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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

RP NO. 474 OF 2025

OP(C) NO.631 OF 2025 OF HIGH COURT OF KERALA

REVIEW PETITIONER/S:

1 **SULOCHANA GUPTA**
AGED 73 YEARS
HOUSE NO. CC VIII/2109 GUJARAT ROAD, MATTANCHERRY, KOCHI, PIN - 682002

2 **MINAKSHI GUPTA**
AGED 44 YEARS
HOUSE NO. CCVIII/2109 GUJARATI ROAD, MATTANCHERRY, KOCHI, PIN - 682002

BY ADVS.
SNEHA MARIYA JAMES
SUKUMAR NAINAN OOMMEN

RESPONDENT/S:

1 **RAJKUMAR GUPTA**
AGED 55 YEARS
FLAT NO. 6D, BAY VIEW APARTMENT, OPP. CHILDREN'S PARK, PRINCESS STREET, FORT KOCHI, PIN - 682001

2 **VISHNUKANT GUPTA**
AGED 52 YEARS
FLAT NO. 1B, SUN RISE APARTMENT, INDIAN CHAMBER ROAD, MATTANCHERRY, ERNAKULAM, PIN - 682002

3 **RBG ENTERPRISES PRIVATE LIMITED**
CIN: U63022KL2005PTC018653 HAVING ITS REGISTERED OFFICE AT DOOR NO. VI/93 JEW TOWN, MATTANCHERRY PO, ERNAKULAM, PIN - 682002



4 **MAHESH KUMAR GUPTA**
AGED 48 YEARS
HOUSE NO. CC VIII/2109 GUJARAT ROAD, MATTANCHERRY, KOCHI, PIN - 682002

5 **SANJAY KUMAR AGARWALA**
RESIDING AT HOUSE NO. CCVIII/2109, GUJARATI ROAD, MATTANCHERRY, KOCHI, PIN - 682002

6 **REGISTRAR OF COMPANIES, ERNAKULAM**
BMC ROAD, THRIKKAKARA P.O., KAKKANAD, KOCHI, KERALA, PIN - 682021

7 **REGIONAL DIRECTOR**
5TH FLOOR, SHASTRI BHAWAN, 26 HADDOWS ROAD CHENNAI, PIN - 600006

BY ADVS.
SHERRY SAMUEL OOMMEN
VYDEHI P.(K/000936/2022)

OTHER PRESENT:

ADV P.B KRISHNAN SR, ADV. AKHIL SURESH, ADV SHERRY SAMUEL OOMMEN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 07.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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O R D E R

(Dated this the 7th day of April, 2025)

The review petitioners are respondent Nos.3 and 4 in O.P.(C.) No.631 of 2025. The O.P. was filed by respondent Nos. 1 and 2 herein, for the following reliefs:

> " a) Call for records in EP/01/KOB/2024 before the Hon'ble National Company Tribunal, Kochi Bench;
>
> b) Quash Exhibit P-11 and P-14 Orders passed by the Hon'ble National Company Law Tribunal, Kochi Bench in EP/01/KOB/2024;
>
> c) Issue appropriate directions to the Hon'ble National Company Law Tribunal, Kochi Bench, to proceed with the final hearing and expeditiously dispose of EP/01/KOB/2024 within a time frame deemed appropriate by this Hon'ble Court:
>
> d) Grant such other reliefs that this Hon'ble Court deem fit to grant under the facts and circumstances of the case;"

2. The review petitioners were not served with any notice in the O.P.(C) and an ex-parte judgment was passed on 20.03.2025. The fact in issue is under consideration of the apex court in CA No.4277-4279 /2023, filed by respondent Nos.1 and 2 and CA

4586-4589/2023 filed by the petitioners, and the apex court in CA 4277-4279 /2023 on 21.07.2023, appointed a mediator to sort out the issues, as it is a family dispute. It was made clear that both parties will stay their hands in different proceedings which may have been initiated in the courts.

3. Because of the judgment passed by this court, the issue has now resurrected again, which is against the order of the apex court. It is also contended that the O.P.(C) is not maintainable under Article 227 of the Constitution of India, as they have a statutory remedy under 421 of the Companies Act. So, there is an error apparent on the face of the record and the judgment passed in O.P.(C) is to be reviewed and to be dismissed.

4. The respondents filed I.A.No.1 of 2025 in R.P. under Order 41 Rule 27 CPC read with Rule 154 of the Rules of the High Court of Kerala, for accepting Annexs.R1(a) to R1(j).

5. Heard the counsels for the review petitioners as well as



for the respondents.

6. The question that arise for consideration is whether the judgment dated 20.03.2025 requires a review under Order 47 CPC.

7. The counsel for the review petitioner, Sri.Sukumar Nainan Oommen argued that NCLT, as per order dated 31.12.2021 in C.P. 114/KOB/2019, CP 119/KOB/2019 and CP 125/KOB/2019, had categorically entered into a finding that the related party transactions done by the respondents are contrary to the provisions of law and therefore, they are declared as invalid and in violation of Articles of Association.

