# Sharda Motor Industries Ltd.

**SMIL: BSE/NSE: 18-19/2109-01** **21st September, 2018**

**BSE Limited**
Department of Corporate Services
Pheroze Jeejeebhoy Towers
Dalal Street, Mumbai - 400 001
**(SCRIP CODE - 535602)**

**National Stock Exchange of India Limited**
Exchange Plaza, 5th Floor
Plot No. C/1, G Block
Bandra - Kurla Complex, Mumbai - 400 051
**(Symbol - SHARDAMOTR) (Series - EQ)**

**SUB: Intimation under Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Dear Sir/ Madam,

In the matter of Company Petition "C.P. No.61(ND)/2017" filed with Hon'ble National Company Law Tribunal, Delhi ('NCLT') and in continuation of our previous intimations, we would like to inform you that the Hon'ble NCLT has vide its Order dated 20th September, 2018 on the Company Application "CA-757(PB)/2018" has directed the Company not to place the Resolution for Re-appointment of Shri Rohit Relan, as Director before the 33rd Annual General Meeting for voting by Shareholders.

The copy of the detailed Order has been enclosed herewith for your reference.

Please take the same on record.

Thanking you,
Yours faithfully,
**For SHARDA MOTOR INDUSTRIES LIMITED**

Divyang

**Divyang Jain**
**Assistant Company Secretary**

SHARDA MOTOR INDUSTRIES LTD. NEW DELHI

Encl as above:

**Regd. Office** : D-188, Okhla Industrial Area, Phase-I, New Delhi - 110 020 (INDIA)
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CIN NO-L74899DL1986PLC023202

FIT FOR INDEXING.

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH**

**CA-757(PB)/2018**
**IN**
**C.P. No. 61(ND)/2017**

**IN THE MATTER OF:**
**Rohit Relan & Ors.** .....**Petitioners**
**v.**
**Sharda Motor Industries Ltd. & Ors.** .....**Respondents**

**SECTION : UNDER SECTION 241/242**

**Order delivered on 20.09.2018**

**Coram:**
**CHIEF JUSTICE (RTD.) M.M. KUMAR**
**Hon'ble President**

**Sh. S.K. Mohapatra,**
**Hon'ble Member (T)**

**PRESENTS:**

For the petitioner: Mr. Virender Ganda, Sr. Adv., Mr. Suhail Dutt, Sr. Adv., Mr. Pawan Sharma, Mr. Anuj Shah &Mr. Rishabh Sharma, Mr. Pritpal Nijjar, Ms. Nripi Jolly, Mr. Ajhar Alam, Advs.

For the respondent: Mr. Salman Khurshid, Sr. Adv., Mr. Jayant Mehta, Ms. Smarika Singh, Ms. Mitali Chauhan, Ms. Shreya Sircar, Mr. Saifur R. Faridi, Ms. Suveni,Ms. Ruchi Kumar & Shubhi Sharma, Mr. Sourav Roy, Advs. for R1 to R6.
Ms. Vidhi Goel, Adv. for R.7

## ORDER

**M.M. KUMAR, PRESIDENT**

**CA-757(PB)/2018**

This is an application filed under Section 242(4) of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016 in CP No. 61(ND)/2017 which has been heard and order is reserved. It is pertinent to mention that the applicant-petitioner, Mr. Rohit Relan along with others filed the company petition with the

allegations of Oppression and Mismanagement' citing the acts of Mr. Ajay Relan Group in the affairs of Respondent No. 1 Company. The applicant-petitioner has attacked even the role of independent directors alleging that the independent directors in breach of their statutory duties have aligned with opposite group led by Mr. Ajay Relan Group – non-applicant in promoting the "Oppression and Mismanagement". The arguments have been heard and the order was reserved on 04.06.2018. It is further pertinent to mention that on 03.04.2017 interim directions were issued on the basis of statement made by the non-applicant – respondent. The order dated 03.04.2017 is set out below in ex-tenso:-

*" Petition mentioned.*

*I have heard Dr. A.M Singhvi, learned Sr. Counsel at some length.*

*The basic controversy raised during the course of arguments pertains to two Resolutions dated 16.03.2017 (at page 439) and 29.03.2017 (at page 456). It is clarified by Mr. Makkar, Learned Sr. Counsel for the Respondent No. 1 to 6 that the circular Resolution dated 16.03.2017 was a draft Resolution which was actually passed on 23.03.2017.*

