S.No.4

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSCIAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF HE HEARING HELD ON
07-03-2025 AT **11:00 AM**

CP No. 45/241/HDB/ 2023
AND
Contempt (CA) 05/2024, IA (CA) No. 295 & 296/2024 in
CP No. 45/241/HDB/ 2023
u/s. 241 of Companies Act, 2013

IN THE MATTER OF:
Escientia Life Sciences & ors **…Petitioner**
AND
Escientia Advanced Sciences Pvt Ltd & Others **…Respondent**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)

O R D E R

CP No. 45/241/HDB/ 2023

Common order pronounced. In the result CP No. 45/241/HDB/ 2023 is allowed to the extent indicated in the order, no costs.

2. Soon after the pronouncement of orders in the open court learned senior counsel Mr. S. Niranjan Reddy and Mr. Arvind Pandian counsel representing Respondents Nos. 2 & 3 and Respondents No.4 to 6 have orally appealed to this Tribunal, to keep today's orders in

abeyance for a period of four weeks contending, that in so far as these respondents are concerned today's orders would have drastic consequences on the functioning and administration of EASPL, besides the respondents have a right of Appeal against the order. Learned Senior Counsel also invited our attention to the interim suspension order dated 28.11.2023 passed earlier in IA No.263 of 2023 in CP (B) No.45/241/HDB/ 2023 under the circumstances. Thus, submitting learned senior counsel reiterated their prayer for keeping today's order in abeyance for a period of four weeks.

3. This prayer is opposed by the Learned Senior Counsel Mr. Vivek Reddy for the Company Petitioner, contending that merely from the passages of the judgment read out in the open court the respondents cannot contend that the order will have drastic consequences in so far as the respondents are concerned, and that they same is not a ground for granting interim suspension.

4. Learned senior counsel further submits that as the Tribunal has not yet confirmed the appointment of the

Administrator, there is no necessity for suspending the order. Heard both sides.

4. Though we have ordered for appointment of an Administrator for Escientia Advanced Sciences Private Limited (EASPL), the consent of the person whom we intend to appoint is not yet received. Likewise, we are yet to receive the consent of Valuer. As a result, we are unable to get the order uploaded or issue certified copy thereof.

5. No doubt, the findings that we have arrived at in our order have come into force/ effect upon pronouncement of the order today, however, actual takeover of EASPL by the Administrator can take place only when we confirm his appointment. In our order we have given three days' time for the proposed Administrator to signify his consent.

6. In this backdrop, we are of the opinion that only to facilitate the 'aggrieved' party to go in Appeal against our order, we are of the view that enforcement of today's order be deferred by till 18.03.2025 with a direction to the

respondents 2, 3, 4, 5 and 6 not to take any policy decision and/ or major decisions including changes in financial and administrative matters of EASPL.

Ordered accordingly.

IA(CA)168/2024
Order pronounced. In the result the application is dismissed as infructuous, no costs.

IA(CA)77/2024
Order pronounced. In the result the application is dismissed as infructuous, no costs.

IA(CA)104/2024
Order pronounced. In the result the application is dismissed as infructuous, no costs.

Contempt (CA) 05/2024
Order pronounced. In the result the petition is dismissed, no costs.

IA (CA) No. 295 /2024
Order pronounced. This is partly allowed, no costs.

IA (CA) No. 296/2024
Order pronounced. This application became infructuous. Accordingly disposed of.

SD/- **SD/-**
MEMBER **MEMBER**
TECHNICAL **JUDICIAL**

karim/ siva

CP No. 45/241/HDB/2023
with
CP No.44/ 241/HDB/2023

INDEX

Particulars	Page no.
Averments made in CP No.45/241/HDB/2023.	10
Reply filed to the amended Company Petition dated 18.04.2024 by R/2 to the amended CP No.45/241/HDB/2023 (This Reply dated has been adopted by respondents no.3 to 9 vide Memo dated 23.04.2024.)	69
Rejoinder dated 31.05.2024 filed by petitioners in CP No.45/241/HDB/2023 in response to Reply dated 02.04.2024/ 18.04.2024 filed by respondent no.2.	138
Averments by the petitioners in CP No.44/241/HDB/2023	223
Reply dated 07.08.2024 filed by respondent no.2.	282
Memos dated 23.07.2024 filed individually by respondents no.3 to 10 adopting reply dated 07.08.2024 filed by respondent no.2.	360
Reply dated 14.08.2024 filed by respondents no.11 & 12 in support of the Amended Company Petition No.44/ 241/ HDB/ 2023.	360
Points for consideration	366
Point-1: Whether the memos filed by Respondents 3 to 9 adopting the counter filed by the 2nd Respondent since unaccompanied by affidavits, cannot be considered as *pleadings* ? If so, whether the doctrine of *non-traversal* of pleadings applies?	371
Point-2 : Whether Articles 44, 69 and 72 of the AOA of 1st Respondent company, which contain *special rights* are *repugnant* to the provisions of the Companies Act, 2013, besides unenforceable? If so, can the same be struck by this Tribunal?	383

Point-3: Whether the nominee Directors of 2nd Respondent suffer from situational and actual conflict of interest (or) gave rise to the possibility of a conflict of interest? If so, whether the same amounted to *oppression* of the interests of the minority shareholders and mismanagement of the affairs of 1st Respondent Company?	448
Point-4: Whether the acts complained in the petition / alleged to have been committed by the respondents tantamount to acts of oppression and mismanagement? If so, for what relief?	516
Point-5: Whether appointment of Mujeebur Rahuman as COO is contrary to the procedure, Article and the provisions of the Companies Act, 2013? If so, for what order?	521
Point-6: Whether Pendris have caused loss of Rs.13 crores to 1st respondent/ company in selling Spent solvents, indulged in unauthorized data migration and approached this Tribunal with unclean hands? If so, are they disentitled to the reliefs claimed in the company petition?	532
Point-7: Whether there is an irretrievable break down of mutual trust and confidence amongst the shareholders of 1st respondent/ company and buy out is the only remedy under the facts and circumstances of the case? If so, to whom such buy out option can be awarded?	561
Result in CP 45/241/HDB/2023 and CP 44/241/ HDB/2023.	598
Enclosure	600

NATIONAL COMPANY LA W TRIBUNAL

HYDERABAD, BENCH-I , HYDERABAD

CP No. 45/241/HDB/2023
with
CP No.44/ 241/HDB/2023

Under section 241 read with section 242 of the Companies Act, 2013.

CP No. 45/241/HDB/2023

1. **Escientia Life Sciences**
   A limited liability company registered
   Under the law of Mauritius
   Regd Office at : Rogers Capital
   Corporate Services Ltd
   3rd Floor, rogers House, No.5
   President John Kennedy Street
   Port Louis,
   Republic of Mauritius
   Through its Director
   Dr. Yadagiri Reddy Pendri.

2. **Kiran Reddy Pendri**
   Son of Yadagiri R. Pendri
   R/o 54, Aspen Drive
   South Glastonbury
   Connecticut – 06073. US.

3. **Ms. Swarnalatha Mannam**
   w/o Venkat, R/o 12-11-1676
   Amber Nagar, Hyderabad
   Telangana – 500044.

.. **Petitioners**

VERSUS

1. Escientia Advanced Sciences Private Limited
Registered Office at:
Survey No.542/2
Plot No.DS/ 14
IKP Knowledge Park, Kolthur Village
Shameerpet, Rangareddi – 500078
Telangana.

2. Deccan Advanced Sciences Pvt Ltd
A company incorporated under the
Companies Act, 2013,
Regd Office : Plot No.1355/ G/A/1
Ground Floor, Road No.45
Jubilee Hills
Hyderabad – 500033,
Through its Director
Vivek Vasant Save.

3. Ms. Rajya Lakshmi Penumetsa
Sunder Nagar, Flat No.202
Jyothi Nest Apartments, SR Nagar
Ameerpet, Hyderabad – 500038.

4. Dandu Chakradhar
Director, Escientia Advanced
Sciences Pvt Ltd.
Plot No.20, Venkatrao Nagar Colony
Kukatpally, Hyderabad – 500072.

5 Ajit Alexander George
Director, Escientia Advanced
Sciences Pvt Ltd.
R/O 403, United Enclave
7-1-28/4, Ameerpet
Hyderabad – 500016.
Telangana.

6. Vivek Vasant Save
Director, Escientia Advanced
Sciences Pvt Ltd.
2303, Rosemount Rodas Enclave
Ghodbunder Road
Hiranandani Estate, VTX
Thane, P.O. Chitalsar
Manpada, Maharashtra.

7. Deccan Fine Chemicals (India) Pvt Ltd
A company incorporated under the
Companies Act, 2013,
Regd Office: 8-2-293/ 82/A/74A
Road No.9, Jubilee Hills
Hyderabad – 500033.

8. G.S. Raju
Promoter of Deccan Advanced
Sciences Pvt Ltd.
Plot No.1355G/A1
Ground Floor, Road No.45
Jubilee Hills, Hyderabad – 500033.

9. Vamsi Gokaraju
Promoter of Deccan Advanced
Sciences Pvt Ltd.
Flat No.5, 14, Hans Crescent, London
SW1X0LJ, UK.
ALSO AT
Plot No.1355/ A1, Ground Floor
Road No.45, Jubilee Hills
Hyderabad – 500033.

.. Respondents

CP No. 44/241/HDB/2023

1. Dr. Yadagiri Reddy Pendri
S/o P. Narasimha Reddy
R/o 54, Aspen Drive

South Glastonbury
Connecticut – 06073.
United States of America.

2. **Ms. Swarnalatha Mannam**
w/o Venkat, R/o 12-11-1676
Amber Nagar, Hyderabad
Telangana – 500044.

.. **Petitioners**

Versus

1. **Escientia Biopharma Private Limited**
Company incorporated under
the provisions of the Companies Act, 1956
having its registered office at:
1-9-815, Adickmet
Near Railway Crossing
Hyderabad – 500044.
Telangana.

2. **Deccan Advanced Sciences Pvt Ltd**
A company incorporated under the
Companies Act, 2013,
Regd Office : Plot No.1355/ G/A/1
Ground Floor, Road No.45
Jubilee Hills
Hyderabad – 500033,
Through its Director
Vivek Vasant Save.

3. **Ms. Rajya Lakshmi Penumetsa**
Sunder Nagar, Flat No.202
Jyothi Nest Apartments, SR Nagar
Ameerpet, Hyderabad – 500038.

4. **Dandu Chakradhar**
Director, Escientia Advanced
Sciences Pvt Ltd.
Plot No.20, Venkatrao Nagar Colony
Kukatpally, Hyderabad – 500072.

5 Ajit Alexander George
Director, Escientia Advanced
Sciences Pvt Ltd.
R/O 403, United Enclave
7-1-28/4, Ameerpet
Hyderabad – 500016.
Telangana.

6. Vivek Vasant Save
Director, Escientia Advanced
Sciences Pvt Ltd.
2303, Rosemount Rodas Enclave
Ghodbunder Road
Hiranandani Estate, VTX
Thane, P.O. Chitalsar
Manpada, Maharashtra.

7. Purushothaman Varadarajan
Director of Escientia Biopharma Pvt Ltd
R/o Flat No.202, GK Topaz
Plot No.839, Defence Colony
Sainikpuri
Secunderabad – 500094.

8. Deccan Fine Chemicals (India) Pvt Ltd
A company incorporated under the
Companies Act, 1956,
Regd Office: 8-2-293/ 82/A/74A
Road No.9, Jubilee Hills
Hyderabad – 500033.

9. G.S. Raju
Promoter of Deccan Advanced
Sciences Pvt Ltd.
Plot No.1355G/A1
Ground Floor, Road No.45
Jubilee Hills, Hyderabad – 500033.

10. Vamsi Gokaraju
Promoter of Deccan Advanced
Sciences Pvt Ltd.
Flat No.5, 14, Hans Crescent, London
SW1X0LJ, UK.
ALSO AT
Plot No.1355/ A1, Ground Floor
Road No.45, Jubilee Hills
Hyderabad – 500033.

11. Suresh Chandra Partani
Director
Escientia Biopharma Pvt Ltd
R/o 1-9-813-815
Adikmet Main Road
Near Old Railway Gate
Hyderabad – 500044.

12. Kiran Reddy Pendri
S/o Dr. Yadagiri R. Pendri
R/o 54, Aspen Drive
South Glastonbury
Connecticut – 06073.
United States of America.

.. Respondents.

Appearance

CP No. 45/241/HDB/2023 :

For Petitioners : Mr. K. Vivek Reddy, Senior Counsel,
Mr. D.V. Seetharam Murthy, Senior Counsel,
Mr. P. Sri Raghu Ram. Senior Counsel,
Mr. Rajesh Maddy, Advocate on Record,
Mr. Sowmya Dasgupta,
Mr. Dwijesh Kapila,
Mr. Aviral Singhal,
Mr. Bhemachary,

Mr. Pranay Bahuguna,
Mr. P. Shamanthak Hande, and
Ms. Mounika Donur, advocates.

For Respondents 2 & 3 : Mr. S. Niranjan Reddy, Senior Counsel,
Mr. Anirudh Arun Kumar,
Mr. Tarun G. Reddy, and
Mr. Sairam, advocates.

For respondents 4 to 6 : Mr. P.H.Aravind Pandian, Senior Counsel &
Mr. Rusheek Reddy KV, advocate,

For respondents 7 to 9 : Mr. Aatif, advocate.

Appearance

CP No. 44/241/HDB/2023 :

For petitioners : Mr. K. Vivek Reddy, Senior Counsel,
Mr. D.V. Seetharam Murthy, Senior Counsel,
Mr. P. Sri Raghu Ram. Senior Counsel,
Mr. Rajesh Maddy, Advocate on Record,
Mr. Sowmya Dasgupta,
Mr. Aviral and
Mr. G. Bheemachary, advocates.

For respondents 2 & 3 : Mr. S. Niranjan Reddy, Senior Counsel,
Mr. K. Sairam,
Mr. Anirudh Arun Kumar,
Mr. Amit Dhingra,
Mr. Siddharth, and
Ms. Kesang Tenzin, advocates.

For respondents no.4-6: Mr. P.H. Arvind Pandian, Senior Counsel.

For R/11 & 12 : Mr. G. Bheemachary, Advocate

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)
&
SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)

Date of Order: 7th March 2025

PER BENCH

COMMON ORDER in
CP No. 45/241/HDB/2023
and
CP No. 44/241/HDB/2023

AVERMENTS IN CP No. 45/241/HDB/2023:

I. This Company Petition is filed, for a *declaration* that the respondents 2 to 9 have acted in a manner *prejudicial and oppressive* to the interests of the Petitioners and the 1st Respondent Company and for other reliefs. Subsequently, at the behest of the Company Petitioners this Tribunal has allowed amendment of the Company Petition vide order in I.A. (CA) No.9 of 2024,. The reliefs as prayed for in the amended Company Petition are as below:

> "A. Declaring that Respondent Nos. 2 to 9 have acted in a manner prejudicial and oppressive to the interests of the Petitioner and Respondent No. 1 Company;

B. Quashing the proposal of Respondent No. 4 for appointment of a Chief Operating Officer and declare the same null and void, and restraining Respondent Nos. 2 to 4 from making any other appointment with similar powers;

C. Declaring that Articles 69 and 72 of the Articles of Association of the Respondent No. 1 Company require unanimous consent of all directors of the Respondent No. 1 Company and, at the very least, the affirmative vote of both the first directors, Dr. Yadagiri Reddy Pendri and Mr. Kiran Reddy Pendri, with respect to the passing of board resolutions and approval of minutes of a previous meeting of the board, respectively;

CC. Consequent to the grant of prayer C, declaring that Articles 69 and 72 of the Articles of Association of the

Respondent No. 1 Company are valid, binding and enforceable and restraining the board of directors of the Respondent No. 1 Company from acting contrary to the Articles of Association of the Respondent No. 1 Company, particularly Articles 69 and 72 of the Articles of Association of the Respondent No. 1 Company;

D. Directing that the Respondent No. 2 Company shall not be entitled to appoint more than 1 (one) director on the board of Respondent No. 1 Company;

E. Appointing an independent director on the board of Respondent No. 1 Company;

F Removing Respondent Nos. 4 to 6 from the Board of Directors of the Respondent No. 1 Company and directing Respondent No. 2 Company to nominate 1 (one) person after providing and

obtaining approvals of the credentials of such person from this Hon'ble Tribunal;

G. Restraining Respondent Nos. 2 to 9 from interfering with the day-to-day functioning and management of the affairs of the Respondent No. 1 Company;

H. Directing Respondent No. 2 to 9 ensure clear separation between the persons nominated on the board of the Respondent No. 1 Company or any other person having access to Respondent No. 1 Company and its information, from any competing business including that known as 'Primopus';

I. Restraining Respondent Nos. 2 to 9, their principals/ directors, their promoters, managers, assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives,

servants, distributors, agents, etc. and/ or any person or entity acting for them from entering into any contract of supply/ services or otherwise with the Respondent No. 1 Company;

J. Declaring the appointment of Dr. MSM Mujeebur Rahuman as Chief Operating Officer of the respondent no.1 company to be void ab initio for failure to adhere to the Articles of Association of the respondent no.1 company.

K. For costs of the petition.

II. The Facts as narrated by the petitioners are that:

(1) The 1st respondent Company was incorporated on 271.02.2013 under the Companies Act, 1956. Copy of Certificate of Incorporation of R/1 Company is at **Annexure – 2**. Copies of Memorandum of Association

and Artic-les of Association of R/1 Company are at **Annexure – 3 (COLLY.)**.

(2) R/1 Company is a technology oriented pharmaceutical CDMO, having the highest repute and credibility in India. It is a part of the Escientia Group, which has a presence in India and the United States of America, and further customers in Europe and Japan, comprises a number of companies, including Escientia USA and EBPL. R/1 Company is a leading research, development, and manufacturing partner to the largest and most innovative pharmaceutical and biotechnology companies. It was founded by Dr. Yadagiri R. Pendri and P/2, Kiran Reddy Pendri. Both of them have led the Company to grow into a talented, renowned and interdisciplinary team with scientific, engineering, and

regulatory expertise in all aspects of drug discovery, development, commercialization, manufacturing, and life-cycle management. R/1 Company has hundreds of employees and is professionally managed by its employees and directors. Copy of the audited financial report of the R/1 Company for F.Y. 2022-23 is annexed herewith and marked as **Annexure – 4.** Copy of list of Shareholders of R/1 Company as on 31.03.2023, is at **Annexure-5.**

(3) Flextronics essentially held about 75% shareholding in R/1 company until August 2020. Respective rights, powers and interests with respect to R/1 company was governed by Shareholders' Agreement (SHA) dated 10.04.20213 (at Mauritius holding company level). SHA has provided that the petitioners and Dr. Yadagiri R.

Pendri would exercise control and management of the business and operations of R/1 Company. Copy of SHA dated 10.04.2013 is at **Annexure -6.** Flextronics was under a need to sell its shareholding in the Escientia Group companies, including R/1 Company. P/2 approached R/9 to determine whether Deccan Group would be interested in acquiring Flextronics' shareholding. *Vide* email dated 07.02.2020 (**Annexure - 7**), R/9 expressed what became the guiding principles for the Deccan group's investment in the Escientia Group, which is as below:

(a) The investment was to be 'passive', in the capacity of a financial investor with no involvement in the day-to-day management and functioning of the companies;

(b) Direct support from R/7 Company in the form of backend support, access to cheaper raw material, opening doors to Japan through Respondent No. 7 Company's shareholder Mitsubishi Corporation (Japan), assisting with raising debt at competitive rates, *etc*.;

The collaboration would be simple and limited investor group involvement.

(4) On the above principles R/7 Company issued a Board Resolution dated 29.07.2020 to invest an amount up to INR 95 Crores in Escientia Group through its 100% subsidiary, R/2 Company in the following manner:

(a) Up to 74% ownership in Respondent No. 1 Company;

(b) Up to 74% ownership in EBPL; and

(c) Up to 75.21% ownership in Escientia USA through Deccan USA LLC.

Share Purchase Agreement dated 03.08.2020 (**Annexure -8**) has been executes, wherein, R/7 purchased 74% shareholding in R/1 Company.

(5) The Petitioners, despite being 25% shareholders of R/1 Company, have infused **INR 271.8 Crores** of equity capital into R/1 Company. On the other hand, the Deccan Group had purchased Flex's 75% shareholding in Escientia Group in August 2020 against a relatively much lesser cash payment of **INR 88.86 Crores**.

As on date, Deccan Group, despite being a 75% shareholder of the R/1 Company, is a significant debtor

to Escientia Group and owes approximately USD 8 Million (approximately INR 66.5 Crores) to Escientia Group. As such, it is evident that despite being a minority shareholder in the R/1 Company, the Petitioners' financial stake in the R/1 Company is significantly greater than Deccan Group. Chart showing the Petitioners' equity investment in Escientia Group is at **Annexure – 9**

(6) As per its rights, R/2 Company proceeded to nominate its directors on the Board of R/1, *i.e.*, 3 directors nominated by R/2 Company, while the remaining 2 directors were nominated by P/1 Company. Accordingly, P/2, R/4 to R/6, and Dr. Yadagiri R. Pendri became directors of R/1 Company. Screenshot from MCA

website showing the current Directors of R/1 Company is at **Annexure – 10.**

(7) Since R/2 has failed to execute shareholders' agreement (SHA), in the larger interest of R/1 Company, P/2 sent email dated 21.03.2022 (**Annexure-11**) to R/8 and 9 stating that:

(a) Consolidated financials of Escientia Group companies (including the Respondent No. 1 Company) for the F.Y. 2021-22 are very strong with revenues around USD 44 million, and EBITDA around USD 18 Million;

(b) Respondent No. 1 Company has about 10+ scalable clients having personal confidence in the Petitioner No. 2 and Dr. Yadagiri R. Pendri;

(c) The initial investment of Respondent No. 8 and 9 is valued very high;

(d) The Petitioner No. 2 and Dr. Yadagiri R. Pendri are carefully leading all aspects of the complex pharmaceutical operations and prudent capital investment for capacity and capability expansions to match with and anticipate current and future demand;

(e) The core leadership team supported by their respective teams stably work very closely with the Petitioner No. 2 and Dr. Yadagiri R. Pendri;

(f) Respondent No. 1 Company should be managed and controlled by entrepreneurs who have financial stake in the business along with operational and technical knowledge;

(g) A highly unusual step of postponing a formal shareholders' agreement was taken at the start of the venture, purely on the strength of the Petitioner No. 2's personal relationship with the Respondent No. 9, knowing that the same would be done once the operations, finances etc. stabilize;

(h) A Draft SHA, prepared based on Deccan Group's agreements and its Articles of Association, will be shared shortly.

Subsequently, P/2 sent draft SHA to R/8 and R/9 vide e-mail dated 29.03.2022. Email dated 29.03.2022 is at **Annexure-12**. Draft SHA is at **Annexure-13**.

(8) In the said draft SHA, principle of granting special rights in favour of minority shareholders of R/1 company was followed by P/2.

(9) R/7 Company also has a minority shareholder- Mitsubishi Corporation of Japan ("**Mitsubishi**"), which owns approximately 20% of the shares of the R/7 Company. AoA of R/7 Company (**Annexure-14**) provide multiple special rights in favour of Mitsubishi at the board level as well as the shareholder level. Thus, similar principle of granting special rights in the favour of the minority shareholders of R/1 Company was followed in the above draft SHA.

(10) R/9 has sent e-mail dated 30.03.2022, acknowledging e-mail dated 29.03.2022 of P/2

(**Annexure** -12). Copy of said e-mail dated 30.03.2022 is at **Annexure-15**.

P/2 sent e-mail dated 29.06.2022 (**Annexure-16**) to R/8 and R/9 on 29.06.2022, *i.e.*, 90 (ninety) days after the email dated 29.03.2022 and requested for execution of a mutually acceptable and fair SHA to govern the board and business in a standard, defined, and formal way, and to secure the interests of both parties. P/2, once again, requested R/8 and R/9 for a call or in-person meeting for discussion on material issues. Further reminders were sent through e-mail dated 06.07.2022 and 11.07.2022 (**Annexure-17 Colly**.) to R/7 stating that he would be connecting with the lawyers to determine progress on draft SHA.

(11) Thereafter, Dr. Yadagiri R. Pendri had personal meetings with R/8 in August and October 2022, wherein, *inter alia*, the Draft SHA was discussed. Subsequently, Dr. Yadagiri R. Pendri sent email dated 13.12.2022 (**Annexure-18**) to R/8 requesting return of Draft SHA with comments, if any.

(12) Deccan Group, R/8 continued to ignore and sideline the petitioners and Dr. Yadagiri R. Pendri, in their efforts to take R/1 Company to greater heights and maximize returns for its investors. Dr. Yadagiri R. Pendri, once again sent email dated 13.02.2023 (**Annexure-19**) to R/7 (Deccan Fine Chemicals) stating that as per discussions, both of them would meet in-person on 27.02.2023 to close a "mutually agreeable" shareholders' agreement.

(13) Vivek Vasant Save, R/6 sent e-mail dated 27.02.2023 (**Annexure-20**) to P/2 and Dr. Yadagiri R. Pendri, in which R/6 has voiced the following concerns on behalf of R/8:

(a) Deccan Group views the Escientia Group as its pharmaceutical business line;

(b) The Deccan Group helped Escientia Group in sending technical staff to Visakhapatnam facility (manufacturing facility of the Escientia Group), recruitment of key leadership, introducing Escientia Group to banks, providing 100% guarantee on the term and working capital debt, and providing unsecured loans to bridge deficits in project and working capital financing;

(c) All of the above was done in spite of not having transparent oversight or involvement in decision-making including with respect to operational, management, and financial matters of the Escientia Group;

(d) Corporate governance, conduct of board meeting, secretarial compliances, regulatory notices, business plans, *etc*., have been sidelined and pending resolution by Escientia Group;

(e) Board compositions at EBPL and Escientia USA are 3:3 and 2:2, which need to be changed in line with 74% majority shareholding of the Deccan Group;

(f) Boards of Escientia group companies after reconstitution need to have oversight of company's affairs and operations;

(g) The Deccan Group needs to be involved in customer interactions, business, and marketing plans, *etc*.;

(h) The Draft SHA can be worked upon only once the aforementioned concerns are resolved.

(14) The petitioners state and submit that the above concerns/ allegations are baseless, intended to renege from the demand to execute SHA. According to the petitioners the following are the correct facts:

(a) R/2 to R/9 never viewed Escientia Group, including R/1 Company, as their pharmaceutical business line, but rather, they exploited, misused and siphoned the brand name, client base, goodwill, resources, capital reserves and business of the Escientia Group, including R/1 Company, to build its own pharmaceutical

CDMO brand, *Primopus*, which operates out of Deccan Group's premises in India and Switzerland;

(b) Deccan Group, including R/2 to R/9 have never given any guarantee, whatsoever, to any banks for term and working capital debt, apart from a 'Letter of Comfort' which does not constitute a guarantee, by any stretch of imagination.

(15) Allegations of Siphoning off business to ***Primopus*.**

The petitioners allege that R/2, R/7, R/8 and R/9 are currently operating a pharmaceutical CDMO business, in the name of Primopus, which is directly competing with R/1 Company. The petitioners further allege that a

competing human CDMO business is operated by R/2, 7, 8 and 9 out of two facilities, viz.

- Basel, Switzerland;

Respondents no.2, 7, 8, and 9 operate and manage this facility through their 100% owned subsidiary incorporated under the laws of Switzerland and styled as "Primopus AG",

- Goa, India.

This facility is operated and managed by respondent Nos. 2, 7, 8 and 9 in-house, by converting their pre-existing manufacturing facilities and workforce.

Since Primopus is in the CMO / CDMO business which is identical to that of R/1 Company, it is patent that the Deccan Group is engaged in direct competing business

with R/1 Company. It is settled law that engaging in such competing business is *prima facie* oppressive and constitutes mismanagement of the affairs of a company under Sections 241 and 242 of the Companies Act.

True copies of relevant pages from the official website of Primopus are annexed herewith and marked as **Annexure – 21 (COLLY.)**

(16) Allegations against **Marcel Velterop and Martin Ghosh**.

Mr. Marcel Velterop is a consultant to R/7 company. Mr. Martin Ghosh is Managing Director of Primopus AG. The petitioners allege that Marcel Velterop has supported R/2 to 9 in diverting the business, clients and resources of R/1 Company to Deccan Group.

In this regard the petitioners invited attention of this Tribunal to the following correspondence taken place R/9 and petitioners:

22.10.2020:

Respondent no.9, sent e-mail (Annexure-22) to P/2 and Dr Yadagiri R. Pendri stating that the "Swiss plant is sitting like a dead duck and there is no clarity how to pay all the bills".

02.11.2020 and 06.11.2020:

R/9 had sent two e-mails (**Annexure** -23) to P/2 and Dr Yadagiri R. Pendri, stating that large amounts of money need to be infused into the Swiss entity urgently, otherwise, the entity will start defaulting on obligations. Further R/9 insisted on sending USD 200,000

(approximately INR 1.6 Crores) to the Swiss entity from Escientia USA.

21.12.2020:

R/9 sent e-mail (Annexure-24) to P/2 and Dr. Yadagiri Reddy Pendri stating that the operations in the Swiss entity should be delayed as much as possible, else Escientia Group will burn cash at a breakneck speed.

03.08.2021:

P/2 sent a detailed email (Annexure-25) to R/9 stating that the Swiss project is entirely unprofitable. P/2 has clearly stated that "I do not think this is a viable business case", however, to no avail.

30.08.2022:

R/8 sent an email (Annexure-26) to Mr. Marcel Velterop and other employees of Deccan Group, wherein, while referring to the Swiss project, he stated that

> *"no sane businessman can support any capital investment proposal with an 8-year payback period"*

R/8 has further said that he will not be able to continue in this manner.

10.11.2021:

R/9 sent an e-mail (Annexure-27) to Mr. Marcel Velterop stating R/7 Company shall acquire a 100% stake in the facility at Switzerland. He further acknowledged the conflict of interest which shall be created by starting respondent No. 7's own human CDMO business.

11.11.2021:

Marcel Velterop vide his e-mail (Annexure-27) endorsed the proposal of R/9 to acquire 100% the facility in Switzerland and acknowledged the conflict of interest that the Respondent No. 7 starting their own human CDMO business shall create.

The petitioners submit that for the foregoing concerns raised by the Petitioner No. 2 and Dr. Yadagiri R. Pendri regarding the financial viability of Escientia Switzerland AG and non-availability of surplus funds with EBPL to finance the revival of the shutdown factory, the Deccan Group unilaterally commenced investing large amounts of capital into Escientia Switzerland AG, leading to additional issuance of share capital. As a direct consequence, EBPL's shareholding in Escientia Switzerland AG, through its investment of CHF 200,000,

was heavily diluted to render EBPL into a miniscule and irrelevant shareholder, with nothing to gain from the success of Primopus.

11.10.2022:

R/7 Company, through Mr. Marcel Velterop, published a Press Release (Annexure-28) announcing the acquisition of Escientia Switzerland AG and its renaming to "Primopus AG". R/7 Company has mentioned in the said Press Release as under:

> "*Primopus™ is a CDMO for the pharmaceutical supply chain and offers fully integrated supply chain options from its Swiss site for RSMs, GMP intermediates and APIs. It is currently expanding and upgrading its capabilities and developing systems to support a highly efficient and compliant operation from Switzerland fully supported by its Indian parent Deccan. Primopus continues the legacy of more than thirty years of API manufacturing at a former big pharma site near Basel, Switzerland.*"

(17) The petitioners allege the following narrative on the website of Primopus shows that by the above

acquisition Deccan Group has promoted Primopus as a competitor of R/1 company:

(a) a "…CMO/CDMO and produce or complex RSM's, GMP intermediates and API's", Which is unequivocally the same / identical business operations as the Respondent No. 1 Company.

(b) "we offer fully integrated small molecule supply from our Swiss site with backward integration through 3 large sites of our parent company, Deccan Fine Chemicals, in India."

(c) "We rely on a large and increasing PR&D and scale-up team at our Goa, India site and are establishing an R&D capability at our Swiss site."

(18) Further submissions made by the petitioners.

(a) The petitioners submit that Deccan Group has:

- Invested Rs.95 crore in Escientia Group for its 75% shareholding.
- Invested a substantially higher sum in Escientia Group's direct competitor – Primopus –

through its capital infusion in and rebranding of the Swiss entity, and through the creation of Primopus

brand in India through the usage of Respondent No. 7 Company's facilities in Goa.

For instance –

On 22.11.2023, Deccan Group has invested addition amount of CHF 7,956,480 (approximately INR 74,95,14,738) into Primopus.

A table detailing the Deccan Group's investments in Primopus is annexed herewith and marked as **Annexure – 29**

(b) The petitioners further submit that senior officers of the Deccan Group, including the directors nominated by Deccan Group to the board of R/1 Company have been actively involved in development and promotion of Primopus. On 13.12.2022, Mr Hiren Vora sent an email

(**Annexure** -30) to Mr Marcel Velterop, with a copy marked to R/4, requesting for annual budget of Primopus which was to be submitted to Mitsubishi. True copy of the financial projections shared by Mr Marcel Velterop showing that Primopus is expected to reach profits before taxes (PBT) of about CHF 26,000,000 (INR 240 Crores) from F.Y. 2030 onwards is annexed herewith and marked as **Annexure – 31.**

(c) The petitioners allege that even nominees of Deccan Group to the Board of R/1 company are actively involved in the competing business. R/6 attended a marketing event in November 2023 at Barcelona, Spain; besides one Mr. Serge Kechichian, who is presently Vice President & Head North American CDMO Business Development at Deccan Pharma – CDMO. Thus, the petitioners contend

that Deccan Group including R/4 to 6 are involved in using Escientia Group for its personal gains. Copy of the LinkedIn posts regarding the marketing event held on Barcelona, Spain in November 2023 is annexed herewith and marked as **Annexure – 32**. Copy of curriculum vitae (generated by LinkedIn) of Mr. Serge Kechichian is at **Annexure – 33.**

(d) By virtue of the above events, the petitioners contend that they could establish the following:

- Primopus is a business that directly competes with the Respondent No. 1 Company;
- Primopus is promoted by the Deccan Group and the Deccan Group has made large investments in Primopus;

- Deccan Group is providing Primopus with its largest facilities in Goa for CDMO activities; and
- Senior personnel of Deccan Group, including the nominee directors of the Deccan Group to the board of e/1Company, are actively engaged in the development and promotion of Primopus.

(19) The petitioner has explained how R/1 company is mismanaged as under:

(A) MISMANAGEMENT IN GIVING INTER-COMPANY LOAN:

(a) R/2 to 9 had compelled Escientia Group, through Escientia USA, to extend an unsecured inter-company loan facility of USD 8 million (approximately INR 64 crores) to Escientia Switzerland AG (now the Deccan

Group entity 'Primopus AG') at a meagre fixed interest rate of 1.69% p.a. in United States dollar terms only. On the other hand, the Escientia Group, including R/1 Company, has availed a secured loan aggregating to INR 8.75 crores from the Respondent No. 7, the 100% parent company of the Respondent No. 2, at a far higher interest rate of approximately 11% p.a., in Indian Rupee terms.

(b) Apart from receiving such a loan under such an attractive deal at the behest of the Respondent Nos. 2 to 9, the mismanagement had reached a breaking point where the borrower/ Primopus AG, has defaulted on the interest payment of the said loan to Escientia USA. It was only after filing of the present Petition and the Deccan Group's default being brought to the knowledge of this Hon'ble Tribunal that Primopus released the interest

payments to Escientia Life Sciences LLC, USA. Copy of the Intercompany Loan Agreement dated August 23, 2021 is at **Annexure – 34 .**

(B) FINANCIAL MISMANAGEMENT :

Escientia Group, including R/1 Company, was compelled to purchase certain supplies from the Deccan Group companies at higher cost, *i.e.*, INR 17,500/- per KG as opposed to a cost of INR 12,500/- per KG which was being incurred by the Escientia Group earlier. Vide email dated 10.06.2021 (**Annexure** -35) it was conveyed that R/7 has requested to reduce the cost being incurred by Escientia Group of companies by INR 3,850/- per KG. Even after this reduction in price, Escientia Group was being compelled to pay about INR 650/- per KG in excess

(C) WHOPPING CONVERSION COST:

As regards conversion costs of the raw material, Deccan Group has mismanaged the financial interests of R/1 Company to the tune of approximately INR 1 Crore by supplying raw material to R/1 Company at exorbitantly high conversion costs as under:-

- R/1 Company paid a conversion cost of INR 2550 per KG.
- Earlier, the Deccan Group charged R/1 Company a whopping conversion cost of INR 9250 per KG for the same product.

Copies of a few invoices issued by external vendors to R/1 Company for the raw material are annexed as **Annexure – 36.** Copies of invoice dated 04.09.2021 issued by R/ 7 Company to R/1 Company for an amount

of INR 1.18 Crore for the raw material conversion cost is at **Annexure – 37.**

(20) BELOW ARE CERTAIN E-MAIL COMMUNICATIONS SUGGESTING HOW DECCAN GROUP SOUGHT TO DEFRAUD R/1 COMPANY.

(i) e-mail dated 28.12.2020 (**Annexure** -38) sent by Mr. R.S. Dwarkanath, the then Nominee Director of Deccan Group to the Board of R/1 company to Dr. Yadagiri Pendri.

It reveals that Deccan Group had offered to supply raw material to R/1 Company

"by adding the same conversion fee".

Dr. Yadagiri R. Pendri only agreed to the same as a gesture of goodwill towards the Deccan Group. However, it turned out to be that Mr. Dwarkanath meant

that Deccan Group will continue to source the raw materials from the same vendor from which R/1 Company was previously procuring the same.

(ii) e-mails dated -mails dated 04.03.2021 and 06.03.2021 (**Annexure** -39) sent by R/ 9 stating that:

Deccan Group would be supplying the raw material to R/1 Company at a much higher cost than what was being paid by R/1 earlier. The Respondent No. 9 stated as follows:

> "*... when we do our math the contribution is lower than our operating cost. This will be because we have higher operating costs than the current 3rd parties but I feel our standards are much better and we can confidently show our plant to any customer as this was the same unit that Merck has audited many times. Our intent is not to make profit but it will be difficult to do this business at the current cost basis*."

The above message signifies the intent of R/9 to defraud R/1. Incidentally, the Head of Operations also warned

that if Essentia Group continues to procure the product from Deccan Group, it would incur losses.

(iii) email dated 06.10.2021 (**Annexure** -41) sent by Mr.Sanjay Vaishnava to P/2 and Dr. Yadagiri Pendri.

This e-mail states that despite his opposition to procurement of the raw material from Deccan Group, Mr R.S. Dwarkanath continued to pressurize R/1 Company into purchasing the same from the Deccan Group.

(iv) email dated 06.10.2021 (**Annexure** -41) sent by Mr R.S. Dwarkanath:

This email conclusively establishes that Deccan Group, through arbitrary pricing on raw materials, extracted undue profits from the Escientia Group, which is itself an act of mismanagement.

(v) emails dated 06.09.2022 and 09.09.2022 (**Annexure -42 Colly**) exchanged between Eli Lilly (a renowned pharmaceutical company) and R/4 to 6 along with Mr. Marcel Velterop.

Developing Eli Lilly as a client was one of the highest corporate priorities of the Escientia Group. Thereafter, a Request for Proposal ("**RFP**") was issued by Eli Lilly ostensibly to Escientia Group, which was then in an underhand and clandestine manner diverted to Deccan Group. The above e-mails show the way of mismanagement of R/1 Company done by the nominee directors of Deccan Group by siphoning-off business opportunities of R/1 Company in favour Deccan Group companies.

(vi) Email dated 01.11.206 (Anenxure-43) sent by Mr. Bernie B. Wing to Mr. Malcolm Rosenthal.

(vii) e-mail dated 20.12.2016 (**Annexure** -44) sent by Mr. Malcolm Rosenthal to Mr. Joe Sutton by which a Presentation Deck of Essentia Group was shared and Confidential Disclosure Agreement (CDA) was requested. Copy of Presentation Deck of Escientia Group is at **Annexure – 45.**

(viii) e-mail dated 07.02.2017 (**Annexure** -46) sent by Mike Ormond of Eli Lilly.

(21) CLANDESTINE DIVERSION OF BUSINESS BY MR.MARCEL VELTEROP FROM ESCIENTIA TO DECCAN GROUP.

(i) The petitioners submit that R/1 Company was granted FDA approval on 20.12.2019. In February 2020,

P/2 reached out to R/9 for acquiring Flex's shareholding in Escientia Group. In August 2020, R/9 proposed the hiring of Mr. Marcel Velterop in Escientia Group. While Mr. Marcel Velterop was interviewed by *inter alia* Dr. Yadagiri R. Pendri and the P/2, he made high claims about being able to rapidly generate revenues for the Escientia Group through his existing contacts in pharmaceutical companies all over the world. On the basis of the said representations, Escientia Group agreed to take a risk and hire Mr. Marcel Velterop, who miserably failed to bring any considerable amount of business to Escientia Group, rather was successful in clandestinely and strategically moving the existing client base of the Escientia Group to the Deccan Group.

(ii) Functions and duties of Mr. Marcel Velterop were solely to support the CEO of Escientia (Dr Yadagiri R. Pendri) as per his Management Consulting Agreement dated 20.01.2021 (**Annexure –47).**

(22) RFP SENT BY ESCIENTIA GROUP TO ELI LILLY.

The petitioners submit that RFI has been sent to Eli Lilly on behalf of the Escientia Group on 01.07.2022. Copies of complete RFI dated 01.07.2022

Along, e-mail dated 16.06.2022 showing the entire R/1 Company and EBPL teams filling up the RFI, are annexed herewith and marked as **Annexure -53.**

Following are the crucial points contained in RFI submitted to Eli Lilly:

(a) "Escientia Life Sciences" i.e., Escientia USA, submitted the RFI;

(b) All details filled in the "Experience and Development Capabilities" section of the RFI mentioned the entire prior experience of Dr. Yadagiri Reddy Pendri, Petitioner No. 2 and the Escientia Group, without any mention of the Deccan Group or the Swiss entity;

(c) All details in the "Equipment and Capacity Requirements" section of the RFI referring to operational capacity were that of the Vishakhapatnam plant of the Respondent No. 1 Company, without any mention of the Deccan Group; and

(d) The "QA and HSE", i.e., quality assurance, and "Analytical" sections of the RFI had details of the systems of the Respondent No. 1 Company and Escientia Biopharma Private Limited, without any mention of the Deccan Group.

The petitioners submit that Request for Proposal (RFP) follows a successful Request for Information (RFI). E-mail dated 06.09.2022 was received from Eli Lilly wherein the RFP was issued by Eli Lilly to Escientia Group, which was shockingly never shared with even one of the hundreds of employees of the Escientia Group, including the Petitioner No. 2 or Dr Yadagiri Reddy Pendri, which is a clear proof of siphoning away of business. Copy of redacted version of the RFP dated

05.09.2022 is annexed herewith and marked as Annexure 54

(23) ATTEMPTS TO APPOINT A CHIEF OPERATING OFFICER FOR R/1 COMPANY AND ESCIENTIA BIOPHARMA PVT LTD (EBPL).

(a) The Petitioners submit that, R/4 has issued a letter dated 21.08.2023 (**Annexure** -78) to Company Secretary of R/1 Company for summoning a board meeting *inter alia* with agenda to consider and approve:

- appointment of COO,
- executing a Power of Attorney ("**Proposed POA**") in favour of the proposed COO,
- granting all powers in relation to the management and control of R/1 Company,

- to delegate the powers for managing the day-to-day operations and affairs of R/1 Company,
- to approve change in signatories authorized to operate the bank accounts of R/1 Company, and
- to enable only R/7 Company employees to sign statutory documents on behalf of R/1 Company.

(b) The petitioners submit that this move of appointment is intended to completely takeover the business, good will and reputation of the R/1 Company, act against its interests and to completely erode the value of R/1 by diverting and siphoning of all business and clientele built by the P/2 and Dr. Yadagiri R. Pendri painstakingly over the years in favour of Primopus. Said Primopus is now in a directly competitive business of that of R/1.

(c) The petitioners further submit that in effect, the resolutions delegate all managerial powers to the proposed COO and to exclude P/2 and Dr. Yadagiri R. Pendri from acting as banking signatories and from filing statutory documents on behalf of R/1 Company, which is a clear attempt to exclude P/2 and Dr. Yadagiri R. Pendri from having any effective role in R/1 Company. It is with this intention that the Company Secretary has board meeting on 04.09.2023 *vide* the Board Meeting Notice and Agenda dated 24.08.2023.

Copy of Proposed POA is at Annexure – 79. Chart showing remuneration for the proposed COO is at Annexure – 80.

Copy of Board Meeting Notice and Agenda dated 24.08.2023 is annexed herewith and marked as **Annexure – 81.**

(d) The petitioners further submit that proposed appointment of the COO is completely antithetical to cost effective management of R/1 Company inasmuch as:

- R/1 Company has earned exponential profits and achieved unparalleled growth with help of the existing officers, and appointing an unknown person as COO will heavily damage the company and its standing amongst its customer base, which expects stable management team;
- The remuneration of the proposed COO is 3 to 4 times of that of the present senior officers of the Respondent No. 1 Company.;

- Essentially all powers in relation to the management and control of the Respondent No. 1 Company are proposed to be delegated by way of the Power of Attorney, which will jeopardize the day-to-day operations of the Respondent No. 1 Company. There are no circumstances in the company which mandate these actions; and
- Dr. Yadagiri R. Pendri, in his capacity as a director of R/1 Company had opposed the said motion for appointment of the proposed COO as is evident from the Company Secretary's email dated 23.08.2023. However, the Respondent No. 4 directed the Company Secretary to summon Board meeting immediately without citing any cogent reasons.

Copies of the Company Secretary's email dated 23.08.2023, and the Respondent No. 4's email dated 23.08.2023 are annexed herewith and marked as **Annexure – 82 (COLLY.)**

- The *bona fides* and credentials of the proposed COO are completely unknown and the manner in which R/2 to 8 are hastily proceeding with the said appointment reeks of *mala fide*.

(e) Dr. Yadagiri R. Pendri addressed letter dated 23.08.2023 (Annexure -83) objecting the proposed appointment of COO. R/4 has sent reply of even date (Annexure -83) that he will proceeding with convening of meeting. Dr. Yadagiri Pendri addressed letter of even date resisting the proposed appointment. Copies of two letters

of Dr. Yadagiri Pendri dated 23.08.2023 and reply of R/4 of even date are at Annexure -83 (Colly.).

(23) BOARD MEETINGS: (i) The petitioners have narrated the events taken place in the Board Meeting dated 04.09.2023, in a chronological order, in para 68A (a) to (h), pages 130 to 136 of the Company Petition. Copy of Minutes of the said Board Meeting dated 04.09.2023 is at **Annexure** -84, wherein the following resolutions were adopted:

> *"**Item No.4**. Appointment of Dr. MSM Mujeebur Rahuman as Chief Operating Officer of the company and delegating to him powers for managing the day-to-day operations and affairs of the company.*
>
> *RESOLVED that the company do have a Chief Operating Officer for managing and looking after day-to-day operations and affairs of the company, who shall report to the Board.*
>
> *RESOLVED further that Dr. MSM Mujeebur Rahuman be and is hereby appointed as COO of the company with effect from September 1, 2023 at a remuneration and other terms and conditions as tabled before the Board and agreed with Dr. MSM Mujeebur Rahuman."*

Delegation of powers to Dr. Rahuman, COO.

RESOLVED further that the company has no objection in case Dr. MSM Mujeebur Rahuman is also appointed as COO of one of the company's group company, namely, Escientia Biopharma Private Limited.

RESOLVED further that any Director of the company be and is hereby severally authorized to do all such acts, deeds and things as may be deemed necessary to give effect to the above Resolution.

*"**Item No.5** To authorize Directors to file requisite forms with MCA and/ or with other Govt authorities.*

RESOLVED that in supersession of earlier resolutions passed by the Board in this regard, Mr. Chakradhar Dandu, (DIN ...), Mr. Ajit Alexander George (DIN ...), and Mr. Vivek Vasant Save (DIN ...), Directors of the company be and are hereby severally authorized for and on behalf of the company to prepare, sign and file statutory forms, papers, documents with the concerned authorities including the RoC, ...

RESOLVED further that all the key forms to be circulated to all the Directors of the Board for comments two days prior to the filing of the forms and inputs and comments. The inputs to be considered on merit.

***Item No.6** To approve change in signatories authorized to operate the Bank Accounts of the company.*

Resolution deferred.

Item No.7 To hold Board meetings at regular intervals for reviewing the operations of the company.

RESOLVED that to review the operations of the company and for the sake of good governance and periodic management reporting to the Board, the Board

meetings of the company be held frequently in such a manner that not more than 90 days shall intervene between two consecutive meetings."

(ii) Letter dated 10.10.2023 (Annexure -85) was issued for the next Board. Meeting. Board meeting was convened on 21.10.2023 with the following agenda:

- To consider appointment of secretarial auditors for FY 2023-24.
- To review and approve delegation of authority to illegally appointed COO.
- To approve change of signatories authorized to operate Bank accounts of the company.

Copy of Minutes of Board Meeting dated 21.10.2023 is at Annexure -86. Another Board Meeting dated 11.08.2023 of R/1 company was held, Minutes of which are at Annexure -87. Board Meeting dated 21.10.2023 has

taken note of Minutes of previous meetings. Proceedings of such meeting are elaborated at pages 142-145 of the petition.

(iii) As regards Curriculum Vitae and LinkedIn profile of Dr. Rahuman (**Annexure** -88), and his appointment as COO, the petitioners contend that:

(a) R/2 Company has justified the appointment of Dr. M.S.M. Mujeebur Rahuman as the COO of R/1 Company in order to streamline the operations of R/1 Company in a professional and coordinated manner with responsibility and accountability and for good corporate governance. The Petitioners submit that, to the contrary, R/1 Company is already being run very professionally and in a coordinated manner with utmost responsibility and accountability, which is

clearly evident from the audited financial reports of the Respondent No. 1 Company (**Annexure** -*4 to the Petition*). Petitioners have never opposed appointment or recruitment of any professional needed for the smooth and efficient business operations of R/1 Company. However, the manner in which appointment of the COO is being orchestrated by the R/2 to 9, reeks of *mala fide*s, oppression and mismanagement.

(b) It was only R/ 4 to 6 (Deccan Group's nominee directors on the Respondent No. 1 Company's Board), along with other senior officers of R/ 7 Company, including R/ 9, who is not even a part of R/1 Company, who decided to appoint a COO, specifically Dr. Rahuman, for R/1 Company and give

such wide and sweeping powers of day-to-day management and control of R/1 Company;

(c) While other candidates were apparently 'considered' by R/ 4 to 6 for appointment as COO, they claimed that the names of these individuals are 'confidential' and cannot be disclosed at this stage to Dr Yadagiri Pendri and Mr. Kiran Pendri, nor are any CVs available to be shared of other candidates who were interviewed thoroughly.

(d) It was only R/ 4 to 6 and other senior officers of R/ 7 Company, including R/ 9, who interviewed Dr. Rahuman in "*early August*";

(e) P/ 2 and Dr. Yadagiri R. Pendri were both available either in Hyderabad (Company's headquarters) or Vishakhapatnam (Company's manufacturing plant)

throughout the month of August, however, they were never informed about the proposal to appoint a COO.

(f) Even in the Board Meeting of R/ 1 Company dated 11.08.2023, Deccan Group's nominee directors did not disclose the intention of appointing a COO and ongoing search for the same to the Board of the R/1 Company. Deccan Group's nominee directors did not even disclose the plans to change the authorized signatories for operating the bank accounts or authorized directors to do statutory filings on behalf of R/ 1 Company. However, in the most clandestine manner, on 21.08.2023 i.e. merely 10 days later, R/ 4 summoned a Board Meeting with all documents and draft resolutions to completely cripple the Petitioners

and Dr Yadagiri R. Pendri and exclude them from R/ 1 Company which reeks of oppression;

(g) Dr. Rahuman's recent tenure with Saudi Arabia Basic Industries Corporation is not relevant to the pharmaceuticals industry and even his last designation was Senior Vice President, which is not senior enough to confer the designation of a COO;

(h) While Dr. Rahuman has been unemployed from May/ June 2023, he has misrepresented in his Curriculum Vitae that he is presently employed with Aragen Lifesciences Private Limited as Senior Vice President, and R/ 4 to 6 and 9 did not find anything odd with the same;

(i) None of the existing senior employees of the Respondent No. 1 Company or of Escientia

Biosciences Private Limited have been considered for being appointed as the COO;

(j) Dr. Rahuman's previous salary as per the Respondent No. 4 was around INR 1.45 Crores per annum plus INR 37 Lacs bonus, therefore, there was no cogent reason to give a hike of such a huge amount, especially when other senior employees of the Respondent No. 1 Company are drawing maximum salaries of around 1.1 Crores;

(k) R/ 4 to 6 and 9 have moved in an extremely clandestine manner with respect to appointment of the COO and the Petitioners are rightfully objecting to the same.

III. REPLY FILED BY RESPONDENT No.2 dated 02.04.2024/ 18.04.2024.

Respondent No.2 has responded to the allegations levelled in the Company Petition by filing its counter, contending, inter alia, that:

(i) The petitioners' attempt to project R/2 as a "passive investor" is baseless, contrary to facts and evidence.

(ii) Deccan Group helped R/1 company to meet its critical obligations of production commitments and supplies to key customers and also providing key manpower support at Visakhapatnam unit of R/1 company.

(iii) Deccan Group worked with R/1 company in providing manpower support for key operational activities, paying for raw materials, preparing cash flow plans, providing a summary of activities and action plans for manufacturing key products at Visakhapatnam unit of R/1

company. Relevant e-mail communications from concerned stakeholders thanking Deccan Group are at Anenxure-4 (Colly.).

(iv) Respondent no.2 with the help of its parent company, viz. R/7, Deccan Fine Chemicals (India) Pvt Ltd. had revived R/1 company by making the following contributions:

(a) R/2 (with the support of R/7) secured bank financing for R/1 Company. Provided requisite undertaking to banks. Banks disbursed respective long-term loans only after R/7 provided initial quasi-equity towards R/1 Company's facility expansion works.

(b) R/7 (parent company of R/2) provided unsecured loans to R/1 Company for procuring raw

materials and meeting its operating expenses to keep up with critical supply requirements to customers prior to obtaining the bank loans, when R/1 Company was in a precarious financial condition.

(c) The answering respondent alleged that the petitioners and/ or Dr. Yadagiri Pendri did not contribute any capital even in such a severe financial crunch.

(d) R/2 had identified the need for R/1 Company to have professionals to handle the manufacturing and finance and helped source, identify and facilitate appointment of personnel including the Unit Head (site manager), Mr. Sanjay Kumar Vaishnava and the CFO, Mr. Srinivasa Rao Korada, who are, admittedly, some of the most

significant employees of R/1 Company, Relevant correspondence is at **Annexure 5 (Colly.)**.

(e) Besides, R/2 through its parent company, provided key technical, operational and critical manpower support by deputing its highly qualified, experienced and technical persons who spent a vast number of manhours at R/7's own cost to help R/1 Company design production lines, debottleneck, optimize and help to increase its production capacity. The same was acknowledged by Dr. Yadagiri Pendri on numerous occasions. Deccan Group also shared important presentations with Escientia Group regarding production plans/designs, debottlenecking plans, process safety etc., which were prepared by employees of the

Deccan Group. Relevant communications exchanged dated 02.09.2020 (redacted version), 09.10.2020, 20.12.2020 to 21.12.2020 (redacted version), 24.12.2020 19.01.2021, 14.02.2021 and 08.04.2021 (redacted version) are at **Annexure 6 (Colly.).**

(v) R/1 company was in a very bad situation. The petitioners requested for help. Respondent no.2 and Deccan Group provided financial assistance. Correspondence exchanged pertaining to the loans provided by/through Respondent No.2 and Deccan Group are at **Annexure 7 (Colly.)**

(vi) R/2 and its nominee directors on Board of R/1 were instrumental in securing loans from Banks including HDFC bank and Indus Ind Bank. Documents evidencing

such efforts of R/2 and its nominee directors and acknowledgement of such contributions by Pendris are at **Annexure 8 (Colly.)**. Details of the loans provided by R/7 and/ or family members of the Deccan Group to R/1 Company are furnished in a tabular form in para 26 (page 15-16) of this Reply. Details of loans provided by banks to R/1 Company by virtue of letters of comforts/undertakings given by R/7 and R/2 and/or nominee directors on the board of Respondent No.1 Company are furnished in para 27 (page 16) of this Reply. Loans were disbursed on the active involvement, strength, and goodwill of Deccan Group. Copies of loan sanction letter of IndusInd Bank dated 04.10.2022, its addendum dated 22.12.2022 and its very recent renewal dated 05.09.2023 and HDFC sanction letter dated

24.06.2021 and annual revision dated 01.09.2022 are annexed herewith as **Annexure 9 (Colly.)**.

