

THE STASSEN CASE: THE FULL PETITION

IN THE COMMERCIAL HIGH COURT OF THE WESTERN PROVINCE
(Holden in Colombo)

- Case No:**
1. R.K. Obeysekere
833, Sirimavo Bandaranayake Mawatha,
Colombo 14

And also of
284, Nawala Road
Nawala.
 2. Zaki Alif
833, Sirimavo Bandaranayake Mawatha,
Colombo 14

And also of
No. 6, 27th Lane,
Inner Flower Road, Colombo 3
 3. V. P. Vittachi
833, Sirimavo Bandaranayake Mawatha,
Colombo 14

And also of
30/3, Colonel T. G. Jayawardena Mawatha
Colombo 3

Petitioners

Vs

1. Stassen Exports Limited
833, Sirimavo Bandaranayake Mawatha,
Colombo 14
2. D. H. S. Jayawardena
833, Sirimavo Bandaranayake Mawatha,
Colombo 14

And also of
82, Main Street, Ja-Ela
3. Dr. N. M. A. Ghaffar
833, Sirimavo Bandaranayake Mawatha,
Colombo 14
4. Mrs. Sonia Weinman
17, Alfred Place
Colombo 3

5. Secretaries & Registrars (Pvt) Limited
Company Secretary
1st Floor, 32A
Sir Mohamed Macan Markar Mawatha
Colombo 3

Respondents

On this 3rd day of July 2008.

The **Petition** of the **Petitioners** above named appearing by their Registered Attorney **G.G.Arulpragasam** states as follows:

1. The 1st Respondent Company above named is a company duly incorporated under the laws of Sri Lanka having the capacity to sue and be sued in its own corporate name (hereinafter called and referred to as “**the Company**”).

A true copy of the Certificate of Incorporation of the Company is annexed hereto **marked P1A** and is pleaded as part and parcel hereof.

True copies of the Memorandum of Association and Articles of Association of the Company is annexed hereto **marked P1B and P1C** and is pleaded as part and parcel hereof.

2. The total number of shares issued by the Company is 2,500,000.

The Companies Form 15 for the year ended 31st December 2006 of the Company is annexed hereto **marked P1D** and is pleaded as part and parcel hereof.

3. In terms of the provisions of the Companies Act No. 7 of 2007, read with the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, this Court is vested with the exclusive jurisdiction to hear and determine this action.

4. (i) The 1st Petitioner above named is the holder of 374,768 shares in the Company representing 14.99 % of the total number of issued shares of the Company, carrying voting rights. The 1st Petitioner is thus entitled to make this application in terms of Section 226 of the Companies Act No. 7 of 2007. The Petitioner is a founder shareholder and founder director of the Company.

True copies of the share certificates of the 1st Petitioner reflecting his shareholding in the Company are annexed hereto **marked P2A to P2P** and are pleaded as part and parcel hereof.

- (ii) The 2nd Petitioner above named is the holder of 374,768 shares in the Company representing 14.99 % of the total number of issued shares of the Company, carrying voting rights. The 2nd Petitioner is thus entitled to make this application in terms of Section 226 of the Companies Act No. 7 of 2007. The Petitioner is a founder shareholder and founder director of the Company.

True copies of the share certificates of the 2nd Petitioner reflecting his shareholding in the Company are annexed hereto **marked P3A to P3P** and are pleaded as part and parcel hereof.

5. The 3rd Petitioner above named was at times material to this action, the holder of 500,017 shares in the Company, together with one subscriber share, representing 20 % of the total number of issued shares of the Company, carrying voting rights. The 3rd Petitioner was a founder director and the founder chairman and continues to be a director and the chairman of the Company to date. For the purpose of disclosure the 3rd Petitioner states that all the shares of the 3rd Petitioner, save one, were transferred to the 4th Respondent in the circumstances more fully set out below.

True copies of the share certificates of the 3rd Petitioner reflecting his shareholding in the Company are annexed hereto **marked P4A to P4J** and are pleaded as part and parcel hereof.

6. Accordingly, the Petitioners (together with the 4th Respondent) collectively are the holders of 1,249,554 shares of the Company carrying voting rights, representing 49.99 % of the shares of the Company carrying voting rights. The Petitioners state that in the aforesaid circumstances, the Petitioners are jointly entitled to make this application in terms of Section 226 of the Companies Act No. 7 of 2007.
7. The 2nd Respondent above named is a founder shareholder and director of the Company and is the holder of 1,250,446 shares of the Company together with one subscriber share, representing 50.01% of the shareholding of the Company, carrying voting rights. The 2nd Respondent is also the Managing Director of the Company.
8. The 3rd Respondent is a director of the Company. The 3rd Respondent does not have any shares in the Company and he was appointed as a director of the Company in the circumstances more fully set out below.
9. The 4th Respondent is the daughter of the 3rd Petitioner and as more fully set out below, is now the shareholder of 500,017 shares of the Company.
10. The 5th Respondent is the Company Secretary of the 1st Respondent Company.
11. The 3rd Petitioner was a senior civil servant, who served with distinction as a Government Agent of Jaffna, the Principal Collector of Customs, Chairman Sri Lanka State Trading (Consolidated Exports) Corporation and Chairman Agricultural and Industrial Credit Corporation.
12. In or about 1971, the 3rd Petitioner was appointed as the Chairman of Sri Lanka State Trading (Consolidated Exports) Corporation (hereinafter called and referred to as “**Consoplexpo**”), which was one of the largest exporters of tea and other produce during the 1970s.
13. When the 3rd Petitioner was appointed Chairman of Consoplexpo, the 2nd Respondent was an Executive of the Tea Department of Consoplexpo.

14. In or about the year 1971 the 3rd Petitioner promoted the 2nd Respondent to the position of Tea Manager in Consolexpo, despite severe political resistance from the Minister of Trade at that time.
15. In or about April 1972, the 1st Petitioner joined Consolexpo as a Trainee Tea Taster and was subsequently appointed as a Tea Taster and the Assistant Manager of the Tea Department, where he worked with the 2nd Respondent.
16. In or about March 1974, the 2nd Petitioner also joined Consolexpo as a Trainee Tea Taster and was subsequently a Tea Taster where he worked with the Petitioner and the 2nd Respondent.
17. Being employed in the same Department, the 1st and 2nd Petitioners and the 2nd Respondent formed a close friendship with each other and they built up a strong bond and trust between them. The 1st Petitioner and the 2nd Respondent also formed a close and revered relationship with the 3rd Petitioner, who they considered as being their mentor.
18. Thereafter, in the year 1973, the 3rd Petitioner left as Chairman of Consolexpo, following his retirement from Public Service. However, the 1st Petitioner and the 2nd Respondent continued their revered friendship and bond with the 3rd Petitioner, seeking advice and guidance from time to time.
19. In the meantime, the mutual trust, friendship and bond between the 1st and 2nd Petitioners and the 2nd Respondent continued to grow and they worked as a team. In fact, the 1st and 2nd Petitioners and 2nd Respondent were largely instrumental in maintaining the large volumes of tea exports in Consolexpo, which ultimately resulted in them becoming akin to brothers rather than friends.
20. In or around 15th August 1977, the 1st and 2nd Petitioners and the 2nd Respondent tendered their resignations together from Consolexpo since the political environment at that time did not permit them to continue their employment at Consolexpo.

True copies of the said resignation letters of the 1st and 2nd Petitioners and the 2nd Respondent dated 15th August 1977 are annexed hereto **marked P5A, P5B and P5C** and are pleaded as part and parcel hereof.
21. Subsequent to leaving their employment at Consolexpo and having no employment at the time, the 1st and 2nd Petitioners, the 2nd Respondent decided to work together as a result of their close knit friendship, bond, trust and confidence in each other.
22. In the aforesaid background, the 1st and 2nd Petitioners and the 2nd Respondent approached the 3rd Petitioner for advice on how they could pool their resources and export tea and other produce and thereby earn their livelihood. As a result of these discussions, the Petitioners and the 2nd Respondent decided to form an enterprise for the export of tea and other produce, in the form of a small company. Their main objective was to eventually become a medium scale exporter of tea.
23. (i) Thereafter on or about the 7th of September 1977, the Petitioners and 2nd and Respondent jointly formed a private company named Stassen Exports

Limited (i.e. the 1st Respondent Company), to carry on the aforesaid enterprise.

- (i) The name “Stassen” was collectively decided on by the Petitioners and the 2nd Respondents since it was felt to be important that the Company should have a western-sounding name that was marketable in foreign tea markets.
- (ii) This name held further significance to the Petitioners and 2nd and 3rd Respondents since “Stassen” was a given name of the 2nd Respondent and it was agreed by all four of them that naming the company based on the given name of one of them reflected the strong friendship, bond trust and sense of brotherhood that existed between them.

24. The Petitioners and 2nd Respondent commenced operations on a very small scale from a single small room in a building leased by a company controlled by Haris and Arjuna Hulugalle (hereinafter collectively and sometimes referred to as “the Hulugalle brothers”), which the Company was permitted to use, since the Company could not afford to pay rent at the time. The Hulugalle brothers also permitted the Company to use their staff and all infrastructure facilities for the business of the Company.
25. During the initial period, the 3rd Petitioner, who was appointed as the first Chairman of the Company, provided critical guidance and insight to the 1st and 2nd Petitioners and the 2nd Respondent and the 3rd Petitioner provided stature to the Company since only he (at that time) had a reputation and high standing in the country as between them.
26. The 1st and 2nd Petitioners attended the tea auctions and handled all aspects of the core business of the Company relating to the export of tea, working in very trying conditions. During this period, the Company did not have the necessary infrastructure to handle the operation of exporting tea, including even rudimentary facilities such as a “Tea Room” (tea laboratory). Consequently, the 1st and 2nd Petitioners were compelled to use the Tea Room facilities of Easwaran Bros for their activities, travelling in public transport for company purposes and often, working late into the night, since they had to wait until Easwaran Bros finished their use of the Tea Room. The Company had to use the telex and telephonic facilities of the Central Telegraphic Office for communication with their foreign buyers, which also was attended to by the 1st and 2nd Petitioners.
27. The main reason that the 1st and 2nd Petitioners had to bear the burden of running the entire aspect of the export operations which involved *inter alia*, trading, tasting, evaluating tea samples, attending auctions, post auction sampling, procuring material for processing of products, supervision of processing of product for export and trading for the next business, which was the core business of the Company, was that the 2nd Respondent was unable to handle such business, being despised in the tea trade due to his arrogance whilst working at Consolexpo. Hence, it would have been detrimental to the Company had the 2nd Respondent attended the tea auctions for purchases, which was critical for the business of the Company. In fact, the 2nd Respondent never attended the tea auction after formation of the Company.
28. In the circumstances, it became the 2nd Respondent’s role in the Company to manage the finances and administration of the Company, whilst the 1st and 2nd

Petitioners devoted their time to handle the entire tea operations. The 3rd Petitioner, functioning as the Chairman of the Company, by virtue of his vast experience and standing, provided guidance in the day-to-day operations of the Company.

