dik

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

COMPANY SCHEME PETITION NO. 307 OF 2014

In the matter of:
The Companies Act, 1956.
And

In the matter of:
Sections 391 to 394 read with 100 to 103 of the Companies Act, 1956.
And
In the matter of:
Triveni Bialetti Industries Private Limited, a company incorporated under the Companies Act, 1956.
And
In the matter of:
Scheme of Arrangement between Triveni Bialetti Industries Private Limited and TTK Prestige Limited and their respective shareholders and creditors

Triveni Bialetti Industries Private Limited, a company incorporated under the provisions of Companies Act, 1956 having its registered office at 231, Khardi, Shahpur, Thane 421304, Maharashtra) ...Petitioner Company

WITH

WRIT PETITION NO. 11048 OF 2012

Bialetti Industries S.P.A. ...Petitioner
vs.
Rachit Suresh Gangar & Ors. ...Respondents

Mr.Ankit Lohia with Sairam Subramanian, Chakrapani Misra and Vaisakh Shaji i/b. Khaitan & Co. for Petitioner in CSP 307-2014 and for Respondent No.2 in WP 11048-2012.
Dr.G.R. Sharma with D.P. Singh for RD.
Mr.Chirag Mody with Mayur Khandeparkar with Munaf Virjee and Nishith Doshi i/b. DSK Legal for Petitioner in WP 11048-2012.

Mr.Harish Pandya i/b. MK Bannatwala for Respondent No.1 in WP 11048-2012.

.....

CORAM : S.C. GUPTE, J.

RESERVED ON : 7 OCTOBER 2015

PRONOUNCED ON : 28 JANUARY 2016

ORDER :

This Company Scheme Petition, filed under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956, seeks sanction of a scheme of arrangement between the Petitioner – Triveni Bialetti Industries Pvt. Ltd. and the transferee - TTK Prestige Limited and their respective shareholders and creditors. The scheme envisages demerger of the kitchen appliances division of the Petitioner Company and vesting of the same into the transferee company – TTK Prestige Limited. A similar scheme petition filed by the transferee company before the Madras High Court has been allowed by that Court. This Company Scheme Petition is being heard along with a writ petition filed on the appellate side of this Court by the objectors to the Company Scheme Petition. The writ petition challenges an order passed by the Company Law Board, Mumbai Bench ("CLB") dismissing a company petition filed by the objectors challenging *inter alia* the resolution passed in the extra-ordinary general meeting of the petitioner company in the Scheme Petition substituting its Articles of Association. The objectors are minority shareholders of the company, who allege an oppression at the hands of the majority shareholders *inter alia* by means of alteration of the Articles. It is the objectors' case in the Company Scheme Petition that the Scheme Petition is filed for circumventing the interim order passed in their writ petition challenging the CLB order. That is how the writ petition, Writ Petition No. 11048 of 2012, has been clubbed with the Scheme Petition and placed before the Company Court under orders of the Hon'ble the Chief Justice.

2 The facts of the case, which are common to the two petitions, may be briefly outlined as below:

2.1 The transferor company – Triveni Bialetti Industries Ltd. (“TBIL”) is a joint venture company held by two groups – one, the Gangar group, which is represented by the Petitioners in the Writ Petition, who are also objectors to the Company Scheme Petition (“Gangars” or “Gangar Group”) and the other, the Bialetti group, represented by the Italian company, Bialetti Industries S.P.A., which is Respondent No.1 in the Writ Petition (“Bialetti” or “Bialetti group”). Under the Joint Venture Agreement dated 20 September 2007 (“JV Agreement”), the Bialetti group, through its affiliate, acquired 70% equity stake in TBIL, whilst 30 % belonged to the Gangars. The JV Agreement provided for pre-emption rights to each of the groups as and when the other group proposed to sell or transfer all or any of its shares, in the form of a Right of First Refusal (“RoFR”). The RoFR also formed part of the Articles of Association of TBIL. Both the JV Agreement and the Articles also contained other suitable provisions for the management of the company through directors nominated by each group as also the decision making process.

2.2 The original stake of Gangars in the equity of TBIL was in course of time diluted to 5.98 %, whilst the 94.02 % of the paid up capital came to be held by Bialetti group.