(vii) The answering respondent further contends that Deccan Group is not a passive investor in R/1 Company and so also Flextronics (whose interest in Respondent No.1 Company was acquired by Deccan Group and R/3). Flextronics was a shareholder holding 75.19% shareholding interest in P/1 on fully diluted basis, which was the holding company of R/1 Company. Relationship between Flextronics, Petitioners, Dr. Yadagiri Pendri/ their entity *namely* Pendri Futran Group, LLC (PFL) (holding shares in Petitioner No.1) vis-à-vis the management and operation of P/1 was governed by Shareholders' Agreement dated 10.04.2013 as amended by amendment agreement dated 01.10.2018 ("ELS

Mauritius SHA"). Copies of ELS Mauritius SHA dated 10.04.2013 and the amendment thereto dated 01.10.2018 are annexed hereto and marked **Annexure 11 (Colly.)**.

With the strength of the above submissions, the answering respondent contends that ELS Mauritius SHA does not expressly or impliedly indicate that Flextronics was a mere passive or financial investor. The Petitioners are incorrectly placing reliance on the ELS Mauritius SHA in an attempt to put pressure on the Respondent No.2 to execute the Draft SHA and usurp the legal rights of the majority shareholder. The answering respondent alleges that the petitioners have not even filed a copy of the ELS Mauritius SHA before this Hon'ble Tribunal.

The 2nd respondent states that the proposed appointment of Dr. M.S.M. Mujeebur Rahuman as COO of R/1 Company

and EBPL is not *mala fide*, contrary to law and/or oppressive against the petitioners, as alleged. The answering respondent explains the reasons for immediate requirement of a COO at R/1 Company as under:

(i) During the period FY 2013-2021, R/1 Company was in a precarious financial position. As construction of manufacturing site/plant of R/1 Company at Visakhapatnam took longer, it resulted in frequent cost overruns and revenue was not enough to cover operating expenses requiring cash injections from P/1.

(ii) R/1 Company operates in one of the most hazardous and highly regulated industries with global audits from agencies such as the Food and Drug Administration, an agency within the US Department of Health and Human Services ("**FDA**"),

etc. expected to occur frequently. The operating status, audit preparedness, internal or third-party audit details, gap analyses are not being shared with the board of Respondent No.1 Company. Therefore, a fulltime person is required in India. There is an immediate need to build a full-time professional team to be led by a professional COO who has appropriate authority and responsibility and is accountable to the board in this regard. Moreover, the requirement of a COO is exacerbated due to the need to have proper reporting structures in the Respondent No.1 Company with respect to health, safety and environmental compliances ("**HSE**") as well as quality assurance compliances ("**QA**"). It is an industry practice to ensure separation of authority by not having HSE and QA report only to the unit heads, but to a

separate authority i.e., COO, so compliance adherence is assured without bias.

(iii) Requirement of a COO of R/1 Company is also aimed at streamlining the operations of R/1 Company in a professional and coordinated manner with responsibility and accountability and for good corporate governance. The role of the COO is to strengthen the business, identify risk and their mitigation measures, etc. It is the responsibility of the board of directors of R/1 Company to strengthen the business and carry out actions in the best interest of R/1 Company.

(iv) There are no business plans for the next three (3) years which have been shared with the board of directors of Respondent No.1 Company by the Pendris. Even though the Respondent No.1 Company is sitting on cash balances, there

are no investment plans for growth which have been discussed or shared at the board. Email dated 09.03.2023 and 11.03.2023 exchanged between Respondent No.6 (Mr. Vivek Save) and Petitioner No.2 are annexed herewith and marked as **Annexure 13**.

Further, immediate reason for appointment of COO is recent developments where, pursuant to Petitioner No.2's unilateral instructions, without knowledge of R/1 Company's board of directors and higher officials, certain machines / equipment was, admittedly, moved from Visakhapatnam unit (which is in SEZ) to Hyderabad without complying with legal requirements. In this regard, emails dated 04.07.2023 and 06.07.2023 from R/4 to P/2, and email dated 06.07.2023 from P/2 admitting to moving of equipment without proper

documentation/ knowledge of the board of directors of R/1 Company are at **Annexure 14 (Colly.)**.

Again, without the knowledge of the board of directors/ senior management missing equipment was brought back to Visakhapatnam unit from Hyderabad on the unilateral instruction of P/2.

P/2 was also unilaterally stalling and delaying capitalization of fixed assets pertaining to the financial year ending 31.03.2023, which is important and critical activity of statutory audit of the Respondent No.1 Company as he had moved the above equipment out of the Visakhapatnam unit of Respondent No.1 Company. This is evident from the emails dated 17.07.2023 (Annexure-15) exchanged between the CFO of Respondent No.1 Company, Petitioner No.2 and Respondent No.4.

On Suitability of Dr. Rahuman as COO:

(v) Dr. M.S.M. Mujeebur Rahuman is an ideal candidate for the post of COO. Copy of Curriculum Vitae of Dr. Rahuman is at **Annexure 16**.

- He holds Ph.D. (Doctorate in Chemical Engineering) from UICT, Mumbai;
- worked as Research Associate in Imperial College London and as Post-Doctoral Research Fellow in the University of Twente, The Netherlands.
- Has 24 years of professional experience and has, in the past, worked with reputed and leading pharma and chemical companies like Biocon/ Syngene, Dr. Reddy's Laboratories, SABIC Technologies and

most recently with Aragen Lifesciences Private Ltd., as Senior Vice President.

Remuneration proposed to be offered to the COO is as per market standards, his last drawn remuneration and commensurate with the role and responsibilities of the COO and his qualifications. The remuneration is for his appointment in two companies i.e., Respondent No.1 Company as well as for the other company namely EBPL. Copy of Mr. Rahuman's last drawn remuneration for FY 2022-2023 (redacted version) and a copy of the competing offer received by Mr. Rahuman (redacted version) are annexed at **Annexure 17.**

(vi) The answering respondent further states that pursuant to order dated 04.09.2023 passed by this Hon'ble Tribunal, the scheduled board meeting of

directors of Respondent No.1 was held on 04.09.2023, wherein a resolution was passed by majority of directors deciding that Dr. M.S.M. Mujeebur Rahuman be appointed as the COO of R/1 Company. However, in compliance with the said order dated 04.09.2023 and further order dated 12.09.2023 passed by this Hon'ble Tribunal such decision has been kept in abeyance till 11.10.2023 subject to further order that may be passed by this Hon'ble Tribunal. At this board meeting a revised Delegation of Authority of the COO (**Annexure-18**) was placed before the board by the R/4, as a Director of R/1 Company.

The answering respondent further states that petitioners are deliberately interpreting Article 69 of Articles of Association of R/1 Company in a wrong manner. Article 69 of the AoA

(page 272 of Volume-III of the Company Petition) reads as follows:

> "Each Director shall have one (1) vote on the Board and all decisions of the Board, including in respect of a resolution by circulation, shall be taken only if **both** Directors have voted in favour of it."
>
> (emphasis supplied)

It is further contended that, a bare perusal of the above Article articulates that there are only two directors. Under no circumstances can the word "**both**" be read as "**all**" as the Petitioners sought to do.

The answering respondent states that under no circumstances can words be read into Article 69, and "**both**" cannot be read as "**all**" and the Petitioners' interpretation of reading the word "all" instead of "both" in the Article is, in any case, against the principles of corporate democracy.

The answering respondent states that such an interpretation of the said Article by the Petitioners is also contrary to their

own stand taken elsewhere in the Petition regarding requirement of an SHA which also includes a laundry list of matters requiring affirmative votes of the Pendris.

Article 69, in addition to referring also to a decision of the board at a meeting, also refers to a decision of the Board in respect of resolution by circulation to be taken only if both directors have voted in favour of it. This provision is clearly contrary to Article 73 which specifically deals with passing of resolution by circulation and requires such resolution to be passed by majority. Article 73 reads as under:

> *"73. A resolution by circulation must be circulated to all Directors (to such addresses, whether in India or elsewhere, as may be specified by each Director to the Company) in draft form, together with the relevant papers, if any, to all the Directors and approved by the Directors in accordance with the provisions of the Act and shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and constituted."*

The Petitioners' interpretation that "both" directors' means 'all" directors cannot be accepted also in view of express wording "all directors" used in Article 73 of the Articles of

Association as opposed to "both" directors in Article 69. The provisions of Articles of Association which are textually inconsistent must be read subject to cross references reconciling them.

Further, Article 73 in unequivocal language provides that the resolution by circulation shall be approved by the Directors in accordance with the provisions of the Companies Act. Section 175 of the Companies Act dealing with the provisions on passing of resolution by circulation *inter alia* provides that no resolution by circulation shall be deemed to have been passed by the Board unless the resolution has been approved by a majority of the directors who are entitled to vote on the resolution.

The answering respondent states that the allegation that Deccan Group sought to elicit disclosure of various processes

of Escientia Group is yet another concocted allegation made by the Petitioners. The answering respondent states that the Petitioners are attempting to mislead this Hon'ble Tribunal by presenting themselves to be 'Escientia Group' and being exclusively liable for any alleged breaches of confidentiality covenants contained in agreements with Escientia US. It is submitted that these agreements are only with Escientia US, of which the Deccan Group holds 75.19% shareholding on a fully diluted basis, and not binding on the entire 'Escientia Group', as alleged or at all. It is also submitted that Respondent No.1 Company is not a party to these agreements and they have no relevance to or bearing on Respondent No.1 Company and/or the Petition.

In the above facts, it is clear that the allegation of breach of confidentiality covenants is baseless and of no relevance to

the Petition and/or R/1 Company. The issue of confidentiality has been raised for the very first time.

Respondent no.2 states submits that narration of facts by the Petitioners regarding the Escientia Switzerland AG (the "**Swiss Company**") (now "**Primopus**") are incorrect and are an attempt to mislead this Hon'ble Tribunal. It is denied that there has been any mismanagement by the nominee directors of R/1 Company by siphoning off business opportunity to Deccan Group, as alleged or at all. Portrayal of the Swiss Company being built by Respondents No.2 to 9 by using Respondent No.1 Company's customer base, as its own pharmaceutical CDMO arm, is based in *mala fides* and denied.

The answering respondent has narrated certain facts in greater details stated to be true and correct facts in paras no.(1) to

(16) and has enclosed copies of e-mail communications exchanged between various parties marked as Annexures-20 to 38. Copies of Board resolutions, Board minutes and relevant e-mails dated 16.11.2020, 22,12,2020, 25.01.2021, 20.04.2021, 26.05.2021, and 01.11.2021 are annexed hereto and marked together as **Annexure 30 (Colly.).**

Significant of such narration of facts by the answering respondent is the details of loan provided by Deccan promoter family to Swiss Company as tabulated below:

Unsecured loans from Deccan Promoter family	**Loan 1**	**Loan 2**	**Loan 3**
Loan date:	16.11.2020	25.01.2021	02.03.2022
Loan Amount:	GBP 300,000	GBP 200,000	GBP 500,000
Interest rate:	0.00%	0.00%	0.00%
Repayment date:	28.04.2021	28.04.2021	28.03.2022
Board resolution date approving the loan	16.09.2020 (signed by	25.01.2020 (signed by	31.01.2022 (signed by

	Petitioner No.2 and others)	Petitioner No.2 and others)	Petitioner No.2 and others)

The above narration of facts not only shows the active involvement of the Deccan Group in Swiss Company to ensure that it achieves the required production plan and yields and that it was Pendris who had incorporated the Swiss Company after taking an informed decision of its requirement. Therefore, it is completely wrong for the Petitioners to now allege that the acquisition of the Novartis plant was a speculative and expensive proposal with a long payback period and having so realized in August 2021 (i.e. almost one year after the acquisition) or that it may have been a plan for the Deccan Group all along – to utilize the Escientia

Group's capital to fulfil the Deccan Group's own business motives.

The answering respondent submits that the allegations of the Petitioners pertaining to the inter-company loan between Escientia US and the Swiss Company are baseless and denied. Said entities are not parties to the Petition. This loan agreement has no concern with and/or bearing on the operation of R/1 Company and/or the adjudication of the Petition.

The answering respondent further submits that allegation that such arrangement was imposed upon Escientia US is baseless and denied. This inter-company loan agreement was signed on behalf of Escientia US by Petitioner no.2, himself. The Petitioners thus, cannot allege otherwise Copies of

documents pertaining to the above arrangement and loan are annexed herewith and marked as **Annexure 40 (Colly.).**

The answering respondent states that Deccan Group has not siphoned off any business opportunities from Escientia Group, as alleged. No commercial relationship between Eli Lilly and the Escientia Group or Deccan Group is in existence.

Mr. Marcel Velterop (a consultant for the Deccan Group and Escientia Group apart from Petitioner No.1 at the time), whose salary was 50% borne by the Deccan Group and 50% by Escientia US, as was agreed between the Deccan Group and Pendris, virtually met with an official of Eli Lilly in September 2021, through his own personal contacts. In line with its sourcing policy for commercial products, Eli Lilly

was primarily interested in procuring pharmaceutical products either in the US or Europe and was cautious in procuring from India. This was communicated by Eli Lilly to Mr. Marcel Velterop and such feedback was shared with Dr. Yadagiri Pendri who acknowledged the same in email dated 10.09.2021 **(Annexure-41).**

The answering respondent further submits that as regards the allegation of the Petitioners that Mr. Marcel Velterop was communicating with Eli Lilly using an Escientia domain name is being used to perpetuate a false narrative is of no significance to the case at hand. Respondent no.2 submits that Petitioner No.2 was well aware that the usage of the Escientia domain name was only for a transitional period as

new server/domain were being set up for the Swiss Company.

As regards the allegation that R/2 to 9 have led R/1 Company to source certain raw material at far higher prices than that of its earlier procurement to unjustly benefit other companies of the Deccan Group, the answering respondent submits that the same is a false and baseless allegation and a desperate attempt on the part of Petitioners to somehow show financial mismanagement. It is denied that there has been any financial mismanagement by R/2 and/or its nominee directors as alleged including by compelling R/1 Company to purchase certain raw materials (CPD) at a higher cost. CPD is a key raw material used by R/1

Company to make their final product for Biohaven/ Pfizer which is Respondent No.1 Company's key customer.

Deccan Group, in the interest of R/1 Company and to adhere to the timelines of the project, advised Escientia Group to balance production of CPD between its Ankleshwar unit in Gujarat and a third-party source. Pricing of the CPD to be supplied and the basis thereof, was communicated by Respondent No.9 to Petitioner No.2 and Dr. Yadagiri Pendri.

The answering respondent submits that Petitioners have conveniently left out the total volume and value of the product supplies which was only for a one-time supply of 1,281 kgs of CPD for a total value of INR 2.2 Crore only. Of INR 2.2 Crore, in fact around INR 1 Crore was for raw material costs which Respondent No.1 Company would

have incurred with any other third-party supplier. The remaining INR 1.2 Crore was paid as conversion fee by R/1 Company to R/7 to cover Deccan Group's capital, fixed and variable costs. Said transaction did not result in any financial gain to R/ 7.

Based on the above submissions respondent no.2 submits that it is clear that Pendris were in discussions and approval to manufacture of CPD by R/7. A copy of email dated 20.08.2021 from the Escientia Group to the Deccan Group is annexed hereto and marked as **Annexure 51**. The answering respondent submits that the allegations of the Petitioners regarding alleged financial mismanagement are false and made with ulterior motive.

In answering para 9A of the Company Petition, R/2 submits that the answering Respondent and R/7 herein own a far

greater share of 'Escientia Group' than the petitioners herein do. It is thus, absurd to say that interest of R/1 Company is compromised by Deccan Group as Deccan Group would only be harming itself. The following is the shareholding of Deccan Group and others in different Escientia Group branded companies:

Entity	**Deccan Group (Respondent Nos. 2 & 7)**	**Ms. Rajya Lakshmi Penu-metsa (Respon-dent No. 3)**	**Escientia Life Sciences, Mauritius (P/1))***	**Mr. Kiran Reddy Pendri (Petitioner No.2)**	**Ms. Swarna-latha Mannam (Petitioner No. 3)**	**Dr. Yadagiri Pendri**	**Pendri Futran Group LLC**	**Oth-ers****
Escientia Advanced Sciences Pvt. Ltd. (R/1)	74%	1.19%	24.76%	0.05%	0% (1 share)	NA	NA	NA
Escientia Biopharma Pvt. Ltd.	74%	1.19%	NA	NA	0% (1 share)	24.81%	NA	NA

Escientia Life Sciences LLC, USA	75.19 %	NA	NA	NA	NA	NA	22.37%	2.44%
*Pendri Futran Group LLC /Pendris hold approximately 90% equity stake and Mr, Anup Gupta (ex-CFO of the Escientia Group) owns approximately 10% stake in Escientia Life Sciences, Mauritius								
Effective ownership of PFL/Pendris family and Ms. Swarnalatha Mannam in EASPL (Respondent No. 1 Company): 22.37%								
Effective ownership of Anup Gupta in EASPL (Respondent No. 1 Company): 2.44%								
**Others – 2.44% shareholding in Escientia Life Sciences LLC, USA is held by Mr. Anup Gupta								

(b) R/2 submits that Escientia Lifesciences LLC ("Escientia US") plays a critical role in relation to R/1 Company, with major contracts under which R/1 Company is engaged in production activities being entered into not by R/1 Company, but by Escientia US.

(c) In response to paras 22 and 23 of the Company Petition, the answering respondent submits that petitioners do not fulfill the criteria stipulated in sections 241 & 244 of the Companies Act. Thus, they are not eligible to file the present Petition. Besides, the petition is not supported by a board resolution authorizing the signatory to sign on behalf of P/1. In view of the foregoing, it is submitted that P/2 & P/3 on their own do not satisfy the criteria to file and maintain the Petition under sections 241 & 244 of the Companies Act. Besides, there are neither acts of oppression by R/ 2 to 9 nor the petitioners are affected by any prejudicial conduct of Respondents No.2 to 9, as alleged.

(d) In response to para 26(g) of the Company Petition, the answering respondent submits that the allegations made

against Dr. Rahuman are false. Dr. Rahuman has no connection with Primopus AG. He was appointed under severe scrutiny far exceeding that of any other employee due to resistance posed by Dr. Yadagiri Pendri and P/2. Such resistance was not based on the best interest of R/1 Company but based on their own vested interests.

(e) With regard to paras 30 and 31 of the Petition R/2 points out the following issues:

- Sustainability:

Repayment of term loans obtained by R/1 Company to the tune of INR 75 Crore have begun after completion of 2 (two) year moratorium. To service these loans, it is important for business of R/1 Company to have sustainability in the immediate future and times to come.

- Dependency on one product – a high-risk situation: Single product along with its key intermediates for Pfizer accounted for more than 70% of R/1 Company's total sales from April 2022 to August 2023 (last 17-month period). It is not prudent for a business to be dependent on one product supplied to only one customer. This is a high-risk situation for a company to be in such a business as profitability can be eroded on a single issue with the said customer, or in the product.

(f) As facts narrated by R/2 in para 45A (page 83 onwards of the Counter), Indus Ind Bank and HDFC Bank sanctioned credit facilities in favour of R1/ company and resolutions were passed by R/1 company to avail such credit facilities.

Thus, at this juncture, the Petitioners are now estopped from alleging or asserting any management understanding to the contrary, and the same will amount to a fraud on the banks, and such fraud shall be at the sole consequence and cost to the Petitioners. It is submitted that there was no ‘U-turn' as alleged by the Petitioners.

(g) Respondent no.2 further states that R/8 and 9 considered the proposed Shareholders' Agreement, found the terms proposed therein unfair, *inter alia* for reasons stated vide the email of Respondent No. 6 dated 23.02.2023, and rejected the Shareholders' Agreement. There was no obligation on any Respondent to acquiesce to such a blatantly discriminatory and unfair Shareholders' Agreement, coming after huge investment and efforts thereafter by Respondents 2 to 9 to make the Respondent No. 1 Company a financially

secure success, a success which now finds several mentions by the Petitioners herein. There was no response to this email dated 23.02.2023 despite the importance thereof.

(h) Respondent no.2 further states that vide an email dated 15.06.2023 (ANNEXURE 62), the Respondent No. 4 wrote to the Petitioner No. 2 regarding a proposed replacement in the Board of Directors of EASPL, seeking appointment of R/5 and 6 on the Board to replace Mr. Dwarkanath and Mr.Hiren Vora as directors of R/1 Company. P/2 responded vide an email dated 16.06.2023 (ANNEXURE 62), stating that the relevant formalities to replace Deccan nominee Directors on the Board of R/1 Company will be completed within a week. Thereafter, vide a Board Resolution dated 23.06.2023 (ANNEXURE-63), the Board of R/1 Company

recommended to the shareholders appointment of R/5 and 6 to the Board and accepted the resignation of Mr. Dwarkanath and Mr. Hiren Vora. A copy of the minutes of the 9th Extra-Ordinary General Meeting of the members of the Respondent No. 1 Company dated 24.06.2023 is annexed hereto as **Annexure 64.**

(i) Respondent no.2 has answered para 54D of the petition. Para 54D reads as under:

> *"54D. It is pertinent to note that the senior officers of the Deccan Group, including the directors nominated by the Deccan Group to the board of the Respondent No. 1 Company, have been actively involved in the development and promotion of Primopus. Mr. Hiren Vora (then Deccan nominee to the Board of the Respondent No. 1 Company) and the Respondent No. 4, have been closely involved in the budgeting and business planning of Primopus, and have been burning midnight oil in ensuring success of Escientia Group's competitor – Primpus... .."*

Respondent no.2 submits that merely submitting an annual budget by Primopus AG to Mitsubishi, a shareholder in R/ 7, is of no consequence to R/1. Merely asking for compliance related documentation

from Primopus AG does not signify any active involvement in development and promotion of Primopus, much less any actual conflict of interest or breach of duty leading to any justiciable issues. Similar information on R/1 is also submitted periodically to Mitsubishi. R/2 further submits that CFO of R/1 Company tenders on monthly basis financial statements of R/1 Company with Deccan Group in the context of statutory filings and compliance requirements. R/2 submits that vide annexures 30 and 31, Petitioners have once again produced privileged and confidential data that they are not entitled to access. The Petitioners are neither recipients nor senders of the aforementioned emails. It is submitted that the Petitioners have unlawfully accessed the said

emails in a blatant act of oppression and mismanagement, and fraud on R/4, 5, 6, 8 and 9. Conduct of the Petitioners in this regard amounts to significant breach of law.

(viii) Respondent no.2 has answered the averments in para 54F of the Amended Petition as under:

Para 54F of the petition:

> *"In light of the foregoing events, the following facts are clear before this Hon'ble Tribunal: (i) Primopus is a business that directly competes with the Respondent No. 1 Company; (ii) Primopus is promoted by the Deccan Group and the Deccan Group has made large investments in Primopus; (iii) Deccan Group is providing Primopus with its largest facilities in Goa for CDMO activities; and (iv) the senior personnel of Deccan Group, including the nominee directors of the Deccan Group to the board of the Respondent No. 1 Company, are actively engaged in the development and promotion of Primopus."*

Primopus is not in any competition with R/1 Company. Deccan Group is not providing Primopus with its largest facilities in Goa for CDMO activities as alleged.

Even if that were the case, it would be of no consequence either to R/1 company or the Petitioners herein. It is denied that directors of Deccan Group on the Board of the Respondent No. I Company are actively engaged in development and promotion of Primopus as alleged. It is submitted that despite the corporate espionage and theft of digital data by the Petitioners in accessing emails of the indents produced with the Petition, the Petitioners have not been able to make out any case of actual conflict of interest or siphoning of technical knowledge from R/1 Company.

On the contrary, while alleging that there is a potential for such transfer of technological knowhow, the Petitioners themselves have indulged in data theft, and have with impunity and utter disregard of the law,

produced the evidence of such actions themselves under sworn statements.

(ix) In response to para 59B of the Amended Petition, R/2 has denied the contents thereof and submitted that the claim as made by the petitioners in para 59B (c) is incorrect. The claim as made by the petitioners reads that:

> *"59B (c) .. .. It is pointed out that the functions and duties of Mr. Marcel Velterop were solely to support the CEO of Escientia (Dr Yadagiri R. Pendri) as per his Management Consulting Agreement dated 20.01.2021."*

R/2 further submitted that Mr. Marcel Velterop is not a party to the present proceedings. He is a stranger to the present proceedings. Petitioners cannot draw any benefit from averments making imputations against him. In any case, it is denied that Dr. Yadagiri Pendri or the

Petitioner No. 2 instructed Mr. Marcel Velterop to restart any discussions with Eli Lilly, as averred in sub-para (d).

(x) Referring to para 59H of the petition the answering respondent states that email dated 14.09.2022 is at **Annexure-78** [IA (CA) No.262/2023] is a privileged one. The petitioners are neither recipients nor senders of the aforementioned email. The petitioners have unlawfully accessed the said emails in a blatant act of oppression and mismanagement, and fraud on respondents no. 4, 5, 6, 8 and 9. This Hon'ble Tribunal may investigate how such emails were accessed by the Petitioners and take appropriate action. The answering respondent states that the conduct of the Petitioners in this regard amounts to significant breach of law.

(xi) As regards paras 65B-65E of the petition, the answering respondent (R/2) denies that any attempt was made to siphon off any business, clients or opportunities of Escientia Group, or R/1 as alleged. R/2 submits that GlaxoSmithKline ("GSK") is not an exclusive client of the Pendris, or even the Escientia Group, of which Deccan Group is the majority owner.

R/2 submits that there is no commercial product overlap between Primopus AG and Escientia Group. Pertinently, Primopus AG is the rebranded Escientia Switzerland AG. Primopus AG is the successor of Escientia Switzerland AG. It is reiterated that the Deccan Group's takeover of the pharma CDMO Escientia Switzerland AG was with the consent of

Pendris. R/2 narrates the following facts, which according to him, are the correct facts:

(a) The Pendris entered into discussions with GSK on or around January 2018 with GSK to explore opportunities to supply components for them.

(b) A Quality Assurance Agreement was entered into between GSK and the Respondent No. 1 Company dated 14.11.2018. Pertinently, this was prior to the investment and acquisition of majority stake and ownership in the Escientia Group by the Deccan Group.

(c) Escientia Life Sciences USA invoiced GSK for supply of certain components between 20.02.2018 and 18.12.2019. All the invoices state

that the invoices are for products being shipped from Escientia Life Sciences USA to GSK USA. It is noteworthy that the relationship appears to have ended in December, 2019, with no further invoices having been produced by the Petitioners. Pertinently, the invoices are by Escientia Life Sciences USA, and not Escientia Switzerland AG. During this invoicing period, especially in Financial Year 2018-2019, R/1 had zero revenues.

(d) Vide above Management Consultancy Agreement dated 20.01.2021, the services of Mr. Marcel Velterop were engaged by Escientia Switzerland AG. A copy of email of P/2 dated 20.07.2021 on his introduction of Mr. Velterop to R/1's employees is at Annexure 69.

The Pendris cut off all communication and collaboration with the Swiss Company and also stopped all payments for the services of Mr. Marcel Velterop from 03.08.2022 without any formal communication to Mr. Marcel Velterop. It is reiterated that from 01.08.2022 onwards, Mr. Marcel Velterop was not under any obligation to assist the Pendris and/or the Escientia Group.

(e) As stated hereinabove, the Deccan Group vide a fund infusion invested directly in Escientia Switzerland, whereby the stake of EBPL in Switzerland was reduced to approximately 2.2%, the shareholding within which the Respondent No. 2 owns 74%, rendering the de-facto shareholding of

the Pendris in Escientia Switzerland AG to only approximately 0.5% on 19.03.2022.

(f) Only on 12.10.2022 did Mr. Marcel Velterop write to GSK, ostensibly without any references from the Pendris or the Escientia Group, in his capacity as the CEO of Primopus AG. Pertinently, during the period in which GSK was a client of Escientia US, Mr. Marcel Velterop had no engagement with Escientia. Escientia Switzerland AG had no interaction with GSK. On 12.10.2022, Mr. Velterop made it clear to GSK vide his email that Deccan had acquired all the shares of Escientia Switzerland AG, which was introduced to GSK as a Deccan entity.

(g) The subsequent email dated 14.11.2022 is only a follow up to the discussions which had already happened on 03.11.2022, and adverts again to `Amidites', and offers supply on behalf of Primopus AG and the Respondent No. 7.

(xii) While answering para 68B (a) to (e) of the petition, respondent no.2 alleges that while setting out Agenda of meeting dated 21.10.2023, the petitioners have suppressed Agenda Item No.4, which reads that:

> *"Review the status of validity and compliance of all licences and permits".*

Under the said Agenda compliances relating the unauthorized movement of equipment from the premises of the Respondent No. 1 Company by the Pendris was sought to be discussed. R/2 submits that

Minutes of the Meeting dated 21.10.2023 reflect that P/2 is responsible for ensuring relevant compliances by R/1 Company. P/2 ought to have voluntarily provided the Board, at least at the meeting dated 21.10.2023, all relevant information, including the inventory of equipment, and the licenses and/or permissions obtained *inter alia* from the SEZ authorities.

(xiii) Respondent no.2 further submits that R/4 to 6 represent 74% of the shareholding in R/1 Company and have every right to seek employment of a COO if they deem fit and proper to do so. Present CFO and also the Site Head of the Respondent No. 1 were also identified solely by the efforts of Deccan Group.

However, in the intervening period prior to the appointment of Dr. Rahuman, P/2 and Dr. Yadagiri

Pendri had commenced their fabrication of a claim of special rights or affirmative voting rights, in an attempt to sideline Deccan Group majority shareholders, after having extracted substantial value from the Deccan Group, including the complete turnaround of EASPL as also EBPL. The reasons for appointment of the COO as stated hereinabove are reiterated. It is reiterated that. the COO is an employee of the Company, working under, and reporting to the management of the Company.

(xiv) Answering para 68E of the petition, R/2 states that the document enclosed as Annexure-90 is wrong. Anenxure-90 of the Company Petition is described as:

"Company's facilities to R/7 Company's facilities at the directions of the R/9."

Whereas, the document enclosed as Annexure-90 is different, which is as below:

e-mail dated 09.09.2021 from Marcle Veltrop.

Thus, Annexure-90 of the Company Petition is an incorrect document.

Besides, the allegations in paragraph 68E relating the transfer of a machine from the Escientia Group's premises, does not even pertain to R/1 Company, and it has no bearing on the present Petition. The Petitioners have suppressed material facts and are guilty of *suppressio veri suggestio falsi.*

The Petitioners have suppressed the correspondence between the parties in this regard, and the exchange of emails seeking approval of EBPL in relation to one piece of equipment, unused by EBPL, in the form of emails dated 14.04.2022, is annexed hereto as Annexure 84. R/2 denies that any such movement took place at the instance of R/9, and the same is contrary to the record.

(xv) Answering para 68G of the petition, R/2 states that Resolution was passed in the Board Meeting dated 04.09.2023, by majority vote, appointing Dr. M.S.M. Mujeebur Rahuman as the COO of R/1 Company. It is implicit in the Resolution itself to have authorized issuance of a letter of appointment, which is only giving effect to the Resolution itself. It is denied that there was no specific authorization to the Respondent

No. 6 to issue a letter of Appointment to Dr. Rahuman, and it is submitted that any Director was authorized to take steps to give effect to the Resolution to appoint Dr. Rahuman. There is no requirement to place a letter of Appointment before the Board for its consideration as alleged. The said appointment was kept in abeyance pursuant to the order of this Tribunal dated 04.09.2023. On 28.11.2023, an order was pronounced by this Tribunal, whereby IA (CA) No. 263/2023 filed by the Petitioners in the Petition for extending the directions passed *vide* order dated 04.09.2023 was dismissed wherein this Tribunal, *inter alia*, held that:

> *"We have already held that prima facie, the Petitioners have failed in establishing violation of any Article or provision in Companies Act, 2013 in appointing Dr Mujeebur Rahuman as COO of the 1st Respondent. Hence, it is not proper to interfere with the said appointment process, merely on the basis of the 'perception' of the petitioners as regards Article 69 of the AOA of the 1st respondent".*

Further, at the request of the Petitioners, this Hon'ble Tribunal kept the order in abeyance for a period of three (3) days effective from 28.11.2023. On expiry of said period of three days and order dated 04.09.2023 having been vacated, steps were taken for confirmation of Dr. M.S.M. Mujeebur Rahuman's appointment as COO of R/1 Company. It is submitted that the appointment letter was issued pursuant to the board resolution dated 04.09.2023.

(xvi) Answering para 68H of the petition, R/2 states that the Petitioners have selectively annexed emails and suppressed material facts germane to the adjudication of the present lis. It is denied that Dr. Rahuman had sent an email dated 22.12.2023 (**Annexure 85)** to Ravi Shankar Kadari without

marking it to any other person. R/2 submits that the COO sought a list of completed projects from April to November 2023, minutes of key customer meetings from the last 3 to 4 months and requested timely sharing of future customer meeting minutes and visit schedules.

It is submitted that prior to Mr. Kadari's email of 26.12.2023, another email was sent by the COO on 23.12.2023 as a reminder to his email of 22.12.2023 to share the available information. A copy of the email dated 23.12.2023 sent from Dr. Rahuman to Ravi Shankar Kadari is annexed hereto as **Annexure 86.**

Further, Mr. Kadari replied to the COO's email of 05.01.2024 *vide* email dated 07.01.2024, wherein Dr.

Yadagiri Pendri and Petitioner No.2 were also recipients, stating that:

"they are regularly interacting on the business side".

The answering respondent submitted that Dr. Rahuman has been appointed as a COO, despite resistance from Dr. Yadagiri Pendri and Kiran Pendri. This Tribunal too declined to interfere with the appointment. Thereafter, the conduct of Dr. Yadagiri Pendri and Kiran Pendri has been to obstruct and thereafter harass Dr. Rahuman at every possible instance.

R/2 further submits that any proprietary information of R/1 Company is not the personal property of Dr. Yadagiri Pendri or Kiran Pendri. Dr. Rahuman is entitled to access any information authorized to him by

the Board of R/1 Company. Copy of Contempt Application is at ANNEXURE-87 of this Reply.

(xvii) Answering para 68M of the Petition, the answering respondent stated that the contents are incorrect and are denied. It is denied that there is any *mala fide* intent of Respondents to harass or humiliate the Petitioners or Dr. Yadagiri Pendri. It is denied that there is any trifling away of the resources of the Respondent No. 1 as alleged. It is submitted that the Petitioners averment that this Hon'ble Tribunal has not expressed an opinion as to the validity of Article 69 of the AoA as per its Order dated 28.11.2023 is incorrect and the Petitioner No. 2 has admittedly taken a contrary stance. Petitioner No. 2 filed the Company Appeal (AT) (CH) No.106/2023 (the "NCLAT Appeal") on

01.12.2023 under Section 421 of the Companies Act before the Hon'ble National Company Law Appellate Tribunal, Chennai ("NCLAT") against order dated 28.11.2023 passed by this Hon'ble Tribunal in IA (CA) No.263/2023 in the Petition. A copy of the Appeal being Company Appeal (AT) (CH) No.106/2023, without its annexures is annexed hereto as **Annexure 92.** Pertinently, the Appellant therein, also being Petitioner No. 2 in the present Petition, *vide* the aforementioned Appeal, has *inter alia* stated as follows in the Appeal:

> *"...*
>
> *8. The following facts in issue and question of law arise for consideration of this Hon'ble Tribunal:*
>
> *(a) Facts in issue:*
>
> *The Appellant is aggrieved by the following findings of the Hon'ble NCLT:*
>
> *(i) Article 69 of the Articles of Association which provide for affirmative voting rights to the Appellant in the meeting of the Board of Directors is violative of Section 175 and 179 of the Companies Act, 2013.*

(ii) Article 69 of the Articles of Association which provide for affirmative voting rights to the Appellant have to be understood to mean `majority voting'.

(iii) The Petitioner has failed to make out a prima facie case that the Articles of Association require unanimity and affirmative voting rights for the Pendris in board meetings when principle of unanimity has been followed for around 250 board resolutions of the Respondent No. 1 Company

(iv) The Petitions before the Hon'ble NCLT have accepted Article 69 as "inoperative or otiose", which has been incorrectly attributed to the Petitioners before the Hon'ble NCLT.

(v) The role of the Deccan Group/Respondent Nos. 2 to 9 is not passive.

(vi) That the SPA executed between the Deccan Group and the Escientia Group is conclusive of the rights of the shareholders.

(vii) That the stand of the Petitioners before the Hon'ble NCLT rendered the meaning of Article 69 of the Articles of Association of the Respondent No. 1 Company as otiose and redundant. ... ..."

(xviii) The answering respondent states that the averments in the above appeal by P/2 are his admissions. R/2 has reiterated that it is the admitted stand of the Petitioner No. 2 vide the aforementioned Appeal to the NCLAT, Chennai, that this Tribunal vide its Judgment dated 28.11.2023 had found, *inter alia*, that:

> *"(i) Article 69 of the Articles of Association which provide for affirmative voting rights to the Appellant in the meeting of the Board of Directors is violative of Section 175 and 179 of the Companies Act, 2013.*
> *(ii) Article 69 of the Articles of Association which provide for affirmative voting rights to the Appellant have to be understood to mean `majority voting'."*

The answering respondent contends that in view of the petitioner's own admission, there is no violation of Article 69 of the AoA.

(xix) While answering para 68U of the petition, the answering respondent refutes the allegation of the petitioners that Deccan Group has attempted to or interested in siphoning off any existing or future business opportunities of R/1 Company. R/2 has submitted that on the contrary Deccan Group, as a majority shareholders of R/1 company, has only sought to build business of R/1 company. In support of such claim R/2 has cited certain instances as below:

(a) Bid to acquire Novartis, Ireland facility:

Deccan Group involved in potential purchase of another Novartis facility in Ringaskiddy, Ireland. This move was intended to promote, grow and expand Escientia Group.

(b) Pursuing Corteva for Escientia:

R/7 has actively promoted R/1 Company and other Escientia Group Companies to a wide customer base through the contacts of the Deccan Group, including major fine chemical companies like Corteva (Dow/DuPont). One instance of such promotion of Escientia was the initiative by R/7 to introduce one of its clients, Corteva, which has global fine chemical business of DowDuPont, to R/1. In support of such claim, R/2 produces copies of e-mails dated 26.01.2022 to 27.01.2022, 14.03.2022 to 15.03.2022 exchanged

between Respondent No.9 and Dr. Pendri at Annexure 97 (Colly.). R/2 also encloses e-mails dated 16.01.2022 to 20.01.2022 exchanged between Dr. Pendri and Respondent No.9 confirming Corteva's successful visit to EBPL facilities at Annexure 98. R/2 further encloses e-mails dated 23.11.2021 to 01.12.2021 exchanged between Corteva Executives, R/7, Marcel Velterop and Dr. Yadagiri Pendri regarding Mr. Velterop and Dr. Pendri's visit to tour the Corteva's facilities in Indianapolis (redacted) at Annexure 25 (colly.)

(xx) Answering para 69A of the petition, the answering respondent states that Articles 44, 69 and 72 were rendered otiose upon R/2 becoming a shareholder of R/1 Company post SHA dated 03.08.2020 referred to hereinabove. Articles 69 and 72 in particular, are a result

of the articles of EASPL at incorporation when Dr. Yadagiri Pendri and the Petitioner No. 2 were the only directors. Albeit, Dr. Yadagiri Pendri and Kiran Pendri were the "first Directors" of R/1 Company, no special rights were conferred by the Articles on them including in their capacity as "first Director(s)".

It is submitted that therefore, Articles 69 and 72 only contemplate a Board that comprises two directors, and as such Articles 69 and 72 are rendered otiose the very moment a third Director is brought on to the Board of EASPL. Plain and simple language of Articles 69 and 72 does not grant any special rights in favour of Dr. Yadagiri Pendri and Kiran Pendri vis-à-vis any third director.

It is however patently incorrect for the Petitioners to aver now that the word `both', which is a commonly used word in the English language to refer to two people or things and to identify two persons or things together, to mean that it would extend to `all'. It is reiterated that at present the Board of EASPL admittedly comprises Five Directors, and the word `both' can never imply 'all Five'. While the Articles 69 and 72 may have meant that all resolutions passed by a Board of two Directors were to be passed unanimously, it would be stretching imagination to an absurd and legally untenable level to suggest that 'both Directors' as referred to in Articles 69 and 72 has to be interpreted to mean "all Five". R/2 states that petitioners seek to import a meaning to

Articles 69 and 72 that is repugnant to common understanding of simple English language.

(xxi) While continuing with his reply to para 69A of the petition states that in view of the above, Articles 69 and 72 cannot be given effect to and R/1 company scan only pass resolutions by majority vote, in absence of any Articles requiring "all Five" or "any Four" or any other numerical combination for the Board to pass resolutions. In this context, R/2 relies on Companies Act, 2013 - Schedule I, Table F —Articles of Association of a Company Limited by Shares. Said Regulation 68 is reproduced below:

> *"68 (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.*
>
> *(ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote."*

(xxii) Answering para 69C of the petition, R/2 denies that Deccan Group insisted revision of AoA. R/2 submits that Article 68 of AoA was amended not at the behest of Deccan Group; it was amended at the behest of Pendris. Besides, the reason for amendment of certain Articles of AoA is to bring the Articles of the AoA in consonance with the Companies Act, 2013.

R/2 reiterates that there are no special rights set out anywhere in AoA of R/1 for any party including Dr. Yadagiri Pendri and Kiran Pendri. Regulation 68, Table F, Schedule I of the Companies Act, 2013, applies to R/1 Company, and is expressly included by virtue of Article 1.2.

(xxiii) In response to para 72B of the petition, R/2 states that the Petitioners' assertion that there was any

amendment of the articles by brute force is incorrect. No such amendment of Articles 69 and 72 by the Respondents. However, the Articles are made redundant by the simple fact that they are rendered meaningless. As Articles 69 and 72 have become redundant, Article 44 of the AoA too became redundant upon the entry of shareholders outside of the Pendri family/ Pendri Futran Group LLC ("PFL") into the shareholding of R/1 Company.

(xxiv) While answering para 78 of the petition, the answering respondent admits that R/2 proceeded to nominate its directors on the board of R/1 Company, admittedly, as per its rights. R/2 submit that these directors exercise their fiduciary duties in the best interest of the R/1 Company. It is denied that there

was/is any alleged understanding that operational and management control would remain with the founding promoters and their team and/or that a shareholders' agreement would be executed to record this. Rest of the averments in para 78 of the petition are denied.

(xxv) Answering para 83 of the petition, R/2 submits that there is no *mala fide* discernible from letter of R/4 dated 21.08.2023 and/or its accompanying secretarial documents. There is no attempt on the part of R/7 to take over the management and day-to-day affairs of R/1 Company by appointing a COO. R/2 denies that Escientia Group is making very healthy profits. R/2 further denies that the remuneration payable to COO has no justifiable basis, is outlandishly high, smacks of *mala fide.* R/2 further denies that the proposed

appointment of the COO is an attempt to effect a colourable exercise of the power by R/2 through R/1 Company and/or to circumvent any statutory requirements, as alleged or at all. Rest of the averments for para 83 are denied.

IV. ADOPTION MEMOS:

The Respondents 2 to 9 have filed memos 23.04.2024 adopting the Counter dated 02.04.2024/ 18.04.2024 filed by respondent 2.

V. REJOINDER BY PETITIONERS dated 09.05.2025/ 31.05.2024.

(1) The petitioners have filed REJOINDER dated 09.05.2024/ 31.05.2024 in response to Reply dated 02.04.2024/ 18.04.2024 filed by respondent no.2. Certain

additional documents are filed in this Rejoinder by way of IA (CA) No.262 of 2023 and IA (CA) No.143 of 2024.

Arrangement of annexures to the Rejoinder is as under:

Annexure	**Where document is available.**
01 to 34	No such annexures are marked in Rejoinder.
35 to 98	IA (CA) No.262 of 2023, in three Volumes, viz. Vol. I, II and III.
99 to 111	No such annexures are marked in Rejoinder.
112 to 123	IA (CA) No.143 of 2024.

Narration of incidents and exchange of e-mail communications/ letters between the parties as explained in the Rejoinder are taken note of. Over and above the discussion about e-mail communications, the submissions made in the Rejoinder can be summarized as under:

In order to substantiate the allegations of oppression and mismanagement made by the petitioners, the petitioners bring to the attention of this Tribunal the admissions made by respondent no.2 (i) in its Reply dated 02.04.2024/ 18.04.2024 and (ii) in its Preliminary Counter dated 04.09.2023.

(a) R/2 Company refused to sign the draft shareholders' agreement (SHA) sent to them by the Petitioner. (*Paragraph 4 at Page 2 of the Reply*).

(b) During the period 2013 to 2019, the manufacturing site/ plant of the R/1 Company was under construction. (*Paragraph 13 at Page 6 of the Reply*)

(c) Execution of a shareholders' agreement (SHA) was originally a condition precedent to the share purchase transaction qua R/1 Company, which was

dropped as a pre-condition on the insistence of Flex. (*Paragraph 19 at Page 8 of the Reply*)

(d) P/2 and Dr. Yadagiri Reddy Pendri were actively involved in decision-making process for induction of personnel, including the Unit Head and CFO of R/2 Company. (*Paragraph 23(c) at Page 12 of the Reply*)

(e) R/6 commented on the contents of the Draft SHA (*Paragraph 37 at Page 22 of the Reply*)

(f) Proposed COO, Dr M.S.M. Mujeebur Rahuman, is being appointed in 2 (two) companies, viz. R/ 1 Company and Escientia Biopharma Private Limited ("EBPL"). (*Paragraph 57 at Page 31 of the Reply*).

(g) Instead of the proposed Power of Attorney, a revised 'Delegation of Authority' was placed before the board of directors for the first time during the course of the meeting that took place on 04.09.2023. (*Paragraph 58 at Page 31-32 of the Reply*);

(h) Article 69 has been a part of R/1 Company's AoA since the company's incorporation (*Paragraph 61 at Page 32 of the Reply*);

(i) Technical staff were deputed by the Deccan Group when the Petitioner No. 2 and Dr Yadagiri Reddy Pendri were in the USA during the COVID-19 pandemic (*Paragraph 67 at Pg. 36 of the Reply*);

(j) Deccan Group technical staff were deployed to implement the processes undertaken by R/1 Company to implement the processes at Escientia

Switzerland, now Primopus (*Paragraph 67 at Page 36 of the Reply*)

(k) The Deccan Group's representatives received information from the Respondent No. 1 Company (*Paragraph 69 at Page 37 of the Reply*);

(l) Escientia Switzerland, now Primopus, was a wholly owned subsidiary of EBPL (*Paragraph 72 at Page 38 of the Reply*);

(m) EBPL had made a cash infusion of CHF 200,000 (Swiss Francs Two Hundred Thousand Only) into Escientia Switzerland (*Paragraph 74 at Page 40 of the Reply*)

(n) Petitioner No. 2 refrained from continuing to be involved with Escientia Switzerland as EBPL could

not put any further equity into it, primarily because raising of fresh equity would result in equity dilution for Petitioner No. 2 and Dr Yadagiri Reddy Pendri (*Paragraph 82 at Page 45 of the Reply*)

(o) Petitioner No. 2 wrote to Respondent No. 9 highlighting his concerns over Escientia Switzerland's financial health (*Paragraph 82 at Page 45 of the Reply)*

(p) Respondent No. 2 stepped in as a direct shareholder into Escientia Switzerland by initially investing CHF 8,908,800 into the Escientia Switzerland on 19.03.2022, which had the consequence of diluting EBPL's shareholding to approximately 2.2% and the Pendris own shareholding to approximately 0.5% (*Paragraph 86 at Page 47 of the Reply*)

(q) As on date, effective shareholding of R/7 Company in Escientia Switzerland, now Primopus, is 99.85% (*Paragraph 86 at Page 47 of the Reply*)

(r) Mr Marcel Velterop' s salary in the relevant period was 50% borne by Deccan Group and 50% by Escientia USA (*Paragraph 96 at Page 51 of the Reply*)

(s) Post-dilution of the Pendris' shareholding, payments to Marcel Velterop by the Escientia Group stopped (*Paragraph 99 at Page 53*)

(t) Dr Yadagiri Reddy Pendri was part of the discussions with Eli Lilly (*Paragraph 96 at Page 51 of the Reply*)

(u) Escientia domain name was being used by Mr Marcel Velterop during the relevant period of discussions with Eli Lilly (*Paragraph 101 at Page 54 of the Reply*)

(v) Primopus is a zero-revenue company, with no active customers and no revenue-generating business (*Paragraph 103 at Page 54 of the Reply*)

(w) Deccan Group added certain 'conversion fee' to the price of CPD. CPD is a key raw material used by R/1 Company to make final product. (*Paragraph 108 at the Page 56 of the Reply*)

(x) The pricing proposed by R/7 was based on its own internal costing (*Paragraph 110 at Page 57 of the Reply*).

(y) P/2 introduced R/9 and sought Deccan Group's investment in Escientia Group (*Paragraph 15 of the Preliminary Counter Affidavit*);

(z) R/9 sent email dated 07.02.2020 to P/2 (*Paragraph 23 of the Preliminary Counter Affidavit*);

(aa) Appointment of proposed COO is intended to change the status quo, i.e., to take away the rights of control and management from the Petitioners and Dr Yadagiri Reddy Pendri, for whatever reasons which are denied and responded in this Rejoinder (*Paragraph 29 of the Preliminary Counter Affidavit*);

(bb) Deccan Group has taken over Escientia Switzerland AG and renamed it to Primopus AG, which is an independent pharmaceutical arm of Deccan Group and in

direct competition with R/1 Company (*Paragraphs 34 to 42 of the Preliminary Counter Affidavit*); and

(cc) No justification of emails sent by the employees of Deccan Group, including respondent Nos. 4 to 6 to Eli Lilly which directly prove siphoning of the business to Primopus (*Paragraphs 49 to 53 of the Preliminary Counter Affidavit*).

(2) The petitioners submit that it has been admitted in 'Preliminary Counter Affidavit' that P/2 introduced Deccan Group, particularly R/9 to Escientia Group. This is an important admission in light of the Petitioner's contention that R/9's e-mail dated 07.02.2020 (*Annexure-7 to the Petition*) forms the basis of the contract and agreement between the parties. The petitioners submit that according to R/2 company Share Purchase

Agreement dated 03.08.2020 (*Annexure-8 to the Petition*) forms the "*entire agreement*" between Deccan Group and Escientia Group rendering e-mail dated 07.02.2020 inadmissible by virtue of Sections 91 and 92 of the Indian Evidence Act, 1872.

(3) The petitioners while referring to Clause 13.2 of Share Purchase Agreement, which reproduced below:

> *"The Escientia Transaction Documents (together with any amendments or modifications thereof) will constitute the entire agreement and understanding among the Parties in relation to the matters contained therein and supersedes all previous correspondence and information exchanged between the Parties (whether written or oral) prior to the date of this Agreement."*

and referring to Recital-D of Shareholders' Agreement dated 10.04.2013, which is as below:

> *"to set forth their respective rights, powers and interests with respect to the Company and their respective shares therein and to provide for the management of the business and operations of the Company."*

submit that R/2 company has failed to draw distinction between Share Purchase Agreement and Shareholders' Agreement (SHA).

(4) The petitioners submit that R/2 Company's objection with respect to the Draft Shareholders' Agreement circulated by the Petitioners *vide* email dated 29.03.2022 (*Annexure-12 to the Petition*) is against the basis of corporate democracy and rights of a majority shareholder. The same is baseless, without any legal sanctity. Contention of R/2 that the Draft SHA is oppressive and *mala fide* attempt of the Petitioners to take away Deccan Group's majority rights and usurp undue rights and extract excessive financial gains are sans documentary evidence.

(5) The petitioners further submit that the Petitioners have repeatedly asked the respondents to "negotiate" and "discuss" the Draft SHA, but in vain. There was a clear understanding between the Petitioners and R/2 Company that a shareholder's agreement governing the respective rights and obligations of the parties shall be executed. However, R/2 Company never intended to execute SHA with the Petitioner to begin with, and always wanted to renege on the promises made to the Petitioner,

(6) The petitioners submit that it is perceived by R/2 Company that Dr M.S.M. Mujeebur Rahuman is proposed to be appointed as COO of R/1 Company to streamline the operations of R/1 Company in a professional and coordinated manner with responsibility and accountability and for good corporate governance.

However, the petitioners contend that R/1 Company is already being run very professionally and in a coordinated manner with utmost responsibility and accountability as is evident from the audited financial reports of R/1 Company (*Annexure-4 to the Petition*). Though the petitioner have never opposed appointment of such professional, the manner in which appointment of COO is being orchestrated by R/ 2 to 9, reeks of *mala fides*, oppression and mismanagement. The petitioners have pointed out the following flaws in recruitment process of COO:

(a) Respondents no.4 to 6 (Deccan Group's nominee directors on R/1 Company's Board), along with other senior officers of R/ 7 Company, including R/ 9, who is not even a part of R/1 Company, have

decided to appoint a COO, specifically Dr Rahuman, for R/1 Company.

(b) Even in the Board Meeting of R/1 Company dated 11.08.2023, the Deccan Group's nominee directors did not disclose the intention of appointing a COO and ongoing search for the same to the Board of R/1 Company. Minutes of Board Meeting dated 11.08.2023 are at Annexure-51. Furthermore, Deccan Group's nominee directors did not even disclose the plans to change the authorized signatories for operating the bank accounts or authorized directors to do statutory filings on behalf of R/1 Company. However, in a most clandestine manner, on 21.08.2023 i.e. merely 10 days later, R/4 summoned a Board Meeting with all documents and

draft resolutions to completely cripple the Petitioners and Dr Yadagiri Reddy Pendri and exclude them from R/1 Company which reeks of oppression.

(c) While Dr M.S.M. Mujeebur Rahuman has been unemployed from May/ June 2023, he has misrepresented in his Curriculum Vitae (Annexure 16 to the Reply) that he is presently employed with Aragen Lifesciences Private Limited as Senior Vice President, and the R/ 4 to 6 and 9 did not find anything odd with the same.

(d) Neither existing senior employees of R/1 Company nor of Escientia Biosciences Private Limited were considered for being appointed as the COO.

(e) Dr M.S.M. Mujeebur Rahuman's previous salary as per R/4 was around INR 1.45 Crores per annum plus INR 37 lacs bonus. Therefore, there was no cogent reason to give a hike of such a huge amount, especially when other senior employees of R/ 1 Company are drawing maximum salaries of around 1.1 Crores.

(f) R/2 Company has further sought to rely on certain movement of machinery from R/1 Company's manufacturing plant in Vishakhapatnam to EBPL's R&D facilities in Hyderabad without a Board Meeting to that effect. R/ 2 Company has placed on record certain email correspondence exchanged with respect to movement of the machinery and its return to the Vishakhapatnam plant (*Annexure 14 (Colly.)*

to the Reply) to justify appointment of the COO. The Petitioners submit that the machinery was temporarily moved within R/1 Company's own facilities, *i.e.*, from the manufacturing facility in Vishakhapatnam to the registered office in Hyderabad, to showcase R/1 Company's capabilities to potential clients who were travelling from the U.S.A. and U.K., but reluctant to travel to Vishakhapatnam. In any case, the machinery was returned to Vishakhapatnam facility. This is not a case of mismanagement, theft, unauthorized use, or oppression of majority shareholders. The said action was undertaken in the best interest of R/1 Company to develop its business.

(g) The petitioners draw attention of this Tribunal to an oppressive and prejudicial incident. Upon directions of R/9, one of the senior employees of R/7 Company permanently moved a valuable imported machine from Escientia Group's premises to R/7 Company's premises without any documentation, resolution, intimation to the authorities or an approval of any kind, whatsoever. As such, *mala fides* of R/ 2 to 9 are clear.

Relevant correspondence demonstrating movement of machinery from R/1 Company's facilities to Respondent No. 7 Company's facilities, at the directions of R/9, is at **Annexure-53 [IA (CA) No.262/2023].**

(7) The petitioners submit that Article 69 of the Articles of Association of R/1 Company, Annexure-3 (Colly.) to the Petition, mandates that all decisions of the Board,

"*shall be taken only if both Directors have voted in favour of it*".

It is submitted that even a plain reading of the provision amply demonstrates the import, *i.e.*, that there must be unanimous consent of all directors' present in a quorate meeting for any resolution sought to be passed. This is not just the correct interpretation of Article 69, but is in fact an entirely permissible interpretation, inasmuch as it provides for a stricter requirement than the Companies Act. It is a settled position of law that the AoA of a company can have a stricter requirement than that which is provided for under the Companies Act or in Table-F of Schedule-I of the Companies Act.

The petitioners submit that Article 69 has to be seen in light of Article 60 (iii) of AoA which categorically states that the first directors of R/1 Company shall be Mr. Kiran Reddy Pendri and Mr. Yadagiri Reddy Pendri. Thus, the phrase "*both Directors*" clearly denotes the aforementioned two directors.

