

(2008) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 99 (K) of 1990

Sandoh North Eastern

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 06-09-2008

Acts Referred:

Companies Act, 1956 — Section 168, 2(18), 224, 227, 617
Constitution of India, 1950 — Article 14, 19, 21
Partnership Act, 1932 — Section 18, 19, 22, 69(2)

Citation : (2009) 1 GLT 817 : (2011) 106 SCL 29

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Advocate : Rajsekhar Rao, for the Appellant; L.S. Jamir and Imti Longjem, for the Respondent

Judgement

Maibam B.K. Singh, J.—Apparently, being aggrieved by the State Government's order, being No. IDB/PLY/8/82(Pt) dated 4.12.1990, issued by the Secretary to the Government of Nagaland, Industries Department, Kohima, conveying the decision of the Government to lease out the management of the Nagaland, Forest Products Limited (in short N.F.P. Ltd.), Tizit, a Government Company registered under the Companies Act, 1956 mainly with the object of carrying on business of manufacturing wood ply, block board and other plywood products, to Ms. Y. Manai Konyak of Tizit Town w.e.f. 16.12.1990 and directing all the concerned including the present Petitioner firm to hand over the premises, equipments and Ors. accessories, etc. to the new Management on or before 15.12.1990, this writ petition has been filed praying mainly for quashing the above said order of the Government as well as for directing the concerned Respondents for immediate payment of all the dues and compensation for the consequential loss of business, reputation and good-will, etc. with interest to the Petitioner firm.

2. The Petitioner firm's case in brief is as follows:

(i) The Respondent company (N.F.P. Ltd.) was a sick unit and under an understanding with the Minister of Industries and Commerce, Nagaland for revival of the Company, the Petitioner firm submitted a formal proposal to the Chairman of the Company informing about the readiness of the firm to supply logs to the Company on credit as per terms and conditions mentioned in the proposal. A copy of the said proposal is at Annexure-1 of the writ petition. Approval having been given by the Board of Directors of the Company in their meeting held on 16.02.1998 regarding engagement of the Petitioner firm as an agent of the said Company for supply of logs on credit and marketing of all its finished products for a period of 5 years, an order was issued in that regard by the Hon'ble Minister, Industries and Commerce, Government of Nagaland and acting Chairman of the said Company through the Respondent No. 6 on 14.3.1988 mentioning the terms and conditions of the said engagement. A copy of the said order is at Annexure-2 of the writ petition. With the approval of the Board of Directors, vide resolution by circulation dated 19.3.1988, conveyed vide order No. NFP/ADM/STR/87-88/486 dated 25.3.1988, the Petitioner firm was approved as a supplier for factory stores, machineries as well as for repairing of machines and factory premises and for which the Petitioner firm was entitled to 5% service charge on actual costs of materials, parts and services. It was also stated in the above said order that payment of bills were to be settled within 30 days of presentation, failing which bank interest charges would be applicable from the date of presentation of bill to final settlement. A copy of the said order dated 25.3.1988 is at Annexure-4 of the writ petition. By virtue of the said appointment/engagement order and its acceptance by the Petitioner firm, it entered into a contract for a period of 5 years on the terms and conditions given in the said order. Before the Petitioner firm was approved as a supplier for factory stores and machinery, etc, the Managing Director of the said Company conducted appraisal survey on the status of the factory of the Company and Annexure-5 is the copy of the said appraisal report dated 19.3.1988.

(ii) The Petitioner firm took various steps including installation of new additional boiler in 1989 in order to make the factory operational to its full capacity and it also sunk all its resources pooled together from various sources. In order to rejuvenate and reactivate the factory, the Petitioner firm extended cooperation to accept the request of the Respondent No. 5 to make payment of salaries and allowances of the officers and staff of the said Company.

(iii) The Petitioner firm suffered due to failure on the part of the Company to clear its outstanding dues. Out of the due amount of Rs. 47.22 lacs as on 31.3.1989, only Rs. 25 lacs was paid in the month of December, 1989. The balance of Rs. 22.22 lacs was incorporated in the audited balance sheet for 1989-90. A copy of the letter issued by the Respondent No. 3 in its report on 22.5.1990 is at Annexure-6 of the writ petition.

(iv) The Petitioner firm made request to the Managing Director of the Company, vide order dated 02.07.1990 (a copy of which is at Annexure-7 of the writ

petition) for clearing the outstanding amount of Rs. 1.2738 crores reflected in the balance sheet 1989-90. An additional due amount was Rs. 30,75,062.63 for the period from April, 1990 to July, 1990. Copies of the audited reports for the period 1.4.1990 to 31.7.90 are annexed as Annexures-8 and 9 respectively in the writ petition.

(v) The Managing Director of the Company made a request to the Director of Industries and Commerce, Nagaland, vide letter No. NFP/ADM/SAE/L/52/89-90/1921-23 dated 9.7.1990 for inclusion of Rs. 1,27,38,298.82 (Rupees one crore twenty-seven lakhs thirty-eight thousand two hundred ninety-eight and eighty-two paise) in the budget estimate for the year 1990-91 towards clearance of liabilities of the Petitioner firm upto the period 31.3.1990. A copy of the letter is at Annexure-9A of the writ petition. The Petitioner firm left no stone unturned to save the Company in peculiar circumstances and raised adhoc loan of Rs. 8 lacs to meet immediate demands of log suppliers.

(vi) Since August, 1990, there has been commercial activity due to sealing and closure of the gate of the factory by the Forest Department on the ground of non-payment of due royalties from 1983 by the Company and thereby affecting the interest of the Petitioner firm adversely. In order to obviate the difficulties faced by the Petitioner firm, it submitted a proposal on 11.9.89 to the Respondent No. 5 for leasing the factory of the Company for a period of 10 years on rent at the rate of Rs. 5 lacs per annum for two years and Rs. 10 lacs per annum for 8 years totalling Rs. 90 lacs but the proposal was not accepted on the ground of pendency of a case before the Supreme Court.

3. It is the case of the Petitioner firm that by issuing the impugned order dated 4.12.1990 and thereby leasing out the management of the Company to the Respondent No. 6 w.e.f. 16.12.1990, i.e., before the expiry of the period of 5 years of the appointment/engagement of the Petitioner firm as supplier of raw materials, machineries, etc. and directing to clear up the dues and liabilities of the Petitioner firm but without giving any notice or opportunity of being heard to the Petitioner firm, the Respondent No. 2 acted arbitrarily, malafidely and capriciously for extraneous reasons. According to the Petitioner firm, in addition to the supplies and other expenses, it paid huge liability of the Company including cost of replacement of machineries, cost of repairs and maintenance of machineries, of bills amounting to Rs. 7 lacs, arrears salaries and wages, etc. Further according to the Petitioner firm, due to its inability to supply finished products against market loan on account of the closure and sealing of the factory gate, its credibility has been completely eroded and as such, the Respondents must suitably compensate it.

