

Delhi High Court

Videocon Industries Limited ... vs Ram Raj Bhandari & Ors. on 23 December, 2022

NEUTRAL CITATION NO:2022/DHC/005815

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Pronounced on: 23rd December 2022

+ RFA 454/2022
VIDEOCON INDUSTRIES LIMITED THROUGH ITS RP & ANR.

Through: Mr. Jayant K. Mehta, Sr.
with Mr. Vineet Sinha, Mr.
Taanu G. Tyagi and Ms. Ka
Advocates

versus

RAM RAJ BHANDARI & ORS.
Through: Mr. C. Shekhar and Mr. Vi
Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

1. The instant appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') read with Order 43 Rule 1 of the Code, assailing the order dated 21 st March 2022 passed by the learned trial Court whereby, the plaint of the Appellants herein (hereinafter referred to as 'plaintiff companies') was rejected under Order VII Rule 11(d) of the Code against the Respondents herein.

FACTUAL MATRIX

2. The facts necessary for the disposal of the present appeal are that the plaintiff companies held 50.21% equity shares in Tirupati Ceramics Limited Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 (hereinafter referred to as 'TCL') being 30,00,000 equity shares of Rs. 10/- each and also have a nominee Director on the Board of said company. TCL was declared as a sick company and consequently, proceedings were pending before the Board for Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR'). The plaintiff companies applied for impleadment as a party to such proceedings to which the Respondent No.1 and 2 through TCL opposed but the BIFR allowed the impleadment application. This order allowing impleadment was challenged by TCL before the Appellate Authority for Industrial and Financial Reconstruction, Delhi (hereinafter referred to as 'AAIFR') which was dismissed and a further appeal to the Delhi High Court in W.P.

(C) No. 11327/2015 was also dismissed by the Division Bench of this Court.

3. During the pendency of the proceedings before BIFR, the plaintiff companies entered into a Memorandum of Understanding (hereinafter referred to as 'MoU') dated 25th January 2011 with Respondent No.3 to transfer the said 50.21% of the issued share capital of TCL to the Respondent No.3, and the Respondent No.3 in return agreed to deposit Rs. 60 lakhs with the plaintiff companies as security for the performance of the said MoU. In furtherance of the MoU, the plaintiff companies delivered the original share certificates covering the shares along with a Transfer Deed signed in blank as a security for the fulfilment of its obligation under the MoU. It was further agreed between the parties to the said MoU that the Respondent No.3 will not lodge the said shares for transfer until the conclusion of the proceedings before the BIFR and hence, till such time the plaintiff companies would remain as the owners of the respective shares and Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 that the said MoU does not confer any right or title in the Respondent No.3 in the said shares except merely an option to purchase the same after conclusion of the proceedings before the BIFR.

4. Subsequent to the above-mentioned events, the erstwhile Chairman, Mr. VN Dhoot, of the plaintiff companies was approached by the Respondent No.2 with an offer to purchase the said shareholding of the plaintiff companies in TCL. At this stage, the plaintiff companies have claimed in the present appeal that their erstwhile Chairman due to lack of communication of the MoU entered into by the plaintiff companies and on account of serious mistake accepted the offer of Respondent No.2 to purchase the shares of TCL. In furtherance of his acceptance, he accepted Rs. 60,00,000/- (sixty lacs rupees) in favour of the plaintiff no.1 and Rs. 30,00,000/- (thirty lacs rupees) in favour of plaintiff No.2 and also addressed separate letters each dated 26th July 2013 to the BIFR and the operating agency stating therein, that the Videocon Group has sold its entire shareholding to the Respondent No.1 & 2 and accordingly, wish to withdraw their impleadment from BIFR in case No. 65/2002.

5. Not only this, Mr. Dhoot also addressed a letter dated 26 th July 2013 to TCL that the original share certificates have been misplaced and that the Respondent No.1 may apply for duplicate share certificates from TCL; and another letter on the same date to the company that the Nominee of the plaintiff companies on the Board of Directors of the company is being withdrawn. On 5th September 2013, the nominee Director of the plaintiff companies, Mr. Yatinder Vir Singh, informed Mr. Dhoot about the MoU Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 dated 25th January 2011 entered into by the plaintiff companies with the Respondent No.3.

6. Taking cognizance of this information, Mr. Dhoot clarified the matter to Respondent No.2 vide email dated 5th September 2013, that by mistake he has entered into a transaction with them as the plaintiff companies had already entered into a MoU with the Respondent No.3 in respect of the 50.21% shareholding in TCL and that, the plaintiff companies are ready to refund the entire sum of Rs.90.00.000/- (ninety lakhs rupees) to the Respondent No.2 along with interest. In response to this email, the Respondent No.2 addressed an email to Mr. Dhoot that the transaction between the

plaintiff companies and Respondent No.2 hold good and the referred transaction between the plaintiff companies and Respondent No.3 is void.

7. Subsequent to this correspondence, the Respondent No.1 called for a meeting of the Board of Directors of TCL on 27th August 2013, at which meeting resolutions were passed to the effect that the duplicate share certificates be issued in respect of shareholding of the plaintiff companies and the said shares be transferred in favour of the Respondent No.1 and 2 jointly.

8. On 3rd September 2013, TCL wrote another email to the plaintiff companies thereby, demanding the original share certificates of the said 30 lakhs shares with a condition that, in case the original share certificates were not handed over or if the plaintiff companies chose not to respond before 5:00 P.M. on 5th September 2013, it will be considered that the Appellants have lost the said share certificates and TCL shall issue duplicate share Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 certificates in favour of Respondent No.1. In response, vide email dated 5 th September 2013, the plaintiff companies refused to hand over the original share certificate to TCL on the ground that it was not in the possession of them and re-iterated its stand to refund the entire sum of ninety lakhs rupees. In the meantime, TCL which was impleaded as a contesting Defendant, was liquidated and was ordered to be dissolved vide order dated 24th November 2020 passed by the NCLT, Chandigarh Branch.