2.3 Sometime in or about June 2010, Bialetti group was in talks with TTK Prestige Ltd. (“TTK”) for divestment of their shareholding in TBIL in favour of TTK. By their email of 17 June 2010, Bialetti group indicated to Gangars that they were negotiating a price of about Rs.28 crores less TBIL liabilities with TTK and also communicated TTK's expression of interest in purchasing even the shares of Gangars. Gangars, in reply, indicated that they did not desire to sell their stake in TBIL, but instead would like to continue to partner with TTK in conducting the business of TBIL. In the course of correspondence between the parties, by their letter dated 2 July 2010, Bialetti called upon Gangars to let the former know of the latter's availability-

(a) to sell their (Gangars') stake in TBIL to TTK for a pro-rata price offered by TTK to Bialetti, or

(b) to purchase Bialetti's stake in TBIL on the same terms and conditions as offered by TTK, or

(c) to sell their (Gangars') stake to Bialetti, specifying the relevant terms and conditions of such sale.

Gangars, for their part, by their communication dated 12 July 2010, offered to purchase Bialetti's stake in TBIL on the terms and conditions proposed by TTK. Gangars, however, called upon Bialetti group to infuse capital to the extent of Rs.5 Crores, whereafter they (Gangars) offered to purchase the Bialetti stake (as increased by infusion of further capital) at Rs.28.70 lac and retain Rs.2 Crores. In response to meetings between the parties further to these communications, Gangars refused to sign any formal undertaking or any confirmation of their intention to acquire Bialetti's stake in TBIL on the terms offered by TTK. Bialetti, in the premises, called upon Gangar group to confirm in writing that it was willing and undertook to pay Bialetti by, and no later than, 2 November 2010 a gross consideration amounting to 93 % of Rs.28 Crores plus an amount equal to 75 % of TBIL's current VAT receivables and 50 % of TBIL's current deferred taxes minus current liabilities of TBIL towards Bialetti and lending banks. Bialetti made it clear that in default of such undertaking, it would explore all options including going ahead with its transaction with TTK. Gangar group, in response, more or less reiterated its earlier stand, claiming *inter alia* that the net value of Bialetti stake was in the negative.

2.4 On 10 November 2010, in a meeting, the Board of Directors of TBIL noticed the deadlock and decided to inform the members of TBIL about the same.

2.5 By its letter dated 13 January 2011, Bialetti group terminated the JV Agreement, in pursuance of its right to do so if Gangars' shareholding was reduced to below 10 % without Bialetti's written consent. Gangars opposed this termination *inter alia* on the ground that the relevant clause providing for the JV partner's right to terminate the JV Agreement could not be invoked by Bialetti in the facts of the case.

2.6 On 14 February 2011, a notice convening a Board meeting of TBIL was served by TBIL on the directors nominated by Gangars. The Board meeting *inter alia* proposed to consider amendment of Articles of Association of TBIL and remove Gangar directors. Gangars objected to this meeting through their solicitors' reply. The Board of TBIL went ahead with the meeting and decided to convene an Extra-ordinary General Meeting ("EoGM") of TBIL *inter alia* for amending the Articles of TBIL and for removal of the directors nominated by Gangars.

2.7 On 24 February 2011, the EoGM was convened and held. Gangars did not attend this meeting. By a unanimous resolution, the meeting approved and adopted the regulations contained in the reinstated Articles of Association submitted to the meeting. Further resolutions for shifting of the registered office of TBIL to the State of Tamil Nadu and removal of Gangar directors were also passed.

2.8 Gangars, thereafter, approached CLB in its jurisdiction under Sections 397 and 398 of the Companies Act *inter alia* challenging the resolutions passed in the EoGM of 24 February 2011 as being oppressive to Gangars.

2.9 When Gangars' petition, Company Petition No.48 of 2011, came up before CLB, Bialetti opposed it *inter alia* on the ground that the petition mainly raised disputes on the ground of termination of the JV Agreement and that there being an arbitration agreement contained in the JV Agreement for adjudication of disputes thereunder, the CLB had no jurisdiction to decide these disputes and in the premises, the parties be referred to arbitration. This objection was raised in a Company Application filed by Bialetti group under Section 8 of the Arbitration and Conciliation Act, 1996.

