

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY PETITION NO.563 OF 2009
WITH
COMPANY APPLICATION NO.492 OF 2014
IN
COMPANY PETITION NO.563 OF 2009**

M/s.Upbeat Trading Pvt. Ltd.)
A private Limited Company)
Having office at 532, Arun Chamber)
Tardeo Main Road, Mumbai – 34.) .. Petitioner
Vs.
M/s.Major Metals Ltd.)
A company registered under the)
Companies Act, 1956 having its)
registered office at 607, J.K.Chambers)
Sector 17, Vashi, Navi Mumbai) .. Respondent

Mr.Sarosh Bharucha a/w Mr.Rajmani Varma a/w Ms.Namita Mistry for the petitioner.

Mr.V.R. Dhond, Senior Advocate a/w Ms.Rashmin Khandekar a/w Mr.Sairam Subramaniam a/w Mr.Chakrapani Mishra a/w Mr.Vaisakh Sherji a/w Mr.Aditya Goyal i/by M/s.Khaitan & Co. for the respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 6th March 2017
PRONOUNCED ON : 24th March 2017

P.C.:

. By this petition filed under Section 433 of the Companies Act, 1956, the petitioner seeks winding up of the respondent-company on the ground that the respondent is unable to pay its debts. The company petition was admitted and was heard finally. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner is a registered non-banking financial company and is in the business of lending and financing since last several years. It is the case of the petitioner that some time in the months of February and March, 2003, Mr.Vikas Berlia and Mr.Naresh Nopani, directors of the respondent-company approached petitioner and represented that the respondent was leading trading company and was intending to expand its area of operation. It is the case of the petitioner that the respondent lured for financial assistance on agreeing to pay interest on borrowed funds @18% p.a. The petitioner accordingly lent Rs.300 lakh during the period between 25th March 2003 to 1st March 2004 to the respondent repayable with interest @ 18% p.a. According to the petitioner, the loan advanced with interest by the respondent came to the tune of Rs.4,13,00,000/-. The petitioner has annexed a copy of the ledger account of the respondent-company for the financial years 2002-03 to 2004-05. It is the case of the petitioner that the respondent paid agreed rate of interest @ 18% p.a. in the financial years 2002-03 to 2004-05 and lastly till 31st March 2006. The respondent did not pay any interest since 31st March 2007.

3. It is the case of the petitioner that the petitioner had orally as well as in writing had requested the respondent to remit the principal amount and interest accrued thereon. The petitioner was shocked and surprised to receive a communication dated 30th September 2006 from the respondent which was alleged to have been received by the petitioner in the month of February 2008 alleging that the Board of Directors of the respondent company had approved in their meeting dated 29th September 2006, allotment of 41300 equity shares of the respondent to the petitioner against unsecured loan of Rs.4,13,00,000/-.

4. The petitioner vide its letter dated 5th February 2008 called upon the respondent to remit the principal amount with interest which was lent and advanced by the petitioner to the respondent. The petitioner sent reminder by its letter dated 18th February 2008 to the respondent. It is the case of the petitioner that the so called adjustment of the loan amount with interest in the sum of Rs.4,13,00,000/- as against the allotment of 41300 equity shares of the respondent to the petitioner was totally illegal. The petitioner had never applied for such shares to the respondent or had instructed the respondent to adjust the said loan amount of Rs.4,13,00,000/- by allotting 41300 equity shares or any other shares to the petitioner.

5. By letter dated 27th February 2008, the respondent alleged that the letter dated 5th February 2008 from the respondent was sent on 19th February 2008 to the petitioner at its Malad address mentioned on the letter head of the petitioner. The respondent enclosed a copy of the letter dated 5th February 2008 along with the said letter dated 27th February 2008. The respondent alleged that the total amount to the credit of the petitioner as on 1st September 2006 had been adjusted towards consideration for allotment of 41300 equity shares of the respondent to the petitioner. It was alleged in the said letter that the said allotment was done on 30th September 2006 as per Board Resolution dated 29th September 2006. The petitioner vide its letter dated 9th May 2008 sent another reminder and called upon the respondent to release the principal amount of Rs.3 crore along with interest and less TDS as applicable and to issue TDS deducted at the earliest.

6. On 18th July 2008, the petitioner through its advocate issued a legal notice to the respondent alleging fraud against the respondent and called upon the respondent to cancel the allotment 41300 shares to the petitioner and repay the said sum of Rs.4.13 crore along with interest alleged to be due since 1st April 2006 within a period of 15 days from receipt of the said notice.

7. The petitioner through its advocate's letter dated 9th February 2009 issued a statutory notice to the respondent calling upon the respondent to pay a sum of Rs.4,13,00,000/- along with interest @ 18% p.a. from 1st April 2006 till date. There was neither any response to the statutory notice nor any payment made by the respondent in response to the said notice.

8. Some time in the month of May 2009, the petitioner accordingly filed this petition inter alia praying for winding up of the respondent company on the ground that the respondent is unable to pay its debts and prayed for appointment of the official liquidator of the assets, effects and business affairs of the respondent with all necessary powers under the provisions of the Companies Act, 1956.

9. By an order dated 6th November 2009, this Court admitted this company petition. The respondent was absent when the matter was heard by this Court. The respondent has filed a detailed affidavit-in-reply and also filed an additional affidavit. The petitioner has filed rejoinder. The respondent has filed sur-rejoinder.

10. Mr.Bharucha, learned counsel appearing for the petitioner invited my attention to the annexures to the company petition including the ledger account of the respondent annexed to the company petition and would submit that the respondent had paid interest on the said loan amount of Rs.3 crore from time to time for four years from the date of obtaining such loan and thereafter stopped paying the interest. He submits that according to the ledger account of the petitioner as on 31st March 2006, sum of Rs.4,13,00,000/- was due and payable by the respondent to the petitioner. He submits that the said alleged letter dated 30th September 2006 annexed at Exhibit 'F' to the petition purporting to allot 41300 equity shares of the respondent to the petitioner against unsecured loan of Rs.4,13,00,000/- to the petitioner and converting the said loan into 41300 equity shares was received by the petitioner for the first time in the month of February 2008. He submits that the petitioner had never applied for issuance of any shares to the respondent. The respondent thus could not have made any such allotment of 41300 equity shares unilaterally and could not have converted the loan amount into equity shares. He submits that the respondent did not file any form for allotment of shares. The respondent has alleged to have charged premium @Rs.990/- per share on the face value of the shares of Rs.10/- each.