29. The Petitioners state that the bond and friendship between them was such that the 2nd Petitioner was the 2nd Respondent's Bestman at the 2nd Respondent's wedding.
30. The Petitioners state that the manner in which they worked and the relationship that existed between them was that of partners acting with the common goal of developing the enterprise, based on their trust and friendship.
31. From the very inception of the Company, all its activities were conducted by the Petitioners and 2nd Respondent acting together as partners. All the decisions of the Company were taken in mutual consultation and agreement with each other.
32.
 - (i) The shareholdings of the Company initially reflected the proportions in which the partners agreed to share the profits from the enterprise.
 - (ii) In view of the seniority and the stature of the 3rd Petitioner and his value to the Company, he was allotted 20% of the issued shares of the Company.
 - (iii) As the 2nd Respondent was the former Tea Manager at Consolexpo and senior in relation to the 1st and 2nd Petitioners, he was allotted 20% of the issued shares of the Company.
 - (iv) The 1st and 2nd Petitioners were allotted 9.99% each of the issued shares of the Company.
 - (v) The 2nd Respondent advised the Petitioners that he had persuaded one Tilak Fernando, who was a senior employee at the Tea Department at Consolexpo, to join them in their enterprise and that he ought to be given 20% of the Company upon joining.
 - (vi) The 2nd Respondent further informed the Petitioners that he would hold the said 20% of the issued shares of the Company in his name in trust for Tilak Fernando until he joined the Company. As a result of the implicit trust and friendship between them, this decision was agreed upon without any suspicion or doubt.
 - (vii) It was also agreed that the remaining 20% of the issued shares of the Company would be allotted to Haris Hullugalle and Arjuna Hulugalle, for having provided the Company with the use of its office premises, staff and other infrastructure. These shares, which were initially allotted to one A.C.M. Villavarayan (who was an employee of the Hulugalle brothers), were later transferred to the Hulugalle brothers.
 - (viii) The two Subscriber Shares of the Company were allotted to two employees of the Hulugalle brothers.

A true copy of the minutes of the Meeting of the Board of Directors of the Company held on 22nd September 1977 is annexed hereto **marked P6** and is pleaded as part and parcel hereof.

33. The Petitioners and 2nd Respondent were appointed as directors of the Company and the 3rd Petitioner was appointed as its Chairman. The 2nd Respondent was appointed as the Managing Director. In addition, the said A. C. M. Villavarayan was also appointed a Director, since he was assisting in setting up the Company. The said A. C. M. Villavarayan resigned as a director of the Company in or about December 1978 after the Company had got off the ground.

A true copy of the Meeting of the Subscribers of the Company held on 22nd September 1977 is annexed hereto **marked P7** and is pleaded as part and parcel hereof.

A true copy of the Meeting of the Board of Directors of the Company held on 13th December 1978 is annexed hereto **marked P8** and is pleaded as part and parcel hereof.

34. Neither Tilak Fernando nor Haris Hulugalle nor Arjuna Hulugalle were appointed as Directors of the Company, since the formation, goals and operations of the Company were initiated, decided upon and executed by the Petitioners and the 2nd Respondent acting in consultation with each other, in trust, friendship and partnership.

35. The Petitioners states that thereafter, Haris and Arjuna Hulugalle informed the Petitioners and the 2nd Respondent that they wished to sell their shares. Consequently, the 1st and 2nd Petitioners purchased 5% each of the shareholding of 10% held by Arjuna Hulugalle, which resulted in their respective shareholding increasing to 14.99% each, in the Company.

A true copy of the minutes of the meeting of the Board of Directors of the Company held on 19th January 1995 is annexed hereto **marked P9** and is pleaded as part and parcel hereof.

36. The Petitioners state that the shares of Haris Hulugalle were acquired by the 2nd Respondent.

A true copy of the minutes of the meeting of the Board of Directors of the Company held on 20th May 1996 is annexed hereto **marked P10** and is pleaded as part and parcel hereof.

37. The Petitioners states that the change in the shareholding did not in any way or manner affect the manner of managing the Company or the composition of the Board of Directors and the essence of the partnership continued on the basis of confidence, trust and friendship.

38. In or about 1982, the Petitioners and the 2nd Respondent agreed to appoint one Dr. Ghaffar (i.e. the 3rd Respondent) and Mr. Srinath Sirimanne to the Board of Directors of the Company. Dr. Ghaffar and Mr. Sirimanne who were employees of the Company, were so appointed in view of their expertise in manufacture of tea and export of other produce, respectively. However, the Petitioners specifically state that neither Dr. Ghaffar nor Mr. Sirimanne participated in any policy decisions of the Company, which continued to be carried on by the Petitioners and 2nd Respondent. Mr. Sirimanne ceased to be a director in or about January 1991 as a result of his demise.

39. In 1978, the Petitioners and the 2nd Respondent decided to form a separate company for the purpose of trading in Green Tea. This company was called Milford Exports Ceylon Limited. The Petitioners and the 2nd Respondent were appointed as Directors and the 3rd Petitioner was appointed as Chairman.

A true copy of the Certificate of Incorporation of Milford Exports Ceylon Limited is annexed hereto **marked P11** and is pleaded as part and parcel hereof.

40. It was intended that the shareholdings of Milford Exports (Ceylon) Limited would reflect the shareholdings in the Company.

41. However, at the time of the Petitioners and the 2nd Respondent deciding upon the share allocation of Milford Exports (Ceylon) Limited, the 2nd Respondent convinced the Petitioners that the 2nd Respondent would hold the 20% of the issued share capital proposed to be allotted to Haris and Arjuna Hulugalle in his name in trust for Haris and Arjuna Hulugalle, since the political situation at that time was extremely unfavourable towards Haris Hulugalle and a direct shareholding by them would be detrimental to Milford Exports (Ceylon) Limited at that time. As a result of the implicit trust and friendship between them, this proposal was agreed upon by the Petitioners without any suspicion or doubt. In fact, subsequently Haris Hulugalle was accused of being involved in a Naxalite Conspiracy against the government.

42. Consequently, the 2nd Respondent held 60% of the issued shares of Milford Exports (Ceylon) Limited comprising his allocation of 20% and the remainder which he claimed to hold on trust as aforesaid.

The Companies Form 15 for the year ended 31st December 2006 of Milford Exports (Ceylon) Limited is annexed hereto **marked P12** and is pleaded as part and parcel hereof.

43. The Company thereafter, expanded into a successful exporting company, achieving a high status in the tea industry and winning the Presidential Award for Export of food and beverages consecutively for five years. The Company eventually became the largest tea exporter in the country in 1988, within a space of 11 years from its incorporation. Since then, the Company has continuously been among the top three tea exporters in Sri Lanka.

44. Even at that stage the Petitioners and the 2nd Respondent conducted the affairs of the Company in consultation with each other and discussed all matters pertaining to the development of the Company. They continued to act as partners and friends with implicit trust in each other, confident that their collective decisions and actions were aimed for the betterment of the Company.

45. As a result of the implicit trust between the four, no one questioned the managing of the finances and administration of the companies by the 2nd Respondent and they continued to work as partners with a common goal.

46. During that time, the Petitioners did not pay any attention to their shareholdings in the Company and Milford Exports (Ceylon) Limited, since their personal and working relationship was akin to a brotherhood and they had implicit trust in each other.

47. The Company did not hold regular, formal Annual General Meetings or shareholder meetings due to the fact that they always considered their working relationship as partners with a common goal and had implicit trust in each other. Moreover, as a result of the implicit trust and strong sense of partnership between them, their rights as shareholders and directors were never acted upon or enforced.
48. With the rapid growth of the Company as well as Milford Exports (Ceylon) Limited, the Petitioners and the 2nd Respondent acting as partners, collectively and in consultation with each other, decided to invest the profits and reserves of the Company and Milford Exports (Ceylon) Limited in strategic investments in other companies, with the common goal of developing and strengthening the Company and Milford Exports (Ceylon) Limited.
49. The Petitioners state that it was the understanding and the expectation between the Petitioners, 2nd Respondent that they would make strategic investments in quoted and unquoted companies and seek to exercise control over them and thereafter leverage the strength of the investee companies to make further down stream investments. It was further agreed that they would seek to have themselves appointed to the Boards of Directors of the investee companies in order to protect and further the interests of the Company and themselves. It was further the understanding and expectation between the Petitioners and the 2nd Respondent that all of them would be consulted when making such investments into investee companies.
50. The first major investment that was so made pursuant to their collective understanding was in Hatton National Bank in 1988. The Petitioners and the 2nd Respondent collectively and in consultation with each other, purchased a shareholding in the Hatton National Bank through the Company and Milford Exports (Ceylon) Limited totalling to a sum of approximately Rs. 77.7 Million. Consequent to the aforesaid investments, the 3rd Petitioner and 2nd Respondent were appointed to the Board of Directors of Hatton National Bank Limited. Thereafter, the 1st Petitioner too was appointed to the Board of Directors of Hatton National Bank Limited and they continue as directors of Hatton National Bank to date.
51. The acquisition of Hatton National Bank was by way of a direct purchase of shares by the Company and Milford Exports (Ceylon) Limited as well as by an acquisition of a company known as Cargo Boat Dispatch Company Limited ("CBD"), which held a substantial parcel of shares in Hatton National Bank. The shares of CBD were distributed between the parties *pro rata* to their shareholding in Milford Exports (Ceylon) Limited. For the purpose of full disclosure, the Petitioners state that the 1st Petitioner and the 3rd Petitioner divested a part of their shareholding in CBD, whilst the 2nd Respondent divested his entire shareholding, in order to comply with the provisions of the Banking Act No. 30 of 1988.
52. Thereafter, pursuant to the collective understanding between the Petitioners and the 2nd Respondent, several other large investments were made. Such investments were made either directly through the Company and / or Milford Exports (Ceylon) Limited or through companies in which they had controlling interests.
53. Accordingly, substantial direct investments for strategic purposes were made by the Company and Milford Exports (Ceylon) Limited in:

- (i) Lanka Milk Foods
- (ii) Distilleries Company of Sri Lanka
- (iii) Madulsima Plantations Limited
- (iv) Balangoda Plantations Limited
- (v) Browns Beach Hotel Limited
- (vi) Sampath Bank Limited
- (vii) Milford Holdings Limited

54. Through the aforesaid companies the parties procured the acquisition of substantial / controlling interests of:

- (i) Balangoda Plantations Limited,
- (ii) Madulsima Plantations Limited,
- (iii) Brown's Beach Hotel Limited,
- (iv) Ambewella Farms Limited,
- (v) Pattipola Farms Limited,
- (vi) Milford Holdings Limited
- (vii) Sri Lanka Insurance Corporation Limited

A chart depicting the intricate web of direct and indirect holdings in the manner aforesaid is annexed hereto **marked P13** and is pleaded as part and parcel hereof.