4. Affidavit-in-opposition was filed on behalf of the Respondents No. 1, 2 and 3 denying almost all the allegations of the Petitioner firm. Their case is as follows:

(i) The Petitioner firm was not registered partnership firm and as such, it was not entitled to file writ petition. The Hon''ble Minister of Commerce and Industries

acted only as the Chairman of the Company and not on behalf of the State of Nagaland. After acquisition of the shares of the Company, each share of the Company stood transferred and vested to the State Government and as such, the resolution of the Board could not be given effect to without approval of the Government. This requirement having not been fulfilled, the order dated 14.3.1988 (Annexure-2 of the writ petition) and the resolution dated 19.3.1988 (Annexure-3 of the writ petition) have no legal validity and the Petitioner firm has no locus standi to claim any right on the basis of the said order and resolution.

(ii) The Petitioner firm never entered into any agreement or contract with a competent authority. It was never engaged to look after the management of the Company and even if it invested any amount, it was done at its own risk and costs.

(iii) The Company was never declared as a sick unit by any authority and the Petitioner firm was never compelled by anyone to listen to the debtors, if any, of the Company. The State Government never promised the Petitioner firm to pay any amount towards repayment of any amount alleged to have been spent or borrowed by it. At the same time, the State Respondents are not liable to pay any amount to the Petitioner firm. There was also no proposal for leasing out the factory of the Company.

(iv) The State Government, in the public interest, decided to lease out the management of the Company to the Respondent No. 6, M/s. Manai Konyak of Tizit Town w.e.f. 16.12.1990. The said decision did not affect the Petitioner firm as the management of the said Company had never been leased out to the Petitioner firm. The Petitioner firm was also never asked to incur any liability by the Respondents No. 1, 2 and 3 and as such, the State Respondents are not liable for any expenditure incurred by it without authority. By the said closure of the gate of the factory of the Company, the Petitioner did not suffer any loss.

5. In pursuance of the direction of this Court, vide order dated 27.4.2000, the Respondents No. 1, 2 and 3 submitted an additional affidavit-in-opposition. Their case as per the additional affidavit is as follows:

(i) The Petitioner firm approached the Chairman, who was the Minister (Industries) and obtained approval of appointment as supplier of logs even before the matter was discussed by the Board of Directors and all the Directors probably fell in line as the decision had already been taken by ignoring all norms.

(ii) The Petitioner firm adopted manipulative means to take control of the Company through back door. In a pre-planned move, a partner of the Petitioner firm gained entry into the management of the Company by obtaining appointment as G.M. and subsequently, the other partner became the Director of the Company in connivance with the then management of the Company without any approval of the State Government. The concerned partner was removed from the Directorship only when the Government raised objection regarding the

appointment.

(iii) The Petitioner firm in connivance with the then management fleeced the Company by supplying logs at inflated prices and by fixing prices of the finished goods absurdly low. In 1989-90 alone, the Petitioner firm managed to pocket Rs. 74 lacs as net profit after allowing 5% selling expenses. Annexure-II is the copy of the calculation of profit for the Petitioner firm for 1989-90. The supply of logs was also manipulated as disclosed by the following facts that total quantity of logs supplied in 1989-90 is 90791 cft, that the quantities supplied in the first 9 months of the year 1989-90 @ Rs. 75 per cft is 23482 cft and that quantity supplied in the last 3 months of 1989-90 @ Rs. 98 per cft is 67279 cft. The Petitioner firm made Anr. Rs. 15,47,417/- by manipulation. The management of the Company was hand in glove with the Petitioner firm in as much as on one hand, more and more money was asked from the Government for running the factory and on the other hand, the Petitioner firm was collecting large profits.

(iv) The State Government took steps for judicial enquiry to look into these aspects but it did not work due to frequent change in the Government.

(v) Work orders were placed with the Petitioner firm without ascertaining from where the money was to be paid. The terms of the order issued by the then Chairman of the Company were extremely vague and worked to the disadvantage of the Company. Probably, supply of stores and repairing etc. were done at the rate fixed by the suppliers at its sweet will. While appointing the Petitioner firm as the supplier, etc., the basic norm of financial prudence was given a go-by. No tender was issued and no purchase board was constituted contrary to the normal practice in Government as well as public sector undertakings.

(vi) Further, taking advantage of enormous difference between the factory price and the prevailing market price of the products, the Petitioner firm made a net profit of Rs. 81,76,900/-. The Company was not sick but was doing roaring business. In 1986-87, the sale of plywood was in excess of Rs. 1 crore and such level of sale was never achieved by the Petitioner firm after sinking lakhs of Government money.

(vii) The Petitioner firm never made any capital investment of its own and there was no question of borrowing from market for this matter. Although the Petitioner firm was virtually running the Company, the statutory dues such as Central excise, NST, CST, power bill and various royalty were left to be paid by the Company. Despite sinking of Rs. 118 crores by the Government during 3 years, the said statutory dues were not paid though expenses were incurred under doubtful heads.

(viii) The State Government does not acknowledge the liabilities claimed by the Petitioner firm as no prior approval of the Government was taken before incurring the alleged expenditures. The said liabilities have apparently been crept into the Company records by manipulation. The arrangement with the Petitioner

firm was detrimental for the interest of the Company as well as the public and as such there is a need for directing for investigation of the entire period of association of the Company with the Petitioner firm to unravel the true picture.

6. An affidavit-in-reply was filed on behalf of the Petitioner by one of the partners denying most of the assertions of the Respondents No. 1, 2 and 3 made in their additional affidavit-in-opposition. Apart from denying most of the assertions of the Respondents No. 1, 2 and 3 made in the additional affidavit-in-opposition the Petitioner firm, in its reply affidavit reiterated its case mentioning other new facts and also enclosing new documents as Annexure-11 to 76. Notable assertions made by the Petitioner firm in the reply affidavit are as follows:

(i) In connection with the appointment of the Petitioner firm as a supplier, no approval of the State Government was necessary as the decision had been taken by the Board of Directors of the Company.

(ii) The Petitioner firm was constituted on 8.3.1988 and registered at Kohima on 10.3.1988. There was no pre-planned move to get entry into the management of the Company. A sub-committee was formed for fixing of sale price of finished products as per resolution dated 19.3.1988 of the Board of Directors. The case of the Respondents No. 1, 2 and 3 that the Company was not sick was falsified from the minutes of the meeting dated 9.12.1988 of the Board of Directors and the Chairman's report (Annexures-17 and 18).

(iii) In June 1989, the Company executed renovation works of the factory premises at a considerable costs with financial assistance of the Petitioner firm and in that connection, the Managing Director of the Company wrote a letter dated 12.6.1989 to the Director of Industries, Nagaland for deputing an Executive Engineer for taking measurement of the executed works.