*The main objection raised by Dr. Singhvi is that these two resolutions have been passed by circulation which is against the basic principles of discussing the issues in the regularly convened meetings. Dr. Singhvi has raised numerous other issues. At this*

*stage, it would not be necessary to dilate upon every argument in view of the statement made on behalf of the respondents.*

*Mr. Makkar, Ld. Sr. Counsel for the respondents on instructions from Mr. Vikas Mishra, Advocate & Mrs. Malini Sud, Advocate has argued that all the contentions raised by Dr. Singhvi are not sustainable in the eyes of law and has vehemently opposed each contention. However, Mr. Makkar has made a statement that two resolutions shall not be acted upon till the next date of hearing as filing of reply would be necessary to put the issues in their proper perspective. Ld. Counsel for the respondents seeks and is granted 10 days time to file the reply with a copy in advance to the counsel Counsel for the petitioner.*

*Rejoinder, if any, be filed within one week thereafter with a copy in advance to the Counsel to the other side.*

*To come up for further consideration on 27.4.2017."*

2. It is further pertinent to mention that non-applicant – respondent No. 1 filed CA-132(PB)/2017 and same was dismissed vide detailed order dated 27.06.2017. Likewise, CA-377(PB)/2017 and CA-412(PB)/2017 were filed by the applicant-petitioner along with CA-393(PB)/2017 filed by non-applicant – respondent those were disposed of on 24.11.2017 on the basis of consensus reached between the parties. It is in this backdrop that in the present application following prayers have been made which are set out in *ex-tenso*:-

*"(a) Direct the Respondents to ensure Petitioner No. 1 is reappointed/continues as director of Respondent No.1;*

*(b) Restrain the Respondent No. 1 from making any investment and/or implement the alleged resolution at item No.15(b) without permitting the Petitioner No.1 to vote on the said resolution after providing him all the information required by him in relation to the said resolution;*

*(c) Remove the existing independent directors namely Mr. Ashok Kumar Bhattacharya, Mr. Kishan Parikh and Mr. Satinder Kumar Lambah and appoint three independent directors in their place as this Hon'ble Tribunal may deem fit;*

*Or in the alternative;*

*Appoint four new independent directors so that they constitution of the board of Respondent No.1 is in compliance of SEBI Guidelines of 1/3rd director should be independent.*

*(d) Pass ad-interim orders in terms of prayer (a) to (c) above;*

3. According to the averments made in the application, the applicant-petitioner, Mr. Rohit Relan is stated to have received a notice on 27.07.2018 concerning the Board meeting of respondent No. 1 Company which was to be held on 03.08.2018. (Annexure 1). In that regard it is alleged that the non-applicant – respondent No. 1 did not furnish any information/supporting papers to him. For that reason he did not attend the meeting held on 03.08.2018. Moreover, he was travelling during that time. He intimated to the non-applicant-respondent that there was nothing in the agenda

items for the applicant-petitioner to participate/oppose and that he would not be attend the meeting. It has been pointed out that there was one agenda item to consider reappointment of applicant-petitioner as director who was to retire by rotation but eligible for reappointment. He had legitimate expectation from the Board of Director for the recommendation in favour of his reappointment. Since he could not have voted in the aforesaid agenda item for this additional reason also he did not attend the meeting which was to be held on 03.08.2018 and it was intimated to non-applicant – respondent vide letter dated 02.08.2018 (Annexure 2).

4. The applicant-petitioners have averred that they were surprised when they received the draft minutes of the board meeting held on 18.08.2018 (Annexure 3). It transpired from the aforesaid minutes that the independent directors made some false allegations against the applicant-petitioner Mr. Rohit Relan which have stand already been rejected by the order of this Tribunal on 27.06.2018. Accordingly, the non-applicant – respondent did not recommend Mr. Rohit Relan for reappointment to the AGM which is sought to be held on 27.09.2018. It has simply been decided to place the matter before the AGM for consideration in contrast with the recommendation for reappointment made in respect of the other

retiring directors. It is also alleged that non-applicant- respondent Nos. 2 & 7 in connivance with the independent directors preferred to abstain from voting on the false ground that they were related to Mr. Rohit Relan whereas under Section 188 of the Companies Act, 2013 in the matter of reappointment of director (not holding any place of profit) such an item is not treated as related party transaction. It has been asserted that earlier in the board meeting dated 17.07.2017 Mr. Ajay Relan non-applicant- respondent did not abstain from voting for reappointment of Mrs. Sharda Relan who is the mother of the applicant-petitioner Mr. Rohit Relan and non-applicant- respondent Mr. Ajay Relan (Annexure 4). The aforesaid scene was sought to be orchestered so that it could be argued that the decision was taken objectively by the independent directors and both Mr. Ajay Relan and Mrs. Sharda Relan had abstained.