9. Being aggrieved with the fact that the Respondent No.1 and 2 were resolute on issuance of the duplicate share certificates despite the plaintiff companies having entered into a MoU with Respondent No.3, the plaintiff companies filed a civil suit bearing No. CS(OS) 2498/2015 (later renumbered as 5700/2016) seeking first, (a) prohibitory injunction the Respondents No.1 and 2 from claiming themselves to be transferees or holders of the said 30 lakh shares held by the plaintiff companies in TCL; secondly, (b) a declaration to the effect that the Appellant No.1 is the rightful holder of 50.21% shares in TCL; thirdly, (c) a prohibitory injunction restraining TCL from treating Respondent No.1 and 2 as holders of the said 30 lakhs shares and fourthly, (d) a prohibitory injunction restraining TCL and Respondent No.1 and 2 from transferring the said shares inter alia other reliefs. An application under Order 39 Rule 1 and 2 of the Code was also accompanied seeking temporary injunction in respect of the reliefs sought at point (a), (c) and (d).

10. This civil suit was removed from the file as the plaint came to be rejected by the learned trial court under Order VII Rule 11(d) of the Code vide order dated 21st March 2022 on the ground that the civil suit was barred Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 by virtue of Section 430 of the Companies Act, 2013 (hereinafter referred to as 'the Act, 2013') as the appropriate forum for the adjudication of the disputes involved is the National Company Law Tribunal (hereinafter referred to as the 'NCLT'.)

11. Aggrieved with the rejection of the plaint by the learned trial Court, the plaintiff companies have preferred this appeal impugning the order of the rejection of the plaint.

SUBMISSIONS On behalf of the Appellants:

12. Mr. Jayant Mehta, learned senior counsel in support of the averments made in the instant appeal has submitted that in the peculiar facts and circumstances of the instant case, the bar under Section 430 of the Act, 2013 is not attracted. He has submitted that Section 430 is pregnant with the phrase 'in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine' and in the present case, the NCLT is not empowered to adjudicate upon the issue of disputed title of share in addition to the relief of permanent mandatory injunction and prohibitory injunction, so by no stretch interpretation such powers can be read into the powers and functions of the NCLT to attract the bar envisaged under Section 430 of the Act, 2013.

13. Mr. Mehta has also submitted that the proceedings before the NCLT are only summary in nature and hence, the NCLT is not empowered to adjudicate upon the prayers sought in the instant case as it requires leading of evidence at length. It is submitted that on a bare perusal of Section 58 of the Act, 2013 it can be deciphered that NCLT has no power to decide the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 issues of title and it can only decide the issue of rectification of register of members. It is further submitted that the Respondents No.1 and 2 have manufactured the minutes of meeting dated 27th August 2013 which have been impugned by way of the instant case and hence, such a plea can also be adjudicated only by the civil Courts and not the NCLT.

14. Mr. Mehta has also taken a vehement plea that the case at hand is not governed by the provisions of the Companies Act, 2013 rather the entire dispute at hand is governed by the provisions contained in the Companies Act, 1956. He has also submitted that the facts of the CS(OS) 5700/2016 relates to the period when even the Companies Act, 2013 was not notified and by no stretch of imagination can the present disputes be governed by the Companies Act, 2013.

15. Learned senior counsel has also contended that the learned trial Court has failed to appreciate that TCL has been liquidated and there is no existing entity as on the date of the impugned order and hence, in the absence of an existing corporate entity, the question regarding invoking of the jurisdiction of NCLT regarding conduct of company's affairs does not arise. As Sections 241-244 of the Act, 2012 are not applicable, so if this Court takes a view that the civil suit is barred in view of Section 430 of the Companies Act then, it would render the Appellants remediless which is not the intention of the legislature.

16. Learned senior counsel has relied on the following judicial pronouncements to contend inter alia that the NCLT cannot go into seriously disputed questions of title; and hence, the present appeal is entitled Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 to be allowed and the impugned order passed by the learned ADJ is liable to be set aside.

(i) Jai Mahal Hotels Pvt. Ltd. Vs Devraj Singh & ORs. (2016) 1 SCC 423;

¶5. We are of the opinion that there is no real dispute between the parties as held by the High Court. DR Group has furnished the succession certificate as well as the transfer deed executed by GD in their favour. The same had to be acted upon. Moreover, the civil court in interim application moved by UD Group held that UD Group had no prima facie case. The said order was required to be acted upon subject to any further order that may be passed in any pending proceedings between the parties. There is no conflicting order of any court or authority. There is thus, no complicated question of title. Moreover, there is no bar to adjudication for purposes of transfer of shares unless the court finds otherwise. The stay order obtained by GD herself could not debar her from making a statement to settle the matter. The judgments relied upon by the appellants have no application to such a fact situation.

16. In *Ammonia* [(1998) 7 SCC 105], the scope of jurisdiction of the Company Court to deal with an issue of rectification in the Register of Members maintained by the Company was considered. Following *Public Passenger Service Ltd. v. M.A.*

Khadar [AIR 1966 SC 489], it was held that jurisdiction under Section 155 was summary in nature. If for reasons of complexity or otherwise, the matter could be more conveniently decided in a suit, the Court may relegate the parties to such remedy. Subject to the said limitation, jurisdiction to deal with such matter is exclusively with the Company Court. It was observed: (*Ammonia* case [(1998) 7 SCC 105], SCC p. 122, para 31) ¶31. ... It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 [Ed.: Corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988.] and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction.

17. Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/Company Law Board. The jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/Company Law Board.

(ii) *Standard Chartered Bank Vs. Andhra Bank & Ors.* (2006) 6 SCC 94;

¶9. We shall now turn to the nature of the proceedings in Misc. Petition No. 81/95. This petition was presented under Section 111 of the Companies Act, 1956. Section 111(1) provides for the power of refusal by a company to register the transfer of debentures to a transferee. The transferor or the transferee has a right of appeal to the Tribunal (then, the CLB) under sub-section (2) of Section 111.

The nature of proceedings under Section 111 are slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in M/s Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 Ammonia Supplies Corporation (P) Ltd. v. M/s Modern Plastic Containers Pvt. Ltd. and Ors. that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title.

(iii) N. Ramaji Vs. Ashwath Narayan Ramji & Anr. (2017) SCC Online Mad 37591;

□30. The learned Senior Counsel for the petitioner contended that the judgment rendered by the Division Bench of Karnataka High Court in (2016) 198 CompCas 481 (Kar) in (K. Ravinder Reddy v. Alliance Business School), was challenged in the Apex Court and by order dated 10.03.2017, it was held that the question of law with regard to Section 58 of the Companies Act is kept open. The learned Senior Counsel for the first respondent in reply submitted that the Hon'ble Apex Court has held in the said judgment that there is no reason to interfere with the impugned order passed by the High Court of Karnataka and further submitted that the said judgment of Hon'ble Apex Court support the case of the first respondent as the judgment of the Karnataka High Court has been confirmed by the Hon'ble Apex Court.

31. The contention of the learned counsel for the petitioner is that as per Section 10GB of the Companies Act, 1956, which was inserted by the Companies (Second Amendment) Act, 2002, the suit is barred by the provisions of the Companies Act, is devoid of merits. As already held supra, the second relief of permanent injunction relates to title of the share and this Section is not applicable to the facts of the present case. The learned Judge held that the suit relates to title of the share and therefore dismissed the application. The judgment relied on by the learned Senior Counsel for the petitioner do not advance Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 the case of the petitioner. On the other hand, the judgments relied on by the learned Senior Counsel for the first respondent are squarely applicable to the facts of the present case.

(iv) K. Ravinder Reddy Vs. Alliance Business School & Ors. Company Appeal No. 8/2016 (Kar HC).

□41. We may record that, by now it is well settled that the jurisdiction of the CLB is summary in nature more particularly when by express omission of the power which it possessed as per earlier provision of section 111(7) of the Act of 1956. Further, the CLB has no jurisdiction to examine the genuineness of the documents more particularly when in the criminal case, the charge sheet is filed on the premise that the documents are not genuine and are forged documents it cannot be said that

the jurisdiction of the civil court is barred since the civil court would possess the jurisdiction for deciding the inter se dispute between the parties unless the jurisdiction is impliedly or expressly barred by any statute. Further, it is only in the civil court proceedings there will be sufficient opportunity to the appellant to prove that the documents of transfer are genuine by examination of his witnesses and the cross-examination of the witnesses of the respondents 2 and 3. As such, in a matter where, in the criminal complaint after investigation, it is found that the documents are forged and not genuine, it would be more appropriate to relegate the party to the civil court for proving the genuineness of the document including by proving the signature because the civil court will have the competence to make appropriate declaration in this regard irrespective of the investigation made by, the Police or the criminal case. After the genuineness of the document, is proved and the appropriate declaration is made by the civil court, unless otherwise prohibited by any competent forum known to law, CLB will have power to direct the company to transfer the share in favour of the appellant but until such declaration is granted by the civil court, CLB may not be in a position to issue direction to the company to transfer the share Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 for the simple reason that unless the documents are found to be genuine including the signature thereof, the question of effecting transfer of shares or issuance of directions for transfer of shares may not arise. Under these circumstances, we do not find that CLB has committed any error in exercise of discretion in relegating the appellant to approach before the civil court for getting appropriate declaration about the genuineness of the documents for transfer of the shares in their favour.

(v) Jai Kumar Arya vs Chhaya Devi, (2017) SCC Online Del 11436.

□18. We are constrained, therefore, to observe that it is not possible to accept Mr. Chandhiok's submission that the reliefs claimed by the plaintiffs in CS (OS) 285/2017 fall, statutorily, within the purview of jurisdiction of the NCLT.

119. There is, in fact, no provision, in the Act, whereunder the claim contained in CS (OS) 285/2017, as made by the plaintiffs

- irrespective of the merit or demerit thereof - could have been preferred before the NCLT. No case of exclusion of the jurisdiction of the Civil Court, under Section 430 of the Act or, consequently, under section 9 of the CPC can, therefore, be said to have been made out.

17. In view of the above discussion on facts and law, it is submitted that the learned trial Court has erred in not considering the fact of dissolution of TCL and accordingly, the order dated 21st March 2022 rejecting the plaint under Order VII Rule 11(d) cannot be sustained in law and is liable to be set aside.

