

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 3rd November, 2014
Judgment pronounced on: 11th February, 2015

+ **CO.A(SB) 23/2014**

M/S WORSHIP IMPEX PVT. LTDAppellant

Through: Mr.A.S.Chandhiok, Sr. Advocate
with Mr. Manish K. Bishnoi,
Adv.

versus

MANORANJANA SINH & ORSRespondents

Through: Mr.Krishna Kumar, Mr.Pradeep
Kar and Ms.Samridhi Kapur,
Advocates for R-1.

Mr.Arun Kathpalia, Ms.Vasudha
Sen and Ms. Tushita Ghosh,
Advocates for respondent No.3

and

CO.A(SB) 25/2014

M/S POSITIV TELEVISION PVT LTD & ANR..Appellants

Through: Mr. Arun Kathpalia, Ms.
Vasudha Sen and Ms.Tushita
Ghosh, Advocates.

versus

MANORANJANA SINH & ORSRespondents

Through: Mr. Krishna Kumar, Mr.
Pradeep Kar and Ms.Samridhi
Kapur, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J

1. Since both these appeals arise out of common impugned order dated 09th May, 2014 passed in Company Petition filed by respondent no.1, they are being disposed of by a common Judgment.
2. Ms. Manoranjana Sinh (respondent no.1 in both the appeals) filed a Company Petition before the CLB under section 397 – 398 of the Companies Act, 1956 (hereinafter referred to as the “Act”) alleging oppression and mismanagement by Mr. Matang Sinh and his associates in respect of M/s Positiv Television Pvt. Ltd. (the appellant in Company Appeal No. 25/2014), hereinafter referred to as “PTPL” and other group companies.
3. The respondent no.1 has sought the relief that she holds 50% share of PTPL and is the Managing Director and Chairperson of PTPL. She further challenges her removal as a Director of PTPL and apart from other reliefs, has sought a declaration that the allotment of

shares by Mr. Matang Sinh (respondent No.2 in Company Appeal filed by PTPL) is null and void.

4. By interim order dated 25.05.2009, the CLB directed *status quo* with regard to the fixed assets of the respondent companies as well as of all the share holdings. PTPL filed an application for modification of the *status quo* order. The application was dismissed by the CLB by its order dated 29.05.2011.
5. Appeal was filed by PTPL before this court against the order of CLB dismissing the application for modification of *status quo* order. By an order dated 19.10.2011, the appeal was disposed of in the following terms:-

“After some arguments, Mr. C.A. Sundaram, learned senior counsel on instructions of Ms. Ranjana Roy Gamin, learned counsel, states that for the moment, appellant would be satisfied if appellant No.8 and/or his associates are allowed to bring in money as share application money, subject to further orders to be passed by the Company Law Board in the petition pending before it.

Mr. Ramji Srinivasan, learned senior counsel on instructions of Mr. Krishna Kumar, learned counsel for respondent, states that in the event the aforesaid amount is brought in as advance share subscription, he has no objection to the appellant No.8 and/or his associates bringing in money.

In view of the aforesaid agreement appellant No.8 and/or his associates are allowed to bring in money into the appellant as share application money, subject to further order to be passed by the Company Law Board in the petition pending before it.

Needless to say, the aforesaid agreement is without prejudice to the rights and contentions of the parties. The company Law Board is directed' to decide the matter without being influenced by any' observations made by this Court as well as by itself in the impugned order.

Though this Court was inclined to dispose of the matter with the aforesaid observations, but at this stage, both the learned senior counsel state that they would like to explore the possibility of amicable resolution of the disputes.

For this purpose, list the matter on 31st October, 2011 at 2:15 p.m.”

6. This Court by order dated 19.10.2011 permitted PTPL to bring in money as share application money subject to further orders of the Company Law Board.
7. It is the contention of the appellants that in terms of said order, the appellant in Company Appeal No. 23/2014, M/s Worship Impex Pvt. Ltd. (hereinafter referred to as “WIPL”) infused a sum of Rs. 150 Crores into PTPL. The said money was infused over a period of time.

8. The contention of PTPL is that the said money which was brought in, in terms of order dated 29.05.2011 of this Court, was used to pay off the secured creditors for release of the assets and discharge of guarantees given including the personal guarantees of Respondent no.1.
9. Respondent no.1 filed the following four applications before the CLB.
- (i) CA.No. 85 seeking directions to prevent breach of *status quo* order dated 25.05.2009.
 - (ii) CA No. 86 setting aside of agreement dated 30.01.2013 between PTPL and WIPL
 - (iii) CA No. 87 praying for initiating contempt proceedings against some of the respondent for violating order dated 25.05.2009 ; and
 - (iv) CA No. 88 seeking impleadment of WIPL and certain other parties.
10. The impugned order dated 09.05.2014 is an order of interim nature passed in CA No. 88 (application for impleadment) as the application has not yet been disposed of.
11. The appellants are aggrieved by the impugned order in as much as by the impugned order the CLB has returned a finding that the agreement dated 30.01.2013 aims at a complete takeover of PTPL by WIPL and a finding that the agreement is fraudulent, mischievous,

in breach of and a complete abuse of the order passed by the CLB on 25.05.2009 and the liberty granted by this court by order dated 19.10.2011 and that the agreement is a nullity.