55. Consequent to the aforesaid investments, the 3rd Petitioner was appointed as Chairman and Director of Lanka Milk Foods Limited, Distilleries Company of Sri Lanka Limited, Balangoda Plantations Limited, Madulsima Plantations Limited, Brown's Beach Hotel Limited, Ambewella Farms Limited and Pattipola Farms Limited as the nominee director of the Company and / or Milford Exports (Ceylon) Limited.

56. The 1st Petitioner was appointed to the Boards of Directors of Lanka Milk Foods Limited, Distilleries Company of Sri Lanka Limited, Balangoda Plantations Limited, Madulsima Plantations Limited, Ambewella Farms Limited, Pattipola Farms Limited and Sri Lanka Insurance Corporation Limited (as Deputy Chairman) as the nominee director of the Company and / or Milford Exports (Ceylon) Limited.

57. The 2nd Petitioner was appointed to the Boards of Directors of Lanka Milk Foods Limited, Madulsima Plantations Limited, Ambewella Farms Limited and Pattipola Farms Limited as the nominee director of the Company and / or Milford Exports (Ceylon) Limited. The 2nd Petitioner declined to be appointed as a director of Distilleries Company of Sri Lanka, Balangoda Plantations Limited and the Sri Lanka Insurance Corporation for personal reasons.

58. The 2nd Respondent was appointed to the Boards of Directors of Lanka Milk Foods Limited, Distilleries Company of Sri Lanka Limited, Balangoda Plantations Limited, Madulsima Plantations Limited, Brown's Beach Hotel Limited, Ambewella Farms Limited, Pattipola Farms Limited, Sri Lanka Insurance Corporation Limited and Aitken Spence & Company Limited as the nominee director of the Company and / or Milford Exports (Ceylon) Limited.

59. The 2nd Respondent was appointed as the Managing Director of Lanka Milk Foods Limited, Distilleries Company of Sri Lanka Limited, Balangoda Plantations Limited, Madulsima Plantations Limited, Ambewella Farms Limited and Pattipola Farms Limited. He was also appointed as the Chairman of Sri Lanka Insurance Corporation Limited and Aitken Spence & Company Limited.

True copies of Annual Reports of the aforesaid companies are annexed hereto **marked P14A to P14 I** and are pleaded as part and parcel hereof.

60. In or around 2005, the Petitioners noticed a gradual change in the 2nd Respondent's attitude towards them and in the manner in which he conducted his affairs in relation to the Company. The first signs of a strain in the friendship, trust, bond and partnership between the Petitioners and the 2nd Respondent began to surface during this period. This change had initially manifested itself during the period that the 2nd Respondent was appointed to various positions in government and State corporations, such as Senior Advisor to the President, the Board of Investments and Sri Lankan Airlines. The 2nd Respondent began to pursue an aggressive business strategy, often testing the limits of legality, which created discomfort and concern to the Petitioners. The Petitioners further state that when the Petitioners expressed these concerns to the 2nd Respondent, he showed displeasure at his "authority" being challenged and openly intimidated them into submission to his decisions.
61. The Petitioners state that the 2nd Respondent threatened to use his majority powers in the Company and his political powers through connections in government to cow them into submission. This deterioration in the relationship led to the 2nd Respondent increasingly acting unilaterally in managing the business and making decisions that impacted the parties. The Petitioners further state that the reports of the public behaviour of the 2nd Respondent above mentioned and his behaviour towards competitors and staff, creating a culture of fear and intimidation, caused them to reasonably believe that the 2nd Respondent could in fact carry out his threats.
62. The Petitioners state that the 2nd Respondent began to act unilaterally and in a dictatorial manner in conducting the affairs of the Company and began to isolate and marginalise the Petitioners from the affairs of the Company. Thenceforth, the 2nd Respondent gradually and continuously took active steps to strain, injure, damage and ultimately severe / destroy the friendship, trust and foundation on which the relationship and partnership as outlined above existed and flourished through the years between the Petitioners and the 2nd Respondent.
63. The 2nd Respondent acting unilaterally and dictatorially began making investments through the Company, Milford Exports (Ceylon) Limited and the other companies under the investment umbrella of the Company and Milford Exports (Ceylon) Limited. The 2nd Respondent refrained from informing or consulting the Petitioners when making or procuring the making of these investments. The investments that the 2nd Respondent made in the aforesaid manner are in Aitken Spence & Company Limited, DFCC Bank Limited, Lanka Bell Limited, Lanka Hospitals Limited (Apollo Hospitals) and Asiri Hospitals Limited, all of which are held or controlled through Distilleries Company of Sri Lanka, its subsidiary Milford Holdings Limited and Sri Lanka Insurance Company Limited. After completing such investments, either directly through the Company or Milford Exports (Ceylon) Limited or through entities controlled by

them, on his unilateral decisions, the 2nd Respondent presented the Petitioners with *fait accompli* in the form of Circular Resolutions etc, which they were compelled to accede to as the relevant investments had already been made and were irreversible.

True copies of the Annual Reports of DFCC Bank Limited and Lanka Hospitals Limited and the Companies Form 15 of Lanka Bell Limited are annexed hereto **marked P15A to P15C** and are pleaded as part and parcel hereof.

64. The Petitioners plead that in view of the relationship that existed between the Petitioners and the 2nd Respondent, the Petitioners at time signed numerous documents at the request of the 2nd Respondent and on his representations without the Petitioners verifying the contents of the said documents.
65. The Petitioners state that the 2nd Respondent continued to ignore their views and completely sidelined and excluded them, whilst proceeding to appoint other persons as directors to the newly acquired companies.
66. The Petitioners state that the 2nd Respondent continued to act dictatorially, without considering the views of the Petitioners. The 2nd Respondent increasingly suppressed the rights and entitlements of the Petitioners as shareholders of the Company. In addition, as the Managing Director of the Company, the 2nd Respondent continued to mismanage the affairs and funds of the Company and utilise the funds for his own purposes.
67. The Petitioners state that the 2nd Respondent has procured the incorporation and operation of an entity named Stassen Distributors Limited, set up for the purpose of transshipment of food products. This company has been set up by the 2nd Respondent without the knowledge or approval of the Petitioners and they are completely excluded therefrom. The 2nd Respondent and one Mr. Jansz are the signatories to all the bank accounts of this company. The use of the name “Stassen” in this company has not been authorised by the Petitioners.

True copies of the certificate of incorporation of Stassen Distributors Limited, the Companies Form 48 and the Signatories to the bank accounts are annexed hereto **marked P16A, P16B and P16C** respectively and are pleaded as part and parcel hereof.

68. As a result of the aforesaid actions of the 2nd Respondent, the Petitioners were alarmed at seeing their rights and entitlements being increasingly oppressed. Therefore, the Petitioners approached the 2nd Respondent with a view of arresting this new trend.
69. In this background, the Petitioners addressed a personal note dated 13th June 2005 to the 2nd Respondent, setting out the essence of their grievances and concerns about the manner in which the 2nd Respondent was behaving and requested him to remedy these matters.
70. The requests made from the 2nd Respondent in the said letter were in essence that he should cease to humiliate the Petitioners; honour the rights of each of the parties as founders; provide the parties with proper and transparent return on their interests by the declaration of regular formal dividends; and to consult and keep

each of them informed of major investments or decisions with regard to the companies of the group.

A true copy of the said note dated 13th June 2005 is annexed hereto **marked P17** and is pleaded as part and parcel hereof.

71. The 2nd Respondent did not reply the said letter dated 13th June 2005 and completely ignored the requests of the Petitioners and continued to conduct the affairs of the Company and Milford Exports (Ceylon) Limited in the manner aforesaid.

72. In the circumstances, the Petitioners addressed another letter to the 2nd Respondent on the 15th of July 2005 requesting him to cease his oppressive conduct. By the aforesaid letter, the Petitioners protested against the manner in which the affairs of the Company and Milford Exports (Ceylon) Limited were being conducted and in particular the acquisitions made by the said companies; the unlawful exercise of powers by the 2nd Respondent; the possible violations of law that may have arisen from the acquisitions made by the 2nd Respondent; oppression of the rights of the Petitioners; the refusal of the 2nd Respondent to agree to a dividend policy and requested the 2nd Respondent to enter into a legally binding shareholders agreement and honour sound corporate governance policies.

A true copy of the said note dated 15th July 2005 is annexed hereto **marked P18** and is pleaded as part and parcel hereof.

73. The 2nd Respondent did not respond to the said letter dated 15th July 2005.

74. Despite the actions of the 2nd Respondent, the Petitioners continued to work tirelessly towards the betterment and benefit of the Company.

75. Thereupon, the Petitioners met the 2nd Respondent in an attempt to discuss the issues between them and resolve their differences amicably. However, these discussions proved absolutely fruitless, since the 2nd Respondent turned violently abusive towards the 3rd Petitioner, even threatening to shoot him. He further made it clear that only he and he alone could give any directions relating to the Company, Milford Exports (Ceylon) Limited and the other companies within the group.

76. Thereafter, the Petitioners wrote another memorandum to the 2nd Respondent dated 10th August 2005 detailing the manner in which the trust, friendship and partnership between them had been severely strained as a result of the oppressive actions of the 2nd Respondent.

A true copy of the said note dated 10th August 2005 is annexed hereto **marked P19** and is pleaded as part and parcel hereof.

77. Thereupon, much to surprise of the Petitioners, the 2nd Respondent wrote to the 2nd Petitioner by letter dated 20th August 2005, addressing him as the Company Secretary of the Company and Milford Exports (Ceylon) Limited directing him to summon extra ordinary general meetings of the Company and Milford Exports (Ceylon) Limited to determine the outcome of the letters dated 13th June 2005, 15th July 2005 and 10th August 2005.

True copies of the said letters dated 20th August 2005 are annexed hereto **marked P20A and P20 B** and are pleaded as part and parcel hereof.

78. In fact, the 2nd Petitioner had ceased to be the Company Secretary of the Company and Milford Exports (Ceylon) Limited as far back as 1987.