2.10 By its order dated 2 May 2012, CLB accepted the objection, holding *inter alia* that the subject matter of disputes in the Company Petition being covered under an arbitration agreement, the Company Petition be dismissed and the parties be relegated to arbitration.

2.11 The order of CLB was challenged by Gangars in a Company Appeal under Section 10F of the Companies Act, 1956.

2.12 By his order dated 6 November 2012, a learned Single Judge of this Court (Dhanuka J) dismissed that appeal, holding *inter alia* that on a conjoint reading of Section 5 and Section 37 of the Arbitration and Conciliation Act, 1996, all judicial authorities are barred from interfering in proceedings governed by part I of that Act except as provided in that part and these provisions being a self-contained code not providing for any appeal from an order passed under Section 8, the appeal under Section 10F of Companies Act, 1956 was not maintainable.

2.13 Gangars have accepted this order and have now moved the present Writ Petition challenging the CLB order, broadly on the same grounds as those urged in their appeal under Section 10F.

2.14 On 31 March 2013 and 24 May 2013, the respective Boards of Directors of TTK and TBIL approved a scheme of arrangement for demerger of the kitchen appliances division of TBIL and vesting of the same in TTK. On a summons for directions moved in that behalf, by its order dated 28 March 2014, convening and holding of meetings of shareholders and creditors was dispensed with by this court. So also, was the procedure prescribed under Section 101(2) for reduction of share capital. TTK thereafter applied as a transferee company for sanction of the scheme to Madras High Court, which sanctioned the same. TBIL, thereafter, moved the present Company Scheme Petition for sanction of the scheme as a transferor company.

2.15 Since common issues have been involved in the Writ Petition and the Company Scheme Petition, the hearing of the two has been clubbed and the petitions are placed before this Court for a common hearing. That is how these matters arise for consideration of this Court.

WRIT PETITION NO. 11048 OF 2012

3 **Rival submissions in the Writ Petition:**

3.1 Learned Counsel for the writ petitioners submitted that after the Company Appeal impugning the CLB order of 2 May 2012 was dismissed by this Court (per Dhanuka J) , another learned Single Judge (Patel J) has decided the question, namely, whether Section 8 of the Arbitration & Conciliation Act, 1996, can be invoked in a Section 397/398 proceeding before the CLB. The learned Single Judge has held that the disputes in a petition properly brought under Sections 397 and 398 of the Companies Act, 1956 cannot be referred to arbitration except where the petition is mala fide or vexatious and 'dressed up' and the reliefs sought are such as can be granted by a private arbitral tribunal. It is submitted that in the present case, the petition, being a properly instituted petition under Sections 397 and 398 of the Companies Act, 1956, ought not to have been dismissed. It is submitted that the parties ought not to have been referred to arbitration in the facts of the case. Learned Counsel relies on the reliefs claimed in the Company Petition before the CLB and submits that these reliefs properly arise, and can be granted only by the CLB, under Section 402 of the Companies Act, 1956 and not by a private arbitral forum.

3.2 On the other hand, learned Counsel for the Respondents – Bialetti group submits that the judgment of the learned Single Judge (Patel J) is per incuriam as it does not consider the binding judgment of another learned Single Judge (Dhanuka J) delivered in this very case, which holds that no appeal lies from an order passed under Section 8 of the Arbitration and Conciliation Act, 1996. Secondly, it is submitted that the finding of CLB that the disputes involved in the Company Petition call for enforcement of the JV Agreement and are covered by the arbitration agreement forming part thereof, cannot be assailed in a

Writ Petition. It is submitted that this is a purely contractual matter and ought not be made the subject of a writ. Lastly, it is submitted that all grounds raised before CLB were decided by it and there was no error of law in its order.