11. Learned counsel for the petitioner invited my attention to the alleged resolution passed by the Board of Directors of the respondent at their board meeting alleged to have been held on 29th September 2006. He also invited my attention to the notice dated 12th April 2006 alleged to have been issued by the respondent stating that the 9th Annual General Meeting of the members of the respondent would be held at

the registered office on 30th September 2006 to transact various businesses. He submits that since meeting was proposed to be held on 30th September 2006, the meeting could not have been held on 29th September 2006. He submits that the entire purported resolution dated 29th September 2006 and the notice are fabricated. He submits that even according to the said alleged notice dated 12th April 2006, there was no agenda for allotment of any equity shares to the petitioner and for converting the loan amount of the petitioner payable by the respondent into 41300 equity shares. He submits that there was no disclosure in the alleged notice as per Rule 6.

12. Learned counsel for the petitioner invited my attention to the share certificate dated 30th September 2006 alleged to have been issued by the respondent in respect of 41300 equity shares in the name of the petitioner. He submits that the petitioner did not receive any such alleged share certificate in respect of 41300 equity shares alleged to have been allotted from the respondent to the petitioner at any point of time. He submits that the petitioner was not the shareholder of the respondent. The petitioner never exercised any rights of his shareholdings in the respondent company. The petitioner never received any notice of meeting or any other communication from the respondent as a shareholder of the respondent.

13. Learned counsel for the petitioner invited my attention to the Directors' Report dated 17th May 2007 annexed at Exhibit 'E' to the affidavit-in-reply along with financial documents and would submit that in the said report of the Chartered Accountants of the respondent and more particularly in paragraph 18 of the said report, it is clearly

mentioned that the respondent had not made any preferential allotment of shares during the financial year ending on 31st March 2007 to any of the parties and companies covered in the register maintained under Section 301 of the Companies Act, 1956. He submits that the said purported allotment of shares by the respondent to the petitioner during the said period is thus ex facie fabricated and fraudulent. He also placed reliance on the report of the Chartered Accountants dated 31st May 2009 in support of his submission that even according to the said report, the respondent company had not made any preferential allotment of shares during the financial year ending on 31st March 2007 to any of the parties.

14. Learned counsel for the petitioner invited my attention to the allegations made by the respondent in the affidavit-in-reply that the petitioner had alleged to have been passed a Board Resolution dated 1st April 2008 authorising one of its Directors Mr.Harakhchand Shah to sell the shares held by it in the respondent. He submits that the petitioner did not pass any such resolution as alleged by the respondent. The petitioner has denied such allegation by filing an affidavit. He submits that if the respondent is relying upon any such alleged resolution alleged to have been passed by the petitioner, the said document would be false and fabricated document. He submits that the respondent has admittedly not produced any such alleged resolution dated 1st April 2008 alleged to have been passed by the petitioner.

15. Mr.Bharucha, learned counsel for the petitioner invited my attention to certain paragraphs of the affidavit-in-reply filed by the respondent placing on record that the petitioner had made other

investment with the respondent company or other group companies from time to time and had produced documents in support of such submission. He submits that though the respondent had annexed some of the documents in support of their case that the petitioner had made other investment with the respondent company or other group companies, the respondent had not annexed any similar document in so far as the alleged allotment of 41300 equity shares of the respondent to the petitioner is concerned.

16. Learned counsel for the petitioner placed reliance on Challans dated 18th December 2008 and 17th November 2007 issued by Ministry of Company Affairs showing acknowledgment of Form 20 filed by the respondent for the financial year ending on 31st March 2008 and 31st March 2007 respectively. He submits that the respondent has admitted the receipt of the loan from the petitioner. He submits that the alleged oral understanding between the petitioner and the respondent for conversion for loan of Rs.4.13 crore into equity shares has not been proved by the respondent in any manner whatsoever. He submits that the defence of the respondent is not a bonafide defence but is sham and moonshine.

17. Learned counsel for the petitioner placed reliance on the judgment of the Calcutta High Court in the case of ***Pawan Kumar Agarwal and Ors. Vs. North Bengal Neuro Research Centre P. Ltd.***, reported in ***(2008) 143 Comp Cas 235 (Cal)*** and more particularly paragraphs 5 to 9 and 11 to 14 and would submit that the Calcutta High Court in the similar facts in hand rejected the similar defence raised by the respondent and has entertained the company petition for winding up

of the respondent company filed by the petitioner therein. He submits that unauthenticated and unilateral document produced by the respondent cannot be relied upon by this Court in support of the allegation of the respondent that the loan amount of Rs.4.13 crore was converted into equity shares.

18. Learned counsel for the petitioner placed reliance on the judgment of this court in case of ***J.K. Corporation Ltd. vs. Ensource Finance Ltd., 2001 Supp.(1) Bom.C.R.830*** and in particular paragraphs 4 to 6 in support of his submission that the respondent having taken loan from the petitioner is liable to return the said amount together with interest and the defence raised by the respondent being not a valid or *bona-fide* defence, the respondent company is bound to be wound up. Learned counsel placed reliance on section 81(1A) and section 81(3)(b) and would submit that the respondent had committed violation of the said provision before purporting to allot 41,300 shares in favour of the petitioner. He also placed reliance on Rules 3(b) and 3(d) of Public Companies (Terms of issue of debentures and raising of loans with option to convert such debentures or loans into share) Rules, 1977 and would submit that the respondent has violated the said rules and has collected the premium of Rs.990/- per share on the face value of Rs.10/- of the share purported to have been allotted without obtaining approval from the Central Government. He submits that no special resolution came to be passed by the respondent before making any such allotment to the petitioner. He submits that the respondent was bound to make disclosure of the allotment of the shares proposed to be made by the respondent in the notice issued before passing a resolution which the respondent admittedly failed.

19. Mr.Dhond, learned senior counsel for the respondent on the other hand submits that during the period 25th March 2003 and 1st January 2004, the petitioner had advanced loan to the respondent in the sum of Rs.4,13,00,000/-. He invited my attention to the ledger account annexed to the petition. It is submitted that the petitioner is a registered non-banking financial company. In the financial year 2002-03 till the financial year 2005-06, the respondent had paid interest at the rate of 18% per annum to the petitioner on the said loan amount. He submits that it is the case of the petitioner that since 31st March 2007, the respondent has committed default in making payment of the interest to the petitioner.