79. Thereupon, by letter dated 29th August 2005, the 2nd Petitioner wrote to the 2nd Respondent informing him that there is no provision for him to convene an extraordinary general meeting of the Company and Milford Exports (Ceylon) Limited. He however, informed the 2nd Respondent that the Petitioners are agreeable to meet with him informally to discuss the issues in the said letters of 13th June 2005, 15th July 2005 and 10th August 2005.

A true copy of the said letter dated 29th August 2005 is annexed hereto **marked P21** and is pleaded as part and parcel hereof.

80. In response thereto, by his letter dated 31st August 2005, the 2nd Respondent informed the 2nd Petitioner that he had now been made to understand that “as per the requirements of the Company Law”, a professional Company Secretary had been appointed to comply with the regulations and that he would be writing to the Company Secretary requesting for a formal EGM as per the Articles of the Company to table and discuss the matters set out in the letters dated 13th June 2005, 15th 2005 and 10th August 2005 and that therefore, an informal meeting was not necessary.

A true copy of the said letter dated 31st August 2005 is annexed hereto **marked P22** and is pleaded as part and parcel hereof.

81. The Petitioners thereafter received documents dated 2nd September 2005, purporting to be notices of meetings, seeking to convene extraordinary general meetings of Company and Milford Exports (Ceylon) Limited scheduled for the 10th of September 2005, purporting to be “by the Order of the Board of Directors”, from the Company Secretaries of the Company and Milford Exports (Ceylon) Limited.

True copies of the said documents purporting to be notices of meetings dated 2nd September 2005 is annexed hereto **marked P23** and is pleaded as part and parcel hereof.

82. In the circumstances, by their letters dated 8th September 2005, the Petitioners informed the Company Secretaries of the Company and Milford Exports (Ceylon) Limited that the meetings sought to be convened were *mala fide* and illegal for the reason that: the Boards of Directors of the Company or Milford Exports (Ceylon) Limited had not given any such order to the Company Secretaries to convene such meetings; no meetings of the Boards of Directors had been held at which such decisions could have been taken; and that the said meetings were sought to be convened without giving requisite notice as provided by the Companies Act. The Petitioners accordingly requested the Companies Secretaries to immediately withdraw such notices and cancel the illegal meetings sought to be convened.

True copies of the said letters dated 8th September 2005 are annexed hereto **marked P24A and P24B** and are pleaded as part and parcel hereof.

83. In response to the aforesaid letters, by their letters dated 9th September 2005, the Company Secretaries informed the Board of Directors of the Company and Milford Exports (Ceylon) Limited that the scheduled extraordinary general meetings stood cancelled. The Company Secretaries further stated that the said meeting had been convened by them on request made by the Managing Director of the Company, i.e. the 2nd Respondent. They further stated that since contradictory instructions were being issued to them by the Chairman and the Managing Director of the Company and Milford Exports (Ceylon) Limited, they were unable to continue to discharge their duties and therefore they were tendering their resignations from the position of Company Secretaries in the respective companies.

True copies of the said letters dated 9th September 2005 are annexed hereto **marked P25A and P25B** and are pleaded as part and parcel hereof.

84. The Petitioners specifically plead that the aforesaid sequence of events was initiated and precipitated due to the unilateral and oppressive conduct of the 2nd Respondent, whereby he attempted to convene an extra ordinary general meeting of the Company without adhering to the statutory provisions, Articles of Association of the Company and without informing or consulting the Petitioners or the Board of Directors of the Company. The Petitioners further states that the 2nd Respondent's aforesaid actions were specifically aimed at completely suppressing the rights and entitlements of the Petitioners as shareholders and Directors of the Company.

85. In response to the said letters dated 9th September 2005 by the Company Secretaries, the Petitioners, by letter dated 19th September 2005, wrote to the Company Secretaries disputing the contention that contradictory instructions are being issued and stating that as Company Secretaries of repute they should have been aware of the provisions of the Companies Act on how extraordinary general meetings are convened and that it should have been obvious to the Company Secretaries that none of the procedures had been complied with in issuing the said purported notices in seeking to convene the said meetings.

86. The Petitioner states that the Petitioners being apprehensive that other unauthorised documentation may also have been issued by the Company Secretaries, purporting to be under the authority of the Boards of Directors, informed the Company Secretaries that they reserved their right to take legal action against them for any wrongdoings that may have been caused.

True copies of the letter dated 19th September 2005 is annexed hereto **marked P26A and P26B** and is pleaded as part and parcel hereof.

87. Frustrated with this stalemate and the spiralling conflict between the parties, the Petitioners decided to confront the 2nd Respondent and urge him to enter into *bona fide* discussions with them for the purpose of resolving the issues between them.

88. (i) Accordingly, on the 6th of October 2005, the 1st and 2nd Petitioners met the 2nd Respondent in the Board Room and made such a request of him. At this meeting the 2nd Respondent agreed to enter into an equitable agreement on how the Company and Milford Exports (Ceylon) Limited should be managed and operated and to also provide for mechanisms by

which the Petitioners could sell-out their interests in the said entities or in the alternative buyout the 2nd Respondent's interests in the said entities.

- (ii) The Petitioners immediately followed up with a letter on the same day to the 2nd Respondent setting out the principles on which such an agreement would be founded, namely (a) fair representation on the Boards of Directors of the Company, Milford Exports (Ceylon) Limited and CBD Exports Limited and maintenance of the status quo as long as their present shareholding continued with the right granted to each of the parties to nominate an alternate or successor; (b) provision for the management of the entities in a fair and transparent manner with proper and regular Board Meetings in adherence to the requirements of the Company law; (c) provision for mutual, unanimous agreement between the parties on major decisions, such as the issue of new shares, declaration of dividends, new investments, disposal of assets, nomination of representations to subsidiaries and entities in which investments are made and the employment of key employees and (d) specific provision for parties to exit from the respective companies by offering their shares to the others at a nominated price and if that price is not acceptable to the others to purchase their shares at that price.
- (iii) The Petitioners further state that the 2nd Respondent was asked for written confirmation that the said proposals were acceptable to him and if so, that discussions should commence within two weeks on the finalisation of an agreement based on the said principles, to be concluded on or before the 31st of December 2005.

A true copy of the said letter dated 6th October 2005 is annexed hereto **marked P27** and is pleaded as part and parcel hereof.

89. The 2nd Respondent by his letter dated 8th October 2005, specifically confirmed to the Petitioners that the said principles were acceptable and that he too agreed that the four points stated in the said letter should be discussed and a decision arrived at within the time frame set out in the said letter dated 6th October 2005. The 2nd Respondent further requested the Petitioners to intimate a date and time for this purpose. Accordingly, by letter dated 26th October 2005, the Petitioners suggested a date and time for the said purpose.

True copies of the said letters dated 8th October 2005 and 26th October 2005 are annexed hereto **marked P28 and P29** and is pleaded as part and parcel hereof.

90. (i) During this time, however the 2nd Respondent continued to oppress the rights of the Petitioners.
- (ii) Around this time, the 2nd Respondent, acting through Distilleries Company of Sri Lanka Limited and Sri Lanka Insurance Company Limited, which are companies controlled by the Company and Milford Exports Ceylon Limited, proceeded to consolidate control over Commercial Bank of Ceylon Limited by moving a resolution to remove its Chairman, Mr. Mahendra Amarasuriya and to substitute him with the 2nd Respondent's nominee.
- (iii) The Petitioners were not informed or consulted in this process.

- (iv) In the circumstances, by a further letter dated 26th October 2005, the Petitioners protested against this position to the 2nd Respondent and reiterated that they were entitled to be consulted in this processes and requested the 2nd Respondent to ensure that no such acquisitions or nominations are made in the future without prior consultation with them.

A true copy of the said letter dated 26th October 2005 is annexed hereto **marked P30** and is pleaded as part and parcel hereof.

- (v) In addition, the 2nd Respondent commenced intercepting correspondence that had been specifically addressed to the 3rd Petitioner as Chairman of Distilleries Company of Sri Lanka Limited to prevent him from responding to crucial queries addressed to him in that capacity by the Chairman of Commercial Bank of Ceylon Limited.

True copies of the correspondence in this regard are annexed hereto **marked P31A and P31B** and are pleaded as part and parcel hereof.

- (vi) The 2nd Respondent thereupon presented the Petitioners with *fait accompli* in the form of a back dated circular resolution of the Board of Directors of Distilleries Company of Sri Lanka purporting to authorise the aforesaid course of action, which the 1st Petitioner and the 3rd Petitioner had no alternative but to reluctantly sign, in order to preserve some semblance of a relationship with the 2nd Respondent, particularly in view of his agreement to the principles set out in the said letter dated 6th October 2005.

91. During the month of November 2005, the parties sought to schedule further meetings pursuant to the letters dated 6th October 2005 and 8th October 2005. However, the parties could not agree on mutually acceptable dates for such meetings.

True copies of letters dated 5th November 2005 and 7th November 2005 are annexed hereto **marked P32A and P32B** and are pleaded as part and parcel hereof.

92. On the 12th of December 2005, the Petitioners forwarded a Draft Shareholders Agreement with a covering letter to the 2nd Respondent as previously agreed upon and requested the 2nd Respondent to revert back to them in order to finalise the Agreement without further delay.

A true copy of the letter dated 12th December 2005 is annexed hereto **marked P33** and a true copy of the draft Shareholders Agreement forwarded to the 2nd Respondent is annexed hereto **marked P34** and is pleaded as part and parcel hereof.

A true copy of the draft Shareholders Agreement forwarded to the 2nd Respondent is annexed hereto **marked P34** and is pleaded as part and parcel hereof.

93. The Petitioners state that they did not receive a response to the said letter dated 12th December 2005. Hence, on the 11th of January 2006, the Petitioners wrote to the 2nd Respondent stating that they forwarded the said Draft Shareholders Agreement in good faith expecting a response but regretted to note that the 2nd

Respondent had not even acknowledged the receipt of the said Draft Agreement, leave aside communicating his responses to the Draft Agreement itself. They further expressed dismay over the fact that the dispute between them had become public knowledge despite every effort by them to keep it private and that continued failure by the 2nd Respondent to cooperate in resolving the issues, would leave them with no option but to seek recourse in an appropriate forum.

A true copy of the said letter dated 11th January 2006 is annexed hereto **marked P35** and is pleaded as part and parcel hereof.

94. To the amazement of the Petitioners, they received a letter dated 16th January 2006 from the 2nd Respondent referring to their letter of 12th December 2005, the Draft Shareholders Agreement and the reminder dated 11th January 2006, completely reversing his previous commitment made by the letter dated 8th October 2005 and stating that he did not wish to proceed with the Agreement as the largest shareholder of the companies in question and that such an agreement was not in his interest.