On behalf of the Respondents:

18. Per Contra, learned counsel appearing on behalf of the Respondents has refuted the arguments advanced by the learned senior counsel for the appellants by contending that from the perusal of the

plaint as well as the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 memorandum of appeal, it emerges that the Appellants are seeking the following reliefs:

a. Cancellation of sale of shares to the Respondent No. 1 and 2 by praying for decree of declaration;

b. Declaration with regard to the owner of the above shares; c. Restrain order against the Respondent No. 1 and 2 from representing themselves to be the shareholders of TCL; d. Restraining the Respondent No. 1 and 2 from transferring the said shares to third party; and e. The meeting of board of directors of TCL dated 27th August 2013 to be null and void and not to be given effect to;

19. In this background, it is submitted that the issues pertaining to allotment of shares, transfer of shares, cancellation of shares, issuance of duplicate shares, and ownership of shares are dealt under the various provisions of the Act, 2013 which can be referred by routing to Sections 39, 46, 173, 59, 179, 241, 242, 243 and 244 of the Act, 2013 and accordingly, the submission to the effect that the National Company Law Tribunal (hereinafter referred to as 'NCLT') has no jurisdiction to deal with the issues involved in the present case is erroneous and belittles the praiseworthy legislative intention to empower the NCLT with wide jurisdiction.

20. Learned counsel has strongly relied on the following judicial pronouncements to content inter alia that the instant appeal is bound to fail for being meritless:

(i) Shashi Prakash Khemkha (D) through Lrs & Anr. vs. NEPC Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 India & Ors., (2019) 18 SCC 569.

¶6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded.

(ii) SAS Hospital Pvt. Ltd. & Anr. vs Surya Construction Pvt. Ltd. & Ors., CS (Comm) No. 1496/2016 decided on 6 th October 2018 (Del HC).

¶8. If these two tests are applied i.e., as to whether the Tribunal's order is attributed finality and as to whether the Tribunal would be able to do what a Civil Court could do, it is clear that an order under Section 59 of the 2013 Act has specific consequences for non-compliance. The order is appealable to the appellate tribunal. The Tribunal has to apply the principles of natural justice. Under Section 242(2)(d) of the 2013 Act, the Tribunal can impose restrictions on the transfer or allotment of the shares of the company. It can also pass an interim order under Section 242(4) of the

2013 Act. Consequences for non-compliance have also been provided under Section 242(4) of the 2013 Act. The Plaintiffs have a right to apply Section 242 of the 2013 Act as they own 99.96% shareholding which has been diluted to 21.44%. Any member with more than 1/10th of the issued share capital can approach the Tribunal. Thus, even as per Jai Kumar Arya (supra), the order being one, which can be passed under Section 242 of the 2013 Act, the NCLT has the jurisdiction. In Jai Kumar Arya (supra), the Court was concerned with the power of removal of directors, which is distinct from the disputes involved in the present case. However, by applying the tests laid down therein, Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 it is clear in the facts of this case that involving issues relating to allotment of share capital, alteration and rectification of the register of members, the NCLT is 'empowered to decide' - leading to the conclusion that this Court has no jurisdiction.

33. The Legislative scheme having been changed, with the amendments which have brought about and for all the reasons stated herein above, this Court holds that the present suit is liable to be rejected leaving the Plaintiff to avail its remedies, in accordance with law before the NCLT.

(iii) MAIF Investments India PTE Ltd. versus Ind-Barath Power Infra Limited by NCLAT in CA (AT) No. 334/2018.

"20. In this matter, there does not appear to be dispute with regard to the execution of agreements between the parties and the correspondence referred to by the Appellant. Legal proceedings which took place when the Appellant and Respondent No.13 sent communication dated 29th August, 2017 seeking to redeem NCDs and convert CCDs is also not in dispute. There does not appear to be dispute that Respondent No.1 (which as per the Company Petition holds 99.99% shares in Respondent No.2) resorted to litigation by first moving under the Arbitration and Conciliation Act and then filing Company Petitions; taking stay; and subsequently withdrawing the Petitions. In the arguments on the part of contesting Respondents, there is no resistance to the submissions of Appellant regarding facts that after withdrawal of the Company Petitions by Respondent No.1, the Respondent No.2 proposed to convert the CCDs, which was opposed by the Appellant and Respondent No.13 with even Investor Directors opposing and at the penultimate stage resigning from the Board, but that contesting Respondents still went ahead to convert the CCDs.

23. Undisputedly, the Appellant has had held one share in the Company. Its grievance is regarding making entry in the Register of Members showing another 906599 equity shares Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 treating the same as having been converted from CCDs. As per Section 59, the only question relevant is whether the name of Appellant has been entered regarding shares said to have been issued against CCDs to be without sufficient cause . In this matter although there is Investment Agreement, we will not dwell much on the Agreement as admittedly, the protection sought by the Appellant and Respondent No.13 while entering into the Investment

Agreement was translated into amendment of the Articles of Association which clearly has a higher binding nature and protection as the Company as well as all the shareholders including Directors become bound by the same.

31. The contesting Respondents have relied on Judgement in the matter of Ammonia Supplies Corporation (P) Ltd. Versus Modern Plastic Containers Pvt. Ltd. and others reported in 1998 7 SCC 105 and the learned NCLT has also referred to this Judgement of the Hon'ble Supreme Court so as to state that there are contentious issues and they cannot be looked into under Section 59 Petition of the Act. This Tribunal had the occasion of considering Section 59 in the changed context of the Companies Act, 2013 coming into force in the matter of Smiti Golyan & Ors. Vs. Nulon India Limited & Ors. reported in MANU/NL/0118/2019. We had observed in that Judgement as under:-