20. Learned senior counsel invited my attention to the allegations made by the petitioner in paragraphs 3(b), 3(c) and 3(d) of the company petition alleging that the respondent had not paid interest since 31st March, 2007. Insofar as letter dated 30th September, 2006 sent by the respondent to the petitioner is concerned, it is alleged in paragraph 3(c) of the petition that the said letter was alleged to have been received by the petitioner in the month of February 2008. He submits that the petitioner did not produce any letter after 31st March, 2007 and before 5th March, 2008 from the petitioner to the respondent calling upon the respondent to pay interest w.e.f. 31st March, 2007.

21. It is submitted that by the said letter dated 30th September, 2006, the respondent had specifically informed the petitioner that as per their discussions, the board of directors of the respondent had approved in their board meeting dated 29th September, 2006 and allotted 41,300 equity shares of the respondent to the petitioner against the unsecured

loan of Rs.4,13,00,000/- to the respondent. The respondent informed the petitioner that the loan was converted into 41,300 equity shares. He submits that in the said letter dated 5th February, 2008, the petitioner did not refer to the letter dated 30th September, 2006 and did not deny the contents thereof but simplicitor demanded repayment of loan with interest. He submits that the said letter dated 30th September, 2006 was sent by the respondent by fax on fax no.23894207. He submits that the petitioner did not disclose as to how the said letter dated 30th September, 2006 was received by the petitioner from the respondent. Learned senior counsel invited my attention to the board resolution dated 29th September, 2006 allotting 41,300 shares to the petitioner in lieu of the outstanding loan amount of Rs.4,13,00,000/-.

22. Learned senior counsel placed reliance on the letter dated 27th February, 2008 addressed by the respondent to the petitioner reiterating that the total amount to the credit of the petitioner on 1st September, 2006 had been adjusted towards the consideration of allotment to the petitioner of 41,300 equity shares of the respondent which allotment was done on 30th September, 2006. He submits that the petitioner sent similar reminder on 9th May, 2008 to the respondent for making repayment of loan amount with interest without dealing with the letter dated 30th September, 2006.

23. Learned senior counsel for the respondent invited my attention to the legal notice dated 18th July, 2008 addressed by the petitioner through its advocates to the respondent. He submits that in the said letter, the petitioner had alleged that the said letter dated 30th

September, 2006 sent by the respondent to the petitioner was received by the petitioner in the month of June 2008. He submits that there is thus contradictions in the stand taken by the petitioner about the date of the alleged receipt of the letter dated 30th September, 2006 in the company petition as well as in the said legal notice dated 18th July, 2008. He submits that the petitioner has not dealt with the said letter dated 30th September, 2006 from February 2008 onwards. He submits that for the first time, the petitioner denied the contents of the letter dated 30th September, 2006 in the statutory notice dated 9th February, 2009 issued much belatedly.

24. It is submitted that the respondent had stopped paying interest to the petitioner since 31st March, 2006. Though the respondent was allegedly bound to pay interest for the period 31st March, 2007 which was not paid, the petitioner did not make any complaint or raised any objection in writing or otherwise till February 2008 for non-payment of interest which itself indicates that the petitioner was fully aware of the allotment of 41,300 shares by the respondent to the petitioner in lieu of the outstanding loan amount of Rs.4,13,00,000/-.

25. Learned senior counsel invited my attention to the courier receipt dated 16th October, 2006 annexed to the affidavit in reply and also to the fax activity report to demonstrate that the fax was sent by the respondent to the petitioner on 16th October, 2006 at 15.59 hours on fax no.23894207. He submits that the said fax number is mentioned on the said letter dated 30th September, 2006 which was sent by the respondent to the petitioner. It is submitted that it is clear that the said letter dated

30th September, 2006 was delivered to the petitioner by fax on 16th October, 2006. He submits that the allegations made by the petitioner in paragraph 4(c) that the said letter dated 30th September, 2006 was received by the petitioner in the month of February 2008 is *ex-facie* false and misleading. He also invited my attention to the averments made by the respondent in the affidavit in reply and more particularly in paragraph 4A(d) stating that the respondent had vide its letter dated 30th September, 2006 had apprised the petitioner that the loan amount of Rs.4,13,00,000/- granted by it had been converted into 41,300 equity shares of face value of Rs.10/- each at the premium of Rs.990/- per share.

26. Learned senior counsel invited my attention to paragraph (8) of the rejoinder filed by the petitioner in this regard. He submits that the petitioner has alleged in the said paragraph in rejoinder that the said letter dated 30th September, 2006 was sent by the respondent to the petitioner by ordinary post and was received by the petitioner in the month of February 2008. He submits that the petitioner did not produce any envelop containing such letter dated 30th September, 2006 before this court till the date of arguments. It is alleged in the said rejoinder that the said consignment was though addressed by the petitioner, the address therein was not of the petitioner. It is further alleged that the stamp upon the said courier receipt indicates that it was accepted by Pankaj Extrusion Ltd. which was the different company from the petitioner. It is the case of the petitioner that the activity report of the fax allegedly sent by the petitioner also shows a different telephone number and not of the petitioner. It is alleged in the rejoinder of the petitioner that the petitioner had not received the said fax but it was apparently sent to Pankaj

Extrusion Ltd. which was not a group company of the petitioner. He submits that the petitioner has improved its story in the affidavit in rejoinder.

27. Learned senior counsel for the respondent invited my attention to the letter dated 18th February, 2008 addressed by the petitioner to the respondent referring to the loan amount of Rs.3 crores and demanding refund of the said amount with interest less TDS and also requesting for issuance of TDS certificate. He submits that the said letter was though addressed by the petitioner, was sent to the respondent with the envelop of Pankaj Extrusion Ltd. having its office at Tardeo, Mumbai - 400 034. He submits that the respondent had contended in the further affidavit dated 27th October, 2010 filed by the respondent and more particularly paragraph (3) that the petitioner is a company belonging to one one 'Pankaj Group of Companies' consisting of Pankaj Extrusion Limited, Pankaj Investments etc. which is predominantly co-owned and managed by the members belonging to Shah family, viz. Mr.Pravin Shah, Mr.Dinesh Shah and Mr.Harakhchand Shah and other family members. He submits that this averments made by the respondent is not disputed by the petitioner.

28. Learned senior counsel for the respondent also invited my attention to the fax dated 27th May 2010, 28th May 2010 and 29th May 2010 sent from the fax of Pankaj Extrusion Ltd. to the respondent thereby requiring various details of issued shares of 41,300 shares of the respondent and a copy of the share certificate etc. It is submitted that the said fax itself would indicate that the petitioner and the said Pankaj Extrusion Ltd. belongs to the same group of Shah family.