4 **Consideration of the submissions in the writ petition:**

4.1 Let us, in the first place, consider whether the judgment of Patel J on maintainability of a Section 8 application in a Sections 397 / 398 proceeding can be said to be per incuriam. The judgment of Dhanuka J referred to above holds that an appeal under Section 10F does not lie from a decision of the CLB rendered on an application under Section 8 of the Arbitration & Conciliation Act, 1996, taken out in a petition filed under Sections 397 and 398 of the Companies Act, 1956. On the other hand, what Patel J holds is that an application under Section 8 does not lie in a petition under Sections 397 and 398 except when certain conditions, discussed by the learned Judge, are satisfied. The two judgments are perfectly compatible and do not give rise to any conflict. It is another matter that Patel J could have dismissed the appeal before him simply on the ground that, under the ratio of the judgment of Dhanuka J, the appeal did not lie under Section 10F. The appeal instead was dismissed by him on another ground, but dismissed all the same. The ground of dismissal was inarbitrability of the disputes before the CLB when the specified conditions did not exist. The CLB held in that case that the disputes were not arbitrable and the learned Judge (Patel J) upheld that finding and dismissed the appeal.

4.2 If one has regard to the facts of the present case, on which the CLB held the disputes to be arbitrable, it certainly cannot be said that the petition before the CLB in this case was either malafide or vexatious or 'dressed up' and thus falling within the small window, through which it is permissible to seek a reference under Section 8 in a Section 397 / 398 petition, as held by Patel J. The relevant clauses of the JV Agreement, breach of which is complained of by Gangars, are incorporated in the Articles of TBIL. If Gangars are right, the case would be as much a case of breach of Articles as a case of breach of JV Agreement. What is urged before the CLB is a case of oppression based on this breach. The relief claimed on that basis is properly claimable under Section 402 of the Companies Act, 1956.

4.3 The CLB, accordingly, could not have refused to hear the Company Petition or referred the parties to arbitration. The tribunal having erroneously refused to exercise its jurisdiction, a writ must be issued in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India. The impugned order of the CLB needs to be struck down and the matter remanded to it for hearing in accordance with law.

5 The Writ Petition is accordingly allowed. The impugned order of the Company Law Board dated 2 May 2012 is struck down. The Company Law Board shall hear Company Petition No.48 of 2011 on merits in accordance with law.

COMPANY SCHEME PETITION NO.307 OF 2014.

6 **Rival submissions in the Scheme Petition:**

6.1 It is firstly submitted by the objectors to the Scheme Petition that the scheme is proposed only with a view to get over the injunction order passed by this Court in the writ petition referred to above. Secondly, it is submitted that both under the Articles of Association of TBIL and the JV Agreement, Bialetti cannot unilaterally alter the Articles without an affirmative vote of Gangars. Under the Articles, as they stood prior to the purported alteration, Bialetti could not have unilaterally decided on a scheme of arrangement including amalgamation or transfer of undertaking of TBIL without an affirmative vote of Gangars. It is submitted that the Gangar group's case on oppression against the Bialetti group, which is based *inter alia* on an unauthorized alteration of Articles, must be heard first before the scheme proposed in the Scheme Petition herein is allowed to go through on the basis of altered Articles. Lastly, it is submitted that Bialetti could not have transferred their shareholding to anyone without allowing the Gangars to exercise the RoFR and that what is proposed is to indirectly achieve divesting of Bialetti's stake, which could not be done directly.

6.2 On the other hand, it is submitted by learned Counsel for TBIL that, in the first place, the notices issued by Bialetti to Gangars substantially comply with the requirement of the Articles and the JV Agreement of allowing the latter to exercise the RoFR. It is submitted that since there was a deadlock, the matter was carried to the general body of members and in a duly convened General Meeting of TBIL, the Articles were altered. It is submitted that the Articles were altered after duly terminating the JV Agreement. The requirement of affirmative vote of the Gangar group, learned Counsel for TBIL submits, cannot apply since the shareholding of the Gangar group had fallen below the minimum of 10 per cent without written consent of the Bialetti group. It is contended that there is no *prima facie* case of oppression on that score and that pendency or existence of a dispute between the parties in that behalf does not require the scheme of arrangement to be stalled.