It is stated that at the time of incorporation of AoA in February 2013, the purpose was to ensure that there was unanimity in the decisions of the Board. The requirement of "*both Directors*" was also present in Article 68, prior to its amendment, which at the time, required that the minimum quorum for a meeting was "*both Directors*". When Deccan Group became a majority shareholder in August 2020, a unanimous resolution was passed on October 26, 2021, *i.e.*, one year after acquisition of the

majority shareholding by Deccan Group, to amend Article 68 and drop the requirement of "*both Directors*" from the quorum of Board meetings. However, the said phrase was retained in Article 69. Thus, while other articles were amended after Deccan Group's acquisition of the majority shareholding, Article 69 was left unamended. This clearly establishes that any decision of the Board can only be taken with unanimity, and Deccan Group has accepted this position. Copy of the unamended AoA of R/1 Company is at **Annexure-54** [IA (CA) No.262/2023].

The petitioners submit that the word used in Article 69 is "both", rather than "two". The literal meaning of the word "both" is "*the two without the exception of either*" or "*people or things, regarded and identified together*".

The interpretation of Article 69 as drawn by the petitioners naturally follows from the meaning of "both" as mentioned hereinabove. The petitioners submit that by virtue of Article 69, all Directors, be it 2 (*erstwhile*) or 5 (*present*) or 15 (*sanctioned strength*) have to vote unanimously to take a decision or pass a resolution. AoA is a contract between the members of a company and the company itself. It is settled law that a contract has to be interpreted in the context of its purpose and intent which is ascertained from its objectives and values.

(8) Refuting the allegation of R/2 made in his reply that Article 69 of the AoA of R/1 Company has become redundant and irrelevant after Deccan Group's acquisition of a majority shareholding in R/1 Company, the petitioners state that even though several amendments

were made to AoA of R/1 Company after acquisition of majority shareholding by Deccan Group in R/1 Company, including that on 26.10.2021, Article 69 was left untouched and unamended.

The petitioners submit that from the incorporation of R/1 company until 04.09.2023 (when Board Meeting was held and when Deccan Group acquired 75% shareholding) all the resolutions were passed with unanimity. There was no disagreement during that period. From 19.08.2020 to 04.09.2023 about 55 resolutions were passed. List of all such unanimous resolutions passed by the Board of R/1 company since its incorporation is at Annexure-55 [IA (CA) No.262/2023].

The petitioners further submit that the following incidents which had taken place during the Board Meeting dated

04.09.2023 prove the acts of oppression committed by respondents no.4 to 6:

(a) The Petitioner No. 2 and Dr Yadagiri Reddy Pendri opposed the following resolutions:

- Appointment of the COO,
- Appointing a common COO for the Respondent No. 1 Company and EBPL, and
- Change of authorized Directors to file requisite forms with several government authorities.

However, to no avail. Respondent Nos. 4 to 6 did not bat an eye and the Chairperson passed the resolution based on majority vote. Principles of good corporate governance and democracy would have demanded that

the Respondent Nos. 4 to 6 resisted from passing any resolution until this Hon'ble Tribunal decided the issues.

(b) R/4 to 6 placed a revised version of the Power of Attorney providing for delegation of authority to the COO, as an afterthought to the arguments led by the Petitioners before this Tribunal on 01.09.2023 and 04.09.2023.

However, even though the revised Delegation of Authority was placed for consideration of the Board during the Board Meeting itself and never circulated in advance with the agenda, the Respondent Nos. 4 to 6 repeatedly attempted to coerce the Petitioner No. 2 and Dr Yadagiri Reddy Pendri to agree to the revised Delegation of Attorney. However, Petitioner No. 2 and

Dr Yadagiri Reddy Pendri did not succumb to such coercion.

(c) Oppressive and prejudicial conduct of the Respondent Nos. 4 to 6 is writ large from the fact that they attempted to 'mute' their mics and have an internal meeting amongst themselves during the open Board Meeting. Petitioner No. 2 and Dr Yadagiri Reddy Pendri fairly repeated that the resolution with respect to the Power of Attorney may be taken up in the next Board Meeting. It was only after a constant back and forth that the Chairman agreed to defer the agenda to the next board meeting.

(d) Similarly, when the resolution for change in the authorized Directors to file the requisite forms with several government authorities was tabled for discussion,

the Respondent Nos. 4 to 6 maintained that **any one** Director is required by law to file the requisite forms with the government authorities. Petitioner No.2 and Dr Yadagiri Reddy Pendri objected by stating that Respondent Nos. 4 to 6 could have "added" their names "in addition to" the names of the Petitioner No. 2 and himself and further, sought a clarification on what was the occasion to "remove" the names of the Petitioner No. 2 and himself altogether. However, without any cogent clarification, the Chairman illegally passed the said resolution amidst a constant opposition by Petitioner No. 2 and Dr Yadagiri Reddy Pendri, based on majority vote in violation of the Article 69.

(e) Change in authorized signatories of the bank accounts of the R/1 company as submitted by the petitioners in Para Nos. 23 and 24 hereinabove.

The petitioners submit that as alleged in the petition certain employees of R/7 Company were deployed at the facilities of Escientia Group in India, who indulged in a variety of suspicious activities, including but not limited to, copying of records and video recording processes. R/2 Company has taken upon itself to justify such acts by naming such people, *i.e.*, Venkata Poruri and David Drouard, and justifying their presence in the facilities of Escientia Group by placing on record certain irrelevant emails showing that the said employees were allotted email IDs of Escientia domain names, which fact is

patently false inasmuch as use of email IDs of a particular domain is not indicative of anything in particular.

R/2 Company has admitted that senior officers of R/7 Company were in fact, placed at the facilities of the Escientia Group.

The petitioners submit that upon Deccan Group's infusion of capital into Escientia Switzerland AG and its consequent renaming to Primopus AG, said David Drouard sent email dated 13.10.2022 (Annexure-56 enclosed to IA (CA) No.262/2023) to Marcel Velterop stating that:

> "*everything is broken up with Escientia and that there is a complete split in terms of business*",

Besides, Deccan Group deployed four more individuals viz.

(i) Mr Prasad Hujare, Fresher Trainee,

(ii) Ms. Smita, Fresher Trainee,

(iii) Mr S. Gurijala (*5 years' experience*), and

(iv) Mr P.M. Selvarajan (~ *5 years' experience*)

who photographed/ videographed confidential processes at the facilities of R/1 Company, all under the garb of majority shareholding.

The petitioners submit that R/2 Company has specifically admitted in its Counter that EBPL made a cash infusion of CHF 200,000 in Escientia Switzerland AG. This would have been impossible if R/2 Company's averments regarding the precarious financial situation of Escientia Group were true.

(9) As regards acquisition of '$1' unit in Muttenz, Switzerland, R/2 Company has placed on record an Asset Purchase Agreement dated 10.09.2020 and several correspondences exchanged between Petitioner No. 2 and R/9 with regard to financial viability of said acquisition. Such documents do not prove anything to the contrary.

The petitioner points out to the correspondence exchanged by R/9 which signifies that Escientia Group's investment in the Swiss entity was unprofitable/ poor. The petitioners produce copies of e-mail correspondence taken place between R/9, petitioner no.2, R/8 are annexed as Annexures 56 to 61 [IA (CA) No.262/2023].

(10) The petitioners also allege oppression and mismanagement in regard to Escientia Switzerland AG *inter alia* related to the Deccan Group's refusal to return

the capital of CHF 200,000 infused by EBPL. It is an admitted and uncontroverted position that owing to the Petitioners' concerns of financial viability and non-availability of surplus capital to fund Escientia Switzerland AG, Deccan Group infused a large capital into Escientia Switzerland AG, rendering EBPL to be only a miniscule shareholder.

The petitioners submit that as regards submissions of R/2 *qua* the actions undertaken in Primopus AG clearly demonstrate the intention of Deccan Group to choke and snuff out Escientia Group. Admittedly, Deccan Group has invested INR 95 crores in Escientia Group for its 75% shareholding. However, Deccan Group has clearly conceded that it has invested a substantially higher sum in Primopus AG. Therefore, it becomes abundantly clear

that Deccan Group has more to lose if Primopus AG fails, than if a systematic takedown of the Escientia Group is undertaken by siphoning off business from Escientia Group to Primopus AG. Thus, Deccan Group's intention is to ensure that their investment in Primopus AG, which is far higher than its investment in Escientia Group, succeeds to the detriment of the Escientia Group.

The petitioners submit that the only response of R/2 to the Petitioners' allegations of oppression and mismanagement made with regard to siphoning Eli Lilly to Primopus is that:

(i) Primopus had no relationship with Eli Lilly in past or present.

(ii) Neither Primopus, nor R/1 Company got the business from Eli Lilly, therefore there is no loss or gain to any party, and

(iii) Eli Lilly required a Swiss supplier.

The petitioners submit that R/2 Company has not even attempted to respond to the allegations with respect to several correspondences placed on record by the Petitioners which clearly shows that the employees/ nominees of Deccan Group attempted to siphon off the business from Escientia Group to Primopus. Copy of LinkedIn profile of R/6 is at **Annexure-64** [IA (CA) No.262/2023].

That R/2 Company has attempted to obfuscate the fact that it was Dr Yadagiri Reddy Pendri and P/2, who introduced Escientia Group to Eli Lilly and made tireless

attempts to secure business from Eli Lilly from as early as in 2016, when Deccan Group was not even involved in Escientia Group in any manner. In support of the aid contention the petitioners drew attention of the Tribunal to certain facts as narrated in para 85 (page 95) of the Rejoinder by enclosing certain e-mail communications and other documents at Annexures-65 to 73 [IA (CA) No.262/2023].

(11) The petitioners further submit that owing to constant efforts from the Escientia Group, Eli Lilly executed a Confidential Disclosure Agreement (CDA) with Escientia Group. Meanwhile, Escientia Group secured a Request for Information ("RFI") for valuable drug Tirzepatide from Eli Lilly in June 2022. The following crucial points are highlighted from the above RFI:

(i) "Escientia Life Sciences" *i.e.*, Escientia USA, submitted the RFI;

(ii) All details filled in the "*Experience and Development Capabilities*" section of the RFI mentioned the entire prior experience of Dr Yadagiri Reddy Pendri, Petitioner No. 2 and the Escientia Group, without any mention of the Deccan Group or the Swiss entity;

(iii) All details in the "*Equipment and Capacity Requirements*" section of the RFI referring to operational capacity were that of the Vishakhapatnam plant of the Respondent No. 1 Company, without any mention of the Deccan Group; and

(iv) The "*QA and HSE*", i.e., quality assurance, and "*Analytical*" sections of the RFI had details of the systems of the Respondent No. 1 Company and Escientia Biopharma Private Limited, without any mention of the Deccan Group.

Unfortunately, the Respondent No. 2 Company has suppressed the complete copy of the RFI, which at the very first glance, demolishes the case of the Respondent No. 2 Company.

True copy of complete RFI sent to Eli Lilly on behalf of the Escientia Group on 01.07.2022, along with email dated 16.06.2022 showing entire R/1 Company and EBPL teams filling up the RFI, is at **Annexure-75 (Colly.)** [IA (CA) No.262/2023].

(12) A Request for Proposal ("**RFP**") follows a successful RFI. On 06.09.2022, an email was received from Eli Lilly wherein the RFP was issued by Eli Lilly to the Escientia Group, which was shockingly never shared with any of the hundreds of employees of the Escientia Group, including the Petitioner No. 2 or Dr Yadagiri Reddy Pendri, which is a clear proof of siphoning away of business. In fact, all subsequent negotiations / communications of the Deccan Group with Eli Lilly placed on record, proves the Deccan Group's efforts to siphon away the proposed business from Eli Lilly to Primopus.

Owing to the confidential nature of the document, a redacted version of the RFP dated 05.09.2022 is enclosed at **Annexure-76** [IA (CA) No.262/2023].

At this stage, it is relevant to point out that the RFI and RFP issued by Eli Lilly are inextricably linked to each other, which is evident from Mr Marcel Velterop's email dated 01.07.2022, wherein, he had stated that the RFI is related to the recent approval granted to Tirzepatide. Further, Mr Marcel Velterop wrote to Mr Martin Ghosh on 06.09.2022 stating that "*on the back of submitting the RFI for amino-acids, I just received a new RFP for a related compound*" which clearly links the RFI with the RFP.

True copies of the emails dated 01.07.2022 and 06.09.2022 are at **Annexure-77 (Colly.)** [IA (CA) No.262/2023].

Shortly after receiving the RFP, the Respondent No. 6 mobilized Deccan Group's employees on a war footing

and started internal communications with Mr Marcel Velterop and Respondent Nos. 8 and 9 to the complete exclusion of the founders of the Escientia Group in a desperate attempt to siphon away the major business opportunity to the Deccan Group [*Annexure 22 (Colly.) to the Petition*].

(13) The Petitioners' case for oppression and mismanagement is further established by an email dated 14.09.2022 sent by the Respondent No. 9 to the employees of the Respondent No. 7 Company and Mr Marcel Velterop wherein, it was mentioned in clear terms that the Eli Lilly business was intended to be executed in Muttenz (*Swiss plant which had been taken over by the Deccan Group and about to be renamed to Primopus*).

Copy of email dated 14.09.2022 is at **Annexure-78** [IA (CA) No.262/2023].

Thereafter, the Respondent No. 6 sent a detailed email dated 04.10.2022 wherein it was made crystal clear that Eli Lilly project is of strategic importance for the entry of the Deccan Group into the pharmaceutical CDMO business (*Annexure-23 to the Petition*). Similarly, upon receiving the RFP, Mr Marcel Velterop stated in his email dated 06.09.2022 [*Annexure 77 (Colly.) hereinabove*] that "*Proposal from Muttenz site*" and "*However this is exactly what we want to Muttenz CDMO future*". Importantly, Mr Marcel Velterop sent an email dated 14.10.2022 to the Deccan employees, including the Respondent No. 6, stating that

> "*The Lilly drug is getting exceptional press and looks to be a winner in the next few years so worth the effort and getting in would really launch Deccan's pharma efforts through Primopus.*"

Copy of e-mail dated 14.10.2022 is at **Annexure-79** [IA (CA) No.262/2023].

At this stage, it is also relevant to point out a meeting invite circulated by Mr Marcel Velterop on 16.09.2022 to the Deccan Group's team (to the complete exclusion of the Petitioners, Dr Yadagiri Reddy Pendri and the entire Escientia team) wherein, he made the following statements which clearly proves that Eli Lilly business was intended to be siphoned off to the Deccan Group:

(a) "*Goa has already started work on the costing*",

(b) "*However, we have to review and map this in Muttenz both non-GMP and GMP*",

(c) "*In Deccan Goa, Vivek is helping me with...*",

(d) "*First delivery from Mitten 1500kg by June 2024 and from 2025 onwards close to 2mt/quarter*",

(e) "*RFP was triggered as a result of our input here*", and

(f) "*I will try to bring initial inputs from the Goa team.*".

Copy of said meeting invite dated 16.09.2022 is at **Annexure-80** [IA (CA) No.262/2023].

(14) The petitioners pointed out that on 10.10.2022, Mr Marcel Velterop, who had by now become an agent of Deccan Group, sent e-mail to Eli Lilly stating that his parent, recently acquired the full ownership of Escientia Switzerland AG and has renamed the company Primopus AG (*Annexure-24 to the Petition*). It is relevant to point out that Eli Lilly wrote back to Mr Marcel Velterop on the very same day, i.e., 10.10.2022 asking for other details in relation to Escientia Switzerland AG's

renaming to Primopus AG. However, no reply was sent to Eli Lilly on the said request which clearly shows the guilty mind of the Respondents herein.

Copy of e-mail dated 10.10.2022 sent by Eli Lilly is at **Annexure-81** [IA (CA) No.262/2023].

(15) The petitioners submitted that Mr. Marcel Velterop presented the Eli Lilly business to the top-most management of the Deccan Group and Deccan Group decided to divert it to Primopus without any discussion at all with the Petitioners. In the email dated 19.10.2022, Mr Velterop clearly mentioned that GS (Respondent No. 8) has given a go-ahead for executing the Eli Lilly project in Muttenz.

Copy of e-mail dated 19.10.2022 is at **Annexure-82** [IA (CA) No.262/2023].

At this stage, it is relevant to point out the actual potential of the Eli Lilly opportunity for the Escientia Group, which was USD 1.3 Billion (*approximately INR 10,900 Crores*). The aforementioned conclusion is reached on the Deccan Group's own calculation of the costing of the RFP per KG in the following manner:

(a) R/6 sent email dated 02.11.2022 to Mr Marcel Velterop and R/9 stating that the minimum costing for the RFP would be USD 12,000 per KG, and may go up to USD 15,000 per KG. Copy of email dated 02.11.2022 is at **Annexure-83** [IA (CA) No.262/2023].

(b) As per the FDA's records, the last patent in relation to Tirzepatide (subject matter of the RFP) is valid until 14.06.2039. Relevant screenshot from the FDA's website is being filed by way of an

Application for filing additional documents and is marked as **Annexure-84** therein.

(c) As per the RFP (*Annexure 76 hereinabove*), the Escientia Group was required to supply up to 7800 KGs per annum to Eli Lilly starting from January 2025 (without an end date). Thus, it is safe to assume that the supplies would at least continue until the drug is patented, i.e., until 2039.

(d) In light of the above, the value of the RFP can be easily calculated in the following manner:

[*(costing per KG) * (quantity to be supplied) * (number of years)*], i.e., USD [12000*7800*14] = USD 1.3 Billion (*approx.*).

Thus, the Escientia Group was being considered by Eli Lilly to be the CDMO manufacturer for Tirzepatide supply chain, a blockbuster drug all over the world, wherein, the Escientia Group would have done business worth USD 1.3 Billion (*approximately INR 10,900 Crores*) from Vishakhapatnam. The Deccan Group is well aware of the traction received by Tirzepatide, which is evident from Mr Marcel Velterop's email dated 01.07.2022 [*Annexure 77 (Colly.) hereinabove*] and email dated 06.12.2022. Further, the Respondent No. 6 made similar statements in his email dated 24.09.2022. Copy of Mr. Marcel Velterop's email dated 06.12.2022 is at **Annexure-85** [IA (CA) No.262/2023]. Copy of E-mail dated 24.09.2022 sent by R/6 is at **Annexure-86** [IA (CA) No.262/2023].

Deccan Group successfully siphoned away this opportunity in an attempt to manufacture and supply the drug from Primopus, Switzerland, which is clear proof of the oppressive and prejudicial conduct of the Deccan Group.

(16) The petitioners further submit that the averment of R/2 that Eli Lilly does not work with Indian manufacturers and required a European partner is not only false but patently disingenuous and contrary to public record. Eli Lilly has had a consistent history of working with Indian CDMOs, including but not limited to Jubilant Organosys, Dr Reddy's, Sun Pharma, Ranbaxy, and Sai Life Sciences. Mr. Marcel Velterop is himself aware of the same as his previous employer, i.e., Sai Life Sciences, was also a CDMO vendor to Eli Lilly,

as is borne out from his email dated 09.09.2021. Therefore, such a submission on the part of Respondent No. 2 Company is patently false and cannot be considered by this Hon'ble Tribunal. Copy of email dated 09.09.2021 sent by Mr Marcel Velterop is at **Annexure-87** [IA (CA) No.262/2023].

(17) The petitioners referred to the contention raised by R/2 Company that Marcel Velterop --

> "*was not under any obligation to assist … the Escientia Group*" because it had "*stopped all payments for the services of Mr. Marcel Velterop from 01.08.2022 without any formal communication to Mr. Marcel Velterop*".

The petitioners submit that Escientia Group, in fact, made payment to Mr. Velterop as late as 03.08.2022. However, Mr. Velterop's consulting firm, i.e., Jamna Pharma Management & Consultancy AG, refused to provide any proper tax invoices for ad hoc payments of over USD 531,000 (*more than INR 4 Crores*) made by Escientia

USA to said Jamna Pharma Management & Consultancy AG, for the reasons best known to them.

Such a non-compliance has incapacitated Escientia Group from processing any further payment requests. Escientia Group sent a letter dated 11.02.2023 to said Jamna Pharma Management & Consultancy AG asking for relevant invoices, but in vain. The petitioners submit that compliance and payment related issues with Jamna Pharma Management & Consultancy AG cannot be considered as a permit for Mr Marcel Velterop to assist R/ 2 – 9 in siphoning away the business and clients of Escientia Group to Deccan Group. Copy of letter dated 11.02.2023 is at **Annexure-88** [IA (CA) No.262/2023].

(18) The petitioners further submit that Mr. Marcel Velterop forwarded a rather smaller RFP [for USD

18,500 (INR 14 lakhs approximately)] received from an existing customer, Biontech, to Escientia Group. Mr. Velterop could not divert Biontech RFP to Primopus, because quick delivery of R&D grade material was needed, and only the R&D center of EBPL had the requisite technology immediately available to quote on the low-value project. The petitioners submit that this shows the conscious attempt of R/ 2–9, acting through Mr.Velterop, to divert a comparatively larger business opportunity to Deccan Group, while giving an impression that Mr Velterop was working in the best interest of Escientia Group.

Copies of e-mail dated 09.09.2022 containing RFP received from Biontech along with the proposal dated

21.09.2022 sent by Escientia USA are at **Annexure-89 (Colly.)** [IA (CA) No.262/2023].

Constant attempts of R/2 – 9 to siphon away the business and clients and business opportunities of Escientia Group, such as, Eli Lilly are further bolstered by the fact that R/2-9, including Mr Marcel Velterop, have also attempted to siphon away one of Escientia Group's oldest and most valuable customers, GlaxoSmithKline ("**GSK**").

(19) The petitioners submit that Escientia Group onboarded GSK as one of its customers after constant efforts by Petitioner No. 2 and Dr Yadagiri R Pendri. After great difficulty, Escientia Group executed a Quality Assurance Agreement dated 14.11.2018 with GSK and became a qualified vendor. Thereafter, Escientia Group

has executed multiple business assignments for GSK and has developed a long-standing relationship. Copies of e-mails dated 19.01.2018, 21.02.2018, 20.03.2018, and 12.04.2018 exchanged between Petitioner No. 2 and Dr Yadagiri Reddy Pendri are at **Annexure-90 (Colly.)** [IA (CA) No.262/2023]. Copy of Quality Assurance Agreement dated 14.11.2018 is at **Annexure-91** [IA (CA) No.262/2023]. Copies of various invoices issued by Escientia Group to GSK are at **Annexure-92 (Colly.)** [IA (CA) No.262/2023].

The petitioners further submit that Mr Marcel Velterop, upon instructions from R/2-9, sent e-mail dated 12.10.2022, wherein he attached the Press Release (*Annexure-19 to the Petition*) to GSK stating that:

> *"attached a PR for reference but in essence Deccan acquired all shares and we are now a wholly owned subsidiary".*

Subsequently, Mr Velterop sent an email dated 14.11.2022 to GSK requesting for a meeting to introduce GSK to "*our Deccan owners*". Mr Velterop was advertising Primopus to GSK and soliciting business from them in an attempt to cut it off from the Escientia Group. Copies of e-mails dated 12.10.2022 and 14.11.2022 are at **Annexure-93 (Colly.)** [IA (CA) No.262/2023].

(20) The petitioners submit that Deccan Group has committed oppressive and prejudicial conduct by harming the financial interests of R/1 Company to the tune of around Rs.1 Crore by supplying raw material at exorbitantly high costs, viz, INR 9250 per kg conversion cost, as opposed to INR 2550 per kg conversion cost that R/1 Company was earlier paying for the same product.

Copies of a few invoices issued by external vendors to R/1 Company for the raw material are at **Annexure-94 (Colly.)** [IA (CA) No.262/2023]. Copy of invoice dated 04.09.2021 issued by R/7 Company to R/1 Company for an amount of INR 1.18 Crore for the raw material conversion cost is at **Annexure-95** [IA (CA) No.262/2023].

Justification :

(21) The petitioners submit that R/2 sought to justify the above oppressive act saying that it had to recover the capital expenditure incurred by it for manufacturing the said raw material. However, no document is placed on record to show that R/1 Company approached Deccan Group to manufacture and supply the said raw material to R/1 Company. The Petitioners submit that Deccan Group

compelled R/1 Company to purchase the raw material at such high costs. R.2 Company cannot justify the oppressive and prejudicial conduct aimed at R/1 Company by citing its own financial interests.

The petitioners submit that in an oppressive and coercive manner, Escientia Group and its employees were forced to buy raw materials from Deccan Group leading to an easily avoidable loss of about INR 1 Crore. Mr Sanjay Vaishnava sent email dated 07.10.2021 to P/2 and Dr Yadagiri Reddy Pendri stating that despite his opposition for procurement of the raw material from Deccan Group, Mr R.S. Dwarakanath continued to pressurize R/1 Company into purchasing the same from Deccan Group. Mr Vaishnava further stated that if the procurement of raw material from the Deccan Group did not stop, the loss

to the Respondent No. 1 Company would have reached INR 3+ Crores. Copy of email said dated 07.10.2021 is at **Annexure-96** [IA (CA) No.262/2023].

Upon getting alarmed by the strong opposition shown by P/2, Dr Yadagiri Reddy Pendri, and Mr Sanjay Vaishnava, Mr R.S. Dwarakanath sent an email dated 06.10.2021 to R/9, wherein, Mr Dwarakanath admitted that:

(i) Deccan Group was supplying raw material to R/1 Company at a very high cost,

(ii) Deccan Group should not lose the income it was generating (INR 60 Lacs per month) from manufacturing a different product at the same unit used for manufacturing the raw material (*which also*

proves that the Deccan Group did not set up any additional facility), and

(iii) Deccan Group should reduce the price of raw material

Copy of email dated 06.10.2021 sent by Mr R.S. Dwarakanath is at **Annexure-97** [IA (CA) No.262/2023].

(22) It is contended that, Anup Gupta is a resident of the USA. He was CFO of Escientia Group. R/2 Company has in its 'Preliminary Counter Affidavit' placed on record an irrelevant and inadmissible email sent by one Anup Gupta to R/4 stating that he does not support the present Petition. The petitioners submit that said Anup Gupta is a resident of the USA. He does not have representation on the Board of Directors in P/1 Company. Besides, his employment in Escientia Group was

terminated on 08.10.2020. Copy of termination notice dated 08.10.2020 issued to Anup Gupta is at **Annexure-98** [IA (CA) No.262/2023].

(23) PARA-WISE COMMENTS:

The petitioners have answered the submissions/ contentions of Reply filed by R/2 as under:

The petitioners denied/ refuted most of the averments made by R/2 in its Reply. The same are taken note of.

While answering paras no.19, 20 and 35 to 39 of the Reply, the petitioners submit that SHA was not executed notwithstanding the unequivocal understanding that a SHA shall be made a pre-condition for execution of the share purchase agreement.

It was decided that execution of SHA would be deferred to allow Flextronics to exit in a timely manner by executing a SHA immediately. The aforesaid factual context is also evident from R/9's e-mail dated 22.04.2020 wherein he stated that he was okay not concluding a SHA only due to the "*time pressures*" and he himself saw failure to conclude a shareholders agreement prior to entering into a share purchase agreement as "*a big compromise*" (*Annexure 3 of the Reply*).

As such, the Respondent No. 2's submission that there was no obligation to enter into a SHA is factually and legally incorrect, and an attempt to renege on the promises made to the Petitioners. Finalization of a SHA was merely deferred in the interest of time. The

petitioners further submit that the foregoing fact is further evident from the stated object of the Share Purchase Agreement which was limited to:

> "*set forth the terms and conditions for the sale and purchase of the Sale Shares, and their mutual rights and obligations in relation thereto*".

The same should be read in contradistinction to the stated object of the Draft SHA, which provided under Recital-D to the agreement dated 10.04.2023 shared by the Petitioner (*Annexure 6 to the Petition and Annexure 7 (Colly.) to the Reply*) which is:

> "*to set forth their respective rights, powers and interests with respect to the Company and their respective shares therein and to provide for the management of the business and operations of the Company.*"

(24) The petitioners submit that aforesaid clauses signify that while the object of the share purchase agreement was limited to providing the terms and conditions for the sale and purchase of shares, the object of a SHA is to prescribe

the *inter-se* rights between the shareholders in managing the company.

(25) In view of the above the petitioners submit that subject matter of the Share Purchase Agreement is entirely different from a SHA and Sections 91 and 92 of the Indian Evidence Act, 1872 itself allows leading oral and documentary evidence on contents of a contract which have not been reduced to writing.

The petitioners submit that clause 13.2 of the Share Purchase Agreement (*Entire Agreement*), provides that:

> "*The Escientia Transaction Documents (together with any amendments or modifications thereof) will constitute the entire agreement and understanding among the Parties in relation to the matters contained therein and supersedes all previous correspondence and information exchanged between the Parties (whether written or oral) prior to the date of this Agreement."* In this regard, it is submitted that clause 13.2 makes it abundantly clear that the Share Purchase Agreement was deemed to be definite only *qua* the "*matters contained therein*",

i.e., the matter of share purchase and not anything in relation to the *inter se* relationship of shareholders, which

is more properly defined in a SHA or AoA. This being the position, R/2 Company cannot now seek refuge behind the Share Purchase Agreement as being conclusive as to the relationship between the parties. Furthermore, it is submitted that R/2 is estopped from maintaining that a SHA was never supposed to be executed, basis its own conduct.

(26) The petitioners further submit that through e-mails dated 31.03.2023 and 29.03.2022 (*Annexure 10 and Annexure 11 to the Petition, respectively*), the Petitioner No. 2 shared the Draft SHA with R/9 and communicated that:

(a) the execution of the shareholders agreement had been postponed purely on the strength of the

Petitioner No. 2's personal relationship with the Respondent No. 9; and

(b) requested R/9 to share his views on the draft for discussion.

R/9 has failed to do so. The petitioners submit that on 23.02.2023 R/6 *vide* e-mail even highlighted certain issues to the Petitioners about the Draft SHA (*Annexure 17 of the Petition*). In light of the aforesaid facts, the Respondent No. 2 along with the Respondent No. 9 have consistently led the Petitioner to believe that they are in the process of reviewing the draft SHA for the purpose of its execution.

The petitioners submit that at this juncture, they cannot deny that a SHA was not supposed to be executed.

(27) Answering paras 41 to 57 of the Reply, the petitioners deny the contents of those paras in their entirety. The petitioners submit that the proposal to appoint a COO and grant him virtually all powers concerning the operation and management of the Respondent No. 1 Company is contrary to the understanding between the Petitioners and the Deccan Group that the Deccan Group shall remain a passive investor and not interfere in the day-to-day affairs of the Respondent No. 1 Company. As founders, minority shareholders in the Respondent No. 1 Company, and subject area specialists, the right to manage the day-to-day affairs of the Respondent No. 1 Company is fundamental to the Petitioners (specifically Dr Yadagiri Reddy Pendri and Petitioner No. 2) and deprivation of

this right will reduce the Petitioners' involvement in Respondent No. 1 Company, a company that they have painstakingly built from scratch, to naught. As such, the resolution proposed by the Respondent No. 2 was oppressive by its very nature. The contents of the Preliminary Objections/ Submission set out hereinabove are reiterated and incorporated by reference. The Respondent No. 2 has furnished the following reasons for appointment of a COO, to which the petitioners responded as below:

Contention of R/2	**Response of the petitioners**
(a) Considering the fact that R/1 Company is dependent on production of a single product for a single buyer, its business	Said justification is merely a *façade* to hide the true intentions of R/2 to hijack the day-to-day management affairs of R/1 Company. Dr M.S.M. Mujeebur Rahman

is in a precarious position. As such, appointment of a COO shall ensure *inter alia* operational delivery and business and strategy planning.	has very little experience in pharmaceutical sector. It is *prima facie* paradoxical that R/2 suggested someone with such little experience to execute such a herculean task, particularly when R/1 Company is already in such a profitable and successful venture.
(b) R/2 has given an undertaking to maintain at least 51% shareholding and management control in R/1 Company to its bankers for term loans. Since R/1 Company is a subsidiary of R/7, the former's financial health is reflected in the	When R/1 represented to Petitioners that it wished to be a passive investor in R/1 Company, R/2 *vide* stated that it shall be raising debt for the Petitioner through its own pledges. When R/2 purchased majority stake in R/1 Company, it was well aware that all future financial reporting of R/7 shall include the financials of R/1 Company on a consolidated basis. In this context, the Respondent No. 2 by its own volition

consolidated financials of the latter.	offered to be a passive investor notwithstanding the foregoing contentions.

(28) The petitioners submit that contents of para 9A of the Reply are denied. The petitioners submit that Deccan Group represented to Petitioner No. 2 that Escientia Group was supposed to be the pharmaceutical vertical of Deccan Group and Deccan Group would not enter into an independent pharmaceutical CDMO business. Yet Deccan Group has admittedly independently entered the pharmaceutical CDMO business through Primopus, and thereby committed fraud on the Petitioners and breached the basic understanding between the Petitioners and R/2, 7, 8, and 9 regarding the Deccan Group's investment in the Escientia Group. Hence, it is denied that there is any

operation of estoppel against the Petitioners whatsoever. It is settled position that there can be no estoppel against law, and therefore if there is a violation of Section 166 (4) of the Companies Act, 2013, such violation cannot be cured given the strict nature of the provision. Copy of Commercial Register of Canton Basel-Landschaft showing R/2 Company's investment in Primopus AG as of 02.03.2024 is at ANNEXURE-112 [IA (CA) No.143 of 2024].

Extract of Primopus AG's financials for FY ending 31.03.2023 from the standalone financial statements of R/7 Company for FY ending 31.03.2023 is at ANNEXURE-113 [IA (CA) No.143 of 2024].

(29) The petitioners submit that contents of para 35A of the Reply are denied. The petitioners submit that the facts

and circumstances have been suppressed with *mala fide* intent by R/2. It is clear that there was no "*behind the back strategy*" adopted by R/2 in relation to MSA extended by Biohaven. To the contrary, MSA was assigned to Escientia Life Sciences USA by Escientia Switzerland AG simply because Escientia Switzerland AG had no ability to fulfil the terms of the MSA and with full knowledge and consent of the Deccan Group. Subsequently, the Escientia Switzerland AG was fully acquired by the Deccan Group and renamed Primopus AG. To date, Primopus AG has not paid any portion of the principal amount of USD 8 million to the Escientia USA. Copy of assignment agreement 2024 is at ANNEXURE-114 [IA (CA) No.143 of 2024].

(30) Referring to para 53 of Counter, the petitioners state that despite clear assurances given by R/9 to P/2 that Deccan Group shall not compete with Escientia Group, Deccan Group has now started a fullfledged Contract Development and Manufacturing Organization (CDMO) business which directly competes with Escientia Group for the same business and clients. The services offered by Escientia and Primopus overlap in *inter alia* the following segments:

(a) CDMO services for regulatory startup material / raw material (R&M)

(b) CMDO services for intermediaries (API starting material)

(c) CDMO services for API, and

(d) CDMO services for Chemistry Manufacturing and Control (CMC), process development (Process R&D).

Geographically, both Escientia and Primopus are seeking clients from the same parts of the world and both entities market themselves to international clientele. Petitioner no. 2, *bona fide* sought an opinion on whether Primopus and Escientia are competing entities from Mr. Ashok Chawla, former Chairperson of the Competition Commission of India (CCI). In his opinion dated 15.04.2024, Mr. Ashok Chawla unequivocally concluded that Escientia and Primopus were directly competing entities. As such, it is absurd for R/2 to deny that Escientia Group and Primopus are not competing ventures. The contents of the Preliminary Objections/ Submission and the Para-wise Reply set out hereinabove are reiterated and incorporated

by reference. Opinion dated 15.04.2024 issued by Mr. Ashok Chawla, former Chairperson o0f CCI is at **ANNEXURE-116** [IA (CA) No.143 of 2024].

The petitioners submit that after thorough analysis of the business of Primopus and Escientia, Mr. Ashok Chawla unequivocally concluded that:

> Besides, the petitioners submit that the Swiss site was, and continues to be, a loss-making enterprise. As prudent businessmen, the Petitioner No. 2 and Dr Yadagiri Pendri were unable to fritter away the scarce resources of the Escientia Group.

(31) Referring to para 54E of Counter, the petitioners strongly refuted the visit of R/6 to Barcelona, Spain was a private visit or it was unrelated to Primopus. The petitioners further submit that LinkedIn post regarding

the event in Barcelona, Spain (*Annexure-32*) makes clear references to Primopus. In addition to the above, the event held at Barcelona, Spain at 'Miro Museum' is also published on the official website of Primopus. Publication of the website of Primopus titled "*Primopus appreciates art, innovation and impetus*" clearly states:

> *"A big thank you **to all our clients** who attended our booth and our splendid CPHI event at the Picasso/Miro event. The splendid art is an inspiration to all those who appreciate creativity. So it is with our brand Amideus and its focus on phosphoramidites".*

As such, the Respondent No. 2 has made a false statement on affidavit, in collusion with R/6 (Executive Director of R/7) by stating that R/6 the Respondent No. 6 merely took a 'private tour' at the Miro Museum and the averments in paragraph 54E reek of the Respondent Nos. 2 to 9's desperate attempts to fraudulently suppress the role of the Respondent Nos. 4 to 6 in the management, promotion,

and/ or development of Primopus, in clear violation of their obligations under Section 166 of the Companies Act. The petitioners contend that in view of above false statement, R/2 does not deserve any further hearing.

(32) With reference to para 54F, the petitioners further submit that R/2 Company has failed to disprove that R/6 is not involved with Primopus. The petitioners further submit that the above facts prove that R/6 has made an active foreign trip for promotion of Primopus' business. The Petitioners have no problem or interest in what R/6 does in his own free time, but it assumes relevance if R/6 is actively involved in the promotion of a competing business while at the same time actively sitting on the board of R/1 Company.

Copy of the publication dated 27.10.2023 about the event held at the Miro Museum in Barcelona, Spain on Primopus' website is at **ANNEXURE-117** [IA (CA) No.143 of 2024].

The petitioners alleged that respondents no.4 to 6 played a role in Primopus as described below:

Name	**Role in Primopus**
Dandu Chakradhar (*Respondent No. 4*)	1. Director in R/2 Company, the company through which R/7 Company has invested more than INR 420 crores in Primopus AG; 2. Directly involved in the dilution of EBPL's stake in Primopus; 3. Closely involved in development and management of Primopus

	4. Shareholder (directly and indirectly) in R/7 Company, which owns and operates Primopus; Head of Corporate Development and M&A at R/7 Company, a position of substantial importance in R/7 Company.
Ajit Alexander George (*Respondent No. 5*)	Head of Treasury in R/7 Company, which means he is in-charge of major financial decisions of R/7 Company including investment into Primopus.
Mr Vivek Vasant Save (*Respondent No. 6*)	1. Executive Director and Whole time Director of R/7 Company; 2. He has significant control over all business, commercial, and financial aspects of R/7 Company, including Primopus. 3. He has admittedly attended business development event in Barcelona, Spain on behalf of Primopus.

(33) Referring to para 59P of the Reply the petitioners denied that Mr. Marcel Velterop, a consultant of R/7 company, was not under an obligation to assist Pendris and/ or Escientia Group. The petitioners submit that Mr. Marcel Velterop himself represents to be in the employment of Escientia Life Sciences USA until October 2022. More than Mr Marcel Velterop, duties and conduct of R/ 2 to 9 are of importance. R/ 2 to 9 were aware of the role and importance of the Escientia Group in the negotiation and RFI with the Escientia Group. If this was not the case, the RFI would never have been sent to the Escientia Group much less the Escientia Group would have been asked to fill it. If the RFI was completely dependent on Escientia Switzerland AG, then there was no need for it to be shared with the Petitioners or that the

Petitioners fill it. Deccan Group's intent was clear, use the Escientia Group's capabilities to secure an RFI and then illegally use it to kickstart the dormant facility in Switzerland by excluding Escientia Group. R/2 to 9 now cannot deny Escientia Group's importance to the transaction. Despite being aware of the role of Escientia Group and the Petitioners, conduct of R/ 2 to 9 in diverting the business for itself and excluding the Petitioners was unfair, lacked probity, harsh, and prejudicial to the Petitioners. Copy of LinkedIn generated CV of Mr. Marcel Velterop is at **ANNEXURE-118** [IA (CA) No.143 of 2024].

(34) Referring to paras 68A(a) and (b) of the Counter the petitioners have denied the contents of these paras. The petitioners submit that R/2 cannot deny that Dr. Rahuman

is associated with Deccan Group. R/4 *vide* his e-mail dated 31.01.2024 (Annexure 119 filed with IA (CA) No.143 of 2024) unequivocally admitted that Dr M.S.M. Mujeebur Rahuman was 'consulting' with Deccan Group from May 2023 to August 2023. Order dated 28.11.2023 in IA No.263/2023 in CP (IB) No. 45/241/HDB/2023 is merely interim in nature; it does not determine the contentions raised by the Petitioners. The petitioners reiterate their submission that decision to appoint Dr Rahuman was made by R/4 to 6 in violation of the AoA and the Companies Act, 2013.

Post e-mail dated 06.07.2023 sent by petitioner no.2, the board of directors of R/1 Company convened a meeting on 11.08.2023. At the aforesaid meeting, there was no

discussion whatsoever regarding the movement of machinery. As such, it is evident that:

(i) The raising of equipment movement issue at this stage was a red herring to distract from the larger issues at play;

(ii) R/ 4 to 6 themselves believed that the issue of movement of machinery was adequately addressed and it requires no further action.

Minutes of the meeting of the board of R/1 Company held on 11.08.2023 2024 are at **ANNEXURE-120** filed with IA (CA) No.143 of 2024. The petitioners submit that in light of the forgoing facts and circumstances, it is evident that the allegations raised by R/2 with respect to movement of machinery are false.

Referring to para 68D of the Counter, the petitioners deny the contents of this para. The petitioners further deny that appointment of a COO or other changes brought by the Respondent Nos. 2 – 9 are by any means necessary for R/ 1 Company. The petitioners further say that a bare perusal of the resolutions illegally declared by R/ 4 – 6 would evince that none of the resolutions are necessary for the growth of R/ 1 Company. These resolutions include:

(a) Appointing a COO for a thriving and successful company

(b) Changing bank signatories for the Respondent No. 1 Company

(c) Engaging a big 3 consulting firm to look into the purported issue of movement of machinery

(d) Changing the organizational structure of the Respondent No. 1 Company

(e) Supplying confidential information of the Respondent No. 1 Company to a COO who is the agent of the Deccan Group

(f) Removal of the Company Secretary of the Respondent No. 1 Company.

All the above resolutions are adopted with the sole objective of hijacking the affairs of R/1. Table of resolutions passed by R/ 4 – 6 is at ANNEXURE-121. with IA (CA) No.143 of 2024.

(35) After denying the rest of the paras of the Counter the petitioners disprove the prayers sought by respondent no.2 in his Counter as under:

With regard to the prayers sought by R/2 at Page 96 of the Reply, the petitioners state that the petitioners have made out prima facie case in the petition as well as in this Rejoinder for intervention by this Tribunal in the affairs of R/1 Company. Entire case of R/2 is based on conjectures and assumptions.

VI. AVERMENTS in CP No. 44/ 241/ HDB/ 2023.

This Company Petition is filed seeking declaration that the respondents 2 to 10 have acted in a manner prejudicial and oppressive to the interests of the Petitioner and Respondent No. 1 Company and for other reliefs. While so, at the behest of the Company Petitioners this Tribunal has allowed IA (CA) No.140 of 2024 for amendment of the Company Petition; and also allowed the application

for bringing additional documents on record being IA (CA) No.139 of 2024 filed on 07.05.2024 vide order dated 04.06.2024. The reliefs as prayed for in the amended Company Petition are as below:

MAIN RELIEFS:

A. Declaring that Respondent Nos. 2 to 10 have acted in a manner prejudicial and oppressive to the interests of the Petitioner and Respondent No. 1 Company;

B. Quashing the proposal of Respondent No. 4 for appointment of a Chief Operating Officer and declare the same null and void, and restraining Respondent Nos. 2 to 10 from making any other appointment with similar powers;

C. Declaring that the Respondent Nos. 4 to 7 are in breach of their obligations under section 166 of the Companies Act;

D. Appointing an independent director on the board of Respondent No. 1 Company;

E. Removing Respondent Nos. 4 to 7 from the Board of Directors of the Respondent No. 1 Company;

F. Restraining Respondent Nos. 2 to 10 from interfering with the day-to-day functioning and management of the affairs of the Respondent No. 1 Company;

G. Directing Respondent No. 2 to 10 ensure clear separation between the persons nominated on the board of the Respondent No. 1 Company or any other person having access to Respondent No. 1 Company and its information, from any competing business including that of Primopus AG;

H. Restraining Respondent Nos. 2 to 10, their principals/ directors, their promoters, managers, assigns, successors-in-interest, licensees, franchisees, sister concerns,

representatives, servants, distributors, agents, etc. and/ or any person or entity acting for them from entering into any contract of supply/ services or otherwise with the Respondent No. 1 Company;

I. For costs of the Petition; and

J. Such further orders as this Hon'ble Tribunal is empowered to pass under Section 242 of the Companies Act, 2013 and mould reliefs as it considers fit and proper in the circumstances of the case to bring an end to the matters complained of.

(1) The acts alleged to be amounting to oppression and mismanagement committed by respondents no.2 to 10 are summarized as under.

(a) R/2, 3, 8, 9 and 10 collectively have nominated whole-time director / key managerial personnel /senior employees of several companies of the Deccan Group, *i.e.*, R/ 4 to 7, as

Directors on the board of R/1 Company and its sister concerns, viz. Escientia Advanced Sciences Private Limited ("**EASPL**") and Escientia Life Sciences, LLC, USA ("**Escientia USA**"), whose sole interest and intention appear to be working towards the detriment of R/1 Company and benefit of Deccan Group by way of their acts. Such acts would benefit the competing business of Deccan Group, viz. Primopus, which operates out of R/8's facility in Goa, India, and also in Switzerland.

(b) The express agreed understanding is that R/ 2 to 10 to remain passive investors in R/1 Company. However, they made attempts to take over the management and control of R/1 Company to siphon off know-how of R/1 Company and to promote competing business of R/8.

(c) In order to denude the Petitioners and R/11 and 12 of their powers to manage R/1 Company, R/ 2 to 10 conspired with each other, moved an agenda for a board meeting

scheduled to take place on 05.09.2023 for appointing a Chief Operating Officer ("**COO**") for R/1 Company. Remuneration proposed for COO is 3 to 4 times higher than the remuneration paid to the existing senior employees in the management of R/1 Company. A Power of Attorney sought to be issued in favor of the proposed COO, granting him all powers in relation to management and control of R/1 Company.

(d) R/2 to 10, while representing to the Petitioners that Escientia Group will be the only pharmaceutical arm of Deccan Group and that Deccan Group will not enter into this sector, have in fact entered into the same line of business independently through R/ 8 under the brand name '*Primopus*', and *via* another entity, *i.e.*, Primopus AG (which was also attempted to be revived by the Deccan Group using funds from the Escientia Group before being entirely acquired) and are directly competing with the

business of R/1 Company, with the direct involvement of the nominee directors of the Deccan Group on the board of Respondent No. 1 Company.

(e) Financial transactions caused by R/ 2 to 10 on behalf of R/1 Company are gravely prejudicial to its financial condition. R/ 2 to 10 have led R/1 Company to source certain raw material at far higher prices to unjustly benefit other companies of Deccan Group. Further, certain debt transactions carried out on behalf of Escientia Group smacks mismanagement. Besides, Escientia Group was made to extend credit to Deccan Group of companies at about 1/7th interest rates, as compared to the interest rates which the Respondent No. 1 Company is being made to pay to the Deccan Group. The Deccan Group has recently defaulted on its interest payments towards such loans to the Escientia Group.

(f) R/2 to 10 have consistently ignored the repeated requests of the petitioners and R/11 and 12 to execute a shareholders' agreement wherein the rights and liabilities of the parties are to be clearly delineated. R/ 2 to 10 have refused to negotiate with the draft shareholders' agreement (SHA) provided by R/ 12 and petitioner No.1.

(g) Since 2021 till mid-2022, employees of R/8 Company deployed at the facilities of Escientia Group in India undertook a variety of suspicious activities including but not limited to copying of records and video-recording processes employed by Escientia Group for its manufacturing and R&D processes. These acts were justified by brazen remarks that Deccan Group as majority shareholders were entitled to do so, without considering the fact that the processes employed at the facilities of the Escientia Group are the processes of the Escientia Group's clients, under strict covenants of confidentiality. Moreover,

since filing of the present Company Petition, Deccan Group has once again made overt and brazen attempts to siphon off valuable business information of R/1 Company, through Dr M.S.M. Mujeebur Rahuman, a person appointed in an opaque manner with the sole objective of transferring Escientia Group's information to Deccan Group for the benefit of its competing pharmaceutical CDMO business, Primopus.

(2) THE EVENTS as narrated by the Company Petitioners.

(i) Founded by Dr. Yadagiri R. Pendri (P/1 herein) and Kiran Reddy Pendri (R/12 herein), R/1 company was incorporated on 22.01.2008 under the Companies Act, 1956. Certificate of incorporation is at Annexure-1. Copies of MoA and AoA are at Annexure-2. Audited Financial Report for FY 2022-23 is at Annexure-3. List

of shareholders as on 31.03.2023 is at Annexure-4. Shareholders Agreement dated 10.04.2013 entered into between R/1 and Flextronics is at Annexure-5.

(ii) Vide e-mail dated 07.02.2020 (Annexure 6, page 290 of the Company Petition) R/10 has expressed willingness to invest in R/1 company. The understanding between R/12 and R/10 is:

(a) The investment was to be 'passive', *i.e.*, Deccan Group would be a financial investor sans involvement in day-to-day affairs of the companies;

(b) Direct support from R/8 Company would be in the form of backend support, access to cheaper raw material, opening doors to Japan through R/8 Company's shareholder/ Mitsubishi Corporation

(Japan), assisting with raising debt at competitive rates, *etc*.;

(c) Collaboration would be simple and limited to investor group involvement.

(iii) Apropos above understanding R/2 company has issued a Board Resolution dated 29.07.2020 to invest an amount of Rs.95 crores in Escientia Group through its 100% subsidiary, viz. R/2 company in the following manner:

(a) Up to 74% ownership in Respondent No. 1 Company;

(b) Up to 74% ownership in EASPL; and

(c) Up to 75.21% ownership in Escientia USA through Deccan USA LLC.

(iv) The above had culminated into Share Purchase Agreement dated 03.08.2020 (Annexure-7).

Contribution of petitioners viz-a-viz Deccan Group:

- Petitioners, despite being 25% shareholders of R/1 Company, have infused INR 271.8 Crores of equity capital into R/1 Company.
- Whereas, Deccan Group had purchased Flex's 75% shareholding in the Escientia Group in August 2020 against a relatively much lesser cash payment of INR 88.86 Crores.
- Thereafter, the Deccan Group has not contributed any capital into the Escientia Group, whatsoever. On the contrary, Deccan Group has compelled Escientia Group to lend huge amounts of money to Deccan Group.

- As on date, Deccan Group, despite being a 75% shareholder of the Respondent No. 1 Company, is a significant debtor to Escientia Group and owes approximately USD 8 Million (approximately INR 66.5 Crores) to Escientia Group.

(v) The petitioners submit that despite being a minority shareholder in R/1 Company, the Petitioners' financial stake in R/1 Company is significantly greater than Deccan Group as demonstrated in the Chart produced at ANNEXURE 8 of this petition.

(vi) Since Deccan Group failed to live upto its commitments and failed to enter into shareholders' agreement with other shareholders of Escientia Group to establish passive nature of Deccan Group's investment, R/12 has sent e-mail dated 21.03.2022 (Annexure 10) to

respondents no.9 & 10, emphasizing the points (a) to (h) as stated in para 39, page 53-55 of the neat copy of the petition. R/12 has also shared draft Shareholders' Agreement (SHA) (Annexure 12) with R/9 & 10 vide his e-mail dated 29.03.2022 (Annexure 11) providing suggestions (a) to (d) as stated in para 40, pages 55-56 of the neat copy of the petition.

(vii) In the said shareholders' agreement (SHA) principle of granting affirmative rights to minority shareholders was followed as was observed in case of Mitsubishi Corporation of Japan. Mitsubishi owns 20% of shares of R/8 company. Yet AoA of R/8 provides special rights in favour of Mitsubishi at Board level as well as shareholder level. Copy of AoA of R/8 company is at Annexure 13 of the neat copy of the petition. The

petitioners submit that granting affirmative voting rights in favour of minority shareholders is a global phenomenon.

(viii) Petitioners and R/12 were thus, oppressed and sidelined to an extent that no responses were forthcoming from R/ 9 and 10 regarding future of R/1 Company or the proposed shareholders' agreement. Therefore, R/12 sent a reminder to R/9 and 10 vide e-mail dated 29.06.2022 (ANNEXURE 15) , *i.e.*, 90 (ninety) days after the email dated 29.03.2022 and requested for execution of a mutually acceptable and fair shareholders' agreement to govern the board and business in a standard, defined, and formal way, and to secure the interests of both parties. R/12, reiterated the need for in-person meeting with R/ 9 and 10.

(3) THE CONCERNS VOICED/ ALLEGATIONS LEVELLED BY RESPONDENT No.6:

(i) After several reminders by petitioner no.1 and R/12, respondent no.6 has sent e-mail dated 27.02.2023 (ANNEXURE-19) by which he made the following accusations:

(a) Deccan Group views Escientia Group as its pharmaceutical business line;

(b) Deccan Group helped Escientia Group in sending technical staff to Visakhapatnam facility (manufacturing facility of the Escientia Group), recruitment of key leadership, introducing Escientia Group to banks, providing 100% guarantee on the term and working capital debt, and providing unsecured loans to bridge deficits in project and working capital financing;

(c) All of the above was done in spite of not having transparent oversight or involvement in decision-making;

(d) Corporate governance, conduct of board meeting, secretarial compliances, regulatory notices, business plans, *etc*., have been sidelined and pending resolution by Escientia Group;

(e) Board compositions at R/1 Company and Escientia USA are 3:3 and 2:2, which need to be changed in line with 74% majority shareholding of Deccan Group;

(f) Boards of Escientia group companies after reconstitution need to have oversight of company's affairs and operations;

(g) Deccan Group needs to be involved in customer interactions, business, and marketing plans, *etc*.; and

(h) Draft SHA can be worked upon only once the aforementioned concerns are resolved.

(ii) The petitioners alleged that the above amounts to denial to execute SHA, and also amounts to breach of understanding leading to oppression and mismanagement.

(iii) Refuting the above concerns voiced by R/6, on behalf of R/9 and 10 as a prejudicial conduct of majority shareholders against minority, the petitioners sought to produce the following facts as correct ones:

(4) PETITIONERS' PROJECTION OF FACTS AS CORRECT ONES VIZ-A-VIZ ABOVE ALLEGATIONS OF R/6:

(a) R/ 2 to 10 never viewed the Escientia Group, including R/1 Company as their pharmaceutical business line rather they exploited, misused and siphoned the brand name, client base, goodwill, resources, capital reserves and business of Escientia Group, including R/1 Company to build their own pharmaceutical CDMO brand, *Primopus*, which operates out of Deccan Group's premises in India and Switzerland;

(b) Deccan Group, including R/2 to 10, have never given any guarantee, whatsoever, to any of the banks for term and working capital debt, apart from a 'Letter of Comfort' which does not constitute a guarantee, by any stretch of imagination.

(5) PETITIONERS' ALLEGATIONS OF MISMANAGEMENT OF R/1 COMPANY.

(i) Siphoning off business of R/1 company to a competing pharmaceutical CDMO.

Respondents no.2, 8, 9 & 10 are operating a directly competing pharmaceutical CDMO at Basel, Switzerland and Goa, India. While respondents no.2, 8, 9 & 10 operate and manage the Basel facility through their 100% owned subsidiary incorporated under the laws of Switzerland and styled as "Primopus AG", the facility in Goa is operated and managed by the said respondents inhouse, by converting their pre-existing manufacturing facilities and workforce. The petitioners submit that it is trite law that engaging in such a competing business is oppressive amounting to mismanagement.

Copies of relevant pages from the official website of Primopus are being filed by way of an application for filing additional documents and is marked therein as **ANNEXURE-20 (COLLY.).**

(ii) Marcel Velterop was a consultant to R/8 Company, which is 100% parent of R/2 Company, in addition to being a consultant to Escientia USA. The Petitioners allege that R/ 2 to 10 were supported by Marcel Velterop in diverting the business, clients and resources of R/1 Company to Deccan Group.

(iii) It is stated that in 2020, R/10 identified a '$1' shut down factory in Basel, Switzerland. It was informed that this factory could be acquired at a low price and may be revived through certain capital investments. As such, R/10 worked with petitioner no.1 for acquisition of the

same through a subsidiary of R/1 Company incorporated in Switzerland, *i.e.*, Escientia Switzerland AG. R/1 Company infused capital aggregating to CHF 200,000 (approximately INR 1,93,26,000/-) into Escientia Switzerland AG (now Primopus AG) in order to revive the shutdown factory, which to date, has not been returned to R/1 Company.