29. Learned senior counsel for the respondent invited my attention to the share certificate bearing no.68 issued by the respondent in favour of the petitioner bearing 41,300 shares and Distinctive Nos. 995651 to 1036950. He also placed reliance on the challan issued by the Ministry of Company Affairs dated 19th October,2006 showing the receipt of fee for Form 2 submitted by the respondent showing that on 30th September,2006, the petitioner was issued 41,300 equity shares of the respondent and also showing amount paid on application in the sum of Rs.4,13,000/- at the rate of 10/- per share on application and Rs.40,887,000/- towards total premium paid. He submits that the said Form 2 was filed by the respondent with the Ministry of Company Affairs on 19th October, 2006 itself. He submits that the allegation of the petitioner that no such share was allotted by the respondent to the petitioner is totally false and frivolous and misleading.

30. Learned senior counsel placed reliance on the balance-sheet of the respondent as on 31st March,2006 and 31st March, 2007 and would submit that the share capital as on 31st March,2007 is increased in view of the shares allotted to the petitioner which can be made out if compared with the share capital mentioned in the balance-sheet as on 31st March,2006. He submits that the total loan reflected in the balance-sheet of the respondent is also reduced in view of the said loan of Rs.4,13,00,000/- given by the petitioner to the respondent having been converted into the equity shares. He submits that the said entry is also duly reflected in the balance-sheet as on 31st March,2007.

31. Learned senior counsel for the respondent also placed reliance on the challan dated 17th November,2007 issued by the Ministry

of Corporate Affairs in favour of the respondent acknowledging the receipt of Form 20B for the Financial year ending on 31st March, 2007 submitted by the respondent showing that the Annual General Meeting of the respondent was held on 29th September, 2007 annexed to Form B which reflected the name of the petitioner at Serial no.51 having 41,300 shares of the respondent.

32. Learned senior counsel for the respondent invited my attention to the affidavit in rejoinder dated 15th December,2010 filed by the petitioner and in particular paragraph (8) and would submit that in the said paragraph, the petitioner had admitted that the letter dated 13th September,2006 was sent to Pankaj Extrusion Ltd. which is different company from the petitioner. He submits that the submission made by the learned counsel for the petitioner is contrary to what is alleged in the affidavit in rejoinder. It is submitted that credibility of the deponent in the affidavit in rejoinder is thus doubtful. Learned senior counsel for the respondent invited my attention to the letter dated 27th February,2008 addressed by the respondent to the petitioner C/o. Pankaj Extrusion Ltd., Tardeo, Mumbai 34 which is not disputed by the petitioner.

33. Learned senior counsel for the respondent invited my attention to paragraph (7) of the affidavit in rejoinder affirmed on 14th December,2010 and filed on 1st March,2016 in reply to the further affidavit of the respondent dated 27th October, 2010. He submits that in paragraph (7) of the said rejoinder filed by the petitioner, the petitioner has admitted an averment made in paragraph (6) of the further affidavit dated 27th October 2010 referring to five fax messages from the petitioner

dated 27th May 2010, 28th May 2010 and 29th May 2010 seeking further information and reminding the respondent to complete the sale formalities with respect to the 41,300 shares. In the said paragraph the petitioner though admitted that all such fax were sent however alleged that the same were sent after knowledge of illegal conversion of the loan to the equity share by the respondent. He submits that in the said paragraph, the petitioner has admitted that the petitioner had been calling upon the respondent to provide the details of issuance of 41,300 shares. He submits that the petitioner however falsely alleged that in all such fax sent on 27th May 2010, 28th May 2010 and 29th May 2010 were in relation to the sale of other shares and not the shares mentioned in the company petition.

34. Learned senior counsel for the respondent invited my attention to the order passed by this court in company Appeal No.59 of 2009 dated 7th July 2010 in support of his submission that this court has already made an observation that there were four group of shareholders in Pankaj Extrusion Ltd. referred to as Mr.Babulal N.Shah, Mr.Harakchand N.Shah, Mr.Pravinchandra N.Shah, Mr.Sureshchandra N.Shah and Mr.Dineshchandra N.Shah groups.

35. Learned senior counsel for the respondent invited my attention to the copy of the resolution passed by the board of directors of the petitioner on 1st April, 2008 resolving that Mr.Harakchand N.Shah, the director of the company was authorized to sell the shares held by the petitioner in the respondent company and to sign the share transfer deed on behalf of the petitioner and to execute other requisite documents as

may be required. He submits that the said copy of the resolution passed by the petitioner is annexed to the further affidavit filed by the respondent on 27th October, 2010 in the present proceedings filed by the respondent. He submits that in the rejoinder filed by the petitioner, the petitioner has falsely denied the contents of the resolution dated 1st April, 2008 and the signature thereon. He also invited my attention to paragraph (9) of the letter dated 16th October, 2006 addressed by the petitioner to the respondent seeking loan confirmation letter from the respondent for the financial year 2005-06.

36. It is submitted that the said letter was also sent by the petitioner to the respondent by fax bearing No.23894207 which fax number was claimed to be a fax number of Pankaj Extrusion Ltd. He also invited my attention to paragraph (3) of the affidavit in reply dated 13th April, 2016 filed by the petitioner to the additional affidavit dated 22nd August, 2012 filed by the respondent stating that now it is the case of the petitioner that there was a split in the Pankaj Group w.e.f. 10th April, 2003 on 2nd June, 2005 vide award dated 2nd July, 2005. The petitioner has not been a part of the Pankaj Group with effect from that date. He submits that the submission made by the petitioner through its counsel that the petitioner had nothing to do with Pankaj Extrusion Ltd. when the transactions were carried on between the parties and more particularly when those five fax were sent from the number of Pankaj Extrusion Ltd. is ex-facie false and contrary to its own affidavit in reply dated 13th April, 2016 filed by the petitioner to the additional affidavit on behalf of the respondent. It is submitted by the learned senior counsel that the petitioner has not filed any returns with the Registrar of Companies for

last eight years. In the income tax returns for the financial year 2006-07 and 2007-08, the alleged loan given by the petitioner to the respondent is not reflected by the petitioner.