21. In para - 31 of the Judgement in the matter of Ammonia Supplies portions of which we have reproduced above, the Hon'ble Supreme Court had observed that there was nothing under the Companies Act expressly barring the jurisdiction of the Civil Court and thus mandated that the Court should examine whether prima facie what is said is a complicated question or not. The earlier Section 10 GB of the companies Act, 1956 relating to Civil Court not to have jurisdiction, does not appear to have been enforced but the position has now changed with coming into force of Companies Act, 2013 and Section 430 of the Act providing that Civil Court would not have jurisdiction to Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act. Under the new Companies Act - Section 59, it is for the NCLT to consider if the name of any person is without sufficient cause entered or omitted from the register of members of a company. Recently in the matter of Shahi Prakash Khemka (Dead) Through LRs. and Another Versus NEPC Micon (Now called NEPC India Ltd.) and Others Civil Appeal Nos.1965 - 1966 of 2014 decided on 8th January, 2019 - 2019 SCC OnLine 223, the Hon'ble Supreme Court of India dealt with disputes which were before the Hon'ble Supreme Court relating to exercise of power under Section 111-A of the Companies Act, 1956 (relating to rectification of register on transfer) and noticed above Judgement in the matter of Ammonia Supplies . It was observed:- Learned counsel for the appellants has drawn our attention to the view expressed in Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and Others (1998) 7 SCC 105, to canvass the proposition that while examining the scope of Section 155 (the predecessor to Section 111), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit. The submission of the learned counsel is that the subsequent legal developments to the impugned order have a direct effect on the present case as the Companies Act, 2013 has been amended which provides for the power of rectification of the Register under Section 59 of the said Act. Learned counsel has also drawn our attention to Section 430 of the Act, which reads as under:-

430. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate. The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 59 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. It is apparent that now even otherwise, exclusive jurisdiction with regard to Section 59 is of the NCLT. NCLT would now clearly have jurisdiction to deal with rectification and all questions including incidental and peripheral questions raised with regard to rectification for the purpose of deciding legality of the rectification. What could earlier be looked into to see if prima facie made out can now be considered if proved to justify rectification even if it was to be said to be complicated question.

32. We have already mentioned that the learned Counsel for the Appellant has relied on the above Judgement of Hon'ble Supreme Court in the matter of Shashi Prakash Khemka Versus NEPC Micon and others . For above reasons, we are of the view that with change of law now under Section 59 of the Act, NCLT can deal with rectification and all questions Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 including incidental and peripheral questions raised with regard to rectification for the purpose of deciding legality of the rectification. NCLT which exercises widest possible powers in a matter under Section 241, 242 of the Act; which even otherwise is expected to always keep interest of the Company in forefront, cannot be treated as unequipped only because the Petition is under Section 59 of the Act. In the present matter, firstly, we are of the view that there were really no complex questions involved and even if it was to be said that there were any complex questions, the same had to be decided by the NCLT and in Appeal, this Tribunal is bound to consider whether or not entry made in the Register of Members could be upheld.

(iv) Smiti Golyan & Ors. vs. Nulon India Ltd., Company Appeal (AT) 222 of 2018.

20. Thus considering the disputes raised in the present matter and the evidence available, keeping in view observations in the matter of "Ammonia Supplies", we have considered the same and find that the learned NCLT rightly decided the matter. We have purposely used the word "prima facie" in the above paragraph analysing the matter on the basis of law as it stood before coming into force of

New Act.

21. In para - 31 of the Judgement in the matter of "Ammonia Supplies" portions of which we have reproduced above, the Hon'ble Supreme Court had observed that there was nothing under the Companies Act expressly barring the jurisdiction of the Civil Court and thus mandated that the "Court" should examine whether prima facie what is said is a complicated question or not. The earlier Section 10 GB of the companies Act, 1956 relating to Civil Court not to have jurisdiction, does not appear to have been enforced but the position has now changed with coming into force of Company Appeal (AT) No.222 of 2018 Companies Act, 2013 and Section 430 of the Act providing that Civil Court would not have jurisdiction to entertain any suit or proceeding in respect of any matter which Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act. Under the new Companies Act - Section 59, it is for the NCLT to consider if the name of any person is "without sufficient cause" entered or omitted from the register of members of a company. Recently in the matter of "Shahi Prakash Khemka (Dead) Through LRs. and Another Versus NEPC Micon (Now called NEPC India Ltd.) and Others" Chdl Appeal Nos.1965 - 1966 of 2014 decided on 8th January, 2019 - 2019 SCC OnLine 223, the Hon'ble Supreme Court of India dealt with disputes which were before the Hon'ble Supreme Court relating to exercise of power under Section 111-A of the Companies Act, 1956 (relating to rectification of register on transfer) and noticed above Judgement in the matter of "Ammonia Supplies"....

21. Learned counsel has further submitted that it is a settled proposition of law that the maintainability of a suit and jurisdiction of the Court to try and decide it are governed as on the day of the presentation of the suit and no subsequent event can either create jurisdiction or take away jurisdiction of the Court which otherwise did not have or had at the time of presentation of the suit. It is accordingly submitted that Sections 241 to 244 of the Act, 2013 will still be applicable and continue to govern TCL despite its liquidation.

22. It is further submitted that the impugned order passed by the learned trial court is correct in law as it has been passed after proper appreciation of law as well as the averments made in the plaint and hence, the present appeal is liable to be dismissed.

FINDINGS AND ANALYSIS

23. I have heard learned counsels appearing on behalf of both the parties and have meticulously perused the record of the instant appeal as well as the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 record of the Court below. I have also given careful consideration to the order dated 21st March 2022 passed by the learned trial court. The following issues require consideration for the adjudication of the instant appeal:

I. Whether the instant suit is governed by the Companies Act, 1956 or the Companies Act, 2013?

a) Can the Appellants in the facts and circumstance of the present case rely on *Jai Mahal Hotels Pvt. Ltd. (supra)* and *Standard Chartered Bank (supra)*?

II. How is a bar on the jurisdiction of civil courts to be inferred?

a) Whether in the facts and circumstances of the present case bar under Section 430 is attracted?

b) Does liquidation of TCL have an impact on the outcome of the instant appeal?

Answer to Issue I.

