



*Directors who have resigned to sit together with the Petitioners to run the company. This proposition is not suitable considering the background of the case. There is no harmony among the family members as is evident from the attempts of settlement made by the learned member of CLB in the past but all such efforts have gone in vain. The Petitioners at present are having control over the affairs of the Company, therefore the prayer for cancellation of resignation and in consequence restoration of the Directors who have resigned is not worthy to accept.*

*b) The Petitioner is seeking direction that Respondent 7 be ordered to vacate the Office of Directorship. In this regard it is worth to note that the settled legal position is that the sitting Directors of the Company can take appropriate decision for removal of a Director if his presence in the Board is not suitable for the day to day functioning of the Company. As a result, the prayer as raised by the Petitioner is left open, rather leave it upon the sitting Directors, to decide the fate of R-7, so as to take due legal steps, if deem fit. However, no specific separate order, as demanded, is lawfully required to be passed.*

*c) That one of the prayer is to direct to make good the amount siphoned by the Respondents. Inter-alia, in this regard, the accounts of the Respondents as appearing in the Books of the Company are the only guiding factor, refer pages 240 to 260 of the Reply of the Respondents, to arrive at the accurate conclusion. It is well known that every Corporate litigation, in one way or the other, ha an*

*economic angle causing dispute. So, the prevalent practice is that the contribution of capital/ funds in the business should be in equal proportion by all the groups or the participants. However, in this case the admitted position is that the financial contribution by the Respondents was much higher than the Petitioners. Rather the Petitioners have not demonstrated their financial involvement as also financial risk in running this business. Undoubtedly, the Respondents have advanced huge amount of loan to R-1 Company which was in fact returned in the phase manner as and when the funds were available in the Company. A common understanding of 'Siphon of funds' is drain off of money from business without having legitimate authority. Conversely, if the transfer of funds is duly recorded in the books of . accounts with legitimate narration and that narration is a rightful explanation which is not found to be fabricated or untruthful than no court of law shall hold such legitimate transfer of money as illicit siphoning of funds. Entries in the accounts have established a direct nexus of adjustment of loan; duly appearing previously; which was undisputedly used for the purpose of the business of the Company. On the face of records this is an unsubstantiated allegation. Consequently, this is not a case of siphoning of funds but simplistically refund of loan. The relief sought is therefore unjustifiable.*

*d) The Petitioners have also objected to the remuneration paid to R-6 and R-7 side by side demanding payment of remuneration to the Petitioner.*

*According to me this is a trifle issue because the remuneration was not alleged as excessive or unreasonable paid to R-6 and R-7. The demand of payment of remuneration to the Petitioner has become redundant because the decision in this regard henceforth shall be in the hands of the remaining Directors i.e. Petitioners, of the Company.*

*e) A fundamental question is how to provide Equitable Justice to both the sides, especially when they are closely related to each other. To maintain the harmony as also to maintain status of the Company it is justifiable to suggest one party to exit from the Company. In this case Respondents have already resigned from the Directorship, except R-7. In furtherance of the said decision already taken by the Respondents it is justified to ask them to surrender their Shareholding in favour of Petitioners at the value to be determined by an independent valuer, to be picked up from the list of empanelled Chartered Accountants. On the basis of the valuation report the shares can be transferred by the Respondents in favour of the Petitioners or their Representatives after receiving the consideration so determined and also to complete other legal formalities required to accomplish the exit plan. Second, to complete the process of handing over by the Respondent and taking over by the Petitioners the existing loan accounts of the Directors should be settled after due adjustment of liabilities.”*

3. Ld. Counsel for the appellants highlighted the facts to suggest that certain more reliefs could have been granted by the Tribunal but in view of the fact that the impugned judgment is not perverse and Ld. Tribunal after taking into consideration the relevant facts has held there is oppression against appellants and granted the reliefs, we find no reason to interfere with the impugned judgment. The appeal is accordingly dismissed with cost of Rs. 50,000/- to be paid by appellants in favour of the 1<sup>st</sup> Respondent Company.

**(Justice S.J. Mukhopadhaya)**  
**Chairperson**

**(Balvinder Singh)**  
**Member(Technical)**