

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT ROOM NO. 1,**  
**MUMBAI BENCH**

**CP No. 21/(MB)/2024**

**Company Petition under Sections 241-242 of the Companies Act, 2013**

**CP No. 21/(MB)/2024**

**Shashi Tanna,**

15, Ramesh Niwas, 51-A Warden Road,  
Breach Candy, Mumbai, Maharashtra - 400 026

**Nikhil Sayta,**

1601 Marathon Heights, Pandurang  
Budhkar Marg, Lower Parel,  
Mumbai, Maharashtra-400 013

... **Petitioners**

**VERSUS**

**Devkaran & Co. Pvt. Ltd.,**

123/125, M. G. Road, Fort,  
Mumbai, Maharashtra - 400 004

**Dilip Tanna; Amal Dilip Tanna; & Aksha Amal Tanna**

having common address as Umang, Flat No.63/64, 6th Floor,  
Alexander Road, Gamdevi, Mumbai,  
Maharashtra - 400 007

... **Respondents**

*Order delivered on 09.06.2026*

**CORAM:**

**Shri Prabhat Kumar**  
**Hon'ble Member (Technical)**

**Shri Sushil Mahadeorao Kochey**  
**Hon'ble Member (Judicial)**

***Appearance:***

**For the Petitioners** : Mr. Ankit Lohia, Advocate a/w Ms.

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Pooja Batra, Ms. Kriti Kalyani, Mr.  
Harit Lakhani & Ms. Anushka  
Bharadwaj, Advocates

**For Respondent Nos. 1 to 4 :** Mr. Mustafa Doctor, Senior Advocate  
a/w Mr. Yash Momaya, Ms. Teresa  
Daulat, M. Tatten, Ms. Ashita Chibbar  
& Ms. Namrata Pathar, Advocates

**ORDER**

*Per : CORAM*

- 1) This is a Company Petition filed under Section 241-242 of the Companies Act, 2013, seeking various reliefs to prevent oppression and mis-management in the Respondent Company by exercising powers under Section 242 of this Tribunal. It is alleged that the Respondent Nos. 2 to 4 in collusion fraudulently and illegally transferred/transmitted, the late Mrs. Tarla Tanna's 66.7% stake in the Respondent No. 1 Company, by reducing her to miniscule 6.67% minority in the Respondent No. 1 Company and have unlawfully taken full control of management of the Respondent No. 1 Company. It is alleged that the Respondents have indulged in falsification of documents and Books of Accounts filed with

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Registrar of Companies and filing of self-contradictory forms and accounts with the Registrar of Companies, Money Laundering, creating liability/loan against the Respondent No. 1 and have caused in increase in losses, long term borrowings, expenses coupled with lack of increment in the surplus and revenue of the Respondent No. 1, thereby eroding the net worth thereof. The Petitioners have therefore sought various reliefs to redress the oppression and mis-management committed by the Respondent Nos. 2 to 4 in the Respondent No. 1 Company.

- 2) The Respondent No. 1 Company was incorporated on 27.02.1947, under the provisions of 1913 Act. The Company was incorporated with the object of carrying on the business as dealer/commission agent in all types of commodities either as sole-proprietors or in partnership with others; to carry on any trade, business, manufacturing or commercial operations in or with India and the East and in other parts of the World, or in connection with any articles exported from or imported to India and the East or any other part of the World; to acquire, deal with or dispose of in any

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manner any property fixed or moveable or immoveable corporal or incorporeal or any interest which may be thought beneficial to the Company; and to carry on in India or elsewhere the business of exporters, importers traders, merchants, manufactures, brokers, agents and dealers in any and all kinds of merchants.

- 3) Mr. Devkaran Nenshi Tanna, Mr. Hasmukh Nenshi Tanna and Mr. Bhogilal Chimanlal Shah were the subscribers to the Memorandum and Articles of Association of the Respondent No. 1 Company. They were the First Directors of the Respondent No. 1 Company.
- 4) The shareholdings of the Respondent No. 1 Company as on year ending March, 2023, filed with the ROC are as under:-

<b>Sr. No.</b>	<b>Name of Shareholders</b>	<b>No. of Shares</b>	<b>Holding (%)</b>
1.	Mr. Dilip Tanna (Respondent No.2)	5133	51.33
2.	Mr. Amal Dilip Tanna (Respondent No.3)	4200	42
3.	Late Tarla Girish Tanna (Petitioner Nos.1 and 2)	667	6.67
	<b>Total</b>	<b>10,000</b>	<b>100</b>

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- 5) So far as the shareholding of late Mrs. Tarla Tanna is concerned, there is no dispute. The Petitioners herein have filed this Company Petition in the representative capacity for and on behalf of the Legal Heirs of deceased late Mrs. Tarla Tanna, pursuant to the consent terms executed in the Suit bearing No. 1210 of 2009 on 26.04.2017 and taken on record in Testamentary Suit No. 127 of 2014, *vide* Order dt. 14.05.2017 read with Order dt. 09.05.2017.
- 6) It is pertinent to note that Mrs. Tarla Tanna passed away on 22.08.2012, leaving behind the Will dt. 16.07.2010. Upon her demise, the Will of late Mrs. Tarla Tanna came to be propounded by the executors of the said Will by filing Testamentary Petition No. 883 of 2014, which was converted into Testamentary Suit No. 127 of 2014, which came to be settled under the Consent Terms. The Respondent No. 2 is the propounder of the Will of late Mrs. Tarla Tanna. It is pertinent to note that the consent terms are under challenge by filing separate Suit by the Respondents bearing Suit No. 1075 of 2019 and also the Testamentary Suit No. 2683 of 2023.

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- 7) In this background, it is the shareholding of late Mrs. Tarla Tanna, which is sought to be protected and preserved by the Legal Heirs of late Mrs. Tarla Tanna as against the Testamentary disposition under the Will of late Mrs. Tarla Tanna, which is under the scrutiny of various Authorities under the Testamentary Suits. Even the consent is under challenge and is pending adjudication before the Court. Pursuant to the consent terms, the association of persons is formed and the present Petitioners have been given authority to pursue all the litigations and file the present Petition. The Respondents have not raised any grievance on filing this Petition in representative capacity by the present Petitioners, however, raised various challenges, alleging *mala fides*, fraud in presenting this Petition and also raising ground as to maintainability of the Petition on the ground of Limitation and delay and laches.
- 8) It is contended by the Petitioners that since the Legal Heirs of late Mrs. Tarla Tanna were entitled to 667 shares of the Respondent No. 1/Company, the advocates for the Petitioners by Letter dt. 02.01.2018, requested for issuance of duplicates of 667 shares on or

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around 17.01.2018. The Petitioners served upon the Respondent the copy of consent terms dt. 26.04.2017 along with the Order dt. 04.05.2017. Thereafter, there were exchange of correspondence between the Respondent No. 1 and the Petitioners. The Respondent No. 2 has filed Suit No. 1075 of 2019, against the Petitioner No. 1 and other Heirs of Devkaran Tanna, Girish Tanna and Tarla Tanna, challenging clause of consent only pertaining to Umang Flat No. 63/64 and Mrs. Nenshi Monji. Some Interim Reliefs were passed. Respondents did not comply with the request of the Petitioners and ultimately the representative of the Petitioners on 11.03.2019 carried out Online Search of the Record of the Respondent No. 1 Company with the Registrar of Companies, since, the Respondents were not transmitting the said 667 shares in favour of Petitioner No. 1. Petitioners therefore found out that the Respondents had fraudulently issued and allotted additional 9000 shares to the Respondent Nos. 2 and 3, increase the share capital of the Respondent No. 1 and thereby taken control of the Respondent No. 1 and turned the Petitioners from the majority shareholder

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(holding 66.7% of share capital of the Respondent No. 1) to minority shareholder (merely holding 6.67% share capital of the Respondent No. 1).

