

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No.301 of 2017**

[Arising out of Order dated 15.05.2017 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.87 of 2007 (T.P. No.15/HDB/2016)]

<b><u>IN THE MATTER OF:</u></b>	<b>Before NCLT</b>	<b>Before NCLAT</b>
1. M/s. Priyaranjani Fibres Limited Regd. Office at Rayapole (Village) Ibrahimpatnama (Mandal) Ranga Reddy District	Original Respondent No.1	Appellant No.1
2. Mr. Kandula Sivananda Reddy 1-397/1 Court Road, Kadapa – 516001, Andhra Pradesh	Original Respondent No.3	Appellant No.2
3. Mr. Kandula Uttam Reddy 4/521, Bapuji Road, Aravinda Nagar, Kadapa – 516001, Andhra Pradesh	Original Respondent No.4	Appellant No.3
4. Mr. Kora Siva Sudershan Reddy 1/496, Smith Road, Kadapa – 516004, Andhra Pradesh	Original Respondent No.5	Appellant No.4
<b>Versus</b>		
1. Mr. D. Srinivasa Rao 7-1-79/C, Dharamkaram Road Ameerpet, Hyderabad – 500016	Original Respondent No.2	Respondent No.1
2. Mr. Tej Kumar 7-1-79/C, Dharamkaram Road	Original Petitioner No.1	Respondent No.2

Ameerpet,  
Hyderabad – 500016

- |    |  |                              |                     |
|----|--|------------------------------|---------------------|
| 3. | Ms. D. Chandana<br>D/o D. Srinivasa Rao<br>7-1-79/C,<br>Dharamkaram Road<br>Ameerpet,<br>Hyderabad – 500016  | Original Petitioners 2 to 50 | Respondents 3 to 51 |
| 4. | Ms. D. Kavitha<br>D/o D. Srinivasa Rao<br>7-1-79/C,<br>Dharamkaram Road<br>Ameerpet,<br>Hyderabad – 500016   |                              |                     |
| 5. | Mrs. D. Lakshmi<br>W/o D. Krishna Rao<br>Flat No.102,<br>H.No. 7-1_345/346,<br>Sai Sri Lakshmi Residency,<br>Balkampet Road, S.R. Nagar,<br>Hyderabad – 500038     |                              |                     |
| 6. | Mr. Cheedi Latchayya<br>S/o Shankara Narayana<br>C/o D. Umavathi<br>7-1-79/C, Dharam Karam Road,<br>Ameerpet,<br>Hyderabad – 500016                                |                              |                     |
| 7. | Mr. Ch. Ramana Murthy<br>S/o Karrenna<br>Savara Addapanasa Village & Post,<br>Saravakota (via), Srikakulam District,<br>Andhra Pradesh (Camp. Ameerpet, Hyderabad) |                              |                     |
| 8. | M/s. Siri Consultants<br>7-1-79/A, Dharamkaram Road<br>Ameerpet, Hyderabad – 500016  |                              |                     |
| 9. | Mr. M. Visweswara Rao<br>S/o M. Ramachandra Rao,<br>H.No.189, Flat No.102<br>Narayandri Apartments,<br>Door No.7, Street No.4,                                     |                              |                     |

Secundrabad – 500026

10. Mr. V.K. Vijaya Kumar  
S/o A. Kotaiah  
H.No.4-1-95, P&T Colony,  
Nacharam, Hyderabad – 500076
11. Mr. T. Rama Rao  
S/o T. Ramulu  
LIG – 734, Road No.5,  
KPHB Colony, Hyderabad – 500072
12. Mr. T. Pulla Rao,  
S/o T. Lakshma Rao,  
LIG-734, Road No.5,  
KPHB Colony,  
Hyderabad – 500072
13. Mr. M. Srikanth Reddy  
S/o M. Narasimha Reddy  
1/406, Babukhan Estate,  
Basheer Bagh, Hyderabad
14. Mr. D. Krishna Rao,  
S/o D. Simha Baladu,  
7-1-29, Plot – 9,  
Coromandal Apartments  
Leela Nagar, Hyderabad – 500016
15. Mr. G.V. Ramana  
S/o G. Venkatappadu  
Ligh-61/C, 2<sup>nd</sup> Floor,  
B.K.Guda, S.R. Nagar,  
Hyderabad – 500038
16. Mr. D. Padma Shree  
S/o D. Simha Baladu  
7-1-408, F.No-102,  
Sai Darshan Residency,  
Ameerpet, Hyderabad – 500016
17. Mrs. D. Umavathi  
W/o D. Srinivasa Rao  
7-1-79/C, Dharamkaram Road  
Ameerpet, Hyderabad – 500016
18. Ms. D. Srisha