A true copy of the said letter dated 16th January 2006 is annexed hereto **marked P36** and is pleaded as part and parcel hereof.

95. Upon receipt of this letter, it became apparent to the Petitioners that the 2nd Respondent's unreasonable and oppressive conduct left them with no option but to seek relief through other fora. The Petitioners also grew increasingly concerned that the 2nd Respondent was growing increasingly arrogant in the manner in which he exercised powers over the Company, Milford Exports (Ceylon) Limited and the other subsidiaries.
96. However, in a final attempt at resolving the deadlock, the Petitioners sought the intervention of a highly respected, senior Attorney – at – Law, who had a long association with the 1st Petitioner and the 2nd Respondent, having been on the Board of Directors of Sri Lanka Insurance Corporation Limited to seek his intervention to facilitate a settlement by way of a buyout or sell-out of the shares of the respective parties, since any hope of re-establishing a working relationship had faded. Consequently, the Petitioners were informed by the said intermediary that the 2nd Respondent had agreed to work towards a settlement and that he had requested them to forward a valuation of all of their respective interests in the Company, Milford Exports (Ceylon) Limited and several other entities through which the Petitioners and the 2nd Respondent had made strategic investments.
97. The Petitioners state that they thereupon retained the services of M/s Ernst & Young, Singapore, which has extensive experience and expertise in valuation of enterprises and multi national companies, for the purposes of conducting a comprehensive valuation on the aforesaid entities in or around May 2006. The aforesaid valuation was duly completed in October 2006. The valuation was computed on the basis of High, Median and Low valuations, based on methodologies comprehensively explained in the said Valuation Report. These values were 27,318,000,000.00 (HIGH), 24,672,000,000.00 (MEDIAN) and 22,027,000,000.00 (LOW) respectively.
98. Thereupon, the Petitioners forwarded the Valuation Report to the 2nd Respondent along with their letters dated 26th October 2006. They further pointed out to the 2nd Respondent that the valuation that was conducted on a conservative basis and

offered to sell the entirety of their shareholdings in the Company, Milford Exports (Ceylon) Limited and CBD Exports Limited to the 2nd Respondent at the proportionate value of the Median of the valuations [i.e. at the proportionate value of Rupees Twenty Four Billion Six Hundred and Seventy Two Million (Rs. 24,672,000,000.00)]. Furthermore, the Petitioners also informed the 2nd Respondent that if he was unable to buy them out at that price, they were willing to purchase the 2nd Respondent's shareholdings at a ten per cent (10%) premium over and above his proportionate share of the valuation.

True copies of the said letters dated 26th October 2006 are annexed hereto **marked P37A and P37B** and is pleaded as part and parcel hereof.

99. The Petitioners state that even though they had requested early discussions with the 2nd Respondent to resolve the issues based on the said valuation, they did not receive even an acknowledgement to the said letter dated 26th October 2006 and therefore sent a reminder to the 2nd Respondent by letter dated 20th November 2006.

A true copy of the said letter dated 20th November 2006 is annexed hereto **marked P38** and is pleaded as part and parcel hereof.

100. The 2nd Respondent responded thereto, by letter dated 27th November 2006, denying interest in either buying the shareholdings of the Petitioners or selling his shareholdings to them but went on to state that since the Valuation was complex, he required considerable time to ascertain the accuracy, appropriateness and the basis of the valuation.

A true copy of the said letter dated 27th November 2006 is annexed hereto **marked P39** and is pleaded as part and parcel hereof.

101. The Petitioners state that the discussions relating to the 2nd Respondent's responses to the said Valuation continued thereafter by way of an exchange of several letters, in which the 2nd Respondent made requests for "workings" and electronic copies of the Valuation. The Petitioners state that though they were unable to provide the said workings since such material were proprietary to M/s Ernst & Young, constituting professional know-how, they provided all other material available to them. In addition, the 2nd Respondent made several requests for extensions, which the Petitioners granted to the 2nd Respondent.

True copies of the letters dated 12th December 2006, 27th December 2006, 4th January 2007, 25th January 2007, 25th April 2007, 8th May 2007 and 11th June 2007 are annexed hereto **marked P40A to 40G** and are pleaded as part and parcel hereof.

102. The Petitioners state that during the aforementioned period, the 2nd Respondent made deliberate attempts to alter the balance of the Board of Directors of the Company and Milford Exports (Ceylon) Limited and in Distilleries Company of Sri Lanka, being the company in which they had the most substantial investments, in order to weaken the position of the Petitioners within the group, strengthen himself and severely oppress the rights of the Petitioners.

103. In this regard, the 2nd Respondent took steps to:

- (i) Remove the 3rd Petitioner from the Chairmanship and the Directorate of the Distilleries Company of Sri Lanka Limited;
 - (ii) Attempt to remove the 3rd Petitioner from the Chairmanship and Directorate of the Company and Milford Exports (Ceylon) Limited;
 - (iii) Appoint the wife of the 2nd Respondent and another nominee of the 2nd Respondent to the Board of Directors of the Company.
104. (i) During the aforesaid period, the 3rd Petitioner, as the Chairman of Distilleries Company of Sri Lanka Limited had serious issues with the 2nd Respondent regarding questionable business practises, which were allegedly being adopted by him as the Managing Director of Distilleries Company of Sri Lanka Limited. These issues arose as a result of unceasing complaints received by the 3rd Petitioner (as Chairman) from several other manufacturers and distributors of alcohol in Sri Lanka.

True copies of correspondence in this regard are annexed hereto **marked P41 and P42** and are pleaded as part and parcel hereof.

- (ii) Consequently, at a meeting of the Board of Directors of Distilleries Company of Sri Lanka Limited held on the 29th of November 2006, the 2nd Respondent, without any prior notice whatsoever, proceeded to take up an item under the heading, “any other business” and produced a letter purportedly written by himself as the Managing Director of Milford Exports (Ceylon) Limited communicating to Distilleries Company of Sri Lanka Limited that the 3rd Petitioner had been removed from the position of Director of Distilleries Company of Sri Lanka Limited.
- (iii) The Petitioners state that the 3rd Petitioner was not even present at the aforesaid meeting at the time he was so removed.
- (iv) The Petitioners state that the Board of Directors of Milford Exports Ceylon Limited did not at anytime decide to remove the 3rd Petitioner from the Directorate of Distilleries Company of Sri Lanka Limited or authorised the 2nd Respondent to so remove the 3rd Petitioner.
- (v) Having removed the 3rd Petitioner from the Directorate of DCSL and consequently from the Chairmanship thereof, the 2nd Respondent caused himself to be elected as the chairman of DCSL, in addition to his position as Managing Director thereof.
- (vi) Thereafter, at the Annual General Meeting of DCSL, in response to a query regarding the absence of the 3rd Petitioner, the 2nd Respondent misled shareholders by informing them that the 3rd Petitioner had resigned from the position of director of DCSL for personal reasons.

Newspaper reports dated 1st December 2006 (The Island Financial Review); 3rd December 2006 (Sunday Island Business); 3rd December 2006 (Sunday Times, Financial Times on Sunday); 3rd December 2006 (The Sunday Leader); The Nation; and the Daily Mirror Financial Times are annexed hereto **marked P43A to P43F** and are pleaded as part and parcel hereof.

105. On the 4th of December 2006 (which was a public, bank and mercantile holiday), the 2nd Respondent wrote to the 3rd Petitioner as “Managing Director of the Company / holder of majority shares” informing the 3rd Petitioner that he had ceased to be a director of the Company and all of its subsidiaries and associate companies, with effect from the 1st of March 1993 by operation of law i.e. sections 181, 182 and 183 of the Companies Act No. 17 of 1982 as amended. Moreover, he directed the 3rd Petitioner to return all company property in his possession.

A true copy of the said letter dated 4th December 2006 is annexed hereto **marked P44** and is pleaded as part and parcel hereof.

106. The 3rd Petitioner promptly responded to the 2nd Respondent by letter dated 5th December 2006, informing him that the 3rd Petitioner would, along with the 1st and 2nd Petitioners, obtain legal advice and send an appropriate response. He further informed the 2nd Respondent that he was acting in total contempt of the law, since he had no unilateral powers to act in such a manner, either as Managing Director or holder of majority shares, since company law had well defined procedures that are required to be complied with.
107. On the same date the Petitioners wrote a further letter to the 2nd Respondent informing him that his letter of the 4th December 2006 had no effect; that he did not have the authority to do so from the Board of Directors and that it was *mala fide*, being contrary to the arrangements that existed between the Petitioners and 2nd Respondent, from the inception of the Company. A similar letter reiterating its contents was sent to Secretaries and Registrars Limited, who was the Company Secretaries informing them that they should disregard the contents of the 2nd Respondent’s aforesaid letter. The 3rd Petitioner, having been reliably informed that the 2nd Respondent had ordered the security not to permit him entrance to the Company premises and that his vehicle should be seized, wrote a further letter on the same date to the 2nd Respondent protesting this action.

Correspondence that took place between the parties in this regard are annexed hereto **marked P45A to P45H** and are pleaded as part and parcel hereof.

108. The Petitioners also became aware that the 2nd Respondent had instructed the Financial Controller of the Company not to make any payment due to the 3rd Petitioner. Thereupon, by their letter dated 6th December 2006, the Petitioners informed the 2nd Respondent that he was acting unlawfully and to withdraw the said instructions.

Correspondence between the parties in this regard are annexed hereto **marked P46A and P46B and** are pleaded as part and parcel hereof.

109. The Petitioners state that on the 6th of December 2006, when 3rd Petitioner attempted to enter the office premises of the Company, he was refused entry by security personnel who claimed that they were acting under the instructions of the 2nd Respondent. Thereupon, the 3rd Petitioner made a complaint to the Grandpass Police Station that he was being prevented from lawfully entering the office premises of the Company, of which he was the Chairman and director.

A true copy of the said Police Complaint is annexed hereto **marked P47** and is pleaded as part and parcel hereof.

110. As a result of the arbitrary and unlawful act on the part of the 2nd Respondent in purporting to remove the 3rd Petitioner as a director and the chairman of the Company, the 3rd Petitioner instituted action in the District Court of Colombo bearing No. 7790/SPL, seeking *inter alia*:

- (a) An Interim Injunction suspending the operation of the 2nd Respondent's letter dated 4th December 2006 until the final hearing and determining of the action;
- (b) An Interim Injunction restraining the 2nd Respondent from intervening, interfering and obstructing the 3rd Petitioner whilst he is functioning as a Director of the 1st Respondent Company until the final hearing and determining of the action; and
- (c) An Interim Injunction restraining the 2nd Respondent from depriving the 3rd Petitioner the salary, allowances and other emoluments paid by the 1st Respondent Company and vehicle facilities and the other facilities provided by the 1st Respondent Company until the final hearing and determining of the action.