9) The Petitioners have contended various acts of oppression and mismanagement which are enumerated as under:

- a. Obstructing the transmission of 667 shares to the Legal Heirs of late Mrs. Tarla Tanna;*
- b. Transferring 4800 shares in favour of Respondent No. 2 (out of the total additional shares of 9000). when as per his existing shareholding at that time, i.e., 33.3%, he was only entitled to 3000 shares;*
- c. Wrongly reflecting Respondent No. 3 as the holder of the shares belonging to the estate of Mrs. Tarla Tanna and illegal and Fraudulent transfer/transmission of Petitioners' 66.7% stake shares held by Mrs. Tarla Tanna in favour of Respondent No. 3;*
- d. Unlawful and fraudulent allotment of the increased share capital to Respondent No. 2 and Respondent No. 3 thereby reducing the majority stake of 66.7% of the Petitioners to minority stake i.e. 6.67% of the paid-up share capital;*
- e. Not offering the additional shares to the beneficiaries of the estate of Tarla Tanna, and not taking the NOC of the beneficiaries of the estate of Tarla Tanna, before allotting the additional shares, in breach of Section 62 of the Companies Act, 2013;*

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- f. The interests of the Petitioners were oppressed by the Respondents as the Petitioners who were 66.66% in majority ownership till then were conveniently reduced to a miniscule 6.67% minority.*
- g. Exclusion from the management of Respondent No. 1*

**10)** The Petitioners are therefore praying for the following reliefs:

- a) Pass appropriate orders, reliefs and directions under Sections 241 and 242 of the Companies Act, 2013 in relation to bring an end to the acts of oppression and mismanagement perpetrated by Respondent Nos. 2 to 4 and for necessary orders and reliefs in respect thereof;*
- b) Appoint an Administrator or special officer or any person as this Hon'ble Tribunal may deem fit and proper to carry on the business and manage the affairs of Respondent No. 1;*
- c) Pass an order and injunction restraining Respondent Nos.1 to 4 from selling, alienating, encumbering or parting with possession and/or creating any third-party rights and/or interests in the property owned and controlled by Respondent No. 1 (including said property more particularly described in the Schedule annexed hereto as Annexure F), without prior written consent of Petitioners;*
- d) Quash and/or set aside the alleged appointment of Respondent Nos. 3 and 4 as Directors of Respondent No. 1*

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*and/or remove Respondent Nos. 2 to 4 as directors w.e.f. the dates of their respective illegal appointments;*

- e) Pass an order and injunction restraining the Respondents from appointing any other persons as Directors on the Board of Directors of Respondent No. 1 company;*
- f) Appoint Petitioner Nos. 1 and 2 as the Directors of Respondent No. 1;*
- g) Declare that all the Board Meetings of Respondent No. 1 on or after 27th June 2011, as well as the minutes of the said meeting are illegal and bad in law and of no effect whatsoever;*
- h) Be pleased to declare that issuance of additional 9000 shares of Respondent No. 1 as well as the consequential allotment to Respondent Nos. 2 and 3, is illegal, null and void in law and has no effect whatsoever, and in the alternative, this Hon'ble Tribunal may be pleased to declare that the pro rata shareholding of 6000 shares was liable to be allotted to Mrs. Tarla Tanna/her Estate and necessary entries be made by Respondent No. 1 in the register of members to reflect the true and correct shareholding of Mrs. Tarla Tanna/her Estate*
- i) Direct Respondent Nos. 2 to 4 jointly and/or severally to provide to the Petitioners all information in respect of the business activities, accounts, statutory records of Respondent No. 1 company and provide to the Petitioners*

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*with all the necessary co-operation and information to ascertain the working of the affairs of the Company;*

- j) Declare that the loans of Mr. Girish Tanna amounting to Rs. 4,75,000/- and Mrs. Tarla Tanna amounting to Rs. 3,45,000/- be restored as being payable to the Petitioners, being the legal heirs of Late Mr. Girish Tanna and Mrs. Tarla Tanna;*
- k) For costs of this Petition including legal costs incurred by the Petitioners be granted;*
- l) For such other and further reliefs as this Hon'ble Bench may deem fit and proper.*

**11)** The Respondents appeared and filed their Reply and conceded to the fact, *vide* Affidavit in Reply dt. 26.03.2025 and Additional Affidavit in Reply dt. 09.01.2026 by the Respondent No. 2 that 667 shares shown in the name of the Respondent No. 3 in various forms filed by the Company on the portal of Ministry of Corporate Affairs was an error on the part of the Chartered Accountant of the Company and that the Audited Financial Statements of the Company filed with Registrar of Company have at material time shown the said 667 shares as belonging to late Mrs.

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Tarla Tanna. Therefore, there is no controversy in respect to the fact that 667 shares have at all material time belonged to late Mrs. Tarla Tanna and have never been transferred to the Respondent No. 3 or the Respondent No. 4 or any other person whosoever.

- 12) Respondents contended that the present Company Petition is filed with *mala fide* and ulterior motive and is therefore misuse and abuse of the jurisdiction of this Tribunal under Section 241-242 of the Companies Act, 2013, by contending that the present Company Petition has been filed in the Year 2024 as a belated afterthought to challenge the allotment of shares made in the Year 2014, in respect of which the necessary filings were admittedly made on the website of Registrar of Company as far back as 2014, immediately after the allotment was made. The Company Petition is nothing but a counterblast to Suit No. 1075 of 2019 and Petition for Letters of Administration being Testamentary Petition No. 2683 of 2023 in respect of late Mrs. Tarla Tanna's Will, both of which have been filed by the Respondent No. 2., Suit No. 1075 of 2019 has been filed by the Respondent No. 2 to challenge the consent terms dt.

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26.04.2017 filed in Suit No. 1210 of 2009, by which the Petitioners herein along with others have purported to usurp to themselves behind the back of Respondent No. 2 *inter alia* a flat admeasuring approx. 1611 sq. fts. on 6<sup>th</sup> and 7<sup>th</sup> Floor of the Building named "Umang" along with stilt covered car parking space at "Kashibai Navrang Marg, Gamdevi". The Umang Flat belongs to late Mrs. Tarla Tanna who bequeathed the same to the Respondent No. 2 under last Will and Testament. The executors of her last Will and Testament had sought probate of the same by filing Testamentary Petition No. 883 of 2014 before the Hon'ble Bombay High Court, behind Respondent No. 2's back and with a view *inter alia* to usurp the Umang Flat and other bequeaths under late Mrs. Tarla Tanna's Will, consent terms dt. 26.04.2017 were entered into, thereby compromising the Testamentary Petition 883 of 2014 and depriving the Respondent No. 2 of the Umang Flat and other entitlements in a completely Fraudulent & Clandestine manner.

- 13) The Respondents have further contended that the Petition is *ex facie* barred by the Law of Limitation. The Petitioners challenge

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issuance and allotment of 9000 shares to Respondent Nos. 2 and 3 in the Year 2014 in respect of which the necessary filings with the Registrar of Companies were made in the Year 2014, immediately following the allotment, is *ex facie* barred by the Law of Limitation. The contention of the Petitioners that they discovered the allotment of additional shares on or around 11.03.2019 pursuant to the search of Records with the Company with the Registrar of Companies and extension of Limitation during the Covid Period are completely mis-conceived for the allotment which took place pursuant to the Board Resolution of the Company dt. 24.04.2014 and the necessary filings with the Registrar of Companies were made on 29.04.2014 and therefore the limitation period for challenging the said allotment would begin to run from 29.04.2014. The Petitioners claimed to have become Legal Representative of late Mrs. Tarla Tanna pursuant to the alleged authority granted under the consent terms dt. 26.04.2017 to represent the Legal Heirs of late Mrs. Tarla Tanna. However, it is pertinent to note that late Mrs. Tarla Tanna has passed away on 22.08.2012, leaving a Will dt. 16.07.2010. The

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executors of late Mrs. Tarla Tanna's Will filed Testamentary Petition 883 of 2014 for Probate of her last Will and Testament before the Hon'ble Bombay High Court on or about 26.02.2014. The Petitioner No. 1 purported to challenge the said Will by filing the Caveat in the said Testamentary Petition on 16.10.2014. Petitioner No. 1, both in aforesaid Caveat and in Suit No. 1210 of 2009, since, as far back as 2012 has been claiming to have an interest and share in the part of the shares of the Respondent No. 1 Company held by late Mrs. Tarla Tanna, which is evident from Chamber Summons, filed by the Petitioner No. 1, being No. 741 of 2012 in Suit No. 1210 of 2009, in which the Petitioner No. 1 has mounted a direct claim of shares in the Respondent No. 1 Company.