5. The reasons given by the independent directors in the minutes of board meeting dated 17.07.2017 are not sustainable. It is alleged that the aforesaid reason have already been rejected vide order dated 27.06.2017 passed by this Tribunal and in respect of the other reason the applicant-petitioner Mr. Rohit Relan has been requesting the independent director to act independently and comply with the order of this Tribunal dated 24.11.2017. According

to the applicants-petitioner a request to the Board of Directors comprised of independent director was made to act independently. It was also pointed out that to seek compliance of order passed by this Tribunal could not be termed regarded as disruption of the Board meeting by the applicant-petitioner Mr. Rohit Relan. Even otherwise the allegation of independent director is vague and does not disclose any detail particulars.

6. It is alleged that the independent directors also played another fraud Under Section 186 of the Companies Act, 2013 a resolution for investment by any company in the shares of an other company has to be passed by consent of all the directors and it is a mandatory requirement. A dissent by a single director would lead to violation of the provisions and such a resolution cannot be passed. In the aforesaid draft minutes it has been alleged that a resolution for investment by respondent No. 1 Company in a Joint Venture was proposed and the same was passed under the last item of the agenda i.e. **'any other item with the permission of the** chair'. In accordance with the aforesaid resolution the existing limits of Rs. 50/- crores has been increased to Rs. 100/- crores without giving any particulars of alleged Joint Venture proposal. The aforesaid resolution appears to have been passed without any agenda item by

taking undue advantage of the absence of the applicant-petitioner Mr. Rohit Relan. A fraudulent conspiracy was hatched to get the aforesaid resolution passed knowing fully well that he would cast a dissent vote to the Joint Venture proposal. No such proposal or its details have been disclosed to the public shareholders which is in violation of SEBI-LODR. Apparently there is no disclosure made to the applicant-petitioner No. 1 Mr. Rohit Relan who is the promoter, shareholder and director. It is asserted that no such resolution could have been passed without the affirmative vote of applicant-petitioner Mr. Rohit Relan and that he has right to reappointment as a director. It has also been claimed that applicant-petitioner Mr. Rohit Relan has been a director of respondent No. 1 Company from the incorporation of respondent No. 1 company i.e. for more than 4 years.

7. It has also been asserted that applicant-petitioner Mr. Rohit Relan was due for retirement by rotation this year as per the provisions of the Companies Act and only one of the director of respondent No. 1 company was to retire by rotation under Section 152(6) of the Companies Act, 2013 read with Article 89 of the Articles of Association of respondent No. 1 Company. However, proposal has been made to retire by rotation two of the directors

namely Mr. Rohit Relan and Mr. Bireshwar Mitra. One of them is to be chosen for retirement by rotation and it has been done first by mutual agreement failing which by draw of lots. Mr. Rohit Relan applicant-petitioner No. 1 has given his consent for reappointment in good-faith without realising that only one of the two was to retire. It is thus asserted that it was the duty of the non-applicant-respondent No. 1 and other non-applicant to ensure compliance with the provisions of Section 152(6) of the Companies Act, 2013 read with Article 89 of the 'Articles of Association'. The language used for the resolution passed in respect of applicant-petitioner Mr. Rohit Relan and the other retiring director clearly reveals the mala fide intention of independent directors and there is a well-founded apprehension to remove him from the directorship at the Annual General Meeting(AGM) which would amount to further gross oppression. The email correspondence regarding his reappointment has been placed on record (Annexure 5).

8. Reply to the application has been filed and the prayer has been opposed. It has been asserted that the application is not maintainable and it is ill motive. It is arm-twisting mechanism adopted by the applicant-petitioner No. 1 Mr. Rohit Relan to obtain personal benefits for himself and to harass the respondent No. 1

company, its shareholders and directors. It has also been asserted that the object is to delay the pronouncement of the judgment on the main petition and thereby adversely affecting the smooth administration of business of the respondent No. 1 company.