37. In so far as submission of the learned counsel for the petitioner on the alleged non-compliance of section 81(1A) of the Companies Act, 1956 by the respondent is concerned, learned senior counsel invited my attention to paragraph (7) of the affidavit in rejoinder dated 1st March, 2006 filed by the petitioner disputing the board resolution dated 29th September, 2006. He submits that the conversion of the loan into the equity share is disputed on the ground of higher premium of Rs.990/- per share. He submits that no such ground alleging violation of section 81(1A) of the Companies Act, 1956 has been raised by the petitioner in the company petition. He submits that on 29th September 2006, the respondent had passed a resolution in the meeting of the board of directors of the respondent. He submits that the notice for the meeting proposed to be held on 30th September, 2006 was an inadvertent error in the date mentioned in the notice. The respondent has also clarified and placed on record that from 2001 onwards, apart from the loan forming subject matter of the present petition, other group companies belonging to the said Pankaj Group had made subsequently investment in other group companies of the respondent and had acquired stake in the said companies. The respondent has given various details of such investments made by the group companies of the petitioner in various group companies of the respondent in the said affidavit.

38. Learned senior counsel invited my attention to some of the application forms for equity shares filed by the petitioner for issuance of

equity shares of the group companies of the respondent. He submits that the shares of Berlia Plasto Chem Private Ltd. was also issued to the petitioner on payment of premium of Rs.990/- per share. The said Berlia Plasto Chem Private Ltd. had allotted 500 shares of the said company on payment of Rs.1,000/- per share for premium of Rs.990/- per share. He submits that Mr.Pravin N.Shah and Mr.Dinesh N.Shah of the group of the petitioner also were allotted 5,000 equity shares of Sweet Marketing (I) Pvt. Limited, group companies of the respondent on premium of Rs.990/- per share. He submits that the petitioner has not disputed the transaction between the group of the petitioner and the group of the respondent.

39. Mr.Dhond, learned senior counsel for the respondent tendered a copy of the resolution dated 25th September, 2006 passed by the respondent alongwith other supporting documents authorizing the directors of the respondent to make allotment of equity shares of Rs.10/- for cash at such price as the board of directors may deem fit. He submits that the said resolution dated 25th September, 2009 is reflected in Form 23 filed by the respondent with the Ministry of Company Affairs on 4th May, 2007. He submits that the respondent had thus complied with the requirement of section 81(1A) of the Companies Act, 1956.

40. In so far as reliance placed by the learned counsel for the petitioner on annexures to the Auditor's Report of the respondent for the year ended 31st March, 2007 and more particularly paragraph (18) thereof is concerned, it is submitted that in the said paragraph the auditor has observed that the respondent company has not made any preferential allotment of the shares. He submits that the said report does not indicate

that no equity share/preference share were issued by the respondent in favour of the petitioner or any other party during the said period. He submits that all the notices were served upon the petitioner from time to time about various annual general meetings held by the respondent in which all the shareholders were invited.

41. Mr.Bharucha, learned counsel for the petitioner in rejoinder submits that the letter dated 30th September, 2006 from the respondent to the petitioner is back-dated letter. He submits that the averments made by the petitioner that the said letter was received in the month of June 2008 is an inadvertent error. He however fairly submits that the petitioner has nothing to show on record that the said letter dated 30th September, 2006 was received by the petitioner on a particular date as alleged in the company petition and in various affidavits and the mode of delivery. It is submitted by the learned counsel that the respondent had not shown any proof of delivery or courier received on record showing that the letter dated 30th September, 2006 was sent by the respondent on the date and/or was received by the petitioner immediately. He submits that insofar as activity report annexed at Exhibit-B to the affidavit in reply filed by the respondent showing the fax no. 23894207 has no connection with the alleged delivery of the letter dated 30th September 2006 on 16th October, 2016.

42. Learned counsel submits that his client is not in a position to produce the envelop containing such letter which was allegedly received by the petitioner belatedly. He submits that though the petitioner has not written any letter for demanding payment of interest for two years, the

petitioner has made various oral request for re-payment of the loan and interest to the respondent. He submits that in view of the existing friendly relations between the petitioner and the respondent, the petitioner did not take any action immediately against the respondent for recovery of the loan amount with interest. He submits that there is no dispute that for sometime, the Pankaj group of companies were group companies of the petitioner. He submits that the petitioner has already explained in the rejoinder that there was split of the Pankaj Group w.e.f.10th April, 2003. He submits that even if the said letter dated 30th September, 2006 was sent by the respondent on the fax number of Pankaj Extrusion Ltd., the same was not received by the petitioner. He submits that on the courier receipt relied upon by the respondent in support of the submission that the said letter dated 30th September, 2006 was sent to the petitioner by courier, there is rubber stamp of Pankaj Extrusion Ltd. acknowledging the receipt of the said courier and not of the petitioner.

43. It is submitted by the learned counsel that the respondent has not raised any bona fide defence in any of the affidavits filed in these proceedings. The respondent has not shown any direct evidence showing the allotment of shares to the petitioner and converting the huge loan amount payable by the respondent to the petitioner. He submits that all the documents relied upon by the respondent are forged and fabricated. It is submitted that the respondent has not produced any proof to show that along with the envelop on page 161 of the affidavit showing the envelop of Pankaj Extrusion Ltd., letter dated 18th February, 2008 was alleged to have been sent by the petitioner to the respondent was delivered.

44. It is submitted by the learned counsel for the petitioner that in the income tax returns of the petitioner for the Assessment Year 2006-07 and in the balance-sheet as on 31st March, 2016, the petitioner has reflected the loan amount of Rs.4,13,00,000/- to the respondent. He submits that the petitioner has not added the interest payable by the respondent to the petitioner w.e.f. 1st April, 2007 in the books of account in view of the fact that the petitioner maintain the books of account on accrual basis and if the interest would have been reflected in the books of account of the petitioner, the petitioner would have become liable to pay income tax on the interest income on accrual basis. It is submitted that by those five fax annexed at Ex.G, the petitioner had not made any request for sale of shares in question but had asked for details of shares which the petitioner did not have. He submits that the fax number mentioned on page 199 is different than the fax number mentioned on pages 39 and 71.

45. It is submitted that insofar as the documents of the respondent filed with the Registrar of Companies and forming part of the record are concerned, those documents are unilateral documents of the respondent and cannot be considered by this court. He submits that the copy of the alleged resolutions annexed at pages 197 and 198 by the respondent are forged and fabricated and are disputed by the petitioner.