- 14) It is therefore contended that though the Company has made necessary filings before the Registrar of Companies and the Ministry of Corporate Affairs and have thereby given Notice to the World at large about the allotment of said 9000 shares since as far back as March, 2014, neither the executors of the said Will nor the beneficiaries there under nor the Petitioners themselves nor any

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other Person claiming independent right in the shares took any steps to file any proceedings to impugn the said allotment. There is nothing in the Petition as to what any of these Persons were doing during this entire time to even ascertain the status in respect of these shares after the demise of late Mrs. Tarla Tanna on 22.08.2012, her 667 shares vested in the executors of her Will, till such time, that they were distributed to the beneficiaries there under or alternatively they vested in whichever person claiming to be entitled to the same as per law or intestate succession or by whatever mode or right and entitlement to the same. Whoever the owner was could have with ordinary due diligence discovered this issuance of 9000 shares by the Company and taken steps in respect of the allotment of 9000 shares if so desire.

- 15) The explanation about the inaction of the Petitioners for all the Years, ever since the allotment of shares in 2014 is that they learnt about the said allotment in or around 11.03.2019 pursuant to the search of record of the Company with the Registrar of Companies. Even in this regard, there is no explanation

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whatsoever as is required under the provisions of Limitation Act, as to why the reasonable due diligence was not exercised prior to March, 2019. It is further contended that even if it is presumed that the Petitioners right to assert any claim with respect to 667 Shares arose only after 26.04.2017 and 04.05.2017, i.e. the date when the consent terms were executed and thereafter filed before the Hon'ble Bombay High Court, the Petition in either case is *ex facie* barred by Law of Limitation. It is further contended that the Petition is not required to be entertained on the ground of delay and laches. The Respondents have tried to justify the issuance of additional shares due to shortage of funds by contending that the Company consistently required fund for its business operations and activities which is also evident from the duly audited Financial Statements of the Company. Petitioners have also not disputed the requirement of Funds and such requirement was met by either availing loans even by the Directors or by issuance of additional shares. Even in the Year 2002, 700 additional shares were issued and subscribed by late Mrs. Tarla Tanna and the Respondent No. 2

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as per their capacity by making payment and was not at all linked to shareholding percentage. The Company was not generating any meaningful interest and mounting litigation expenses due to encroachment in Marol Property. There was requirement of substantial funds in the Company, therefore, following the same practice, funds were brought in the Company by allotment of 9000 shares on 24.03.2014, followed by extending loans by the Directors. The Respondent No. 2 was appointed as a Director on 12.03.1974 and as Managing Director since 2002 and has been attending all the affairs of the Company by investing immense time and efforts & energy and has not claimed anything from the Company. The Respondent No. 2 has not drawn any salary or remuneration from the Company till date. The Financial condition of the Company has been such that there are not Funds available for the Directors to draw the remuneration. It is further contended that the Company has followed the procedure of Law as per the Companies Act, 1956. There was no requirement of Notice to be given to the existing Shareholders of the Company as it was not applicable to a Private

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Company under the extant law. The Company followed the procedure under the Articles of Association which empower the Directors to issue Shares at their discretion without any restriction. Since, the Company was in continuous requirements of funds for its operations and expenses and was continuously mounting losses, 9000 shares were issued and subscribed by Respondent Nos. 2 and 3 by making payment. Since, no one approached claiming any right or beneficial interest in the Shares in the Company, ever since the demise of late Mrs. Tarla Tanna. Dilution of late Mrs. Tarla Tanna's shareholding was never intended. The Company was admittedly in need of funds, issuing shares at a value that the persons would agree to subscribe was the only option available to the Company at that time. It is therefore, contended that the Cause of Action cannot be said to be a continuing cause of Action, if the allotment of shares were to be continuing wrong, it would mean that no limitation would ever apply even in a case where the Petitioners had admittedly knowledge of an allotment. It is therefore contended that the Petition is a *mala fide* attempt by the

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Petitioners, asking to exercise the Power under Section 242 of the Companies Act, 2013, there are no acts of oppression or mismanagement, the dilution of the shareholdings of the Shareholders was not intended, as the Company was in the need of funds, the present Petition is barred by the Limitation and therefore, the Petition is required to be dismissed.

- 16) Considering the rival contentions of the Parties to the present Company Petition, the lis revolves around the shares of late Mrs. Tarla Tanna and dilution of her shares to the minority shareholding from the majority. As pointed out above, the allegations of allotment of shares admittedly held by late Mrs. Tarla Tanna to the Respondent Nos. 3 and 4 under the same Folio Number thereby alleging oppression has been put to rests by the Respondent by contending that these shares are admittedly held by late Mrs. Tarla Tanna and it was the mistake of Chartered Accountant while making filings for various Financial Years that they were shown in the name of Respondent Nos. 3 and 4. The rectification to that effect could thus be made.

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- 17) Therefore, the only question which is left to be adjudicated in the present Petition is whether the Petition is barred by Limitation and whether there are acts of oppression and mis-management by Respondent Nos. 2 and 3 in running the business affairs of the Respondent No. 1 Company, which further revolves around issuance of 9000 shares which are subscribed by Respondent Nos. 2 and 3 which has in fact affected the dilution of percentage of Shareholdings of late Mrs. Tarla Tanna from 66.67% the majority to a miniscule minority Shareholding of 6.67%, Falsification of the documents and books of accounts with the Registrar of Companies which again pertain to the shares of late Mrs. Tarla Tanna. Money Laundering, creating liabilities/loan against the Company, misappropriation of loan standing to the Credit of Mr. Girish Tanna and late Mrs. Tarla Tanna, increase in losses, long term borrowings, eroding net worth of the Respondent No. 1 Company, unlawfully usurpation of the management of the Company, incorporation of new Company by the Respondents, are the key allegations. Therefore, the crux of the matter is whether the Petitioners have

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come before this Court *bona fide* and whether the Petition is filed within Limitation as prescribed under Section 137 of the Limitation Act, pursuant to the applicability of Limitation Act under Section 433 of the Companies Act, 2013.

- 18) There is no dispute that late Mrs. Tarla Tanna having acquired shares of the Respondent No. 1 from time to time from various persons had 667 shares in her name and at the relevant time, she was holding 66.67% shares of the Respondent No. 1 Company. It is also not disputed that she expired on 22.08.2012, leaving behind the Will dt. 16.07.2010. The propounders of the Will have filed Testamentary Petition No. 883 of 2014, before the Hon'ble Bombay High Court. It is submitted by the Ld. Counsel for the Respondents that behind the back of Respondent No. 2 and with a view to usurp the Umang Flat and other bequest under the will of late Mrs. Tarla Tanna, consent terms dt. 26.04.2017 were entered into thereby compromising the Testamentary Petition No. 883 of 2014, depriving Respondent No. 2 of the Umang Flat and other entitlements in the Company in a completely fraudulent and

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clandestine manner. The Respondent No. 2 therefore filed a Suit 1075 of 2019 and Testamentary Petition 2683 of 2023 for Letters of Administration in respect of late Mrs. Tarla Tanna's Will; both Proceedings are pending and were filed prior to the present Company Petition. Some Interim Orders with regard to the Flat in question have also been passed by the Hon'ble High Court of Bombay. It is therefore contended that as a Counterblast to the said Suit, the present Petition is filed. It is pertinent to note that pursuant to the Will, Testamentary Proceedings were pending before the Hon'ble Bombay High Court and the beneficiary under the Will is *sub judice* before the Hon'ble Bombay High Court. It is alleged that in the Testamentary Suit filed by the Respondents, the Legal Heirs, i.e. the Petitioners have executed some consent terms, those consent terms are challenged by filing a Separate Suit and the matter is *sub judice* before the Court. It is pertinent to note that these Suits were filed in the Year 2014 and thereafter, further Suits are filed in 2019, therefore, the Legal Heirs of late Mrs. Tarla Tanna are litigating before the Courts ever since the filing of Suits in 2014

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and they are aware of the shareholding of late Mrs. Tarla Tanna in the Respondent No. 1 Company as they have staked claim to her Shareholdings as her Legal Heirs and pursuant to the Consent Terms, which are under challenge, they are claiming right over the shares of late Mrs. Tarla Tanna and on the basis of those consent terms, the rights into the affairs of the Company are sought to be enforced by way of this Petition. It is therefore submitted by the Ld. Counsel for the Respondents that the Petitioners were aware about the Shareholdings of Shareholders of the Respondent No. 1 Company ever since the demise of late Mrs. Tarla Tanna or at least since the filing of the Testamentary Suit in the Year 2014. There was nobody who has claimed their right over the shares of late Mrs. Tarla Tanna until the consent terms dt. 26.04.2017, therefore, even if it is assumed that the right to assert any claim with respect to 667 shares arose only after 26.04.2017, i.e. the date of consent terms, or 04.05.2017, i.e. the date when the consent terms were executed, and thereafter, filed before the Hon'ble Bombay High Court, the Petition would be barred by Law of Limitation even after taking

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into account the Order dt. 10.01.2022, passed by the Hon'ble Supreme Court.