12. The appellants are further aggrieved by the finding of the CLB that the true persons who are or have been financially interested in the success or failure of WIPL are different from the persons who appear to be members of WIPL and the true persons who are or have been able to control or materially influence the policy of WIPL are different from the persons who were in control of WIPL and therefore a probe into the affairs of WIPL is desirable in the interest of not only PTPL but also of WIPL.
13. The appellants are aggrieved by the exercise of the *suo moto* powers by the CLB under section 247 (1A) of the Act and the direction to the Central Government to appoint a team of inspectors of unimpeachable integrity for investigating into the affairs of WIPL for the purposes of determining the true persons who are or have been instrumental in providing funds to WIPL to the extent of Rs. 150 Crores and also for determining the true persons who are or have been financially

interested in gaining control over PTPL and its group companies through WIPL.

14. The appellants are further aggrieved by the direction of the CLB whereby the CLB has directed that the parties to the addendum agreement dated 09.02.2013 and 30.03.2013 shall not act on such agreement and further that no Board Meeting or EOGM of PTPL or WIPL shall be held without seeking prior approval of the CLB and the direction of maintaining *status quo* on the shareholding of WIPL.
15. PTPL is further aggrieved by the direction by the CLB to the Central Government to induct one of its nominee as a director on the Board of PTPL without whose presence no Board Meeting of PTPL shall be held and without whose affirmative vote no resolution would be passed by the Board of PTPL and the further direction that the nominee director be made a joint signatory in all bank accounts and no withdrawals are permitted till the nominee director assumes position on the Board.
16. Learned Counsel for the appellants contended that the arguments were heard by the CLB only on the application for impleadment and the other applications are yet to be heard and the CLB without even adjudicating on the application that was heard, returned

findings and issued directions that were either subject matter of the applications that are yet to be heard or were beyond the scope of even those applications.

17. It is further contended that the impugned order is in violation of the principles of natural justice as neither the appellants were put to notice in respect of the directions that were sought to be issued or powers to be exercised nor were the appellants heard on the said issues prior to the findings being returned and directions being issued by the impugned order.
18. Learned Senior Counsel for WIPL further contended that the CLB without even hearing the parties, has held that the Agreement dated 30.01.2013 is a nullity. It is submitted that in case the agreement was void then under Section 65 of the Contract Act, the parties that have received advantage under the agreement that is void are bound to restore it or compensate for it. It is submitted that in case the agreement is held to be nullity then PTPL and respondent no.1 must first restore to WIPL the amount of Rs. 150 Crores obtained by PTPL from WIPL under the said agreement.
19. Learned Counsels for the appellant submitted that there was no application filed by respondent no.1 seeking for investigation into the affairs of WIPL or seeking a

direction that no Board Meeting or EOGM of WIPL be held or seeking appointment of a nominee director on the Board of PTPL. It is contended that the order was really an order on Company Applications No. 85, 86 and 87 of 2013, which even as per the order, are still to be heard. It is contended that the impugned order issues directions that were not even the subject matter or arise out of any of the applications/petitions pending before the CLB.

20. Learned Counsel for the appellants contended that it is an admitted position that by agreements dated 30.01.2013 and addendum agreements dated 09.02.2013 and 30.03.2013, Rs. 150 Crores were infused by WIPL into PTPL. Even the application of Respondent no.1 conceded that Rs. 150 Crores were infused into PTPL by WIPL. It is contended that the application further admits that PTPL had loans of more than Rs. 200 crores from public sector banks and the said amount of Rs. 150 crores so infused in PTPL was utilized for liquidating the liabilities of PTPL. The personal guarantees given by respondent no.1 to the public sector banks to enable PTPL to avail of the loans were also discharged.

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21. Learned Counsel for PTPL contended that because of the infusion of the said amount of Rs. 150 Crores, PTPL was in a position to negotiate with the public sector banks and the secured creditors and was thus able to save Rs. 72 Crores.
22. Learned Counsel for the appellants contended that Rs. 150 Crores had been infused as share application money by WIPL into PTPL under the protective order passed by this Court. Learned Counsel for PTPL contended that the fact that the money had been brought in only as share application money is so reflected in the books of accounts of PTPL. It is submitted that even if there is a dispute raised by the respondent No.1 about the character of the infusion or assuming, without admitting, that the parties had shown the money, as money brought in, under a head other than share application money, the same would be of no consequence as the money was brought in, in terms of order dated 19.10.2011, that itself stipulated that the money shall be subject to further orders to be passed by the CLB in the petition pending before it. The limited liberty granted by this court would protect the respondent no.1 in all respects.