8. It is an admitted fact that Review Application No. 2/KOB/2022 was filed to review the common order passed on 31.12.2021 and to get clarity of the order. The NCLT clarified the earlier order by enumerating the consequential reliefs passed in paragraph 55, which reads as follows:



"i. The 2nd and 3rdrespondents (ie, Mr Rajkumar Gupta and Mr Vishnukant Gupta) have vacated office as directors of the1st Respondent Companies (ie, Mssrs RBG Enterprises Private Limited, Mssrs RBG Trading Corporation Private Limited and Mssrs RBG Retail Private Limited) in accordance with Sections 167(1)(c) and 167(1)(d) of the Act with effect from. 31.12.2021;

ii. The 2nd and 3rd respondents are not fit and proper persons to hold the office of Director or any other office connected with the conduct and management of any company as contemplated under section 242(4A) of the Act with effect from 31.12.2021;

iii. On a consideration of the documents filed by the Respondent pursuant to the directions of this Hon'ble Tribunal on 28.07.2021 and 12.08.2021, the affirmation of the 3rd Respondent (ie, Mr. Vishnukant Gupta) to the Review Petition, the reliefs sought for in IA/195/KOB/2021 shall stand allowed. The Registry is directed to take necessary action forthwith;

iv. In view of our finding that the 2nd and 3rd respondent have failed to comply with the provisions of Act governing related party transactions (including Section 184 and 188), they shall stand disqualified as Directors of the 1st respondent Companies having regard to section 164(1)(g) of the Act with effect from 31.12.2021;

v. Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN-00643069) shall stand appointed as Directors of the 1st respondent Companies with immediate effect;



vi. Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN -00643069) are hereby directed to convene the Annual General Meetings of the 1st respondent Companies in CP/114/KOB/2019, CP/119/KOB/2019 & CP/125/KOB/2019 for the years FY 2015-2016 till date and to table the financial statements of the 1st respondent Companies for consideration of the shareholders;

vii. The 2nd and 3rd respondent, and their spouses, Mrs Ritu Gupta and Mrs Anika Gupta are hereby directed to refund all amounts drawn illegally by them through related party transactions including remuneration, as disclosed in the financial statements from FY 2015-16 till date, within 30 days from the date of this order.

viii. The Registrar of Companies, Kerala is directed to notify the change in the Board of Directors of the 1st respondent Companies (ie, Mssrs RBG Enterprises Private Limited, Mssrs RBG Trading Corporation Private Limited and Mssrs RBG Retail Private Limited) within a period of three working days from today;

ix. The Bankers of the 1st respondent Companies are hereby directed to immediately change the signatories to the bank accounts based on the mandate signed by Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN -00643069);

x. The above directions shall apply in respect of all other Company Petitions, ie, CP/119/KOB/2019 and CP/125/KOB/2019;

xi. The Registry is also directed to immediately forward a copy of this order to the Registrar of Companies, Kerala

for compliance.

2. With the above said directions, the present Application stands disposed of."

The original orders in CP/114/KOB/2019, CP/119/KOB/2019 and CP/125/KOB/2019 along with the review order, were challenged in Company Appeal Nos.18, 19, 20 and 31 of 2022. NCLAT did not find any error in the common order dated 31.12.2021 and confirmed the findings in respect of related 3rd party transactions. But since, there was no specific finding of operation and mis management, the directions given in the review applications were set aside, which means the clarity given by incorporating clauses (i) to (xi) in the final order of the Review Application was set aside and the matter was remanded back to NCLT for a limited point as to whether the acts committed by the applicants fall within the ambit of operation and mismanagement.

It is to be noted that the review petitioners have not filed any appeal against the order dated 31.12.2021. Against the appellate order of NCLAT, the original petitioners as well as the review petitioners filed separate appeals as civil appeal Nos.4277-4279/2023 and 4586-4589/2023 before the apex court and Ext.P5 common order dated 21.7.2023, was passed.

9. Along with I.A.No.1 of 2025 in the Review Petition, Ext.Nos.R1(a) to R1(j) orders of the apex court are produced. After the order dated 21.7.2023, on 14.5.2024, the apex court was appraised of the fact that one of the parties terminated the mediation and thereafter, the learned counsel appearing for RBG group was directed to take instructions whether they are willing to join mediation again and posted the case to 26.7.2024. On 26.7.2024, again the apex court has taken note of the fact and directed the senior counsel representing the parties to hold a meeting with the parties to reach an amicable settlement. But, in



spite of earnest efforts, amicable settlement could not be arrived and thereafter, on 17.09.2024, Ext.P6 order was passed staying the order of remand appearing in paragraph No.44, till the final disposal of the appeal.

10. Though the review petitioners sought for a stay of the impugned final order of NCLAT in Company Appeal Nos.18, 19,20 and 31 of 2022 as far as it set aside the order of NCLAT, in Kochi, in review application in Review Appeal No.02 of 2022 in CP.Nos.114, 119 and 125 of 2019 dated 16.3.2022, the apex court did not grant a stay. In such circumstances, the respondents in the Review Petition had approached this court under Article 227 of the Constitution of India, for a disposal of the Execution Petition filed by them as EP. 1/KOB/2024.