(iv) Leasing out of the management of the Company to the Respondent No. 6, who was a minor at the relevant time, cannot be considered as one made in public interest. Due to non-payment of its outstanding dues, the Petitioner firm could not clear its cash credit account with the UCO bank in time.

(v) The Managing Director of the Company wrote letter dated 29.9.1992 clarifying to the Respondent No. 2 that after deduction of the payments already made and some other expenses, net amount payable to the Petitioner firm stood at Rs. 1,05,44,885.75. Annexure-40 of the reply affidavit is the copy of the said letter.

(vi) The matter of the outstanding dues was negotiated and. the Petitioner firm agreed to accept an negotiated amount of Rs. 837.635 lacs as the final settlement of the outstanding dues on the understanding that the amount would be paid within 14 days from 8.12.1992. Annexure-41 of the reply affidavit is the copy of the said letter.

(vii) The Managing Director of the Company wrote letter dated 24.2.1993 to the Secretary, Industries, Government of India praying for sanctioning an amount of

Rs. 1195.99 lacs including outstanding liabilities of Rs. 837.64 lacs of the Petitioner firm. The Respondent No. 5 also sent a message to the Secretary, Industries, Government of Nagaland on 3.3.1993 to consider sympathetically the said prayer for assistance from National Renewal Fund. In the audited balance sheet of the Company as on 31.3.1993, the outstanding due of the Petitioner firm was shown as Rs. 6,68,999.85. Annexure-50 of the reply affidavit is the copy of the balance sheet.

(viii) On request of the Managing Director of the Company, M/s. Dosi & Company, Chartered Accountants, Guwahati, was entrusted for assessment of business loss of the Petitioner firm for the period from August, 1990 to March, 1993. The said Chartered Accountants assessed the loss as Rs. 428.55 lacs. The balance sheet of the Company as on 31.3.1994 was prepared by the Chartered Accountants wherein the liabilities towards the Petitioner firm was shown as Rs. 8,30,75,385. A detailed work out of the liability was also prepared. Annexures-57, 58, 59 and 60 of the reply affidavit may be referred to in this connection.

(ix) Annexure-61 is a copy of the letter dated 4.3.1994 of the Petitioner firm addressed to the Chief Minister, Nagaland forwarded by the Industries Department of the Government of Nagaland to the Managing Director of the Company.

(x) Annexure-63 is a copy of the note of the Chief Minister, Nagaland to the Secretary, Industries Department, to examine the claim of the Petitioner firm.

(xi) Annexures-68, 69 and 70 are copies of the letter, memo and notification respectively connected with setting up of an expert committee to examine all the claims of various firms against the Company, direction given to the officers to submit a consolidated report for onward transmission to the expert committee and extension of time for submission of the report of the expert committee respectively.

(xii) Annexure-71 is a copy of the audited report dated 7.9.96 along with the balance sheet showing the liabilities of the Company to the Petitioner firm as Rs. 1389.41 lacs as on 31.8.1996.

(xiii) Annexure-72 is a copy of the forwarding letter of the Director of Industries, Government of Nagaland addressed to the Secretary, Industries and Commerce, Government of Nagaland dated 4.10.1996 forwarding the report of the Assessment Committee on liabilities and claims of various firms against the said Company. As per report of the said Assessment Committee, the outstanding liabilities towards the Petitioner firm including interest was Rs. 1271.23 lacs as on 31.3.1996.

(xiv) Annexure-73 is a copy of the letter of the Petitioner firm to the Respondent No. 3 requesting him to update the outstanding liabilities of the Petitioner firm from 31.3.1996 upto 31.3.1998 for incorporation in the report of the expert committee to the Cabinet.

7. Annexure-74 is a copy of the letter of the Petitioner firm addressed to the Chief Minister in-charge of Department of Industries and Commerce, Government of Nagaland detailing the entire facts and circumstances of the matter and requesting for payment of the due of the Petitioner firm within February, 2000. In the above said letter, it was also mentioned that with reference to the Lok Sabha unstarred question No. 2628, as reported by the State Government of Nagaland, in the answer given by the Union Finance Minister, the liabilities of the Company towards the Petitioner firm including the interest was Rs. 2053.73 lacs on 30.8.1998 and that the total amount due upto 31.12.1999 was calculated as Rs. 2672.172 lacs.

(i) Annexure-75 is a copy of the letter of Respondent No. 3 dated 19.1.2000 addressed to one M.R, Lok Sabha, camped at Mokokchung, stating that the liabilities of the Company towards the Petitioner firm was Rs. 1890.42 lacs as on 31.3.1998.

(ii) Annexure-76 is a copy of the certificate issued on 07.4.2000 by the acting Principal of Christian Higher Secondary School, Dimapur certifying to the effect that the Respondent No. 6, to whom the management of the Company was leased out, was a minor aged about 12 years in December, 1990 and that his date of birth was 31.5.1981.

8. It is the case of the Petitioner firm that by leasing out the management of the Company to a minor during the continuance of the term of the arrangement with the Petitioner firm for no valid reasons, the State Respondents acted illegally, unfairly, unjustly and arbitrarily in violation of Petitioner firm's fundamental rights under Articles 14, 19 and 21 of the Constitution of India. Further, according to the Petitioner firm, it had invested crores of rupees for the upliftment of the Company at the request of the Company and as such, the impugned order, which was passed without giving any opportunity of being heard and also without clearing the due, has prejudicially affected its interest. It is also the case of the Petitioner firm that the Government of Nagaland and the Company have admitted many times their liabilities towards the Petitioner firm. Moreover, according to the Petitioner firm, various developments and events, taking place subsequent to the filing of the writ petition and during its pendency, have substantiated the claim of the Petitioner in full and the doctrine of promissory estoppel is applicable in the case. Furthermore, according to the Petitioner firm, the facts revealed, facts admitted by all the concerned and the promises made by the Government of Nagaland and the Company call for the application of doctrine of legitimate expectation and the Petitioner firm was under legitimate expectation that the Government of Nagaland and Company would discharge their liabilities. The Petitioner firm produced a copy of the fax message dated 21.7.1999, a copy of the letter dated 24.7.1998 issued by the Resident Commissioner, Nagaland, a copy of the letter dated 8.7.98 issued by the Joint Secretary, Industries and Commerce, a copy of the letter dated 3.4.1999 issued by the Director, Industries, a copy of the letter dated 26.8.2003

issued by the Registrar of Companies and the representation dated 20.1.2007 by filing an affidavit on 05.4.2007 and enclosing the said documents as Annexures-A to F.