23. It is contended that making the infusion of money subject to the orders of the CLB implied that in case the CLB were to permit the transfer of shares then the share application money would be converted into equity capital and shares would be allotted to WIPL and in case the CLB were not to accept the share application money, the money would have to be refunded to WIPL.
24. Learned Senior Counsel for the WIPL contends that WIPL has no concern or interest in taking over PTPL. It is contended that WIPL had brought in money only in terms of the order passed by this court and in case the respondent no.1 has any objections then WIPL is agreeable to taking the money back.
25. It is submitted that respondent no.1 cannot, after having availed of the benefit of the money brought in by WIPL, challenge the transaction. It is contended that in case respondent No.1 has any objection to the transaction, then respondent no.1 should first restore the benefit and restitute the money to WIPL.
26. It is contended that respondent no.1 kept quite all along when the money was being brought in and was being utilized by PTPL to pay off the private sector banks and the secured creditors and was being utilized for
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discharge of the personal guarantees given including those given by the respondent no.1.

27. It is further contended that the application for impleadment of WIPL filed by the respondent no.1 is mala fide as the respondent no.1, after the infusion of Rs. 150 Crores by WIPL, has got all the assets of PTPL freed and debts paid off and thereafter the said application is being used as a modus operandi to force WIPL into giving up or writing off the said Rs. 150 Crores.
28. Learned Senior Counsel for WIPL submitted that the powers have been exercised by the CLB under Section 247(1A) of the Act without there being any specific application for the same and without the appellants being even put to notice that such powers were sought to be exercised.
29. It is contended that neither is WIPL a party to nor the affairs of WIPL are subject matter of the petition/proceeding pending before the CLB and as such, there could not have been any direction issued for investigating into the affairs of WIPL. It is contended that under Section 247(1A), the company whose affairs could be investigated into, is a company that is the subject matter of the proceedings pending before the

CLB. It is contended that in exercise of powers under Section 247(1A), it is not any and every company whose affairs can be investigated into, but it is only that company, in respect of which the proceedings are pending before the CLB, whose affairs can be investigated into.

30. It is submitted that if a company is a party before the CLB in a capacity other than the capacity of a company in respect of which the proceedings are pending before the CLB, then no orders under Section 247(1A) can be passed.
31. It is contended that the impugned order is in the nature of an interim order pending adjudication of CA No. 88 for impleadment and there is no prayer made by the applicant seeking exercise or invocation of powers of the CLB under Section 247(1A) of the Act.
32. Learned Senior Counsel for WIPL further submitted that since the contention of the respondent itself is that Section 247(1A) of the Act is not applicable after impleadment then powers under Section 247(1A) could not have been exercised to conduct an enquiry pending an application for impleadment. It is further submitted that such an application for impleadment could not

have been entertained without the respondent being first directed to deposit the money taken from WIPL.

33. It is further contended that Section 247(1A) requires formation of an opinion and a declaration by the CLB that affairs of the company ought to be investigated and such an opinion can be formed only on the basis of material on record, and as there was neither any material on record nor even a submission or prayer requiring an investigation into the affairs of WIPL, no such directions could have been issued.
34. Learned Senior Counsel for WIPL further submitted that when the powers under Section 247(1A) could not be exercised *qua* WIPL even if it had been a party to the proceedings, then powers could certainly not be exercised as an interim direction in an application seeking impleadment of WIPL.
35. Learned Senior Counsel for WIPL submitted that the respondent no.1 had filed the petition under Section 397 of the Act for oppression and mismanagement and such a petition would not lie against a company that is a stranger to the transaction or to the issue of oppression and mismanagement. It is submitted that when the petition was filed before the CLB or when the alleged cause of action accrued to the respondent no.1,

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WIPL was in no manner connected with PTPL. WIPL had come into the picture much later and had infused Rs. 150 Crores in terms of order dated 19.10.2011 and as such, no direction can be issue *qua* WIPL.

36. It is further contended that WIPL is neither a necessary nor a proper party to the petition filed by the respondent No.1 alleging oppression and mismanagement by PTPL and the other respondents therein.
37. Learned Senior Counsel further contended that no asset of PTPL was either charged or mortgaged with WIPL, therefore the plea that the WIPL had attempted to take over PTPL was not sustainable.
38. Learned Counsel for the Respondent per contra contended that Mr. Matang Sinh, appellant No.2 in the appeal filed by the PTPL, who is also the husband of the respondent no.1, alongwith his group had indulged in various fraudulent activities including actions that resulted in siphoning of the profits of the company.
39. Respondent No.1 contended that there was an arrangement/agreement/understanding between Mr. Naveen Jindal, his associates/company with Mr. Matang Sinh whereunder Mr. Naveen Jindal, his

associates and companies have given more than Rs. 150 crores and Mr. Matang Sinh had secured all his share holding, assets of the company with the result that PTPL has been virtually taken over by the said group and it is in these circumstances the respondent no.1 prayed for impleadment of various parties including Mr. Naveen Jindal and WIPL.