7 **Consideration of rival submissions in the Scheme Petition:**

7.1 The scheme of arrangement proposed by the TBIL does not really fall under the provision of transfer of shares in the Articles or the JV Agreement. There is no question of exercise of any RoFR in the case. The main question in the objections of the Gangar group to the scheme may be formulated thus: (a) the principles of decision making provided in the JV Agreement (Clause 10), which are also reflected in the Articles of TBIL (Clause 36), *inter alia* require that decisions on certain matters require, during the subsistence of the JV Agreement and the Articles, an affirmative vote of each of the two groups; (b) any merger or reconstruction as also amendment to the Articles is covered within such matters; (c) the merger as well as amendment of Articles in the present case was in breach of this provision; (d) such breach is the subject matter of the Company Petition filed by Gangars before the CLB complaining of oppression and mismanagement; and (e) till that petition is decided, TBIL cannot be allowed to go ahead with the merger proposed in the Scheme Petition.

7.2 The merger decision was taken by TBIL under the amended Articles which do not have the clause of affirmative vote. The decision, accordingly, on the face of it, cannot be faulted as a breach of Articles. But the real question is, whether the amendment of Articles itself is valid. If it is valid, the decision of merger cannot be faulted. If not, the decision is vitiated and it would be unfair to allow TBIL to go ahead with the merger, since that would be *prima facie* oppressive of the minority represented by Gangars.

7.3 The matter, therefore, hinges on two main issues: (i) Whether the EoGM of 24 February 2011 was duly convened and held?; and (ii) whether the decision to alter the Articles taken therein was valid?. General body of members is the supreme authority to decide on Articles and whether they should be amended, but it must act within the constitutional mandate of the Articles; its acts must be *intra vires* the Company and its members.

7.4 Gangars complain of an inadequate notice of the Extra-ordinary General Meeting (EoGM). The Articles of TBIL require a minimum notice of 7 days ordinarily for convening and holding a general meeting. But under Article 21, a general meeting may, with consent of members holding not less than 90 per cent of voting power, be called at a shorter notice and in such manner as the members may deem fit. Bialetti admittedly held more than 90 per cent voting power and could certainly convene and hold a general meeting at a shorter notice and in a manner thought fit by them. The EoGM was validly convened and held.

7.5 On the validity of the decision itself, what is crucial is clause 58 of the Articles (which is a reflection of clause 19.1.4 of the JV Agreement). This clause permits termination by Bialetti in the event that, "*at any moment starting from January 1st, 2010 the ratio of the existing shareholding interest of the Gangars in the Company is reduced to or below 10 (ten) % without the prior written consent of Bialetti, Bialetti may terminate these Articles forthwith by giving a written notice of thirty (30) days to the Gangars upon the occurrence of such event.*" The case of Bialetti is that without such consent of Bialetti the Gangars' stake was diluted from original 30 per cent to the current 5.98 per cent, and that in the premises, the Articles and the JV Agreement were terminated by Bialetti by a proper notice.

7.6. The answer of Gangars to this termination is three-fold : Firstly, it is submitted that the dilution of Gangars' shareholding below 10% occurred prior to January 1, 2010 and hence it does not qualify as an event entitling Bialetti to terminate the JV Agreement and the Articles. Secondly, it is submitted that the dilution had occurred with the consent of Bialetti, as all corporate resolutions for issuance of further equity shares had been passed with Bialetti's consent. Thirdly, it is submitted that right from the inception, there was a clear understanding between Bialetti and Gangars that TBIL was essentially a quasi-partnership wherein the two groups had agreed to run the affairs of TBIL in letter and spirit of the JV Agreement.