9. An affidavit-in-opposition was also filed on behalf of the Respondents No. 4 and 5 contesting the claims of the Petitioner firm by denying almost all the allegations in the writ petition and describing the said claim as no more than wishful thinking of the Petitioner firm. The Respondents No. 4 and 5's case is as follows:

(i) The Petitioner firm made a proposal to the Company, vide letter dated 1.3.1988 stating its willingness to supply logs on credit as per conditions mentioned in the letter. A copy of the letter is at Annexure-A of the affidavit-in-opposition of the Respondents No. 4 and 5.

(ii) On 16.02.1988, the Board of Directors of the Company held a meeting in the Office Chamber of the Minister of Industries, Ex-Officio Chairman and one of the resolutions in the meeting was for appointment of one Mr. C. Manuel as General Manager of the Company. The said Mr. C. Manuel was designated as Chief Executive Officer of the Company. Though the said Mr. C. Manuel's wife Mrs. G. Lyndoh and Mr. K. Ashangba Sangtam are shown as partners of the Petitioner firm, the said Mr. C. Manuel and not his wife Mrs. G. Lyndoh and the said Mr. K. Ashangba Sangtam are partners of the Petitioner firm. Though in the meeting of the Board of Directors of the Company held on 16.2.1988, there was no any agenda or resolution regarding making the Petitioner firm as the sole agent for supply of logs and marketing of finished products, the then Chairman of the Company issued an order on 14.3.1988, purportedly, in accordance with para 4(a) of the minutes of the meeting of the Board of Directors held on 16.2.1988, approving the Petitioner firm as an agent of the Company for supply of logs on credit and for marketing of its finished products as per terms and conditions mentioned in the order. All arrangement bestowing benefits upon the Petitioner firm were at the instance of the then Minister of Industries as acting Chairman and the Petitioner firm. There was no valid decision of the Board of Directors on the matter.

(iii) On 19.3.1988, some members of the Board held a meeting and certain resolutions were circulated to be ratified in the next Board meeting. The resolutions, inter-alia, dealt with the nomination of one Director of the Petitioner firm, fixation of sale price of finished products and the correction in the appointment of Mr. C. Manuel from pay scale to an honorarium of Rs. 1 per month on the request of the Petitioner firm, Mr. C. Manuel being its representative. The said purported resolutions clearly show the game plan of the Petitioner firm. As per Article 84 of the Articles of Association of the Company, the power to appoint/nominate Directors vests solely in the State Government. The said resolutions have not also been ratified by the Board of Directors of the Company. Consequent to the said resolution, Mr. K. Ashangba Sangtam assumed office as a Director nominated by the Petitioner firm and as such, the Company

became an extension of the Petitioner firm with Mr. K. Ashangba Sangtam as a Director and Mr. C. Manuel as the General Manager. Relying on the said resolution dated 19.3.1988, an order, dated nil March, 1988, a copy of which is at Annexure-C of the affidavit-in-opposition filed on behalf of the Respondents No. 4 and 5, was issued by the then Minister of Industries approving the Petitioner firm as supplier for factory stores and machineries, etc. with an entitlement of 5% service charge on actual costs of materials, parts and services. Annexure-C is a copy of the said order transcribed in non-judicial stamp of Rs. 10.

(iv) The association of the Company with the Petitioner firm started in the year 1988 and concluded some time in 1990 and all the records pertaining to the association have been taken away by the Petitioner firm.

(v) Apparently, the Petitioner firm was supplying logs to the Company at highly inflated rates and buying the finished products at ridiculously low rates with service charge of 2% thrown in for good measure. Annexure-D of the said affidavit-in-opposition is a copy of the minutes of the meeting of the Board of Directors held on 9.12.1988 at 1100 hrs containing, inter-alia, ratification of fixation of sale price of finished products of the Company and Annexure-E is a copy of the notice dated 23.6.1986 issued by the Managing Director of the Company notifying rates for purchase of logs.

(vi) Annexure-F of the affidavit-in-op-position is a copy of the minutes of Anr. meeting of the Board of Directors of the Company held on 9.12.1988 at 1200 hrs wherein Mr. K. Ashangba Sangtam also participated as a Director. Annexure-G is a copy of the letter written by the Chairman of the Company to the Secretary, Department of Industries containing communication, amongst Ors., regarding appointment of Mr. K. Ashangba Sangtam as a Director and the appointment of Mr. C. Manuel as General Manager.

(vii) Annexure-H is a copy of the resolution dated 26.6.1989 regarding removal of Mr. K. Ashangba Sangtam by way of expunging the earlier resolution of the Board in connection with his appointment as a Director, Mr. C. Manuel was terminated from being General Manager of the Company by an order dated 1.12.1990 (Annexure-32, page 210 of the paper book) and letters of the Petitioner firm dated 28.2.1990 and 5.3.1990 (Annexures-24 and 25, pages 199 and 201 of the paper book) reveal that all along while working as the General Manager of the Company, he was also actually an employee of the Petitioner firm.

(viii) Since the Petitioner firm was supplier of raw materials and purchaser of finished products, it is not entitled to claim any subsidy in terms of the Transport Subsidies Scheme, 1971. Annexure-I is a copy of the said Scheme.

(ix) The Petitioner firm was responsible to a large measure for the accumulated losses/liabilities of the Company. The said engagement of the Petitioner firm as the supplier of raw materials as well as the purchaser of the finished products was not legally made in accordance with the Memorandum and Articles of Association of the Company. All records of liabilities/outstanding debts of the

Company are at the instance of the Petitioner firm. The reports of the Chartered Accountant are not reports authorized by the Company and they are based on the documents/records in the custody of the Petitioner firm. Numerous reports submitted by different committees/agencies on the liabilities of the Company have been submitted in the line of the claim of the Petitioner firm. It is the Petitioner firm, who must make reparation to the Company and not vice-versa. The Company entered into an agreement with Ms. Manai Konyak and the agreement was executed properly in accordance with the constitutional requirement for contracts entered into by the State.

10. I have heard Mr. Rajsekhar Rao, learned Counsel appearing on behalf of the Petitioner firm, Mr. L.S. Jamir, learned Counsel appearing on behalf of the Government Respondents and Mr. Imti Longjem, learned Counsel appearing on behalf of the Respondents No. 4 and 5. Upon hearing the parties through their respective counsel and on perusal of their pleadings, it is ascertained that there are disputes in between the parties on various points.

11. One of the points raised by the Government Respondents is regarding the maintainability of the present writ petition by the Petitioner firm. According to the Government Respondents, the Petitioner firm was an unregistered firm at the relevant time of filing the writ petition and as such, it was not entitled to file a writ petition. Though the case of the Petitioner firm is that it was a registered firm at the relevant time, no acceptable or reliable document is produced in this regard. Learned Counsel appearing on behalf of the Petitioner firm submits that it was not in fact registered at the relevant time. In these circumstances, it is concluded that the Petitioner firm was not a registered firm at the relevant time. No doubt, as per Section 69(2) of the Indian Partnership Act, 1932, no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. However, the present writ petition is not a suit. It is well settled that a writ petition on behalf of a firm is maintainable. At the same time, since the firm stands for all the partners collectively, having regards to the provisions of Sections 18, 19 and 22 of the Indian Partnership Act and in the absence of anything to show that the writ petition is against the interest of any of the partners, the writ petition is to be deemed to have been filed by all the partners who are citizens of India. This point is decided in favour of the Petitioner firm.