19) It is submitted by the Respondent that even assuming, without admitting, that the Petitioners' right to assert a claim in respect of the said 667 shares arose only on 26.04.2017, being the date of execution of the Consent Terms, the claim is nevertheless barred by limitation. Computing limitation from 26.04.2017, the period from 26.04.2017 to 14.03.2020 amounts to 2 years, 10 months and 20 days (1054 days). In view of the exclusion of limitation directed by the Hon'ble Supreme Court during the COVID-19 period, the balance period of limitation became available from 01.03.2022. Accordingly, the three-year limitation period expired on 01.04.2022. Even assuming that a minimum period of 90 days was available from 01.03.2022, the Petition would still be barred by limitation. Since the present Petition was filed only on 12.02.2024, it is clearly time-barred.

20) Similarly, even if 04.05.2017, being the date on which the Consent Terms were filed before the Hon'ble High Court, is taken

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as the date from which limitation commenced, the claim remains barred. The period from 04.05.2017 to 14.03.2020 works out to 2 years, 10 months and 12 days (1046 days). Upon applying the benefit of exclusion granted by the Hon'ble Supreme Court, the balance limitation period recommenced from 01.03.2022 and expired on 19.04.2022. Even assuming that an additional period of 90 days was available from 01.03.2022, the Petition would still be beyond limitation. As the Petition was filed only on 12.02.2024, the same is barred by limitation.

**21)** In this backdrop, as is evident that from these dates, the Petition would be barred by limitation i.e. beyond the Period of Three Years from 26.04.2017 or 04.05.2017, the dates when the consent terms were executed before the Hon'ble Bombay High Court. The Petitioners have come up with the Case that they made various correspondence with the Respondent No. 1 Company for transmission of 667 Shares held by late Mrs. Tarla Tanna in their name. In spite of several correspondence since there was no response from the Respondents they made search through their

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Advocate in March 2019 and discovered that 9000 shares were allotted and subscribed by the Respondent Nos. 3 and 4 and found out various other acts of oppression and mis-management and after the exclusion of Period of Limitation during Covid Time, the Petition since filed in the Year 2024 is within Limitation.

22) Ld. Counsel for the Respondents has submitted that there is no explanation as to why due diligence of the search of the Record of the Company would not have taken place prior to March, 2019, why no steps were taken by the Petitioners and/or any of the executors or beneficiaries under the Will of late Mrs. Tarla Tanna prior thereto. The invocation of Section 17 of the Limitation Act would also not come to the rescue of the Petitioners for the Petitioners were required to establish and plead the particulars of the alleged Fraud. The reliance is placed on *Santosh Devi... vs... Sunder (2025) SCC OnLine SC 1808* has held as under:

*“17. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed document is a registered sale deed. It is not in dispute that the petitioner has signed the sale deed. We are,*

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*therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and Ors. reported in (2006) 5 SCC 353. The relevant portion of the said decision reads as below:*

*“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.” (Emphasis supplied)*

*In view thereof, in the present case, the initial onus was on the plaintiff, who had challenged the sale deed.*

*18. When fraud is alleged against the defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges. In the present case, fraud is alleged as a ground upon which the plaintiff justifies the institution of the suit long after the expiry of the period normally allowed for the institution of the suit. Though no specific reference to the provisions of Section 17 of the Limitation Act, 1963 (for short, ‘the Limitation Act’) is made in the plaint, it is manifest that the pleading proceeds upon the hypothesis that the plaintiff had also contributed along with the defendant in the purchase of the subject property and at the time of the sale, the plaintiff was entitled to 50% of the sale consideration. In other words, the fraud was played upon*

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*the plaintiff to sign the sale deed and thereby transfer the subject property. The requirement of Order VII Rule 6, Civil Procedure Code, are clear. It is necessary that the plaint should show the ground upon which the exemption from the normal period of limitation is claimed. The question is whether the plaint in this case fulfils the requirements of law. As observed by Lord Selborne in Walling Ford vs. Mutual Society reported in (1880) 5 A.C. 685:*

*“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations however strong be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.”*

*19. It is not the mere use of general words such as ‘fraud’ that can serve as the foundation for the plea. Such expressions are quite ineffective to give the legal basis in the absence of particular statements of fact which alone can furnish the requisite basis for the action.*

**23)** Ld. Counsel for the Respondents have also placed on reliance on *Pallav Sheth....vs....Custodians & Ors, AIR 2001 SUPREME COURT 2763*, wherein, it is held as under: -

*“Section 17 of the Limitation Act, inter alia, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the*

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*right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent (Section 17(1)(b)) or where any document necessary to establish the right of the Plaintiff or Applicant has been fraudulently concealed from him (Section 17(1)(d)), the period of limitation shall not begin to run until the Plaintiff or Applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the Plaintiff or the Applicant first had the means of producing the concealed document or compelling its production. These provisions embody fundamental principles of justice and equity, viz, that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud”.*

and contended that Section 17 of the Limitation Act *inter alia* provides that –

*“Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, – the knowledge of the right or title on which a suit or application is founded*

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*is concealed by the fraud of the defendant or respondent or his agent, the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it."*

In the present case, the Respondents have not concealed anything from the Petitioners all acts complained, were done with full notice and disclosure; Section 17 is therefore, wholly inapplicable.

24) Ld. Counsel for the Petitioners, on the other hand, submitted that the Fraudulent acts of Respondents were discovered on 11.03.2019, by search of Records of Registrar of Companies and Ministry of Corporate Affairs. The Petitioners were empowered under the consent terms dt. 04.05.2017 and the Association of Persons Agreement dt. 16.04.2018, the Petitioner No. 1 started correspondence in January 2018. The Respondents never informed the Petitioners about the current status of the Shareholding, and therefore, failure or refusal to transmit the shares by the Respondents, the Petitioners exercised the due

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diligence, conducted an online search. It is further submitted that in terms of Section 17 of the Limitation Act, 1963, the period of Limitation does not commence until the Fraud is discovered. The Limitation ought to be computed from when the Petitioners first learned about the illegal allotment of 9000 shares, pursuant to online search dt. 11.03.2019. The reliance is placed in the case of *Galipoglu Hidromas Hidrolik Otomotive Sanayive Ticaret A.S. ...vs...Galipoglu Hidromas India Manufacturing Private Limited and Others (2024) SCC OnLine NCLT 1088*, wherein, it is held as under:

*“28. Now coming to the question of Limitation, this Petition has been E-filed on 04.01.2022. Alleged illegal transfer of shares happened on 27.07.2016, when the shareholding pattern was changed. There is specific averment in the petition that from the search report dt. 27.08.2019, the petitioner learned that 2,76,44,344 equity shares out of the total shares of 3,76,73,775 held by the Petitioner have been transferred to the second Respondent without its consent or payment of consideration. This makes it clear that the Petitioner came to know of the transfer for*

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*the first time only on 27.08.2019. The limitation act, 1963 provides the limitation shall start from the date the party gets the knowledge of a fact. In the present case, the illegal transfer came to the knowledge of the Petitioner on 27.08.2019. This Petition has been filed on 04.01.2022, i.e. within the period of three years as provided in Schedule I to the Limitation Act. So, the Petition filed by the petitioner through its power of attorney prima facie is within the limitation. Further, the limitation is a question of fact and law and the petition cannot be dismissed on such preliminary issue."*

- 25) Subsequently, on account of Covid-19 period from 15.03.2020 to 28.02.2022, has been excluded and therefore, a period of **02 Years 11 Months 14 Days** would lapse from the date of discovery of Fraud and therefore, the Petition is within Limitation. It is further submitted that illegal allotment of shares amounts to continuous acts of oppression causing prejudice to the interest of Shareholders. The Act of oppression, causing prejudice to the interest of Members, cannot be dismissed for any alleged delay. Reliance is placed on *O.K. Augusty... vs. OFS*

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*Industries P. Ltd. and others (2009) 149 Comp Cas 20 (CLB),*

wherein, it is held as under:

*“43. As regards the preliminary objection of the Respondents that the increase in the paid-up share capital which took place from 1999 to 2003 from Rs. 15 Lakhs to 1 crore has been challenged after lapse of 8 years and that the allotment of 85 lakhs shares has been challenged after lapse of 4 years from the date of allotment and hence the Petition is liable to be dismissed on account of inordinate delay and laches, on considering the facts, the legal contentions and the cases cited by the Petitioners and the Respondents, I find that the contention is untenable. It is settled law that the illegal allotment of shares amounts to continuous act of oppression causing prejudice to the interests of members. The Act of oppression became continuous till it is remedied or brought to an end, the petition cannot be dismissed at the threshold on account of unproved case of delay or laches”.*

26) Reliance is also placed on *M. Nandana Reddy...vs...Sri Lakshmi Narasimha Mining Co. (P) Ltd.*, wherein, it is held as under:

*“38. On the basis of analysis in the aforementioned paragraphs, we are of the view that even if the appellant had*

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*knowledge of the allotment of shares to R-3 & R-4, which was clearly in contravention of the Articles of Association, she was eligible and entitled to raise the issue of contravention of Articles of Association in allotment of these shares as she was not a person directly responsible for making such an allotment. Further, the appellant, who was not involved into day-to-day affairs of the company, cannot be supposed to have kept track of reduction in percentage of her shareholding and the issue of delay and laches was continuing even after reduction in her percentage shareholding, till the date of filing the Company Petition 09-2016. The Articles of Association are binding on Company and its members and also on Board of Directors and if laid down procedure and principles have not been followed in allotment of shares to R-3 & R-4, the allotment cannot be held as valid".*

- 27) As pointed out above, the Legal Heirs claiming through the Petitioners were aware of the Shareholdings of late Mrs. Tarla Tanna, even prior to her death and also came to know about the Will on the institution of the Testamentary Petition No. 883 of 2014 before the Hon'ble Bombay High Court in the Year 2014. During all this time, none of the Legal Heirs have made any claim or have asserted any interest in the shares of late Mrs.

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Tarla Tanna with the Respondent No. 1 Company. It appears from the contention of the Respondent No. 2 that under the Will of late Mrs. Tarla Tanna, certain rights are claimed in the Property by the Respondent No. 2. Therefore, he appears to be one of the beneficiaries under the Will. In the Testamentary Suits, the consent terms were arrived by virtue of which the present Petitioners claimed to have acquired their Authority of the Legal Heirs of late Mrs. Tarla Tanna, who are asserting the right over the Shares held by her. The Respondent No. 2 has filed a suit challenging the consent terms which is *sub judice* before the Hon'ble Bombay High Court. Therefore, existence of Will and pendency of Testamentary Petitions regarding the same Will does not crystallise the right asserted by the Legal Heirs through the present Petitioners. It is pertinent to note that the Petitioners have asserted their right or have made the search pursuant to the consent terms alleged to have been executed on 26.04.2017, pursuant to which the Petitioners who are authorised to litigate on their behalf before the various forums

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have taken the search in March, 2019, therefore, even after 2017 till 2019, the Petitioners did not discover anything from the Registrar of Companies Portal. Needless to mention, the Legal Heirs who now claim their right have also not shown anything about their due diligence in finding the Shareholdings of late Mrs. Tarla Tanna to which they claimed their right. It is pertinent to note that there is no allegation that there are no filings made with the Registrar of Companies as contemplated under the provisions of Companies Act, 2013, by the Respondent No. 1 Company. All the filings were promptly done. It is therefore submitted that even the allotment of 9000 shares was done in March, 2014 and the filing with the Registrar of Companies were made on 29.03.2014, which were in public domain, the persons who assert their rights to the Shareholdings of late Mrs. Tarla Tanna, should have been vigilant to carry due diligence in finding out as to what are the filings with the Registrar of Companies of the Respondent No. 1 Company, if they were so interested in running and the affairs and

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management of the Company. It is settled law that, filings with the Registrar of Companies is notice to the Public at Large.

- 28) The Hon'ble Supreme Court in the case of *Dilboo (SMT)(Dead) by LRs & Ors. ....vs... Dhanraji (SMT) (Dead) and Ors. (2000) 7 SCC 702*, has held as under:

*"20. .... It is always for the party who files the suit to show that the suit is within time. Thus, in cases where the suit is filed beyond the period of 12 years, the plaintiff would have to aver and then prove that the suit is within 12 years of his/her knowledge. In the absence of any averment or proof, to show that the suit is within time, it is the plaintiff who would fail. Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge".*

- 29) It is the contention of the Petitioners that they have discovered Fraud after taking inspection of filings with the Registrar of Companies in March, 2019. The Fraud is alleged that

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the Respondent Nos. 2 & 3 issued additional shares without giving any Notice to the existing Shareholders and Respondent Nos. 2 & 3 have subscribed to those additional shares, thereby reducing the Share percentage of late Mrs. Tarla Tanna and therefore, it is alleged that the Respondents have acted fraudulently. The Respondents have sought to explain that the Company does not have profit making business. There was need of infusion of funds from time to time and therefore, there was a need of issuance of additional shares which were subscribed by Respondent Nos. 2 and 3 and the funds were infused in the Company. It is not in dispute that the financial health of the Company in question is not very sound and is not a profit-making company. There are few properties in the name of the Company, one is given on Lease for 99 Years, which fetches meagre rent and another Property at Marol is under Litigation and is in dilapidated condition, which requires frequent maintenance from time to time for which there are no funds available with the Company; and in this circumstances,

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additional shares were allotted by the Company. Therefore, it was incumbent on the part of the Petitioners to plead as to in what manner the Fraud has been designed and executed by the Respondents. Firstly, the right of the Legal Heirs of late Mrs. Tarla Tanna over the shares held by her are in dispute which are not crystallised as yet and therefore, merely saying that upon taking search in 2019, they have discovered fraud, i.e. issuance of additional 9000 shares would not suffice to propound fraud, which is fortified by the Authority relied upon by the Ld. Counsel for the Respondents in the case of *Santosh Devi, cited (supra)* and *Pallav Sheth, cited (supra)* as against the submissions of Ld. Counsel for the Petitioners that they learned about the illegal allotment of 9000 shares pursuant to the online search report dt. 11.03.2019. relying upon **Galipoglu's case cited (supra)**, the contention of the Petitioners that they discovered the alleged fraud only in the year 2019 and not prior thereto would not be sufficient to bring the present Petition within the period of limitation. It is pertinent to note that all the procedure

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as required for allotment of shares was compiled by the Respondents. Section 81 of the Companies Act, 2013, since, it is a Private Company would not be applicable. The Petitioners admittedly, were not available, since the demise of late Mrs. Tarla Tanna in the Year 2012, till the date of filing of the present Petition. No Legal Heirs were substituted or no one has claimed or asserted their right to the Shares held by late Mrs. Tarla Tanna, therefore, except, the Respondents, there was nobody to whom the Notice could have been issued or the right issue could have been exercised, as contemplated under Section 66 of the Companies Act, 2013. It is pertinent to note that the filings with the Registrar of Companies in the prescribed formats were made in the Year, 2014 itself. Therefore, since, the Petitioners were aware of the rights which they have asserted in the Testamentary Petition could have been diligent enough to know about their Shareholdings. A bare assertion that pursuant to the Consent Terms in the Year, 2017, letters were written to the Respondent, for transmission of Shares and thereafter, taking

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search in the Year, 2019 obviously seems to be an attempt to bring the Petition within Limitation, without pleading the manner of perpetration of Fraud and execution of fraudulent acts and gaining advantage by fraudulent means. Hence, the Authority relied upon by the Ld. Counsel for the Petitioners, would not be helpful to the Petitioners to bring the Petition within Limitation, as the Petitioners who are representatives of the alleged Legatees/Legal Heirs of late Mrs. Tarla Tanna, cannot be said to have acquired the knowledge only pursuant to the consent terms which prompted them to take the search with the records of Registrar of Companies. It is also pertinent to note that the records of the Registrar of Companies which the Petitioners claimed to have discovered also pertains to the Year, 2014. Therefore, the contention of the Petitioners that they have made search in the Year, 2019 and then discovered that there was illegal allotment of 9000 shares does not seem to hold merits.

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- 30) The Hon'ble Supreme in the case of *Hameed Joharan (Dead) and Ors....vs...Abdul Salam (Dead) BY LRs. And Ors., (2001) 7 SCC 573* has held as under:

“14. Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper-this is opposed to the fundamental principle of which the statutes of limitation are founded. It cannot, but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times. Even the doctrine of prescription in Roman Law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming dis-favour. Law courts never tolerate an indolent litigant since delay defeats equity. The Latin maxim *Vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right”.