111. Upon supporting the 3rd Petitioner's application for an enjoining order, the Learned District Judge issued an enjoining order as set out aforesaid on or about the 13th of December 2006. Thereupon, after inquiring into the application for the said interim injunction, the Learned District Judge refused the application of the 3rd Petitioner.

The Complaint and the documents annexed thereto, the Statements of Objections and the documents annexed thereto and the Order of the Learned District Judge of Colombo dated 31st January 2007 have been produced below as part of the documents produced in paragraph 114.

112. Being dissatisfied with the Order of the Learned District Judge dated 31st January 2007, the 3rd Petitioner lodged Leave to Appeal Application bearing No. CALA 24/2007, to the Court of Appeal and upon full inquiry, their Lordships set aside the Order of the Learned District Judge of Colombo dated 31st January 2007 and issued the Interim Injunctions prayed for by the 3rd Petitioner.

The Petition in the said CALA No. 24/2007 and the documents annexed thereto, the Statements of Objections and the documents annexed thereto and the Judgement of the Court of Appeal dated 21st February 2007 delivered in the said CALA No. 24/2007 have been produced below as part of the documents produced in paragraph 114.

113. The 2nd Respondent lodged a Special Leave to Appeal application to the Supreme Court against the said Judgement dated 21st of February 2007 of the Court of Appeal in CALA No. 24/2007. The 3rd Respondent too lodged a similar appeal, although he had specifically informed court that he would not participate in this action in the District Court, nor lodged a Leave to Appeal Application to the Court of Appeal.

114. Upon the Counsel for the 3rd Petitioner taking up certain preliminary objections, the 2nd Respondent withdrew the said Special Leave to Appeal and thereupon lodged another Special Leave to Appeal Application. Once again the Counsel for the 3rd Petitioner took up certain preliminary objections to the maintainability of this second application and the Supreme Court fixed the matter for Inquiry for the 30th of June 2008. When the special Leave to Appeal Application came up on 30.06.2008, the 2nd Respondent 2nd time withdrew the said Special Leave to Appeal Application.

A true copy of the entire case record in SC (SPL) LA No: 81/2007, which contains the Plaint of the Petitioner in DC Colombo Case No: 7790/SPL and CALA No: 24/2007 is annexed hereto **marked P48** and is pleaded as part and parcel hereof.

115. (i) The Petitioner states that immediately after the District Court of Colombo refused to grant the said interim injunctions, the 2nd Respondent convened an purported “emergency” meeting of the Board of Directors of the Company on the 2nd of February 2007 to discuss the events flowing after the aforesaid Order of the District Court and matters arising there from and to appoint a Chairman due to the court Order.

A true copy of the Notice of Meeting dated 31st January 2007 is annexed hereto **marked P49** and is pleaded as part and parcel hereof.

- (ii) The Petitioners wrote to the Company Secretaries informing them that the aforesaid court Order did not result in a removal of the 3rd Petitioner from the Board of Directors of the Company and that there was no bar to his continuation as the Chairman / Director. They further specifically informed the Company Secretaries that they would not be attending the purported meeting and that in their absence, the meeting could not be held since there would not be a quorum.

A true copy of the said letter dated 1st February 2007 is annexed hereto **marked P50** and is pleaded as part and parcel hereof.

- (iii) The Petitioners subsequently became aware that the 2nd Respondent had proceeded to hold a purported meeting, attended only by himself and the 3rd Respondent, despite the absence of a quorum and had purported to appoint himself as the Chairman of the Company.

The draft minutes of the said purported meeting obtained from the Company Secretaries are annexed hereto **marked P51** and is pleaded as part and parcel hereof.

- (iv) The Petitioners state that formal minutes of this purported meeting have not been issued by the Company Secretaries to date.

- (v) Immediately after the said unlawful meeting, the 2nd Respondent issued a circular to the members of the Staff of the Company stating that the 3rd Petitioner ceased to be the Chairman of the Company and that the 2nd Respondent had been appointed to that position with immediate effect.

A true copy of the said circular dated 2nd February 2007 is annexed hereto **marked P52** and is pleaded as part and parcel hereof.

116. The Petitioners state that the 3rd Petitioner, through his Attorney – at – Law, wrote to the Company Secretaries pointing out to them *inter alia*, that the said meeting lacked a quorum and was unlawful and warned them against tendering / registering decisions and / or resolutions taken at the said unlawful meeting.

A true copy of the said letter dated 2nd February 2007 is annexed hereto **marked P53** and is pleaded as part and parcel hereof.

117. (i) The Petitioners further plead that consequent to the Court of Appeal granting the said Interim Orders on the 21st of February 2007 as more fully set out above, the Petitioners convened a meeting of the Board of Directors of the Company for the purpose of declaring the purported decisions / purported resolutions purportedly taken or passed at the purported meeting held on the 2nd of February 2007, invalid, *ab initio* illegal and of no effect in law due to the lack of a quorum and to reaffirm that the 3rd Petitioner continued to be the Chairman of the Board of Directors of the Company.

True copies of the requisition of the said meeting dated 23rd February 2007 and the Notice of the said meeting are annexed hereto **marked P54A and P54B** and are pleaded as part and parcel hereof.

- (ii) However, when the said meeting was convened the 2nd Respondent sought to forcibly prevent the 3rd Petitioner from functioning as the Chairman of the said meeting and despite the fact that the said resolutions were formally moved, voted on and adopted by a valid majority, he refused to recognise the decision of the majority of the Board. He further insisted that he was still the chairman of the Board and requested the 3rd Petitioner to present a legal opinion on who the chairman of the Board is.

The draft minutes of the said purported meeting obtained from the Company Secretaries are annexed hereto **marked P55** and is pleaded as part and parcel hereof.

118. (i) The Petitioners state that on the 14th of May 2007, the 2nd Petitioner and the 3rd Petitioner convened a further Board Meeting to discuss several matters relating to pending litigation and authorities purportedly granted by the Company. The said meeting was convened by the Company Secretaries on the 16th of May 2007.

True copies of the requisition of the said meeting dated 14th May 2007 and the Notice of the said meeting are annexed hereto **marked P56A and P56B** and are pleaded as part and parcel hereof.

- (ii) When the meeting was convened, the 2nd Respondent acting in an abusive and disruptive manner, forcibly prevented it from being duly conducted, compelling the 3rd Petitioner to adjourn the meeting, upon which the Petitioners, left the Board Room.
- (iii) The Petitioners state that despite the adjournment of the meeting, the 2nd Respondent had continued to proceed to purportedly conduct the meeting and take several illegal and unauthorised decisions.

- (iv) The Petitioners further state that despite the fact that no formal minutes of the previous minutes of meeting of the Board had been circulated by the Secretaries, the 2nd Respondent purported to unilaterally confirm minutes of the meetings previously held.
- (v) The Petitioners state that they obtained draft minutes of the said proceedings on the 16th of May 2007 after which, they wrote to the Company Secretaries protesting against proceedings continuing after the meeting was adjourned.
- (vi) They also forwarded a legal opinion confirming that the 3rd Petitioner continued to be the Chairman of the Company, responding to the previous request of the Company Secretaries for such an opinion.

True copies of the letter dated 28th May 2007 and the Legal Opinion forwarded therewith are annexed hereto **marked P57A and P57B** and are pleaded as part and parcel hereof.

- (vii) The Petitioners plead that the 2nd Respondent continues to unlawfully act as the Chairman of the Company, preventing the 3rd Petitioner from performing such functions.
- (viii) The Petitioners further plead that as a result of the aforesaid unlawful actions on the part of the 2nd Respondent, the 3rd Petitioner also instituted Contempt of Court Proceedings in the Court of Appeal against the 2nd Respondent on the basis that the 2nd Respondent is in violation of the aforesaid Judgement of the Court of Appeal dated 21st February 2007 in CALA 24/2007.

A certified copy of the aforesaid Contempt of Court proceedings bearing No. CA (Contempt) 440/2007 is annexed hereto **marked P58** and is pleaded as part and parcel hereof.

119. (i) In the meantime, on the 5th of December 2006, (being the day after the day on which the 2nd Respondent purported to remove the 3rd Petitioner as the director/ chairman as set out above), the 2nd Respondent gave special notice of his intention to propose two resolutions for the appointment of his wife, Mrs. Priyadharshini Jayawardena and one Cedric Royle Jansz to the Board of Directors of the Company and Milford Exports Ceylon Limited, thereby seeking to alter the composition and balance in the Board of Directors of the said companies.

A true copy of the Notice of the extraordinary general meeting dated 5th December 2006 together with the documents annexed thereto are annexed hereto **marked P59** and are pleaded as part and parcel hereof.

- (ii) The Company Secretaries communicated the said notice to the Petitioners by letter dated 7th December 2006, requesting instructions from the Board of Directors. The Petitioners promptly responded to the Company Secretaries by letter dated 7th December 2006, pointing out that any extraordinary general meeting had to be convened by the Board of Directors and requested the Company Secretaries to convene a meeting of

the entire Board of Directors in consultations with the members of the Board, to consider this matter.

A true copy of the said letter dated 7th December 2006 from the Company Secretaries is annexed with the Petition **marked P60** and a true copy of my letter dated 7th December 2006 is annexed with the Petition **marked P61** and is pleaded as part and parcel thereof.

- (iii) The Petitioners thereafter wrote to the Company Secretaries on the 12th of December 2006, requesting them to convene a meeting of the Board on the 22nd or 23rd of December 2006 at their office or at a neutral venue since the 3rd Petitioner was being forcibly prevented from entering the Company premises at that time.

A true copy of the said letter dated 12th December 2006 of the Petitioners is annexed hereto **marked P62** and is pleaded as part and parcel hereof.

- (iv) The 2nd Respondent responded to the Company Secretaries by his letter dated 14th December 2006 agreeing to the selection of dates and categorically conceding that the venue could be of the choice of the Petitioners.

A true copy of the said letter dated 14th December 2006 of 2nd Respondent is annexed hereto **marked P63** and is pleaded as part and parcel hereof.

120. (i) The Petitioners state that in this background, the Petitioners received a letter from the 2nd Respondent dated 4th January 2007 relating to the pending negotiations on the valuation of the enterprises and the buyout and sell-out described above.

- (ii) In that context, they responded thereto by letter dated 25th January 2007 expressing concern about the attempt by the 2nd Respondent to change the composition of the Board of the Company and alter the arrangements that existed within the Company and Milford Exports Ceylon Limited on how they were managed and administered for over 30 years. In the circumstances, they sought an assurance from the 2nd Respondent that he will continue to maintain the status quo until the valuation was completed and negotiations concluded.