40. It is contended that the exercise of powers by the CLB under section 247(1A) was a *suo moto* exercise of power and as such no such application was required to be filed. It is contended that the order was more in the form of an enquiry and as such, no opinion was required to be formed prior to the exercise of such powers. Further, it is contended that it was an inquisitorial power exercised by the CLB to ascertain facts and no prejudice was caused to the appellants.
41. It is further contended that the order had been passed in terms of the allegation of the respondent that there was someone else, who was behind WIPL and controlling WIPL. Learned counsel for the respondent contended that there were facts before the CLB, which persuaded the CLB to issue the directions by the impugned order.
42. It is contended that the CLB had in fact heard all the four applications on admission. It is contended that

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hearing on CA No. 88 of 2013 had been concluded and the parties were awaiting the decision on the said application, however, the CLB in its wisdom passed the impugned order and kept CA No. 88/2013 pending.

43. It is submitted that the order was an order in aid of deciding whether impleadment should be permitted or not. It was fairly conceded that the respondent had not prayed for the directions that had been passed by the CLB by the impugned order and the directions were issued by the CLB *suo moto*.
44. Though it was admitted that the respondent had not made any such prayer in any of the applications, it was contended that the directions *qua* WIPL do not flow from any of the pending applications but flow from the general powers of the CLB to pass such directions.
45. With regard to the directions issued in respect of PTPL, it is contended that since other applications were pending before the CLB, it could pass such orders.
46. It is contended that the agreement entered into between PTPL and WIPL was contrary to the liberty granted by this court by order dated 19.10.2011. It is contended that the agreement dated 30.01.2013 was a nullity and the subsequent addendum agreement was also a nullity

and contrary to the liberty granted by order dated 19.10.2011 and the subsequent addendum agreements dated 09.02.2013 and 30.02.2013 would not validate the agreement dated 30.01.2013.

47. It is submitted by the respondent no.1 that WIPL by infusing Rs. 150 Crores had attempted to virtually take over PTPL and the investigation directed by the CLB was to investigate into the coalition between WIPL and PTPL.
48. It is contended that the impugned order only expressed a strong prima facie view on the invalidity of the agreement dated 30.01.2013. It is contended that if the CLB were to finally hold that the agreement is not a nullity, it could always take steps for enforcement of the same. It is contended that the same is only an opinion and not an order. It is submitted that the impugned order does not return a finding of fact that the agreement dated 30.01.2013 is a nullity but the same is only a prima facie opinion.
49. Though elaborate submissions have been made by the parties on the factual matrix as elucidated hereinabove, the controversy involved in the present appeals is in a narrow compass. For disposal of the appeal, it is not necessary to deal with the elaborate submissions on the

factual matrix. Further, since the impugned order is in the nature of interim order passed in an application that is still to be disposed of, I would restrict myself to the directions issued by CLB by the impugned order.

50. For resolving the controversy, it would be expedient to examine the scope of the relevant provisions of the Act.
51. Section 247(1A) of the Act has been placed by the legislature in Part VI under the heading MANAGEMENT AND ADMINISTRATION. Sections 235 to 251, of Chapter I, Part VI under the heading GENERAL PROVISIONS, deal with Investigation.
52. Section 235 of the Act empowers the Central Government to investigate into the affairs of a Company. Section 237 lays down that the Central Government shall appoint one or more inspectors to investigate the affairs of a Company and report if the Company by Special Resolution or the Court by an order declares that the affairs of the company ought to be investigated.
53. Section 239 empowers the inspectors appointed under section 235 or 237 to investigate into the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding

company or a subsidiary of its holding company or a holding company of its subsidiary or is or of any other body corporate which has at the relevant time been managed by any person as managing director or as manager who is or was the managing director or manager of the company, etc.

54. Section 247 of the Act lays down:

247. Investigation of ownership of company.—(1) *Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons.*

(a) *who are or have been financially interested in the success or failure, whether real or apparent, of the company; or*

(b) *who are or have been able to control or materially to influence the policy of the company.*

(1-A) *Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the Tribunal, in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other*

matters relating to the company, for the purpose of determining the true persons—

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.]

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55. Section 247(1) empowers the Central Government, for good reason, to appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure, whether real or apparent, of the company; or who are or have been able to control or materially to influence the policy of the company.

56. Section 247(1A) lays down that the Central Government shall appoint one or more inspectors under sub-section (1), if the CLB in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purpose of

determining the true persons who are or have been financially interested in the success or failure, whether real or apparent, of the company or who are or have been able to control or materially to influence the policy of the company.

57. The difference in the scheme of the Act is clearly apparent. While section 235, 237 and 247(1) deal with investigation into affairs of a or any company and section 239 deal with investigation into the affairs of a body corporate connected in the specified manner with the said company whose affairs are being investigated, section 247(1A) deals with investigation into affairs of the company which is subject matter of any proceedings pending before the CLB.
58. Sec 247(1A) uses the expression "the company" in contradistinction to the expression "a company" or "any company" used in sections 235, 237, 239 and 247(1). The expression "the company" in section 247 (1A) has also to be read in conjunction with the expression "in the course of any proceeding before it".
59. The use of the expression "a" and "any" alongwith the word "company" signifies the intention of the legislature that it is to operate in respect of a company or any company in general. However, the use of the