(iv) After it became clear by August 2021 that the said acquisition was a speculative and expensive proposal with a long and uncertain payback period, the founder promoters of the Escientia Group repeatedly requested that the activities in Switzerland be halted and Escientia Group's financial resources be preserved, but in vain. Thereby R/9 and 10 directed the authorized banking signatories, including R/ 4, to continue spending the

capital available with Escientia Group, on the said acquisition. Thus, the capital and financials of Escientia Group eroded. The petitioners drew attention to the following e-mail communications sent by R/10 pointing out Escientia Group's investment in the Swiss entity was forced by Deccan Group and it was unprofitable/ a poor investment:

E-mail dated	**Sent by**	**Addressed to**	**Enclosed to the neat copy of[H1] petition as Annexure No.**
22.10.2020	R/10	R/12	21
02.11.2020 06.11.2020	R/10	R/12	22
21.12.2020	R/10	R/12 and P/1	23
03.08.2021	R/12	R/10	24
10.11.2021 10.11.2021	R/10	Marcel Velterop	25

11.11.2021	Marcel Velterop	R/10	25
01.03.2022	R/5	R/12	26
02.03.2022	R/4	Company Secy., EASPL	27
		Draft Board Resolution enclosed by R/4 to the above e-mail dated 02.03.2022 by R/4	28
		Annual Return for FY 2021-22 of R/1	29
		Board Report for FY 2021-22	30
02.03.2022	Company Secy	R/4	31
		Board Resolution dated 25.02.2022	32
03.03.2022	R/4	Directors of Swiss entity	33
From 18.02.2022	R/12 Marcel Velterop	Marcel Velterop R/12	34

to 19.03.2022			
08.06.2022	R/5	Srinivasa Rao Korada, Chief Financial Officer ("CFO") of EASPL.	35
15.07.2022	R/4	R/12	36

(6) REFUNDING OF CAPITAL INVESTED BY R/1, A FAR CRY.

While Deccan Group has been successful in oppressing the petitioners, it has sidelined the interests of R/ 1 Company to such an extent that even after launching its own pharmaceutical CDMO arm (Primopus), Deccan Group did not utter a word so far about refunding the capital invested by R/1 Company into the Swiss entity.

(7) RESPONDENT No.1 AND PRIMOPUS ARE THE ENTITIES COMPETING WITH EACH OTHER:

(i) The petitioners submit that R/8, Deccan Fine Chemicals (India) Pvt Ltd has published a Press Release (ANNEXURE-38) announcing acquisition of Escientia Switzerland AG and its renaming as Primopus AG. This was a strategic move of Deccan Group to independently enter into the pharmaceutical CDMO business, contrary to its earlier express intentions. R/8 Company mentioned in the Press Release dated 11.10.2022 as follows:

> "*Primopus™ is a CDMO for the pharmaceutical supply chain and offers fully integrated supply chain options from its Swiss site for RSMs, GMP intermediates and APIs. It is currently expanding and upgrading its capabilities and developing systems to support a highly efficient and compliant operation from Switzerland fully supported by its Indian parent Deccan. Primopus™ continues the legacy of more than thirty years of API manufacturing at a former big pharma site near Basel, Switzerland.*"

Further, R/8 Company, through Marcel Velterop, stated that:

> "*Through its subsidiary Primopus™ AG, Deccan will now expand the pharma CDMO business with its own assets and management.*"

The aforementioned statement is completely false and misleading because the Deccan Group continued to use the assets and management of the Escientia Group for the operational purposes of Primopus which caused irreparable harm and mismanagement in the Escientia Group, including R/1 Company. Pertinently, Marcel Velterop was also announced as the CEO of Primopus AG in the Press Release.

(ii) By the aforesaid acquisition, Deccan Group has promoted Primopus as a competitor of R/1 company. Even Drug, Chemical & Associated Technologies Association, Inc. ("**DCAT**") has registered both Escientia Group and Primopus in the same category with identical descriptions, evidencing that both businesses are virtually identical and thereby competing. True copy of DCAT's

description of Escientia and Primopus is annexed herewith and marked as ANNEXURE-40.

In view of the above the petitioners sought an opinion from the Competition Commission of India (CCI) as to whether the two business were competing in nature. The Chairperson of CCI had issued an opinion dated 15.04.2024 (ANNEXURE-39) to the Petitioners concluding unequivocally that:

"*Primopus is a competing entity vis-à-vis the Escientia Group*".

(8) DECCAN GROUP'S INVESTMENT IN PRIMOPUS IS MORE THAN ITS IVESTMENT IN ESCIENTIA GROUP.

Deccan Group has invested INR 95 crores in Escientia Group for its 75% shareholding. However, Deccan Group has invested a substantially higher sum in Escientia Group's direct competitor – Primopus – through its

capital infusion in and rebranding of the Swiss entity. Table detailing Deccan Group's investments in Primopus is annexed as ANNEXURE-41.

(9) DIRECTORS OF R/1 COMPANY AND CONFLICT OF INTEREST:

The in the circumstances when Deccan Group is running a business, which competes with R/1 Company through Primopus, the directors nominated by Deccan Group to the Board of R/1 Company have a clear and direct conflict of interest between the interests of their nominator – the Deccan Group, and R/1 Company. The aforesaid conflict has reached such great heights that R/4 and 6 have even worked actively towards the promotion of Primopus. As such, it is evident that the directors nominated by Deccan Group have, with full knowledge and in a mala fide manner, failed to fulfill their duties towards R/1

Company. This is violative of section 166(4) of the Companies Act, 2013.

(10) OPPRESSION AND MISMANAGEMENT AS ALLEGED BY THE PETITIONERS AGAINST RESPONDENTS No.2 TO 10.

The petitioners alleged that the Deccan Group along with R/2 to 10 have failed to fulfill their commitment of being a passive investor and not entering into pharmaceutical CDMO space. The petitioners alleged that Deccan Group along with R/2 to 10 have committed oppression and mismanagement in multiple ways as explained under:

OPPRESSION:

- Starting a business which competes with R/1 company in its pharmaceutical CDMO business;
- Directors nominated by R/2 and 8 to the board of R/1 Company – Respondent Nos. 4 – 7 got engaged

in developing and managing Deccan Group's competing pharmaceutical CDMO business.

- Deccan Group has on numerous occasions attempted to siphon off and / or divert business from R/1 Company to its competing pharmaceutical CDMO business.

MISMANAGEMENT :

(i) Mismanagement of R/1 Company by sanctioning an inter-company loan at throwaway interest rates to R/8 Company for Escientia Switzerland AG.

In August 2021, R/2 to 10 compelled Escientia Group, through Escientia USA, to extend an unsecured inter-company loan facility of USD 8 million (approximately INR 64 crores) to Escientia Switzerland AG (now Deccan

Group entity 'Primopus AG') at a meagre fixed interest rate of 1.69% p.a. in United States dollar terms only. Whereas, Escientia Group, including R/1 Company, has availed an INR 8.75 crores secured loan from R/ 8, the 100% parent company of R/2 Company, at a far higher interest rate of about 11% p.a. in Indian Rupee terms.

Said transaction undertaken at the behest of R/ 2 to 10 is prejudicial to Escientia Group, including Escientia USA and R/1 Company. As regards interest, it was only after filing of the present Petition Primopus released interest payments to Escientia Life Sciences LLC, USA. Copy of the Inter-company Loan Agreement dated August 23, 2021 is at **ANNEXURE - 46**.

(ii) Financial mismanagement of R/1 Company by the nominee directors of the Deccan Group.

- Higher cost of supplies:

Escientia Group, including R/1 Company, was compelled to purchase certain supplies from Deccan Group companies at higher cost, *i.e.*, INR 17,500/- per KG as opposed to a cost of INR 12,500/- per KG which was being incurred by Escientia Group earlier. Vide e-mail dated 10.06.2021 (ANNEXURE 47), it was conveyed that R/9 has requested to reduce the cost being incurred by Escientia Group companies by INR 3,850/- per KG. It is stated that even after this reduction in price, the Escientia Group was being compelled to pay about INR 650/- per KG in excess.

- Higher conversion costs:

As regards procurement of raw material by Escientia Group, Escientia Group paid conversion cost of Rs.2550 per KG earlier. However, Deccan Group charged the Escientia Group conversion cost of Rs.9250 per KG for the same product. Few invoices in support of the above submission are annexed at ANNEXURE-48. Copy of the invoice dated 04.09.2021 issued by the Respondent No. 8 Company to the Escientia Group for an amount of INR 1.18 Crore for the raw material conversion cost is annexed herewith and marked as **ANNEXURE-49.**

- Higher cost of raw material:

(11) The following e-mail communications reveal how Deccan Group sought to levy higher cost for procurement of raw materials

e-mail dated 24.12.2020:

One Mr. R.S. Dwarkanath (former nominee Director of Deccan Group to the Board of R/1 company) had offered vide his e-mail dated 24.12.2020 (ANNEXURE 50) to supply raw material to R/1 company by adding the same conversion fee.

e-mail dated 04.03.2021:

However, in complete departure of the above e-mail, R/10 sent communications vide e-mail dated 04.03.2021 and 06.03.2021 (ANNEXURE 51) stated that Deccan Group would supply raw material to Escientia Group at higher price than what was being paid earlier.

Email dated 06.10.2021:

R.S. Dwarkanath sent email dated 06.10.2021 (ANNEXURE 53) R/10 admitting that:

- Deccan Group was supplying raw material to Escientia Group at a very high cost,
- Deccan Group should not lose the income it was generating (INR 60 Lacs per month) from manufacturing a different product at the same unit used for manufacturing the raw material (which also proves that the Deccan Group did not set up any additional facility), and
- Deccan Group should reduce the price of the raw material in a manner that it appears to be logical and does not give an impression that the Deccan Group was fixing the prices arbitrarily.

<u>e-mail dated 07.10.2021 :</u>

Sanjay Vaishnava, Site Head at EASPL, vide his e-mail dated 07.10.2021 (ANNEXURE 52) sent to P/1 and R/12 stating that despite his opposition to procurement of the raw material from the Deccan Group, Mr R.S. Dwarakanath continued to pressurize the Escientia Group into purchasing the same from the Deccan Group.

(iii) <u>Abuse of resources of R/1 Company by Deccan Group including R/1 Company's R&D facilities and manhours of high-ranking scientists.</u>

- Marcel Velterop along with other employees of Deccan Group including R/4 to 7 abused the resources of R/1 Company by causing its R&D facilities and manhours of high-ranking scientists to be solely used for benefit of R/8's manufacturing facilities in Goa. It is stated that almost 26 full-time

equivalent (FTE) weeks of high-ranking scientists of the Respondent No. 1 Company were utilized by the Deccan Group for purposes of the said samples. Copy of e-mail dated 10.08.2022 containing calculation/ estimate of the 26 FTE weeks incurred is annexed herewith and marked as **ANNEXURE-54**.

- The aforementioned samples were ultimately shipped to R/8 Company's manufacturing facility in Goa via 3 (three) different shipments. Copies of the invoices dated 07.06.2022, 02.07.2022, and 10.08.2022 are annexed herewith and collectively marked as **ANNEXURE-55 (Colly.)**.

(iv) Mismanagement of R/1 Company by the nominee directors of the Deccan Group by siphoning-off

business opportunities of the Respondent No. 1 Company to the Deccan Group companies.

Gradual erosion of value of R/1 Company has been further exacerbated by the direct actions of the nominee directors of the Deccan Group, and their management appointees, in diverting business that should rightly be held by Escientia Group to Deccan Group companies.

The petitioners submit that Escientia Group has filled up Request for Information (RFI) dated 01.07.2022 (ANNEXURE 67) as a highest-priority business opportunity and submitted the same to Eli Lilly (which is a most valuable pharmaceutical company in the worlds). Developing Eli Lilly as a client was one of the highest corporate priorities of the Escientia Group. Thereafter, a Request for Proposal ("**RFP**") dated 05.09.2022

(ANNEXURE 68) was issued by Eli Lilly ostensibly to Escientia Group, which was then in an underhand and clandestine manner diverted to Deccan Group without the knowledge of the Petitioners or R/ 11 and 12. E-mails dated 06.09.2022 and 09.09.2022 exchanged between Eli Lilly and the Respondent Nos. 4 to 7 along with Marcel Velterop are annexed herewith and collectively marked as **ANNEXURE-56 (Colly.)**.

ELY LILLY BUSINESS VIZ-A-VIZ DECCAN GROUP

(i) The petitioners submitted that their case for oppression and mismanagement is further established by email dated 14.09.2022 (ANNEXURE 70) sent by R/ 10 to the employees of the R/8 Company and Marcel Velterop stating that Eli Lilly business was intended to be executed in Muttenz (Swiss plant which had been

taken over by Deccan Group and about to be renamed to Primopus AG). Respondent no. 6 sent a detailed email dated 14.10.2022 (ANNEXURE 71) making clear that Eli Lilly project is of strategic importance for entry of Deccan Group into pharmaceutical CDMO business (Annexure-24 to the Petition).

(ii) The petitioners rely on a meeting invite dated 16.09.2022 (ANNEXURE 72) circulated by Marcel Velterop among Deccan Group's team (to the complete exclusion of the petitioners, R/12 and the entire Escientia team) wherein, he made certain statements which clearly prove that Eli Lilly business was intended to be siphoned off to Deccan Group.

However, Deccan Group successfully siphoned away this opportunity in an attempt to manufacture and supply the

drug from Primopus, Switzerland. It is a clear proof of the oppressive and prejudicial conduct of Deccan Group.

The fact that Eli Lilly offering manufacturing contract to an Indian Company like R/ 1 Company is further supported by the fact that Eli Lilly has had a consistent history of working with Indian CDMOs including but not limited to Jubilant Organosys, Dr Reddy's, Sun Pharma, Ranbaxy, and Sai Life Sciences. Marcel Velterop himself was aware of the same as his previous employer, i.e., Sai Life Sciences, was also a CDMO vendor to Eli Lilly, as is borne out from his email dated 09.09.2021 (ANNEXURE 79).

Marcel Velterop owed a duty to R/1 Company to protect and promote its commercial and business interest. However, Marcel Velterop siphoned off business from

R/1 Company. Escientia Group, in fact, made a payment to Velterop as late as 03.08.2022 for his services. However, Velterop's consulting firm, i.e., Jamna Pharma Management & Consultancy AG, refused to provide any proper tax invoices for ad hoc payments of over USD 531,000 (more than INR 4 Crores) made by Escientia USA to the said Jamna Pharma Management & Consultancy AG, for reasons best known to them. Such non-compliance made Escientia Group incapacitated Escientia Group from processing any further payment requests. Escientia Group sent letter dated 11.02.2023 (ANNEXURE 80) to the said Jamna Pharma Management & Consultancy AG requesting for the relevant invoices, but in vain. Compliance and payment related issues with Jamna Pharma Management &

Consultancy AG cannot be considered as a permit for Marcel Velterop to assist R/ 2 – 10 in siphoning away the business and clients of Escientia Group to Deccan Group.

(12) MARCEL VELTEROP AND OTHERS MISUSING ESCIENTIA DOMAIN NAME/ BRAND NAME.

(i) It is clear that R/2 to 10 did not bother about diversion of business being done and prejudice being caused to R/1 Company. In fact they indulged in such detrimental conduct against their fiduciary duties to R/1. It is worthwhile to note that Velterop and others continued interact on behalf of Escientia Group, using e-mail IDs with Escientia domain names, while the intent and motive was to divert all business of Escientia Group to Primopus, the independent pharmaceutical arm of the Deccan Group. For instance, on 18.10.2022

(ANNEXURE 83), Marcel Velterop sent email to R/9 and others briefing them about the Eli Lilly Project. Admittedly, it was mentioned that the drug promises a

"*huge revenue for this drug (>$10Bn/yr).*"

On 19.10.2022 (ANNEXURE 83) Marcel Velterop sent email with the subject line:

"*introduction lilly RFT for primopus – Deccan*"

On 21.10.2022 (ANNEXURE 84) Marcel Velterop sent an email to R/6 and others stating technical viability of Eli Lilly Project. He further stated that:

> "*we have a Go to proceed for Lilly proposal from Muttenz ... and the 2x100gr demo batches from Goa labs.*".

(ii) Apart from the above the following e-mail communications would also establish diversion of business from Escientia Group to others:

e-mail dated	**Annex-ure**	**Sent by**	**To**	**Subject**
02.02.2023	86	R/12	MD of Primopus AG	Use of 'Escientia' brand by some employees of Primopus AG.
02.02.2023	87	Biontech	Marcel Velterop	Proposal dated 31.09.2022 sent by Escientia USA.

(13) ATTEMPTS TO APPOINT A CHIEF OPERATING OFFICER (COO) FOR R/1 COMPANY.

(i) Following are the events unfolded in regard to appointment of COO:

21.08.2023:

R/4 issued letter to P/1 requesting for convening of a Board Meeting to *inter alia* consider and approve the appointment of COO, to execute Power of Attorney in favor of the proposed COO, to grant all powers in relation to management and control of EASPL and R/1 Company, and to delegate the powers for managing the day-to-day operations and affairs of EASPL and R/ 1 Company.

23.08.2023:

Vide his letter dated 23.08.2023 (ANNEXURE 92) P/1 opposed the said move of R/4 and stated that in light of the legal nuances, convening of the Board Meeting is unwarranted.

23.08.2023:

R/ 4 responded to letter dated 23.08.20204 of P/1 reiterating his earlier stand.

23.08.2023:

P/1 sent another letter of even date (ANNEXURE 93) to R/4 stating that the meeting is unwarranted.

28.08.2023:

R/4 issued notice (ANNEXURE 94) to the Directors of R/1 company to consider, inter alia, appointment of COO, executing the Proposed POA (ANNEXURE 95).

However, P/1 and R/12 were of the opinion that proposed appointment of COO is antithetical to cost effective management of R/1 company inasmuch as:

(a) R/1 Company has earned exponential profits and achieved unparalleled growth with help of the existing

officers. Appointing an unknown person as COO will heavily damage the company and its standing amongst its customer base, which expects stable management team;

(b) Remuneration of the proposed COO is 3 to 4 times of that of the present senior officers of the Respondent No. 1 Company;

(c) Essentially all powers in relation to the management and control of the R/1 Company are proposed to be delegated by way of the Proposed PoA, which will jeopardize the day-to-day operations of R/1 Company. There are no circumstances in the company which mandate these actions;

(d) P/1, in his capacity as a director of R/1 Company, had opposed the said motion for appointment of proposed COO as is evident from his letter dated 23.08.2023.

However, R/4 issued notice dated 28.08.2023 convening Board Meeting on 05.09.2023;

(e) *Bona fides* and credentials of the proposed COO are unknown and the manner in which R/ 2 to 10 are hastily proceeding with the said appointment reeks of *mala fide*;

(f) If proposed agendas are passed, petitioners and R/ 11 and 12, who have always acted in the best interests of R/ 1 Company as opposed to R/2 to 10, will have no access or control over the bank accounts of R/ 1 Company, which itself reeks of *mala fide* and dishonest intent. Furthermore, inability of P/ 1, and R/ 11 and 12 to file statutory documents as a result of the proposed resolutions would cause grave prejudice to R/1 Company and would amount to giving free reign to Deccan Group to undo years of hard work that led to building of R/ 1

Company. Continuing oppression and mismanagement of R/2 to 10 will cause irreparable harm if their conduct is not interdicted at this stage.

(ii) Board meetings were convened twice. Minutes of said Board Meetings dated 05.09.2023 and 19.09.2023 are at ANNEXURE 96 and ANNEXURE 97 respectively. Relevant clauses of Minutes of Board Meeting dated 19.09.2023 are as under:

> "*(c) However, despite the objections of the Petitioner No. 1 and the Respondent No. 12, the Respondent Nos. 4 – 7 passed the resolution for issuing the DOA in the favour of Dr. M.S.M. Mujeebur Rahuman, albeit decided to not give effect to the same in light of the orders passed in Company Petition No. 45 of 2023.*
>
> *(d) .. .. However, the resolution was deemed to be passed by majority vote with the Respondent Nos. 4 – 7 voting in favour.*"

(iii) The petitioners submit that R/6 (Vivek Vasant Save) has issued Appointment Letter dated 02.12.2023 (ANNEXURE 98), unilaterally in favour of Dr. MSM

Mujeebur Rahuman on letterhead of EASPL. Terms and conditions of such appointment were not approved by the board of directors of EASPL. The same *inter alia* are as under:

(a) Services of the COO are transferable and can be seconded or deputed by EASPL to any of the offices or operations of EASPL and / or operations of its group company – R/1 Company herein (paragraph 2);

(b) EASPL has no objection in case the COO is also engaged / appointed by R/ 1 herein in any role including as its COO, without any additional renumeration or compensation from EASPL or R/1 Company (paragraph 7);

(c) The COO is restrained from disclosing any proprietary information of EASPL except as

specifically authorized by EASPL or any of its associate / group companies (paragraph 1.1 of Annexure II)."

(iv) Said appointment letter was accompanied by a notice dated 02.12.2023 (ANNEXURE 99), which was directed to be placed on the notice boards of EASPL which stated that:

> *"COO will be responsible for managing and looking after the day-to-day operations and affairs of EASPL."*

(v) The petitioners herein have challenged the said appointment letter dated 02.12.2023 (ANNEXURE 98) before this Tribunal being IA (CA) No.1 of 2024 in CP No. 44/241/HDB/2023. This Tribunal vide order dated 02.01.2024 (ANNEXURE 103) has passed the following order:

> *" .. .. It is in the fitness of things that status quo order be maintained on appointment of Dr. MSM Mujeebur Rahuman as COO of the company till further orders. .. .."*

(vi) A Board meeting was held on 04.01.2024. Relevant part of the Minutes of Meeting dated 04.01.2024 (ANNEXURE 104) is as under:

> *"(b) As regards the agenda item to appoint Dr. M.S.M. Mujeebur Rahuman as the COO of the Respondent No. 1 Company and issue the DOA in his favour, it was decided that the aforesaid agenda items shall be **dropped**, in light of the order dated 02.01.2024 passed by this Hon'ble Tribunal in I.A. (C.A.) No. 02 of 2024 in Company Petition No. 44 of 2023."*

(14) ATTEMPT TO RECLASSIFY R/ 2 COMPANY AS A "PROMOTER-SHAREHOLDER"

(i) From the point when R/2 acquired its stake in R/1 Company till the last Annual Return filed by R/1 Company, R/2 Company had always been classified as a "public shareholder". Such a classification was made with board approval and unequivocally accepted by R/2 to 10, without demur. However, at the board meeting dated 04.01.2024, R/ 4 to 7, for the first time,

communicated Deccan Group's intent to classify R/2 as a "promoter shareholder" of R/1 Company. The aforesaid demand was being raised without any change in the shareholding, capital structure and / or management / organizational structure of R/1 Company. Besides, R/1 has also been surreptitiously attempting to appoint a COO for R/1 Company.

(ii) The petitioners allege that R/ 2 to 10 have even attempted to coerce the Company Secretary of R/ 1 Company to re-classify R/2's shareholding to "promoter". Despite the Company Secretary's unequivocal position that R/2 Company does not qualify as a "promoter" under section 2(69) of the Companies Act, R/ 2 – 10 have mala fide chosen to ignore his independent advice as the guardian of corporate

governance of R/1 Company. R/2 – 10's wilful contravention of the Companies Act in this regard knows no bounds inasmuch as R/2 – 10 have made open threats to review appointment of Company Secretary at the board meeting held on 22.01.2024 of EAPL. In support of the above submissions the petitioners produced e-mail communications exchanged between the Company Secretary of R/1 Company and R/4 – 6 at **ANNEXURE - 105 (COLLY.)**

(15) CHANGE OF SIGNATORIES – PROJECTION BY R/5:

(i) On 29.02.2024, R/5 issued an e-mail and a letter dated 28.02.2024 (ANNEXURE 106) to State Bank of India, *inter alia* stating that there has been a change in the authorized signatories of R/1 Company, despite the fact that the said issue was pending adjudication before this

Tribunal. A similar e-mail with a letter dated 29.02.2024 (ANNEXURE 107) was also sent to Axis Bank on the same date. However, said email/ letters dated 29.02.2024 neither placed before the board of R/1 Company for any kind of discussion, nor were circulated to P/ 1 or R/12. Respondent no.11 has issued letter dated 29.02.2024 (ANNEXURE 108) to SBI asking them to maintain status quo and ignore letter dated 28.02.2024 (Annexure 106) as it lacks Board approval and the matter is subjudice. Similar letter of even date was issued by R/12 to SBI, a copy of which is at ANNEXURE 109. Similar letter dated 29.02.2024 (ANNEXURE 110) was issued by R/11 to Axis Bank. Similar letter dated 29.02.2024 (ANNEXURE 111) was issued by R/12 to Axis Bank.

(ii) R/5 has sent e-mail dated 06.03.2024 (ANNEXURE 112) sent to R/12 stating that letters dated 28.02.2024 issued to the State Bank of India and Axis Bank got approval of the Board of R/1 Company, and as such, disputed the contents of the letters dated 29.02.2024 issued by R/ 12 to SBI and the Axis Bank.

(iii) In furtherance to the aforesaid e-mails, R/5 also issued letter dated 06.03.2024 (ANNEXURE 113) to SBI and letter dated 06.03.2024 (ANNEXURE 114) to Axis Bank inter alia stating that the letters dated 29.02.2024 sent by R/ 11 and 12 be ignored and the changes in the authorized signatories of the bank be carried out.

(16) CONCLUDING SUMMARY AS PROVIDED BY THE PETITIONERS:

The petitioners submitted that they are aggrieved by the following conduct of R/ 2 to 10:

(i) R/ 2 - 10 have failed to adhere to the "basic understanding" between P/ 1 and Deccan Group that the role of Deccan Group shall be passive and the day-to-day management of R/1 Company shall be handled by P/ 1 and R/12;

(ii) R/2, 8, 9 and 10 are running a directly competing business with R/1 Company;

(iii) R/2 – 10, through appointment of a COO for R/ 1 Company, are attempting to denude P/ 1 and R/ 12 of their justified interest in managing the affairs of R/1 Company;

(iv) Appointment of COO is for collateral purpose of siphoning off business and illegally transferring confidential and commercial sensitive data from R/1

Company to Deccan Group's competing business; and

(v) R/2 to 10 are attempting to re-classify R/2 Company as "promoter" of R/ 1 Company in contravention to the provisions of the Companies Act.

VII. RESPODENT No.2 HAS FILED REPLY dated 07.08.2024.

(i) Respondent no.2 wonders how the petitioners can equate respondent no.1/ Escientia Advanced Sciences Private Limited (EASPL) in CP No.45/241/ HDB/ 2023 and respondent no.1 herein, namely, Escientia Biopharma Private Limited (EBPL) as one and the same. The fact is that both EASPL and EBPL are two separate legal entities with distinct corporate identities. Nature of business and scope of operation of the two companies are distinct. Even Memorandum of Association (MoA) of these two entities

is different. Respondent no.2 has enclosed MoA of EASPL and EBPL at ANNEXURE 2 (Colly.) of this reply.

(ii) Besides, R/2 submitted that this Company Petition is not maintainable inasmuch as :

- The allegations levelled in the petition do not pertain to R/1 company.
- It relates to convening of meeting of the Board of Directors on 05.09.2023. Copy of Minutes dated 05.09.2023 is at ANNEXURE-4 of this Reply. Thus, the said meeting having been conducted on schedule, this petition becomes infructuous.
- Respondents belonging to Deccan Group are labelled as 'passive investors', yet they are alleged to be 'active' in the acts of oppression.

- The petition does not contain a single instance suggesting that the petitioners have complained to the respondents that they were aggrieved by any specific act of oppression.
- The allegations as alleged cannot be projected to invoke equitable jurisdiction.
- R/8 to 10 are neither proper nor necessary parties in the present proceedings. Sections 241 and 242 of the Companies Act, 2013 provide that a person who is not a shareholder, director or manager can be impleaded under very limited circumstances. The Petitioners have failed to establish such a circumstance for their impleadment.

(iii) Respondent no.2 proceeded to narrate background of facts from para 14 onwards of the Reply. Such facts revolve around share transfers, share purchases, etc. A perusal of such narration of facts further reveal that there are disputed questions of facts about share transfer or shareholders' agreement. Such a contradiction is described below:

(iv) The company petitioners were emphasising at the cost of repetition all throughout the petition the issue of draft shareholders' agreement not being executed despite commitment made by Deccan Group in that regard. Such a persistent submission of the petitioners that the parties were consensus ad idem as to the fact that a shareholders' agreement shall be executed soon after culmination of the

share purchase agreement dated 10.04.013 (Annexure-5 of the company petition), can be found in the Company Petition at:

- page 17 (Synopsis),
- para 20 (page 33),
- para 20A (page 35),
- para 27(f) (page 42),
- para 37 (page 51) and
- para 38 (page 52)
- para 39(h) (page 55)

(v) Such a claim of non-execution of Shareholders' Agreement is refuted by respondent no.2 with all vehemence. The following are the claims and counter-claims by the parties on this issue:

Claim of the petitioners with regard to proposed Shareholders' Agreement.	**Counter-claim of respondent no.2 in his Reply dated 07.08.2024.**
Para 20, page 33: 20. During 2020, Flextronics had expressed its intention to liquidate its	Para 21, page 11 of Reply:

shareholding in the Escientia Group on an urgent basis, leading R/ 12 to reach out to R/10, an old acquaintance of Respondent No. 12, to discuss a potential investment opportunity in the Escientia Group. Respondent No. 10 expressed his willingness to enter into the transaction for purchase of Flextronics' shareholding in the Escientia Group on similar terms as that of Flextronics, *i.e.*, a passive investor into R/1 company. Ultimately, the transaction culminated in the purchase of shareholding in the Escientia Group, driven by the growth prospects and reputation of the group as well as the personal relationship between R/ 12 and R/10. Notably, owing to the personal nature of the relationship between the promoter groups, the transaction	21. One of the pre-closing conditions for the share purchase transactions being discussed by R/8 was the signing of a new shareholders' agreement. However, at the request of Flextronics/BDA Partners, the same was dropped as a requirement for closing the share purchase transaction as Escientia companies were in a precarious financial position and the share purchase transaction was required to be closed immediately. Respondent no. 8 agreed to not insist on execution of a share-

proceeded in an atypical manner, wherein for the Indian entities, including R/1 Company, no separate shareholders' agreement was entered into to delineate the rights and liabilities of the shareholders. However, the understanding between the parties remained that the investment of the Deccan Group would be passive as it was with Flextronics, without any substantial operational control, and that specific shareholders' agreements would ultimately be executed. In addition to the above, the Deccan Group specifically represented to the Petitioners and R/1 Company that it is neither involved in, nor intends to, engage in the pharmaceutical CDMO business independently, being in the agrochemical CDMO business.	holders' agreement as they were aware that in any event, they have the rights available to them under company law in respect of being a majority share-holder. Accordingly, the SPA was signed by R/ 1 Company with R/ 12 (Kiran Pendri) signing on behalf of it and also on behalf of the Pendris' holding company, PFL as well as Escientia Life Sciences, Mauritius. E-mails dated 22.04.2020 and 23.04.2020 are at Annexure 7 (Colly.).

20A. Although it is common industry practice to execute a shareholders agreement and a share purchase agreement virtually simultaneously, the reason why the parties chose to defer the execution of a shareholders agreement in the present case was solely due to time pressures, and at the request of Flextronics to not make the execution of a shareholders' agreement a precondition to the culmination of the transaction. As such, at Flextronics' special request, and on the strength of the personal relationship between R/12 and R/10, it was agreed that the transaction shall be proceed with by deferring the execution of a shareholders' agreement to post completion of the transaction for share purchase. Deccan Group was itself disquieted due to deferment of the	22. Consequently, there was no shareholders' agreement executed nor was there any agreement to enter into any specific shareholders' agreement to establish passive rights of the Deccan Group, as alleged by the Petitioners. Such an allegation is false, without basis, contrary to the documented facts as well as the conduct of the parties. Such allegation, that Deccan Group were passive investors or that a commitment was made by them that a shareholders' agreement was to be

execution of a shareholders' agreement and the parties were consensus ad idem as to the fact that a shareholders' agreement shall be executed soon after culmination of the share purchase transaction.	entered, are made with *mala fide* purposes.

RESPONSE OF 2nd RESPONDNET TO THE ALELGATIONS LEVELLED BY THE PETITIONERS:

Respondent no.2 has offered its response to each of the principal allegations of the petitioners as under:

ALLEGATION-1

Intentional failure of Deccan Group to keep to its commitment to the promoters of Escientia Group to enter into a shareholder's agreement for R/1 Company and EASPL to clearly establish the passive nature of Deccan Group's investment;

and

R/ 2 to 10 have departed from the understanding given by R/ 10 for undertaking the investment in R/ 1 Company.

RESPONSE OF R/2 TO ALLEGATION-1

The Petitioners are attempting to build a false narrative that R/2 was a "passive investor" in R/1 Company. Neither was there any commitment by Deccan Group to enter into a shareholders' agreement to establish its "passive nature", as alleged nor was there any such undertaking given by R/10 (Vamsi Gokaraju). E-mail of 07.02.2020 of R/10 to R/12 (Annexure 6 to the Petition @ Pg.290) is a one-off communication which was written much prior to the deal taking place and the signing of Share Purchase Agreement (SPA) dated 03.08.2020.

No reliance can be placed by the Petitioners on any correspondence prior to execution of the said SPA dated 03.08.2020 as the SPA at clause 13.2 specifically states that the Escientia transaction documents will constitute

the entire agreement and understanding among the parties in relation to the matters contained therein and supersedes all previous correspondence and information exchanged between the parties whether written or oral prior to the date of this agreement.

The Petitioners cannot coerce the Deccan Group to enter into an agreement such as a SHA, which is not a requirement in law but a creature of contract.

Deccan Group is not a passive investor in R/ 1 Company and so was the case with Flextronics (whose interest in R/1 Company was acquired by the Deccan Group).

As stated above, Flextronics was a shareholder holding 75.19% shareholding interest in Escientia Life Sciences, Mauritius, on a fully diluted basis, which was the holding company of Respondent No. 1 Company. Relationship

between Flextronics and Petitioners/PFL (holding shares in Escientia Life Sciences, Mauritius) vis-à-vis the management and operation of Escientia Life Sciences, Mauritius was governed by a Shareholders Agreement dated 10.04.2013, as amended by amendment agreement dated 01.10.2018 (**"ELS Mauritius SHA"**). A copy of the ELS Mauritius SHA dated 10.04.2013 and the amendment thereto dated 01.10.2018 is at **Annexure 8** of this Reply.

Shareholders' agreement would neither be a condition precedent to the share purchase agreement between Deccan Group, Flextronics, Escientia Life Sciences, Mauritius and others nor was it a condition subsequent.

In view of the above, it is clear that Deccan Group was active in running R/ 1 Company. The Pendris are not

capable of running and operating R/1 Company without the active support of Deccan Group and therefore the Petitioners' allegation that Deccan Group was a passive investor is without basis.

ALLEGATION-2:

> Mismanagement of the Respondent No. 1 Company through siphoning-off of business to Primopus;
>
> And
>
> Mismanagement of the Respondent No. 1 Company by the nominee directors of the Deccan Group by siphoning-off business opportunities of the Respondent No. 1 Company to the Deccan Group companies.

RESPONSE OF R/2 TO ALLEGATION-2:

The answering respondent submits that R/1 Company being an R&D Company, it is not involved in any commercial manufacturing. Thus, the allegation, such as siphoning-off of business to Escientia Switzerland AG

(the "**Swiss Company**") (now "**Primopus**") has no relevance.

R/1 Company being an R&D unit set up in a special zone in Hyderabad where commercial production is not permitted, and it can be only used for R&D support, there is no question of siphoning off business from R/1 Company.

As regards the allegation qua Eli Lilly, an identical allegation has been raised in the EASPL Petition, which has been adequately dealt with in paragraphs 70 to 87 and 95 to 103 of R/2's Reply in the EASPL Petition/ CP No.45 of 2023.

ALLEGATION-3

> Mismanagement of Respondent No. 1 Company by sanctioning an inter-company loan at throwaway interest rates to Respondent No. 8 Company for Escientia Switzerland AG;

And

The Deccan Group has caused Respondent No. 1 to undertake a series of financial transactions to its detriment.

RESPONSE OF R/2 TO ALLEGATION-3:

As regards the allegation of sanctioning an inter-company loan at throwaway interest rates to R/ 8 is concerned, this loan agreement has no bearing on the operation of R/ 1 Company and/or the adjudication of the Petition. Inter-company loan agreement between Swiss Company and Escientia US dated 23.08.2021 and documents pertaining to the above arrangement are at **Annexure 10 (Colly.)**.

Thus, the allegation that inter-company loan facilities have been extended at a far less interest rate than the standard interest rates applicable to such loans is irrelevant as the loan is between two foreign entities.

Interest rates of an INR loan between two Indian entities cannot be compared with a USD loan between two overseas entities.

ALLEGATION-4

Financial mismanagement of R/1 Company by the nominee directors of Deccan Group;

and

Deccan Group has caused R/ 1 to undertake a series of financial transactions to its detriment.

RESPONSE OF R/2 TO ALLEGATION-4:

The allegation that Deccan Group has caused R/1 Company to take a series of financial transactions including purchase of CPD (raw material) to its detriment pertains to EASPL (CP No.45/ 2023), not the present petition.

The allegation that R/ 2 to 10 have led Escientia Group companies to source certain raw material at far higher prices than that of its earlier procurement to unjustly benefit other companies of Deccan Group pertain to EASPL (CP No.45/2023). These allegations were dealt in paragraphs 104 to 114 of R/2's Reply in the Amended EASPL Petition.

ALLEGATION-5

Attempts to appoint a COO for R/1 Company and EASPL;

and

The attempt of R/ 2 to 10 to appoint a COO for both R/ 1 Company and EASPL is mala fide, contrary to law, and aimed at oppressing the Petitioner.

RESPONSE OF R/2 TO ALLEGATION-5:

(a) Proposed appointment of Dr. M.S.M. Mujeebur Rahuman as COO of R/1 Company and EASPL is a necessity. Decision to appoint a COO of a company is

best left to the wisdom of the board of directors of a company, acting in its best interest, which may be taken after following the due process for holding such a meeting. Reasons for immediate appointment of a COO at R/1 Company:

(b) There is neither full-time senior executive nor any single senior full-time personnel in R/1 Company.

(c) R/2 has pointed out a mistake crept in the Company Petition, namely:

Page 42/Para 31 of the Petition:

- R/1 Company's profit for FY 2022-2023 is projected as INR 170.46 Crore (approx.).

As per financial statement - at Annexure 3/ Pg. 213 of the Petition:

- INR 170.46 million = INR 17 Crore (approx.)

(d) R/2 submitted that for the period April 2023 to Aug 2023 in the current financial year, R/1 Company made a loss of INR 1 Crore with only INR 19.5 Crore sales evincing a great degree of variability in the performance of R/1 Company.

(e) As stated above, EASPL contributed about 50% of overall sales to the Respondent No. 1 Company over the last 17 months period (April 2022 to August 2023). R/1 Company is highly dependent on EASPL's continued ramp-up in operations. Without EASPL, R/1 Company is unlikely to be even financially viable.

(f) R/ 1 Company operates in one of the most hazardous and highly regulated industries with global audits from agencies such as the Food and Drug Administration, an agency within the US Department of Health and Human

Services ("FDA"), etc. expected to occur frequently. The operating status, audit preparedness, internal or third-party audit details, gap analyses are not being shared with the board of R/1 Company.

Therefore, a fulltime person is required in India to ensure that the operations are carried out efficiently and in compliance with the laws of the land to protect the interest of R/1 Company and all its stakeholders.

(g) Certain machines/ equipment were moved from Visakhapatnam unit which is in the SEZ to Hyderabad unit of R/1 Company premises, where registered office is located. Again, without the requisite approvals/ documentation, the missing equipment was brought back to the Visakhapatnam unit of EASPL from the Hyderabad

unit. Such a high value equipment cannot be moved helter-skelter, as it is an EOU unit.

(h) Dr. M.S.M. Mujeebur Rahuman is an ideal candidate for the job of COO. CV of Dr. Rahuman is at Annexure 11 (Colly.) of this Reply.

(i) Proposed remuneration of COO commensurates with market standards, his last drawn remuneration, his role, responsibilities and qualifications. Besides, the proposed COO discharges responsibilities for both R/1 company and EASPL. Copies of Rahuman's last drawn remuneration for FY 2022-2023 (redacted version) and competing offer received by Rahuman (redacted version) are at **Annexure 12 (Colly.)**.

(j) A meeting of the board of directors of R/1 Company was held on 05.09.2023 at which, after due discussions

and deliberation, a resolution was passed by majority of the directors deciding that Dr. M.S.M. Mujeebur Rahuman (who had been appointed as COO of EASPL though such decision has been kept in abeyance pursuant to the order of this Hon'ble Tribunal dated 04.09.2023 in the EASPL Petition), be appointed as COO of R/1 Company. However, in deference of order dated 04.09.2023 in the EASPL Petition, the implementation of the appointment of Rahuman would be given effect to by the Board at a later stage. Prior to this board meeting, a revised Delegation of Authority ("DOA") of the COO was shared with the board for discussion during the board meeting via Respondent No. 4's email of 05.09.2023 (ANNEXURE 13).

(k) Respondent no.2 submits that at the Board meeting held on 04.01.2024, Agenda Item No. 6 regarding Dr. Rahuman's appointment as COO of R/1 Company was discussed and it was proposed to rescind the appointment of Dr. M.S.M. Mujeebur Rahuman as the COO of R/1 Company which in any case was not given effect to, and to treat the said appointment as ineffectual *ab initio*.

ALLEGATION-6

> Deccan Group sought to elicit disclosure of various processes of Escientia Group, which has potential to expose Escientia Group, petitioner No. 1 and R/12 to legal action from its clients.

RESPONSE OF R/2 TO ALLEGATION-6:

R/2 submits that these agreements are only with Escientia US, of which Deccan Group has a 75.19% shareholding

on a fully diluted basis, and not binding on the entire 'Escientia Group', as alleged. R/2 has further submitted that R/1 Company is not a party to these agreements, and they have no relevance to and/or bearing on R/1 Company and/or the Petition.

ALLEGATION-7

> Abuse of resources of R/1 Company by Deccan Group, including R/1 Company's R&D facilities and manhours of high-ranking scientists.

RESPONSE OF R/2 TO ALLEGATION-7:

This is an unsubstantiated allegation. The email filed in support of this allegation is of August 2022 which does not reveal any abuse of the R&D facilities of R/1 Company, as alleged, or that the Petitioners have lodged protest/complaint regarding utilization of scientists of R/1 Company for purposes of samples and/or that there

was any demand for compensation for utilization of scientists.

This was a commercial arrangement that was agreed by Petitioner No. 1 (Dr. Yadagiri Pendri) who instructed R/1 Company's personnel to continue the laboratory work for R/8. This was communicated by Petitioner No. 1 to R/8 vide e-mail dated 21.04.2022 (ANNEXURE 15) sent to Marcel Velterop, which is reproduced below:

> *"As discussed on the phone we will discuss on the finances of Amidate FTEs program discount based on our current FTE rates, $75,000/per FTE/year for last 10 years without any inflation adjustment and which does not include project specific chemicals.*
>
> *However, please be assured that the laboratory work will continue without any hiatus at EBPL, Hyderabad so that you can support your ongoing work at Goa / Muttenz. I have instructed the team in Hyderabad at the beginning of the program to start the work on the project which has already begun several weeks ago and not to worry about the PO etc., which will come at a later date…"*
>
> ***[Emphasis supplied]***

Respondent no.2 submitted that based on petitioner no.1's acceptance and instructions to R/1 Company's personnel, work continued on this project for services to R/8 and not on R/8's insistence, as alleged. Thus, there is no question of abusing R/1 Company's resources, as alleged.

ALLEGATION-8

> Affairs of R/1 Company were / are not being managed in a proper manner. Several non-compliances have been made due to mismanagement by the petitioners and R/12.

RESPONSE OF R/2 TO ALLEGATION-8:

Actions/omissions of petitioners and R/12 have prejudiced the interests of R/1 Company.

R/4 & 7 have written several emails to R/12, including emails dated 11.09.2023, 20.09.2023 and 27.09.2023

(ANNEXURE 16), seeking details of certain related party transactions. R/5 in his email dated 11.09.2023, had requested R/12 to provide the following:

(a) the details of the related party transactions carried out during the financial year 2022-23, transfer pricing policy including the back-up documents etc., *inter alia*, to reflect that these transactions were entered into at arm's length; and

(b) similar details for the first quarter April - June 2023.

After several reminders, R/2 has responded vide e-mail dated 14.10.2023 (ANNEXURE 19) sent to R/7, but has failed to provide the information requested. R/7 has responded vide his e-mail dated 17.10.2023 (ANNEXURE 19). In view of the above the answering

respondent submits that the acts and omissions of the petitioners and R/12 would amount to mismanagement and the same are prejudicial to the interests of R/1 Company as well as R/ 2 to 10.

Respondent no.2 has enclosed reply of R/2 filed to the Amended Petition being CP No.45/241/ HDB/ 2023 at ANNEXURE 20.

Minutes of board meetings held on 05.09.2023, 19.09.2023, and 04.01.2024 wherein the board has had detailed discussions regarding appointment of Dr. Mujeebur Rahuman as the COO of R/ 1 Company and delegation of authority in his favour are at **ANNEXURE 21 (COLLY.).**

The answering respondent has produced certain documents along with this petition to substantiate its

claim that Deccan Group is active in building the business of Escientia Group. These documents were already part of CP No.45/241/ HDB/ 2023.

- E-mails dated 16.09.2021 exchanged amongst Marcel Velterop, the R/ 12, R/10 and Novartis along with the attachments thereto -- **Annexure 22 (Colly.)**.
- E-mails dated 26.01.2022 to 27.01.2022, 14.03.2022 to 15.03.2022 exchanged between R/ 10 and Petitioner No. 1-- **Annexure 23 (Colly.)**.

- E-mails dated 16.01.2022 to 20.01.2022 exchanged between Petitioner No. 1 and Respondent No. 10 confirming Corteva's successful visit to R/1 Company’s facilities -- **Annexure 24 (Colly.)**.

- E-mails dated 23.11.2021 to 01.12.2021 exchanged between Corteva Executives, R/8, Marcel Velterop and Petitioner No. 1 regarding Velterop and Petitioner No. 1's visit to tour the Corteva's facilities in Indianapolis (redacted) -- **Annexure 25 (Colly.)**.

ADDITIONAL PRELIMINARY SUBMISSIONS/ OBJECTIONS BY RESPONDENT 2.

Respondent 2 has raised the following contentions under the caption -

(i) Respondent No. 12 was a whole time Director in Escientia Switzerland AG and was actively involved in all the business decisions until his resignation in March 2022 which is further forthcoming from the minutes of the board meetings of Escientia Switzerland AG dated 16.11.2020, 22.12.2020, 25.01.2021 and 01.11.2021 are

annexed herewith and marked as **Annexure 26 (Colly.)**. A copy of the resignation letter dated 19.03.2022 is attached hereto and marked as **Annexure 27**.

(ii) Respondent No. 12 at his own will expressed his desire to exit Escientia Switzerland AG and further expressly supported the idea of Deccan Group continuing with Escientia Switzerland. In this regard, contents of the emails dated 01.12.2022 and 02.12.2022 are reiterated. *(Ref. Annexures 46 to 50 of the Present Reply)*

(iii) There was comprehensive acquiescence of R/12 to Deccan Group taking over Escientia Switzerland AG as can be seen the response of R/12 to email dated 02.12.2022. R/2 submits that acquiesced with Deccan's

takeover of Escientia Switzerland AG, now the Petitioners cannot claim any conflict of interest. The petitioners have alleged of conflict of interest subsequently to manufacture facts in support of a Company Petition.

(iv) R/2 submits that nature of business and scope of operation of the EASPL and R/1 Company are distinct.

Suppression of facts:

Respondent no.2 submits that the following facts have been suppressed in the original company petition:

(i) Transition from "Escientia Switzerland AG" to "Primopus AG" only concluded in Oct 2022 and till such time, all the personnel of Primopus AG including Marcel

Veltrop continued to use the domain name "@escientia.com".

(ii) Usage of the domain name "@escientia.com" by Primopus AG was well within the knowledge of R/12 (Kiran Pendri) who also acknowledged the same as evidenced by the emails dated 16.09.2022, 19.09.2022, and 01.12.2022, sent by the Respondent No. 12, reflecting the fact that '@escientia.com'. domain was temporarily being used for the email IDs of the employees of Primopus was under transition to the new domain name of Primopus. *(Ref. Annexure 66 (Colly.) of the Present Reply)*

(iii) Petitioners supressed the fact that it was Marcel Veltrop as a representative of the Swiss Company who received an RFP for TZP sidechain under the CDA signed

between the Swiss Company and the relevant customer and not the Escientia Group.

(iv) Petitioners have also not disclosed the fact that the said RFP was only shared with the Deccan Group following the termination of Marcel's service by the Escientia Group by the time the RFP was received by Marcel.

(v) Suppression of the fact that Primopus AG's interaction with GSK was entirely independent of any relationship that EASPL or the Respondent No. 1 Company had with GSK and that while any alleged interaction of EASPL with GSK through Escientia USA ended in December 2019, Primopus AG's interaction with GSK only commenced on 12.10.2022, vide Marcel Velterop's efforts, for entirely different products.

(vi) Suppression of the fact that the interaction of Primopus AG with Eli Lilly through the efforts of Marcel Velterop was independent of any Escientia entity and for a different product range altogether, and subsequent to efforts by Velterop and the Deccan group to grow the business of Escientia Group companies vide Eli Lilly, which in any case did not come to fruition.

(vii) R/5 and 7 were appointed to the Board of R/1 with the full consent and acquiescence of the Petitioners,

Illegal movement of equipment between the premises of EASPL and R/1 and fabrication of documents by R/12:

(i) In July 2023, R/12 had surreptitiously removed several pieces of valuable equipment belonging to EASPL from its Special Economic Zone ("**SEZ**") premises at Vishakhapatnam. Vide email dated

06.07.2023, R/12 has admitted that the equipment was moved out of Vishakhapatnam unit of EASPL, without proper documentation and without knowledge of the board.

(ii) He further admitted that there was non-compliance and claimed that the said unauthorised movement was purportedly made in the context of a customer visit. E-mails dated 04.07.2023 and 06.07.2023 exchanged between R/4 and R/12 are at Annexure 28. Above equipment was restored at the original place on the unilateral instruction of R/ 12. Such unauthorized to and fro movement of the above equipment will put R/1 Company and EASPL vulnerable to legal action.

(iii) R/ 4 had visited Vizag facility of EASPL and found R/12 having involved in fabrication of documents.

Besides, various non-compliances are of very serious nature and could result in serious ramifications from various statutory authorities. e-mail dated 23.03.2024 from Respondent No. 4 to the Board of Directors informing them about the sequence of events along with the returnable gatepass/ equipment list and covering note on the letterhead of R/1 Company is annexed at ANNEXURE 29.

(iv) R/ 5 sent email dated 25.03.2024 (ANNEXURE 30) to the board of directors of EASPL *inter alia* stating that:

> *"the above referred documents clearly establish that EASPL's equipment from its SEZ Unit at Vizag were in fact illegally diverted to EBPL (and not to Hyderabad office of EASPL as claimed by Mr Kiran Reddy Pendri)*
>
> *...*
>
> *It also raises further questions. Are EASPL funds being used to purchase equipment for EBPL? What are the impact of violations of the SEZ, GST and Customs laws caused by this clandestine removal of the equipment? Has EASPL violated the terms and conditions of the term loan agreement and the undertakings given to the Bank — misuse of bank funds? Has there been serious lapse in the internal controls on "procurement to pay process "followed by the Company?*

> *How the security allowed the equipments to be taken out of the SEZ Unit without proper document and approval? Is this diversion of assets for personal gains of Mr. Kiran Reddy Pendri? Whether such acts tantamount to stealing of EASPL property? Have such unauthorized or related acts been carried out in the past also? - are some of the immediate thoughts that come to my mind."*

R/2 submits that the board of directors of EASPL have taken cognizance of the events above and had taken steps to investigate the same.

Creation of roadblocks by R/ 11 and 12 in derogation of board resolutions.

(i) Pursuant to resolutions passed in board meeting of R/1 Company dated 19.09.2023, approving change in the signatories to operate the bank accounts of R/ 1 Company with Axis Bank Limited and State Bank of India, R/5 on behalf of R/1 Company addressed letter dated 28.02.2024 (ANNEXURE 31) to the above Banks asking them to

take necessary action. R/ 11 and 12, despite having participated in the board meeting wherein the resolutions were passed, and in utter disregard of the resolutions passed and their fiduciary duties, wrote letter dated 29.02.2024 (ANNEXURE 32) to the Banks that the said resolutions were invalid and that the same were communicated without authority of the board. R/11 and 12, on various pleas tried to restrain the banks from performing their contractual obligations with respect to R/ 1 Company.

(ii) In response to the above, R/ 5, sent emails dated 06.03.2024 (ANNEXURE 33), to R/ 12, lamenting the hindrance caused in implementation of the validly passed resolutions. Further, R/5 and 7 *vide* letters dated 06.03.2024 (ANNEXURE 34), in their capacity as the

directors of R/ 1 Company, wrote to Axis Bank Limited and State Bank of India informing them that despite of the dispute between the shareholders of R/1 Company being *sub judice* before this Tribunal, the question pertaining to validity of board resolutions does not arise. Relevant portion is extracted hereunder for ease of reference:

> *"66 i) Save as otherwise expressly provided in the Act, questions arising at any meeting of Board shall be decided by a majority of votes."*

PARAWISE REPLY TO THE PETITION AS ANSWERED BY RESPONDENT 2.

(i) Respondent no.2 has already answered comprehensively major part of the Company Petition in Section-I of its reply dated 07.08.2024. Section-II of the Reply commencing from page 52 of the Reply have denials of the claims made in the company petition,

dismissal of the claims made by the petitioners as unsubstantiated ones. It also contains specific answers to the minute details of the Company Petition. Broadly such denials/ contentions are:

- R/1 Company is NOT a pharmaceutical Contract Development Manufacturing Organization (**CDMO**).
- R/1 is not a manufacturing partner to any company.
- EASPL and R/1 Company are two separate entities. Allegations in the EASPL Petition have no bearing on the current Petition.
- In an attempt to create hurdles in functioning of R/1 Company and to mislead the Tribunal, petitioners have reproduced the pleadings from the EASPL Petition verbatim without even attempting to verify

their factual accuracy, raising concerns as to the specificity and accuracy of the claims presented before the Tribunal.

- R/1 Company is a Research & Development Company. It does not involve in any commercial manufacturing. Thus, there is no question of siphoning off business from R/1 Company.
- Principle for adjudicating whether two business are competing with each other under competition (Competition Act, 2002) is relevant and applicable to determination of acts of oppression and mismanagement under the Companies Act, 2013?

  This question is posed as R/8, Deccan Fine Chemicals (India) Pvt Ltd has published a Press Release (ANNEXURE-38 of the petition)

announcing acquisition of Escientia Switzerland AG and its renaming as Primopus AG, which is in direct competition with R/1 company in CDMO business.

Chairperson of Competition Commission of India had issued an opinion dated 15.04.2024 (ANNEXURE-39 of the petition) to the Petitioners concluding that:

"*Primopus is a competing entity vis-à-vis the Escientia Group*".

While answering the contents of para 9A of the petition, R/2 submits that Deccan Group (R/2 and R/8 are its part) own a far greater share of 'Escientia Group' than the Petitioners do. It is absurd to say that the interests of R/1 Company are compromised by Deccan Group as it would amount to Deccan Group harming itself. Minutes of the board meetings of Escientia Switzerland AG dated

16.11.2020, 22.12.2020, 25.01.2021 and 01.11.2021 are at Annexure 26.

The following table illustrates the shareholding of the Deccan Group and others in different Escientia Group branded companies:

	Deccan Group	**Ms. Rajya Lakshmi Penumetsa (R/3)**	**Escientia Life Sciences, Mauritius**	**Kiran Reddy Pendri (Petitioner No.2)**	**Swarnalatha Mannam (Petitioner No. 3)**	**Yadagiri Pendri**	**Pendri Futran Group LLC**	**Others****
Escientia Advanced Sciences Pvt. Ltd.	74%	1.19%	24.76%	0.05%	0% (1 share)	NA	NA	NA
Escientia Bio-pharma Pvt. Ltd. (R/1)	74%	1.19%	NA	NA	0% (1 share)	24.81%	NA	NA
Escientia Life Sciences	75.19%	NA	NA	NA	NA	NA	22.37%	2.44%

LLC, USA								
*Pendri Futran Group LLC /Pendris hold approximately 90% equity stake and Mr, Anup Gupta (ex-CFO of the Escientia Group) owns approximately 10% stake in Escientia Life Sciences, Mauritius.								
Effective ownership of PFL/Pendris family and Ms. Swarnalatha Mannam in EASPL: 22.37%								
Effective ownership of Anup Gupta in EASPL: 2.44%								
**Others – 2.44% shareholding in Escientia Life Sciences LLC, USA is held by Anup Gupta								

R/2 further submits that Escientia Lifesciences LLC ("Escientia US") plays a critical role in relation to R/1 Company and EASPL, with major contracts under which R/1 Company and EASPL are engaged in research/ production activities being entered into not by R/1 Company or EASPL, but by Escientia US.