A true copy of the said letter dated 25th January 2007 of the Petitioners is annexed hereto **marked P64** and is pleaded as part and parcel hereof.

- (iii) However, the 2nd Respondent responded by letter dated 19th February 2007 denying that he was seeking to change the status quo and that he was merely providing against an eventuality, should he “drop dead” and that the said appointments were for the purpose of ensuring continuity of the valuation and negotiations without interruptions.

A true copy of the said letter dated 19th February 2007 of the 2nd Respondent is annexed hereto **marked P65** and is pleaded as part and parcel hereof.

- (iv) The Petitioners responded to this contention by their letter dated 21st February 2007, pointing out that all four shareholders of the Company had similar interests to protect, since the entities had been operated on the basis of partnership and that they being the minority, required greater protection on the Board. They further pointed out that if the 2nd Respondent needed to appoint his wife to the Board, the 3rd Respondent (who is a non shareholder – director) could be requested to resign and for his spouse to be appointed in his place. The Petitioners further pointed out in this letter that since there were large undisclosed assets of the Company, which could be made to disappear without any trace at the discretion of the 2nd Respondent, their very limited oversight over such assets could only be assured by ensuring the maintenance of the status quo.

A true copy of the said letter dated 21st February 2007 of the Petitioners is annexed hereto **marked P66** and is pleaded as part and parcel hereof.

- (v) The Petitioners state that these legitimate concerns were ignored by the 2nd Respondent and he continued with his attempt to change the composition of the Board.
121. Thereafter, at a duly convened Board Meeting of the Company, the Company Secretaries were instructed to convene an extraordinary general meeting of the Company for the 21st of February 2007 to consider the resolutions proposed by the 2nd Respondent.
122. The Petitioners state that the said extraordinary general meeting could not be held due to the lack of a quorum. The Petitioners state that they did not attend the said extraordinary general meeting, since they had been advised that had they attended the said meeting, the 2nd Respondent would have exercised his superior voting strength to carry the said resolutions and alter the composition and balance of the Boards of Directors of the Company and Milford Exports Ceylon Limited, contrary to existing arrangements, which existed for over 25 years, thereby gaining complete control over the Boards of Directors of the Company and Milford Exports Ceylon Limited, oppressing the Petitioners.
123. The Petitioners state that despite all the aforesaid events taking place, whereby the 2nd Respondent sought to continually undermine the position of the Petitioners within the Company and its other subsidiaries and associate companies and thereby oppress their rights therein, they desisted from seeking to enforce their rights through recourse to the Courts in the hope that the on going negotiations which were being facilitated through a mutually respected senior Attorney – at – Law, would bear fruit. In fact, the 2nd Respondent, through his legal counsel, had continually assured their Lordships in proceedings before the Supreme Court in Application No. 81/2007 that they were seeking to resolve the issues through negotiations.
124. On the 26th of June 2007, the Petitioners responded to the letter dated 11th June 2007 addressed to them by the 2nd Respondent, in which he had sought an extension of time to complete his valuation, expressing concerns about the additional delay. However, despite these concerns, they agreed to a further extension of time until the 10th of July 2007.

A true copy of the said letter dated 26th June 2007 is annexed hereto **marked P67** and is pleaded as part and parcel hereof.

125. (i) In or around July 2007, the 2nd Respondent forwarded a document from M/s KPMG India, said to contain a valuation of the Company and its subsidiaries and associate companies. However, in fact, the contents of the said document was no more than a broad comment on the Valuation prepared by M/s Ernst & Young, Singapore submitted by the Petitioners to the 2nd Respondent.
- (ii) M/s KPMG, India had valued the entirety of the Company and its subsidiaries and associate companies at a figure of Rs. 2,603,000,000.00 as compared to the Ernst & Young median valuation of Rs. 24,672,000,000.00. The Petitioners state that the valuation of M/s KPMG India is absurdly low, as manifested by the fact that the offer the Petitioners had made to the 2nd Respondent for his proportionate interests, exceeded four times the total value given by M/s KPMG on all of the companies.
- (iii) Despite being sceptical about the *bona fides* of the 2nd Respondent, particularly in view of the valuation provided by him, the Petitioners continued to negotiate with the 2nd Respondent through the good offices of the aforementioned senior Attorney – at – Law, who was formally appointed by both parties as the Facilitator for such negotiations.
- (iv) Consequently several rounds of discussions were held between the Facilitator and the respective auditors in Singapore and in New Delhi at their respective offices during the month of August 2007 and between the representatives of the parties and the auditors in the presence of the Facilitator in Singapore in September 2007.
126. Despite all the efforts made by the Petitioners during these negotiations and their continued offer to sell their shares to the 2nd Respondent at the price nominated by them based on the said Valuation of Ernst & Young and an offer to buy the 2nd Respondent's shares on the same formula with an additional premium of 10%, which the Petitioners plead is the most transparent and fairest mechanism for determining the market price of the said shares, the 2nd Respondent obstinately and unreasonably refused to either buy the shareholding of the Petitioners or to sell the 2nd Respondent's shareholding to the Petitioners. As a result of the failure of the parties to reach any settlement, the aforesaid intermediary withdrew from his role as a facilitator.

Correspondence that took place between the parties in this regard are annexed hereto **marked P68A to P68E** and are pleaded as part and parcel hereof.

127. Thereafter, by its letter dated 31st January 2008, the 2nd Respondent indicated *inter alia*, that he is no longer interested in seeking a resolution to this dispute and advised to the Petitioners to follow any course of action available to them and that the 2nd Respondent is no longer interested even receiving correspondence from the Petitioners and the 3rd Respondent.

A true copy of the said letter dated 31st January 2008 is annexed hereto **marked P69** and is pleaded as part and parcel hereof.

128. Subsequently, the 2nd Respondent issued an Office Memorandum dated 6th May 2007 to the Petitioners (with copies to the Financial Controller and Senior Administrative Officer) stating *inter alia* that

“With immediate effect, no official travel should be undertaken without my specific approval. Same will apply to the other members of the staff as well. No official travel should be approved to any member of the staff, without consulting me. This has become necessary as travel undertaken for the last few months by various Executives and Directors have not been beneficial to the Company and little or no results have been achieved. It has now become the practice for the slightest excuse to send various people overseas when such expenditure is not justified compared to the usefulness of the trip.

I also wish to remind that administration matters such as promotion, demotions, appointments and dismissals too should have my specific approval and no administration function should be undertaken by any Directors, other than myself in respect of all Companies in the Group.”

A true copy of the said Inter Office Memorandum dated 6th May 2008 is annexed hereto **marked P70** and is pleaded as part and parcel hereof.

129. The Petitioners state that this action on the part of the 2nd Respondent is a clear demonstration of his increased hostility towards the Petitioners and the 2nd Respondent is clearly attempting to abrogate the powers of the Board of Directors and concentrate all powers in the Company to himself, thereby completely oppressing the rights of the Petitioners. The Petitioners further state that this action on the part of the 2nd Respondent to exclude the Petitioners from the management of the Company by using his majority shareholding and intimidation.
130. The Petitioners state that in the meantime, the health of the 3rd Petitioner has deteriorated significantly and upon a request made by him to transfer his shares in the Company, Milford Exports (Ceylon) Limited and CBD (save one share each) to the 4th Respondent (who is his daughter and sole heir), the 3rd Petitioner convened a meeting of the Board of Directors of the said three companies for the purpose of approving the transfer of the shares of the 3rd Petitioner in the Company, Milford Exports (Ceylon) Limited and CBD to the 4th Respondent.
131. Thereafter, on or about the 22nd of April 2008 meetings of the Board of Directors of the Company, Milford Exports (Ceylon) Limited and CBD were held and the aforesaid Resolutions were duly approved and the shares of the 3rd Petitioner in the Company, Milford Exports (Ceylon) Limited and CBD were transferred to the 4th Respondent (save one share in each of the said companies).

True copies of the confirmed minutes of the said Board Meetings are annexed hereto **marked P71A, P71B and P71C** and are pleaded as part and parcel hereof.

132. The Petitioners pleads that the 3rd Petitioner transferred the shares to his daughter, who accepted the said share transfer subject to the same terms and conditions on which the 3rd Petitioner became a shareholder of the Company

133. The Petitioners state that the Petitioners having exhausted all avenues available to them in amicably resolving the differences between them and the 2nd Respondent, have no other alternative but to seek redress through Court as specifically provided for in the Companies Act No. 7 of 2007.
134. The Petitioners plead that the aforementioned acts on the part of the 2nd Respondent is evidence of his attempts to oppress the rights of the Petitioners as shareholders of the Company, Milford Exports Ceylon Limited and CBD Exports Limited.
135. The Petitioners further state that the 2nd Respondent had at this stage an “ego” problem when the 2nd Respondent wanted to project himself as a business tycoon.
136. The Petitioners further plead that the 2nd Respondent has appointed persons as “Group Chief Executive Officer”, “Group Financial Controller” and “Group Head of Audit and Compliance” to oversee all matters relating to the affairs of the companies which are owned / controlled by the Company, Milford Exports (Ceylon) Limited and CBD as more fully set out above and thereby has totally excluded the Petitioners from the decision making process and management of the said companies. The Petitioners further state that as a result of the aforesaid action on the part of the 2nd Respondent, the entire basis on which the Petitioners and the 2nd Respondent decided to make investments in other companies has been irrevocably damaged and changed by the 2nd Respondent.

True copies of Circulars issued at the direction / behest of the 2nd Respondent in this regard are annexed hereto **marked P72A, P72B and P72C** and are pleaded as part and parcel hereof.

137. In the aforesaid circumstances, the Petitioners plead that:
 - (i) The Company was formed and managed substantially as a partnership;
 - (ii) The basis and / or the foundation of the Company was that of a partnership in which the Petitioners and the 2nd Respondent were partners equally entitled to participate in the management of the business of the Company.
138. The Petitioners state that the understanding of the Petitioners and the 2nd Respondent was that the Company was to be incorporated substantially on the basis of a partnership, was to be managed on the basis of a partnership and was to be operated on the basis of a partnership.
139. The Petitioners plead that as set out aforesaid from the inception the Company was run as a partnership and on the basis of mutual trust and confidence until the 2nd Respondent wrongfully and / or unlawfully breached the underlying basis and foundation upon which the Company was incorporated and managed and commenced managing the Company in the dictatorial manner that the 2nd Respondent wanted.
140. The Petitioners plead that from on or about the year 2005, the management and the operation of the Company was in the hands of the 2nd Respondent. The Petitioners protested but to no avail.