expression “the” alongwith the word “company” in section 247(1A) signifies that it refers to a particular company. When the expression “the company” in section 247(1A) is read in conjunction with the expression “in the course of any proceeding before it”, it is clear that the provision is applicable in respect of the company which is subject matter of the proceedings before the CLB. The expression “the company” would take colour and be qualified by the expression “in the course of any proceeding before it”. The use of the expression “in the course of any proceeding before it” implies that there must be some proceedings pending before the CLB before the power to direct investigation can be ordered. The use of the expression “the company” implies further that it refers to the company in respect of which the proceedings are pending before the CLB. The use of the expression “in the course of any proceeding before it” cannot be read liberally so as to empower the CLB to direct investigation into the affairs of any company connected or unconnected with the proceedings or which is merely a party to the proceedings. In a proceeding under section 397 for oppression and mismanagement, the expression “the company” would refer to the company in respect of which the allegation of oppression and mismanagement has been made and not to other companies that may be

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party to the proceedings either as petitioner or as performa respondent. Section 247(1A) would not empower the CLB to direct investigation into the affairs of a company which is merely party to the proceedings but is not the company in respect of which there is any allegation of oppression and mismanagement.

60. The Calcutta High Court in ***UNI WORTH TEXTILES LIMITED V ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED, (2012) 175 COMP CAS 418(CAL)*** has laid down that, if Section 247(1A) is read as giving the CLB unfettered authority in all circumstances to declare by an order that the affairs of a company ought to be investigated as regards the matters specified in such provision, it would result in the expression “in course of any proceedings before it” being rendered otiose. That would be impermissible by any rule of construction. Since section 247(1A) of the Act was not meant to be directly invoked - or such provision being taken recourse to only for the purpose of an investigation being directed thereunder - it does specify who may apply thereunder or who may be heard in course thereof. In the absence of the guidelines in the provision itself as to when and how the authority thereunder may be invoked or exercised - the two

inevitable questions on the bounds of authority in any judicial or quasi-judicial jurisdiction, where limitlessness may not be presumed unless expressly specified or by unavoidable implication - the answers to the questions have necessarily to be found in the expression “in the course of the proceedings before it” in section 247(1A). The clue to when such power may be exercised is in the understanding of the expression to imply “during any pending proceedings”; which, in turn, will bring the scope of the pending proceedings into play to provide a key to how the authority may be exercised. Section 247(1A) of the Act provides for wide inquisitorial powers being exercised by the CLB. Ordinarily, such a provision has to be strictly construed and, apart from the fact that it is undesirable to merely direct an investigation for investigation's sake without the result of the investigation being dealt with under such provision, the expression “in the course of the proceedings before it” has to be seen in proper perspective as a check on the otherwise unbridled authority thereunder.

61. In *UNIWORTH TEXTILES LIMITED CASE*, (*SUPRA*) the court has very lucidly spelt out the rules of contextual construction that though the words of a statute have generally to be understood to convey the meaning that

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they would bear in their ordinary sense, literal construction and contextual construction may not be seen to be mutually exclusive. A word or an expression has to be seen against the backdrop of the company that it keeps. If a word or an expression is capable of several sets of meaning in its literal import, the one best suited to the context would be the most acceptable. But a word or an expression in a statute cannot be given a meaning that it would ordinarily not bear only by referring to the context and the perception of what it ought to have implied. Language is, at best, an imprecise form of communication, which is even more inexact when in cold print. The spoken word has the advantage of the accompanying tone or gesture to convey a more specific meaning of that which is being communicated. The interpretation of that which is communicated in writing should lend more towards how it is capable of being understood rather than how it was intended to be perceived. The true meaning of a written word is as it ought to appear to a reasonable reader. The fundamental tenets of statutory interpretation recognise the gulf between the words in a statute and the varied understanding thereof and attempt to bridge the gap.

62. In ***BIRLA CORPORATION LTD. V. EAST INDIA INVESTMENT CO. PVT. LTD., (2006) 133 COMP CAS 515(CAL)***, the Calcutta High Court has laid down as under:

34. *Section 247(1A) does not lay down the circumstances in which the CLB might pass orders for investigation into the affairs of the company.*
35. *The essential ingredients of sub-section (1A) of section 247 of the Companies Act are (i) there should be proceedings before the CLB (ii) in course of those proceedings, the CLB should form an opinion that the 'true persons' Who are or have been financially interested in the success or failure of the company, are different from the persons who appear to be the members of the company, (iii) the 'true persons' who are or have been able to control or materially influence the policy of the company, are different from the persons who appear to be in the control of the company and (iv) a probe into the company's affairs is desirable in the interest of the company itself, and/or in public interest.*
36. *The sine qua non for passing an order for investigation by appointment of Inspectors is formation of opinion of necessity of such an investigation. There can be no doubt that the opinion might be subjective, but existence of circumstances and/or material that justify formation by the CLB of prima facie opinion of the necessity of an investigation in the interest of the company*

and/or in public interest must be demonstrable.

37. The CLB should not direct a roving fishing investigation at the behest of persons who have some ulterior intent in seeking investigation, for example, to stop the shareholders from exercising their rights as shareholders, including their right to vote as attempted in the instant case. The power to direct investigation under section 247(1A) is to be invoked bona fide and in public interest.