- 31) Ld. Counsel for the Respondents has relied upon the Judgment of the Co-ordinate Bench, NCLT Hyderabad Bench,

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in the matter of *Ravi Sanghi & Anr... vs... Sanghi Synthetics Pvt. Ltd & Ors.* Wherein, it was held as under:

*“34. Having heard the Ld. Counsels, it may be stated, that merely by stating that only upon perusal of the annual return for the financial year ending 2007, the petitioners gained knowledge of the alleged illegal transfer of shares, especially when it is not the case of the petitioners that the Annual Reports of the 1<sup>st</sup> respondent were not uploaded in the MCA web site as required under the statute, the Petitioners cannot get over the bar of limitation, as once the returns are uploaded in the MCA web portal, which is in the public domain, the same constitutes notice to public especially to all the directors and members of the company”.*

32) The Co-ordinate Bench, NCLT Chandigarh Bench, in the matter of *Kuldeep Singh... vs... Sainis Cold Retreaders Private Limited* has held that *“It would be thus, quite strange for the petitioner to allege that he has not been receiving any notice of the meeting of AGM and in case he challenges his removal as a Director and remained silent for a period of 9 years. The filing of the statutory documents with the Registrar of Companies comes within the public*

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*domain and would be considered a public notice to all and sundry for the purposes of counting the period of limitation for filing the petition”.*

33) Due diligence is explained by the Hon’ble Supreme Court in *Chander Kanta Bansal...vs...Rajinder Singh Anand (2008) 5 SCC 117*, reads as under:

*“..... The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort.*

*"Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence"*

*"Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by,*

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*a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial".*

It is therefore contended by the Respondents that the Petition is not maintainable on the grounds of delay and laches.

- 34) It is submitted by the Ld. Counsel for the Respondents that even if it is assumed that the Petition is within Limitation, the Petition ought not to be entertained on the ground of delay and laches. The equitable jurisdiction under Section 241-242 of the Companies Act, 2013 should not be exercised when there is gross delay and laches on the part of person who seeks such reliefs. In the present case, Mrs. Tarla Tanna, passed away in the Year, 2012 and for over Two Years no one came forward to stake a claim on the Shares, the Company was in need of funds,

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necessitating issuance of further shares. Respondent Nos. 2 and 3 invested their own hard-earned money into the Company and they advanced the unsecured loans to the Company for its requirement. The Respondent No. 1 Company is dealing with various issues with Marol Property, in the interest of the Company. Respondent Nos. 2 and 3 did not draw any salary or remuneration for their services, they worked without compensation. After passage of 10 years to undo the allotment of 9000 shares would be grossly inequitable to Respondent Nos. 2 & 3 who can never be compensated for their loss of time and efforts over the intervening 10 Years.

35) Ld. Counsel for the Respondents relied upon *Eastern Coalfields Limited....vs...Dugal Kumar (2008) 14 SCC 295*

*“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant- Company. It is well-settled that under [Article 226](#) of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ Court is that the petitioner is guilty of delay and laches. It is*

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*imperative, where the petitioner invokes extra-ordinary remedy under [Article 226](#) of the Constitution, that he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.*

27. *The underlying object of refusing to issue a writ has been succinctly explained by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong, (1874) 5 PC 221: 22 WR 492 thus;*

*“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that*

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*defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy”.*

- 36) Ld. Counsel for the Respondents also relied upon the Judgment in the case of *Abdul Wahid Abdul Gaffor Khatri Director and Others...vs...Safe Heights Developers Pvt. Ltd and Others, (2018) SCC OnLine Bom 693*, wherein, the Hon’ble Supreme Court held as under:

*“This Court, in the context of a similarly discretionary order under [Section 111](#) of the Companies Act, 1956, in [Sulochana Neelkanth Kalyani v. Takle Investments Co. & Ors.](#), has held that exercise of such discretion could certainly be affected by inordinate and unexplained delay and laches and that any such delay may render granting of the relief inequitable, as there could be equities arising in favour of other parties as a result of such delay and also such delay may give rise to a case of acquiescence, waiver or estoppel. These aspects would be for the CLB to assess and would depend upon the facts and circumstances of each case”.*

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37) Ld. Counsel for the Petitioners, on the other hand, submitted that the Petition is within Limitation, Respondents have breached their fiduciary duty by illegally allotting 9000 shares and therefore cannot claim equity. In fact, Respondents have not made out a case of laches. Discretion ought to be in favour of the estate of the deceased, i.e. late Mrs. Tarla Tanna and not for the Respondents, who misused their fiduciary position. None of the judgments relied upon by the Ld. Counsel for the Respondents pertain to a similar case, where Director misused fiduciary duties to dilute the shareholding of the deceased Shareholder. The Petitioners acted promptly upon discovering the Fraud on 11.03.2019 and thereafter filing the Petition within the statutory period of Limitation. Ld. Counsel for the Petitioners relied upon *M. Nandana Reddy...vs...Sri Lakshmi Narasimha Mining Co. (P) Ltd., cited (supra)*, thereby contending that oppression and mis-management is continuing wrong. The Respondents continue to hold illegally allotted

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shares and therefore no objection of delay and laches can defeat the Petitioners' right to challenge such acts, so long as oppressive conditions persist.

- 38) It is admitted position that Mrs. Tarla Tanna expired in the Year 2012 and for over Two Years nobody has staked any claim over her shareholding in the Company. It is only in 2019, the Petitioners in the representative capacity have contended that they have made search in the records of the Registrar of Companies and found out that the additional 9000 shares of the Company were allotted in the Year 2014. As observed earlier, the Legal Heirs were aware about the holdings of late Mrs. Tarla Tanna. They were also aware about the Testamentary Proceedings initiated by the Respondent No. 2, therefore, they could have found out from the records on the Ministry of Corporate Affairs Portal about the status of the Respondent No. 1 Company. There is no explanation put forth by the Petitioners, as to why none of the Legal Heirs who now claim their right over the Shareholdings of late Mrs. Tarla Tanna have made any

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search or have kept track of the happenings in the Respondent No. 1 Company. In the prudent Man's wisdom, a person who claims legacy over the holdings of their Aunt would naturally be vigilant to carry out due diligence. It is only after consent terms in the Testamentary Petition that they have formed association of Persons and they have appointed the present Petitioners as the Representatives who in turn, to bring the Petition under the Limitation, have made correspondence and alleged to have taken search with the records of Ministry of Corporate Affairs and found that 9000 additional shares were issued by which the Shareholdings of late Mrs. Tarla Tanna has been reduced to 6.67%. The delay in preferring the Petition, that to after institution of Suits by the Respondents challenging the consent terms on the basis of which they assert their rights, would certainly defeat the equity. In the case of *New Delhi Municipal Council...vs...Pan Singh and Ors. (2007) 9 SCC 278* has held as under:

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*“16. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction”.*

- 39) The Applicant has relied upon the judgment in the case of ***Gopal Dwarkadas Gupta....vs....Prashant Prabhakarrrao Kothekar (2015) 3 Mh.L.J. 640***, wherein, the Hon’ble Bombay High Court has held as under:

*“10. It is seen from the impugned order that the learned Civil Judge has refused to grant temporary injunction in favour of the appellants on the grounds that there has been delay and laches on the part of the appellants, that there was no readiness and*

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*willingness on the part of the appellants and that one of the lands which is the tend bearing Survey No. 89/2 being a fragment, its transfer was not permissible under Fragmentation Act. These grounds, on a closer took at the agreement to sell as well as other documents filed on record of the appeal appear to be the result of perverse appreciation of agreement to sell carried out by the learned Civil Judge.*

11. *I do not understand how delay and laches can be inferred only because notice in the matter had been issued on 7-4-2012 by the appellants. Last date of execution of the sale deed, prima facie, was 4-11-2011 and as respondent neither got the suit land measured by this date nor did remain present at Sub-Registrars office on that date, limitation period of three years, as provided for specific performance of contract under Article 54, Limitation Act, 1963, commenced, prima fade from 4-11-2011. Notice was issued in about five months from 4-11-2011, though it may not have been necessary, time being of the essence of contract, and it was well within limitation. When the notice was well within limitation, one is appalled to note the reasoning of learned Civil Judge that a notice issued about 5 months after the last date of performance indicated delay and laches”.*

40) However, this Authority is on different set of facts, where the

Notice was issued after Five Months of date agreed for the

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executing sale deed which was within Limitation period of Three Years from the date of filing of the Suit and therefore it was held that there were no delay and laches.