46. Insofar as special resolution dated 25th September, 2006 alleged to have been passed in the extraordinary general meeting by the respondent is concerned, it is submitted by the learned counsel for the petitioner that it was not the case of the respondent that in any of the pleadings that such resolution was passed by the respondent authorizing

the board of directors to issue equity shares including to the petitioner. No inspection of any notices of meeting alleged to have been sent by the respondent to the petitioner has been furnished. He submits that the copy of the alleged special resolution dated 25th September, 2006 has been relied upon by the respondent for the first time across the bar. He submits that the petitioner was not required to plead non-compliance of section 81(1A) of the Companies Act, 1956. He invited my attention to paragraph (D) on page 18 of the company petition and would submit that the petitioner has pleaded sufficiently in the company petition that there was no resolution passed by the respondent thereby allotting 41,300 shares to the petitioner.

47. It is submitted by the learned counsel for the petitioner that the petitioner does not deny the other investments made by the petitioner and its group companies with the respondent and its group companies. He submits that merely because the petitioner has admitted other transactions with the respondent and its group companies, no presumption can be drawn by this court that the petitioner had also agreed for conversion of the loan amount into equity share. The respondent though had produced documents in respect of other investments made by the petitioner and its group companies with the respondent and its group companies, the respondent has not produced similar documents in respect of the alleged transaction in question. It is submitted that the documents produced by the respondent across the bar cannot be relied upon. He submits that the respondent has even otherwise failed to show that the petitioner was allotted 41,300 shares under the resolution produced before this court.

48. Mr.Dhond, learned senior counsel for the respondent invited my attention to the letter dated 16th October, 2006 addressed by the petitioner to the respondent on the letterhead of the petitioner which contains the said fax number i.e. 23894207 denied by the petitioner deliberately and contrary to the said fax number mentioned on the letterhead of the petitioner. He submits that it was for the recipient of the letter received from the respondent to show what documents were received by the recipient i.e. the petitioner from the respondent and from what fax number. It is submitted that the special resolution has to be passed before increasing the subscribed share capital. After such increase in the subscribed share capital, board can decide about the allotment of shares. He submits that there is no legal bar under section 81(1A) of the Companies Act, 1956. He submits that the allotment to the petitioner is not made in the Annual General Meeting. He submits that the board can pass a resolution for issuance of the larger number of shares. He submits that the balance-sheet of the respondent company admittedly shows the increase in the share capital out of which 41,300 shares were allotted to the petitioner.

49. Mr.Dhond, learned senior counsel for the respondent submits that insofar as judgment relied upon by the petitioner are concerned, there is no dispute about the proposition of law laid down by various courts in those judgments but are clearly distinguishable in the facts of this case.

REASONS AND CONCLUSIONS :-

50. It is not in dispute that the petitioner had given loan of Rs.300 lakh during the period between 25th March 2003 to 1st March

2004 to the respondent which was repayable with interest. The respondent had paid interest to the petitioner in the financial years 2002-03 to 2004-05 and lastly till 31st March 2006. It is an admitted position that the respondent did not pay any interest since 31st March 2007. It is the case of the respondent that the respondent had passed a resolution on 29th September 2006 thereby allotting 41300 equity shares of the respondent to the petitioner @Rs.1000/- per share comprising of Rs.10/- each as face value and at a premium of @Rs.990/- per share thereon in lieu of the outstanding loan amount of Rs.4,13,00,000/- on the date of such allotment. It is the case of the respondent that the said decision of the respondent was conveyed to the petitioner by letter dated 30th September 2006 sent by fax to the petitioner. It is, however, the case of the petitioner that the said letter dated 30th September 2006 was received by the petitioner only in the month of February 2008. The petitioner disputed the said allotment of 41300 equity shares or any other shares to the petitioner on various grounds.

51. A perusal of the record indicates that in so far as the receipt of the said letter dated 30th September 2006 sent by the respondent to the petitioner is concerned, the petitioner has alleged different period of receipt of the said letter in the pleadings filed before this Court. The petitioner could not demonstrate before this Court whether the petitioner had made any demand for payment of interest during the period between 1st April 2006 till the petitioner called upon the respondent to remit the principal amount with interest on 5th February 2008. A perusal of the record indicates that in the said letter dated 5th February 2008 and the subsequent reminder letter dated 18th February 2008, the petitioner did not refer to the letter dated 30th September 2006 addressed by the

respondent informing the petitioner of allotment of 41300 equity shares to the petitioner in lieu of the outstanding loan of Rs.4,13,00,000/-. In support of the case of the respondent that the respondent had allotted 41300 equity shares by the respondent to the petitioner in lieu of outstanding loan amount of Rs.4,13,00,000/-, the respondent placed reliance on the following documents/pleadings :-

(i) The board resolution dated 29th September, 2006 allotting 41300 shares to the petitioner in lieu of the outstanding loan amount of Rs.4,13,00,000/-;

(ii) The legal notice dated 18th July, 2008 addressed by the petitioner through its advocates to the respondent alleging that the said letter dated 30th September, 2006 sent by the respondent to the petitioner was received by the petitioner in the month of June 2008;

(iii) The courier receipt dated 16th October, 2006 and also the fax activity report to demonstrate that the said letter was sent by courier as well as by fax by the respondent to the petitioner on 16th October, 2006 at 15.59 hours on fax no.23894207;

(iv) The averments made by the petitioner in the affidavit-in-rejoinder that the said letter dated 30th September 2006 sent by the respondent to the petitioner by ordinary post was received in the month of February 2008. It was averred by the petitioner that the said letter was apparently sent to Pankaj Extrusion Ltd. ;

(v) An envelope of Pankaj Extrusion Ltd. along with letter dated 18th February 2008 addressed by the petitioner to the respondent having

its office at Tardeo, Mumbai 400 034. It was the case of the respondent that the said Pankaj Extrusion Ltd. belonged to one 'Pankaj Group of Companies' consisting of Pankaj Extrusion Limited, Pankaj Investments etc. which is predominantly belonging to Shah family, viz. Mr.Pravin Shah, Mr.Dinesh Shah and Mr.Harakhchand Shah and other family members;

(vi) The letter sent by fax dated 27th May 2010, 28th May 2010 and 29th May 2010 from the fax of Pankaj Extrusion Ltd. to the respondent requiring various details of issued shares of 41,300 shares of the respondent and a copy of the share certificate etc.;

(vii) The challan issued by the Ministry of Company Affairs dated 19th October,2006 showing the receipt of fee for Form 2 submitted by the respondent showing the issuance of 41,300 equity shares of the respondent and also the amount paid on application in the sum of Rs.4,13,000/- at the rate of 10/- per share on application and the premium. The said Form 2 was submitted on 19th October, 2006;