63. It has been held in **BIRLA CORPORATION CASE (SUPRA)** by the Calcutta High Court that Section 247(1A) does not lay down the circumstances in which the CLB might pass orders for investigation into the affairs of the company. The *sine qua non* for passing an order for investigation by appointment of Inspectors is formation of opinion of necessity of such an investigation. There can be no doubt that the opinion might be subjective, but existence of circumstances and/or material that justify formation by the CLB of prima facie opinion of the necessity of an investigation in the interest of the company and/or in public interest must be demonstrable. The CLB should not direct a roving fishing investigation at the behest of persons who have some ulterior intent in seeking investigation. The

power to direct investigation under section 247(1A) is to be invoked bona fide and in public interest.

64. In the case at hand, the CLB has passed the order in the nature of an interim order in an application seeking impleadment. There is clearly no formation of opinion by the CLB that the 'true persons' who are or have been financially interested in the success or failure of the company, are different from the persons who appear to be the members of the company or the 'true persons' who are or have been able to control or materially influence the policy of the company, are different from the persons who appear to be in the control of the company and a probe into the company's affairs is desirable in the interest of the company itself, and/or in public interest and that such an investigation was required into the affairs of WIPL. There was admittedly no request or prayer made by the respondent for the same. Parties have not even been put to notice that such an order was contemplated. Parties have admittedly not been heard on this issue. There is clearly a violation of the principles of natural justice.

65. Furthermore, the proceedings in which directions have been issued in *suo moto* exercise of powers under section 247(1A), in respect of WIPL, are not

proceedings in respect of WIPL. WIPL is not even a party to the said proceedings. Though an application seeking impleadment of WIPL is pending but it is yet to be decided by the CLB. Even if the said application were to be allowed and WIPL was impleaded as a party, it would make no difference as the proceedings do not relate to the affairs of the company WIPL. Merely because WIPL is impleaded as a party to the proceedings would not empower CLB to direct an investigation into its affairs as permitting so would render the very words “in the course of the proceedings before it” otiose. The proceedings pending before the CLB are not proceedings in respect of WIPL.

66. Thus, it is clear that the CLB has committed an error and the direction for investigating into the affairs of WIPL in exercise of powers conferred under section 247(1A) is clearly not sustainable.
67. Furthermore, it is clear that the impugned order dated 09.05.2014 is an interim order passed in CA No. 88 an application seeking impleadment of several parties including WIPL as a respondent. Perusal of the appeal record clearly shows that the directions issued by the CLB by the impugned order do not emanate from the application for impleadment but either emanate from

the other pending applications that are yet to be heard or do not emanate at all from any of the pending applications.

68. The heading of the impugned order itself shows that the order has been passed only in CA No. 88. Reference has been made to the heading of the order as the order in its body refers to certain other applications also. Furthermore the procedure adopted by the CLB prior to the passing of the impugned order requires a reference to be made to the heading of the order.
69. Para 6 of the order refers to four applications, i.e. CA No. 85, 86, 87 and 88 of 2013. Para 6 records as under:-

“6. In the above scenario senior learned counsel Mr. Ramji Srinivasan was heard on admission of four applications filed by the Petitioner i.e. CA Nos. 85, 86, 87 and 88 of 2013 on 19.11.2013. CA No.85/(ND)/2013 sought urgent interim directions for preventing a breach of the status quo dated 25.05.2009 passed by this Board. CA No. 86 sought setting aside the agreement dated 30.01.2013 between WIPL and PTPL and R-2. CA No.87 prayed for initiating contempt proceeding against R-2, 3, 4 & 6 and all others abetting such breach of the order dated 25.05.2009 and present CA No.88/C.No.1/2013 sought impleadment as shown in para 1 (supra).”

70. In paragraph 7, the CLB has recorded as under:-

“7. During the next two hearings i.e. on 10.01.2014 and 07.02.2014 pleadings in the above mentioned CA were not complete. On 13.03.2014, as agreed, it was directed that while hearing on interlocutory applications mentioned above, CA No. 86/C.No.I/2013 (which should have been CA No.88) seeking impleadment shall be heard in order of precedence and the remaining applications thereafter. It is in these circumstances that arguments commenced on CA No.88 first and concluded. The remaining CAs are yet to be heard in continuation.”

(Underlining supplied)

71. Paragraphs 6 and 7 of the impugned order show that though on 19.11.2013, the counsel for respondent no.1 was heard on admission of various applications, however as pleadings were not complete in some of the applications as of 10.01.2014 and 07.02.2014, thus on 13.03.2014 it was agreed between the parties that application for impleadment (CA No. 88) shall be heard in order of precedence and the hearing on the said application was concluded and the other application are yet to be heard in continuation.