24. Learned senior counsel for the plaintiff companies has taken a stand that the learned trial Court has failed to appreciate that the provisions of the Companies Act, 2013 are not applicable in the facts and circumstances of the case. It is submitted that the facts of the suit CS No. 5700/2016 relate to the period when even the Companies Act, 2013 was not notified. It is submitted that the relevant provisions of Companies Act, 2013 pertaining to issue of duplicate share certificate were not even notified at the time of date of filing of suit CS No. 5700/2016.

25. The learned trial Court while adjudicating the instant plea of the plaintiff companies, held as follows:

□ Insofar as the third objection qua non applicability of provisions of the Companies Act, 2013 is concerned, same is Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 meritless because the said Act came into force in the August, 2013 and present suit had been filed in the year 2015. Further, the nominee director Yatinder Vir Singh wrote to defendant No. 1 and informed to Y. N. Dhoot on 05.09.2013. The alleged meeting of Board of Directors of the defendant No. 1 was purportedly held on 27.08.2013. The previous Act (The Companies Act, 1956) was repealed by Section 465 of the Companies Act, 2013. The Company Law Board constituted under the Companies Act, 1956 was to be dissolved on the constitution of the NCLT and NCLAT in view of Section 466 of the Companies Act, 2013. The NCLT and NCLAT have already been constituted.

26. I am in agreement that with the findings recorded by the learned trial Court inasmuch as the bulk of the provisions of the Companies Act, 2013 relevant to the present controversy was notified on 30 th August 2018 and with Section 46 dealing with 'Certificate of Shares' was notified on 1 st April 2014. The ratio of *Jai Mahal Hotels Pvt. Ltd. (supra)* and *Standard Chartered Bank (supra)* is of no help to the plaintiff companies as the same were decided in the context of the Companies Act, 1956 and hence, are not applicable to the facts and circumstances of the present case.

27. Even otherwise, this Court is afraid that such a plea taken by the learned senior counsel cannot be sustained particularly in view of Section 465 of the Act, 2013 which deals with 'Repeal of certain enactments and savings' as well as the judgment of the Hon'ble Supreme Court in *Shashi Prakash Khemkha (D) Through LRs vs. NEPC Micon, (supra)*, wherein the Hon'ble Supreme Court being

confronted with an identical plea, made the following pertinent observations:

¶6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today.

28. Accordingly, I do not find any merit in the contentions of the learned senior counsel and hence, the present case will be governed by the provisions of the Companies Act, 2013 and not Companies Act, 1956. The instant issue is answered accordingly.

Answer to Issue II.

29. Section 9 of the Code is also symbolised as the gateway to the civil Courts as it envisages not only the inherent powers of the Civil Courts to entertain any suit of a civil nature, but also the inherent rights of the disgruntled yet hopeful litigants to approach the civil Courts with a huge expectation that they will get justice from this forum, which would adjudicate upon their infringed legal rights and will invoke the legal machinery to protect and vindicate such rights. It is a settled proposition of law that the exclusion of the jurisdiction of a civil Court is not to be readily inferred. But law cannot be unreasonable, as the law prevailing in a region cannot divorce from the societal requirements. In other words, law and societal advancements go hand in hand and the law has to be Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 modified/adjusted in a way so as to always cater to the ever dynamic needs of the society. In this background, though in a different context, it is apposite to refer to the following lines written by Joseph P. Bradley, former Associate Justice of the Supreme Court of United States of America.

¶8 Society cannot exist without law. Law is the bond of society: that which makes it, that which preserves it and keeps it together. It is, in fact, the essence of civil society.

30. As a natural corollary, Section 9 also envisages certain restrictions as it would be unreasonable to expect that such a provision of magnanimous scope can be enacted by the Parliament without any qualifications/exceptions. It is necessary to reproduce Section 9 of the Code:

¶9. Courts to try all civil suits unless barred.--The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

31. On a bare perusal, it transpires that there are two types of exceptions which are canvassed in Section 9, first, exceptions under the Code of Civil Procedure itself which is apparent from the use of 'subject to the provisions herein contained' and secondly, exceptions which are not covered under the Code of Civil Procedure which is apparent from the use of 'excepting suits Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 of which their cognizance is either expressly or impliedly barred'. In the present case we are concerned with the latter exception which can further be divided into two types, first, jurisdiction expressly barred and secondly, jurisdiction impliedly barred. Considering the language of Section 430 of the Act, 2013, the analysis in the present judgment pertains to jurisdiction expressly barred.

32. In *State of Andhra Pradesh vs. Manjeti Laxmi Kantha Rao*, AIR 2000 SC 2220, the Hon'ble Supreme Court while interpreting Section 9 of the Code held as under:

□5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is:

(i) whether the legislative intent to exclude arises explicitly or by necessary implication, and;

(ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

33. The Hon'ble Supreme Court in a classic decision in the case of *Ganga Bai vs. Vijay Kumar*, AIR 1974 SC 1126, held that:

□5. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 of law and it is enough that no statute

bars the suit. But the position in regard to appeals is quite the opposite.

34. It is apposite to refer to the milestone decision of a Constitution Bench of the Hon'ble Supreme Court in *Dhulabhai vs. State of Madhya Pradesh*, AIR 1969 SC 78, wherein the apex court laid down the following principles relating to the exclusion of jurisdiction of civil courts:

□(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for. the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

35. A suit is said to be expressly barred when it is barred by any enactment for the time being in force. Indisputably, it is open for a competent legislature to bar the jurisdiction of civil Courts in respect of a particular class of suits of a civil nature, provided that in doing so it acts within the four corners of the legislative powers conferred upon it and does not violate the letter and spirit of the Constitutional provisions. It is a settled proposition that every presumption should be made in favour of the jurisdiction of a civil Court and the provisions of exclusion of jurisdiction of a Court must be strictly construed. If there ever arises any suspicion about Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 the ousting of the jurisdiction of a civil Court, then the Courts are duty bound to lean towards an interpretation which would uphold the jurisdiction of a civil Court. And, if the remedy provided by a statute is not adequate and all questions cannot be decided by a special tribunal, the jurisdiction of a civil court is not barred.