12. It is already seen that the first part of the prayers of the Petitioner firm is for declaring the impugned order dated 4.12.1990 as illegal and arbitrary and thereby for quashing the same and also for allowing the Petitioner firm to continue its operation as per orders dated 14.3.1988 and 25.3.1988. The order dated 14.3.1988 is the one said to have been issued by the Chairman of the Company, purportedly, in accordance with para 4(a) of the minutes of the 5th Board of Directors meeting held on 16.2.1988, approving the Petitioner firm as the agent for supply of logs on credit and for marketing of all finished products of

the Company for a period of 5 years under the terms and conditions mentioned in the order. The other order dated 25.3.1988 was also passed by the Chairman of the Company, purportedly, in accordance with the approval of the Board of Directors resolution by circulation dated 19.3.1988, approving the Petitioner firm as the supplier for factories stores, machineries and also in respect of the repair of machineries and factory premise, etc. as per the terms and conditions mentioned in the order itself. It is to be noted that in the order dated 25.3.1988, it is not mentioned as to for how many months or years, the Petitioner firm was to be the supplier of factories stores, machineries, etc. However, Petitioner firm's case is to the effect that the order dated 25.3.1988 is also for a period of 5 years.

13. There are disputes in between the concerned parties regarding the questions if the above said two orders dated 14.3.1988 and 25.3.1988 are legal; if the said two orders are binding to the Company; if there were, in fact, resolutions of the Board of Directors for approving the Petitioner firm as agent for supply of logs on credit for a period of 5 years as per terms and conditions mentioned in the order dated 14.3.1988 and also for approving the Petitioner firm as supplier of stores and machineries, etc. as per the terms and conditions mentioned in the order dated 25.3.1988, and if, even assuming that there were resolutions of the Board of Directors forming the basis of the said two orders, under Article 114 of the Articles of Association of the Company, the said resolution concerning the Petitioner firm were major decisions, which ought to have been sent to the State Government first for approval before making them operational by issuing the said two orders.

14. On perusal of the minutes of the 5th meeting of the Board of Directors of the Company held on 16.2.1988, which is Annexure-11 of the affidavit-in-reply filed by the Petitioner firm in respect of the additional affidavit-in-opposition filed by the Respondents No. 1, 2 and 3, it is ascertained that there was no resolution regarding approval of the Petitioner firm as an agent for supply of logs, etc. Apparently, there was no agenda for discussion in the said meeting regarding giving approval to any particular firm as supplier of logs, etc. to the Company. As per para 4(a) of the above said minutes, discussion was made regarding resumption of the production by the Company and the resolution was passed as follows:

Resolved that the M.D. be and is hereby authorized to put the factory into production by obtaining the required materials on credit which will be cleared out of the sale of the finished products without creating any further liabilities.

There is nothing to show that in pursuance of the said resolution, local firms were invited to tender for supply of required materials on credit which would be cleared out of the sale of finished products without creating any further liability. It appears that no such invitation was made. In fact, by issuing such invitation to all, the concerned authority of the Company would have been in a position to select a firm which would be capable to supply the required materials, etc. under the terms and conditions best suitable and advantageous to the Company. The

terms and conditions under which the Petitioner firm was allowed to supply the logs etc. cannot be considered as beneficial and advantageous to the Company. Now, the question is, without following the said normal, fair and reasonable procedure, how the Petitioner firm was approved as an agent for supply of logs and for marketing of all finished products by the Chairman of the Company as per terms and conditions mentioned in Annexure-2 of the writ petition. There is also nothing to show that at the relevant time, the Petitioner firm was a reputed and trustworthy firm having experiences in supplying materials and marketing of finished products, etc. According to the Petitioner firm, it was approached through the Minister of Industries and Commerce, Nagaland, who was the Chairman of the Company to help in reviving the Company sometime in January, 1988. Now the question is why the Petitioner firm was approached through the then Minister of Industries and Commerce, who was at the helm of affairs of the Company, instead of adopting the normal procedure for selection of a competent and suitable supplier etc. Further, according to the Petitioner firm, it submitted a formal proposal to the Chairman of the said Company on 01.3.1988. At the time of the said proposal, the Petitioner firm was not apparently even constituted. As per Annexures-12 of the affidavit-in-reply of the Petitioner to the additional affidavit-in-opposition filed by the Respondents No. 1, 2 and 3, the Petitioner firm was constituted on 8.3.1988 by executing a deed of partnership and the same was amended on 22.2.1989. It appears that at the time when the Petitioner firm was appointed as an agent for supplying of logs as well as for marketing of finished products of the Company, the Petitioner firm was only a novice and it was not a reputed firm dealing in the business of supply, etc. The same considerations apply in respect of the appointment of the Petitioner firm as a agent for supply of machines and also for repairing of machines and factory premises, etc. Apparently, as per order, a copy of which is at Annexure-4 of the writ petition issued by the Minister of Industries and Chairman of the Company on 25.3.1988, approval was given in that regard by the Board of Directors resolutions dated 19.3.1988 made by circulation. According to the Respondents No. 4 and 5, the said resolution was not ratified by the Board of Directors of the Company though it was required to do so in the next Board of Director's meeting. In my considered opinion, the decisions, purportedly, taken for appointing the Petitioner firm as an agent for supply of raw materials, for marketing of finished products, for supply of machines and for repairing, etc. were major decisions in respect of which approval of the State Government ought to have been taken before issuing order or orders for making the resolution operational.

15. On the basis of Annexure-11 of the affidavit-in-reply filed by the Petitioner, it is ascertained that in the meeting of the Board of Directors of the Company held on 16.2.1988, a resolution being No. 4(b) was made, inter-alia, for appointment of Shri C. Manuel as General Manager of the Company in the pay scale of Rs. 1410-60-1890-EB-60-2130-70-2480. Nothing is found to have been disclosed in the resolution dated 16.2.1988 about the credentials that made the said Mr. C.