72. However, while dealing with the application for impleadment, the CLB in paragraph 18 of the order has recorded as under:-

“18. Therefore, before adjudicating on the issue of impleadment in CA No.88/C.No.1/2013 it needs to be investigated as to who are the true persons who are or have been financially interested in the success or failure of, whether real or apparent, of WIPL, in gaining complete control of PTPL or materially to gain complete control of PTPL, by granting a loan of 150 crores through WIPL to PTPL under the terms embodied in the agreement dated 30.01.2013 and addendum dated 09.02.2013 and 30.03.2013. It also needs to be investigated as to what is the extent or nature of collusion between such true persons and Matang Sinh R-2. It also needs to be investigated as to from which source WIPL acquired funds to the extent-of 150 crores and what nexus Mr. Rajiv Jain to whom a letter dated 14.05.2013 relating to mutual understanding of securing financial assistance from WIPL of 150 crores in the form of loan or equity was marked by Mr. Matang Sinh R-2, has, with such true persons. It is only in such an appropriate situation that the _ power conferred on the CLB under section 247(1A) of the Companies Act, 1956 is required to be exercised suo moto.”

(Underlining supplied)

73. In paragraph 18, the CLB has recorded that before adjudicating on the issue of impleadment in CA No. 88, powers under Section 247(1A) of the Companies Act have been exercised in respect of the company, WIPL.

74. In paragraph 19, the CLB has held as under:-

“19. In my considered opinion before adjudicating CA No.88/C.No.1/2013 it is absolutely necessary that an investigation is, carried out by the Central Government into the affairs of WIPL as regards the Membership of the company, its Board of Directors and the source from which WIPL had obtained a sum of 150 crores to be granted initially as loan to PTPL and its nexus with the true persons behind it who aimed at securing full control of PTPL and its group companies. I therefore direct the Central Government to appoint a team of inspectors of unimpeachable integrity for investigating the affairs of WIPL for the purpose of determining the true persons who are or have been instrumental in providing funds to WIPL to the extent of 150 crores and also for determining the true persons who are or have been financially interested in gaining control over PTPL and its group companies through WIPL and the success or failure of such strategy whether real and apparent of WIPL or who are or have been able to control or materially to influence the policy of WIPL. The investigation shall also be focused, while ascertaining such true persons, on the purpose in reconstituting the Board of WIPL with Mr. Shekhar Sharda and Mr. Amit Kumar Jha, who were not only at an earlier point of time in the employment of JSPL and Mr. Navin Jindal but also held vital positions in JSPL. A probe into the nexus of Mr. Rajiv Jain with such true persons shall also be conducted.”

(Underlining supplied)

75. In paragraph 19 also, the CLB has recorded that before adjudicating on the application for impleadment, the powers under Section 247(1A) have been exercised.
76. The CLB by the impugned order has further directed that no Board Meeting or EOGM of PTPL or WIPL shall be held without seeking prior approval of the CLB. The CLB has further directed *status quo* as on the date of the order on the share holdings of WIPL and has injuncted the transfer of any share holdings. The CLB has directed the Central Government to appoint a nominee director on the Board of PTPL without whose presence, no Board Meeting of PTPL shall be held and without whose affirmative vote, no Resolution can be passed by the Board of PTPL. The nominee director has been made a joint signatory in all bank accounts and no withdrawal is permitted from any bank account of PTPL till the nominee director assumes position on the Board. The CLB has listed the matter for hearing on the other applications and also for considering whether in view of the finding that the agreement dated 30.01.2013 is a nullity, the addendum agreements dated 9.2.2013 and 30.03.2013 have any force of law.
77. It is an admitted position of the parties that CA No. 88, the impleadment application, has not yet been disposed

of and final orders are yet to be passed thereon and the other application are yet to be heard. Even the impugned order records that the arguments were heard on the impleadment application and the other applications filed by the respondent no.1 are yet to be considered. The CLB by the impugned order has recorded that the directions passed in the impugned order have been passed before adjudicating on the issue of impleadment in CA No. 88 of 2013.

78. On 19.11.2013, the CLB issued notice in the above applications and directed that, the parties to the agreement dated 30.01.2013 and the security agreement dated 30.01.2013 shall not act any further upon the agreements and WIPL was called upon to show cause as to why the agreements dated 30.01.2013 be not terminated or set aside in exercise of powers under section 402(e).
79. It is thus clear that by the impugned order passed in CA No. 88 for impleadment, the CLB, without deciding on the impleadment and without even hearing the parties on merits, has held that the agreement dated 30.01.2013 aims at a complete takeover of PTPL by WIPL and the agreement is fraudulent, mischievous, in breach of and a complete abuse of order passed by the CLB on

25.05.2009 and the liberty granted by the order dated 19.10.2011 by the High Court, and is therefore a nullity.

80. The CLB after returning the finding as above, records that since at that juncture, it was only considering the impleadment of proposed respondents, it would confine itself to observing that it is doubtful if an agreement which is a nullity could be revived or modified by any addendum agreement which would be considered while considering the setting aside of agreement dated 30.01.2013. The order further records that after hearing the parties, the CLB would pass appropriate order whether the agreement dated 30.01.2013 and the further addendums are also liable to be set aside.
81. The impugned order further records the contentions of the counsel for the respondent no. 1 (Petitioner before CLB) on CA No. 88, raising doubts about the financial capacity of WIPL to grant a loan of Rs. 150 Crores to PTPL and the contention that the agreements dated 30.01.2013 are in violation of *status quo* order dated 25.05.2009 of the CLB.
82. The other applications apart from the application for impleadment that were pending as per the order were (i) CA.No. 85 seeking directions to prevent breach of

status quo order dated 25.05.2009, (ii) CA No. 86 for setting aside the agreement dated 30.01.2013 between PTPL and WIPL and (iii) CA No. 87 praying for initiating contempt proceedings against some of the respondent for violating order dated 25.05.2009.