41) Ld. Counsel for the Applicant has further relied upon the Authority - *Board of Trustees of Ports of Bombay & Anr....vs... APL India Pvt. Ltd. & Ors (2015) SCC OnLine Bombay 1506*, wherein, the Hon'ble Bombay High Court has held as under

*"4. The defendants content that there has been a gross delay in the sale which took place after certain orders came to be passed. For a period of about four years there were no orders against the plaintiff restraining the plaintiff from selling the goods. That aspect would constitute delay and laches. That may be considered whilst adjudicating the issue of recovery of monies by the plaintiff. However, the period of Limitation is not affected by delay or laches".*

This Authority classifies the aspect of delay and laches and the Limitation. Limitation is not affected by delay and laches.

42) Ld. Counsel for the Petitioners has also relied upon the judgment in the case of *Parag Gupta and Associates....vs....B.K.*

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*Educational Services Pvt. Ltd., (2017) ibclaw.in 49 NCLAT,*

wherein, the Hon'ble NCLAT has held as under:

*“69. If there is a delay of more than Three Years from the date of cause of action and no laches on the part of the Applicant, the Applicant can explain the delay where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise”.*

It is pertinent to note that the aforesaid judgment was dealing with the Petition filed under Section 7 and 9 of the Insolvency and Bankruptcy Code, 2016, therefore, the same cannot assist the Applicant to justify the delay.

43) In the case of *M. Nandana Reddy... vs... Sri Lakshmi Narasimha Mining Co. (P) Ltd., cited (supra)*, it was held by the Hon'ble National Company Law Appellate Tribunal that *“the Appellant who was not involved in day to day affairs of the Company, cannot supposed to have kept track of reduction in percentage of her shareholdings and issue of delay and laches was continuing even after*

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*reduction*". In the present case, although the Petitioners were not involved into day to day affairs of the Company, however, they claimed to be the Legal Heirs of late Mrs. Tarla Tanna who has expired in the Year 2012 and has left a Will which is also under Scrutiny with the Competent Court. The Legal Heirs were aware of the Testamentary Petitions, Shareholdings and their right, therefore, they could have discovered by due diligence about the happenings in the Company as they were concerned about their shares in the Respondent No. 1 Company. Therefore, to constitute continuing wrong or continuing cause of action, the doctrine of proper purpose would assume significance in the present case. It is contention of the Respondents that the Company is left with few Assets, one is leased out on 999 years which is almost a Sale and it does not fetch any substantial income and the other Property which is situated at Marol is under litigation and the condition is dilapidated, the accumulated losses/deficits are reflected in the balance sheet of the Company filed along with the Petition at

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“Annexure BB-1”, page 567, which has Negative balance under the Head “Reserves and Surplus”. The deficit increases in the Financial Year 2013-2014, indicating continuing losses or deterioration in financial position during that period. The Company had borrowings, long term borrowings increased from 9,60,000/- in the Year 2013 to 10,60,000/- in the Year 2014. Total Assets/Liabilities were around 16,41,000/- in the Year 2014 and therefore, the contentions of the Respondents that there was need of infusion of Funds in the Year 2014 to run the Company appears to be justified which had prompted them to infuse more funds in the Company by issuance of Additional Shares. Consequently, 9000 additional shares were issued which were subscribed by Respondent Nos. 2 and 3 and the Funds to the tune of Rs. 9,00,000/-, have been infused by the Respondents in the Company which is in the benefit of the Company and it may have consequences of reduction of Share Capital, however, issuance of additional Shares in the Financial position of the Company at the relevant time was a necessity

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and therefore, as held by the Hon'ble Supreme Court in the case of *Dale and Carrington Investment Pvt. Ltd. & Anr....vs....P.K. Prathapan and Ors, (2005) 1 SCC 212*, have deal with on the role of Directors in the Company. The relevant para of the said judgment is quoted below:

*"13. On the role of Directors, the law is well settled. The position has been the subject matter of various decisions. Some of them are:*

*In Regal (Hastings) Ltd. v. Gulliver and Others, (1942) 1 All ER 379 Lord Russel of Killowen observed as under:*

*"Directors of a limited company are the creatures of a statute and occupy a position peculiar to themselves. In some respect they resemble trustees, in others they do not. In some respect they resemble agents, in others they do not. In some respect they resemble managing partners in others they do not. The said judgment quotes from Principles of Equity by lord Kames. In one sentence the entire concept is conveyed. The sentence runs "Equity prohibits a trustee from making any profit by his management, directly or indirectly. Ultimately*

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*the issue in each case will depend upon facts of that case".*

14. Lindley MR observed in *Alexander v. Automatic Telephone Co.*, (1900) 2 Ch. 56 at page 66-67:

*"The Court of Chancery has always exacted from directors the observance of good faith towards their shareholders and towards those who take shares from the company and become co-adventurers with themselves and others who may join them. The maxim "Caveat emptor" has no application to such cases, and directors who so use their powers as to obtain benefits for themselves at the expense of the shareholders, without informing them of the fact, cannot retain those benefits and must account for them to the company, so that all the shareholders may participate in them."*

15. M/s. [Needle Industries \(India\) Ltd. and Others v. Needle Industries Newey \(India\) Holding Ltd. and Others](#), [1981] 3 SCC 333 is a judgment of this Court in which amongst various other aspects the power of directors regarding issue of additional share capital was also considered. This Court observed:

*"The power to issue shares is given primarily to enable capital to be raised when it is required for the purposes of the company but it can be used for other purposes also as, for*

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*example, to create a sufficient number of shareholders to enable the company to exercise statutory powers, or to enable it to comply with legal requirement as in the instant case. Hence if the shares are issued in the larger interest of the company, the decision cannot be struck down on the ground that it has incidentally benefited the Directors is their capacity as shareholders. So if the Directors succeed, also or incidentally, in maintaining their control over the company or in newly acquiring it, it does not amount to an abuse of their fiduciary power. What is objectionable is the use of such power simply or solely for the benefit of Directors or merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company. Where the Directors seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in their fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. But if the power to issue shares is exercised from an improper motive, the issue is liable to be set aside and it is immaterial that the issue is made in a bonafide belief that it is in the interest of the company."*

16. In the [Needle Industries](#) case (supra) the Board of Director had resolved to issue 16000 enquiry shares of Rs. 100 each to be

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*offered as rights shares to the existing shareholders in proportion to the shares held by them. The offer was to be made by a notice specifying the number of shares to which each shareholder was entitled to. The notice further said, in case the offer was not accepted within 16 days from the date on which it was made, it was to be deemed to have been declined by the concerned shareholder. The Holding Company held 18990 shares and it was entitled to 9495 rights shares. The Holding Company could not avail its right to exercise the option for purchase of rights shares offered to it. As a result the whole of the Rights Issue consisting of 16000 shares was allotted to the Indian shareholders. The Holding Company filed a petition under [Sections 397](#) and [398](#) of the Companies Act, 1956 in the High Court. The Single Judge held in favour of the Holding Company that it had suffered a loss in view of the fact that the market value of the rights share was Rs. 190 whereas the shares were allotted at par i.e. at Rs. 100. The grievance of the Holding Company was that on account of postal delays it failed to receive the notice containing the offer of rights shares in time, and therefore, it could not exercise its option to buy the share. On appeal the Division Bench held that the affairs of Needle Industries India Ltd. were being conducted in a manner oppressive to the Holding Company. The Division Bench ordered winding up of the company. A further appeal to the Court was allowed mainly on the ground that there was no oppression. However, a direction was issued that*

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*the Indian shareholders pay an amount equivalent to that by which unjustifiably enriched, namely Rs. 90 x 9495 which comes to Rs. 8,54,550 to the Holding Company.*

17. In the [Needle Industries](#) case (*supra*) this Court referred to some old English decisions with approval. *Punt v. Symons*, (1903) 2 Ch 506 was quoted in which it was held "where the shares had been issued by the Directors, not for the general benefit of the company, but for the purpose of controlling the holder of the greater number of shares by obtaining a majority of voting power, they ought to be restrained from holding the meeting at which the votes of the new shareholders were to have been used."