Continuing with para 9A of the petition, the answering respondent admits the statement of the petitioners that

R/4 to 7 being directors of R/ 1 company are bound by the duties of directors including those mandated under S. 166 of the Companies Act, 2013, as true. However, R/2 has produced e-mail correspondence exchanged between R/10 and R/12 and reproduced excerpts therefrom as under:

e-mail dated 02.12.2022 sent by R/10 to R/12 (Annexure-49, page 1486-1488, at page 1487)	**Reciprocation e-mail dated 02.12.2022 sent by R/12 to R/10 (Annexure 50, page 1489)**
".....I hope you recognize that we have been treating Escientia from the beginning that way by paying for several bills, assigning engineers to help at the site, etc……..I know for sure our attitude and the fact that we do not see either a 100% Deccan company or a 75% Deccan company as being different. Escientia group is positioned as the pharma vertical of	*"....I certainly had no intent to antagonize you. I fully recognize how hard you are working to solve this business problem and help grow Escientia. I understand fully where you are coming from in your below note. I fully support your vision for Escientia and*

Deccan and we want it to immensely succeed……"	*you have been our great supporter…."*

R/2 submits that R/12 has reneged on the commitments set out vide the aforementioned email exchange. Thus, the petitioners are now estopped from claiming that the same respondent Directors, and Deccan Group, who have made immense contributions to R/1 Company, at the request of, to the knowledge of, have now compromised the interest of R/1 Company. The allegations of the Petitioners are denied as fabricated ones.

CONFLICT OF INTEREST QUA PETITIONER No.1 AS HE IS A DIRECTOR OF VIMTA LABS LTD.

Continuing with its answering of para 9A of the petitioner R/2 submits that 1st petitioner has conflict of interest as he has directorship in Vimta Labs. As per the petitioners' own understanding of conflict of interest, it is P/1, who

has conflict of interest on the Board of R/1 Company, by virtue of his position as a non-executive director at Vimta Labs Ltd., a publicly listed pharma CDMO. R/2 further submits that consistent with the petitioners' characterization of competing business, Vimta Labs Ltd. stands as one of India's foremost contract research and testing organizations, catering to diverse sectors including but not limited to biopharmaceuticals, healthcare, and medical devices. Petitioner No. 1's profile at Vimta Labs Ltd. explicitly delineates his role in developing strategic plans and market positioning, effectively positioning the company as a competitor to the R/1 Company and EASPL; and also professes experience in 'fiduciary responsibilities of the Board of Directors' which is the subject matter of the present Application.

Petitioner No. 1's directorship at Vimta Labs, which is a competing venture to R/ 1 Company, raises concerns regarding potential information transfer, and contravenes Section 166 of the Companies Act, 2013. Relevant extracts from the website of Vimta Labs are annexed hereto as ANNEXURE 35 of this Counter.

By virtue of the above submissions R/2 submits that law cannot be applied differently to Dr. Pendri, as opposed to R/ 4 to 7. Therefore, petitioner no.1/ Dr. Pendri is liable to be removed from the Board of R/ 1 Company for his long and continuing professional association with Vimta Labs.

RESPONDENT No.8 IS NOT A NECESSARY/ PROPER PARTY.

Answering para 10 of the petition R/2 submits that R/8 is not a proper or a necessary party to these proceedings. R/

8 is neither a shareholder nor is it exercising any managerial functions in R/1 company. Petitioners have failed to show how the R/8 can be sought to be impleaded in a petition under Section 241 and 242 of the Companies Act, 2013 or that any reliefs can be sought against them.

(vi) While answering para 27 of the petition, R/2 submits that petitioners have approached this Tribunal with unclean hands. The alleged acts of oppression/ mismanagement being referred to by the Petitioners have been addressed in the Preliminary Submissions/ Objections section and/or Parawise Reply to the Petition section of this reply, the contents of which are reiterated herein in this regard. Respondent no.2 gives a gist as to which particular allegation was answering in which particular paragraph as under:

Allegation contained in para number	Answer given by respondent no.2 in :	
	Para number of reply	Section of the reply
27(a)	6 to 9 and 38	Parawise reply section.
27(b)	24 to 37	Preliminary submissions/ objections section.
27(c)	47 to 59	Preliminary submissions/ objections section.
27(d)	38	Preliminary submissions/ objections section.
27(e)	39 to 47	Preliminary submissions/ objections section.
27(f)	27 & 28	Preliminary submissions/ objections section.
27(g)	60 & 61	Preliminary submissions/ objections section.

Answering paras 31 and 32 of the Petition, R/2 refuted the credit claimed by Pendris unto themselves that profit made by R/1 company has become possible because of their vision, effort and hard work. Even though current profitability of R/1 Company can never be an indicator of the future profitability and a reason not to appoint a COO, the Petitioners are misleading this Tribunal by stating that R/1 Company's profit for FY 2022-2023 to be "*approximately INR 170.46 Crore*", whereas according to the financial statement is INR 170.46 million = INR 17 Crore (approx.) (at Annexure 3/ Pg. 215 of the Petition). For the period April 2023 to August 2023 in the current financial year, R/1 Company made a loss of INR 1 Crore with only INR 19.5 Crore sales so there is a great degree of variability in the performance of the Respondent No. 1

Company. As stated above, EASPL contributed about 50% of overall sales to R/1 Company over the last 17 months period (April 2022 to August 2023). R/1 Company is highly dependent on EASPL's continued ramp-up in operations. Without EASPL, R/1 Company is unlikely to be even financially viable.

Answering the contentions in para 46B of the petition, on the point that from e-mail dated 07.02.2020 sent by R/10 to R/12, basic understanding which emerges between the petitioners and R/2 to 10 regarding management of R/1 company was that R/2 to 8 shall be 'passive' investors, R/2 relied on relevant part of para 45(A) (8) of order dated 28.11.2023 of this Tribunal passed in IA No.263 of 2023 in CP No. 45/241/HDB/2023, which is reproduced hereunder:

Para 45(A)(8) :

> *"Moreover, clause 13.2 the Share Purchase Agreement clearly says that,*
>
> > *'the Escientia Transaction Documents (together with any amendments or modifications thereof) will constitute the entire agreement and understanding among the parties in relation to the matters contained therein and supersedes all previous correspondence and information exchanged between the Parties (whether written or oral) prior to the date of this Agreement'.*
>
> *So much the reliance placed on the email communication dated 07.02.2020, wherein it was stated that,*
>
> .. ..
>
> *is of no avail to the petitioners."*

Pertinently, the Preliminary Submissions set out the substantial role already played by Deccan Group in rescuing not just R/1 Company but the entire bouquet of Escientia ventures goes far beyond the scope of the aforementioned letter dated 07.02.2020.

Answering para 57A of the Petition, R/2 submits that the circumstances under which Primopus AG came into existence through Deccan Group's rescue of the ailing Escientia Switzerland AG after R/12 admitted his inability to operate and bring it to profitability the plant at Switzerland owned by Escientia Switzerland AG, and

that R/ 12 acquiesced to the takeover by Deccan Group. R/12 is now required to be estopped from alleging that Deccan Group is competing with R/1 Company.

Merely alleging that there exists a competing business, no event of oppression and mismanagement is made out. R/2 insists that the petitioners need to point out which specific act would amount to oppression and mismanagement.

As regards the opinion of the Chairperson of Competition Commission of India dated 15.04.2024 (ANNEXURE-39), R/2 submits that it has neither evidentiary value nor is it binding on this Tribunal. A perusal of the said opinion reveals that the same was obtained by suppressing material facts and providing incomplete facts as is evident by the false statements made therein,

including that Primopus is a brand operated out of India and has connected the 'brand' Primopus to the incorporated entity Primopus AG.

R/2 demands that the Petitioners have to prove their case under the Company Petition that Primopus AG is a competing entity to R/1 Company prior to this Tribunal's consideration of the effect of any alleged competition and whether such competition, if proved would constitute an oppressive act towards the petitioners, especially in light of no actual prejudice to R/1 Company shown by the petitioners. R/2 submits that the principle for adjudicating whether two business are competing with each other under competition law is relevant and applicable to determination of acts of oppression and mismanagement under Company Law.

R/2 further submits that the opinion does not explore any provisions or principles of law, and the first line of the analysis portion states :

> *"The competing business, Primopus, being run by the Deccan Group is based in Goa."*

R/2 further submits that without any analysis, the opinion starts with the presumption of Primopus being a competing business, and further, falsely states that Primopus is based in Goa. The presentation of the opinion is self-serving *inter alia* in light of the fact that Primopus AG has not even commenced any commercial operations yet.

Answering para 57B of the petition, R/2 submits that the contents in this para are unsubstantiated and the allegations levelled in this para are the work of imagination. R/2 submits that the petitioners are under misconception that:

(a) all CDMOs by their very nature can make the products manufactured by all other CDMOs;

(b) all CDMOs are competing with all other CDMOs even if they are located in different continents and cater to exclusive and different clients; and

(c) despite point (a) above, Primopus AG will have to siphon off and or poach R/1's existing contracts to be in business.

By the Petitioners' own admission, an approval of Food and Drugs Administration (FDA) takes a lot of time and effort and thus, a facility cannot just start manufacturing a completely new product as claimed by the Petitioners. R/2 submits that none of the above cases have been proved by the petitioners or even established *prima facie*.

Respondent no.2 has narrated certain facts and events commencing from September 2020 to February 2023, in para 63A, pages 111 to 128 of the Reply, supported by e-mail correspondence exchanged between the parties/ stakeholders (Annexures 44 to 63 of this Reply), by which R/2 sought to demolish all the allegations levelled by the petitioners.

Answering paras 63B (a) to (d) of the petitioner, respondent no.2 stated that the contents relate to the business with Eli Lilly and Primopus. It is further stated by R/2 that Primopus is not a party to these proceedings and any allegations regarding alleged dealings of Primopus with Eli Lilly or any other party cannot be adjudicated before this Tribunal in the present proceedings in their absence.

While answering para 63C of the petition, R/2 has vehemently stated that Eli Lilly was primarily interested in procuring pharmaceutical products either in the US or Europe and was cautious in procuring from India, as was communicated to the Petitioner No. 1 by Marcel Velterop and acknowledged by him vide his email dated 10.09.2021. P/1 has vide his e-mail dated 10.09.2021 acknowledged Eli Lilly's caution about sourcing from India and preference to source from the West, *inter alia* stating that:

> *"…Thanks for the update. It is great that meeting went well and he shared the current thinking at Lilly regarding their approach to CDMOs. Let us discuss in detail and make plans for next call/meeting with him….".*

R/2 has stated that the petitioners have suppressed the aforesaid exchange of emails, which are critical to understanding the nature of interaction between Eli Lilly

and the Petitioners. However, copies of those e-mails are not enclosed to this Reply.

R/2 has relied another communication, viz. e-mail dated 29.03.2022 (ANNEXURE 64 COLLY of this Reply; Annexure 11 of the Company Petition) sent by R/10 to R/23. Relevant portions of the email dated 29.03.2022 is reproduced below:

> *"....*
> *Escientia is a CDMO with a strong partner Mike (>$800M fine chemical revenues) and now present in 3 geographies after the Swiss site (RSM's and GMP intermediates) was added.*
> *……..*
> *As to the topic of interest, Fmoc-protected amino-acids, I can confirm that our parent Deccan is able and interested to set-up supply from its Indian operations. The process requires tri-phosgene or phosgene; already today large amounts of tri-phosgene are used to this is in place and a new, Swiss engineered phosgene system will be implemented over the next 12 months which opens up this option as well.*
>
> *Producing a series of Fmoc-protected amino acids in the amounts indicated is of interest for sure and we can explore optimal fit amongst our Vizag, Swiss and other plants depending on your preference.*
>
> *Mike, you had asked about nitrosamine assessment which is fully in place as confirmed during our meeting and in addition inquired about the number of batches produced in our Vizag site last year.*
>
> *We made a total of 340 batches leading to some 70 batches GMP released and supplied (intermediates and active ingredient combined).*

> *The GMP scale-up and supply for clinical phases also takes place on our Vizag site which further saves time as we can avoid tech transfer during late stages and launch. ……."*

R/2 submitted that the aforesaid e-mail relied upon by petitioners shows that to the knowledge of petitioners, Escientia was projected as part of Deccan group, which had necessary experience to produce Fmoc-protected amino acids, which was what interested Eli Lilly in the first place. Contrary to any siphoning of business from R/ 1 Company, petitioners through Velterop sought business from Eli Lilly on the strength, scale and capabilities of the manufacturing experience of its parent group being Deccan Group at its various production facilities. The email also specifically states that the choice of unit for manufacturing, between Vizag, Swiss and other plants, will depend on the preference of Eli Lilly. R/2 submits that petitioners have thoroughly misconstrued e-mail

dated 29.03.2022. Petitioners have also deliberately omitted the attachment to the aforesaid email dated 29.03.2022 which is referred to in the email itself, which covers the capabilities and resources of Escientia Switzerland AG and the Deccan Group and its manufacturing facilities extensively.

While answering para 63D of the petition, R/2 has relied on certain e-mail communications exchanged between Marcel Velterop, Eli Lilly and Dr. Pankaj Rege, which are annexed at ANNEXURES 55, 56, 57, etc. of this Reply. Respondent no.2 alleged that petitioners did not place on record communication vide which Velterop received the Request For Proposal (RFP), a copy of which is placed at ANNEXURE 59 of this Reply. Despite heavy reliance on and accusations against Velterop, the

petitioners have failed to implead Velterop in the present proceedings. *(Ref. Annexure 59 of the Present Reply)*

RFP and RFI are independent of each other:

Respondent no.2 further alleged that petitioners sought to mislead this Tribunal by implying that every RFP is preceded by a corresponding RFI. This assertion is blatantly untrue and contrary to industry standards. Respondent no.2 submitted that RFP and RFI can exist independently of one another and the former need not always follow the latter. R/2 submitted that an RFI is issued solely for information and planning purposes and does not constitute an RFP, or a promise to issue an RFP, or a commitment to issue any type of solicitation in the future.

Respondent no.2 claimed that Deccan group had saved the petitioners and also R/1 Company from substantial loss, and penalties it would have incurred in shutting down the Swiss facility, vide the takeover of Escientia Switzerland AG with all its liabilities.

Answering para 63F of the petition, in response to reliance placed by the petitioners on e-mail dated 01.07.2022 of Marcel Velterop (a consultant to R/8 Company) and email dated 06.12.2022 (Annexure 77); e-mail dated 24.09.2022 (Annexure 78 of the petition) of R/ 6 (Vivek Save), respondent no.2 submitted that there is nothing in the RFP to show that it connects to the RFI, or even that the RFP was for R/1 Company or any other Escientia entity. Evidently, Velterop's email dated 01.07.2022 is only in the context of the news article that

formed part of the email itself, and his statement was speculative, and based on publicly available information.

Respondent no.2 further submitted that email dated 06.09.2022 makes evident that RFI was only in the context of Amino Acids. It is submitted that the petitioners' averments of there being any imminent deal with Eli Lilly for R/1 Company to manufacture components for Eli Lilly is entirely concocted, and a perversion of facts, which point to Eli Lilly only being interested in purchasing components manufactured in the USA or in Europe, dealing only with Escientia Switzerland AG, and for products manufactured by the Deccan Group, being Amino Acids. Pendris themselves

admittedly made submissions to that effect in response to the RFI from Eli Lilly.

Answering para 64G of the petition, respondent no.2 states that Escientia Group itself is only part of the Deccan Group, with the petitioners only being minority shareholders therein. Pertinently, the RFP also emanated from the aforementioned CDA signed with Escientia Switzerland AG. R/2 further states that R/12 and petitioner no.1 jeopardized the whole operations and success of Escientia Switzerland AG, failing to infuse necessary funds to operationalize the plant which would have been critical to cater to Eli Lilly's requirements, and thereafter cut off all communication with, and importantly, all payments to Marcel Velterop, who was

under no obligation thereafter to bring any business to the Pendris.

Respondent no.2 alleged that the petitioners have stolen certain e-mails communication from the servers of R/1 company and have doctored some documents, amounting to acts of oppression, mismanagement and fraud on respondents no. 4, 5, 6, 7, 9, and 10, which are detailed hereunder:

Details of document	**Sent by**	**Enclosed at**	**Averments made by R/2 in Reply dated 11.06.2024, at**
STOLEN DOCUMENTS (CORPORATE ESPIONAGE) AS ALLEGED BY R/2			
e-mail of R/9 dated 30.08.2022, trailing email therein of Mr. Marcel Velterop	R/9, Marcel Velterop, R/10.	Annexure-82 of petition.	Para 54, page 90

dated 29.08.2022, email of R/10 dated 10.11.2021, Marcel Velterop's email in response thereto dated 11.11.2021.			
e-mail dated 13.12.2022; Financial projections shared by Marcel Velterop showing that Primopus will reach profits of Rs.240 crores.	Hiren Vora	Annexures 42 and 43 of petition.	Para 57D, page 101.
Redacted version of Request for Proposal (RFP).	Eli Lilly & Company	Annexure 68 of petition.	Para 63E, page 144. R/2 states that it is

			suppression of fact.
e-mail dated 06.09.2022 and 09.09.2022.	Mails exchanged between Eli Lilly and R/4 to 7.	Annexure 56 of petition.	Para 63F and 63G, page 145 to 147.
e-mail dated 14.09.2022.	Vamsi Gokaraju, R/10	Annexure -70 of petition.	Para 63H, pages 147, 148.
e-mail dated 04.10.2022, 06.09.2022 and 14.10.2022.	2nd mail was sent by Roy O'Keeffe to Marcel Velterop	Annexure-56 of petition.	Para 63-I, page 149.
e-mail dated 10.10.2022	Sent by Eli Lilly		Para 63K, page 151
e-mail dated 06.12.2022	Sent by Marcel Velterop to R/10	Annexure-77 of petition.	Para 63N, page 153.
e-mail dated 24.09.2022.	Sent by R/6 to R/10	Annxure-78	Para 63N, page 153.
DOCTORED DOCUMENT AS ALLEGED BY R/2			

e-mail dated 16.09.2022	Sent by Marcel Velterop	Annexure 72	Para 63J, page 149.

Answering para 63K of the petition, R/2 submits that Deccan Group had to intervene and rescue failing Escientia Switzerland AG with whom Eli Lilly had entered into a Confidential Disclosure Agreement dated 17.01.2022. Upon Deccan Group's fund infusion in the ailing Escientia Switzerland AG, R/1 Company's shareholding therein was reduced to 2.2%, the shareholding within which R/2 owns 74%, rendering the de-facto shareholding of Pendris in Escientia Switzerland AG to only approximately 0.5%. Thereafter, Pendris cut off all communication and collaboration with the Swiss Company and also stopped all payments for the services of Marcel Velterop from 03.08.2022. Thus, Marcel

Velterop is no longer under any obligation to assist Pendris/ Escientia Group.

Answering paras 69B to 69E of the petition R/2 has stated that GlaxoSmithKline ("GSK") is neither an exclusive client of Pendris nor Escientia Group, of which Deccan Group is the majority owner. There is no commercial product overlap between Primopus AG and Escientia Group. Pertinently, Primopus AG is the rebranded Escientia Switzerland AG, and Primopus AG is the successor of Escientia Switzerland AG. Respondent no.2 laid emphasis on Deccan Group's takeover of pharma CDMO Escientia Switzerland AG with the consent of Pendris, and the averments hereinabove relating to the emails exchanged between Petitioner No. 2 herein and

R/10 dated 02.12.2021. Respondent no.2 narrated what he called the correct facts as under:

(a) Pendris entered into discussions with GSK on or around January 2018 with GSK to explore opportunities to supply components for them.

(b) A Quality Assurance Agreement was entered into between GSK and R/1 Company dated 14.11.2018. Pertinently, this was prior to the investment and acquisition of majority stake and ownership in the Escientia Group by Deccan Group.

(c) Escientia Life Sciences USA invoiced GSK for supply of certain components between 20.02.2018 and 18.12.2019. All the invoices state that the invoices are for products being shipped from Escientia Life Sciences USA to GSK USA.

(d) Vide Management Consultancy Agreement dated 20.01.2021, services of Marcel Velterop were engaged by Escientia Switzerland AG. A copy of the email of R/ 12 dated 20.07.2021 on his introduction of Velterop to R/1's employees is at ANNEXURE 67 of this Reply.

Said Marcel Velterop was a consultant for both Deccan Group and Escientia Group, and 50% of his salary was borne by Deccan Group, while 50% was borne by Escientia US, as was agreed between the Deccan Group and Pendris.

Vide an email dated 21.02.2022 (ANNEXURE 68), Mr. Marcel Velterop wrote to P/1, R/12 and R/9, and noted that Ms. Sue Coote from GSK, and several

others had confirmed their attendance at a conference referred to as the DCAT meeting.

Following up after the meeting, vide an email dated 25.03.2022, the Respondent No. 12 wrote to Ms. Sue Coote and sought a meeting. Mr. Marcel Velterop also wrote an email dated 28.03.2022 to Ms. Sue Coote, thanking her for the meeting on the sidelines of the DCAT conference, and summarized an 'Essentia' value proposition as discussed. Ms. Sue Coote vide an email dated 29.03.2022 responded only to the email from Marcel, stating that she would be in touch. A copy of email of Mr. Marcel Velterop dated 21.02.2022 is at ANNEXURE 68. A copy of the email dated 28.03.2022 from Marcel Velterop along with trailing email of the Respondent No. 12

dated 25.03.2022 to Sue Coote along with its attachment thereto is annexed at ANNEXURE 69 (Colly.). A copy of the email dated 29.03.2022 from Sue Coote to Marcel Velterop is at ANNEXURE 70.

(e) Pendris cut off all communication and collaboration with the Swiss Company and also stopped all payments for the services of Marcel Velterop from 03.08.2022 without any formal communication to Mr. Marcel Velterop. It is reiterated that from 01.08.2022 onwards, Mr. Marcel Velterop was not under any obligation to assist the Pendris and/or the Escientia Group.

(f) Deccan Group vide a fund infusion invested directly in Escientia Switzerland, whereby the stake of R/1 Company in Switzerland was reduced to 2.2%, the

shareholding within which R/ 2 owns 74%, rendering the de-facto shareholding of Pendris in Escientia Switzerland AG to only 0.5% on 19.03.2022.

(g) Only on 12.10.2022 Marcel Velterop write to GSK, ostensibly without any references from Pendris or Escientia Group, in his capacity as CEO of Primopus AG. Pertinently, during the period in which GSK was a client of Escientia US, Marcel Velterop had no engagement with Escientia.

(h) Subsequent email dated 14.11.2022 is only a follow up to the discussions which had already happened on

03.11.2022, and adverts again to 'Amidites', and offers supply on behalf of Primopus AG and R/8.

Thus, it is evident that there is no overlap whatsoever between Escientia Group's business with GSK, and Primopus AG's interaction with GSK. There is also no overlap in the commercial products being offered by Escientia Group, and Primopus. There is also no misrepresentation by Primopus AG as to its ownership or association with any other entity. R/2 submits that there is no breach of any fiduciary duties on behalf of any Directors to R/1 Company as alleged, and R/ 1 Company is not even associated with any supply of products to GSK and all invoices pertained to Escientia US.

VIII. INDIVIDUAL MEMOS DATED 23.07.2024 BY OTHER RESPONDENS.

Above Reply dated 07.08.2024 filed by respondent no.2 is adopted by respondents no.3 to 10 vide individual Memos dated 23.07.2024.

IX. REPLY DATED 14.08.2024 FILED BY RESPONDENTS 11 & 12 TO THE AMENDED COMPANY PETITION:

(i) Respondent no.11 is a Director of R/1 company. R/12 is the son of petitioner no.1 herein; he claims to be founder and promoter of Escientia Group; and is associated with his father/ petitioner no.1 herein in promoting Escientia Group.

(ii) Both the answering respondents support the case of the Company petitioners. Respondent no.11, in the capacity of Director of R/1 Company asserted that

Deccan Group (comprising of Respondent Nos. 2 and 8), through the actions of specific individuals, *viz.*, respondents 4 to 7, 9 and 10, have perpetrated various acts of oppression and mismanagement in R/1 Company, all with the singular aim of committing a corporate raid on the Escientia Group to the detriment of its minority shareholders and to the benefit of the Deccan Group's competing pharmaceutical CDMO business, Primopus.

(iii) GROUNDS FOR INTERFERENCE BY THIS TRIBUNAL AS MADE BY THE ANSWERING RESPONDENTS.

Respondents no.11 & 12 have made out the following grounds for interference by this Tribunal:

(A) Existence of a clear conflict of interest for the Deccan Group, which has significant shareholding

in two competing pharmaceutical businesses – the Escientia Group, and Primopus. Notably, the Respondent No. 1 Company has a less than 0.4% shareholding in the Swiss-arm of Primopus, *i.e.*, Primopus AG, and therefore stands to gain next to nothing should Primopus succeed. However, the Deccan Group has by its conduct demonstrated its unequal treatment of the two businesses, being concerned with the success of Primopus rather than the Escientia Group.

(B) Deccan Group has purchased 75% shareholding across three entities of Escientia Group, *i.e.*,

- R/1 Company,
- Escientia Advanced Sciences Private Limited, and
- Escientia Life Sciences LLC,

for a total consideration of approximately INR 95 crores in August 2020. However, as on date, Deccan Group has invested close to INR 4685 crores in Primopus, as per the latest filings made with the Swiss government. It is therefore evident that Deccan Group is --

(a) pouring funds into Primopus to ensure that it succeeds to the detriment of the Escientia Group;

(b) creating, continuing, and perpetuating a situation of conflict of interest for its nominee directors on the Board of R/1 Company, in clear violation of Section 166 of the Companies Act.

(c) Each of the nominee directors of R/2 Company on the Board of R/1 Company suffers from situational and personal conflict. By virtue of Deccan Group's ownership of a competing business, in which the

minority shareholders of R/1 Company have entirely minimal shareholding, the Deccan Group has placed itself in a situation of conflict of interest.

(d) Each of the nominee directors of R/2 Company on the Board of R/1 Company also suffers from personal conflict, inasmuch as they are (a) significant whole-time salaried employees of R/8 Company, the parent entity of R/2 Company; and (b) have shareholding in R/8 Company, thereby demonstrating pecuniary conflict. This pecuniary conflict plays out in a manner where such directors would stand to make significant pecuniary gain, if Primopus succeeds, and the same cannot be said for the success of the Escientia Group.

(e) Deccan Group has already undertaken various steps with a view to damage the business of R/1 Company, which includes:

(i) Attempting to appoint Dr M.S.M. Mujeebur Rahuman, presently the Chief Operating Officer of EASPL by virtue of an order of this Hon'ble Tribunal dated 28.11.2023, to be COO of R/1 Company, in clear violation of statutory provisions, and with a view to place an agent of Deccan Group in-charge of R/1 Company; and

(ii) Regularly convening Board meetings where all deliberations and procedures are given a go-bye, and where Deccan Group's nominee directors are aggravating the situation of conflict of interest by passing Board resolutions to facilitate siphoning

off business opportunities, transfer of confidential data, and significantly alter the management structure of R/1 Company.

X. In the light of the contest as above, the following points are framed for our consideration:

POINTS:

(1) Whether the memos filed by Respondents 3 to 9 adopting the counter filed by the 2nd Respondent since unaccompanied by affidavits, can be considered as *pleadings* ? If not, whether the doctrine of *non-traversal* of pleadings applies?

(2) Whether Articles 44, 69 and 72 of the AOA of 1st Respondent company, which contain *special rights* became *otiose*, *redundan*t, besides *repugnant* to the provisions of the Companies Act, 2013? If so, can the same be struck down by this Tribunal? If yes, without there being a prayer ?

(3) Whether the nominee Directors of 2nd Respondent suffer from situational and actual conflict of interest (or) gave rise to the possibility of a conflict of interest? If so, whether the same amounted to *oppression* of the interests of the minority shareholders of EASPL?

(4) Whether the acts complained in the petition/ alleged to have been committed by the respondents tantamount to acts of oppression and mismanagement? If so, for what relief?

(5) Whether appointment of Dr.Mujeebur Rahuman as COO, is contrary to the, *Articles, procedure* and the provisions of the Companies Act, 2013? If so, whether this Tribunal can interfere with the said appointment ?

(6) Whether Pendris have *caused loss* to the tune of Rs.13 crores to 1st respondent/ company in selling Spent solvents, indulged in *unauthorised data migration* and approached this Tribunal with

unclean hands? If so, are they disentitled to the reliefs claimed in the company petition?

(7) Whether there is an *irretrievable break* down of mutual trust and confidence amongst the shareholders of 1st respondent company and '*buy out'* is the only remedy under the facts and circumstances of the case? If so, to whom such buy out option can be awarded?

XI. We have heard Ld. Senior Counsels, Mr. K. Vivek Reddy, Mr. D.V. Seetharam Murthy & Mr. P. Sri Raghuram for, Mr. Rajesh Maddy, Advocate on Record for the petitioners, and Mr. Sowmya Dasgupta, Mr. Dwijesh Kapila, Mr. Aviral Singhal, Mr. Pranay Bahuguna, Mr. P. Shamanthak Hande, Ms. Mounika Donur, Mr. Bhemachary Advocates, in CP No.45/241/ HDB/ 2023.

Also heard Mr. S. Niranjan Reddy, learned Senior Counsel appearing with Mr. Anirudh Arun Kumar, Mr. Tarun G. Reddy and Mr. Sairam, learned advocates for respondents 2 & 3 and

Mr. P.H. Aravind Pandian, learned Senior Counsel for Mr. Rusheek Reddy K.V., Advocate for respondents 4 to 6. Mr. Aatif, advocate for respondents 7 to 9.

In CP No.44/241/ HDB/ 2023 we have heard, learned Senior Counsel Mr. K. Vivek Reddy, for Mr. Rajesh Maddy, Advocate on Record, for the petitioners, and Mr. Sowmya Dasgupta, Mr. Aviral & Mr. G. Bheemachary, learned Advocates

Mr. S. Niranjan Reddy, learned Senior Counsel, for Mr. Sairam, for respondents 2 & 3, Mr. Anirudh Arun

Kumar, Mr. Amit, Mr. Siddharth and Ms. Kesang Tenzin, learned Advocates

Mr. P.H. Arvind Pandian, learned Senior Counsel for respondents no.4 to 6.

Mr. G. Bheemachary, learned Advocate for respondents no.11 & 12.

XII. Before we proceed to decide the points as above, we wish to state that barring the relief relating to special rights, rest of the reliefs prayed in both the above Company Petitions are common. That apart, the pleadings, documents and parties (barring the proforma parties) are also being common in both the company petitions. Hence, in order to avoid conflict/ repetition in our discussion/order, and with the consent of the Ld. Sr. Counsel for both sides, we proceed to pass the following;

XIII. COMMON ORDER

POINT-1:

Whether the memos filed by Respondents 3 to 9 adopting the counter filed by the 2nd Respondent since unaccompanied by affidavits, can be considered as *pleadings* ? If not, whether the doctrine of *non-traversal* of pleadings applies?

The Submissions.

Mr. Vivek Reddy, the Ld. Senior Counsel for the company petitioners, raised a *preliminary* objection by contending that the Respondents 3 to 9 are trying to rely on the pleadings/counter of 2nd Respondent herein, by simply filing "memos" adopting the counter filed by the 2nd respondent without filing verification affidavits, despite opportunity granted to file the reply/counter to the Company Petition, as such the said memos cannot be considered as "counter" and in fact, the same is nothing

but an *abuse of the process of law*. Thus, submitting, Ld. Sr. Counsel emphasised that in the absence of counter affidavit being filed by or on behalf of Respondents 3 to 9 as mandated under Rule 111 of NCLT Rules, the case of Petitioners as against these Respondents stood unrebutted.

Ld. Sr. Counsel also submits that in the Company Petition allegations were levelled against Respondents 3 to 9 which pertain to the period *prior* to the incorporation of 2nd respondent, as such the 2nd Respondent having been incorporated on 30.07.2020 i.e. post incorporation, is not competent to testify to these averments in the Petition. According to the Ld. Sr. Counsel, the facts which are solely in the knowledge of one individual cannot be testified by another individual.

Ld. Sr. Counsel relied on Order VIII Rule 5(1) of The Code of Civil Procedure, 1908 (CPC) *besides* on the following rulings:

A.K.K. Nambiar vs. Union of India, *[1970] 3 S.C.R. 121.*

> *"... The reason for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."*

Smt. Savithramma vs. Cecil Naronha & Anr., *[1988] Supp. 2 S.C.R. 561:*

> *"... The importance of verification has to be judged by the purpose for which it is required. It is only on the basis or verification, it is possible to decide the genuineness and authenticity of the allegations and the deponent can be held responsible for the allegations made in the affidavit. In this Court evidence in support of the statements contained in writ petitions, special leave petitions, applications and other miscellaneous matters, is accepted in the form of affidavit filed by the parties concerned. It is therefore necessary that the party stating facts must disclose as to what facts are true to his personal knowledge, information or belief. If the statement of fact is based on information the source of information must be disclosed in the affidavit. An affidavit which does not comply with the provisions of Order XI of the Supreme Court Rules, has no probative value and is liable to be rejected. ..."*

and reiterated the plea that in the *absence* of affidavits by or on behalf of Respondents 3 to 9, the case of Petitioners as against these Respondents stood admitted.

Mr. P.H.Arvind Pandian, Ld. Sr. Counsel for the respondents 4 to 6 would submit that, the mere *non-filing of the affidavits* along with the 'adoption' memos by the respondents 3 to 9, do not *invalidate* the memos. According to the Ld. Sr. Counsel as the Petitioners have withdrawn an Application vide I.A. (C.A.) No. 143 of 2024 wherein the prayer of the Petitioners was to direct the Respondents 3 to 9 to file evidence affidavits and that by such *withdrawal* of the application the Petitioners have *accepted* the adoption memos of Respondents 3 to 9 without any affidavits, as valid pleadings.

Mr. Niranjan Reddy, Ld. Sr. Counsel for the respondents 2 to 3 sailed with the above submission of the Ld. Sr. Counsel for the respondents 2&3.

Refuting these submissions, Ld. Sr. Counsel for petitioners submits that the withdrawal of the application on behalf of Petitioners was only in the interests of *expedition* of case in an early manner and the same does not come in the application of law relating to pleadings. Ld. Sr. Counsel submits that there cannot be *estoppel* against the application of law and hence, the consequences of non-filing of affidavits must follow.

Our analysis & findings.

Submission of affidavits by the parties to a *lis,* in support of their case/defence is one of the most accepted practises being followed by the Judicial Forums and this Tribunal

is no exception to this practise. Insofar as filing of petitions, objections or counter in this Tribunal is concerned, NCLT Rules, 2016 mandates that, the same shall be verified as an Appeal or Petition, and affirmed by a supporting affidavit. The relevant rules are as follows:

> ***"37. Notice to Opposite Party***
> ***……...***
> *(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.*
>
> ***111. Filing of objections by respondent, form and consequences. -***
> *(1) The respondent, if so directed, shall file objections or counter within the time allowed by the Tribunal.*
> *(2) The objections or counter shall be verified as an appeal or petition and wherever new facts are sought to be introduced with the leave of the Tribunal for the first time, the same shall be affirmed by a supporting affidavit."*

At the first blush, the submissions of the Ld. Sr. Counsel for the petitioner that as *the respondents 3 to 9* did not file affidavits in support of the memo's adopting the counter filed by the 2nd respondent in terms of the rule 111 as such the case of the petitioner remain un rebutted by the

respondents 3 to 9, appeared to us as convincing, but on perusal of *catena* of rulings of Hon'ble Supreme Court of India, one among such State of Punjab and Anr. vs. Shamlal Murari and Anr., *(1976) 1 SCC 719*, wherein it was held as follows:

> *"7. It is true that, in form, the rule strikes a mandatory note and, in design, is intended to facilitate a plurality of Judges hearing the appeal, each equipped with a set of relevant papers. Maybe, there is force in the view taken by the Full Bench that certain basic records must be before the court along with the appeal if the court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the rule transcend the directory level and may, perhaps, be considered a mandatory need. The use of "shall" — a word of slippery semantics — in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition have all to be considered before condemning a violation as fatal.*
>
> *8. It is obvious that even taking a stern view, every minor detail in Rule 3 cannot carry a compulsory or imperative import. After all, what is required for the Judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper-book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the overemphasis laid by the court on three copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three items, the result might have been different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the court.* ***We must always remember that processual law is not to be a tyrant but a***

> ***servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice be doing of justice to parties, the rule is mandatory. <u>But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum</u>. After all, courts are to do justice, not to wreck this end product on technicalities.*** *Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time,"*

We are fully convinced that "*rules of procedure are handmaids of justice*" and we should not enthrone a regulatory requirement into a dominant desideratum more particularly when the consequences of noncompliance of regulatory requirement are not spelt out in the Regulation or the Rule.

The following rulings of Hon'ble High Courts, would further establish that, filing of a "memo" adopting the written statement of a defendant is deemed that

defendant adopting the written statement has denied the plaint averments:

Hon'ble Telangana High Court in CCC Appeal No. 157/2015;

> *"35. It is observed that filing of a memo adopting written statement by defendant No.1 is nothing but defendant No.1 sailing with defendant No.2. Since the defendant No.2 has denied the plaint averments, it is deemed that even defendant No.1 has denied the plaint averments.*
> ……
> *36. In view of the above facts and circumstances, this Court is of the view that the Trial Court has considered all the relevant aspects in proper perspective and passed a well-reasoned Judgment and thereby there is no necessity to interfere with the impugned common judgment."*

The Hon'ble Andhra Pradesh High Court in Banka Kanaka Rao vs Kandregula Sanjeev Kumar And Others, *C.R.P. No. 667 of 2012* dated 27.09.2012 observed as follows:

> *"Defendants 9 and 10 i.e., respondents 1 and 2 herein filed I.A.No.1034 of 2011 under Order 8 Rule 9 C.P.C. with a prayer to permit them to file an additional written statement. It was stated that the counsel, who was engaged by them, has filed the memo, adopting the written statement filed by the 15th respondent without their knowledge and that on realizing the same, they have engaged another Advocate and as per his advice, they wanted to file additional written statement. The petitioner opposed the application by filing counter. The trial Court*

allowed the I.A. through order, dated 19.01.2012. Hence, this civil revision petition.

……..

In the instant case, respondents 1 and 2 are deemed to have filed written statement, since they have filed a memo adopting the written statement filed by the 15th respondent. Obviously for that reason, they named the written statement, which, they wanted to file independently as 'additional written statement'. The permission accorded to respondents 1 and 2 by the trial Court would result in a situation, where they not only have the benefit of the contents of written statement filed by the 15th respondent, but also of the additional written statement. The basis pleaded by respondents 1 and 2 for filing additional written statement does not support this. If they wanted to distance themselves from the written statement filed by respondent No.15, they ought to have withdrawn the memo, through which they adopted the written statement. As long as the memo remains, respondents 1 and 2 cannot be permitted to file another written statement in the form of additional pleadings.

……..

Respondents 1 and 2 did not file written statement of their own. Though the filing of a memo adopting the written statement of another defendant may bring about a situation as to making the pleadings complete, the liberty of a defendant to file independent written statement cannot be taken away, in case the memo was filed without his knowledge. The question as to whether the memo adopting the written statement of another defendant was filed with or without the knowledge of the concerned party, is certainly a matter for verification by the Court, as and when steps are initiated.

Therefore, the civil revision petition is allowed and the order under revision is set aside. It is however left open to respondents 1 and 2 to withdraw the memo filed on their behalf adopting the written statement of the 15th defendant i.e., 15th respondent herein and if permitted, to file an application seeking permission of the Court to file a written statement of their own."

Hon'ble High Court of Karnataka in Doddaiah vs Doddaiah, *W.P. No. 14267/2009,* observed as follows:

> *"4. Now it is necessary to note that the petitioner is not filing a separate written statement and he is filing a memo adopting the written statement of the 3rd defendant. ……..*
> *……*
> *But, anyhow, it is relevant to note that the petitioner appeared before the trial court since 2003 by impleading himself as a party to the proceedings and thereby having been granted sufficient time to file his written statement, but has not chosen the same. In the circumstances, it is necessary to award costs. Taking into consideration the financial position of the parties, I am of the opinion that it is just and proper to award an amount of Rs.1,500-00 as costs.*
> *Hence the writ petition is allowed……."*

Insofar as the rulings in re, A.K.K. Nambiar & Savitramma, *supra*, relied on by the Ld. Sr. Counsel for the Petitioners are concerned, the same can be distinguished on facts from the present case. Both in AKK Nambiar (supra) and Smt. Savithramma (supra), there was only one party on each side unlike the present case. In such case, an affidavit is must as the only person contesting the case must be bound by the statements made. Also, in both the above referred cases, it is the affidavit of the initiating party itself which was found to

be defective. In Smt. Savithramma (supra), though the defect was on both the sides, the same cannot be equated to the present case, as the case before the Hon'ble Supreme Court was a contempt petition which specifically requires personal knowledge of the averments thereby mandating the filing of affidavit. Moreover, a defective affidavit is entirely different from an adoption memo.

As regards the contention that the respondents 3 to 9 testification to the events prior to the incorporation of 2nd Respondent is concerned, the veracity of the same can be tested keeping in view of the fact that the "facts" deposed basing on the information and not within the personal knowledge of 2nd Respondent. So much so the contents of the Counter of 2nd respondent insofar as the same related

to the event prior to 30.07.2020 are concerned, the same were based on the "available information" and not on the personal knowledge of respondents 3 to 9.

We therefore in the light of our discussion, *supra, reject* the plea of the petitioners that in the *absence* of filing of affidavits by or on behalf of Respondents 3 to 9 along with the adoption Memos, the case of Petitioners as against these Respondents stood admitted.

The Point-1 is answered accordingly.

POINT-2.

(1) Whether Articles 44, 69 and 72 of the AOA of 1st Respondent company, which contain *special rights* became *otiose*, *redundan*t, besides *repugnant* to the provisions of the Companies Act, 2013? If so, can the same be struck down by this Tribunal? If yes, without there being a prayer ?

The Submissions.

Mr. Vivek Reddy, Ld. Senior Counsel for the petitioners would contend that Articles 44, 69, and 72 of the Articles of Association of EASPL are *original regulations* forming a part of the Articles of Association of the 1st Respondent Company since its incorporation in 2013 and each of these Articles provides certain 'special rights' to certain members:

The above Articles are reproduced hereunder:

> *"**44.** Any resolution would be considered as passed at a general meeting only if all Shareholders present at a quorate meeting of the Shareholders have voted unanimously in favour of it.*
>
> *** *** ***
>
> ***69.** Each Director shall have one (1) vote on the Board and all decisions of the Board, including in respect of a resolution by circulation, shall be taken only if both Directors have voted in favour of it.*
>
> *** *** ***
>
> ***72.** The minutes of the Board shall be circulated within thirty (30) days of the date of the meetings of the Board. At the beginning of each meeting of the Board, the Board minutes of the previous meeting shall be approved if agreed to by both Directors."*

According to the learned Senior Counsel the above Regulations are in existence ever since the incorporation of the 1st Respondent Company, not *'repugnant'* to any of the provisions of the Companies Act 2013, and that the same cannot be *'tinkered'* with by the Respondents or by this Tribunal, except by following the procedure as prescribed by the Act and the Articles themselves.

Learned Senior Counsel further contends that the respondents 2 to 9, being fully aware of and ''acquiesced' with this fact situation are *estopped* under law from contending that the rights conferred under these articles are un enforceable. According to the Ld. Sr. Counsel, despite objection by the petitioners 2 & 3, in every Board meeting of the 1st respondent since 04.09.2023, 'resolutions' were passed "without" obtaining the

affirmative vote of the Pendris as such the same are unenforceable under law. In support of this submission Ld. Sr. Counsel relied on the document 19/ Pg. 144 of Petitioners Complilation-2.

Ld. Senior Counsel further submits that, Article 69 of the Articles of Association *mandates* that for any decision of the Board of directors, both the *"first"* directors of the Respondent No. 1 Company, *namely,* the petitioners 2 & 3, (for short 'Pendris') must be part of any majority. Learned Senior Counsel submits that Article 60(iii) of the Articles of Association specifically identify the "first directors" of the 1st Respondent Company as Dr Yadagiri R. Pendri and Mr Kiran R. Pendri. Learned Senior Counsel states that as per the 2nd Respondent's own counter affidavit/ reply (Para 69A/ Pg. 204 of the Reply),

and as per the case set up by the Petitioners, the meaning of "both directors" is the original promoter directors of EASPL, viz., Dr Yadagiri R. Pendri and Mr Kiran R. Pendri (Para 69A/ Pg. 202 of the Amended Company Petition). The relevant extracts of both the Amended Company Petition and the Reply of Respondent No. 2 are reproduced hereunder for ease of reference:

> *"69A. ... It is submitted that the phrase "both directors", as it occurs under Articles 69 and 72 of the AOA, means the "first directors" of the Respondent No. 1 Company – Mr. Kiran Reddy Pendri (Petitioner No. 2) and Dr. Yadagiri Reddy Pendri, under Article 60 (iii) of the AoA. In this context, a plain reading of Articles 69 and 72 makes it amply clear that the aforesaid articles grant certain special rights in the favour of Mr. Kiran Pendri and Dr. Yadagiri Reddy Pendri in matters of passing board resolutions and approving board minutes, respectively. ..."*

Reply of Respondent No. 2 dated 01.04.2024:

> *"69A. ... Articles 69 and 72 in particular, are a result of the articles of EASPL at incorporation wherein the only directors on the Board were Dr. Yadagiri Pendri and the Petitioner No. 2, as is evident from a perusal of Article 60(iii). ..."*

Learned Senior Counsel further states that the conduct of the parties at all previous Board meetings of

EASPL prior to the filing of the Company Petition amply demonstrates that this meaning was given due regard in practice as well (Document 13/ Pg. 248 of PC-1).

However, the minutes of various subsequent meetings came to be "approved" despite the Pendris expressing their dissent. This conduct according to the learned Senior Counsel is not only violation of Article 72, which provides a similar right to the Pendris vis-à-vis minutes of meetings is *oppressive*. Ld. Sr. Counsel, asserts that the claim of the respondents that Article 69 became "redundant" or "otiose" after the Deccan Group inducted 3 (three) more directors into the Board of EASPL is misconceived and warrants no consideration.

Learned senior counsel also referred to the EGM conducted on 15.10.2024, wherein the Deccan Group

through one of its nominee directors, i.e. the Respondent No. 5/ Mr Ajit Alexander George, who also happened to be the chairman of the meeting, declared Article 44 as being *invalid and repugnant* to the Companies Act, and refused to honour the regulation. On this basis, the chairman declared the resolution for confirmation of the COO under Section 196(4) of the Companies Act as having passed by majority. The Company Petitioners thereafter filed I.A. (C.A.) No. 168 of 2024 to demonstrate violation of Article 44 and to overturn the confirmation of the COO and the said application came to be tagged with the main Company Petition on the request of the Petitioners.

Learned Senior Counsel submits that the attempt by the Deccan Group to *strike-off* special rights

contained in the Articles of Association, apart from being oppressive, is a peculiar approach, since the Deccan Group itself has special rights for various shareholders contained in its own Articles of Association. In particular, Articles 70, 71, 98, 103, 104, 112, 113, 114, 115, 144 and 145 read with Schedule II, Schedule VI, and Schedule VII, demonstrate the existence of various kinds of special rights at the Board and shareholder level. Therefore, if the Deccan Group's argument were to be accepted, such special rights granted in favour of various minority shareholders and promoters would cease to exist, which is not the situation contemplated under applicable law.

Learned senior Counsel states that the law surrounding *jurisdiction* of courts to entertain a challenge

to Articles of Association, in particular original Articles of Association and not amendments, is well settled. Reliance in this regard is placed on the ruling in ***Tata Consultancy Services Ltd. vs Cyrus Investments (P) Ltd.,*** *(2021) 9 SCC 449*, wherein Hon'ble Supreme Court, dealing with an Appeal in proceedings under Sections 241 and 242 of the Companies Act between various shareholders and companies of the Tata Group, in particular, a challenge to the validity of Article 121 (*affirmative vote in all Board decisions*), Article 118 (*affirmative vote in chairperson appointment*), and Article 86 (*quorum requirements*), held that:

> ***"190.*** *It is no doubt true that the Tribunal has the power under Section 242 to set aside any amendment to the Articles that takes away recognised proprietary rights of shareholders.* ***But this is on the premise that the bringing up of amendment itself was a conduct that was oppressive or prejudicial."***
>
> (Emphasis is ours)

Learned senior counsel further argued that mere setting a higher standard than the Companies Act, in the AoA cannot be considered to be repugnant to the Companies Act, 2013 and the same is entirely permissible and that that Articles will not be inconsistent with the Companies Act, in case they prescribe a higher standard. Ld. Sr. Counsel states that under Articles 44, 69 and 72, higher standards were set. In this regard learned senior counsel placed reliance on ***Sunil Jagmohandas Shah*** *v.* ***Dhiren Rameshchandra Shah*** Suit (L) No. 22818 of 2023, decided on 25.10.2023, Paras 41 and 42. The relevant paras are as under:

> ***"Inconsistency***
> ***41.*** *By way of reply, Mr. Dhond submitted that the provisions of section 6 of the said Act will be applicable only when the provisions of the Act and articles are inconsistent with each other and not otherwise. According to him, if the articles laid down a guideline which is higher than the guideline laid down under the Act, there is no inconsistency.*
> ***42.*** *Even, I am not impressed by the arguments of Mr. Andhyarujina to the effect that the provisions of section 6 of the Companies Act, will be applicable. It is true that as per section 6, the provisions of the Companies Act, is given predominance over memorandum, articles,*

any agreement or resolution. This provision will come into picture only when both the provisions are inconsistent, i.e., in conflict with each other. On this background, when we consider the provisions of section 169 of the Companies Act, on one hand and the provisions of article 145 of the What is the inconsistency, if two things/provisions cannot stand at the same time, both are inconsistent with each other. articles of association, they are not inconsistent with each other. Section 169 and article 145 contains the provision of removal by passing resolution. The only difference is about which resolution. If the Companies Act, provides for passing of special resolution and the articles provide for passing of ordinary resolution, then a director cannot be removed by passing an ordinary resolution. When the articles prescribe that special resolution is required, it means to say that additional precaution is required to be taken. So, there is no inconsistency.

Learned senior counsel placed reliance on ***Amrit Kaur Puri*** *v.* ***Kapurthala Flour, Oil and General Mills Co. P. Ltd. & Ors.*** [1984] 56 Comp Cas 194 (P&H). Paras 24 to 26 of the said judgment are reproduced hereunder:

"24. *According to art. 98, the quorum for a meeting is of four directors. The question arises whether in view of s. 287, the company could provide in its articles that the quorum shall be of four directors. Sub-s. (2) of s. 287, which relates to quorum, reads as under:*

"287(2) The quorum for a meeting of the board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher.

25. *The contention of the learned counsel for the respondent is that the maximum number of directors as provided in art. 79 is nine and, therefore, the articles could provide a quorum of three and in case there is provision for a quorum of more directors than three, that is ultra vires the section.*

26. *I have not been able to persuade myself to accept this contention. No doubt, it is true that the Act has provided a quorum of one-third of the total strength of the directors or two directors, whichever is higher, but it does not forbid the company to fix a higher number of directors to form a quorum. It provides the*

minimum number of directors. That means that the company in its articles cannot provide a quorum of lesser number of directors than what is provided in sub-s. (2) of s. 287. However, it can provide a quorum of directors on the higher side. According to s. 9(b), the provisions contained in the articles are void if these are repugnant to the provisions of the Act. In my view, there is no repugnancy between the provisions of art. 98 and s. 287. Therefore, the minimum quorum for the meeting of the directors is four. However, there were three directors present when resolution No. 4, reproduced above, was passed and, therefore, it is illegal. After taking into consideration all the abovesaid circumstances, it cannot be held that the company gave a notice, much less a valid notice, to the petitioner to purchase the shares of Raghbir Singh transferred by him in the name of Smt. Usha Rani. Therefore, the transfer by him in her favour is illegal. However, it is not disputed that Smt. Raj Rani was a shareholder of the company. A shareholder had a right to transfer his shares in the name of another shareholder, according to art. 20. Therefore, the transfer by Raghbir Singh in favour of Smt. Raj Rani is a valid transfer. I decide issue No. 4 accordingly."

Learned senior counsel also referred to Secretarial Standards (SS-1) issued by the Institute of Company Secretaries of India ("**ICSI**") – having the force of law as per Section 118(10) of the Companies Act, specifically under paragraph 6.3 highlights that;

"if any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote."

Ld. Sr. Counsel states that, it is evident that SS-1 clearly acknowledges not just the existence of special rights, but the validity of special rights in a voting

process, as in the present case. According to the learned senior counsel rather than going by the 2nd Respondent/ Company's contention that Article 44 is redundant, a construction which gives meaning has to always be given preference to a construction that leads to redundancy. Reliance in this regard is placed on ***Radha Sundar Datta v. Mohd. Jahadur Rahim & Ors.*** (1959) 1 SCR 1309, Pg. 1319.

> *"11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat". What has to be considered therefore is whether it is possible to give effect to the clause in question, which can only be by construing Exhibit B as creating a separate Patni, and at the same time reconcile the last two clauses with that construction. Taking first the provision that if there be other persons entitled to the Patni of lot Ahiyapur they are to have the same rights in the land comprised in Exhibit B, that no doubt posits the continuance in those persons of the title under the original Patni. But the true purpose of this clause is, in our opinion, not so much to declare the rights of those other persons which rest on statutory recognition, but to provide that the grantees under the document should take subject to those rights. That that is the purpose of the clause is clear from the provision for indemnity which is contained therein. Moreover, if on an interpretation of the other clauses in the grant, the correct conclusion to come to is that it creates a new Patni in favour of the grantees thereunder, it is difficult to see how the reservation of the rights of the other Patnidars of lot Ahiyapur, should such there be, affects that conclusion. We are unable to see anything in the clause under discussion, which militates against the conclusion that Exhibit B creates a new Patni."*

Learned Senior Counsel submits that, various special rights were removed by the respondents from the Articles of Association of EASPL, *viz.*:

(a) special rights for quorum at general meetings (Article 43);

(b) special rights for quorum at Board meetings (Article 68);

(c) special rights for chairpersonship (Article 70).

However, notably, Articles 44, 69, and 72, remained untouched and were continued. Therefore, according to the Ld. Sr. Counsel, leaving some Articles unamended while amending other Articles, it has been *established* that the real intent of the shareholders, including the Deccan Group, was to keep the unamended Articles binding.

Reliance in this regard is placed on *Calcom Cement India Ltd. v. Binod Kumar Bawri,* O.M.P. (COMM.) No. 152 of 2021, decided on 17.10.2022:

> *"Clause 3.20 of Amendment to SHA*
>
> ***91.*** *The learned Arbitral Tribunal next proceeds to examine Clause 3.20 of the Amendment to the SHA.*
>
> ***92.*** *Clause 3.20 commences with the words "the parties hereby agree that within 60 days from the effective date, the parties shall mutually agree on the amendments to Clause 9.1 with respect to Project Conditions ……". In view of the express words of Clause 3.20, the finding, of the learned Arbitral Tribunal, that the Clause was not in the nature of an agreement to agree, is obviously incorrect. In express terms and without any equivocation in that regard whatsoever, Clause 3.20 stipulates that the parties agreed, vide the said Clause, to mutually agree on the amendments to Clause 9.1. Clearly, therefore, the Clause was in the nature of an agreement to agree.*
>
> ***93.*** *The finding of the learned Arbitral Tribunal that Clause 3.20 of the Amendment to the SHA was not an agreement to agree, therefore, being opposed to the very wording of the said Clause, constitutes an error apparent on the face of the record and, with respect, a "patent illegality" within the meaning of Section 34(2A)[17] of the 1996 Act.*
>
> ***94.*** *That an agreement to agree is not enforceable at law is specifically held in Speech & Software Technologies v. Neos Interactive Ltd.[41], which holds that "agreement to enter into the agreement is neither enforceable nor does it confer any right upon the parties".*
>
> ***95.*** *Again, the very opening words of Clause 3.20 indicate that the finding, of the learned Arbitral Tribunal, that, by operation of the said clause, Clause 9.1 of the SHA stood altered within the meaning of Section 62[11] of the Contract Act, is incorrect on facts as well as in la, and is opposed to the wording of the Clause. All that Clause 3.20 did was to chalk out a plan for the future. Indeed, the clause was incapable of execution or operation in praesenti, as it stood. It envisaged the Bawris and Dalmia mutually agreeing, within 60 days from the effective date, to the amendments in Clause 9.1 with respect to the Project Conditions etc. As such, the amendments to the Project Conditions in Clause 9.1 were also to be subject matter of future agreement between the parties. Clause 3.20 recorded the agreement between the Bawris and Dalmia to mutually agree on the terms of such amendment within 60 days of the effective date. It did nothing more. It did not agree on any terms of amendment. Indeed,*

> *it did not even envisage what the terms of amendment would be. That was to be subject matter of mutual agreement between the Bawris and Dalmia, to take place at a future date within 60 days of the effective date. Clause 3.20 merely evinces the intention of the parties to do so.*
>
> ***96.*** *Mutual agreement cannot, however, be at gunpoint. Mutual agreement, by its very definition, requires consensus ad idem. Where such consensus ad idem, regarding the terms in which Clause 9.1 of the SHA was to be amended was lacking, quite obviously, there could be no such mutual agreement. The very fact that Clause 3.20 envisaged future mutual agreement indicates that, in the absence of such future mutual agreement, the Clause would be inoperable and ineffective."*

Thus, submitting Ld. Sr. Counsel contends that it is not open to the Deccan Group to contend that these Articles have become *non-operational.*

Learned senior counsel, further submits that Articles of Association being a Registered document cannot be declared illegal unilaterally, and such declaration must be done through an appropriate challenge before a court of competent jurisdiction, *i.e.*, before a civil court in a suit.