83. The above clearly shows that the CLB has passed directions in the impugned order that are beyond the scope of the application for impleadment and some of the directions passed by the CLB emanate from the other pending applications which are yet to be heard and decided. Even the impleadment application has not been disposed of. The finding of the CLB that the agreement dated 30.01.2013 aims at a complete takeover of PTPL by WIPL and the finding that the agreement is fraudulent, mischievous, in breach of and a complete abuse of the order passed by the CLB on 25.05.2009 and the liberty granted by the High Court by order dated 19.10.2011 and that the agreement is a nullity is not a finding that can be a finding returned in an application seeking impleadment of WIPL, the application seeking setting aside of the agreements (CA 86) is still pending and is yet to be heard. The finding returned is without a hearing and without adjudication of the pending application. The finding returned that the agreements are fraudulent, mischievous, in breach

of or a complete abuse of the orders passed or are a nullity is clearly without complying with the principles of natural justice and is thus not sustainable. Similarly, the direction that that the parties to the addendum agreement dated 09.02.2013 and 30.03.2013 shall not act on such agreement is also without a hearing and an opportunity to the affected parties and is without complying with the principles of natural justice and is thus not sustainable.

84. The doubts raised by the respondent no.1 about the financial capacity of WIPL to grant a loan of Rs. 150 Crores to PTPL do not arise for consideration in the application for impleadment as the said application has been filed on the very premise that Rs. 150 Crores has been invested by WIPL. It is not in dispute that the said amount has been invested by WIPL in PTPL. Whether WIPL did or did not have the financial capacity to invest the said amount is not a relevant consideration for the impleadment application and does not arise for consideration in the application for impleadment which is premised on the very contention that the said amount of Rs. 150 Crore was infused by WIPL in PTPL. Furthermore, it is also admitted by the respondent no.1 that the said amount has been infused by WIPL. For impleadment, what is relevant is whether the proposed

parties are necessary or proper parties and whose presence is required for the complete and effective disposal of all the issues arising in the proceedings. The impleadment application is yet to be decided. Whether this issue is relevant for the disposal of the other pending applications is yet to be considered by the CLB as the other applications are yet to be heard and decided.

85. Similarly, the direction by the CLB to the Central Government to induct one of its nominee as a director on the Board of PTPL without whose presence no Board Meeting of PTPL shall be held and without whose affirmative vote no Resolution would be passed by the Board of PTPL and further of making the nominee director a joint signatory in all bank accounts and not permitting any withdrawals till the nominee director assumes position on the Board are also directions that do not emanate from the application for impleadment. The other applications are still pending and to be taken up for hearing and the directions have been issued without a hearing and without affording an opportunity to the affected parties. There is a clear infraction of the principles of natural justice. The impugned order in this respect is also not sustainable.

86. Similarly, the direction by the CLB that the parties to the addendum agreement dated 09.02.2013 and 30.03.2013 shall not act on such agreement and further direction that no Board Meeting or EOGM of PTPL or WIPL shall be held without seeking prior approval of the CLB and the direction of maintaining *status quo* on the shareholding of WIPL are also directions that do not emanate from the application for impleadment. The other applications are still pending and to be taken up for hearing and the directions have been issued without a hearing and without affording an opportunity to the affected parties. There is a clear infraction of the principles of natural justice. The order in this respect is also not sustainable.
87. The reliance placed by the learned counsel for the respondent no.1 on the judgment in the case of ***BAKHTAWAR CONSTRUCTION Co. (P) LTD VS. BLOSSOM BREWERIES LTD. & ORS, (1999) 95 COMP CAS 28(BOM)***, is misplaced as the Bombay High Court in the said case was considering the issue of applicability of section 248 of the Act and further more the direction for investigation in the said case was sought to be issued under section 248 in respect of the company that was subject matter of the main petition before the CLB.

88. Further reliance placed by the learned counsel for the respondent on the judgment of the CLB in the case of *ALAKNANDA MANUFACTURING AND FINANCE PVT. LTD & ORS. VS. BAHUBALI SERVICES LTD. & ORS., (1996) 86 COMP CAS 291(CLB)*, is also misplaced as in the said case the CLB was considering the application under section 247(1A) in respect of the shares of the company in respect of which the main proceedings were pending.
89. In view of the above, the appeals are allowed. The impugned order dated 09.05.2014 is set aside. The CLB is directed to decide the pending applications in accordance with law and the principles as elucidated hereinabove. There shall be no orders as to costs. Nothing stated herein shall amount to an expression of opinion on the merits of the respective contentions of the parties.

SANJEEV SACHDEVA, J

FEBRUARY 11, 2015

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