Manuel suitable and fit for appointment as General Manager of the Company. According to the Respondents No. 4 and 5, Mrs. G. Lyndoh, who is said to be a partner of Mr. K. Ashangba Sangtam in the Petitioner firm, is the wife of the said Mr. C. Manuel and in fact, the said Mr. C. Manuel is the real partner of the said Mr. K. Ashangba Sangtam. There is no denial of the fact of the said Mr. C. Manuel being the husband of Mrs. G. Lyndoh, one of the partners of the Petitioner firm. In the resolution of the Board of Directors by circulation dated 19.3.1988, inter-alia, after mentioning about the association of the Petitioner firm with the Company from March, 1988 onwards in making the factory of the Company to start production, it is mentioned about the need of the Petitioner firm to be represented in the Board by allowing the said firm to nominate one Director in order to facilitate active participation of it at the policy making level. In the said resolution by circulation, it is further stated to the effect that the above said arrangement should continue till the continuance of the Petitioner firm as partner in the functioning of the Company. In pursuance of the above said resolution, Mr. K. Ashangba Sangtam assumed office as a Director of the Company on being nominated by the Petitioner firm and he participated in various meetings of the Board of Directors held after his assumption of the office.

16. On the basis of Annexure-D of the affidavit-in-opposition filed on behalf of the Respondents No. 4 and 5, it is ascertained that in the meeting of the Board of Directors of the Company held on 09.12.1988, when a resolution was taken approving the resolution passed by circulation on 19.3.1988 regarding carrying out of various developmental works at the factory through the agency of the Petitioner firm, the said K. Ashangba Sangtam was present. It is well settled that a Director of a Company must act bonafide and for the best interest of the Company. He stands in a fiduciary capacity and vis-a-vis the Company. He must act for the paramount interest of the Company. For long, it has been the established rule of equity that he must not place himself in a position in which his personal interest conflicts with his duty towards the Company. He is not supposed to take part at the time of any discussion in connection with any contract or arrangement in which he is directly or indirectly interested. Articles 93 and 94 of the Articles of Association of the Company are to that effect. There is no sufficient materials for concluding that the said K. Ashangba Sangtam acted on behalf of the Company with utmost good faith, utmost care and due diligence.

17. As per Article 84 of the Articles of Association of the Company, the Directors of the Company are to be appointed by the Government of Nagaland. There is no any provision in the relevant Memorandum and Articles of Association about allowing any firm to nominate a Director of the Company on any ground or consideration. The illegality was removed only on 26.6.1989 by making a resolution, inter-alia, to expunge the earlier resolution of the Board regarding the appointment of Shri K. Ashangba Sangtam as a Director.

18. From the said resolution by circulation dated 19.3.1988, it is also ascertained that the said Mr. C. Manuel was a representative of the Petitioner firm at the

relevant time. Instead of giving the said Mr. C. Manuel a pay scale, on request of the Petitioner firm, he was paid token honorarium of Rs. 1 per month. The contribution of the said C. Manuel as a General Manager was highly appreciated by the Chairman of the Company as seen from his letter dated 26.6.1989 addressed to the Secretary, Government of Nagaland. According to the Chairman, the said C. Manuel, General Manager was a valuable asset and his removal from being General Manager of the Company would not be advisable. The service of the said C. Manuel was terminated w.e.f. 01.12.1990 vide order No. NFP/ADM/TAS/87-88/2086 dated 01.12.1990 issued by the Managing Director of the Company. Annexure-32 of the affidavit-in-reply of the Petitioner is a copy of the said termination order.

19. In the light of the above discussions and having regards to the disputes in between the parties, the allegations of the Respondents to the effect that the Petitioner firm adopted manipulative means to take control of the Company through the back door, that in a pre-planned move, the Petitioner firm gained entry into the management of the Company in connivance with those already in the management of the Company, that the Petitioner firm in connivance with the then management fleeced the Company by supplying logs at inflated prices and by fixing prices on finished products very low, that supply of stores and repairing, etc. were done at the rate fixed by the Petitioner firm at its sweet will and that the liabilities shown in the Company records have been crept into by manipulation, though denied by the Petitioner firm, cannot be lightly brushed aside. The above said points in disputes are relevant and will have an important bearing in making a just decision of the case. Taking an overall view of the facts and circumstances in which the business of the Company was running in association with the Petitioner firm and thereby incurring debts at a time when there was to the apparent knowledge of the Directors and Ors., who were in the helm of affairs of the Company, no reasonable prospect of the creditors ever receiving payment, one may reasonably raise questions if the Company was carrying on business with intent to defraud and if, due to misfeasance, misconduct and fraudulent acts of the Directors and Ors. in the helm of affairs of the Company, the pecuniary losses were caused to the Company. The Petitioner firm may not be interested to get any answer in respect of the above said questions. However, while considering if the Petitioner firm is entitled to any relief sought by it, this Court cannot ignore the above said disputed points and questions. In my considered opinion, no fair, just and reasonable decision of this case can be made by ignoring them. At the same time, the above said disputed points and questions cannot be properly tried in the writ petition.

20. It is well settled that a Company incorporated under the Companies Act has a separate existence and the law recognizes it as a juristic person separate and distinct from its members. The new personality emerges from the moment of its incorporation and from that date, the new person begins to function as an entity. The fact that the entire share capital of the Company was contributed by the State Government does not make any difference. A Government Company

cannot be identified with the State Government itself. It cannot be said to be a Company run by or under the authority of the State Government. In the eyes of law, a Government Company is its own master and it is to act in accordance with relevant acts, rules and Articles of Association.

21. There is no dispute that the Respondent Company is a Government Company as per provisions of Section 617 of the Companies Act, 1956: Even though the Company was a Government Company at the relevant time also, it was having a separate entity quite separate from the State Government and it was not a department of the State Government. The State Government was not supposed to interfere in the functioning of the Company except in the manner and as permitted under the Companies Act, 1956, rules and relevant Articles of Association. No provision in the said Act, Rules and Articles of Association, which authorizes the State Government to lease out the management of the Company to anybody is brought to the notice of this Court. In the impugned order dated 4.12.1990, the source of power under which the Government exercised power of leasing out the management of the Company to M/s. Manai Konyak is not mentioned. There is no provision in the Companies Act and the relevant rules empowering the State Government to lease out the management of the Government Company. Article 113 of the Articles of Association of the Company is as follows:

113. Subject to the provisions of the Act, the Board shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorized to exercise and do except those which are assigned to the Managing Director in accordance with the provisions of the Act and these Articles. Provided that the Board shall also not exercise any power or do any Act or things which is directed or required, whether by the Act or any other statute or by the Memorandum of the Company or by Articles or otherwise to be exercised or done by the Company in general meeting. Provided further that in exercising any power or doing any such act or thing, the Board shall be subject to the provisions in that behalf contained in the Act or in these Articles or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the Company in general meeting.

Regarding local management, Article 114 of the Articles of Association of the Company says as follows:

114. The Board may, subject to the provisions of the Act, make such arrangements as it may think fit for the management of the Company's affairs and for this purpose appoint local boards, attorneys and agents and fix their remuneration and delegate to them such powers as the Board may deem requisite or expedient. The Board may have offices of the Company outside the State of Nagaland but the management of the Company shall be carried on from the registered office or any other office situated in Nagaland as may be decided by the Board.