D/o D. Srinivasa Rao  
7-1-79/C, Dharamkaram Road  
Ameerpet, Hyderabad – 500016

19. Mr. D. Narasimha Murthy,  
S/o Simha Baladu,  
7-1-29, Plot -9,  
Coromandal Apartments  
Leela Nagar, Hyderabad – 500016
20. Mrs. Ch. Madhu Latha  
D/o Ch. Sambhi Reddy,  
Plot No.15B  
Maheshwari Nagar, Bharat Nagar,  
Hyderabad – 500018
21. Mr. P. Dasaratha Rao  
S/o P. Simhachalam  
7-1-79/A, Dharamkaram Road  
Ameerpet, Hyderabad – 500016
22. Mr. Kornu Mohan Rao  
S/o K. Pappaiah  
Near Market, Ameerpat,  
Hyderabad – 500016
23. Mr. K.H. Prasad  
S/o K. Lashmaiah  
7-1-79/A, Dharamkaram Road  
Ameerpet, Hyderabad – 500016
24. Mr. P. Ram Babu  
S/o Narayana Rao  
H. No.6-1-285 A,  
Padma Rao Nagar,  
Secunderabad – 500025
25. Mr. M. Uma Rao  
S/o M. Appalasuri  
SRT 659, Sannath Nagar,  
Hyderabad – 500018
26. Mr. B. Krishna Rao  
S/o Ramanamurthy  
C/o Idupulapadu Cotton Mills,  
Ganapavaram, Guntur, A.P.

27. Mr. S.K. Syed  
S/o S.K. Khasim Saheb  
C/o Idupulapadu Cotton Mills,  
Ganapavaram, Guntur, A.P.
28. Mr. Shaik Saida Saheb  
S/o Meera Saheb H. No.9-135-3,  
Mazeed Street,  
Ganapavaram, Nadendla (Mandal)  
Guntur (D.T.), A.P.
29. Mrs. Shaikunbi  
W/o Shaik Saida Saheb  
S/o Meera Saheb H.No.9-135-3,  
Mazeed Street,  
Ganapavaram, Nadendla (Mandal)  
Guntur (D.T.), A.P.
30. Mr. V. Seshiah  
S/o Late V. Subbiah  
H.No.8-3-222/8/36  
Plot No.13, Madura Nagar,  
Yusuf Guda, Hyderabad – 500038
31. Mr. Ch. Govinda Rao  
S/o Ch. Gajapathi Rao  
H.No.7-19/7, Subhash Nagar,  
B.N. Colony, Jeedimetla, Hyderabad
32. Mrs. Ch. Vijaya Lakshmi  
W/o Ch. Satyanarayana  
H. No.19/6, Subhash Nagar, B.N. Colony,  
Jeedimetla, Hyderabad
33. Mr. R. Sri Ramulu  
S/o R. Ram Murthy  
Plot No.9, Flat No.302,  
Usha Mullapudi Road,  
Hyderabad – 500072
34. Mrs. Y. Sri Devi  
H.No.EWS-273,  
Bharat Nagar Colony,  
Hyderabad – 600018
35. Mr. M. Sita Ram  
S/o M. Chiranjeevulu,

Yathabasivalasa Village,  
Perivada Post, Srikakulam District, A.P.

36. Mr. Thavati Naidu  
S/o P. Raja Rao,  
8-77/2, Chintal,  
Srinivasanagar, Hyderabad
37. Mr. D. Rama Murthy  
S/o Sri Suran Naidu  
Venkatapuram Village  
Aludu (Post)
38. Mr. Cheedi Kerranna  
S/o C.H. Pentaya  
Savaraddapansa (Village)  
Sarova Kota (Mandal)  
Srikakulam (District), A.P.
39. Mr. Kornu Naran Naidu  
S/o K. Haridas  
Savirigram Village,  
Srikakulam District, A.P.
40. Mr. G.Appa Rao  
S/o G. Satyanarayana  
Pasaravani Peta  
Narasannpeta mandal  
Srikakulam District, A.P.
41. Mr. M. Mohan Rao  
S/o M. Chiranjeevulu  
Yatlabasivalasa Village  
Parivada Post, Srikakulam District, A.P.
42. Mrs. Sk. Mastan Bi  
W/o S.K. Khasim  
SRT – 89, Sanath Nagar, Hyderabad – 18
43. Mr. Sk. Gulam Mohammad  
S/o Sk. Khasim  
SRT – 89, Sanath Nagar, Hyderabad – 18
44. Mrs. S. K. Gousya Begum  
W/o D.L.M. Khasim  
SRT – 89, Sanath Nagar, Hyderabad – 18