Reliance in this regard is placed on *Thota Ganga Laxmi & Anr. v. Govt. of Andhra Pradesh & Ors.* (2010) 15

SCC 207, Paras 4 to 5, wherein it was held that;

> ***"4.*** *In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non-est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.*
>
> ***5.*** *In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states:*
>
> > *"(i) The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:*
> >
> > > *Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law."*
>
> *A reading of the above Rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non-est and meaningless transactions."*

Learned Senior Counsel submits that, as per the

decision in re, *TCS (supra)*, the jurisdiction of this Tribunal specifically excludes *qua* challenge to the Article, the decision in *Sunil Jagmohandas Shah (supra)* lays down that a suit had been filed to challenge a specific regulation in the Articles of Association.

Therefore, when a proper procedure is envisaged under law, it is not open for the Deccan Group to either *unilaterally* declare an original Article as being illegal, or to agitate such a challenge before this Hon'ble Tribunal in the manner it is now done.

Ld. Sr. Counsel also contends that there is no specific prayer in the counter or a Counter claim or any valid legal action from the 2nd respondent or the nominee directors, seeking to declare the Articles containing special rights as otiose, unenforceable or redundant, as

such the respondents are not entitled for the said relief in this proceedings.

Insofar as the ruling in re, *Deepak Kishan Chhabria & Anr. v. Orbit Electricals Pvt. Ltd. & Ors.* Company Appeal (AT) No. 64 of 2020, decided on 31.12.2019 is concerned, learned Senior Counsel contends that, unlike the case on hand, the said proceedings themselves are under Section 241 and 242 of the Companies Act challenging an *amendment* to the Articles of Association, and not to any original regulation. As such the said ruling on facts is not applicable to the present case.

Per Contra, Mr. S. Niranjan Reddy learned senior counsel for 2nd & 3rd respondents, while strongly refuting the

aforementioned contentions, vehemently contended as under:

Articles 69 and 72 of the AoA are not special rights in favour of the Pendris, and the said Articles have become *otiose* and *redundan*t, however the Pendris seek to give meaning to the Article by supplying words and intent to the Articles which is unfounded.

According to the Ld. Sr. Counsel, Article 69 is verbatim Article 41 of the Articles of Association of EASPL as existed at the time of incorporation of the company in the year 2013, which has been suppressed by the Petitioners. Pertinently, under the 2013 Articles, Article 33 states that *"The number of Directors constituting the Board shall at all times be (not more than and not less than) two (2) in number."*. The actual number

of Directors from the commencement of EASPL was also only 2, comprising of Dr. Pendri and Kiran Pendri, the Petitioner No. 2. However, when EASPL adopted new Articles in 2019, Article 33 was replaced with Article 60, which provides for not less than 2 and up to 15 Directors on the Board of EASPL. In compliance with the SPA with Deccan Group referred to hereinabove, 3 nominees of Deccan Group were appointed to the Board, increasing the size of the Board of EASPL to 5, and rendering Article 69, which did not provide for, did not conceive of or take into account an expanded Board of EASPL, hence redundant. Further it is submitted that nowhere in the SPA it was intended to grant any special rights to the Petitioners.

Ld. Sr. Counsel further submits that, Article 44 requiring *unanimity* of the Shareholders of EASPL for passing any resolutions at a Shareholders' Meeting of EASPL is *repugnant* to the section 114 Of Companies Act, 2013, as such the same is liable to be read down/ struck down by this Hon'ble Tribunal.

Ld. Sr. Counsel states that, many of the articles claimed by the petitioners as *entrenchment* articles including Article 44 which can only be permitted in the manner prescribed in Section 5 of the Companies Act, 2013, failing which it would be repugnant to the Act, and therefore, void. According to the Ld. Sr. Counsel, though new set of articles were adopted/substituted by EASPL in June 2019 the Articles were never amended in accordance with section 5 of the Companies Act 2013 and other

applicable provisions a such the petitioners are not entitled to claim any special rights under Articles 44, 69 and 72 of the AoA of EASPL.

In so far as the reserved matters in Deccan Articles are concerned, Ld. Sr. Counsel submits that, the Articles of DFCL and rights of Mitsubishi therein are clearly set out reserved matters and follow due process of law, unlike in the case of EASPL where no such rights are clearly set out. The Special Rights in DFCL's Articles are set out vide Reserved Matters and the voting mechanism thereon is also clearly set out in the Articles. Ld. Sr. Counsel states that consistent with any global practice, the Articles of DFCL only provide for Special Rights *qua* certain kinds of subjects (Reserved Matters) and there is no blanket right to Mitsubishi over every decision of DFCL.

Ld. Sr. Counsel further contends that only after removing alleged special rights vis-à-vis the Quorum for meetings vide Resolutions dated 25.10.2021, Pendris have shared a draft Share Holders Agreement , for short 'SHA' dated 29.03.2022, proposing a list of 'Affirmative Vote Matters' which requires the joint consent of both Deccan and the 1st Petitioner. According to the Ld. Sr. Counsel, if there were Special Rights as alleged, there would be no need for any SHA setting out only specific topics or actions which require an affirmative vote of the Pendris. Ld. Sr. Counsel submits that the SHA reduces rights of Deccan Group, given the Pendris' contention that no decision can be taken, at either a Board Meeting, or at a General Meeting, without their consent. Ld. Counsel submits that, there is no mention of any

Special/affirmative rights even in the communication by which SHA is sought by Pendris, which clearly states that the SHA is to be negotiated. Ld. Sr. counsel states that the response of Deccan to the draft SHA *vide* Mr. Vivek Save's email dt. 23.02.2023 emphatically states that the SHA is *unacceptabl*e, *inter alia,* for the reasons sated below;

i. Attempts to dilute Deccan's rights as a majority shareholder as per law.
ii. Introduces affirmative votes (and therefore does not already exist).
iii. Authorizes minority shareholder to appoint officers in disregard to majority stake of Deccan.

Ld. Sr. Counsel states that the Pendris did not respond to the aforementioned email. However, *Vide* the

present CP the Petitioners contend that the proposed SHA was to establish passive nature of Deccan's investment, and the failure to enter into a SHA is an act of oppression. According to the Ld. Sr. Counsel, during the course of arguments only the Petitioners started contending that the SHA set out greater rights than in the Articles.

Mr. P.H. Aravind Pandian, Ld. Sr. Counsel for the Respondents 4 to 6 would submit that, at the time of incorporation, EASPL's AOA, including Article 69 was drafted for a closely-held company with two directors only. The governance structure changed significantly in August 2020 when Deccan Group acquired a majority shareholding and nominated three additional directors to the board, increasing its size to five. This shift

necessitated a transition to majority-based decision-making, as recognized under Regulation 68 of Table F, which states that board resolutions are passed by a majority vote unless otherwise specified in the Act.

According to the Ld. Sr. Counsel, interpreting the word "both" as requiring unanimity or affirmative vote of all directors would:

a) Contradict Article 68, which specifies that the quorum for board meetings is 1/3rd of the board's strength or two directors, whichever is less.

b) Lead to a perpetual deadlock, as any dissent by a single director would paralyze decision-making.

c) Conflict with Article 73 of the AOA and Section 175 of the Companies Act, which govern resolutions by

circulation and require approval by a majority of directors, not unanimity

Ld. Sr. Counsel states that the principles of corporate democracy require decisions to be made by *majority* vote, especially when the majority shareholder holds 74% of the equity. Section 6 of the Companies Act, 2013, reinforces the statutory supremacy of the Act over conflicting provisions in the AOA, as such Article 69, if interpreted to mandate unanimity, would contravene the Companies Act and undermine corporate governance principles.

Ld. Sr. Counsel submits that, the Petitioners by way of Rejoinder to the Amended Company Petition dated 10.05.2024 only stated that a Board Resolution required the unanimous consent of the directors present in a

'quorate meeting' of the Board and only during the course of final arguments in the Company Petition have contended that Article 69, for the passing of any resolution, requires the affirmative votes of both Dr. Yadagiri Pendri and Mr. Kiran Pendri.

Ld. Sr. Counsel states that in February, 2013, EASPL was established with only Petitioners 2 and 3 as promoters. The articles of the Company on incorporation the maximum number of directors as two and this Articles of Association have been suppressed by the Petitioners and not placed on record. On 10.04.2013, Flextronics invested in EASPL, EBPL and ELS USA, and entered into a Shareholders' Agreement with ELS Mauritius, the 3rd Petitioner herein. On 01.06.2019, i.e. prior to Deccan Group's investment in EASPL, the Company adopted

new Articles to bring them in line with the Companies Act, 2013. Flextronics did not have any directors on the Board of EASPL, and the Directors continued to be Dr. Yadagiri Pendri and Kiran Pendri. It was only in this version that the number of possible Directors was increased from 2 to 15.

Ld. Sr. Counsel states that, on 25.10.2021, Board Meeting of EASPL was held wherein it was resolved to recommend and approve proposed amendments to Clauses 43, 67, 68 and 70 of the Articles of Association of EASPL, at the behest of Pendris to bring the same in *consonance* with the Companies Act, 2013. The same was approved in the AGM held on 26.10.2021. The said Board Meeting and the AGM was not attended by Kiran Pendri, and the *quorum* could not have been constituted

by virtue of unamended Article 43. The Pendris have not challenged the said Board or General Resolutions amending the articles, as such they are precluded from now raising the same.

Ld. Sr. Counsel further states on 27.01.2022, EASPL held a Board Meeting wherein the minutes of previous board meeting held on 25.10.2021 was confirmed. The 2nd petitioner Kiran Pendri did not attend this Board Meeting and even in his absence, the Board approved the minutes without any alleged affirmative vote of Kiran Pendri.

According to the Ld. Sr. Counsel, Article 44 of the Articles of Association (AOA) of 1st Respondent (EASPL) mandates that any resolution at a general meeting can only be passed unanimously by all

shareholders present, and this provision conflicts with the Companies Act, 2013, which prescribes decision-making based on either an ordinary resolution (simple majority) or a special resolution (75% majority). The Companies Act does not envisage a requirement for unanimous resolutions, thereby making Article 44 incompatible with statutory provisions. Section 114 specifies the thresholds for ordinary and special resolutions, requiring a simple or special majority, respectively. Article 44, by requiring unanimity for all resolutions, imposes an impractical and legally untenable voting standard. This directly contradicts the Companies Act, which provides no basis for mandatory unanimity, and renders Article 44 void under Section 6, which gives statutory provisions precedence over the AOA.

Ld. Sr. Counsel states that the unanimity requirement under Article 44 has the potential to paralyze decision-making, creating deadlocks even on routine matters. For example, a single dissenting vote – even from a minority shareholder – could derail resolutions favoured by an overwhelming majority, disrupting the company's operations and governance. This undermines the principles of corporate democracy and majority rule, both of which are central to the Companies Act, 2013.

According to the Ld. Sr. Counsel, initially designed for a closely held family company, Article 44 is obsolete and incompatible with the present structure of EASPL, which now includes five shareholders. This change necessitates adherence to statutory norms under Sections 103 and 114, emphasizing majority-based decision-

making. Article 44, in its current form, is not just legally void but also oppressive to the majority shareholder and detrimental to the company's functioning.

Ld. Sr. Counsel, submits that Section 6 of the Companies Act unequivocally states that any provision in the AOA repugnant to the Act is void. Article 44's unanimity requirement is inconsistent with the democratic and participatory framework envisioned by the Act, making it redundant and inoperative. Additionally, while AOAs may prescribe stricter compliance, these cannot contravene statutory provisions or stifle effective corporate governance.

Therefore, according to the Ld. Sr. Counsel, given its repugnance to the Companies Act, 2013, Article 44 should either be struck down or read down to align with

statutory requirements. Its continued application threatens to impede corporate governance, violate majority shareholders' rights, and compromise the operational efficiency of EASPL.

Ld. Sr. Counsel asserts that, entrenchment provisions demanding stricter thresholds, such as unanimity, are permissible only if adopted in compliance with Section 5(3) to (5) of the Act. The entrenchment procedure, including explicit intention and agreement by all members or special resolution (as applicable), was not followed, rendering Article 44 invalid as an entrenched provision. Ld. Sr. counsel stated that even though EASPL adopted new Articles of Association in 2019 under the Companies Act, 2013, replacing those under the Companies Act, 1956, the procedural requirements for

entrenchment, such as agreement by all members (private companies) or explicit declarations in resolutions (Form MGT-14), were not met. The resolutions passed referenced only a special majority, and no explicit intention to entrench Article 44 or other provisions was demonstrated. This invalidates the entrenchment claim.

According to the Ld. Sr. Counsel, interpreting Article 44 as an entrenchment provision requiring unanimity for all resolutions creates impractical business scenarios. For instance, shareholders with minimal holdings could obstruct critical resolutions, disrupting company operations. Such an interpretation contradicts the intent of the Companies Act, 2013, and business common sense. Moreover, the lack of notice to shareholders about entrenchment provisions compounds

the issue, as subsequent shareholders were unaware of stricter voting requirements.

Placing reliance on the ruling by the Hon'ble NCLAT, Principal Bench, New Delhi in order dated 13.10.2023 in Company Appeal (AT) No.64 of 2020 in the matter of *Deepak Kishan Chhabria & Anr. v. Orbit Electricals Pvt. Ltd.*, wherein it was held that;

> *"79. We are, therefore, satisfied after considering the arguments and averments that Articles 59 and 60 can in a 'prima facie' manner be considered as 'entrenched articles' and therefore, their amendment/deletion in the EGM dated 3.5.2019 could have been done, after satisfaction of the provisions of sub-sections (3) and (4) of section 5 of the Companies Act, 2013. In particular, sub-section (4) of section 5 of the Companies Act, 2013 makes it necessary that an amendment in the Articles should be agreed to by all the members of the company, in the case of a private company. In view of the fact that Orbit Electricals Pvt. Ltd. is a private company, we note that since the Appellant Deepak Kishan Chhabria did not agree to the amendment/deletion of articles 59 and 60 in the EGM dated 3.5.2019, such amendment/deletion cannot be considered as legal since "all" members of the company present and voting did not vote in favour of the amendment/deletion."*

Ld. Sr. Counsel submits that entrenched provisions require unanimous member agreement to be valid in terms of section 5 of the Companies Act 2013. Article 44,

lacking such compliance, cannot be construed as entrenched. Additionally, Section 6 of the Companies Act invalidates provisions that conflict with statutory voting thresholds, emphasizing the supremacy of statutory requirements over contrary articles.

Our Analysis & findings.

The *crux* of the submissions of the Learned Senior Counsel for the Deccan is, that the *special rights* under Articles 44, 69 and 72 of the AoA of the 1st respondent claimed by the petitioners are ***unenforceable*** and/or have become ***otiose*****,** besides ***repugnant*** to the provisions of Companies Act 2013, as such the contention of the petitioners that the same are enforceable is unsustainable. By contending so, the respondents have revealed that they are not disputing the *existence* of special rights

under these articles, but are *seriously* questioning the very legal existence of these Articles and their enforceability.

Admittedly, the 1st respondent (EASPL) was established in February, 2013, with only the 2nd & 3rd Petitioners as promoters. The Articles of the Company on incorporation state that the maximum number of directors as two. While it was so, on 10.04.2013 M/s. Flextronics, entered into a Shareholders' Agreement with ELS Mauritius the 3rdPetitioner herein, and invested in EASPL, EBPL and ELS USA. On 01.06.2019, i.e. *prior* to Deccan Group's investment in EASPL, the 1st respondent Company adopted *new Articles* to bring them in line with the Companies Act, 2013, and while doing so, consciously kept the Articles 44, 69, &72 *besides* other articles

intact. There is nothing on record to show that M/s Flextronics had any discomfort/objection for the above Articles to exist, despite it being a majority shareholder then in the 1st respondent. Later in the year 2019 the 1st respondent (EASPL) adopted new Articles whereby, Article 33 which provides for not less than 2 was replaced with Article 60 which provides up to 15 Directors on the Board of EASPL

While matters stood thus, on 03.08.2020 the Decan Group entered into a Share Purchase Agreement, for short 'SPA', whereby it replaced M/s Flextronics by purchasing the entire74% share of M/s Flextronics in EASPL, EBPL and ELS USA. It is trite to say that the Decan Group having become the member of the 1st respondent by virtue of the SPA, *supra,* is bound by the

Articles of Association of the EASPL. Here we usefully refer to Section 10 of the Companies Act, for the purpose of highlighting the binding nature of the AoA & Memorandum on the members of the Company.

Effect of memorandum and articles.—

(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Hon'ble Supreme Court of India, in **TCS (*supra*),** observed as follows:

> ***"188.*** *A person who willingly became a shareholder and thereby subscribed to the Articles of Association and who was a willing and consenting party to the amendments carried out to those Articles, cannot later on turn around and challenge those Articles. The same would tantamount to requesting the Court to rewrite a contract to which he became a party with eyes wide open."*

Therefore, the Respondents having entered into a Share Purchase Agreement (SPA) with EASPL, with their *eyes wide open* are bound by the Articles and are not allowed to contend contra, especially stating that they were *misled* by their Company Secretary, as such they are not bound by the said Articles and this Tribunal therefore, shall rewrite these Articles.

Here it is pertinent to note that special rights under the following Articles were *removed* by the respondents from the Articles of Association of EASPL, *viz.*:

(d) special rights for quorum at general meetings (Article 43);

(e) special rights for quorum at Board meetings (Article 68);

(f) special rights for chairpersonship (Article 70).

by way of an amendment, but, notably, Articles 44, 69, and 72, remain untouched and are continued. Therefore, we find *force* in the submission of the Ld. Sr. Counsel for the petitioners that the *real intent* of the shareholders, more particularly that of the *Deccan Group*, was to keep the above Articles intact.

In this regard we usefully place reliance on the

following rulings:

DLF Universal Limited and another v. Director, Town and Country Planning Department, Haryana and others, AIR 2011 Supreme Court 1463, wherein it has been held that:

> *"It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation. .. .."*
>
> Emphasis supplied

In Great Eastern Shipping Company Limited v. State of Karnataka and others, AIR Online 2019 SC 1668, wherein the Hon'ble Supreme Court after placing reliance on the above stated observations of the

pronouncement in DLF Universal (supra) held that:

> *"There is no dispute with the proposition that the terms and conditions have to be seen as intended by parties, and it has to be based on the objectives, values, and policies that contract is designed to actualize."*

In Calcom Cement India Ltd v. Binod Kumar Bawri & others, the Hon'ble Delhi High Court held that:

> *"61. While doing so, the distinction between ―harshness‖ and ―unworkability‖ has to be borne in mind. A contractual covenant which appears to be harsh, even to an undue degree, does not, ipso facto, become unworkable. Equally, a covenant which was workable at one point of time, but becomes unworkable owing to intervening events - which is the fate that has befallen Clause 9.1 of the SHA, according to the learned Arbitral Tribunal - cannot be ignored or bypassed on that ground. Much less can the learned Arbitral Tribunal use the supervening event as a ground to remodel, or rewrite, the contractual covenant.*
>
> *... ...*
>
> *... ...*
>
> *65. In the particular circumstances of the present case, therefore, the learned Arbitral Tribunal could not have re-written Clause 9.1 of the SHA, thereby eviscerating the responsibility of the Bawris to ensure completion of the Project Conditions, as required by the said Clause, and transferring the responsibility to Dalmia. The fact that, during the tenure of the SHA, there may have been a change in the shareholding pattern in Calcom, or even a substantial shift of managerial control over Calcom, from the Bawris to Dalmia, cannot justify such an exercise. The learned Arbitral Tribunal could not have provided for Neutral Citation Number : 2022/DHC/004348 circumstances to which the contract executed among the parties did not cater."*

In IL & FS Trust Company Limited v. Birla Peruchchini

Limited, *[2004] 121 COMP CAS 335 (BOM)*, Hon'ble Bombay High Court has held that:

> *"28. In the present case, the restriction which has been imposed is part of the articles of association which have been assented to by the shareholders of the company. The articles are not repugnant to the Companies Act, 1956. Therefore, the principle of law which is laid down in the judgments referred to by counsel appearing on behalf of the first respondent have no application to the facts here. In any event, I am of the view that at the present stage, it would be impossible for the court to ignore the provisions of the articles of association which have been solemnly agreed upon and accepted. The law is well settled that subject to the provisions of the Companies Act, 1956 the company and its members are bound by the provisions contained in the articles of association. The articles regulate the internal management of the company and define the powers of its officers. The articles also establish a contract between the company and members and between the members inter se. The contract governs the ordinary rights and obligations incidental to the membership in the company. Naresh Chandra Sanyal v. Calcutta Stock Exchange Association Ltd."*

In Yogesh Radhakrishnan v. Media Networks, Hon'ble High Court of Delhi has held that:

> *"29. There can be no manner of doubt that the requirement of affirmative vote is a negative covenant. Fry, J. sitting in the Chancery Division as far back as in Donnell Vs. Bennett (1883) 22 Ch.D. 835 observed that there can be no substantial or tangible distinction between a contract containing an express negative stipulation and a contract containing an affirmative stipulation which implies negative. The same view was followed by the Courts in this country in Kirtyanand Sinha Vs. Ramanand Sinha MANU/BH/0020/1936, JairamValjee Vs. Indian Iron and Steel Co. Ltd. AIR 1940 Cal. 466 and in Navayuga Engineering Company Ltd. Vs. Sanghi Industries Ltd. MANU/AP/1508/2001 (DB). This Court though, in Shubhmangal Merchantile (P.) Ltd. Vs. Tricon Restaurants (India) Pvt. Ltd. AIR 2000 Delhi 13, sounded a note of caution that Section 42 of the SRA does not say that every affirmative contract includes by necessary implication a negative agreement to refrain from doing certain things, and that it is a question of interpretation in each case whether a particular*

> *contract can be said to be having a negative covenant, express or implied contained within it. The affirmative vote for the decisions mentioned in Clause 8 of the JVA, after its incorporation in the AoA, would thus make any decision and action in pursuance thereto requiring an affirmative vote without such affirmative vote, ultra vires the company."*

That apart, when the 9th Respondent wanted the Petitioners to *strike down* the above articles from the draft Share Holders Agreement (**SHA**) sent by the 2nd petitioner one year after removing the above Articles, the same was not acceded to by the Petitioners. This inaction on the part of the Petitioners was never questioned by the Deccan Group.

However, at an EGM held on 15.10.2024, *the* Deccan Group *unilaterally* and while the matter is '*sub judice'*, declared Article 44 as *struck down*, observing that the same is *repugnant* to the provisions of the Companies Act, despite protest by the Petitioners. Here it is to be reiterated that, Articles of association being a

Registered document cannot be declared illegal *unilaterally*, and such declaration must be done through an appropriate challenge before a court of competent jurisdiction, *i.e.*, before a civil court in a suit.

Reliance in this regard can be placed on *Thota Ganga Laxmi & Anr. v. Govt. of Andhra Pradesh & Ors.* (2010) 15 SCC 207, Paras 4 to 5, wherein it was held that:

> ***"4.*** *In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non-est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.*
>
> ***5.*** *In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states:*
>
> > *"(i) The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:*

> *Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law."*
>
> *"A reading of the above Rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties.* ***Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non-est and meaningless transactions."***
>
> (Emphasis is ours).

So much so, the we have no hesitation in holding that striking down of Article 44 in the manner as afore mentioned by the Deccan Group, being contrary to the well-established law and procedure is unsustainable and untenable, besides constitutes a grave act *of oppression on the part of the respondents.*

There is yet another aspect, *namely*, *acquiesce* on the part of the Deccan Group as regards the Articles of Association of the 1st respondent which *operates* as complete *bar* on the members of the Deccan Group from contending that the *special rights* under Articles 44, 69 and 72 are not *available, repugnant to the Companies Act,* or *unenforceable*. It is settled law that the *doctrine* of delay and laches as well as *acquiescence* are applied to *non-suit* the litigants when the ingredients of the same are established.

In this regard we usefully rely on the following rulings Chairman, State Bank of India v. MJ James, (2022) 2 SCC 301, it was observed that;

> *"Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stand by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence,*

or acceptance. which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention".

Vidyavathi Kapoor Trust v. *CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584], it was held that;

"acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person".

Here, it is pertinent to note that vide e-mail communication dated 07.02.2020 (Annexure 7 of the Company Petition) respondent 9 sent to 2nd petitioner it has been stated that:

"My thoughts on how Deccan could be a good partner for Escientia:

1. *Passive just like Flextronics.*
2. *Provide any available backend support such as HR, Technology & Engineering, purchase support, local and Delhi regulatory support etc.*
3. *Deccan could support by serving as a close proximity non-GMP.*

... ...

As mentioned Deccan would be keen to keep the collaboration simple and limit investor group as we have had experiences where each party as their own priorities.

Overall, I think the idea is very interesting and would be a nice way to grow Escientia and for Deccan to have a pharma presence. Can you send any general Escientia presentation so I can discuss with my father."

Therefore, in the backdrop of the afore stated legal and factual position, the positive inaction on the part of the respondents in questioning the enforceability of the above Articles all through, in our considered view bars the respondents from contending that Articles 44,69 & 72 are unenforceable.

Now we proceed to deal with the other contention of the Learned Senior Counsel for 2nd and the Respondents 4 to 6 that, Articles 44, 69 & 72 are ***repugnant*** to the provisions of the Companies Act, as such the same are unenforceable in the light of Section 6 (1)of the Companies Act 2013 Act.

As per Black's Law Dictionary, the meaning of ***repugnant*** is :

"That which is contrary to what is stated before, or insensible."

Indisputably, Articles 44,69 & 72 are in existence ever since the incorporation of EASPL. The 2nd Respondent Company and its directors are fully aware of and acquiesced with these Articles ever since the execution of the SPA. In fact, after entering into SPA at the behest of 2nd Respondent, certain Articles *namely,* Article 43,68,&70 were amended unanimously. Thereafter, the Respondents at an EGM held on 25/10/2021 unilaterally declared Article 44 as struck down, observing that the requirement of *unanimity* under Article 44 of the AoA *conflicts/repugnant* with Section 14 of the Companies Act 2013 which requires a *special resolution* to alter the articles, despite protest by the petitioners.

In order to answer the challenge to the striking down of Article 44, we usefully refer to section 14 of the Companies Act, which is extracted hereunder:

Section 14.

Alteration of articles.—

> *(1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, **by a special resolution, alter its articles including alterations having the effect of conversion** of—*
> *(a)a private company into a public company;*
> *Or*
> *(b)a public company into a private company:*
> *Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:*
> *Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.*
>
> *(2)Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.*
> *(3)Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles."*

The respondents trace 'repugnancy' between Article 44 of the AoA of the 1st respondent and clause (1) of section 14 of the companies Act, by pointing out that in terms of

clause (1) of section 14 of the Companies Act 2013, a Company may, *by a special resolution* alter its articles whereas Article 44 of the AoA says that

> *'any resolution would be considered as passed at a general meeting only if all Shareholders present at a quorate meeting of the Shareholders have voted unanimously in favour of it'.*

This contention is *refuted* by the Ld. Sr. Counsel for the petitioners contending, *inter alia*, that, enhancing the requirements of the Act or laying down conditions that are either not there in the Act or are more stringent than those in the Act, does not amount to repugnancy and Article 44 only lays down higher standards than Section 14 of the Act, as such there is no repugnancy at all.

In A Ramaiya, Guide to the Companies Act, 18th Edition, at Page 410, it was observed as follows:

> *"Meaning of conflicting [provisions*

The Act will override the provisions of the memorandum and articles of association only when the same are inconsistent with the Act. Any two instruments would be deemed inconsistent only where they cannot be reconciled with each other. There would be nothing wrong in the articles enhancing the requirements of the Act, or laying down conditions that are either not there in the Act or are more stringent than those in the Act. A conflict would be said to arise only where the Articles contain stipulations contrary to the Act."

In **Sunil Jagmohandas Shah** vs **Dhiren Rameshchandra Shah**, wherein the Hon'ble Bombay High Court, referring to **Amrit Kaur Puri (supra)**, observed as follows in respect of repugnancy/inconsistency:

"Inconsistency

41. *By way of reply, Mr. Dhond submitted that the provisions of section 6 of the said Act will be applicable only when the provisions of the Act and articles are inconsistent with each other and not otherwise. According to him, if the articles laid down a guideline which is higher than the guideline laid down under the Act, there is no inconsistency.*

42. *Even, I am not impressed by the arguments of Mr. Andhyarujina to the effect that the provisions of section 6 of the Companies Act, will be applicable. It is true that as per section 6, the provisions of the Companies Act, is given predominance over memorandum, articles, any agreement or resolution. This provision will come into picture only when both the provisions are inconsistent, i.e., in conflict with each other. On this background, when we consider the provisions of section 169 of the Companies Act, on one hand and the provisions of article 145 of the articles of association, they are not inconsistent with each other. What is the inconsistency, if two things/provisions cannot stand at the same time, both are inconsistent with each other? Section 169 and article 145 contains the provision of removal by passing resolution. The only difference is about which resolution. If the Companies Act, provides for passing of special resolution and the articles provide for passing of ordinary resolution, then a director cannot be removed by passing an ordinary resolution. When the articles prescribe that special*

resolution is required, it means to say that additional precaution is required to be taken. So, there is no inconsistency.

43. *For this view, I am fortified by the observations in the case of Amrit Kaur Puri v. Kapurthala Flour, Oil and General Mills Co. P. Ltd. [1982 SCC OnLine P&H 518; (1984) 56 Comp Cas 194 (P&H).] There was an issue about quorum for meeting of the board of directors.*

Section 287(2) of the Companies Act, 1956 says that the quorum should be 1/3rd of the total strength. Whereas article 79 of the articles of association provided for not less than 4 and not more than 9. It was held that if the articles provide for higher quorum, there is no repugnancy".

In IL & FS Trust Company Limited v. Birla Perucchini Limited, 2003 (3) BOMCR 334, it was held that:

"27. .. .. The shareholders of the company agreed to a particular provision being incorporated in the articles requiring the affirmative assent or vote of the petitioners for the adoption of accounts. There is nothing repugnant in this provision to the Companies Act, 1956."

Hon'ble High Court of Delhi in decision dated 19.03.2013 in CS (OS) No.217 of 2013 in the matter of Yogesh Radhakrishnan v. Media Networks, held that:

"29. There can be no manner of doubt that the requirement of affirmative vote is a negative covenant. Fry, J. sitting in the Chancery Division as far back as in Donnell Vs. Bennett (1883) 22 Ch.D. 835 observed that there can be no substantial or tangible distinction between a contract containing an express negative stipulation and a contract containing an affirmative stipulation which implies negative. The same view was followed by the Courts in this country in Kirtyanand Sinha Vs. Ramanand Sinha MANU/BH/0020/1936, JairamValjee Vs. Indian Iron and Steel Co. Ltd. AIR 1940 Cal. 466 and in Navayuga Engineering Company Ltd. Vs. Sanghi Industries Ltd. MANU/AP/1508/2001 (DB). This Court though, in Shubhmangal Merchantile (P.) Ltd. Vs. Tricon Restaurants (India) Pvt. Ltd. AIR 2000 Delhi 13, sounded a note of caution that Section 42 of the SRA does not say that every affirmative

> *contract includes by necessary implication a negative agreement to refrain from doing certain things, and that it is a question of interpretation in each case whether a particular contract can be said to be having a negative covenant, express or implied contained within it. The affirmative vote for the decisions mentioned in Clause 8 of the JVA, after its incorporation in the AoA, would thus make any decision and action in pursuance thereto requiring an affirmative vote without such affirmative vote, ultra vires the company."*

Therefore, having carefully examined Article 44 of the AoA of the 1st respondent and *sub section* 1 of section 14 of the Companies Act 2013 in the above *legal frame* and the *factual matrix* of this case, we find that Article 44 only provides *higher quorum*, than what is prescribed in section 14(1) of the Act, and does not dispense with the requirement of passing of any resolution, so as to render the said Article repugnant. Except contending *repugnancy, the* respondents have not shown to this Tribunal how mere increase in the *quorum* tantamount to repugnancy, especially in the light of the rulings *supra.*

Therefore, we have no hesitation in holding that the there is no *repugnancy* between the provisions of the Companies Act 2013 and the AOA of EASPL

Now we shall discuss the submission of the respondents that entrenched provisions demanding stricter thresholds such as unanimity, are permissible *only* if adopted in compliance with Section 5(3) to 5(5) of the 2013 Act, however, in the case on hand as the entrenchment procedure, including the explicit intention and agreement by all members or special resolution as applicable since was not followed, Article 44 is invalid as an entrenched provision.

A bare perusal of section 5(3) of the Companies Act, 2013 reveals that the Articles *may* contain provisions for entrenchment to the effect that specified provisions of

the Articles *may* be altered only if conditions or procedures more restrictive than those applicable in the case of special resolutions, are met or complied with. Admittedly, the Articles containing special rights referred supra, were incorporated on formation of the 1st respondent/ company by which time Companies Act 2013 has not come into force and even though some of the articles including special rights were amended in the year 2019, the Articles, such as Article 44, 69 and 72 remain unamended perhaps consciously and conspicuously. According to the learned Senior Counsel for the respondents 3 to 9 when these Articles containing provisions for entrenchment incorporated in the Articles of the 1st respondent/ company there was no unanimity among the members of the 1st respondent, as such the very

incorporation of these Articles itself being in violation of sub-section (4) of section 5 of the Companies Act, the petitioners are not entitled to place reliance on these special Articles. Section 5(3) of the Companies Act, 2013 containing special rights.

Since the 1st Respondent is a private company, sub-section (4) of Section 5 states that the entrenchment provisions in the AOA are to be made either on the incorporation of the company, or through an amendment, by consent of all the members of the company. Therefore, it is to be seen whether the special articles in the Articles of Association of the EASPL was signed by all the members or not.

The term member is defined as follows in the Companies Act, 2013

As per Section 2 (55) “member”, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the

company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;”

A perusal of the Articles of Association discloses that as on the date of incorporation of the 1st Respondent Company, there were two shareholders and both shareholders i.e. the 1st and 2nd Petitioners herein and both these shareholders have signed the AOA of EASPL. Moreover, as already stated Flextroncs, the investor, who joined EASPL in the year 2013, having acquired 75% shareholding never disputed the enforceability of Articles containing special rights on any ground. Likewise the 2nd respondent which had stepped into the shoes of Flextronics also did not take any steps available under the law for annulment of Articles containing

special rights on any ground, much less on the ground much less on the ground of non-compliance of subsection 4 of section 5 of the Companies Act 2013, despite the clear disinclination shown by the petitioners in accepting the request of the Deccan group to delete Special Articles in the Share Holders Agreement required to be entered by both the groups or at the time of amending the Artiles in the year 2021. So much so, the Deccan Group by their open and passive conduct waived their alleged statutory right of questioning the enforceability of special Articles on the ground of non-compliance of procedure laid own under Section 5 of the

Companies Act 2013, as such the same cannot now be raised in this proceedings.

In so far as the ruling in re, Deepak Kishan Chhabria & Anr. v. Orbit Electricals Pvt. Ltd. & Ors, supra, the same pertains to a case where there was an amendment to the articles, which was challenged, whereas in the present case, there was no such amendment and the impugned Articles were very well present in the AoA since inception of the 1st Respondent Company, the Articles of which were duly signed by the 2nd respondent. As observed n TCS supra, unless, the Articles amended are challenged, the jurisdiction of this

Tribunal under Section 241 to test the oppressive nature of these Articles would not lie.

The Point-2 is answered accordingly.

POINT-3:

Whether the nominee Directors suffer from situational and actual conflict of interest (or) gave rise to the possibility of a conflict of interest? If so, whether the same amounted to *oppression* of the interests of the minority shareholders of EASPL **?**

The submissions

Learned senior counsel for the petitioners would contend that the Deccan Group has set up a competing pharmaceutical CDMO business in the name of *Primopus* – based in Muttenz, Switzerland and Goa, India, which is being run to the detriment of the Escientia Group.

Learned senior counsel for the petitioners would further contend that having established a pharmaceutical CDMO business clearly competing with the Escientia Group, the Deccan Group has acted oppressively by treating the Escientia Group and its minority shareholders unfairly, which is contrary to the rulings of the House of Lords in *Meyer (supra)*, and the Hon'ble Supreme Court of India in *S.P. Jain (supra)* as follows:

> ***Scottish Co-operative Wholesale Society Ltd. v. Meyer & Anr. [1959] AC 324:***
>
> *"... A partner who starts a business in competition with the business of the partnership without the knowledge and consent of his partners is acting contrary to the doctrine of utmost good faith between partners. He is also acting in a manner which, I think, may be regarded as oppressive to his partners for he is doing them an injury in their business.*
>
> *..."*
>
> ***S.P. Jain v. Kalinga Tubes Ltd. [1965] 2 S.C.R. 720, Pg. 735G :***
>
> *"Meyer's case was between a parent company and a subsidiary company and it was held that "(1) when a subsidiary company is formed with an independent minority of shareholders, the parent company must, if engaged in the same class of business, conduct the affairs of the subsidiary, even though these are in a sense its own, in such a way as to deal fairly with the subsidiary; (2) that, if the parent company deliberately pursues a course calculated to destroy its*

> *subsidiary, with resulting loss to the minority shareholders, this may amount to oppression within the meaning of s. 210; (3) that the conduct of a majority shareholder may amount to oppression notwithstanding the fact that his own shares depreciate in value pro rata with those of the minority; and (4) that, even if the majority shareholder has virtually destroyed the substratum of the company by his oppressive conduct and it is conceded by all parties to be just and equitable that the company be wound up, the oppressed minority may nevertheless be entitled to a remedy under sec. 210."*
>
> *These observations were approved by the House of Lords in appeal and it was held that "whenever a subsidiary is formed as in this case with an independent minority of shareholders, the parent company must, if it is engaged in the same class of business, accept as a result of having formed such a subsidiary an obligation so to conduct what are in a sense its own affairs as to deal fairly with the subsidiary.""*

According to the ld. Sr. Counsel, the Deccan Group is acting unfairly and detrimental to the commercial interests of the Escientia Group, when it:

(a) Proposed to bifurcate the markets between Primopus and the Escientia Group, as stated by Mr Marcel Velterop in his email dated 11.11.2021,wherein he stated that all non-Muttenz business would go to the Escientia Group;

(b) The key personnel of Primopus were using Escientia email addresses to write to Escientia customers, as in the case of a potential customer - Eli Lilly - and in the case of an existing customer - GlaxoSmithKline;

(c) Appointed a COO, Dr M.S.M. Mujeebur Rahuman, admittedly without disclosing his prior association with the Deccan Group to either the Board of EASPL or this Hon'ble Tribunal;

(d) Empowered the COO through a covenant in his employment agreement to transfer the confidential business information of EASPL to Deccan group companies, no doubt to promote the business of its competing entity,

Primopus;

(e) Placed Respondent Nos. 4 to 6 in EASPL and Respondent Nos. 4 to 7 in EBPL in an 'impossible situation of serving two companies with competing interests, contrary to the ruling in ***Meyer (supra)***;

(f) The Deccan Group's nominee director on the Boards of EASPL and EBPL, Respondent No. 6/ Mr Vivek Vasant Save, was promoting and marketing Primopus instead of the Escientia Group at pharmaceutical trade fairs

(g) Systematically seeking out the Escientia Group's confidential business information to share it with its nominee directors who have a vested interest in the success of Primopus, by

inter alia:

(i) Seeking circulation of MIS reports by including all confidential data of EASPL;

(ii) Official email address of EASPL updated, giving communication access to the Deccan Group's nominee directors where confidential data about customers, vendors, purchase orders, *etc*., were received;

(iii) Using a third party, Grant Thornton Bharat, to extract confidential information of EASPL under the garb of a 'special review';

(iv) Authorising Respondent Nos. 4, 5 and the COO to approach clients of the contract-

holding entity, Escientia Life Sciences LLC, USA ("**ELS USA**") directly (;

(v) Authorising all customer communications and business decisions to be taken by Respondent Nos. 4, 5 and the COO

(h) Prioritising the interests of Primopus over the interests of the Escientia Group by:

(ii) Investing approximately ~INR 600 crores in Primopus Switzerland as of 11.10.2024, with no visibility on the amount invested in the Goa facility.

(iii) No monetary investment in the Escientia Group, as its initial entry was for INR 95 crores paid to the erstwhile shareholder, and further financial support only came in

the form of assisting with obtaining loans from banks. On the contrary, the Deccan Group is presently the biggest debtor of the Escientia Group, and owes USD 8 million by 31.12.2024.

(iv) Highlighting Primopus as the company that is to be expanded and grown

(i) Placing its nominee directors in a place of situational and actual conflict, thereby committing a violation of Section 166(4) of the Companies Act which prohibits even a 'possibility' of conflict

(j) Seeking a selective investigation into the Pendris and their activities, but ignoring the pleas of the Pendris for broadening the

investigation.

(k) Actual attempts at siphoning and diversion of corporate opportunities, *i.e.*, the Eli Lilly and GlaxoSmithKline business, away from the Escientia Group and towards Primopus.

Ld. Sr. Counsel also relied on the undermentioned Table wherein the actual conflict of Respondent Nos. 4 to 6 in C.P. No. 45/241/HDB/2023 and Respondent Nos. 4 to 7 in C.P. No. 44 of 2023 is set out:

Name of Director	**Particulars of Conflict**
Chakradhar Dandu	- Salaried whole-time employee of DFCIPL, with the title "Head of Corporate Development and M&A" - Shareholder in DFCIPL - Director of DASPL – 99.9% owner of Primopus - Former banking signatory of Primopus AG

Vivek Vasant Save	- Salaried whole-time Executive Director of DFCIPL - Shareholder in DFCIPL - Actively involved in the promotion of Primopus in Barcelona, and the siphoning of Eli Lilly business
Ajit Alexander George	- Salaried whole-time employee of DFCIPL with the title "Head of Treasury", *viz.*, in-charge of all financial aspects of the Deccan Group, including investment of INR 600 crores in Primopus - Shareholder in DFCIPL
Purushothaman Varadarajan	- Company Secretary of DFCIPL and DASPL

Thus, submitting Ld. Sr. Counsel contends that, in light of the foregoing, it is evident that the Deccan Group has acted unfairly to the interests of the Escientia Group and its minority shareholders by setting up and continuing a competing pharmaceutical CDMO business and attempting to siphon and divert corporate opportunities as well as confidential information for the benefit of the

competing entity – Primopus.

Mr. Niranjan Reddy, learned Senior Counsel for the 2nd respondent, while strongly refuting the above submissions strenuously contended that the Petitioners have contended that the Deccan Group and its nominee Directors are in a position of conflicting interests in EASPL by virtue of their separate ownership of Primopus AG, which is also a pharmaceutical CDMO with the potential to be in direct conflict with the interests of EASPL.

According to the Ld. Sr. Counsel, the contentions of the Petitioners are incorrect, because in the Original Company Petition filed on 29.08.2023, the Petitioners never raised/pleaded any argument regarding situational conflict. In the Rejoinder dated 17.10.2023, the

Petitioners for the first time introduced the argument that the Deccan nominee directors have allegedly failed in their duties to the Company as outlined under Section 166 of the Companies Act, and even then, only in a single instance. It was only in the Amended Company Petition dated 20.03.2024, did the Petitioners build on the argument of situational conflict.

Ld. Sr. Counsel submits that, Section 166(4) requires that a Director shall not involve himself in a situation having a direct or indirect conflict or may result in conflict with the interests of the Company. The Petitioners have failed to cite any instance where Respondents No. 4, 5 or 6 have acted against the interest of EASPL. Deccan Nominee Directors have acted only in the interests of the Company, as is evident from the

minutes of the Board, *inter alia* during the course of the present proceedings after the commencement of any disputes between the Petitioners and the Respondents. The situation where a potential conflict may exist for a Director in EASPL vis-à-vis Primopus AG has not yet occurred, and no conclusions can be drawn on the basis of mere speculation. In any case, it is submitted that Section 166(4) prescribes penalties for any violations, which prayers have not even been made by the Petitioners.

According to the Ld. Sr. Counsel, Hon'ble Supreme Court in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. & Ors., (2021) 9 SCC 449* held that while exercising the powers under Section 241 and 242,

it is impermissible for Tribunals to consider the likelihood of future bad conduct:

> *"**186.** As a matter of fact, NCLAT has agreed, on first principles, that it has no jurisdiction to declare any of the Articles of Association illegal. After having set a benchmark correctly, NCLAT neutralised Article 75 merely on the basis of likelihood of misuse. Section 241 (l)(a) provides for a remedy, only in respect of past and present conduct or past and present continuous conduct. NCLAT has stretched Section 241(l)(a) to cover the likelihood of a future bad conduct, which is impermissible in law."*
>
> (Emphasis Supplied)

Ld. Sr. Counsel submits that, similar view was taken by the Hon'ble High Court of Andhra Pradesh in the case of *Nagavarapu Krishna Prasad & Anr. v. Andhra Bank Ltd. 1982 SCC OnLine AP 288, Para 54:*

> *"54. ...A mere apprehension that the minorities will be oppressed in the conduct of a company that is to be formed in future, cannot be a sufficient ground for invoking s. 397 of the Companies Act"*

Ld. Sr. Counsel asserts that exceptions as are available under Section 175(5) of the UK Companies Act are also available under the Indian Companies Act, 2013, *inter alia* under Sections 184 and 188 of the Companies Act, 2013, which have to be read with Section 166(4).

Pertinently, even under Section 184(1) of the Companies Act, 2013, requiring disclosures of a Director's interest in other companies, there is nothing preventing such director from participating in, and voting as a Director in any Board Resolutions.

Section 184(2) G.S.R. 464(E) dated 05.06.2015 issued by the Ministry of Corporate Affairs permits an interested director also to participate in any such meetings after disclosing his interest, in a private Company.

Ld. Sr. Counsel submits that the fiduciary relationship between a director and the Company has to be interpreted in the context of his conduct towards the Company. A director cannot retain any benefit of any contract entered into on behalf of the Company, and such a breach was found to constitute a violation of fiduciary

duty by the Hon'ble Madras High Court in *Probir Kumar Misra v. Ramani Ramaswami, 2009 SCC OnLine Mad 1427, at Paras 123-124*. Section 166(4) of the 2013 Companies Act does not deviate from this rule, and Section 166(4) is not a new provision but similar requirements were already contained in Sections 299 and 300 of the Companies Act, 1956, along with Section 88 of the Indian Trusts Act, 1882. Relevant excerpts from the *Probit Kumar Misra Case* cited hereinabove are extracted below:

> *"123. Section 88 of the Indian Trusts Act reads as follows:*
>
> *...*
>
> *124. While making a director liable under the fiduciary relationship with the company, the conduct must be relating to the affairs of the company. In any event, respondents Nos. 3 to 6 cannot be mulcted with the liability. Law is settled that duty to disclose on the part of a director in relation to his conduct towards the company in fiduciary relationship and that the director should not be permitted to retain the benefit of any contract entered on behalf of the company and such breach will be termed violation of fiduciary relationship, as it was held by the Privy Council in Cook v. G.S. Deeks, AIR 1916 PC 161. The dictum laid down by the Privy Council cannot be made applicable to the facts and circumstances of the present case to make respondents*

Nos. 3 to 6 liable under the concept of fiduciary relationship." (Emphasis Supplied)

Section 88 of the Indian Trusts Act has to be read with Section 166 of the Companies Act, 2013. Thus, Section 166 is attracted if a director, who is in a fiduciary capacity to the company attempts to make a personal profit. If he does, he is obliged to return the money to the Company under Section 166(5).

Section 166(4) has to be read with Section 166(1) and it must be examined if there is an event related to a company and the directors conduct in relation thereto which is conflict. The Companies Act keeps the company and an owner of the company at arm's length, which is the purpose of Section 166(4). The Company is not to be treated as personal property and a loss caused to the Company by a director has to be brought back to the

company. Reference is made to the judgement of the Hon'ble Madras High Court in *Public Prosecutor v. Khaitan, 1956 SCC OnLine Mad 236, Pg. 3-4,* and the relevant excerpt is extracted hereinbelow:

> *"…It must be clear from the collocation of the two sections that the contract or arrangement dealt with in the two provisions must be identical. While S. 91-A enjoins an obligation on the director who is interested in a contract or arrangement entered into by the company to disclose his interest to the other directors and imposes penalties for not disclosing his interests, S. 91-B is designed to prevent such interested director from voting on these resolutions.*
>
> *Thus the nature of the contract or arrangement as well as the nature of the concern or interest of the director dealt with in S. 91-B must both be obviously of the same nature as that envisaged by the identical words in S. 91-A. So far as the latter section is concerned, it does not need much argument to establish that it is designed to ensure that a director who is in a fiduciary position to the company does not make any secret profit on account of the transactions or business of the company while acting on its behalf. As was stated in Northwest Transportation Co. v. Beatty,*
>
> > *"a director is precluded from dealing on behalf of the company with himself entering into engagements in which he has a personal interest conflicting or which possibly makes conflicts with the interests of those whom he is bound by fiduciary duties to protect and this rule is as applicable to the case of one of several directors as to a managing or a sole director."*
>
> *The object of the statutory provision in S. 91-A was to secure that there shall be no conflict between the personal interest of each of the directors and their duty towards the company without the nature of that interest being disclosed to the directors and the shareholders. When there is a possibility of such a conflict, by a director having personal interest in any contract or arrangement entered into by the company, S. 91-A provides for its disclosure to the other directors so that the*

company would have the advantage of the unbiased and informed judgments of the other directors as to whether in the interests of the company such a transaction need be entered into or not. Sub-S. (3) of S. 91-A, which was introduced by the Companies Amendment Act, 1936, makes provision for this information becoming available to shareholders by requiring this matter to be entered in a register, so that even they might be kept informed of the personal interest of the directors in any contract entered into on behalf of the company. Thus the general rule of law that directors shall not make a profit out of the contracts by the company without the knowledge of the co-directors and the shareholders is statutorily enforced and if there is a violation besides the common law obligation to account to the company for these profits, there is a penalty superimposed by S. 91-A(2)."

The aforementioned case interprets Section 91A and 91B of the Companies Act 1913 which are extracted below:

"S. 91-A(1): Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement. Provided that a general notice that a director is a director or a member of any specified company or is a member of any specified firm and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company. 2. Every director who contravenes the provisions of Sub-S. (1) shall be liable to a fine not exceeding one thousand rupees. 3. A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which Sub-S. (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours. 4. Every officer of the company who knowingly and wilfully acts in contravention of the provisions of Sub-S. (3) shall be liable to a fine not exceeding five hundred rupees."

"91-B(1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested nor shall his presence count for the purpose of forming a quorum at the time of any such

vote; and if he does so vote, his vote shall not be counted. Provided that the Directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the money. (2) Every director who contravenes the provisions of Sub-S. (1) shall he liable to a fine not exceeding one thousand rupees. (3) This section shall not apply to a private company. Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company."

Section 166(4) requires that:

"a director of a company shall not involve in a situation…"

The aforementioned provision:

(a) Refers to conflict in the capacity of an Individual, being the Director; AND

(b) Requires a 'situation' of conflict, wherein the individual Director is himself in conflict.

In the present case, none of the Deccan nominated Directors of EASPL are the shareholders or directors of Primopus AG. Section 166(4) does not refer to a nominator, and only the Director's interests are to be

seen. No cause of action has arisen in relation to Section 166 of the Companies Act, 2013.

Ld. Sr. Counsel further contends that the directors being interested in other body corporate is a scenario which is foreseen by the law pursuant to which directors are required to disclose their concern or interest in any other body corporate by way of Form MBP-1. Merely holding an interest in another company can never disqualify a director for being conflicted even when those companies are engaged in the same business. Serving on the boards of multiple companies simultaneously does not inherently constitute a conflict of interest and innumerable examples of the same can be found. In support of the plea the learned counsel stated that in Zydus Life Sciences Limited, Maruti Suzuki Limited, the

Directors on Board of the company also are serving on the Board of other companies.

Learned Sr. counsel further states that Dr. Yadagiri Pendri, who is a Director on the Board of EASPL is also non-executive Director of Vimta Labs, a publicly listed pharma CDMO.

Learned counsel states that by Petitioners' own understanding and by virtue of directorship of Dr. Pendri with Vimta Labs - Dr. Yadagiri Pendri, while being on the board of Vimta Labs is also a major stakeholder in Escientia Life Sciences LLC Mauritius, which owns a 24.76% shareholding in EASPL, and is also privy to all strategic and business plans of EASPL, both EASPL and Vimta Labs being engaged in similar business. And on the Petitioner's stand taken and submissions made, Dr.

Pendri's directorship at Vimta Labs, which is a competing venture to EASPL, raises concerns regarding potential information transfer, and contravenes Section 166 of the Act viewed from EASPL's point of view as well as from Vimta Labs eyes/point of view and Dr. Pendri is liable to be removed from the Board of EASPL for his long and continuing professional association with Vimta Labs.

Ld. Sr. Counsel submits that, there is no criminal act as contended by the Petitioners, and the only penalty prescribed for a violation of Section 166 is a fine, of anywhere between 1 to 5 Lakh Rupees, under 166(7). Without prejudice to the submission that the Deccan nominee directors are not in a position of conflict of interest, it is submitted that it is established law an act contrary to the law is not by itself oppressive, the

Petitioners must prove with sufficient evidence that there was continuous conduct that was burdensome, harsh, and wrongful; mere lack of confidence between the shareholders would not be enough.

Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holding Ltd. & Ors., (1981) 3 SCR 698 Placitum G @ Pg. 121 of PCC-3;

> *"49. Neither the judgment of Bhagwati, J. nor the observations in Elder [1952 SC 49] are capable of the construction that every illegality is per se oppressive or that the illegality of an action does not bear upon its oppressiveness. In Elder [1952 SC 49] a complaint was made that Elder had not received the notice of the Board meeting. It was held that since it was not shown that any prejudice was occasioned thereby or that Elder could have bought the shares had he been present, no complaint of oppression could be entertained merely on the ground that the failure to give notice of the Board meeting was an act of illegality.* ***The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful.*** *But a series of illegal acts upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed. This may usefully be illustrated by reference to a familiar jurisdiction in which a litigant asks for the transfer of his case from one Judge to another. An isolated order passed by a Judge which is contrary to law will not normally support the inference that he is biased; but a series of wrong or illegal orders to the prejudice of a party are generally accepted as supporting the inference of a reasonable apprehension that the Judge is biased and that the party complaining of the orders will not get justice at his hands."*

S.P. Jain v. Kalinga Tubes Ltd. (1965) 2 SCR 720 Placitum D to E @ Pg. 221 of PCC-3]

> ***"……..*** *These observations from the four cases referred to above apply to Section 397 also which is almost in the same words as Section 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."*

Ld. Sr. Counsel submits that the Petitioners have not been able to show any instance of actual harm or prejudice being caused to the Respondent No. 1 Company or to their rights as the minority shareholder. Even if a violation of Section 166 by the Directors of the Respondent No. 1 Company is made out, the same would not amount to amount to an act of oppression.

Ld. Sr. Counsel states that in *Rajeev Saumitra v. Neetu Singh & Ors. 2016 SCC OnLine Del 512 [Doc. 8,*

Pg.66 of Respondents' Compilation 3 re. Situational Conflict] it was held that;

> "*33. The remedy provided under Section 166(7) of the Companies Act, 2013 is a fine not less than that of Rs. 1 lakh and the legislative intent could not have been to introduce the remedy of the magnitude provided under Section 88 of the Trusts Act, 1882 or that of an injunction on defendant No. 2. The remedy provided under Section 166(7) is the maximum that can be imposed for the breach of the duties by a Director under Section 166."*

In Solar Industries India Ltd. v. Kailash Chandra Nuwal Promoter & Ors., 2021 SCC OnLine NCLAT 5140 [Doc. 9, Pg. 122 of Respondents' Compilation 3 re. Situational Conflict]

> *"40. ...non-compliance of Section 184(1) has no link with Section 167 of the Act. Section 184(4) of the Act provides that if a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to one lakh rupees, or with both. Thus, non-compliance of Section 184(1) would not lead to automatic vacation of the office as director of the Company."*
>
> (Emphasis Supplied)

The interest referred to in Section 166(4) has to be a personal interest, and no personal interest exists in Primopus AG for any of the 3 Deccan nominated

Directors, who are neither directors nor are in management or are employees, of Primopus AG.