7.7 Whether or not the dilution of shareholding of Gangars happened before January 1, 2010, it is still a dilution which subsists after January 1, 2010. *Prima facie* what is meant by clause 58 of the Articles (and clause 19.1.4 of the JV Agreement) is that if the Gangars' shareholding is below 10% at any time after January 1, 2010, Bialetti has the right to terminate. Three conditions must be met for Bialetti to exercise its right of termination : (i) The relevant date, i.e. January 1, 2010, should have passed; (ii) Gangars' shareholding stands diluted below 10%; and (iii) such dilution has not occurred with the prior written consent of Bialetti. All three conditions have been met in the present case. It is no answer to Gangars that the dilution has occurred as a result of issuance of additional shares by duly passed board resolutions to which Bialetti directors are party. The Articles of TBIL provide for issuance of additional capital to Bialetti and Gangars in the proportion of equity capital held by them in TBIL. In the event, Gangars do not subscribe to the whole or part of such additional equity share capital offered, Bialetti is entitled to subscribe to such capital. Under these provisions, resolutions for issuance of additional capital were duly passed; Gangars were offered shares, but did not subscribe to these; and Bialetti subscribed to these shares. That is what happened and as a result, Gangars' shareholding went below 10%. These circumstances do not lead to an inference that Gangars' shareholding was reduced below 10% **with prior written consent** of Bialetti within the meaning of

Article 58 or clause 19.1.4 of the JV Agreement. By reason of having taken up shares not subscribed to by Gangars, Bialetti cannot be said to have consented to the reduction of Gangars' stake in terms of Article 58 or clause 19.1.4 of the JV Agreement. The requirement of these provisions is of a prior written consent for reduction of shareholding. *Prima facie* it is not possible to dilute the meaning of the expression or treat it as merely directory. It is also not possible *prima facie* to accept the submission of Gangars that TBIL was a quasi partnership. It is a joint venture between two independent business entities who operated at arms' length and agreed to form a corporate entity and do business for mutual benefit. There is no partnership principle in this. None of the criteria laid down by courts to treat a corporate entity as a quasi-partnership are *prima facie* satisfied in the present case.

7.8 In sum, the resolution of TBIL amending the Articles, passed after 30 days' notice of termination by Bialetti, cannot be faulted *prima facie,* as the same was passed in a duly convened General Meeting by members who were entitled to pass the same.

7.9 The upshot of this discussion is that whilst the CLB may examine the case of oppression urged by Gangars in their Company Petition, the scheme need not be held up till that case is determined. As I have noted above, *prima facie* there is no case of want of authority on the part of TBIL or Bialetti group to alter the Articles or the proposed scheme falling foul of the original Articles providing *inter alia* for an affirmative vote of Gangars. Secondly, and in any event, in case Gangars succeed in showing a case of oppression, appropriate relief, in the facts of the case, could very well be a monetary relief to Gangars. The CLB, in a case like the present, considering that admittedly Gangars have a mere 5.98 per cent of equity stake in TBIL, is expected to give a suitable exit option to Gangars, since any other option would entail a complete dead-lock in the management of TBIL. TBIL has other assets and undertakings, considering which appropriate relief could always be moulded.

7.10 In that view of the matter, there is no merit in the case of the objectors in the Scheme Petition, based on their allegations in the Company Petition concerning oppression and mismanagement. (Learned Counsel for the objectors did not argue the case of mismanagement before me, whilst objecting to the Scheme Petition. That case is of course a matter to be considered by the CLB in the Company Petition.)

7.11 There is also no merit in the contention of the objectors that the scheme is proposed only to get over the interim orders operating in the writ petition herein. Even under the interim orders, TBIL was at liberty to apply for permission of the Court for any sale or disposal of its assets. The Company Scheme Petition is but such an application. As I have noted above, though the writ petition is allowed and the Company Petition is sent back to the CLB for hearing in accordance with law, there is no *prima facie* merit in the Writ Petitioners' case on impermissibility of amendments to the Articles or the vires of the scheme *vis-a-vis* the mandate of the Articles and in the event of Gangars succeeding in their Company Petition, an appropriate relief could still be moulded and accordingly, the scheme need not be held up pending decision in the Company Petition.

8 Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 307 of 2014 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (g) and (i) to (k).

9 The Petitioner Company to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of issuance of Order.

10 Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21/ E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

11 The Petitioner Company in Company Scheme Petition to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai within four weeks from the date of the order.

12 Filing and issuance of the drawn up order is dispensed with.

13 All concerned authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

14 At the request of the objectors to the Scheme, this order sanctioning the scheme is stayed for a period of three weeks' from today. It is clarified that as a result of this stay if any damages are incurred by the Transferor or Transferee Companies, the objectors will be liable to compensate the Petitioner for such damages.

(S.C.GUPTE J.)