9. In the preliminary objections, it has been asserted that the interest of the respondent No. 1 company are paramount. The application proceed on the assumption that had he attended the meeting on 03.08.2018, he would have dissented with the said resolution and it would have been defeated. The applicant-petitioner Mr. Rohit Relan does not even make a mention of how an increase the investment limit from Rs. 50 crores to Rs. 100/- crores would not be in the best interest of Respondent No. 1 Company.

10. The Company Petition or the instant application does not disclose any act of 'Oppression and Mismanagement' and therefore there is no cause of action for filing the instant application. The non-applicants have claimed that the reliefs prayed by the applicant-petitioner are contrary to the settled principles that shareholders have a right to pass a resolution to nominate/re-nominate the director and that the courts do not interfere in the internal management of the companies. The applicant-petitioner Mr. Rohit Relan cannot claim it as a matter of right to continue in

the office of director against the collective decision of the shareholder.

11. There is no provision in the Companies Act that every business transaction has to be identified by bringing an agenda in the board meeting. The plea that item 15(b) was taken on 03.08.2018 without any agenda does not de-track it from the fact that a resolution was unanimously passed by the director present at the meeting in accordance with the provisions of Section 186 of the Companies Act. The resolutions were passed in the regular course of business of Respondent No. 1 Company. It is then purview of the board of directors to take up any other item with permission of the Chair and in that regard reliance has been placed on Clause 1.3.10 of the SS-1-Secretarail Standard concerning the Board of the Directors. The Courts have gone to extent of observing that a business of a company can be transacted even without a common agenda and every agenda of a meeting of the companies necessarily has a residuary clause to consider any other matter with the permission of the Chair.

12. It has also been asserted that the application is premature and speculative in nature. It is full of contradictory allegation as if the applicant-petitioner Mr. Rohit Relan has an

indefeasible right to continue as a director. As a matter of fact the applicant-petitioner Mr. Rohit Relan had agreed to retire by promotion (Annexure-5) (Pages 57-59 of the application). There is no discriminatory treatment to the applicant-petitioner Mr. Rohit Relan viz-a-viz Mr. Bireshwar Mitra.

13. The non-applicant has also controverted the allegations levelled against the independent director by asserting that they are persons of repute and immense influence and that they have impeccable professional standing.

14. There is now substantial decrease in the sales of Respondent No. 1 Company to Bharat Seats Ltd. (BSL). It is asserted that on 11.07.2017 this Tribunal vide interim order had asked the parties to maintain status quo with respect to supply made by the Respondent No. 1 Company to Bharat Steas Limited. There has been substantial decrease of sales of Respondent No. 1 Company to BSL and BSL sale in turn has exponentially increased which is detrimental to the business of Respondent 1-Company. It is apprehended that soon the applicant-petitioner Mr. Rohit Relan would discontinue placing order on Respondent 1-Company on behalf of BSL resulting into huge business losses to it. The total sale of respondent 1-company to BSL amounts to approximately 25 per

cent of the entire business and by the acts of applicant-petitioner Mr. Rohit Relan the business of Respondent 1 would decline approximately by 25 per cent thereby causing huge loss of finance and reputation to it.

15. It has also been asserted that the respondent No. 1 Company undertakes regular evaluation of its independent directors and the allegations made by the applicant-petitioner Mr. Rohit Relan are false. It has been averred that any action of the Respondent 1 Company which does not serve the personal interest of applicant-petitioner Mr. Rohit Relan then it cannot be regarded as oppressive. The self-interest of a shareholder/director cannot be synonymous with oppression and that the applicant-petitioners have filed multiple applications seeking the same relief.