36. At this stage, before deciding as to whether the civil court's jurisdiction is barred or not, it is pertinent to refer to the Statement of Object and Reasons; and certain provisions of the Act, 2013 which throws light upon the powers and jurisdiction of the NCLT as well as the Scheme of the Act, 2013.

□Statement of Objects and Reasons.--The Companies Act, 1956 had been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act has been in force for about fifty-five years and had been amended several times.

2. In view of changes in the national and international economic environment and expansion and growth of economy of our country, the Central Government after due deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international, economic environment and further accelerate the expansion and growth of our economy. And for this purpose a Bill, namely, the Companies Bill, 2009 was introduced on 3rd August, 2009 in the Lok Sabha along with the Statement of Objects and Reasons appended to the said Bill outlining its salient features. The said Bill was referred to the Parliamentary Standing Committee on Finance for examination and report and the Committee gave its Report on the 31st August, 2010. □430. Civil court not to have jurisdiction.--No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. □39. Allotment of securities by company.--(1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or

other instrument.

(2) The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed. (5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 day during which such default continues or one lakh rupees, whichever is less. 46. Certificate of shares.--(1) A certificate, 79[issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary], specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. (2) A duplicate certificate of shares may be issued, if such certificate--

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(4) Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.

(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under Section 447. 59. Rectification of register of members.--(1) If the name of any person is, without sufficient cause, entered in the register Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the

person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register. (2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved. (3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned. □79. Powers of Board.--(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:--

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to authorise buy-back of securities under Section 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board's report;

(h) to diversify the business of the company;

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(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed: Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify: Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.--Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act. Explanation II.--In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of. (4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 conditions on the exercise by the Board of any of the powers specified in this section. □241. Application to Tribunal for relief in cases of oppression, etc.-- (1) Any member of a company who complains that--

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture- holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under Section 244, for an order under this Chapter. (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

[Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.] (3).....

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(5)..... [242. Powers of Tribunal.--(1) If, on any application made under Section 241, the Tribunal is of the opinion--

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit. (2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for--

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the

case;

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(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub- section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23
NEUTRAL CITATION NO:2022/DHC/005815 (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

[(4-A) At the conclusion of the hearing of the case in respect of sub-section (3) of Section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a

fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.] (5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. (6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered. (7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable 345[* * *] with fine which shall not be less than twenty-five thousand rupees but which may extend to 346[one lakh rupees]. "243. Consequence of termination or modification of certain agreements.--(1) Where an order made under Section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,--

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company:

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

[(1-A) The person who is not a fit and proper person pursuant to sub-section (4A) of Section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. (1-B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the

conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.] (2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) 348[or sub-section (1-A)], and every other director of the company who is knowingly a party to such contravention, shall be punishable 349[* * *] with fine which may extend to 350[five lakh rupees]. □244. Right to apply under Section 241.--(1) The following members of a company shall have the right to apply under Section 241, namely:--

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members: Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241.

Explanation.--For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them. Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815

37. In *Shashi Prakash Khemkha (D) Through LRs vs. NEPC Micon (supra)*, the Hon'ble Supreme Court while interpreting Section 430 of the Act, 2013, made the following pertinent observations:

□Learned counsel for the appellants says that the issue raised by the appellants qua the transfer of shares, whether done rightly or wrongly, has to be adjudicated by some forum - whether it be a civil suit or the exercise of jurisdiction by the then Company Law Board.

Learned counsel for the appellants has drawn our attention to the view expressed in *Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and Others (1998) 7 SCC 105*, to canvass the proposition that while examining the scope of Section 155 (the predecessor to Section 111), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit. The submission of the learned counsel is that the subsequent legal developments to the impugned order have a direct effect on the present case as the Companies Act, 2013 has been amended which provides for the power of rectification of the Register under Section 59 of the said Act. Learned counsel has also drawn our

attention to Section 430 of the Act.....

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today.

38. The NCLT is a specialised agency created for the purpose of a speedier and efficient regulation of the management of a company. Its powers are much broader than what are vested in the civil courts by virtue of Section 9 of the Code.

39. In *Union of India vs. R. Gandhi*, (2010) 11 SCC 1, the Hon'ble Supreme held as under:

□33. The argument that there cannot be 'whole-sale transfer of powers' is misconceived. It is nobody's case that the entire functioning of courts in the country is transferred to Tribunals. The competence of the Parliament to make a law creating Tribunals to deal with disputes arising under or relating to a particular statute or statutes cannot be disputed. When a Tribunal is constituted under the Companies Act, empowered to deal with disputes arising under the said Act and the statute substitutes the word 'Tribunal' in place of 'High Court' necessarily there will be 'whole-sale transfer' of company law matters to the Tribunals. It is an inevitable consequence of creation of Tribunal, for such disputes, and will no way affect the validity of the law creating the Tribunal.