In dealing with a case of violation of fiduciary duties by a director the CLB in *Yashovardhan Saboo vs. Groz-Beckert Saboo Ltd. and Ors. (1995) 83 Com Cases 371* held [*Doc. 10, Pg. 138 of Respondents' Compilation 3 re. Situational Conflict]*

> *"42. ...The provisions enacted in sections 297, 299 and 300 of the Companies Act are founded on the principle that a director is precluded from dealing on behalf of the company as himself and from entering into engagements in which he has a **personal** interest conflicting or which possibly may conflict with the interest of those with whom he is bound by fiduciary duty. A director occupies a fiduciary position in relation to a company and he must act bona fide in the interests of the company. If a director makes a contract with the company and does not disclose his interest he will be committing breach of trust."*
>
> (Emphasis Supplied)

In case of *Tata Consultancy Services v. Cyrus Investments, 2021) 9 SCC 449 [PCC-1, Pg. 1-157]* while considering the allegation of violation of fiduciary duties by dilution of loyalty towards the Respondent No. 1

Company in favour of the nominator company, the Supreme Court held:

> ***"217.*** *... In fact it is a paradox to claim that by virtue of Sub-sections (2) and (3) of Section 166, every Director of a Company is duty bound to act in good faith in order to promote the objects of the company for the benefits of its members and in the best interests of all the stakeholders as well as environment and a duty to exercise independent judgment, and yet mandate the appointment of independent Directors under Section 149(4). If all Directors are required under Section 166(3) to exercise independent Judgment, we do not know why there is a separate provision in Section 149(4) for every listed Public Company to have at least 1/3rd of the total number of Directors as independent Directors. We do not also know whether the prescription in Section 149(4) is a tacit acknowledgment that all the Directors appointed in a General meeting under Section 152(2) may not be independent in practice, though they may be required to be so in theory.* ***[PCC-1, Pg.136]***
>
> ***218.*** *A person nominated by a charitable Trust, to be a Director in a company in which the Trust holds shares, also holds a fiduciary relationship with the Trust and fiduciary duty towards the nameless, faceless beneficiaries of those Trusts.... [**PCC-1, Pg.137**]*
> *...*
>
> ***224.*** *Coming to the argument revolving around the duty of a Director, it is necessary that we balance the duty of a Director, under Section 166(2) to act in the best interests of the company, its employees, the shareholders, the community and the protection of environment, with the duties of a Director nominated by an Institution including a public charitable trust. They have fiduciary duty towards 2 companies, one of which is the shareholder which nominated them and the other, is the company to whose Board they are nominated. If this is understood, there will be no confusion about the validity of the affirmative voting rights. [**PCC-1, Pg.138**]*
> *...*
>
> ***228.*** *The question as to (i) what is in the interest of the company, (ii) what is in the best interest of the members of the company as a whole and (iii) what is in the interest of a nominator, all lie in locations whose borders and dividing lines are always blurred. If philosophical rhetoric is kept aside for a moment, it will be clear that success and profit*

> *making are at the core of business enterprises. Therefore, the best interest of the majority shareholders need not necessarily be in conflict with the interest of the minority or best interest of the members of the company as a whole, unless there is siphoning off or diversion. Such a question does not arise when the majority shareholders happen to be charitable Trusts engaged in philanthropic activities. It is good to wish that the creation gets liberated from the creator, so long as the creator does not have any control or ability to manipulate. In the corporate world, democracy cannot be seen as an ugly expression, after using the very same democratic process for the appointment of directors. [**PCC-1, Pg.139**]*
>
> (Emphasis Supplied)

With respect to involvement of the trustees in the affairs of the Respondent No. 1 Company and nominee directors' consultation with nominator trustees, the Supreme Court stated:

> *"229. Much ado was made about pre-consultation and pre-clearance by the Trustees, even before the Board took a call. But it was actually about nothing. Whenever an institution happens to be a shareholder and a notice of a meeting either of the Board or of the General body is issued, it is but normal for the institution to have an idea about the stand to be taken by them in the forthcoming meeting." [PCC-1, Pg.139]*
>
> (Emphasis Supplied)

The collective shareholding of the 3 Directors in DFCL, which in turn owns DASPL, which in turn owns Primopus AG, is less than 0.5% of the total shares of

DFCL. All three Deccan nominated Directors on the Board of EASPL are professionals.

Ld. Sr. Counsel also placed reliance on the extract from Ramaiya 18th edition, section 291, Hawkes v. Cuddy (2009) 2 BCLC 427(CA)) [Doc. 11, Pg. 183 of Respondents' Compilation 3 re. Situational Conflict], wherein it was observed that;

> *"The fact that a director of a company was nominated to that office by a shareholder did not, of itself, impose any duty owed to his nominator by the director. An appointed director could take the interests of his nominator into account without being in breach of his duties to the company, provided that his decisions as a director were taken in what he genuinely considered to be the best interests of the company."*

Ld. Sr. Counsel also states that in the Departmental Clarification (Department's File No. 8/50/299/61-PR) [*Doc.12, Pg.185 of Respondents' Compilation 3 re. Situational Conflict]* issued under the Companies Act, 1956 states that:

> *"The idea underlying sections 297, 299 and 300 is that a director's partnership in a firm or membership or directorship in a body corporate will be deemed to constitute his interest in such firm or body corporate because he is presumed to share directly in the gain or profit arising from a contract with such firm or body corporate. In the case of an employee, such as the general manager of such a firm or body corporate, he is supposed to get a fixed remuneration from the employer, which is not likely to be affected by any loss or gain resulting from the contract. Thus, his being an employee of a body is not likely to influence his decision in regard to a contract between that body and the company of which he is a director. Section 299 would not thus require the disclosure by a director of the fact of his being general manager or other employee of a firm or body corporate with which his company proposes to enter into a contract or arrangement.*
>
> (Emphasis Supplied)

The learned senior counsel for the 2nd respondent further contended that the Deccan nominated Directors have never hindered the growth plans or seeking expansion of opportunity by EASPL, and have on the contrary made significant contributions to EASPL as acknowledged by the Pendris prior to the filing of the CP.

Mr. Aravind Pandian, Learned senior counsel for the respondents 4 to 6 while sailing with the submissions of the learned Senior Counsel for respondents 2 and 3 would contend that, in the Original Company Petition filed on

29.08.2023, the Petitioners never raised/pleaded any argument regarding situational conflict. For the first time in their Rejoinder dated 17.10.2023, the Petitioners argued that the Deccan nominee directors have allegedly failed in their duties in the Company as outlined under Section 166 of the Companies Act.

This argument was built upon by the Petitioners in the Amended Company Petition dated 20.03.2024, that Respondent No. 2, along with the Respondent Nos. 7-9 are engaging in a directly competing human CDMO business with the Respondent No. 1 Company.

Learned Senior Counsel reiterates that EBPL is an R&D company which cannot undertake commercial production and is not in the nature of a Pharmaceutical CDMO and can by no stretch of imagination be said to be

competing in nature. Moreover, the Respondent No. 2 craves leave to refer to and rely upon the arguments advanced on behalf of Respondent Nos. 4 to 6 in this regard, along with the Note tendered on 28.11.2024 titled "Note on Situational Conflict" along with its compilation RC 3 during the course of arguments in the CP 45/241/HDB/2023, and a copy of the same is annexed hereto, without its compilation, and marked as Annexure 2.

Ld. Sr. Counsel submits that without prejudice to the above, even if the stand taken by the Petitioners was to be taken on merit, it is submitted that Section 166(4) requires that a Director shall not involve himself in a situation having a direct or indirect conflict or may result in conflict with the interests of the Company. The

Petitioners have failed to cite any instance where Respondents 4 to 7 have acted against the interest of EBPL. Deccan Nominee Directors have acted only in the interests of the Company, as is evident from the minutes of the Board, inter alia during the course of the present proceedings after the commencement of any disputes between the Petitioners and the Respondents.

It is submitted that the situation where a potential conflict may exist for a Director in EBPL vis-à-vis Primopus AG can never occur (on account of EBPL being an R&D Company), and no conclusions can be drawn on the basis of mere speculation. In any case, it is submitted that Section 166(4) prescribes penalties for any violations, which prayers have not even been made by the Petitioners.

Our analysis & findings

Before we proceed further with our discussion, we usefully trace herein, the historical background behind setting up of *Primopus.* The *Pendris* and the *Gokarajus* collectively decided in 2021 to purchase a defunct manufacturing facility in Muttenz, Switzerland through EBPL. A 100% subsidiary of EBPL – Escientia Switzerland AG – was incorporated. However, the venture was burning through the cash reserves of the company, prompting the Pendris to seek its closure. The 9th Respondent represented to the 2nd Petitioner that the Deccan Group would carry on the business, allowing the Pendris to exit, but assured the Pendris that there would be no conflict of interest or competition between the Escientia Group and the Swiss facility. Accordingly,

Deccan Group acquired the same in October 2022, and renamed the Company as Primopus. EBPL's stake by this time had been diluted to nearly zero.

According to the Pendris, while they were under the assumption that the Primopus facility would be used for activities not undertaken by the Escientia Group, such as the production of GMP amidites and it was only in the lead up to the filing of the Company Petitions did the Pendris discover that the Deccan Group had been actively attempting to siphon off potential and existing business from the Escientia Group to Primopus – including the business of Eli Lilly and Glaxo Smith Kline. This submission is however denied by the Decan Group.

There is no quarrel that the Deccan Group have setup a pharmaceutical CDMO business in the name and style of

Primopus at Muttenz, Switzerland and at Goa, India, and that the 1st Respondent (EASPL) is also a pharmaceutical CDMO having its manufacturing facility at Visakhapatnam and marketing unit at Hyderabad. Likewise, there is no dispute that the business carried on by *Primopus* at Muttenz, Switzerland is the 99.99% subsidiary of 2nd Respondent and unit in Goa is 100% owned by 7th Respondent.

In aid of our effort to arrive at a proper conclusion on this point, at the outset we wish to rely/refer herein on/to the correspondence between Decan Group and Pendris before and after Deccan became the investor in EASPL and took over *Primopus*.

The 9th respondent on 07.02.2020 sent an email to the 2nd petitioner stating that;

"My thoughts on how Deccan could be a good partner for Escientia:

4. *Passive just like Flextronics.*
5. *Provide any available backend support such as HR, Technology & Engineering, purchase support, local and Delhi regulatory support etc.*
6. *Deccan could support by serving as a close proximity non-GMP.*

… … …

As mentioned Deccan would be keen to keep the collaboration simple and limit investor group as we have had experiences where each party as their own priorities.

Overall, I think the idea is very interesting and would be a nice way to grow Escientia and for Deccan to have a pharma presence. Can you send any general Escientia presentation so I can discuss with my father."

On 02.12.2021 the 9th Respondent sent an email to the 2nd Petitioner stating that:

" .. .. The sites offer different value propositions and accordingly will seek different business. .. ..

.. I know for sure our attitude and the fact that we do not see either a 100% Deccan Company or a 75% Deccan company as being different. Escientia group is positioned as the pharma vertical of Decan and we want it to immensely succeed… .."

Emails dated 02.12.2021 issued by 2nd Petitioner No. 2 to Respondent No. 9, which has not been denied by Respondent No. 9 (Pg. 13 of PC-2):

"… But one thing is clear: I do not want to risk even a 0.01% chance of any sort of situation where you and I are on opposite sides of the table/deal, because our entire trust in working with Deccan is based on the fact that as long as your and my incentives are perfectly aligned as co-equity shareholders, there is no risk of issues."

"Marcel has laid out a scenario to me where Deccan takes the shareholding of Muttenz not just to be in the GMP amidites space but to enter the CDMO business eventually under his leadership. …"

"… Regularly Escientia competes with European CDMOs for projects, whether Minakem or FIS or Procos, etc. Last thing I want is eventually

compete with you, my brand-new partner! Of course Deccan has every right to do any venture it wants, including CDMO, but then, they should be completely separate, as one management works 24/7 with total focus to build Escientia, which will benefit Deccan/ Pendris, and some other folks grow Muttenz CDMO, which would benefit Deccan…."

"… But Deccan and Escientia do not compete for projects or clients at this time, and we have a 100% mutually beneficial relationship…."

"… Now what Marcel is pitching is utterly confusing – it is not at all GMP amidites venture, but a future competitor and current Escientia, run by the same CEO. Nowhere in the world is this a possibility, not because of some moral or other reason, but because it will simply not maximize returns for stockholders. …"

Email of Respondent No. 9 to Petitioner No. 2, in which he assures Petitioner No. 2 that the businesses will not compete (Pg. 17 of PC-2):

"… I understand now your new point is conflict of interest. … The sites offer different value propositions and accordingly will seek different business. … Escientia group is positioned as the pharma vertical of Deccan and we want it to immensely succeed. …"

On 23.02.2023 the 6th respondent sent an email to the 2nd Petitioner

"As you are well aware, Deccan is a pureplay fine and specialty chemical manufacturing company and is one of the largest CDMO player in our industry, which we have built over the last 15years. As a large chemical manufacturing company, we have significant resources, capabilities, expertise, knowledge and organisational skills which are synergistic and complimentary to build a pharma CDMO business. For Deccan, pharma CDMO business is an extension of our core business and accordingly view Escientia as Deccan's pharma business line. … …"

Photocopies of above e-mails are attached below:

DOCUMENT-1

From: Vivek Save <vivek.save@deccanchemicals.com>
Date: Thu, 23 Feb 2023 at 3:10 PM
Subject: Escientia Review
To: Yadagiri Pendri <yadagiri.pendri@escientia.com>, Kiran Pendri <Kiran.pendri@escientia.com>
Cc: <GSRaju@deccanchemicals.com>, Vamsi Gokaraju <Vamsi@deccanchemicals.com>, DVS Narayanaraju <DVS@deccanchemicals.com>, Chakri Dandu <chakri.dandu@deccanchemicals.com>, Tiwariji <rt@deccanchemicals.com>

Dear Dr. Pendri and Kiran,

Hope all good at your end!

This has reference to the recent email of February 13 from Dr. Pendri to GS confirming meeting at our Hyderabad Office on February 27, which was forwarded to me to respond on behalf of Deccan.

As you are well aware, Deccan is a pureplay fine and specialty chemical manufacturing company and is one of the largest CDMO player in our industry, which we have built over the last 15 years. As a large chemical manufacturing company, we have significant resources, capabilities, expertise, knowledge, and organizational skills which are synergistic and complimentary to build a pharma CDMO business. For Deccan, pharma CDMO business is an extension of our core business and accordingly view Escientia as Deccan's pharma business line. We, at Deccan, therefore can and want to utilize all our available resources and capabilities to grow Escientia's business. All our actions since our acquisition of 74% ownership in Escientia companies have been fully geared towards Escientia's long term growth and success.

You will appreciate, as a strategic partner, some of the actions we have taken in the interest of Escientia companies are: -

- sending our technical staff to the Vizag facility to improve production throughput;
- identifying and assisting in the recruitment of the key leadership;
- introducing Escientia group to the banks through our standing, goodwill and network;
- providing 100% guarantee on the term and working capital debt to the banks during the project phase; and
- providing unsecured loans to bridge deficits in project and working capital financing.

DOCUMENT-2

Muttenz Discussion

Kiran Pendri < Kiran.pendri@escientia.com

Wed 01-12-2021 13:40

To: Vamsi Gokaraju Vamsi@deccanchemicals.com

Dear Vamsi,

As you know, Marcel is visiting US later this week. **He has briefly updated me that he has formally pitched the business case for Deccan acquiring Muttenz site from Escientia and then investing its capital into the amidites opportunity**, as an alternative to the business problem of Escientia being forced to downsize the manpower next month when money runs out. He has told me the business case is standalone profitable with an attractive payback period, although I have not seen the financial model. Of course, he is very excited about this and he must be quite focused on its success, as the size and scope of the investment commitment he is seeking from you is huge and significantly exceeds your investment in Escientia, by a multiple.

I assume you and your dad are carefully considering this proposal in totality of Deccan's commitment to the pharma space versus the rest of its fine chemical activities. I want to discuss certain important elements of Marcel and Martin's proposal as they relate to your and my existing business venture. I know we briefly touched on many of the below topics, and there may be other issues, but wanted to list some topics at the top of our mind:

(A)our shared incentive and agreement to ensure Escientia is a financially stable entity with healthy standalone financial metrics, sustainably funding growth out of its resources and creating equity wealth for our families without "lose it all" risks, hence its inability to take on the new scope / amidites Muttenz project within Escientia

Re: Muttenz Discussion

Kiran Pendri < Kiran.pendri@escientia.com>

Thu 02-12-2021 11:09

To: Vamsi Gokaraju <Vamsi@deccanchemicals.com>

Dear Vamsi:

Marcel has landed in US, and he and I had a brief discussion, and he has clarified that the topic of tech transferring ELS-140 not just as an FDA audit trigger but as a transfer of the project or substantial volumes thereof. I am not sure I had understood this from your and my prior discussion, I had thought the ask from you was an audit trigger, but perhaps I had misunderstood. As you are aware, that is the second largest molecule from a value added standpoint in the Escientia financial plan.

I understand Marcel is trying his best to navigate a business problem and he is trying to provide a solution, but I am now very sure he is NOT fully clear on the complex situation, and I do not think I should discuss these issues with him after today, as he is not the key player. Critical issues that pertain to the shareholders and our venture are now on the table, and I think you, me, my dad, and your dad should have an open discussion. Request your urgent empathy with our situation, we have been good partners to you and hope we can clear off this issues immediately with total clarity, so we can focus on building Escientia, which is poised to be a multi-hundred-million dollar return for both of us if we do this properly. My dad and I are extremely nervous at this point, and I really want to openly discuss point-by-point with you, then we can have a discussion with our fathers as well. I believe we have brought an excellent, profitable deal to you and are delivering on financial results and will continue to do so. We will do nothing to jeopardize the financial investment you have entrusted us with.

I first of all want to again clarify that no one is seeking a bail out

From: Vamsi Gokaraju <Vamsi@deccanchemicals.com>
Sent: 02 December 2021 22:17
To: Kiran Pendri <Kiran.pendri@escientia.com>
Cc: Marcel Velterop <marcel.velterop@escientia.com>
Subject: Muttenz

Dear Kiran,

Due to various issues related to our customer's year end I'm dealing with at Deccan and issues with banks, the discussions regarding Muttenz are now largely between Marcel and the larger team at Deccan. Over the past several weeks you have indicated to me your concerns and personal fears about the financial risk for your family of participating in Muttenz and your desire to focus efforts and investments in India. I had agreed with this view and told you we will hopefully find an outcome where you can focus on expanding Vizag and Muttenz does not become a prolonged risk for you but as support need some ELS 140 for the business case and you had agreed and offered all GMP support to get this running. You said that you were very much relieved and at ease. Of all the Biohaven molecules ELS 140 is the least strategic versus ELS 139 and the final API 138. We were happy that you were constructive and offered full GMP support. Overall I think the outcome under consideration is the best possible outcome by which Escientia India takes no financial burden, expands capacity rapidly and thrives. Today Vizag is a tiny player with 90 m3 and you need to expand fast and ensure you meet all customer commitments since once reputation is lost it will take years to earn back. We cannot disappoint any customer and want Escientia Vizag to grow aggressively hence even the proposal to build another block.

In your discussions with Flex I recall them repeatedly pushing you to start liquidation of Vizag which you strongly resisted saying they do not understand the implications. In a similar fashion now you are repeatedly asking for us to wind down Muttenz. Please recognize that the problem at Muttenz has partly arisen by our many months of effort to restart the plant without infusion of equity with the intent

21

Forwarded message ----------
From: Kiran Pendri <Kiran.pendri@escientia.com>
Date: Thu, 2 Dec 2021 at 22:41
Subject: Re: Muttenz
To: Vamsi Gokaraju <Vamsi@deccanchemicals.com>

Dear Vamsi, thank you for your kind and detailed note explaining your thinking. In no way had I meant to offend you by talking of liquidations. The only reason I had brought that up with you in past was to in context of risk mitigation against future losses. I certainly had no intent to antagonize you. 1 fully recognize how hard you are working to solve this business problem and help grow Escientia. I understand fully where you are coming from in your below note. I fully support your vision for Escientia and you have been our great supporter. I will call you.

Kiran

//TYPED COPY//

It is thus, clear from the correspondence , *supra,* that the basic and fundamental understanding between the Petitioners and Deccan Group is that EASPL would be the pharmaceutical vertical of Deccan Group. It is also clear from the above emails which are not denied, that the Pendris have been insisting ever since the establishment of Primopus that they do not want any sort of conflict of interest between Escientia and Primopus.

Further, the Petitioners also cited the following in order to buttress the submission that Escientia and Primopus are competing businesses

OVERLAPPING CDMO SERVICES				
S. No.	**Name of Service**	**Escientia**	**Primopus, Switzerland**	**Deccan Goa**
1.	CDMO services for RSM/ raw materials	YES	YES	YES

2.	CDMO services for intermediaries	YES	YES	YES
3.	CDMO services for API	YES	YES	YES
4.	CDMO services for chemistry manufacturing and control (CMC) and process development (process R&D)	YES	YES	YES

OVERLAPPING MARKET				
S. No.	**Name of Market**	**Escientia**	**Primopus, Switzerland**	**Deccan Goa**
1.	USA	YES	YES	YES
2.	Europe	YES	YES	YES
3.	Asia	YES	YES	YES

TARGETTING SAME CUSTOMERS				
S. No.	**Name of Service**	**Escientia**	**Primopus, Switzerland**	**Deccan Goa**

1.	Eli Lilly	YES	YES	YES
2.	GlaxoSmithKline	YES	YES	YES
Note: Both Escientia and Primopus pitched to the same customers at DCAT week; Vivek Vasant Save (Respondent No. 6) promoted Primopus in Barcelona, Spain, while being on the Board of EASPL and EBPL				

The interests of Respondent No. 4 to 6 were demonstrated as follows:

Name of Director	Particulars of Conflict
Chakradhar Dandu	- Salaried whole-time employee of DFCIPL, with the title "Head of Corporate Development and M&A" - Shareholder in DFCIPL - Director of DASPL – 99.9% owner of Primopus - Former banking signatory of Primopus AG
Vivek Vasant Save	- Salaried whole-time Executive Director of DFCIPL - Shareholder in DFCIPL - Actively involved in the promotion of Primopus in Barcelona, and the siphoning of Eli Lilly

	business
Ajit Alexander George	- Salaried whole-time employee of DFCIPL with the title "Head of Treasury", *viz.*, in-charge of all financial aspects of the Deccan Group, including investment of ~INR 600 crores in Primopus - Shareholder in DFCIPL
Purushothaman Varadarajan	- Company Secretary of DFCIPL and DASPL

Learned senior counsel for the petitioners would also contend that having established a pharmaceutical CDMO business, Primopus is competing with the Escientia Group and has been acting oppressively, by treating the Escientia Group and its minority shareholders unfairly, which is contrary to the understanding between both the groups and rulings of

the House of Lords in Myer (supra) and the Hon'ble Supreme Court of India, in S.P. Jain (supra) which are as follows:

Scottish Cooperative Wholesale Society Ltd v. Meyer & another, (1959) AC 324:

> *"... A partner who starts a business in competition with the business of the partnership without the knowledge and consent of his partners is acting contrary to the doctrine of utmost good faith between partners. He is also acting in a manner which, I think, may be regarded as oppressive to his partners for he is doing them an injury in their business. ..."*

S.P. Jain v. Kalinga Tubes Ltd. [1965] 2 S.C.R. 720, Pg. 735G :

> *"Meyer's case was between a parent company and a subsidiary company and it was held that "(1) when a subsidiary company is formed with an independent minority of shareholders, the parent company must, if engaged in the same class of business, conduct the affairs of the subsidiary, even though these are in a sense its own, in such a way as to deal fairly with the subsidiary; (2) that, if the parent company deliberately pursues a course calculated to destroy its subsidiary, with resulting loss to the minority shareholders, this may amount to oppression within the meaning of s. 210; (3) that the conduct of a majority shareholder may amount to oppression notwithstanding the fact that his own shares depreciate in value pro rata with those of the minority; and (4) that, even if the majority shareholder has virtually destroyed the substratum of the company by his oppressive conduct and it is conceded by all parties to be just and*

> *equitable that the company be wound up, the oppressed minority may nevertheless be entitled to a remedy under sec. 210."*
>
> *These observations were approved by the House of Lords in appeal and it was held that "whenever a subsidiary is formed as in this case with an independent minority of shareholders, the parent company must, if it is engaged in the same class of business, accept as a result of having formed such a subsidiary an obligation so to conduct what are in a sense its own affairs as to deal fairly with the subsidiary."*

However, the Learned Senior Counsels representing the Deccan Group while denying the submission as aforementioned, would contend that situation where the potential conflict must exist for a Director in EASPL vis-à-vis Primopus has not yet occurred, as such no conclusion can be drawn on the basis of mere speculation. That apart, learned Senior Counsel would further contend that in any case, Section 166 (4) of the 2013 Act prescribes penalties for any violation, which prayer have not been made by the Petitioners.

As far as the business of EBPL is concerned, Learned Senior Counsel reiterates that the same is an R&D company which cannot undertake commercial production and is not in the nature of pharmaceutical CDMO. As such, by no stretch of imagination, it can be said to be competing in nature.

It is pertinent to note that on a bare perusal of status of *Primopus* in the year 2020 founded on the website of DCAT, *Primopus* is a CDMO and producer of complex RSM, GMP intermediaries and APIs and the same is as follows:

> *"Primopus is a CDMO in the Basel area focussed on scale up and commercial supply of complex RSMs, GMP intermediates and API. The production plant was acquired from a local large pharma company and has a long history of API manufacture for regulated markets. Primopus is upgrading the plant and adding a pilot plant, R&D labs and advanced automation and will start up in Q1 '24 with a range of complex RSMs for a fast growing pharma modality.*
>
> *.. .."*
>
> *"Founded in 2020, Primopus AG (formerly Escientia Switzerland AG) is a CMO/ CDMO and producer of complex RSM's, GMP intermediates and APIs.*

We operate out of a former Novartis API plant near Basel, Switzerland. It is equipped with over 250m3 reactor capacity in a 17,000m2 plant with ample capacity to make key API ingredients. The plant has made innovator intermediates and APIs for over 30 years with an outstanding track record.

We offer fully integrated small molecule supply from our Swiss site with backward integration through 3 large sites of our parent company, Deccan Fine Chemicals, in India. Responding to the post-Covid trend to de-risk and diversify supply chain, we offer a hybrid model and the best of several worlds at a competitive price.

We rely on a large and increasing PR&D and scale up team at our Goa, India site and are establishing an R&D capability at our Swiss site."

Admittedly, EASPL also serves in the business of pharmaceutical CDMO and EBPL serves in the R&D business. The Petitioners further laid emphasis on the involvement of Respondent No.6, Mr. Vivek Vasant Save, in the trade show at Barcelona promoting the business of Primopus and not Escientia, by producing the 'Post' received by them, which is reproduced hereinbelow:

23/11/2023, 08:20 (7) Post | LinkedIn

71

DOCUMENT-11

Home My Network Jobs Messaging Notifications Me For Busin

Haig Armaghanian

Strategic Advisor | Podcaster | Haig Barrett Partners CEO | Angel Investor | Freeman of the Company of Entrepreneurs | Cigar Aficionado

+ Follow

View full profile

Haig Armaghanian • 2nd
Strategic Advisor | Podcaster | Haig Barrett Partners CEO | Ange...
2w •

+ Follow

Last week while in Barcelona, I had the privilege to attend a private tour of the Miró museum to view the newly launched Miró and Picasso exhibition.

The CPhI Barcelona VIP event was hosted by Primopus AG & Deccan, Pharmaceutical Manufacturing Company. The exhibition itself was fantastic and commemorated the 50th anniversary of the death of Pablo Picasso, and the 40th of Joan Miró, bringing together the works of two of the world's most famous painters. I even got a masterpiece of my own created!

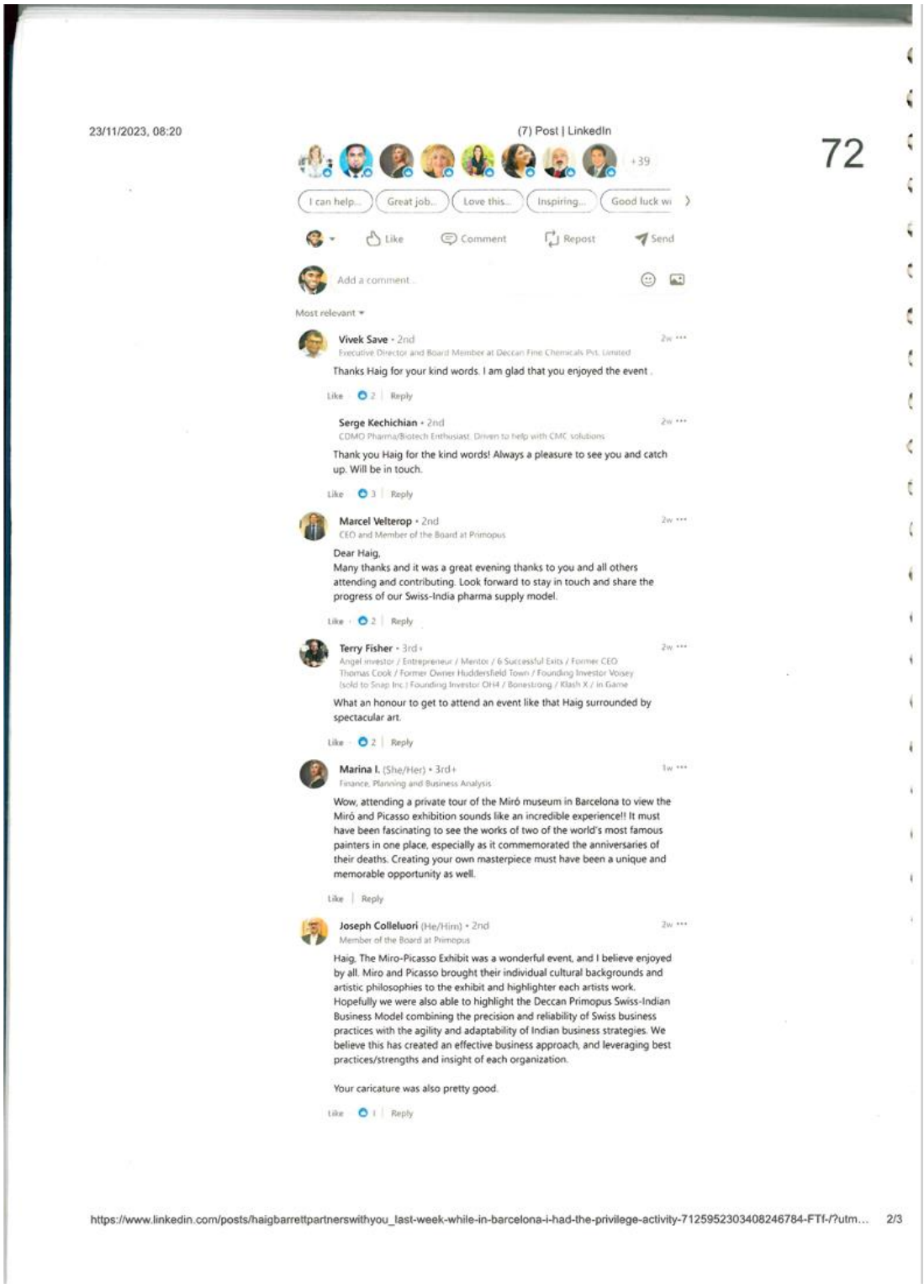
Primopus AG, based in Basel, delivers exceptional life-embracing pharma services to global innovators. It was a pleasure to spend quality time getting to know their exceptional executive team and its vision for the future.

A big thank you to Primopus AG & Deccan for hosting a wonderful evening and to Serge Kechichian, Marcel Velterop, Joseph Colleluori and Vivek Save for their hospitality.

47 6 comments

Reactions

https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm... 1/3



23/11/2023, 08:20 (7) Post | LinkedIn 72

+39

I can help... Great job... Love this... Inspiring... Good luck wi

Like Comment Repost Send

Add a comment...

Most relevant

Vivek Save • 2nd
Executive Director and Board Member at Deccan Fine Chemicals Pvt. Limited
2w
Thanks Haig for your kind words. I am glad that you enjoyed the event .
Like 2 | Reply

Serge Kechichian • 2nd
CDMO Pharma/Biotech Enthusiast. Driven to help with CMC solutions
2w
Thank you Haig for the kind words! Always a pleasure to see you and catch up. Will be in touch.
Like 3 | Reply

Marcel Velterop • 2nd
CEO and Member of the Board at Primopus
2w
Dear Haig,
Many thanks and it was a great evening thanks to you and all others attending and contributing. Look forward to stay in touch and share the progress of our Swiss-India pharma supply model.
Like 2 | Reply

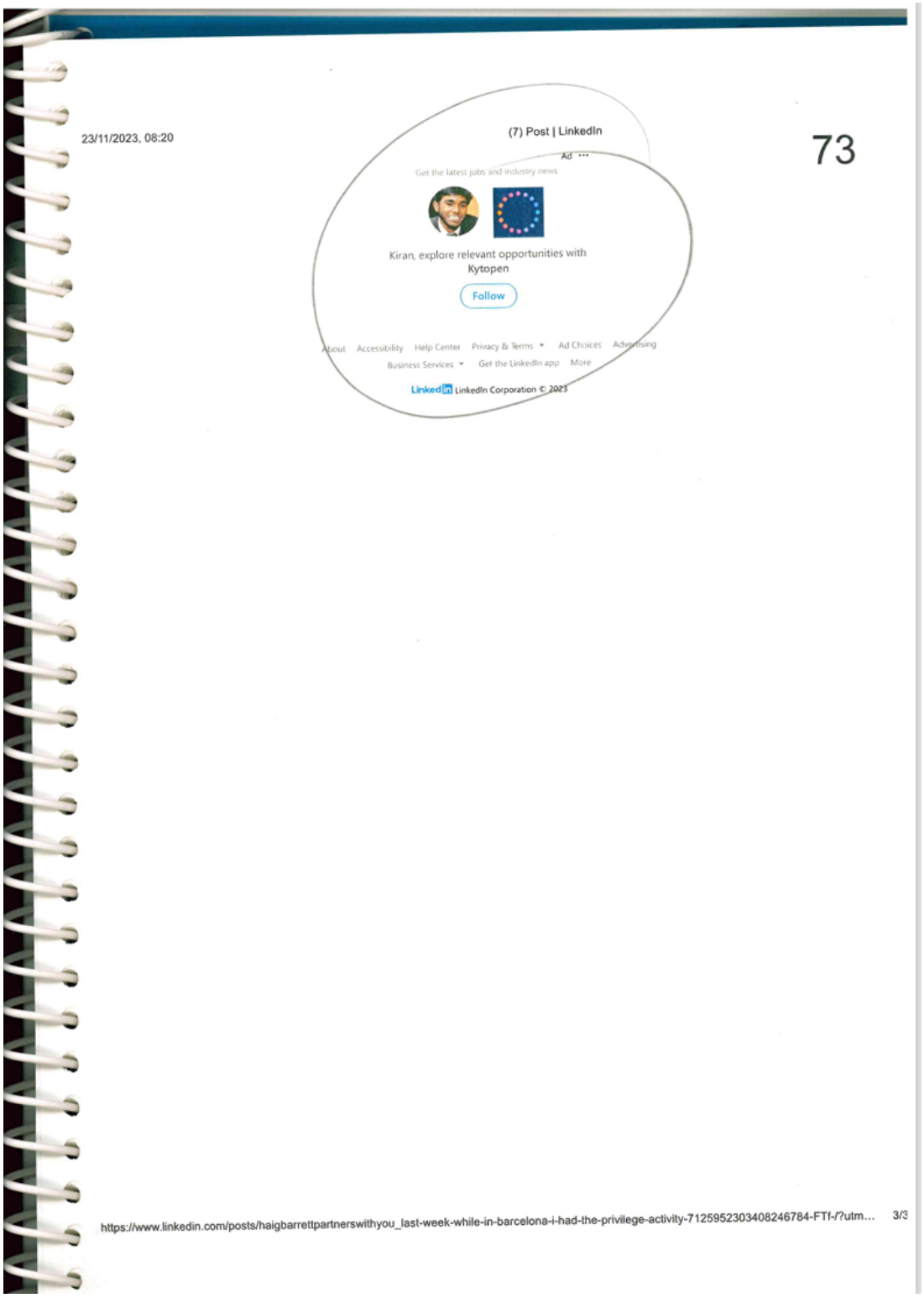
Terry Fisher • 3rd+
Angel investor / Entrepreneur / Mentor / 6 Successful Exits / Former CEO Thomas Cook / Former Owner Huddersfield Town / Founding Investor Voisey (sold to Snap Inc.) Founding Investor OH4 / Bonestrong / Klash X / In Game
2w
What an honour to get to attend an event like that Haig surrounded by spectacular art.
Like 2 | Reply

Marina I. (She/Her) • 3rd+
Finance, Planning and Business Analysis
1w
Wow, attending a private tour of the Miró museum in Barcelona to view the Miró and Picasso exhibition sounds like an incredible experience!! It must have been fascinating to see the works of two of the world's most famous painters in one place, especially as it commemorated the anniversaries of their deaths. Creating your own masterpiece must have been a unique and memorable opportunity as well.
Like | Reply

Joseph Colleluori (He/Him) • 2nd
Member of the Board at Primopus
2w
Haig, The Miro-Picasso Exhibit was a wonderful event, and I believe enjoyed by all. Miro and Picasso brought their individual cultural backgrounds and artistic philosophies to the exhibit and highlighter each artists work. Hopefully we were also able to highlight the Deccan Primopus Swiss-Indian Business Model combining the precision and reliability of Swiss business practices with the agility and adaptability of Indian business strategies. We believe this has created an effective business approach, and leveraging best practices/strengths and insight of each organization.

Your caricature was also pretty good.
Like 1 | Reply

https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm... 2/3


23/11/2023, 08:20
(7) Post | LinkedIn
73
Ad
Get the latest jobs and industry news
Kiran, explore relevant opportunities with Kytopen
Follow
About Accessibility Help Center Privacy & Terms Ad Choices Advertising
Business Services Get the LinkedIn app More
LinkedIn Corporation © 2023
https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm...
3/3

23/11/2023, 08:21 (7) Post | LinkedIn 74

Haig Armaghanian • 2nd
Strategic Advisor | Podcaster | Hai...
2w • Follow

Last week while in Barcelona, I had the privilege to attend a private tour of the Miró museum to view the newly launched Miró and Picasso exhibition.

The CPhI Barcelona VIP event was hosted by Primopus AG & Deccan, Pharmaceutical Manufacturing Company. The exhibition itself was fantastic and commemorated the 50th anniversary of the death of Pablo Picasso, and the 40th of Joan Miró, bringing together the works of two of the world's most famous painters. I even got a masterpiece of my own created!

Primopus AG, based in Basel, delivers exceptional life-embracing pharma services to global innovators. It was a pleasure to spend quality time getting to k ...see more

47 6 comments

Like Comment Repost Send

Add a comment...

Most relevant

Vivek Save • 2nd 2w
Executive Director and Board Member at D...
Thanks Haig for your kind words. I am glad that you enjoyed the event .
Like 2 | Reply

Serge Kechichian • 2nd 2w
CDMO Pharma/Biotech Enthusiast. Driven t...
Thank you Haig for the kind words! Always a pleasure to see you and catch up. Will be in touch.
Like 3 | Reply

Load more comments

https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm... 1/3

23/11/2023, 08:21 (7) Post | LinkedIn

75

Haig Armaghanian • 2nd
Strategic Advisor | Podcaster | Hac...
2w •

Last week while in Barcelona, I had the privilege to attend a private tour of the Miró museum to view the newly launched Miró and Picasso exhibition.

The CPhI Barcelona VIP event was hosted by Primopus AG & Deccan, Pharmaceutical Manufacturing Company. The exhibition itself was fantastic and commemorated the 50th anniversary of the death of Pablo Picasso, and the 40th of Joan Miró, bringing together the works of two of the world's most famous painters. I even got a masterpiece of my own created!

Primopus AG, based in Basel, delivers exceptional life-embracing pharma services to global innovators. It was a pleasure to spend quality time getting to know their

Add a comment...

Vivek Save • 2nd 2w
Executive Director and Board Member at D...
Thanks Haig for your kind words. I am glad that you enjoyed the event .

Serge Kechichian • 2nd 2w
CDMO Pharma/Biotech Enthusiast, Driven t...
Thank you Haig for the kind words! Always a pleasure to see you and catch up. Will be in touch.

https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm... 2/3

23/11/2023, 08:21 (7) Post | LinkedIn 76

Haig Armaghanian • 2nd
Strategic Advisor | Podcaster | Hai...
2w •

Last week while in Barcelona, I had the privilege to attend a private tour of the Miró museum to view the newly launched Miró and Picasso exhibition.

The CPhI Barcelona VIP event was hosted by Primopus AG & Deccan, Pharmaceutical Manufacturing Company. The exhibition itself was fantastic and commemorated the 50th anniversary of the death of Pablo Picasso, and the 40th of Joan Miró, bringing together the works of two of the world's most famous painters. I even got a masterpiece of my own created!

Primopus AG, based in Basel, delivers exceptional life-embracing pharma services to global innovators. It was a pleasure to spend quality time getting to know their

Add a comment...

Vivek Save • 2nd 2w
Executive Director and Board Member at D...
Thanks Haig for your kind words. I am glad that you enjoyed the event .

Serge Kechichian • 2nd 2w
CDMO Pharma/Biotech Enthusiast. Driven t...
Thank you Haig for the kind words! Always a pleasure to see you and catch up. Will be in touch.

https://www.linkedin.com/posts/haigbarrettpartnerswithyou_last-week-while-in-barcelona-i-had-the-privilege-activity-7125952303408246784-FTf-/?utm... 3/3

Indisputably, section 166(4) of the Companies Act, 2013 prohibits a Director of a company from involving in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

The concept of fiduciary duty of a director in relation to a company is well recognised and established. Since, a director is a trustee and also an agent, he cannot do anything, which would be against the interest of a company nor could he profit at the expense of the company. Conflict of interest would arise when a person owes allegiance to two or more entities/persons and is placed in a situation to take a decision which would affect the interest of all those to which/whom he owes allegiance. If a director of a company is placed in such a

situation either he should recuse himself or he is duty bound to take the decision which would be in the interest of the company failing which he would be in breach of his fiduciary duties. It is more so in case of nominee directors when there is a clash of interest between the company and their nominators. Some of the allegations of the petitioners herein, are that the nominees of the majority shareholders are guilty of inaction in the sense that they have failed to enforce contractual obligations of their nominator, viz. the7th respondent.

The question as to whether acts of omission/ inaction similar to those alleged to have committed by the Deccan Group members could be considered to be oppressive has been examined in Scottish Cooperative Wholesale Society Ltd. v. Meyer (1958) 3 All ER 66 (HL), supra,

which has also been followed in Needle Industries (India) v. Needle Industries Newey (India) Holding Ltd. (1982) 1Comp LJ 1 (SC). In terms of the decision in these cases, shareholders can complain that the directors have acted in an oppressive manner when, with ulterior motive, they do nothing to defend the interest when they ought to do something. Similarly, if they fail to enforce contractual rights, the shareholders could definitely claim that the directors have acted in an oppressive manner. Keeping these principles in mind, the acts and allegations against the nominee director when examined, we noticed that, nominee Directors, *namely,* Chakradhar Dandu, Vivek Vasant Save and Ajit Alexander George admittedly are the shareholders in 7th respondent/ company in CP No.45/241/HDB/2023, viz. Deccan Fine Chemicals

(India) Pvt Ltd, which has 100% shareholding in Primopus. Both EASPL and Primopus are engaged in pharmaceutical CDMO business.

Hon'ble Supreme Court of India in the matter of M.K. Rajagopalan v. Periaswamy Gaunder & another, (2024) 1 SCC 42 held in para 158 as under:

> ***"158.*** *In the backdrop of the aforesaid facts, noticeable it is that Section 166(4) of the Companies Act prohibits a director of a company from involving himself in a situation in which he may have a direct or even indirect interest that conflicts, or may possibly conflict, with the interest of the company.* ***Given the status of the resolution applicant as Managing Director of MGM Healthcare Private Limited, his dealing with property of the corporate debtor and converting the same into a hospital cannot be said to be having no impact on the activities of the said MGM Healthcare Private Limited. A direct conflict of interest being writ large on the face of the record, it cannot be said that the prohibition in terms of Section 166(4)*** *does not operate and the resolution plan does not stand in contravention of any of the provisions of law for the time being in force. For this reason too, in our view, the appellant-resolution applicant could not have been accepted as eligible applicant."*
>
> (Emphasis is ours)

However, Ld. Sr. Counsel for the Deccan Group contends that mere apprehension that interest of minorities will be oppressed in conduct of company cannot be a sufficient ground to invoke section 241/242

of the Companies Act, 2013 and direct conflict of interest must be established. Insofar as this submission is concerned, we are of the view that Hon'ble supreme Court of India, in re, Rajagopalan, supra, by merely observing as below:

> '*Given the status of the resolution applicant as Managing Director of MGM Healthcare Private Limited, his dealing with property of the corporate debtor and converting the same into a hospital cannot be said to be having no impact on the activities of the said MGM Healthcare Private Limited. A direct conflict of interest being writ large on the face of the record, it cannot be said that the prohibition in terms of Section 166(4)'*

upheld the contention of existence of 'direct' conflict of interest, by simply relying on the 'status' of the resolution applicant, without insisting on the need for establishing direct conflict. So much so, we are unable to accept the submission of the Deccan Group that proof of existence of direct conflict of interest is mandatory to attract

conflict of interest in terms of section164 of the Companies Act.

In TCS (supra), as regards the acts of nominee Directors *vis-à-vis* the interests of the nominator (nominating shareholder), it was observed that:

> ***"224.*** *Coming to the argument revolving around the duty of a Director, it is necessary that we balance the duty of a Director, under Section 166(2) to act in the best interests of the company, its employees, the shareholders, the community and the protection of environment, with the duties of a Director nominated by an institution including a public charitable trust.* ***They have fiduciary duty towards two companies, one of which is the shareholder which nominated them and the other, is the company to whose Board they are nominated.*** *If this is understood, there will be no confusion about the validity of the affirmative voting rights. What is ordained under Section 166(2) is a combination of private interest and public interest. But what is required of a Director nominated by a charitable trust is pure, unadulterated public interest. Therefore, there is nothing abhorring about the validity of the affirmative voting rights."*
>
> ***"227.*** *The decision in Neath Rugby Ltd., In re and Central Bank of Ecuador v. Conticorp SA, are relied upon to show that while a nominee Director is entitled to take care of the interests of nominator, he is duty-bound to act in the best interests of the company and not fetter his discretion."*
>
> ***"228.*** *The question as to* ***(i) what is in the interest of the company, (ii) what is in the best interest of the members of the company as a whole and (iii) what is in the interest of a nominator****, all lie in locations whose borders and dividing lines are always blurred. If philosophical rhetoric is kept aside for a moment, it will be clear that success and profit making are at the core of business enterprises. Therefore, the best interest of the majority shareholders need not necessarily be in conflict with the interest of the minority or best interest of the members of the company as a whole, unless there is siphoning off or* ***diversion****. Such a question does not arise when the majority shareholders happen to be charitable trusts engaged in philanthropic activities. It is good to wish that the creation gets liberated from the creator, so long as the creator does not have any control or ability to manipulate. In the corporate world,*

democracy cannot be seen as an ugly expression, after using the very same democratic process for the appointment of Directors."

Insofar as the case on hand is concerned, it can be said that when the Respondents 4 to 6 while on the Board of Respondent No.1/EASPL have acted in the interests of Respondent No.2 (subsidiary company) benefitting Respondent No.7 (holding company), such acts must be said to have done on the instructions/directions of 2nd respondent. Likewise, R.4 to 6 have acted against the interests of R/1 Company by soliciting/diverting the business of R/1 Company to Primopus.

Therefore, merely absolving respondents 4 to 6 from the directorship of 1st respondent company itself would not resolve the conflict, as there would be some other nominee directors of 2nd Respondent who would be acting as per the instructions of Respondent No.2. Here,

it is not the directors who are to be faulted with, but it is the nominating entity (Respondent No.2) and the interests/intention of it which we are looking at.

As regards the argument of the respondent that being a shareholder of 74% entitles them for a proportionate representation thereby entitling them to retain 3 nominee Directors on the Board of 1st Respondent Company. Hence, it would be appropriate herein, to refer to the observation of Hon'ble Supreme Court in the same TCS (supra) which is as follows:

> ***"Claim for proportionate representation***
> ***232.*** *As we have pointed out elsewhere, the statute confers upon the members of a company limited by shares, a right to vote in a general meeting. And this right is proportionate to his shareholding as per Section 47(1)(b). Section 152 which contains provisions for the appointment of Directors, does not confer any right of proportionate representation on the Board of any company, be it public or private."*

Therefore, this Tribunal, is having adequate powers to control the affairs of the Company under Section 242 of The Companies Act, 2013, the entitlement of Deccan

Group to have proportionate nominee Directors is not a hurdle to this Tribunal to restrict the number of Directors to be on the Board of Respondent Company for the proper management of the affairs of the company. However, for the reasons we have stated above, we find no purpose in exercising our powers under section 242 of the Act.

Moreover, it is to be stated that conflict of interest is acknowledged by Vamsi Gokaraju in his e-mail dated 10.11.2021 sent to Marcel Velterop, which is as below:

> *"… Issues:*
> *Confusion to customers about different businesses Deccan and Escientia.*
> *Use of same brand – perception of other shareholders.*
> *Conflict of interest – while for Deccan both ventures are almost one for the Pendri's they will not see potential value from Muttenz and need to find a way to align the organization to work together.*
>
> *Ideas to bridge the issues:*
> *To the external world maintain a single Escientia Brand for all pharma businesses including Muttenz. This is beneficial as a clear brand approaching the same pharma customers and leveraging perceptions of scale which is beneficial for all.*
> *Move forward with the option for customers to dual source within the group along the original concept. Need to find a way to align Pendri's to this objective."*

As already observed another nominee director, Mr.Vivek Vasant Save has openly involved in promotion of business of Primopus at an event at Barcelona hosted by Primopus as is evident from the undisputed document as produced hereinabove.

We therefore, in the light of our discussion, *supra,* are of the firm view that the nominee directors of Deccan have breached section 166(4) of the Companies Act, 2013, which is also an act of *oppression.*

The Point-3 is answered accordingly.

POINT-4:

Whether the acts complained in the petition/ alleged to have been committed by the respondents tantamount to acts of oppression and mismanagement? If so, for what relief?

Ld. Sr. Counsel has pointed out that the following instances constitute the acts of oppression:

(a) Deccan Group has failed to enter into a shareholders' agreement for R/1 company and EBPL to clearly establish the passive nature of Deccan Group's investment and have always attempted to prepone execution of such agreement, to take advantage of its majority shareholding.

(b) Nominees of Deccan Group on the Board of R/1 company, viz. R/4 to R/6 have actively been mismanaging the affairs of R/1 by siphoning off business to Primopus. Said company was acquired by Deccan Group and made into its own pharmaceutical CDMO arm.

(c) Nominee Directors of Deccan Group have undertaken financial mismanagement of R/1 company by sanctioning inter-company loans at throwaway interest rates to R/7 company for Escientia Switzerland AG (now Primopus AG) for which R/7 company has in fact defaulted on its interest payments.

(d) Deccan Group has unjustly enriched itself using R/1 company by extending raw materials for manufacturing process to R/1 company at exorbitant rates.

(e) Deccan Group through its nominee directors is attempting to appoint COO for both R/1 company and Escientia Biopharma Pvt Ltd (EBPL), with exorbitant remuneration and with a clear view and

aim of usurping all powers of the Board and the founder promoters. It proposes to give wide and untrammeled powers to the proposed COO.

Per Contra, Ld. Sr. Counsel for 2nd respondent, while refuting the above submissions, submitted as under:

(a) On one hand the respondents/ Deccan Group are labelled as 'passive investors', on the other, they are accused of 'active' in oppression.

(b) Merely calling a meeting of Board by a Directors in accordance with statutory provisions is not act of oppression.

(c) Mere refusal by majority group to sign an onerous Shareholders' Agreement (SHA) being thrust upon

them in dilution of their rights as majority shareholders is not an act of oppression.

(d) The petitioners have sought equitable reliefs under sections 241 to 244 of the Companies Act, 2013.

(e) The petitioners seek personal gain and pecuniary benefits at the expense of R/1 company and the answering respondent.

(f) Filing of this petition seems to be summoning of a meeting of Board of Directors of R/1 company by R/4. In fact, it was convened by Company Secretary of R/1 company.

(g) When a meeting is convened by a nominee director of majority shareholder to consider resolution which are in the interest of R/1 company, it cannot be seen as an act of oppression.

Our analysis & findings.

We wish to state that the expression "oppression and mismanagement" which is the main concept in section 241 of the Companies Act, 2013, is not defined in the Companies Act. Therefore, the task of defining what constitutes 'oppression and mismanagement' is the task of the courts/ tribunals. In this task we are usefully guided by the ruling in Palghat Exports Private Ltd. Vs. T.V. Chandran And Ors., [1994] 79 COMP CAS 213 (KER), para 19 of which is reproduced hereunder:

> *"19. The expressions "oppression" and "mismanagement" which are the core concepts in the section are left by the Legislature without defining them. When once it is left without definition, the task of the court is difficult and more responsible. Naturally, the court will always incline to wade through precedents to find out and to assign the correct meaning of these two words "oppression" and "mismanagement" in the context in which they are used. Certainly, the courts have to decide on the facts of each case as to whether there is a real cause of action under Section 397 or 398 of the Act."*

It is pertinent to observe herein that in our discussion under Points-2 and 3 above we have categorically held that the acts and actions of the Members of Deccan Group towards EASPL and its Directors mentioned therein constitute acts of oppression. Therefore, when multiple acts of oppression since established, the Tribunal may with a view to brining to an end the matters complained of, may make such an order as it thinks fit. As such further enquiry as regards other alleged acts of oppression and mismanagement is not required.

Point-4 is answering accordingly.

Point-5

Whether the appointment of COO is *contrary* to the AOA of EASPL and/or the provisions of the Companies Act, 2013? If so, can the appointment be interfered with by this Tribunal?

Insofar as the appointment of COO of EASPL is concerned, the Company petitioners had earlier prayed this Tribunal to restrain the respondents (Deccan Group) from conducting the Board Meeting scheduled on 04.09.2023, wherein one of the Agenda items was to appoint Dr. MSM Mujeebur Rahuman as Chief Operating Officer (COO) of EASPL and this Tribunal on 04.09.2023, passed the following interim order:

> *"Order on interim relief:*
>
> *1.The Petitioners herein, have filed the above Company Petition under Section 241 R/w Section 242 of the Companies Act, 2013, seeking appropriate remedies alleging various acts of oppression and mismanagement by Respondents 2-9, which are narrated in the Company Petition.*
>
> *2. By way of ad-interim relief, Petitioners have also prayed for an interim order restraining Respondents 2-9 from calling the meeting of the Board of Directors scheduled on 04.09.2023 at 5 pm or on any date thereafter, inter-alia, for the purpose of appointment of Shri M.S.M. Mujeebur Rahuman as Chief Operating Officer (COO) of the 1st Respondent Company or any other officer/employee with similar powers and from passing any resolution by the Directors of the 1st Respondent Company.*
>
> *3. Ld. Senior Counsels Shri D. V. Sita Ram Murthy and Shri S. Ravi for the Petitioners have invited our attention to the pleadings and various documents filed besides relied on the several rulings and contended that the Respondents 2-9 (also referred as "Deccan Group"), through its nominee directors are all set to appoint a COO for the 1st Respondent Company contrary to the provisions of the Companies Act, 2013, with an unheard of and exorbitant remuneration, with a clear view and aim of usurping of powers of the Board and the founder promoters bypassing the Board procedures, in the Board Meeting scheduled on 04.09.2023 (today) at 05.00 PM, pursuant to the notice dated 24.08.2023 issued by 1st respondent company.*

4. Ld. Senior Counsels vehemently urged that when there are no allegations of mismanagement and the financial statements of the 1st Respondent Company clearly discloses that the 1st Respondent Company is a profit making going concern the overwhelming urgency shown by the Deccan Group in calling for a Board Meeting on 04.09.2023, inter-alia, to appoint COO Shri M.S.M. Mujeebur Rahuman for the 1st Respondent Company clearly reveals the 'ulterior motive' of the Deccan Group, to dislodge the Petitioners completely from the management and control of the affairs of the 1st Respondent Company, as such it is a fit case to grant ad-interim relief restraining the Respondents 2-9 from passing any resolution in the Board Meeting, more so in respect of the item nos. 4, 5 & 6 of the Agenda of the Board Meeting dated 04.09.2023.