All major decision taken by the Board only shall be sent to Government for approval after which these shall be operative. Government instruction, if any, issued in respect of the management and running and other aspect of the Company shall be carried out by the Company.

22. Keeping in view the above provisions of the Articles of Association of the Company and having regards to the absence of any provision in the Companies Act, 1956 and rules empowering the State Government to decide about leasing out of the management of a Company, the State Government acted beyond its jurisdiction by issuing the impugned order straightaway. At the most the Government could have issued instruction in respect of the management of the Company. The State Government issued the impugned order dated 4.12.1990 and thereby interfered with the functioning of the Company without any authority of law. The impugned order dated 4.12.1990 was issued by the State Government beyond its jurisdiction and as such, the said order is liable to be quashed.

23. It is also to be noted that by leasing out the management of the Company to M/s. Y. Manai Konyak, the State Government was virtually making the said firm a managing agent of the Company. Section 168 of the Companies Act, 1956 does not permit Government Companies to have managing agents. Section 618 of the Companies Act, 1956 says:

618. Government Companies not to have managing agents: No Government company whether formed before or after the 1st day of April, 1956 shall, after the commencement of the Companies (Amendment) Act, 1960, appoint or employ, or after the expiry of six months from such commencement, to continue the appointment or employment of, any managing agent:

Provided that where a Company has become a Government company after the 1st day of April, 1956, nothing in this section shall prevent that company from continuing after the commencement of the Companies (Amendment) Act, 1960, the appointment or employment of a managing agent appointed or employed before such commencement.

In the light of the above provisions also, the impugned order dated 4.12.1990 is not sustainable in the eyes of the law. In the result, the impugned order dated 4.12.1990 is hereby quashed.

24. Regarding the prayer of the Petitioner firm for allowing it to continue its operation as per orders dated 14.3.1988 and 25.3.1988, in my considered opinion, since the period of 5 years for which the Petitioner firm was supposed to be an agent in respect of supply and purchase, etc. has already expired and having regards to the disputed questions involved in this case, the above said prayer is not to be granted. Accordingly, the said prayer is rejected. Further, keeping in view the disputed questions involved in this case, I am not inclined to pass any order giving compensation to the Petitioner firm regarding the illegal action of the State Government in passing the impugned order dated 4.12.1990

thereby putting an end of the association of the Petitioner firm with the Company.

25. While issuing the order dated 4.12.1990, direction was given in the order itself to clear up any dues and liabilities incurred during the period of the management of the Company by M/s Sandoh North Eastern (the Petitioner firm), but there is a dispute in between the parties about the actual amount required to be paid to the Petitioner firm. There is a dispute even on the question if the Petitioner firm made any investment in the Company properly in accordance with the relevant provisions of the Act, Rule and Articles of Association. The said disputed questions require consideration of evidences. Normally, such disputed questions are not to be decided in a writ petition. As per Article 143 of the Articles of Association of the Company, every balance sheet and profit and loss account of the Company when audited and adopted by the Company in general meeting shall be conclusive. No balance sheet and profit and loss account of the Company which have been audited and adopted by the Company in its general meeting is produced. No account relating to business of the Company duly authenticated by the competent persons under the relevant provisions of Articles of Association of the Company is brought to the notice of this Court. It is also to be noted that the provisions of Section 619 of the Companies Act, 1956 make it clear that notwithstanding Section 224 of the Act, the appointment of an Auditor of a Government Company rests solely with the Central Government as also his removal from office. The said appointment is to be made on advice of the Comptroller and Auditor General of India. Nothing is brought to the notice of this Court to show that the Central Government issued any notification in exercise of its power u/s 620 of the Act making any modification in this regard. The power and duties of an Auditor in respect of Companies other than Government Companies are laid down in Section 227 of the Act but Section 227 does not apply to a Government Company as defined in Section 2(18) read with Section 617 of the Act. There is also nothing to show that any Auditor was appointed in respect of the said Company in accordance with the provisions of the Companies Act, 1956.

26. Keeping in view the above said findings, the documents produced by the Petitioner firm are to be examined to ascertain if either the Company or the State Government has admitted the actual amount liable to be paid to the Petitioner firm.

27. According to the Petitioner firm, as on 31.3.1989, its outstanding dues was Rs. 47.22 lacs and out of which, only Rs. 25 lacs was paid in December, 1989 leaving a balance of Rs. 22.22 lacs, which was not paid to it on or before 31.3.1989, was incorporated in the audited balance sheet of the Company for 1989-90. Annexure-6 of the writ petition is a copy of the letter dated 22.5.1990 said to have been written by the Managing Director of the Company to the Petitioner firm. However, no reliable, authenticated and duly audited balance sheet of the Company for 1989-90 by a duly authorized Auditor is produced. Merely on the basis of the letter dated 22.5.1990, one cannot reasonably

conclude that the Company admitted its liability to the extent mentioned in the said letter. Since the contents of the letter were not apparently based on any reliable and duly audited balance sheet of the Company by a duly authorized Auditor and in the facts and circumstances of the case, no reliance is to be placed on the said letter.

28. It has also been brought to my notice that in the meeting of the Board of Directors of the Company held on 15.1.1993, inter-alia, a decision was taken that in respect of the claims for payment of outstanding dues and liabilities preferred by the Petitioner firm, the Company management would work out the details and furnish the same to the Government for consideration. Annexure-45 of the affidavit-in-reply filed by the Petitioner is said to be a copy of the above said resolution but it is found to have apparently been signed by the Chairman of the Company and its Managing Director but not to have been signed by 3 (three) Directors. Even assuming that there was a resolution to the effect mentioned above, it does not mean, in the facts and circumstances of the case, that the Company admitted any specific amount as the amount liable to be paid by it to the Petitioner firm.

29. Annexure-47 of the affidavit-in-reply filed by the Petitioner is said to be a copy of the letter dated 24.2.1993 written on behalf of the Petitioner firm to the Chairman of the Company on the subject--Justification, outstanding and claims of the Petitioner firm. It does not show any admission on the part of the Company regarding the claims made by the Petitioner firm.

30. Annexure-48 of the affidavit-in-reply filed by the Petitioner firm is said to be a copy of the letter dated 24.2.1993 written by the Managing Director of the Company to the Secretary, Industries, Government of India, Ministry of Industry (Department of Industrial Development) praying for assistance for rehabilitation of the Company. In the said letter, in the para concerning the liquidation of outstanding liabilities, a sum of Rs. 837.64 lacs is mentioned as the outstanding liabilities in respect of the Petitioner firm. However, having regards to various disputed points and questions including the question of misfeasance, misconduct of the Directors and Ors. in the helm of affairs of the Company, it will not be proper and just to conclude that the Company admitted liability in respect of the said liability mentioned in the letter. In the context in which the said amount was mentioned, it is more likely that the amount claimed by the Petitioner firm was mentioned as the then existing liability in respect of the Petitioner firm with the object of getting assistance from the Central Government without considering the question of correctness or otherwise of the claim by the Company.