141. The Petitioners state that at times the 2nd Respondent became abusive and even threatened physical harm
142. The Petitioners state that since the year 2005, the Petitioners and the 2nd Respondent have not been adhering to the initial understanding and / or foundation and / or basis on which the Company was incorporated and run, namely that it would be akin to a partnership between the Petitioners and the 2nd Respondent.
143. The Petitioners state that due to the actions of the 2nd Respondent, the Company is no longer being run as a partnership.
144. The Petitioners state that despite several objections by the Petitioners, the 2nd Respondent continues to run the business of the Company in the way and manner he wants.
145. The Petitioners state that in the circumstances, the basis and / or foundation upon which the Company was incorporated and managed and upon which the Petitioners and 2nd Respondent entered into the relationship has now been terminated by the 2nd Respondent.
146. The Petitioners plead that the Petitioners and the 3rd Respondents have been totally kept out of the management and operations of the Company.
147. The Petitioners further state that from 2005:
 - (i) The Petitioners did not receive what in truth and in law they should receive from the Company;
 - (ii) there have been no proper meetings of the shareholders and / or Board of Directors except as hereinbefore explained;
 - (iii) The 2nd Respondent has run the Company as if it was a proprietary concern.
148. In the circumstances, the Petitioners state that the basis and / or foundation upon which the Company was incorporated has now ceased to exist and / or taken away.
149. The Petitioners state that in the circumstances, the affairs of the Company are being conducted in a manner that is oppressive to the Petitioners.
150. The Petitioners further state that this situation cannot be remedied by the Board of Directors and / or by the shareholders at a general meeting in view of the particular attitude and behaviour of the 2nd Respondent.
151. The Petitioners plead that the Petitioners had and have a legitimate expectation that as long as the company exists it would be run as a partnership.
152. The Petitioners plead that the Petitioners have a legitimate expectation that the Petitioners and the 2nd Respondent would be equal partners in the running of the business and/or that the running of the business would be based upon a

partnership and/or principles of partnership upon which the Petitioners and the 2nd Respondent have an equal say and standing.

153. The Petitioners plead that the 2nd Respondent has unilaterally chosen to end the partnership and/or quazi partnership and/or terminate the running of the business on the principles of a partnership.
154. The Petitioners plead that the business of the company and/or the affairs of the Company and/or the company is not being run on the principles of a partnership which was the basis and the foundation of the coming together of the Petitioners and the 2nd Respondent.
155. In the circumstances set out hereinbefore the Petitioners plead that the Petitioners and the 2nd Respondent had formed the Company and entered in to the membership thereof on the basis of a personal relationship involved in mutual confidence and/or understanding.
156. The Petitioners plead that the agreement and/or understanding of the association between the Petitioners and the 2nd Respondent and the incorporation of the Company was that the character of the association between the Petitioners and the 2nd Respondents as set out hereinbefore would remain the same.
157. In the circumstances the Petitioners plead that the foundation and/or gravamen of the associations between the Petitioners and the 2nd Respondent was that all affairs of the Company would be run on the principal of a partnership not withstanding the incorporation of the 1st Respondent company.
158. The Petitioners state that the 1st Respondent company is presently in a state and/or run in a manner that was not contemplated by the Petitioners and the 2nd Respondent at the time of the commencement of their association to do business between them and/or at the time of the incorporation of the Company.
159. In the aforesaid circumstances the Petitioners plead that the removal of the foundation and/or gravamen of association upon which the Petitioners entered into a business relationship is an oppression of the Petitioners.
160. The Petitioners further plead that the affairs of the Company are being conducted in a manner prejudicial to the interests of the Company and/or a material change has taken place in the management of the Company and that by reason of that change it is likely that the affairs of the Company would be conducted in a manner prejudicial to the interests of the Company.
161. The Petitioners state that in the circumstances of this case there was no useful purpose in summoning board meetings in that *inter alia*,
 - (i) At all times material the 2nd Respondent controlled the majority of the shares of the 1st Respondent Company and/or;
 - (ii) The 2nd Respondent deliberately ignored and/or flouted any decision of the Board of Directors of the Company; and

- (iii) The 2nd Respondent carried on the affairs of the Company as he wanted irrespective of the wishes and/or decisions of the Board of Directors and / or the Petitioners.
162. The Petitioners specifically plead that the 2nd Respondent carried out his own wishes and managed and controlled the Company in the manner he wishes notwithstanding any decision of the Petitioners.
163. The Petitioners plead that on numerous occasions the Petitioners have indicated their decisions and/or intentions to the 2nd Respondent who has contumaciously and deliberately ignored the same and acted in a manner that suits him.
164. The Petitioners plead that the 2nd Respondent has in breach of the foundation and/or basis of the commencement of the association between the Petitioners and the 2nd Respondent deliberately excluded the Petitioners from the management of the affairs of the 1st Respondent Company.
165. The Petitioners plead that in the circumstances of this case the Petitioners are 'locked in' to the Company without other recourse.
166. The Petitioners plead that there is a deadlock between the Petitioners and the 2nd Respondent.
167. The Petitioners plead that the Petitioners have lost all confidence in the 2nd Respondent.
168. The Petitioners plead that the 2nd Respondent is continuing to
- (i) Exclude the Petitioners from the management of the Company;
 - (ii) Run the Company in the manner in which he solely wishes; and
 - (iii) Exclude the Petitioners from the management of the Company and/or the decision making process
169. The Petitioners state that the Petitioners are ready and willing :
- (i) To nominate a figure at which the 2nd Respondent would have the choice of either selling his shares or to buy the shares of the Petitioners and the 4th Respondent; or
 - (ii) To permit the 2nd Respondent to nominate a figure at which the Petitioners and the 4th Respondent would either sell their shares and / or buy the shares of the 2nd Respondent.
170. The Petitioners state that it is just and equitable and in the interests of the shareholders and the Company for the Petitioners and the 4th Respondent to sell their shares to the 2nd Respondent and / or buy the shares of the 2nd Respondent.
171. The Petitioners state that pending the aforesaid sale of the shares by the Petitioners and the 4th Respondent on the one hand to the 2nd Respondent and / or the 2nd Respondent to the Petitioners and the 4th Respondent on the other hand the

status quo of the Board of Directors of the Company ought to be maintained without any change, in order to protect their respective interest in the Company.

172. The Petitioners state that no prejudice whatsoever would be caused to the Company if the status quo on the Board of Directors of the Company remains the same until the final hearing and determination of this action.
173. The Petitioners further plead that in law, the *status quo* on the Board of Directors should remain until the sale of the shares of the Petitioners and the 4th Respondents to the 2nd Respondent on the one hand and / or the shares of the 2nd Respondent to the Petitioners and the 4th Respondents on the other hand.
174. The Petitioners plead that grave and irreparable loss and damage would be caused unless the interim order prayed for herein is granted by Court.
175. The Petitioners plead that though the Petitioners are on the Board of Directors, the actual control and management of the Company is in the hands of the 2nd Respondent though the Petitioners have at all times protested about the same and attempted without success to change it.
176. In the aforesaid circumstances, the Petitioners plead that the 2nd Respondent is acting in a manner that is oppressive to the rights and entitlement of the Petitioners and is suppressing their rights and entitlements as minority shareholders of the Company.
177. The Petitioners further plead that grave and irreparable loss, harm and damage will be caused to the Petitioners unless the 2nd Respondent is restrained from continuing to oppress and deprive the Petitioners of their rights and entitlements as a minority shareholder of the Company.
178. In the aforesaid circumstances, a cause of action has accrued to the Petitioners to seek:
 - (a) As the Court deems fit and proper in terms of the law to issue Notice in the first instance and / or in the alternative to issue an order under and in terms of Section 377(a) and / or Section 377(b) of the Civil Procedure Code;
 - (b) For a declaration that the affairs of the 1st Respondent Company are being conducted in a manner oppressive to the Petitioners;
 - (c) For a declaration that the 2nd Respondent is conducting the affairs of the 1st Respondent Company in a manner in violation of the foundation and / or basis upon which the 1st Respondent Company was incorporated and managed;
 - (d) An order directing the 2nd Respondent to purchase the shares of the Petitioners and the 4th Respondent in the 1st Respondent Company at a price per share nominated by the Petitioners or to sell the shares of the 2nd Respondent in the 1st Respondent Company to the Petitioners at the said price per share nominated by the Petitioners;

- (e) In the alternative to (d) above, an order directing the Petitioners to purchase the shares of the 2nd Respondent in the 1st Respondent Company at a price per share nominated by the 2nd Respondent **or** in the event the Petitioners not buying the shares at the said price to sell the shares of the Petitioner and the 4th Respondent in the 1st Respondent Company to the 2nd Respondent at the said price per share nominated by the 2nd Respondent;
- (f) For an interim order preventing the 1st Respondent Company and / or the 2nd Respondent from taking any steps whatsoever to alter the present status quo of the Board of Directors of the 1st Respondent Company, until the final hearing and determination of this action.

179. Along with this Petition, the Petitioners provide an indemnity in terms of the provisions of Section 521 of the Companies Act No. 7 of 2007.

WHEREFORE the Petitioner prays that Your Honour's Court be pleased to:

- (A) As the Court deems fit and proper in terms of the law to issue Notice in the first instance and / or in the alternative to issue an order under and in terms of Section 377(a) and / or Section 377(b) of the Civil Procedure Code;
- (B) Grant a declaration that the affairs of the 1st Respondent Company are being conducted in a manner oppressive to the Petitioners;
- (C) Grant a declaration that the 2nd Respondent is conducting the affairs of the 1st Respondent Company in a manner in violation of the foundation and / or basis upon which the 1st Respondent Company was incorporated and managed;
- (D) Make an order directing the 2nd Respondent to purchase the shares of the Petitioners and the 4th Respondent in the 1st Respondent Company at a price per share nominated by the Petitioners **or** to sell the 2nd Respondent's shares in the 1st Respondent Company to the Petitioners at the said price per share nominated by the Petitioners;
- (E) In the alternative to (D) above, make an order directing the Petitioners to purchase the shares of the 2nd Respondent in the 1st Respondent Company at a price per share nominated by the 2nd Respondent **or** in the event of the Petitioners not buying the shares at the said price to sell the shares of the Petitioners and the 4th Respondent in the 1st Respondent Company to the 2nd Respondent at the said price per share nominated by the 2nd Respondent;

- (F) Issue an interim order preventing the 1st Respondent Company and / or the 2nd Respondent from taking any steps whatsoever to alter the present status quo of the Board of Directors of the 1st Respondent Company, until the final hearing and determination of this action;
- (G) Grant costs; and
- (H) Grant such other and further relief as to this Court shall seem meet.

Attorney – at – Law for the Petitioners