16. Rejoinder has also been filed and the assertion made in the application have been reiterated controverting the averments made in the reply. A reference has been made to the averments made in the instant application wherein the acts of oppression have been highlighted. It has been asserted that there were five directors before the death of Mr. N.D Relan. The Managing Director is not to retire by rotation. As per the provisions of Section 152(6)(c) of the Companies Act, 2013, 1/3rd of the total number of directors are

liable to retire by rotation. They are retire each year at the AGM. Before the death of Mr. N.D Relan, two directors were liable to retired every year as 1/3rd of 5 comes to 1.66 which must be rounded off to two. After the death of Mr. N.D Relan. The total surviving directors are four in number and 1/3rd are to retire by rotation each year. The 1/3rd from the four is worked out then it is 1.33 and by rounding of it is equivalent to 1. The list of four directors has been given in the following table:-

| Name of Director | Date of appointment/re-appointment |
|---|---|
| R P Chaudhary (Respondent No. 8) | 26.08.2015 |
| Sharda Relan (Respondent No. 7) | 26.08.2015 |
| Rohit Relan (Respondent No. 1) | 03.09.2014 |
| B. Mitra | 18.11.2014 |

17. The aforesaid violation has continued since the death of Mr. N D Relan and the only defence taken in the reply is that such an objection has never been raised in the past. Accordingly the following averments have been made in paras 5 & 6 of the rejoinder:-

"5. However, the Respondent No. 1 after the death of Mr. N D Relan has been violating the provisions of Section 152 and is using the said violation as an opportunity to oust the Petitioner No. 1 from the directorship of Respondent No. 1 in continuation of oppression of the Petitioner No. 1 Group. In 2016, the Petitioner No. 1 was rightly made to retire but pursuant to nefarious design of Respondent Group with the accomplice of so called independent directors Mr. Mitra was also made to retire who was to actually retire only in 2017. In 2017, Mr. R P Chaudhary and Respondent No. 7 were made to retire instead of Mr. Mitra. Given the gross misconduct of the independent directors which has been admitted in the reply also as having been done deliberately by not recommending the reappointment to the shareholders, it is now clear that the Respondent Group armed with ready-to be-company in illegal acts, independent directors had malafide intentions right from the death of Mr. N D Relan to use this threat every alternate years as another attempt of Respondent No. 2 to compel Petitioner Group to agree to division without payment of any money being the difference in valuation of Respondent No. 1 Company and BSL. The only defence in the reply with regard

to this illegality is that the Petitioner No. 1 never objected to the said illegality and hence he is now estopped from objecting to the illegality. It is settled law that there is no estoppel against the statute and this Hon'ble Tribunal ought not to permit the Respondents to once again commit any illegality. In any event, the Petitioner No. 1 is entitled for reappointment being the promoter shareholder and director of Respondent No. 1 which is in the nature of partnership *inter* se between the promoters and also on the principles of legitimate expectation since the Petitioner No. 1 is the director of Respondent No. 1 since almost beginning.

6. Yet again, Respondent No. 1 Company in its board meeting dated 03.08.2018, rather than retiring only one director by rotation, is retiring both Petitioner No. 1 and Mr. Bireshwar Mitra. The same was also brought to the knowledge of Respondent No. 1 Company by means of I.A. 757 of 2018 in spite of which Respondent No. 2 has failed to correct the same and has issued the Notice dated 01.09.2018 for Respondent No.1's AGM containing an item for reappointment of Petitioner No. 1 as Director. It is submitted that in accordance with the provisions of Section 152 (6) (c) and (d) of the Act read with

Article 89 of the AoA of Respondent No. 1 Company, Petitioner No. 1 was not liable to retire. Without prejudice to above, as Mr. Bireshwar Mitra was also appointed on the same day as Petitioner No. 1 i.e. on 07.09.2016 and therefore, the same has to be determined by a draw of lots. Relevant extracts of notice dated 01.09.2018 and agenda for the AGM dated 27.09.2018 is annexed hereto and marked as **ANNEXURE 'A'."**

18. We have heard learned Senior Counsel, Mr. Virender Ganda in support of the application on behalf of the applicant-petitioners and Mr. Salman Khursid, learned Senior Counsel along with Mr. Jayant Mehta for the non applicant-respondent.

19. Various questions have been raised in this application namely whether the proprietary would demand to maintain status quo with regard to the status of applicant-petitioner Mr. Rohit Relan as director in respondent No. 1 company especially when the argument in main case have been heard and the order is reserved; whether under Section 152 (6) of the Companies Act, 2013 read with Article 89 of the Articles of Association only one director by rotation is to retire and what is the effect of the observations made in the board resolution passed on 03.08.2018 authorizing the convening of AGM on 27.09.2018.