31. Annexure-60 of the reply-affidavit filed by the Petitioner firm is said to be a copy of the audited balance sheet of the Company as on 31.3.1994 showing the liability of the Company towards the petitioner firm as Rs. 830.74 lacs rounded to Rs. 831 lacs. In the absence of anything to show that the auditing was done by the duly authorized Auditor in accordance with the relevant Act and Rules and that the said balance sheet has been duly approved by the Company, in the facts

and circumstances of the case, the said Annexure-60 cannot be relied upon to show the liability of the Company towards to the Petitioner firm. On the same considerations, the so-called audited balance sheet of the Company as on 31.3.1996 submitted by M/s. D.K. Somani and Associates, Chartered Accountants, showing the liabilities of the Company towards the Petitioner firm as Rs. 1389.41 lacs cannot be relied.

32. Annexure-61 of the reply affidavit filed by the Petitioner is said to be a copy of the letter dated 25.4.1994 written by the Under Secretary to the Government of Nagaland to the Managing Director of the Company forwarding the copy of the letter of the Petitioner firm dated 4.3.1994 addressed to the Hon''ble Chief Minister, Nagaland and requesting to examine the matter relating to outstanding claims of the Petitioner firm and assessment of actual liabilities at the earliest for necessary action. Annexure-63 of the reply affidavit filed by the Petitioner is said to be a copy of the communication made by the Chief Minister, Nagaland to the Secretary, Industries, referring to the outstanding claims of the Petitioner firm and directing the latter for examination and putting up the same for consideration. Annexure-64 of the reply affidavit filed by the Petitioner is said to be a copy of the communication made by the Chief Minister, Nagaland to the Secretary, Industries, giving directions to prepare Cabinet memo regarding the claim and liabilities in respect of the Petitioner firm. The above said annexures show that the concerned parties of the State of Nagaland were aware of the claims of the Petitioner firm but they are not sufficient for establishing that the State Government admitted any amount as the amount actually liable to be paid to the Petitioner firm in respect of the expenditures incurred and investment made during its management of the Company.

33. Annexure-65 of the reply affidavit filed by the Petitioner firm is said to be a copy of the proceedings of the said Cabinet held on 10.9.1995 showing that the Cabinet made a decision to set up an Expert Committee to examine the claims of the various firms as against the said Company and to submit its report to the Cabinet on or before 31.3.1996. On 01.4.1996, the Director of Industries, Government of Nagaland appointed three members Committee to examine the outstanding claims against the Company and to submit a consolidated report on the matter for onward submission to the Expert Committee constituted by the Cabinet. The term of the said Expert Committee was extended w.e.f. 1.4.1996 to 30.9.1996 vide notification No. IDB/PLY-1/95 dated 11.7.1996. On 04.10.1996, the Directorate of Industries submitted a report of liabilities and claims against the Company, purportedly, prepared by the three members committee, to the Secretary, Government of Nagaland for onward submission to the Expert Committee. The said report of the three members committee was in consonance with the claims of the Petitioner firm and purportedly prepared on cash books, ledgers, vouchers, files, registers and balance sheets of the Company. However, in the facts and circumstances of the case, without thorough investigation and examination in respect of the disputed questions including the question on misfeasance, misconduct of the Directors and Ors. in the helm of affairs of the

Company, the said report is not be relied upon for ascertaining the actual liabilities of the Company towards the Petitioner firm. The Committee's view cannot be taken as final which the State Government is bound to accept. No action was apparently taken even for submission of the report to the Expert Committee. No further action is also apparently taken by the State Government for ascertaining the actual amount liable to be paid to the Petitioner firm.

34. It is also brought to the notice of this Court that with reference to an unstarred question being No. 3451 raised by one Shri K.A. Sangtam, M.P. before the Lok Sabha, Joint Secretary to the Government of Nagaland sent a letter dated 8.7.1998 to the Resident Commissioner, Nagaland House, stating inter-alia that liability of Nagaland Forest Products Ltd., Tizit (the Company) was Rs. 2388 lacs as on 31.3.1998. Annexure-75 of the reply affidavit filed by the Petitioner firm is said to be a copy of the letter written by the Director of Industries and Commerce, Nagaland on 19.1.2000 to the M.P., Lok Sabha camp--Mokokchung furnishing a detailed statement of liabilities of the Company as on 31.3.1998. As per the said letter, outstanding liabilities/claims against the Company in respect of the Petitioner firm under the head--investment is Rs. 704.74 lacs and under the head - loss of business from August, 1990 to March, 1993 is Rs. 1185.68 lacs. In the facts and circumstances of the case and having regards to the disputed question involved in the case, it will not be just and proper to hold on the basis of the contents of the above said letter that the liabilities of the Company towards the Petitioner firm have been admitted either by the Company or the State Government. It appears that the letter was in the nature of furnishing information regarding the existing claims of liabilities made by the Petitioner firm and Ors. as against the Company.

35. In the light of the above discussion, I am of the considered opinion that the actual amount liable to be paid to the Petitioner firm has not been ascertained and that there has not been any admission either by the State Government or the Company about the actual amount liable to be paid to the Petitioner firm. In the facts and circumstances of the case, having regards to the public interest involved in the functioning of the Government Company properly and legally to serve the interest of public, the doctrine of promissory estoppel and the doctrine of legitimate expectation shall not be applicable in the present case.

36. In the result, the Petitioner firm is not entitled to any of the relief claimed in the writ petition except one for quashing the impugned order dated 4.12.1990, which has been done. The Petitioner firm is at its liberty to file any suit in respect of its claims regarding due amount, compensation and interest liable to be paid by the concerned Respondents before the competent authority in accordance with law. In the facts and circumstances of the case and having regards to the disputed questions including the question of misfeasance, misconduct and fraudulent acts of the Directors and Ors. in the helm of affairs of the Company and also the question if the Petitioner firm adopted manipulative means to take control of the Company through the back door, I am of the opinion that

considering the public interest involved, it will be proper and just if the affairs of the Company and its association with the Petitioner firm and Ors. are properly investigated by the competent authority in accordance with the relevant provisions of the Act and Rules. The State Government shall have to take appropriate steps in this connection as expeditiously as possible. This decision shall not bar the State Government from proceeding in any manner permissible under the law so as to ascertain the actual amount liable to be paid to the Petitioner firm or from making to any legal settlement with the Petitioner firm in this connection without ignoring the public interest involved in the matter.

37. With the above said decisions and decisions, this writ petition stands disposed of.