44) The Hon'ble Supreme Court in the case of *M/s. [Needle Industries \(India\) Ltd. and Others v. Needle Industries Newey \(India\) Holding Ltd. and Others](#)*, [1981] 3 SCC 333, cited (*supra*), has held as under:

"15. The power to issue shares is given primarily to enable capital to be raised when it is required for the purposes of the company but it can be used for other purposes also as, for example, to create a sufficient number of shareholders to enable the company to exercise statutory powers, or to enable it to comply with legal requirement as in the instant case. Hence if the shares are issued in the larger interest of the company, the decision cannot be struck down on the

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*ground that it has incidentally benefited the Directors is their capacity as shareholders. So if the Directors succeed, also or incidentally, in maintaining their control over the company or in newly acquiring it, it does not amount to an abuse of their fiduciary power. What is objectionable is the use of such power simply or solely for the benefit of Directors or merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company. Where the Directors seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in their fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. But if the power to issue shares is exercised from an improper motive, the issue is liable to be set aside and it is immaterial that the issue is made in a bonafide belief that it is in the interest of the company."*

- 45) Their Lordships have further held, in Needle Industries case, that; this Court referred to some English decision with approval, in the case of *Punt...vs...Symons*, was quoted, “where shares had been issued by the Directors not for the general benefit of the Company but for the purpose of controlling the holders of the greater number of shares by obtaining a majority of voting power, they ought to be restrain from

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*holding the meeting at which the votes of the new shareholders were to have been used".*

**46)** It is settled law that, the Doctrine of proper purpose have been applied in the Courts in India as was applied in the Commonwealth Countries. Moreover, Section 81 of the Companies Act, 1956 was not applicable to Private Companies as such, thus, there was no requirement in law to give Notice to all the Shareholders, which, in the present Case could not have been given as nobody was available at that time. Moreover, the Articles of Association empowers Directors to issue Shares at their discretion without any restrictions. The relevant provisions are quoted as under: -

- a. The Share shall be at the disposal of Directors, who may issue, allot, or otherwise dispose of the same to such persons on such terms and conditions and at such time as the Directors may think fit and the Directors are empower to exercise the powers mentioned in Section 49 of the Indian Companies Act.

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47) Section 62 of the Companies Act, 2013 was notified only on 01.04.2014, even otherwise, the provisions under Section 62 are *pari materia* to the old Act. Therefore, considering the financial statement of the Company at the relevant time and the contentions raised by the Respondents, the intention of issuing additional shares was to infuse more funds in the Company. It is was in the interest and benefit of the Company that the additional shares were issued and therefore, the acts of the Respondents were *bona fide* in the interests of the Company, and therefore, as in the intervening period after the death of late Mrs. Tarla Tanna, there was no one, particularly, the Legal Heirs of late Mrs. Tarla Tanna, who have now staked claim pursuant to the consent terms in the Testamentary Suit, that the Notices could have been issued to the other Shareholders.

48) Moreover, the Respondents have demonstrated that by the Board Resolution held on 27.06.2011 in the presence of late Mrs. Tarla Tanna and the Respondent No. 2, the Respondent No. 3 was appointed; therefore, on 24.03.2014, when 9000 shares were issued,

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the Respondent No. 3 was the Director of the Company. Therefore, the contention of the Petitioner that issuance of the additional 9000 shares was fraudulent and was infused with the intention of reducing the majority shareholders to the minority and usurpation of control of the Company by the Respondent Nos. 2 and 3, does not have substantial force and merits, therefore, the said act cannot be said to be oppressive as against the present Petitioners. The Contention that the Shares were allotted on 24.03.2014, merely days before Section 62 of the Companies Act, 2013 came into effect on 01.04.2014, the timing of the impugned allotment executed just before the strict provisions of Section 62 came into force, demonstrates the deliberate calculated and *mala fide* nature of the Respondents' action to circumvent the enhanced Shareholder protection that would have otherwise applied. It is pertinent to note that during this Period, none of the Petitioners or the Legal Heirs of late Mrs. Tarla Tanna had made any claim over the Shareholdings of late Mrs. Tarla Tanna and therefore, the

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contentions that it was *mala fide* does not have any force and substance.

49) It is contended by the Petitioners that the Respondent No. 2 admits and contends that he was duty bound to act in fiduciary capacity. It is significant that late Mrs. Tarla Tanna lived with the Respondent No. 2, till she passed away. On one hand, Respondent Nos. 2 and 3 have illegally transferred the unsecured loans reflecting in the name of late Mrs. Tarla Tanna to their own name, in the Year 2018, purportedly holding the same in their fiduciary capacity and on the other hand they have simultaneously unlawfully allotted the shares to themselves and the Respondent No. 3 so as to usurp the Shares of late Mrs. Tarla Tanna and majority control of the Respondent No. 1, thereby acting in direct derogation of their fiduciary duty.

50) It is contended that the Respondents have submitted that issuance of 9000 shares was not undertaken as on right basis and therefore, it is clear that illegal allotment of 9000 shares was undertaken to dilute the shareholdings of late Mrs. Tarla Tanna.

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These contentions are refuted by the Respondents who have produced financial statement of the Company at the relevant time and have justified for what purpose there was need for issuance of additional shares till that time, it is pertinent to note that no one, except Respondent Nos. 2 and 3, had claimed the rights to the Shares of late Mrs. Tarla Tanna, therefore, the contention that there was breach of fiduciary duties by the Respondent Nos. 2 & 3 in running the business and affairs of the Company is unsustainable.

**Incorrect Statutory Filings:-**

**51)** It is contended by the Petitioners that 667 Shares of late Mrs. Tarla Tanna, were duly and consistently reflected in balance sheet and financial statements of the Respondent No. 1 as belonging to her held under Folio No. 6. The Financial Statements of the Year 2012-13 clearly records late Mrs. Tarla Tanna as holder of 667 Shares in the Folio. It is therefore contended that the Respondents have sought to be misappropriated shareholding under the guise of impugned allotment. The Respondents have clarified in their

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contention that this was the mistake committed by the Chartered Accountant and which is certainly subject to correction. The Respondents have not disputed that the late Mrs. Tarla Tanna was the holder of 667 Shares at the time of her demise.

52) Cause of action for filing this Petition would arise from the date when the statutory filings are made and are put in the public domain, which is deemed knowledge to the public and particularly to the Shareholders of the Company, therefore, from the date of statutory filings, the cause of action would arise and applying Section 433, the limitation prescribed under Section 137 under the Limitation Act would apply and therefore, the Petition is certainly barred by limitation. This is fortified by the Judgment of the Hon'ble Supreme Court in the case of *Nikhila Divyang Mehta & Anr. ...Versus...Hitesh P. Sanghvi & Ors. (2025) INSC 485*, wherein, it is held as under:

*"28. The other contention that the plaintiff acquired knowledge of the Will and Codicil in the first week of November, 2014, but that was not a complete knowledge as probably he could read the same subsequently. In dealing with the submission, the appellate Court*

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*distinguished between “having knowledge” and “full knowledge” to hold that the suit is not barred by limitation as the limitation would reckon from the date of full knowledge. It is a complete fallacy to make any distinction between “knowledge” and “full knowledge”. First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action. Accordingly, to the plaintiff himself, the cause of action for the suit had arisen much earlier. Secondly, the plaintiff has not pleaded any date on which he acquired complete knowledge and that such argument is only an afterthought and appears to be a simple creation of the first appellate court”.*

- 53) Thus, having considered the contentions of both the Parties and having assessed the material placed on record, it is evident that the Petitioners in the representative capacity have filed this Company Petition belatedly after the period of Limitation prescribed and on the merits the delay and laches on the parts of the Legal Heirs of late Mrs. Tarla Tanna to assert their rights and seek equitable reliefs, would be defeated. The allotment of additional shares was *bona fide* in the interest of the Company. Therefore, the acts of the Respondent Nos. 2 and 3 cannot be said to be oppressive as against the present Petitioners. The instances of

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the mis-management as alleged are not substantiated. Filings with the Registrar of Companies have been made from time to time and the Board Meetings have been held. Infusion of funds in the Company to keep it alive have been done in the interest of the Company by the Respondent Nos. 2 and 3. Hence, the Company Petition bearing CP No. 21 of 2024, sans merit & is required to be dismissed.

54) There will, however, be no order as to costs. Ordered Accordingly. File be consigned to record.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

Vedant Kedare/Akanksha Shingade  
(Stenographer/LRA)

Sd/-

**SUSHIL MAHADEORAO KOCHEY**  
**MEMBER (JUDICIAL)**