20. The share holding of the applicant-petitioner in respondent 1 company after the death of N D Relan is 27.03%. The share holding of the non applicant-respondent Nos. 2 to 6 is 46.34%. The share holding of the public is 25.05%. The aforesaid pattern of shareholding has been explained in following table:-

Shareholding of Sharda Motor Industries Ltd. [R-1]

[After the death of Late N.D. Relan]

| | | | |
|---|---|---|---|
| Rohit Relan (P-1) (7.21%) | Ajay Relan (R-2) (32.52%) | N.D. Relan (HUF) | R.P. Chowdhary (R-8) (0.01% |
| Ritu Relan (P-2) (12.49%) | Mala Relan (R-3) (8.35%) | (0.50%) | Indira Chowdhary (R- |
| Rishabh Relan (P-3) (2.67%) | Aashita Relan (R-4) (0.09%) | | (1.07%) |
| Pranav Relan (P-4) (2.17%) | Aashim Relan (R-5) (5.06%) | | |
| Ayush Relan (P-5) (1.75%) | Ajay Relan HUF (R-6) (0.32%) | | |
| Rohit Relan HUF (P-6) (0.75%) | **Total – 46.34%** | | |
| **Total – 27.03%** | | **Total – 0.50%** | **Total – 1.08%** |

Remaining shares of 25.05% with public

List of present directors of R-1:

(i) Sharda Relan [R-7]

(ii) Rohit Relan [P-1]

(iii) Ajay Relan (Also CEO & Managing Director) [R-2]

(iv) R.P. Chowdhary [R-8]

(v) Kishan Nagin Parikh (Appointed as independent Director)

(vi) Ashok Kumar Bhattacharya (Appointed as independent Director)

(vii) Bireswar Mitra (Appointed as Whole-time Director)

(viii) Satinder Kumar Lambah (Appointed as independent Director)

21. At this stage it would be worthwhile to consider the resolution dated 03.08.2018 passed by the Board of Directors. The relevant item No. 7 is set out below in *ex-tenso*:-

> **"ITEM No. 07) TO CONSIDER AND RECOMMEND THE RE-APPOINTMENT OF THE FOLLOWING DIRECTORS OF THE COMPANY, WHO ARE LIABLE TO RETIRE BY ROTATION IN ENSUING ANNUAL GENERAL MEETING ("AGM"), IF ELIGIBLE AND OFFER THEMSELVES FOR THE RE-APPOINTMENT:**
>
> (a) SHRI ROHIT RELAN
>
> (b) SHRI BIRESWAR MITRA

Shri Nitin Vishnoi, Company Secretary apprised the Board that as per the provisions of the Companies Act, 2013 and Articles of Association of the Company, one-third of the rotational Directors (excluding the Independent Director) are liable to retire at every Annual General Meeting who have been longest in the office as such. Accordingly, such Rohit Relan and Shri Bireswar Mitra directors of the Company, who have been longest in the office, are liable to retire at the ensuing Annual General Meeting, being eligible and offered themselves for re-appointment.

**(a)SHRI ROHIT RELAN**

*Shri S K Lambah and Shri A K Bhattacharya, Independent Directors of the Company expressed their concerns regarding the conduct of Shri Rohit Relan and the manner in which the Board has been dragged into the family dispute, which should rather be resolved within the family or (not?) in the Court. Shri Bhattacharya stated that Shri Rohit Relan's conduct during the Board Meetings has been disruptive and that Shri Rohit Relan was acting in conflict with the interests of SMIL (by reducing the orders placed by Bharat Seats Limited ("BSL") on the Company and thereby affecting its profitability) which was a matter of serious concern.*

The Board passed the following resolution in this regard:

**"RESOLVED THAT** the name of Shri Rohit Relan (holding DIN 00257572), who is liable to retire by rotation at the ensuing Annual General Meeting (AGM) of the company, being eligible, offers himself for the re-appointment be and is hereby placed for consideration for re-appointment as director of the company at the ensuing AGM.

**(b)SHRI BIRESWAR MITRA**

The Board considered the matter of re-appointment of Shri Bireswar Mitra, Director of the company who is also liable to retire by rotation

at the ensuing Annual General Meeting and passed the following resolution in this regard.