11. It is a settled proposition of law and provision under Order 41 Rule 5 CPC that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far

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as the appellate court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree. Since there was no stay, the NCLT was free to proceed with the execution petition.

12. One of the grounds raised by counsel for the review petitioner is that Ext.P11 order of NCLT dated 6.12.2024, was neither challenged in appeal under Section 241 of the Companies Act nor in this proceedings, and unless it is set aside, propriety demands no interference should have been done by this court.

13. Counsel for the petitioner relied on the judgment of the apex court in **Board of Control for Cricket in India and another v. Netaji Cricket Club and others** (2005 KHC 883) wherein, the court has held as follows:

> "91. It is true that in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius** (1955 (1) SCR 520: AIR 1954 SC 526) this Court made observations as regards limitations in the application of review of its order stating:
>
> "Before going into the merits of the case it is as well to

bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule." but the said rule is not universal.

92. Yet again in Lily Thomas (**Lily Thomas v. Union of India, 2000 (6) SCC 224: 2000 SCC (Cri) 1056**) this Court has laid down the law in the following terms

"52. The dictionary meaning of the word 'review' is 'the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji (1971 (3) SCC 844: AIR 1970 SC 1273), held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If

the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error." (emphasis supplied)."

14. The apex court in **Sanjay Kumar Agarwal v. State Tax Officer and another** [(2024) 2 SCC 362], held as follows:

"It is very pertinent to note that recently the Constitution Bench in **Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others,** held that even the change in law or subsequent decision/judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be



allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review."

15. A reading of Ext.P11 would show that the NCLAT only directed issue of notice with a copy of petition to respondent Nos.3 and 7, and a rejoinder to be filed within a week and it was observed that the Tribunal may wait for the outcome of the matter pending before the supreme court. In order to give a direction to NCLT, invoking under Article 227 of the Constitution of India, Ext.P11 need not be set aside. It is also brought to the notice through I.A.No.1 of 2025 that the review petitioners have already approached the apex court by filing an I.A. in Civi Appeal No. 4586/4589/2023, to stay the proceedings in execution petition



pending before NCLT, Kochi, and the same is yet to be numbered.

16. On going through judgment dated 20.3.2025, this court has only directed to take up E.P./01/KOB/2024 and if pleadings are completed, dispose of the same within a time frame, since there was no stay from the Hon'ble apex court in proceeding with the E.P. Hence , I do not find any error apparent on the face on record to review the same under Order 47 Rule 1 CPC, more particularly, when the review petitioners have already approached the Hon'ble apex court with a similar prayer.

Therefore, the Review Petition stands dismissed.

Sd/-

BASANT BALAJI, JUDGE

dl/

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APPENDIX OF RP 474/2025

RESPONDENT ANNEXURES

Annexure R1(a)	**A TRUE COPY OF THE APPLICATION SEEKING INTERIM RELIEF IN I.A.128185 OF 2023 BEFORE THE HON'BLE SUPREME COURT IS PRODUCED HEREWITH**
Annexure R1(b)	**A TRUE COPY OF THE APPLICATION SEEKING INTERIM RELIEF IN I.A.138540 OF 2023 BEFORE THE HON'BLE SUPREME COURT IS PRODUCED HEREWITH DATED 03-07-2023**
Annexure R1(c)	**A TRUE COPY OF THE PLAINT IN O.S. NO. 12 OF 2025 IS PRODUCED HEREWITH DATED 07-02-2025**
Annexure R1(d)	**A TRUE COPY OF THE PLAINT IN O.S. NO. 22 OF 2025 IS IS PRODUCED HEREWITH DATED 12-03-2025**
Annexure R1(e)	**A TRUE COPY OF THE ORDER OF THE SUPREME COURT IN 26.07.2024 IN CIVIL APPEAL NO. 4277-4279 OF 2023 WITH CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH**
Annexure R1(f)	**A TRUE COPY OF THE ORDER OF THE SUPREME COURT IN 14.12.2023 IN CIVIL APPEAL NO. 4277-4279 OF 2023 WITH CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH**
Annexure R1(g)	**A TRUE COPY OF THE ORDER OF THE SUPREME COURT IN 14.05.2024 IN CIVIL APPEAL NO. 4277-4279 OF 2023 WITH CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH**
Annexure R1(h)	**A TRUE COPY OF THE ORDER OF THE SUPREME COURT IN 05.08.2024 IN CIVIL APPEAL NO. 4277-4279 OF 2023 WITH CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH**
Annexure R1(i)	**A TRUE COPY OF THE ORDER OF THE SUPREME COURT IN 12.08.2024 IN CIVIL APPEAL NO. 4277-4279 OF 2023 WITH CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH**
Annexure R1(j)	**A TRUE COPY OF THE APPLICATION FILED BEFORE THE SUPREME COURT IN CIVIL APPEALS NOS. 4586-4589/2023 IS PRODUCED HEREWITH DATED 29-03-2025.**