40. In *Madras Bar Association vs. Union of India*, (2015) 8 SCC 583, the Hon'ble Supreme Court is held as under:

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 □1. First of all, the creation of Constitution of NCLAT has been specifically upheld in 2010 judgment. It cannot be denied that this very Petitioner had specifically questioned the Constitutional validity of NCLAT in the earlier writ petition and even advanced the arguments on this very issue. This fact is specifically noted in the said judgment. The provision pertaining to the constitution of the Appellate Tribunal i.e., Section 10FR of the Companies Act, 1956 was duly taken note of. Challenge was laid to the establishments of NCLT as

well as NCLAT on the ground that the Parliament had resorted to tribunalisation by taking away the powers from the normal courts which was essentially a judicial function and this move of the Legislature impinged upon the impartiality, fairness and reasonableness of the decision making which was the hallmark of judiciary and essentially a judicial function. Argument went to the extent that it amounted to negating the Rule of Law and trampling of the Doctrine of Separation of Powers which was the basic feature of the Constitution of India. What we are emphasising is that the petitions spearheaded the attack on the constitutional validity of both NCLT as well as NCLAT on these common grounds. The Court specifically went into the gamut of all those arguments raised and emphatically repelled the same.

12. The Court specifically rejected the contention that transferring judicial function, traditionally performed by the Courts, to the Tribunals offended the basic structure of the Constitution and summarised the position in this behalf as under:

We may summarize the position as follows:

(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for 'Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly, while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an

exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive. Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815

41. By way of Section 430 of the Act, 2013, a company has an existing remedy to approach the NCLT in terms of Section 241 read with Section 244 of the Act, 2013 and consequently, the Tribunal has been given wide powers to pass such orders as it may think fit in terms of Section 242 of the Act, 2013. Chapter XXVII deals with the constitution of the Tribunals. Powers have been given to the Tribunal to 'pass such orders thereon as it thinks fit' in terms of Section 420 of the Act, 2013. Moreover, under Section 424 of the Act, 2013 the Tribunal also has the same powers and functions as are vested with a Civil Court. Section 425 of the Act, 2013 has vested with the Tribunal the power to punish for contempt which was not available with the Company Law Board. In various ways, the NCLT is not merely exercising limited jurisdiction under the new Act, but is also vested with inherent powers and powers to punish for contempt. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. Section 39 of the Act, 2013 deals with the allotment of securities by a Company on the satisfaction of certain conditions and Section 46 inter alia pertains to issuance of duplicate shares on satisfaction of certain conditions as have been stated therein.

42. The bulk of the dispute between the parties pertain to the ownership of the 50.21% shareholding in TCL and the validity of the meeting of the board of directors which is alleged to have taken place on 27th August 2013. Having perused the scheme of the Act, 2013, on the first sight though it appears that the disputes at hand between the parties can be adjudicated by the NCLT but in my opinion, such a decision would render the Appellants Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 herein remediless as TCL has been dissolved and is no more in existence. The fundamental principle behind the bar on the jurisdiction of the civil court is that there must be adequacy of remedy being available to the parties who are relegated out of the civil Courts and they must not be rendered remediless. Among other relevant sections of the Companies Act, 2013 governing the dispute at hand, a glance at Section 241 read with Section 244 requires the following essentials to be satisfied before an application can be made to the Tribunal:

a) In case the company does not have a share capital, an application under Section 241 can be made by not less than 1/5th of the total number of its members.

b) In case the company does have a share capital, an application under Section 241 can be made by not less than 100 members or not less than 1/10th of the total number of its members, whichever is less; or any member(s) of the company holding not less than 1/10th of the issued share capital of the company.

43. In case the company has been dissolved by the NCLT, there exists no corporate entity which can be proceeded under the Companies Act, 2013 and similarly, there exists no members of such a company. Therefore, such provisions cannot be said to be applicable to the disputed governing TCL.

It is pertinent to refer to Section 250 of the Act, 2013 which deals with the effect of company being notified as dissolved.

250. Effect of company notified as dissolved.- Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

44. It is also important to refer to the relevant portion of the order dated 24th November 2020 passed by the NCLT, Chandigarh bench by way of which TCL was dissolved:

23. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 of the Code, the Interim Application bearing CA No.584/2019 in CP (18) No.SO/Chd/Hry/2017 is disposed of with the following directions:

(i) M/s. Tirupati Ceramics Limited, the Corporate Debtor, is hereby dissolved with immediate effect;

(ii) The Liquidator is permitted to close the pending Liquidation Bank Account within three weeks from the date of receipt of copy of this order.

(iii) The Registry is directed to forward a copy of this order to the Registrar of Companies, Punjab, Haryana and Chandigarh within a period of two weeks from today;

45. Therefore, this Court does not find any merit in the objection of the Respondents that the subsequent liquidation of TCL will have no bearing on the present case. No corporate entity now exists in the form of TCL which may be governed by the provisions of the Companies Act, 2013. Hence, it cannot be said that the suit filed by the plaintiff companies was barred under Section 430 of the Companies Act, 2013.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:23.12.2022 18:48:23 NEUTRAL CITATION NO:2022/DHC/005815 CONCLUSION

46. As has been discussed in the foregoing paragraphs, there is an inherent right in every person as per Section 9 of the Code to bring a civil suit setting forth as to how the plaintiff's legal rights have been violated for which he/she is seeking the indulgence of the Court and every interpretation must be made by which the jurisdiction of the civil Court is not readily ousted. Further, in case of suspicion, an interpretation should be made which leans in favour of the jurisdiction of the civil Court. In view of the reasons aforesaid, this Court is of the considered opinion that the trial court has erred in rejecting the plaint as being barred by Order VII Rule 11(d) of the Code inasmuch as the

suit was not barred under Section 430 of the Act, 2013.

47. Resultantly, the present appeal succeeds and the impugned order dated 21st March 2022, passed by the learned trial court is set aside. The suit is restored to the file. Considering the facts and circumstances of the case, there shall be no order as to costs.

48. Pending applications, if any, also stand disposed of.

49. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH) JUDGE DECEMBER 23, 2022 gs/mg Signature Not Verified Digitally
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