(viii) The balance sheets of the respondent as on 31st March,2006 and 31st March, 2007 showing the increase in share capital during the period ending on 31st March 2007 and also showing the reduction in the loan amount in the books of the accounts of the respondent;

(ix) The challan dated 17th November, 2007 issued by the Ministry of Company Affairs in favour of the respondent acknowledging the receipt of Form 20B for the Financial year ending on 31st March, 2007 showing the Annual General Meeting of the respondent was held on 29th

September, 2007 which reflected the name of the petitioner at Serial no.51 having 41,300 shares of the respondent;

(x) Averments made in paragraph (7) of the affidavit-in-rejoinder filed by the petitioner admitting the averments made in paragraph (6) of the further affidavit dated 27th October, 2010 filed by the respondent referring to five fax messages from the petitioner dated 27th May 2010, 28th May 2010 and 29th May 2010;

(xi) The order passed by this Court in the Company Appeal No.59 of 2009 dated 7th July 2010 observing that there were four group of shareholders in Pankaj Extrusion Ltd. referred to as Mr.Babulal N. Shah, Mr.Harakchand N. Shah, Mr.Pravinchandra N. Shah, Mr.Sureshchandra N.Shah and Mr.Dineshchandra N.Shah groups;

(xii) A copy of the resolution dated 1st April, 2008 passed by the board of directors of the petitioner resolving that Mr.Harakchand N.Shah, the director of the company was authorized to sell the shares held by the petitioner in the respondent and to sign the share transfer deed on behalf of the petitioner and to execute other requisite documents. It is the case of the respondent that the petitioner has falsely denied the contents of the resolution dated 1st April, 2008 and the signature thereon;

(xiii) The letter dated 16th October, 2006 addressed by the petitioner to the respondent seeking loan confirmation letter from the respondent for the financial year 2005-06 which was sent by the petitioner to the respondent by fax bearing no. 23894207 which was the fax number of Pankaj Extrusion Ltd.;

(xiv) The averments made in the additional affidavit dated 22nd August, 2012 filed by the respondent alleging that there was a split in the Pankaj Group w.e.f. 10th April, 2003 on 2nd June, 2005 vide award dated 2nd July, 2005 and since then the petitioner has not been a part of the Pankaj Group;

(xv) The petitioner has not filed any returns with the Registrar of Companies for last eight years;

(xvi) The application form for equity shares submitted by the petitioner for issuance of equity shares of group companies of the respondent in support of the submission that the fiduciary relation between the petitioner and the respondent is not disputed and showing premium of Rs.990/- paid by the respondent or its sister group; and

(xvii) A copy of the resolution dated 29th September 2006 passed by the respondent along with other supporting documents authorising the directors of the respondent to make allotment of equity shares of Rs.10/- for cash at such price as the board of directors may deem fit.

52. A perusal of the aforesaid documents clearly indicates that the respondent had passed an appropriate resolution in the meeting held by the respondent resolving to allot 41300 equity shares to the petitioner in lieu of the outstanding loan of Rs.4,13,00,000/-. The respondent had also filed various returns from time to time informing the authority such as Ministry of Company Affairs about the resolution passed by the respondent and allotting 41300 equity shares to the petitioner which returns and forms were filed immediately after making such allotment to

the petitioner. In my view, filing of such returns and forms immediately after allotment of those 41300 equity shares to the petitioner clearly indicates that the respondent had allotted such shares to the petitioner and had informed the petitioner about such allotment by letter dated 30th September 2006.

53. A perusal of the record further indicates that even in the balance sheet of the respondent for the relevant years, the share capital of the respondent was increased in view of the allotment of 41300 equity shares to the petitioner and simultaneously the loan amount reflected in the balance sheet of the respondent taken from various parties was correspondingly reduced in view of the conversion of the loan amount of Rs.4,13,00,000/- given by the petitioner. None of such balance-sheets of the respondent are disputed by the petitioner.

54. In so far as the submission of the learned counsel for the petitioner that the Board Resolution dated 1st April 2008 alleged to have been passed by the petitioner authorising Mr.Harakchand N.Shah to sell the shares held by the petitioner in the respondent company is not passed and is fabricated by the respondent is concerned, in my view, the reliance placed on the said resolution is in conformity with the other documents produced by the respondent for consideration of this Court showing the allotment of 41300 shares of the respondent to the petitioner in lieu of the outstanding loan of the petitioner in the books of accounts of the respondent in the sum of Rs.4,13,00,000/-. In my view, the said resolution cannot be doubted also on the ground that the petitioner had sent five fax messages to the respondent inquiring about those shares including

the sale in respect thereof. In my view, there is thus no substance in the submission of the learned counsel for the petitioner.

55. In so far as the submission of the learned counsel for the petitioner that though the respondent had produced the documents in support of its submission that the petitioner and its group companies had made other investments with the respondent and with other group companies of the respondent, however, has not produced similar documents in respect of the alleged allotment of 41300 shares is concerned, in my view, the respondent has produced several documents including statutory records in support of its case of allotment of 41300 equity shares of the respondent to the petitioner in lieu of the outstanding loan amount of Rs.4,13,00,000/- in the books of accounts of the respondent. It is an admitted position that the petitioner did not address any letter to the respondent calling upon to pay interest on the said alleged outstanding loan amount of Rs.4,13,00,000/- after 1st April 2006 till 5th February 2008.

56. In so far as the submission of the learned counsel for the petitioner that the respondent has committed violation of Section 81(1A) and Section 81(3)(b) is concerned, the petitioner has not raised any ground in the company petition alleging violation of Section 81(1A) of the Companies Act, 1956. Be that as it may, the respondent has produced a copy of the resolution dated 29th September 2006 passed by the respondent in the meeting of Board of Directors and also the notice for the meeting proposed to be held on 30th September 2006. I am inclined to accept the submission of the learned senior counsel for the respondent

that there was an inadvertent error in the date of the meeting mentioned in the notice. The petitioner did not dispute that the petitioner had paid premium @Rs.990/- per share in respect of various shares allotted by the respondent or its group companies of the respondent. The petitioner did not dispute the said allotment of various shares by the respondent or its group companies in favour of the petitioner or its group companies on payment of premium of Rs.990/- per share. The petitioner did not dispute the fiduciary relations between the petitioner and the respondent.