5.Per contra, Shri S. Niranjan Reddy, Ld. Senior Counsel for the 2nd Respondent, while strongly opposing grant of ad-interim relief, at the outset contended that due to paucity of time, the 2nd Respondent is unable to file a detailed para-wise reply to the petition and hence filed a preliminary reply, reserving its right to answer each and every allegation raised in the petition by way of a separate detailed counter.

6.According to the Ld. Senior Counsel, the Petitioners are seeking personal gain and pecuniary benefits at the expense of 1st Respondent Company and the answering respondent, hence, this ground alone is sufficient to conclude that the petition is not maintainable.

7.Ld. Senior Counsel further submitted that the allegations as made in the Petition cannot be projected as something that would "trigger the just and equitable cause for winding up or to grant relief u/s 241-242 of the Companies Act, 2013" and "no case is made out for winding up". Therefore, according to the Ld. Senior Counsel, the CP itself is liable to be dismissed.

8.Ld. Senior Counsel further stated that the proposed resolutions of today's Board Meeting are yet to be discussed and deliberated and may be passed with or without modifications after the views of the Directors present and voting are taken into consideration. Therefore, according to the Ld. Senior Counsel, when the Directors at the meeting can freely express their views before the proposed resolutions are passed, it is premature to come to any conclusion on the outcome of the proceedings and to pass restraint order.

9.Ld. Senior Counsel also submitted that mere summoning of the Board Meeting by the 1st Respondent cannot be seen by the minority shareholders as an "act of oppression" and therefore, granting interim relief at this stage is uncalled for and unwarranted.

10.Ld. Senior Counsel has also taken us through the Share Purchase Agreement and the correspondences and contended that the submissions of the Ld. Senior

Counsel that the Board Meeting Scheduled on 04.09.2023 has been called hastily, only to dislodge the Petitioners from the Management and control is unfounded and an afterthought.

11.Shri Y. Suryanarayana, Ld. Counsel for Respondent No.4 sailed with the submissions of R-2.

12.We have heard the Ld. Senior Counsels. Perused the record.

13.The Company Petition and documents run over 03 bulky volumes and the interim counter contains 300 odd pages. Both sides have made lengthy submissions and concluded only at 01.40 pm today, even while the Board Meeting is scheduled at 5 pm today.

14. On a prima facie, examination of the records placed before us, we are of the view that in the absence of any specific allegation, that the due procedure in calling for today's Board Meeting is not followed, granting stay of today's Board Meeting is unwarranted. Therefore, we are not inclined to stay the Board Meeting scheduled on 04.09.2023 (today at 5pm).

15.However, having regard to the fact that, the affairs of the 1st Respondent are prima facie, being conducted normally, we do not find any immediate urgency to empower the COO to be appointed in today's Board meeting with the power to conduct the affairs of the 1st Respondent Company, as detailed in the Power of Attorney.

16. *Therefore, if the Board of Directors of R-1 takes a decision to appoint Shri M.S.M. Mujeebur Rahuman as COO of 1st Respondent Company, the said decision shall be kept in abeyance till 12.09.2023.*

17. *Meanwhile, the Petitioners to serve notice on the remaining respondents and Respondents who have entered appearance to file their counters by 08.09.2023.*

18. *For continuation of hearing, list the matter on 12.09.2023.*

19. *Since the order was under typing, we have directed the Registry around 4.45 pm to inform the Ld. Counsels for both sides to defer today's Board Meeting till 5.30 p.m and we are informed that Ld. Counsels were accordingly informed.*

20. *This order is pronounced at 5.30 pm in the open court. Ld. Counsels for both sides present physically and also through VC. Registry is directed to upload the order forthwith."*

The said Board meeting was conducted on 04.09.2023, wherein Resolution by majority of the Directors was passed in favour of Dr. MSM Mujeebur Rahuman appointing him as COO of EASPL. However, in compliance of the directions of this Tribunal, the appointment of Dr. Mujeebur Rahuman as COO was kept in abeyance till 12.09.2023. Later, the said order was extended from time to time and finally when IA No.263 of 2023 was filed seeking extension of interim directions issued vide order dated 04.09.2023, the same has been dismissed by this Tribunal vide order dated 28.11.2023, which reads as under:

> *"(5) We have already held that **prima facie,** the Petitioners have failed in establishing violation of any Article or provision in Companies Act, 013 in appointing Dr. Mujbur Rehuman as COO of the 1st Respondent. Hence, it is not proper to interfere with the said appointment process, merely on the basis of the 'perception' of the petitioners as regards Article 69 of the AAO of the 1st respondent.*
>
> *46. Therefore, in the light of our discussion as above, we are of the view that the petitioners have failed in establishing a prima facie, case in their favour for extension of our interim order dated 04.09.2023 beyond 28.11.2023. Hence this application is liable to be dismissed. However, we hereby make it clear that the above appointment of Dr. MSM Mujubur Rehuman, as COO of the 1st respondent, is subject to the final outcome of this company petition. So also, the remuneration offered to Dr. MSM Mujubur Rehuman. We further direct Dr. MSM Mujubur Rehuman to file an undertaking affidavit before this Tribunal, within three days from the date of this order duly declaring and unconditionally undertaking that, in the event of this Tribunal declaring that the*

remuneration now offered to him by the Directors of the "Deccan Group', is not as per acceptable/market standards, commensurate with the role and responsibilities of the COO and his qualifications, then he would return either the whole or such partition of the remuneration as may be directed by the Tribunal. At the same time, we also direct the board of directors of the 1st respondent to have a relook at the objections raised by the members of the 'Essentia group' on the quantum of rumination offered to Dr. Mujbur Rehuman, in the best interests of the 1st respondent.

47. *We have also taken note of the submission of the Ld. Sr Counsel for the 2nd Respondent that at the impugned board meeting dated 04.09.2023, a revised Delegation of Authority of the COO was placed before the board by the 4th Respondent, which, inter alia, provides powers to carry out his responsibilities as entrusted by the board and that all the responsibilities discharged by the COO would at all times be subject to any further directions of the board of 1st Respondent Company, besides the statement that the consideration of this 'limited Delegation' of Authority, was deferred at the request of the 'Escentia Group', at the said board meeting as they wanted time to consider the same. A copy of this Delegation of Authority presented to the board on 04.09.2023 also has been annexed to the counter. We therefore, hope that the members of both the 'Groups', would once again deliberate on this aspect and take appropriate decision in this regard in the best interests of the 1st respondent.*

48. *This application therefore, is hereby dismissed, however under the circumstances without costs.*

49. *Before we part with, we wish to say that since we made it clear that our observations in this order are subject to the final outcome of the Company Petition, we direct both sides to get ready for final hearing on the next date of hearing without fail. The petitioners are also at liberty to move this Tribunal, for expeditious hearing, if necessary."*

In the above order dismissing IA No.263 of 2023, this Tribunal had *prima facie*, dealt with the rival contentions including the following:

- The phrase, “both directors” used in Article 69 of the Articles of Association would mean all the directors; if so, whether the resolutions passed by majority directors approving the appointment of Dr. MSM Mujeebur Rahuman as COO is sustainable?
- Whether the appointment of Dr. MSM Mujeebur Rahuman as COO is mala fide, unwarranted, unsustainable and oppressed?

and concluded that as the Tribunal was dealing with an Interlocutory Application and proper answer to the above questions can be found only after hearing both the sides in the Company Petition, the findings that were entered were only *prima facie*.

In the above backdrop, it is to be seen now, whether appointment of Dr. MSM Mujeebur Rahuman as COO of EASPL is sustainable under law.

This Tribunal while answering Point-2, held that:

"A bare perusal of section 5(3) of the Companies Act, 2013 reveals that the Articles may contain provisions for entrenchment to the effect that specified provisions of the Articles may be altered only if conditions or procedures more restrictive than those applicable in the case of special resolutions, are met or complied with. Admittedly, the Articles containing special rights referred supra, were incorporated on formation of the 1st respondent/ company by which time Companies Act 2013 has not come into force and even though some of the articles including special rights were amended in the year 2019, the Articles, such as Article 44, 69 and 72 remain unamended consciously and unanimously. According to the learned Senior Counsel for the respondents 3 to 9 that when this Articles containing provisions for entrenchment incorporated in the Articles of the 1st respondent/ company there was no unanimity among the members of the 1st

respondent, as such the very incorporation of these Articles itself being in violation of sub-section (4) of section 5 of the Companies Act, the petitioners are not entitled to place reliance on these special Articles. Section 5(3) of The Companies Act, 2013 contains provision for special rights. As the 1st Respondent is a private company, sub-section (4) of Section 5 states that the entrenchment provisions in the AOA are to be made either on the incorporation of the company, or through an amendment, by consent of all the members of the company. Therefore, it is to be seen whether the special articles in the Articles of Association of the 1st Respondent Company was signed by all the members. The term member is defined as follows in the Companies Act, 2013:

> "2. (55) "member", in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;"

A perusal of the Articles of Association discloses that as on the date of incorporation of the 1ts Respondent Company, both the shareholders i.e. Petitioner No.1 and 2 herein have signed the AOA of 1st Respondent Company. In our discussion on the plea of 'repugnancy', supra, we have categorically held that there is no repugnancy

between the AoA of the 1st respondent and the provisions of the Companies Act 2013. So much so, the respondents are precluded under law from attacking the Articles of the 1st respondent.

Above pertains to a case where there is an amendment to the articles, whereas in the present case, the impugned Articles were very well present in the AoA since inception of the 1st Respondent Company. There was no amendment made to these Articles, so as to seek interference of this Tribunal. As observed n TCS supra, unless, these Articles were amended, the jurisdiction of this Tribunal under Section 241 to test the oppressive nature of these Articles would not lie.

The Point-2 is answered accordingly."

Therefore, in the light of our findings on Point-2, supra, the Resolution dated 04.09.2023, whereby Dr. MSM Mujeebur

Rahuman has been appointed as COO, cannot be said to be passed validly. Consequently, the resolution dated 04.09.2023 shall fail and the consequences thereof shall follow the suit.

The Point-5 is answered accordingly.

Point-6

Whether Pendris have caused loss of Rs.13 crores to 1st respondent/ company in selling Spent solvents, indulged in unauthorized data migration and approached this Tribunal with unclean hands? If so, are they disentitled to the reliefs claimed in the company petition?

SUBMISSIONS

According to the Ld. Sr. Counsel, the Deccan Group, with clear mala fide intent, have alleged inter alia that the Pendris have caused loss of INR 13 crores to EASPL on the sale of 'spent solvents'. Ld. Sr. Counsel, inter

alia, contended that:

(a) "Spent solvents are useful by-products of the manufacturing process at EASPL", but were sold as mixed solvents at a rate of INR 3 per kg, despite the solvents being extracted and stored separately;

(b) On the basis of a report pursuant to a 'special review' conducted by Grant Thornton Bharat, which was filed only on 15.10.2024 ("**GT Report**"), it was concluded that the spent solvents could be sold separately for better rates to external vendors, upto INR 66 per kg.

In this regard, it is further submitted that:

(c) There has been a blatant mischaracterization

of "spent solvents" as "useful by-products". By nature, spent solvents are highly flammable toxic waste, generated as a by-product of the Escientia Group's primary activity – pharmaceutical production. This is generated on a daily basis.

(d) The Central Pollution Control Board has defined spent solvents as follows:

"Spent solvent is generated during use of solvent to dissolve or dilute other substances or materials or chemical intermediaries in various industrial processes. These spent solvents are **hazardous wastes** and are required to be disposed, when not utilised as resource recovery, in authorized disposal

facility in accordance with authorization condition stipulated by the state SPCB/ PCC."

- Standard Operating Procedure and Checklist of minimal requisite facilities for Utilization of Hazardous Waste under Rule 9 of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 dated February 2021

(e) For safety reasons, pharmaceutical units such as the Escientia Group dispose of this material **immediately** – either by incinerating it or asking a vendor for immediate removal. In this vein, the Pendris ensured that the spent solvents were removed immediately, without

resorting to testing or analysis, at a price of INR 3 per kg since it was for immediate removal;

(f) By contrast, the Deccan Group, fuelled by its quest for profit irrespective of safety measures, sought to maximize profits on spent solvent disposal;

(g) At the meeting of the Board of Directors of EASPL held on 26.06.2024, the Deccan Group's nominee directors proposed competitive price recovery for sale of spent solvents. While the Pendris agreed in principle to this proposal, Dr Yadagiri Reddy Pendri, who has years of experience in this field, gave a specific warning about the dangers of

accumulating spent solvents, viz., that it can lead to a fire:

> *"Senior staff should take care of disposals properly so that there was no accumulation which can be dangerous and lead to fire etc."*
>
> ***(Pg. 86 of RC-4(iii)***

(h) *Despite this warning, after the said meeting, the CFO (whose role does not include taking business decisions on operational aspects of the factory) released an Interim Policy on disposal of spent solvents (**Pg. 4 of RC- 4(iii)**), whereby multiple rounds of testing were mandated, which would lead to accumulation of solvents at the factory;*

(i) *The existing system of weekly disposal of spent solvents was halted, allowing hazardous waste to accumulate. Due to the testing and*

sampling process, the removal was not undertaken in a speedy manner;

(j) *On 21.08.2024, the fire accident took place at the factory of EASPL. As per the report of the Chief Inspector of Factories dated 24.08.2024* ***(extracted in the order dated 04.11.2024 passed in I.A. (C.A.) No. 69 of 2024 @ Pg. 109****), the cause of the accident was held to be the ignition of Methyl Tert-Butyl Ether ("****MTBE****"), a spent solvent of which 100 litres came to be collected inside the factory premises. MTBE was one of the spent solvents specifically identified by the GT Report (@* ***Pg. 123 of RC- 4(iii))****;*

(k) The Deccan Group has relied upon an

averment of "under-invoicing" to contend that there has been "siphoning" of funds by Petitioner No. 2. However, this allegation, apart from being without evidence, is patently absurd inasmuch as it cannot follow that Petitioner No. 2 had any financial gain from selling spent solvents cheaply. This allegation, aside from being vexatious and unpleaded, merely demonstrates the lengths the Deccan Group will go to in order to mislead this Hon'ble Tribunal;

(l) The GT Report cannot be relied upon as:

(i) The terms of reference were selective, and made without consideration of the Pendris' request for an expanded scope of

investigation to include (a) investigation into conflict of interest; (b) siphoning of the Eli Lilly business which caused a loss of ~INR 10,900 crores to the Escientia Group; (c) the nature and extent of payments made privately to the COO by the Deccan Group and its related parties; (d) investigation into the nature of the secret proprietorship concern of the COO; and (e) the bribing of security personnel by the Deccan Group's employees;

(ii) The GT Report itself contains numerous disclaimers (**Pg. 337 of RC- 4(iii)**) stating that it cannot be relied upon by any person and is not in the nature of an audit.

(m) The Deccan Group has in fact established its own role as well as the abdication of responsibility of the COO as being causal factors for the fire accident at the factory of EASPL;

(n) In any case, these questions are not the purview of this Hon'ble Tribunal and shall be dealt with appropriately by the relevant authorities under the Factories Act, 1948.

However, the Ld. Sr. Counsel for the Respondents No. 2 and 3, refuted the above submission and contended that:

The Petitioner No. 2 directed and approved the sale of useful byproducts from the manufacturing processes at EASPL at a throwaway rate without obtaining any

quotations, through one of his agents who is not associated with EASPL at all, despite much better rates being available in the market for the sale of the byproducts, being called 'Spent Solvents'. The Respondent craves leave to refer to and rely upon a Note tendered during the course of arguments on behalf of Respondent Nos. 4 to 6 titled "Brief Note on Spent Solvents" along with compilation being RC-4(iii) in this regard, a copy of which is annexed hereto as Annexure 16. The Note highlights a fraud played on EASPL, by labelling specific byproducts collected and labelled separately, simply as 'Spent Solvents', with no logical or business basis to it but to obfuscate the value that EASPL can derive from their sale.

On 13.06.2024, the CFO brought the matter of solvent sales to the attention of the Board of EASPL, highlighting that the current Delegation of Authority (DOA) did not encompass "disposals" and sought clarification on the Board's stance [Doc. 137, Pg. 1810 of R2's Add. Reply Affidavit dt. 15.10.2024]. Subsequently, Respondent No. 4 advised to put the proposal on hold to enter a rate contract for the disposal of spent solvents until a Board decision was made [Doc. 137, Pg. 1810 of R2's Add. Reply Affidavit dt. 15.10.2024]. A resolution was passed on 26.06.2024 authorizing the CFO and Site Head to oversee disposals while emphasizing competitive price realization and transparency. This resolution was communicated to EASPL employees on 11.07.2024 [@

Pg. 1173 of Doc. 88, Pg. 1154 of R2's Add. Reply Affidavit dt. 15.10.2024].

On 22.07.2024, the CFO presented an offer from Visakha Solvents Limited (VSL) that highlighted a marked disparity in valuation. VSL's analysis quoted rates ranging from INR 5 to INR 66 per kg, significantly higher than the INR 3 per kg previously realized under the arrangements involving Mr. Kiran Pendri and Mr. Suresh Partani, both of whom acted without clear authorization from EASPL [@ Pg. 1813 of Doc. 137, 1810 of R2's Add. Reply Affidavit dt. 15.10.2024]. This revelation necessitated an increase in the sales order value, as proposed by the CFO on 08.08.2024, and a thorough review of historical sales practices, as sought by Respondent No.4 on 09.08.2024 [@ Pg. 1835 of Doc.

137, Pg. 1810 of R2's Add. Reply Affidavit dt. 15.10.2024].

The Grant Thornton Special Review for FY 2021-2024 disclosed systematic undervaluation and lack of transparency in solvent and drum sales [Doc. 131, Pg. 1524 of R2's Add. Reply Affidavit dt. 15.10.2024]. Key findings include:

- 68% of the total scrap sale of INR 2.46 Crores (INR 1.68 Crores) constituted spent solvents sold at INR 3 per kg, while market analysis suggested an average potential rate of INR 26 per kg, resulting in a calculated loss of INR 12.91 Crores during the review period.

- The removal of labels identifying solvent compositions before sale and the opaque involvement of

unauthorized individuals (e.g., Mr. Suresh Partani) suggest intent to mislead and financial impropriety.

- HDPE drums used for solvent storage were sold at INR 8 per kg, far below market rates of INR 61–66 per kg, leading to a further loss of INR 38.19 Lakhs.

The revelations of undervaluation, improper categorization, and unauthorized involvement in the sale process demonstrate systemic lapses. The intentional sale of solvents as “mixed solvents” despite their identifiable individual compositions and market demand, coupled with the removal of labels, to facilitate its sale as a mixed solvent at a lower price, constitutes a breach of fiduciary duties and corporate governance principles. Over three financial years, these practices alone resulted in an estimated loss exceeding INR 13.29 Crores, with

potential losses over the operational period likely to be significantly higher.

The Petitioners have attempted to mislead this Hon'ble Tribunal by contending that the Petitioners never organized a sale of the spent solvents and were only concerned with speedy removal of the spent solvents, claiming that the volatile chemicals are likely to cause accidents, and that it was the spent solvent which caused the factory explosion at EASPL's plant. However, the Petitioners' contention is misleading and incorrect:

- Storage of spent solvents had nothing to do with the factory accident.

- The Petitioners have incorrectly argued that the accident was caused due to an explosion resulted from the storage and handling of spent solvents, specifically

MTBE (Methyl Tert Butyl Ether) [Pg.109-110 of the Order dt. 04.11.2024 in IA 69/2024]. This assertion is contradicted by the findings in the Order of the Deputy Inspector of Factories itself which explicitly states that the explosion occurred due to a solvent leak during the manufacturing process, involving fresh MTBE handled through factory pipelines. The relevant portion of the Order dated 24.08.2024 is reproduced below:

> *"On 21.08.2024 in "A" shift the distilled Methyl Tert-Butyl Ether (MTBE) from the reactor in 2nd floor was being collected in the 100 Liters receiver and then transferring from receiver to outside storage tank of 10 KL capacity at west side of block by applying the Nitrogen pressure. ... At about 1:55 PM the workers have observed that the leakage from flange at first floor and falling through cable opening floor cut and is falling on MCC panel located at ground floor. The entire building was provided with recirculated AHU by providing ducts in all floors and main AHUs are located at ground floor. The MRBE vapours at ground floor and first floor are sucked through AHU and circulated to all other areas like PF LAB and other rooms. At about 2:20 PM due to some ignition source either at electrical panel or static charge, the vapours accumulated heavily in the ground floor and spread through AHU duct caught fire and exploded heavily due to vapour cloud explosion. Due to that impact MCC panel blasted and the walls of PD lab and AHU corridor walls, ducts of AHU and false ceiling in the ground floor were found collapsed and fire with smoke spread to all the 4 floors and resulting into death of 17 workers and injuries to 38 workers....."*
>
> (Emphasis Supplied)

- MTBE, whether fresh or spent, is a hazardous material routinely used and managed at EASPL. However, the explosion did not involve the spent solvents stored separately in drums in a designated area of the factory.

- Further, the Petitioners' attempt to connect the explosion to Deccan's policies on the handling and sale of spent solvents is baseless. The storage of spent solvents has consistently adhered to Standard Operating Procedures (SOPs), and no evidence suggests that these materials played any role in the incident. Instead, the Petitioners' negligence in addressing non-compliances highlighted in the Order, despite their claimed expertise in pharmaceutical manufacturing, contributed to the unsafe conditions leading to the accident. The Petitioners

claim that spent solvents were sent out daily by truckloads, suggesting a routine and rapid disposal process. This claim is patently false as the historical practices at EASPL, even prior to the adoption of the Majority Board Resolutions for competitive pricing, involved the storage of spent solvents in drums on factory premises. Different types of spent solvents were segregated and stored separately, as verified in the Grant Thornton Report. The materials were not disposed of on a daily basis, nor in large quantities, as alleged. Delays noted in the disposal process, particularly in the instances flagged in the Grant Thornton Report, were attributed to the time required for policy deliberations by the Board. Once a vendor was engaged, the entire process of testing,

quotation, and removal typically took only 4-5 days, ensuring efficiency and compliance.

- The Petitioners allege that the pursuit of higher sale prices resulted in prolonged storage times, creating hazardous conditions. This claim is inaccurate and mischaracterizes the actual disposal timeline. Vendors offering competitive rates conduct testing and analysis as part of standard procedures, and subsequent disposals occur swiftly. The alleged 44-day disposal delay arose due to internal policy deliberations and not from the sale process itself. Furthermore, there is no evidence that the prolonged storage caused or contributed to any hazardous conditions.

- The Petitioners claim that the Pollution Control Board (PCB) directed the destruction of spent solvents,

which was ignored in favor of vendor assessments requiring prolonged factory storage. This assertion is unsupported by evidence, as no PCB directives mandating destruction have been placed on record. EASPL complies with relevant environmental regulations, ensuring safe storage, segregation, and disposal of spent solvents. Contrary to the Petitioners' claim, the waste was segregated at the point of generation, and any subsequent vendor testing only verified this segregation. Additionally, the incineration of highly flammable materials like MTBE, as suggested by the Petitioners, is neither practical nor consistent with regulatory norms.

- While the Petitioners claim that Dr. Pendri raised objections to the disposal of spent solvents, the records

show otherwise. During the Board meeting on 26.06.2024, Dr. Pendri agreed to the resolution for the sale of spent solvents. His only cautionary remark was that senior staff should ensure proper handling to prevent accumulation, a reasonable suggestion rather than an objection. The Petitioners falsely argue that the segregation and labeling of spent solvents were conducted improperly under Deccan's policies. However, the Grant Thornton Report reveals that prior practices involved the deliberate mislabeling of drums by Mr. Kiran Pendri, who placed generic labels such as "spent solvent" over existing specific labels [Pg.1553 of Doc. 131, Pg.1524 of R2's Add. Reply Affidavit dt. 15.10.2024]. This mislabeling undermined transparency

and compliance, further discrediting the Petitioners' claims.

Ld. Sr. Counsel for the Respondent No. 4 to 6 Contends that:

a) The Petitioners have further mismanaged and siphoned of assets by under-invoicing the Company's products, even while matters concerning the company were pending before this Hon'ble Tribunal with regards with spend solvent, resulting in huge loss of at least Rs. 12.91 Crores. In this regard, the Respondent No. 2 craves leave to rely upon note titled, "***Brief Note on Spent Solvents***", which has been passed on during the course of arguments, a copy of which is annexed hereto,

without its compilation of documents, and marked as **Annexure 9.**

Our analysis & findings.

According to the Members of Deccan Group, Pendris have caused loss of Rs.13 crores to EASPL on the sale of spent solvents by selling the same at the rate of Rs.3 per Kilogram despite the same could have been sold separately for a better price to external vendors at the rate of Rs.66 per Kilogram.

This allegation has been denied by the Company Petitioners. There is a unanimity amongst both the sides in contending that that spent solvent is generated during the sue of solvent to dissolve or dilute other substances, materials or chemical intermediaries in various industrial

processes. According to the Company Petitioners these spent solvents are hazardous waste and are required to be disposed of immediately when not utilized as resource recovery immediately, lest there may be fire accident. Therefore, spent solvents were sold as mixed solvents at the rate of Rs.3 per Kilogram to eliminate any possibility of fire accident.

It is a matter of record that fire accident did take place at the factory premises in Atchutapuram and one of the causes for the said accident had been attributed to the stored spent solvents in the factory premises. The Police agencies are investigating the matter. Therefore, we do not get into this aspect. Both the sides have levelled allegations against each other for the loss said to have been cause. However, there is no convincing material

placed before us to come to a right conclusion on the persons responsible for the alleged loss and also quantum. In the absence of any cogent material placed before us from either of the parties, we are not inclined to delve into this plea. Moreover, as already stated the investigation undertaken by the Police agencies is in progress. Therefore, we are not inclined to enter into any finding on this point.

It is represented by Mr S. Niranjan Reddy, Learned senior counsel for respondent no.2 and 3 (Deccan group) submitted that without any Board Resolution of M/s Escientia Advanced Sciences Pvt Ltd or leave of this Tribunal, at the behest of 11th respondent Dr. Kiran Reddy Pendri, 95% of data/ records of M/s Escientia Advanced Sciences Pvt Ltd kept in electronic form, is

being *migrated* to another entity, *namely*, M/s Escientia USA. The learned Senior Counsel has also invited our attention to the correspondence that has been filed as annexures to the applications, more particularly pages 59, 67 and 70 of the application IA (CA) No.295 of 2024 and contended that the migration process which is being done at the behest of Dr. Kiran Reddy Pendri is completely unauthorized, contrary to the rules, besides in violation of fiduciary duty of directors of the Board of M/s Escientia Advanced Sciences Pvt Ltd., therefore, the said process needs to be stopped forthwith.

Learned senior counsel further submitted that M/s. Escientia USA, shareholding comprises not only 'Pendris' (Company Petitioners) and some of the members of Deccan Group, but also a *third party*, so

much so, migration of data of M/s Escientia Advanced Sciences Pvt Ltd (India), to third party is a matter of serious concern, apart from being an act amounting to *oppression and mismanagement* of the affairs of M/s Escientia Advanced Sciences Pvt Ltd.

Mr. Arvind Pandian, learned senior counsel for the 2nd respondent has drawn our attention to definitions under Section 2 and Section 128 of the Companies Act, 2013 *besides* Accounting Rules, and contended that data migration, which is undertaken at the behest of Dr. Kiran Reddy Pendri, is in complete violation of the above provisions and contrary to the interests of the Company and its shareholders, hence needs to be *stopped* forthwith and complete access to the data should be made available to the applicants herein, lest the applicants would suffer serious loss and injury.

However, Mr. Vivek Reddy, learned senior counsel for the Company Petitioners would contend that there is

no truth in the contentions put forth by the petitioners as regards un authorised migration of the data/ information from the 'Indian Tenant' named *'escientiaadvanced.onmicrosoft.com*' to an US Tenant.

In light of the undertaking submitted by the Company Petitioners and taking into consideration the developments, such as major fire accident taken place at the manufacturing unit of Escientia at Atchutapuram, we are of the view that it cannot be said that the petitioners have committed acts amounting to oppression or caused prejudice to the interest of EASPL.

Insofar as the plea that the petitioners have approached this Tribunal with unclean hands is concerned,

we are unable to find any material worth in support of this application. Therefdore, this plea is rejected.

The Point-6 is answered accordingly.

Point-7

Whether there is an irretrievable break down of mutual trust and confidence amongst the shareholders of 1st respondent/ company and buy out is the only remedy under the facts and circumstances of the case? If so, to whom such buy out option can be awarded?

The submissions.

The petitioners contended that much water has flown under the bridge, as a major fire accident took place at the site of EASPL in August 2024, resulting in complete breakdown of mutual trust and confidence between the parties. This absence of trust between the

shareholders, precipitated by the breach of the basic understanding between the parties, and the aggressive acts of scapegoating being undertaken, demonstrate that the interests of the Escientia Group can only be preserved if one of the two groups is given an exit from the business through a buyout. Even when mediation came to be suggested by this Hon'ble Tribunal *vide* order dated 14.03.2024, it was the Respondents who did not agree to such mediation, while the Petitioners had agreed (as recorded *vide* order dated 18.04.2024).

If, as per the Deccan Group's case, special rights are causing a deadlock, the remedy is not to annul the special rights, but to order a buyout. Reliance in this regard is placed on ***Draegerwerk (supra),*** **Paragraph 14(b)** (**Pg. 439 of PCC- 4**) and ***Majestic Infracon***

Private Limited v. Etisalat Mauritius Limited & Ors. **Appeal (L) No. 461 of 2013 in C.P. No. 114 of 2012, decided on 13.01.2014, Paragraph 72 (Memo dated 23.12.2024)**.

It is further submitted that buyout is a remedy that is always available to this Hon'ble Tribunal if it believes that there is no possibility of the parties being able to reconcile. In fact, failure to establish oppression does not restrict this Hon'ble Tribunal's power to end the matters complained of by granting a buyout. This position has been acknowledged by:

(a) The Hon'ble Supreme Court of India in ***Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holding Ltd. & Ors.*** **[1981] 3 S.C.R. 698**

at Pg. 156H (Pg. 30-160 of PC-4); and

(b) The Hon'ble Karnataka High Court in ***Synchron Machine Tools P. Ltd. & Ors. v. U.M. Suresh Rao*** **(1994) 14 CLA 199 (Kar) at Paragraph 172** (**Pg. 454-616 of PC-4**).

While the Respondents are also clear that the present proceedings may only be ended with a buy-out order, it is the Respondents' case that the first right of purchase must be given to the majority shareholder. Reliance in this regard was placed on ***Yashovardhan Saboo v. Groz-Beckert Saboo Ltd. & Ors.*** **(1995) 83 Comp Cas 371 (CLB), Para 60**. It is clarified that the decision in *Yashovardhan Saboo (supra)* was rendered

in the specific facts and circumstances of that case, and the present proceedings on facts differ greatly.

In the present facts and circumstances, it would be more appropriate for the original promoters of EASPL and EBPL, *i.e.*, the Company Petitioners, to get the first right to purchase the shares of the Deccan Group. This is because:

(c) The Pendris are the original promoters of the Escientia Group and have been involved with the Escientia Group since its inception in 2008;

(d) The Pendris do not suffer from any conflict of interest, unlike the Deccan Group which is running a competing pharmaceutical CDMO business in Goa, India and Muttenz,

Switzerland;

(e) The Pendris are admittedly the technocrats in the organisation, having the technical and business expertise to run a pharmaceutical CDMO;

(f) The Pendris are the sole source of business for the Escientia Group;

The remedy of buyout cannot be given as a reward to the oppressor [***Dale & Carrington Investment P. Ltd. & Anr. v. P.K. Prathapan & Ors.*** **Supp. [2004] (4) S.C.R. 334 @ Pg. Pg. 189E to 189G** (**Pg. 161-189 of PC-4.**

This position has been affirmed by judicial precedent as in the cases of:

- Neeedle Industries Pg.157B-157G

- M/s. Dale & Carrington Pg. 189E-189G
- Chander Mohan Jaon vs CRM Digital Synergies P. Ltd & Ors. [2008] 84 CLA 268 (CLB) @ Para 17 (**Pg. 617-642 of PC-4)**

Contentions of Respondent No.2

A buyout can be directed by the Hon'ble Tribunal if the Hon'ble Tribunal is satisfied that Winding down of the business would be prejudicial to the shareholders AND:

(i) Oppression is made out; OR if

(ii) Functional deadlock between shareholders or groups of shareholders is made; OR if

(iii) There is a breach of quasi partnership between the members of the Company.

It is submitted that the Petitioners have failed to make out any of the three grounds required for an order of buyout.

The Petition is liable to be dismissed with costs. It is submitted that the Respondents have demonstrated that it is the Petitioners, as minority shareholders, who have oppressed the majority and mismanaged the affairs of EASPL. However, without prejudice to other contentions, it is submitted that if a buyout is to be directed in the present case, it is the Respondent No. 2 who must be given the first option to buy out the Petitioners, as is consistent with established law, *inter alia* as set out in the Judgment of the Hon'ble Principal Bench of the CLB in the case of ***Yashovardhan Saboo vs. Groz-Beckert Saboo Ltd. and Ors.*** (1995) 83 Com Cases

371, at **Para 60,** [***Doc. 10, Pg. 138 of Respondents' Compilation 3 re. Situational Conflict],*** the relevant portion of which is reproduced below:

> *"60. ...No doubt, we have come to the conclusion that the petitioner has not been able to establish a case of oppression. At the same time, we are aware that a time has come when the relationship of the two parties has reached a stage where reconciliation is difficult. Shri Mookherjee has also drawn our attention to the decision of the Supreme Court in* ***Needle Industries' case, [1981] 51 Comp Cas 743*** *in which it was held that even if the case of oppression is not established, the Bench has got power to give relief to do substantial justice between the parties. .... Therefore, the only solution that can put to an end this dispute is severing of the relationship by sale of shares by one party to the other. While the petitioner has made it clear during the hearing that he is not interested in selling his shares, he is willing to buy shares of the respondents and has prayed for such a relief. ... It is settled law that the majority should never be forced to sell its shares to a minority and the relief that can be given in such a case to a minority shareholder is to ensure a fair price for the shares he is required to sell. Accordingly in this case the GB group which is holding 60 per cent, of the shares should buy the shares of the Saboo group."*

The Judgment of the Hon'ble CLB in ***G. Govindaraj & Anr. v. Venture Graphics P. Ltd. and Ors. 2004 SCC OnLine CLB 61, Para 11***, ***Pg. 14*** a copy of which is annexed hereto as **Annexure 36,** the relevant portion of which is reproduced below:

> *"...In view of the irreconcilable differences ... only way to ensure the smooth functioning of the company is that the warring parties must part*

ways … Towards this end, the petitioners, being minority shareholders will sell their shares in favour of the respondents…"

The majority should not be forced to sell even if the minority has technical competence and experience. Reliance in this regard is placed on the judgment of the Hon'ble Calcutta High Court in the case of ***Combust Technic P. Ltd., In re. 1984 SCC OnLine Cal 122 Para 71-73,*** a copy of which is annexed hereto as **Annexure 37,** the relevant portion of which is reproduced below:

"71. ...Neither of the parties is willing to sell his or her shares to the other. .... The petitioner also relies on the support of the workers of the company. His additional grounds are that he alone has the experience and technical qualification to run the company while respondent No. 2 is not competent technically or otherwise to manage the company by herself.
72. The contention of respondent No. 2, on the other hand, is that she is in a majority and it is settled law so far as this court is concerned that the majority should never be forced to sell its shares to a minority.
73. In view of the decisions, In re Albert David Ltd., [1964] 68 CWN 163, In re Sindhri Iron Foundry (P.) Ltd., [1964] 34 Comp Cas 510 (Cal) : 68 CWN 118 and Tea Brokers (P.) Ltd. (AFOO No. 312 of 1972—February 19, 20, 1974), the contentions of respondent No. 2 cannot be brushed aside. Whatever be her competence, she, in my view, cannot ultimately be kept out of the management. Majority is a matter of arithmetic and in law she also should not be directed by this court to sell her shares to the petitioner."

Majority should be given the first option to purchase Reliance in this regard is placed on the Judgment of the Hon'ble Delhi High Court in the case of ***Chander Krishan Gupta v. Pannalal Girdhari Lal Private Ltd. and Ors. 1981 SCC OnLine Del 327*** **Para 30,** a copy of which is annexed hereto as **Annexure 38:**

> *"…Though all the allegations of oppression have been made against respondents Nos. 3 and 5, to my mind they should be given the first option to purchase the other shares. The oppressor being asked to purchase the shares is not something which is unknown to company law. (See Scottish Co-operative Wholesale Society Ltd. v. Meyer, [1958] 3 All ER 66 at page 89; [1959] 29 Comp Cas 1). It is admitted by the petitioner that for the last few years it is respondents Nos. 3 and 5 who have been managing the affairs of the company … In my view, therefore, it will be more beneficial for the company, at this stage, that the control goes into the hands of respondents Nos. 3 and 5…"*

The Petitioners relied on **Draegerwerk v. Usha Drager Pvt. Ltd. [** ***PCC-4, Pg. 439*****]** contending that the Hon'ble Delhi High Court found that deadlock arose due to affirmative right given to a director which constituted a sufficient ground for winding up and thus a buyout

remedy was ordered, and the special rights were not removed. However, in ***Draegerwerk v. Usha Drager Pvt. Ltd,*** the Petitioner and the Respondent both had 50% shareholding. Presence of an affirmative right is an additional factor to come to the conclusion of functional deadlock after finding that both the groups' shareholding is more or less equal.

> *"14. ...Both the groups have 50% shareholding and there is no likelihood of the two groups mutually agreeing to transfer of shareholding inter se. Thus, we have a situation where the company for last three years has not functioned as per ""the Constitution" i.e. the Act. Rules and the Articles. The deadlock is not confined to the Board of Directors, the executive, but also the legislature and entire electorate i.e. the shareholders who are split half and half."*

Referring to the ruling in ***Majestic Infracon v. Etisakat DB Telecom Ltd,*** learned Senior Counsel contends that the Petitioner and the Appellants in the above case held about 45% equity each. BHC stated that there is nothing on record to show that the minority

shareholders with 10% equity would side with either of the parties and even presuming that they only cooperate with the appellant who argued that there is no deadlock, special resolutions would still not pass. The bench noted that the Petitioners were entitled to nominate 3 directors whereas the appellants were entitled to nominate 2 directors and the quorum required at least two of petitioners' nominee directors and one of appellant's directors. Since, the Petitioner held majority on the board who unequivocally refused to continue any association with the appellant and was against the continuation of the company, the court held that there was little likelihood of any effective resolution being passed. The Hon'ble Court also cited ***Para 33 of Hind Overseas Pvt. Ltd., v. Ragunath Prasad Jhunjhunwalla (1976) 3 SCC 259*** to

state that the shareholding does not have to be equal and that it is sufficient if the shareholding is *"more or less equal".* The Court only held that functional deadlock is present after being satisfied that the test as laid down by Hind Overseas including the test of "more or less equal" shareholding was met.

On the reliance placed in the ruling in ***Dale v. Carrington*** [***Pg. 161-189, PCC-4***] learned Senior Counsel contended that a buyout option cannot be given to the oppressor as the same would be akin to rewarding oppression. The Case cited by the Petitioners involved the improper allotment of shares and thus it was held that being the oppressor, the party should not get the right to buy out and take advantage of his own wrongdoing.

Without prejudice, even assuming oppression is made out, oppressor can be given the first option to buy out the oppressed as established hereinabove.

It is submitted a relationship in the nature of 'quasi-partnership' does not and did not ever exist between the Petitioners and the Respondents. The Deccan Group came in as the majority shareholder much after the incorporation of Respondent No. 1 Company and much after the Pendris had started business under the name of 'Escientia'. Furthermore, it is pertinent to note that the plea of quasi partnership has never been pleaded by the Petitioners and has been argued only at the final stage. Reference may be made to the Hon'ble Supreme Court's Judgment in ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449, Para 142*:**

> ***"…….****In the case in hand there was never and there could never have been a relationship in the nature of quasi-partnership between the Tata Group and SP Group. SP Group boarded the train half-way through the journey of Tata Sons. Functional deadlock is not even pleaded nor proved……."*

Relevant factors for determining whether a relationship is in the nature of a quasi-partnership were set out by the Hon'ble CLB in the case of ***Mohmad Rafiq Jafferbhai Bagwan v. Sathyaprakash Subramanian & Ors. 2013 SCC OnLine CLB 99***, a copy of which is annexed hereto as **Annexure 39**. None of the factors are applicable in the given scenario:

> *"9. Further, equality in the shareholding, conversion of preexisting partnership into a company, an understanding between the parties for equal participation in the management are some of the circumstances which may led to the presumption that the company is in the guise of a partnership. Though, it is not necessary the existence of the aforesaid facts for such presumption but the existence of these facts could only strengthen the claim of quasi partnership."*

It is also established law that a plea for consideration of a relationship of shareholders of company as a quasi-partnership should not be easily accepted, as was held by

the Hon'ble Supreme Court in the case of ***Kilpest Pvt. Ltd. and Ors. v. Shekhar Mehra (1996) 10 SCC 696, Para 11*** a copy of which is annexed hereto as **Annexure 40**.

The operations and business of EASPL (Respondent No. 1 herein), EBPL (Respondent No. 1 in CP 44 of 2023), and ELS USA are interlinked with the Deccan Group holding a ~75% shareholding. In the case of ELS USA, the Deccan Group holds a 75.19% voting interest including through 'Notes'. Furthermore, EBPL has a high dependency on EASPL and ELS LLC USA with the services provided to EASPL/ELS LLC USA, forming more than approximately 95% of overall sales of EBPL. The Articles of Association of EBPL do not contain any

provisions requiring unanimity in Board Meetings or General Meetings nor are there any other form of special rights claimed by the Petitioners by virtue of the Articles. Owing to the interdependence between the companies and high dependence of EBPL on EASPL, if an order of buyout is made for either of the companies, then a corresponding order has to be made for the other Group Company as well. The Petitioners Company Petition 44 relating to EBPL does not have any legs to stand on owing to the fact that EBPL is an R&D company and cannot undertake any commercial production unlike EASPL whose object is to primarily manufacture active pharmaceutical ingredients. Nor are there any special rights claimed by the Petitioners in EBPL.

If an order of buyout for EASPL is made in favour of the Petitioners giving them the first right to buy the stake of the Respondents, EBPL's existence would prove to be untenable.

Our Analysis and findings

In **Erlanger** vs. **New Sombrero Phosphate Co**., (1874-80) All ER Rep 271, the position of promoters of a company was explained by **Lord Cairns, L.C.** as follows:

It is now necessary that I should state your Lordships in what position I understand the promoters to be placed with reference to the company which they proposed to form. They stand, in my opinion, undoubtedly in a fiduciary position. They have had in their hands the creation and moulding of the company; they have the

power of defining how, and when, and in what shape, and under what supervision it shall start into existence and commence to act as a trading corporation.

It is the promoter who generates the idea of formation of a company and brings it into existence This existence is not of a mere nature, but the survival of the company after the incorporation is to be foreseen by the promoter. In short, it can be said that the promoters lay the foundation stones of a company. It is the brain child of the promoters who give actual form to the company. It can also be said that the incorporated company is the intellectual property of the company.

A tragic fire accident had taken place on 21.08.2024 at 02.15 PM at M/s EASPL manufacturing facility in

Atchutapuram, in which seventeen (17) innocent employees of M/s.EASPL, have lost their lives, twenty (20) employees have sustained major injuries, and eighteen (18) employees have sustained minor injuries. The concerned Police have registered a FIR No. 169/2024 filed at Rambilli Police Station, Anakapalli District under Sections 106(1), 125(a) and 125(b) of the Bharatiya Nyaya Sanhita, 2024 ("BNS"), and the enquiry/ investigation into the cause of the accident is underway.

On 22.08.2024, the Hon'ble Chief Minister of Andhra Pradesh along with team of senior officers visited the premises in Atchutapuram, and Hon'ble Chief Minister of Andhra Pradesh, has constituted a Committee to inquire into the incident.

It is pertinent to note that, on the next day after the accident,

i.e. on 22.08.2024, the 7th Respondent Ajit Alexander George, requisitioned for the meeting of the Board, to discuss the;

> *"steps and measures taken/ to be taken by the Company towards safety and well-being of the employees, arrangements made for proper medical treatment to injured employees and support extended/being extended to the families"*

Accordingly, the Board meeting was held on 21.10.2023 and it was unanimously, resolved by the Board as below:

> *"Resolved that the approval of the Board be and is hereby accorded to authorize Mr. Srinivasa Rao Korada, Chief Financial Officer (CFO) of the company to engage one of the big 4 firms (E&Y, Deloitte, PwC, KPMG) to study the said issue of movement of equipment from the Vizag Unit of the company to Hyderabad and submit their report to the Board for assessment of the consequential impact and risk on the company and its Directors for the further deliberation in the best interest of the company."*

However, soon after passing the above resolution

unanimously, both the 'groups' started blaming each other for the fire accident that occurred on 22.08.2024. One of the shareholders of M/s. EASPL, even filed Interlocutory Application, vide IA (CA) No.243 of 2024, to pass an ad interim, order:

> *'directing suspension of Dr. MSM Mujeebur Rahuman and the Board of Directors of respondent no.1 company and replacing it with an 'Administrator' as per the discretion of this Hon'ble Tribunal."*

Later vide memo dated 03.10.2024, the prayer insofar as the same rates to 'suspension of Dr. MSM Mujeebur Rahuman from the 1st respondent company during the pendency of the Company Petition', was not pressed and the prayer for appointment of Administrator has been retained.

In the above IA (CA) No.243 of 2024, it is contended that the email dated 24.08.2024 sent by the applicant herein,

addressed to M/s. EASPL, transpires that despite the gravity and seriousness of the situation at hand, the applicant and the respondents 7 and 8, have disclaimed responsibility or that of their masters and have suddenly abandoned the wheel after the unfortunate incident on 21.08.2024, contrary to their own stand before this Tribunal. In support of the same extracts from the email dated 24.08.2024 are reproduced hereinbelow:

> *"3. .. .. you (Mr. Kiran Reddy Pendri) have the ultimate control of the factory affairs and management and are solely responsible and also accountable to the relevant authorities. .. .. 4. .. .. Given the above concerns, we cannot help but question the intent behind your communication. It may be perceived as an attempt to shift responsibility away from yourselves. Deccan Fine Chemicals (India) Private Limited and/or its promoters have absolutely no involvement and obligation on this matter. All legal, operational, and ethical obligations related to this incident lie solely with the relevant persons within EASPL."*

It is also contended that, the need of the hour is the appointment of an independent, qualified and experienced professional having high integrity and industry knowledge, as an `Administrator', to take

control of the manufacturing premises of M/s. EASPL, which will also, ensure a free and fair investigation into the cause of the unfortunate accident.

This application is resisted strongly, by the applicant and the respondents 7&8, contending, inter alia, that the application seeking replacement of the management of EASPL with an Administrator is a difficult, time-consuming process and will cause severe prejudice to the investigation under FIR No. 169/2024 filed at Rambilli Police Station, Anakapalli District under Sections 106(1), 125(a) and 125(b) of the Bharatiya Nyaya Sanhita, 2024 ("BNS"). It is further contended that, already IA No.104 of 2024 has been filed by the 2nd respondent, for *ad interim* order suspending respondent

no.4/ Mr. Dandu Chakradhar (DIN No. 07328978), respondent no.5/ Mr. Ajit Alexander George, (DIN No. 10077248) and respondent no.6/ Mr. Vivek Vasant Save (DIN No.05191822) from their directorship of M/s EASPL for the duration of the present proceedings and the same was heard and reserved for orders.

The 2nd respondent Dr. Kiran Reddy Pendri, who is the 'occupier' of the factory, attended the Board Meeting from Boston, USA. It is contended that the Deccan group is unaware as to when Kiran Reddy Pendri, the Occupier of the Factory, or Dr. Yadagiri Pendri, left India and when they intend to return to India and to the factory at Atchutapuram. In all, ten resolutions have been passed in the Board Meeting as per Draft Minutes. The resolutions, *inter alia,* provided effective steps to be taken in

connection with the fire accident, constituted teams to prepare action plan to handle the situation and update the Board of Directors periodically.

This Tribunal disposed of the IA No. 69 of 2024 observing that the prayer of the applicant and the rival contentions in this regard will be considered while deciding the Company Petition, and if in the opinion of this Tribunal it is just and necessary to do so in the interest of the EASPL.

It is therefore, clear that despite resolving unanimously to work together in the interest of the company, both groups started blaming each other levelling serious allegations against each other.

Thus, it is absolutely clear that lack of Trust and serious differences between the Pendris and the Members of Deccan Group have reached to the fore and have irretrievably broke down. That apart, we have categorically held that the acts of oppression by respondents 3 to 10 were established. As held by Hon'ble Supreme Court in **Needle Industries' case, [1981] 51 Comp Cas 743** in which it was held that even if the case of oppression is not established, the Bench has got power to give relief to do substantial justice between the parties. Therefore, in our considered opinion, the only solution that can put to an end this dispute is severing of the relationship by sale of shares by one party to the other. Therefore, in this scenario, we have no doubt in our minds

that, in order to do substantial justice between the parties, buy-out is he only remedy.

XIV. Therefore, this Tribunal hereby appoints:

(A) Mr. Devaki Vasudeva Rao, Practicing Company Secretary, whose details are as under:

e-mail	:	dvrao@dvraoassociates.com
Mobile No.	:	9989345999
Address	:	D.V. Rao & Associates Plot No.54, Sri Sai Residency Megha Hills Madhapur Hyderabad – 500 081.
COP	:	12123

as the **Administrator** of Escientia Advanced Sciences Private Limited for an initial period of six months commencing from the date of his acceptance of this

appointment, for carrying out the following functions and compliances:

(i) The Administrator is directed to file an acceptance-cum-consent letter to the above order before the Tribunal within three days from the date of this order, before the Registry.

(ii) Upon the appointment of the Administrator, the powers of the present Board of EASPL, shall stand suspended until further orders and the Administrator shall take control of all the affairs and the management of EASPL .

(iii) The Directors of EASPL shall provide all the required support to the Administrator for proper administration of all the affairs of the EASPL.

(iv) The Administrator shall be paid monthly remuneration of Rs.2,00,000/- (Rupees two lacs only), besides he is entitled for the reimbursement of the expenses incurred by him in connection with the work done as Administrator as per actuals.

(v) Upon obtaining the Valuation report from the Valuer appointed by this Tribunal, the Administrator is directed to forthwith give first offer to the Company Petitioners to buy out the shares of the 2nd respondent, within a period of 3 (three) months from the date of submission of the valuation report by the Valuer.

(vi) The company petitioners shall convey their decision of accepting or rejecting the proposal of buying out the shares of respondent-group within a period of 15

(fifteen) days from the date of this order to the Administrator.

(vii) If the petitioners themselves or through any investor agree to buy out the shares of EASPL within the time stipulated as above, the 2nd respondent is bound to accept the offer and exit from EASPL.

(viii) In case company petitioners are not ready to buy out the shares of 2nd respondent in EASPL within the stipulated time of three months the next offer shall to be given to the 2nd respondent and the 2nd respondent shall convey its decision of accepting or rejecting the proposal of buying out the shares of the Petitioners in EASPL within a period of 15 (fifteen) days of offer.

(ix) In case no group evince interest in buying out the shares of the other group, the Administrator is directed to report the same as well, so that appropriate winding-up orders under Section 242 (1) (b) of the Companies Act, 2013 can be passed on the grounds and facts of the case that it is just and equitable that the company should be wound up.

(x) If the company is acquired by either of the group with the exit of the opponent group, the Administrator is directed to report the same to the Tribunal immediately, so that appropriate orders can be passed for taking control of EASPL by the acquirer groups.

(xi) The Administrator is directed to ensure necessary compliances before the concerned statutory

authorities including but not limited to filings under the Companies Act, 2013.

(xii) We direct that the Administrator shall enjoy complete immunity from any kind of civil and criminal proceedings already launched or to be launched in or outside the country against EASPL / and its directors for all acts done prior to and subsequent to the date of appointment as an Administrator with an additional immunity and protection during all such legal proceedings for and against EASPL. None of the state or Central Government agencies shall initiate any actions, civil or criminal, punitive or coercive, against the Administrator for the acts of omission or commission

in EASPL, in exercise of regulatory, enforcement and the like powers.

(xiii) The officers/managerial persons of EASPL shall continue their regular functions/ duties under the Administrative control of the Administrator. However, there shall be no dismissal/ termination or appointment of employees without prior permission and approval of this Tribunal.

(xiv) The Administrator may take help and assistance from the existing employees of the Company, which he may deem fit and proper.

(xv) The Administrator shall not borrow any funds or dispose of or alienate or create any kind of charge on any of the assets of the of EASPL without prior permission and approval of this Tribunal.

(xvi) The Administrator is hereby authorized to operate the Bank Account of the EASPL maintained at the Banks as detailed at Enclosure of this order until further orders of this Tribunal. The concerned Bank authorities shall permit the Administrator appointed herewith to operate the Bank Account of EASPL upon production of the attested true copy of this order.

(xvii) Both the parties shall file Statement of Bank Account of the EASPL maintained at concerned Branch/ Branches for the period from 01.01.2025 to 07.03.2025, within the period of 10 (ten) days from the date of this order through e-filing and report compliance.

(xviii) We hereby make it clear that the appointment of Adminstrator will not absolve Dr. Kiran Reddy Pendri from the role of 'occupier' of the factory situated at Atchutapuram and Dr. Kiran Reddy Pendri shall continue to be the 'occupier' of the factory.

(B) We hereby appoint Mr. Bijay Murmuria, Director, Sumedha Fiscal Services Ltd., Kolkata, whose details are as under:

e-mail	:	bijay_murmuria@sumedhafiscal.com
website	:	www.sumedhafiscal.com
Tel. No.	:	3322298936/ 6758/ 3237/4473
Mob. No.	:	9830039390
Address	:	Sumedha Fiscal Services 8B, Middleton Street 6A, Geetanjali Kolkata- 700071.

as the Valuer for valuing the shares of the Company Petitioners in EASPL and the 2nd respondent, namely, Deccan Advanced Sciences Pvt Ltd as per the standard valuation process, who shall submit report within 30 (thirty) days from the date of this order.

(i) The Valuer shall be tentatively paid fee of Rs.3,00,000/- (Rupees three lacs only), besides he is entitled for the reimbursement of the expenses incurred by him in connection with the Valuation as per actuals.

(ii) The Petitioners and the 2nd respondent shall submit copies of their share certificates to the Valuer, within 3 (three) days of the appointment of the Valuer, if the same are needed by the Valuer.

The Point-7 is answered accordingly.

XV. Thus, the petitions are accordingly disposed of with the above directions. No costs.

Result

In the result, CP No. 45/241/HDB/2023 is hereby allowed to the extent indicated in the order. However, without costs. CP No.44/241/HDB/2023 is also hereby allowed to the extent indicated in the order. However, without costs. However, without costs.

SD/- **SD/-**

CHARAN SINGH **DR.VENKATA RAMAKRISHNA BADARINATH NANDULA**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

karim/ anil

ENCLOSURE

C.P. No. 44/241/HDB/2023

ESCIENTIA BIOPHARMA PRIVATE LIMITED

BANK ACCOUNTS

1. AXIS BANK

S. No.	Account No.	Branch	IFSC Code
1	027010200027937	Tarnaka Branch	UTIB0000027
2	909020032601017	Tarnaka Branch	USD Account

2. STATE BANK OF INDIA

S. No.	Account No.	Branch	IFSC Code
1	32543043700	Ramnagar Branch	SBIN0012917

C.P. No. 45/241/HDB/2023

ESCIENTIA ADVANCED SCIENCES PRIVATE LIMITED

BANK ACCOUNTS

1. INDUSIND BANK

S. No.	Account No.	Branch	IFSC Code
1	650014129309	Secunderabad Branch	INDB0000004
2	650014132127	Secunderabad Branch	INDB0000004

3	**201006257492**	**Secunderabad Branch**	**USD Account**

2. HDFC BANK

S. No.	Account No.	Branch	IFSC Code
1	**57500000676411**	**Banjara Hills Branch**	**HDFC0009417**
2	**50200059453470**	**Banjara Hills Branch**	**USD Account**

3. AXIS BANK

S. No.	Account No.	Branch	IFSC Code
1	**913020015302156**	**Hyderabad Main Branch**	**UTIB0000008**
2	**920020012427816**	**Hyderabad Main Branch**	**USD Account**