**"RESOLVED THAT** the name of Shri Bireswar Mitra (holding DIN 06958002), who is liable to retire by rotation at the ensuing Annual Meeting (AGM) of the company, being eligible, offers himself for the re-appointment be and is hereby recommended for the re-appointment as director of the company at the ensuing AGM"

22. A perusal of comments made below the name of Mr. Rohit Relan by independent directors are wholly unwarranted. It has been observed therein that the independent directors need to express their concern with regard to the conduct of Mr. Rohit Relan and the manner in which the Board has been dragged into the family dispute which should have been resolved within the family not in the Courts. There is condemnation of Mr. Rohit Relan by one Mr. Bhattacharya who stated that during the board meeting his conduct has been disruptive and that he was acting in conflict with the interest of respondent no. 1 company which has affected its profitability.

23. It is represented on behalf of the non applicant-respondent by Mr. Salman Khursid, learned senior counsel that these comments are ignorable because these have not been attached with the agenda

circulated to seek the votes on various items and therefore, it would not impact the mind of the shareholders who are to vote. The aforesaid contention has been controverted by Mr. Virendra Ganda, learned senior counsel for the applicant-petitioner, Mr. Rohit Relan by arguing that in a company where the non applicant-respondent holds more than 46.34% shares and they are fully aware of such comments then it is frutile to claim that at the time of voting in the AGM these members would not be affected. The resolution may not be in the knowledge of 35.05% public shareholders which would not make material difference. It is therefore, patent that the resolution passed on 03.08.2018 is likely to prejudice the mind of the shareholders and once it is realized that there are adverse comments on the role of the applicant-petitioner, Mr. Rohit Relan adversely affecting profitability then he would not be able to inspire confidence and his reappointment is elusive. It is difficult to believe that a director who is alleged to have dragged the company into litigation and has adopted disruptive conduct would be able to win the vote of confidence particularly when it is said that he has been acting in conflict with the interest of respondent 1 company which is a matter of serious concern as it effects its profitability. Therefore, we are of the view that in the AGM there cannot be any fair

treatment which would be given to the applicant-petitioner, Mr. Rohit Relan.

24. Moreover, when the acts of oppression and mismanagement are under the active consideration of the Tribunal it would be highly improper to disturb the status quo.

25. We are also inclined to accept the submission that only one of the director is to retire by rotation if the provisions of Section 152(6) of the Companies Act, 2013 are kept in view which need to be complied with. The provisions of Section 152(6) (c) & (d) of the Companies Act, 2013 are set out below in *ex-tenso:-*

> "(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liableto retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office."
>
> "(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since

their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot."

26. A perusal of the aforesaid provisions makes it patent that at every subsequent annual general meeting (AGM) 1/3rd of such of the directors for the time being as are liable to retire by rotation must retire from office if their number is neither 3 nor in multiple of 3 then the number nearest to 1/3rd must retire. It has been rightly projected by the learned counsel for the petitioner-applicant, Mr. Rohit Relan that four directors other than independent directors are in position and 1/3rd vote being would work out to 1.33. The number nearest to 1/3rd of the fraction of one (.33) cannot be regarded as one. Therefore, only one director is to be retired by rotation. Mr. Khursid has submitted that by the aforesaid formula the only ¼ of the director would retire and not 1/3. However, when the provision has been made by stating that the nearest to 1/3 shall retire then there is no escape from the conclusion that nearest to 1/3 would be 1 of the four and not 2 of the four. The fraction below half would be nearest to 1/3 and therefore, the rounding off is implicit in the provisions of Section 152(6) (c) of the Companies Act,

2013. Going by the aforesaid logic only one is to retire and preferring the applicant-petitioner, Mr. Rohit Relan may not be right choice.

27. For all the aforesaid reasons stated above this application succeeds. It is directed that the name of applicant-petitioner, Mr. Rohit Relan shall not be placed before the AGM and only one person is to retire by rotation. This time the name of Mr. Biswesar Mitra may be kept for consideration by AGM on 27.09.2018. Status quo with regard to the directorship of applicant-petitioner, Mr. Rohit Relan be maintained as a director till further order.

28. The application stands disposed of.

Sd/-

**(M.M.KUMAR)**
**PRESIDENT**

20.9.

Sd/-

**(S.K. MOHAPATRA)**
**MEMBER(TECHNICAL)**

20.09.2018
Aarti