57. A perusal of the record indicates that there is contradiction in the case of the petitioner that the said letter dated 30th September 2006 was received by the petitioner in the month of February 2008 or in June 2008. In the affidavit in rejoinder filed by the petitioner, it was the case of the petitioner that the said letter was received by an ordinary post. Mr.Bharucha, learned counsel for the petitioner fairly stated that the petitioner is not in a position to produce any envelope containing such letter dated 30th September 2006 in support of the submission of the petitioner that the said letter was received in the month of February 2008 or June 2008 or was sent by ordinary post and not by fax. On the other hand, the respondent has produced the copy of the courier receipt showing the acknowledgment of the said letter by Pankaj Extrusion Ltd. The respondent has also produced the fax activity report to demonstrate that the fax was sent by the respondent to the petitioner on 16th October, 2006 at 15.59 hours on fax no.23894207. The said fax number was admittedly the fax number of Pankaj Extrusion Ltd., a group company of the petitioner. The petitioner itself had sent various letters from the same fax number to the respondent. The petitioner also admitted

belatedly that at the relevant time, the said Pankaj Extrusion Ltd. was a group company of the petitioner.

58. I am thus inclined to accept the submission of the learned senior counsel for the respondent that the letter dated 30th September 2006 was sent by courier to the petitioner as well as by fax and was received by the petitioner immediately after dispatch of such letter by courier and/or by fax. The petitioner has not disputed that there was a rubber stamp of Pankaj Extrusion Ltd. on the courier receipt produced by the respondent. I am not inclined to accept the submission of the learned counsel for the petitioner that the envelope of Pankaj Extrusion Ltd. produced by the respondent in support of the submission that the letter dated 18th February 2008 addressed by the petitioner to the respondent referring to the loan amount of Rs.4,13,00,000/- along with TDS certificate was not sent along with the said envelope of Pankaj Extrusion Ltd. The petitioner has not disputed the fact that the Division Bench of this Court had clearly observed that the said Pankaj Extrusion Ltd. was a group company of various members of Shah family including Mr. Harakhchand Shah.

59. A perusal of Form 20B filed by the respondent with the Ministry of Company Affairs on 17th November 2007 for the financial year ending on 31st March, 2007 clearly shows that the Annual General Meeting of the respondent was held on 29th September, 2007 and the name of the petitioner at Serial no.51 having 41,300 shares of the respondent is shown in the said document.

60. A perusal of Form 2 submitted by the respondent with the Ministry of Company Affairs on 19th October 2006 also shows that the petitioner was issued 41300 equity shares of the respondent and that the amount paid on application in the sum of Rs.4,13,000/- at the rate of 10/- per share on application and Rs.40,887,000/- towards total premium paid thereon. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the allotment of 41300 equity shares by the respondent to the petitioner in lieu of the outstanding loan amount of Rs.4.13 crore was fraudulent or without consent and knowledge of the petitioner. The effect of the allotment of shares in favour of the petitioner was also duly reflected in the balance-sheet of the respondent in the relevant years i.e. increase the share capital by reducing the loan amount. The petitioner did not produce any documents to show that the said amount is reflected as loan after allotment of shares by the respondent.

61. A perusal of the record indicates that the relationship of the petitioner with the Pankaj Extrusion Ltd. which is denied initially has been accepted by the petitioner belatedly in the rejoinder. The case of the petitioner is totally inconsistent and contradictory. There are several disputed facts. Various triable issues are raised by the parties in this company petition and the affidavits. In my view, the defence raised by the respondent is bonafide and not moonshine and is supported by various documentary and circumstantial evidence.

62. In so far as the submission of the learned counsel for the petitioner that the annexures to the auditor's report of the respondent for the year ended 31st March, 2007 and more particularly paragraph (18)

would show that the respondent company has not made any preferential allotment of the shares and thus the contention of the respondent at the same time that the petitioner was allotted 41300 shares is false is concerned, a perusal of paragraph (18) of the said auditor's report indicates that the auditor has observed that the respondent company has not made any preferential allotment of the shares and has not observed that no equity shares/preference shares were issued by the respondent in favour of the petitioner or any other party during the said period. The submission made by the learned counsel for the petitioner is totally untenable and without any merit.

63. There is no merit in the submission of the learned counsel for the petitioner that the documents relied upon by the respondent which are alleged to have been filed by the Registrar of Companies are unilateral documents and cannot be considered by this Court. Those documents relied upon by the respondent are statutory records demonstrating that the respondent had complied with various provisions of law for allotting equity shares to the petitioner, for converting the loan amount into equity shares and for charging premium. This Court is empowered to consider such statutory documents to consider the allegation of the petitioner that the shares were not allotted to the petitioner with its consent or with the knowledge of the petitioner. There is no legal bar under Section 81(1A) of the Companies Act, 1956 for making allotment of any shares.

64. In so far as the judgment of the Calcutta High Court in the case of ***Pawan Kumar Agarwal and Ors. (supra)*** is concerned, the facts before the Calcutta High Court in the case of ***Pawan Kumar Agarwal***

and Ors. (supra) were totally different. The respondent in this case has relied upon the statutory documents which can be considered by this Court.

65. In so far as the judgment of this Court in the case of **J.K. Corporation Ltd. vs. Ensource Finance Ltd. (supra)** is concerned, there is no dispute about the proposition of law laid down by this Court in the said judgment. However, since the respondent has demonstrated before this Court that the loan given by the petitioner to the respondent was converted into equity shares and the petitioner was allotted 41300 shares, the petitioner could not make any demand for return of loan amount with interest or otherwise. The judgment of this Court in the case of **J.K. Corporation Ltd. vs. Ensource Finance Ltd. (supra)** is thus clearly distinguishable in the facts of this case.

66. The jurisdiction of the Company Court while deciding the company petition for winding up is a discretionary jurisdiction. The disputed facts and the allegations of fraud, forgery and fabrication cannot be considered in the winding up petition. Be that as it may, the respondent has produced sufficient documents on record to controvert the allegations made by the petitioner. I am thus not inclined to exercise the discretion in favour of the petitioner and against the respondent.

67. I therefore pass the following order :-

- (i) Company Petition No.563 of 2009 is dismissed;
- (ii) In view of dismissal of the company petition, the Company Application No.492 of 2014 does not survive and is accordingly disposed of;

- (iii) It is made clear that the observations made by this Court in this judgment are for the purpose of deciding this company petition only;
- (iv) There shall be no order as to costs.

R.D.DHANUKA, J.