45. Mrs. Shaikumbi  
W/o D.L.M. Khasim  
H.No.2-1-57/3  
Venkateswara Colony,  
Lakshmi Garden Road,  
Uppal, Hyderabad
46. Mr. Khader Mastan  
S/o S.K. Meera Saheb  
C/o SRT – 89,  
Sanath Nagar, Hyderabad - 18
47. Mr. D. Linganna  
G6, Reliance Residency,  
Domalguda, Hyderabad – 29
48. Mrs. D. Bala Rama Murthy  
S/o D. Shimla Baladu  
Ward No.6, Arts College Road,  
Srikakulam, A.P.
49. Mr. Someswara Rao M  
S/o M. Chiranjeevilu  
Yatlabasivalasa Village  
Parivada Post, Srikakulam Dist. A.P.
50. Mr. D. Suriyanarayana  
S/o D. Rama Rao  
Killam Village,  
Srikakulam Dist., A.P.
51. Mr. D. Jawahar Babu  
C/o 7-1-79/A, Dharamkaram Road,  
Ameerpet, Hyderabad – 16

**For Appellant:** **Shri Atul Yeshwant Chitale, Sr. Advocate with Ms. Mamta Tiwari, Ms. Sukanya Basu, Ms. Shivangi Khanna, Shri Aman Bhatnagar, Shri Aamir Husain and Shri Dhananjaya Sud, Advocates**

**For Respondents:** **None (Respondent No.1)**

**Shri P. Nagesh and Shri Dhruv Gupta, Advocates (Respondent Nos.2 to 51)**

**J U D G E M E N T**  
**(14<sup>th</sup> December, 2018)**

**A.I.S. Cheema, J. :**

1. This Appeal has been filed against Impugned Order dated 15<sup>th</sup> May, 2017 passed by National Company Law Tribunal, Hyderabad Bench ('NCLT', in short) in CP No.87/2007 (T.P. No.15/HDB/2016) which had initially been filed before the Company Law Board ('CLB', in short) on 28.09.2007. The Company Petition had been filed by present Respondents 2 to 51 as Petitioners (hereafter referred as 'Petitioners') against the Appellants. The Appellant No.1 Company was arrayed as Respondent No.1 in the Petition. We will refer to this Appellant as 'Company'. The Appellants 2 to 4 were original Respondents 3 to 5. We will refer to them as 'contesting Respondents' or by their number as they were arrayed in NCLT. The present Respondent No.1 in Appeal – D. Srinivasa Rao was Respondent No.2 in the Company Petition. We will refer to him as 'Respondent No.2'. The original Petitioners filed the Company Petition against Respondent No.2 - D. Srinivasa Rao and the contesting Respondents, inter alia, making grievances of oppression and mismanagement of the Company on the part of Respondent No.2 who, it was alleged, entered into an Agreement dated 9<sup>th</sup> October, 2013 to sell 80 Lakhs shares of himself and Petitioners and let the management of the Company go in the hands of Respondent No.3, who subsequently brought in Respondent Nos.4 and 5. In brief, the case of the original Petitioners is that the contesting Respondents started managing the affairs of the Company without being shareholders and even



if they were introduced as Additional Directors, it was without their confirmation in General Body Meeting, which was not held. Thus, Petitioners claimed that these persons were not even Directors.

2. It would be appropriate to refer to the contentions as were raised by the original Petitioners in the Company Petition.

3. Copy of the amended Company Petition is filed by the Appellants as Annexure – 'E'. In brief, original Petitioners claimed in the Company Petition:-

3.1 The Company is a public limited company incorporated in February 1991. Authorized share capital is Rs.23 Crores divided into 2,30,00,000 equity shares of Rs.10/- each. Paid up share capital is of Rs.11,70,00,000/- divided into 1,70,00,000 (*sic*) equity shares of Rs.10/- each. The Company was incorporated to carry on business of spinning and weaving mills. The company availed term loan of Rs.16 Crores from IDBI and working capital from State Bank of India, Allahabad Bank, etc. Original Respondent No.2 and his friends and relatives mortgaged their properties as securities and had given personal guarantees.

3.2 Petitioners claim that other Petitioners have executed Power of Attorney in favour of Petitioner No.1. Petitioners 8 and 14 are Directors of the Company. Original Respondent No.2 is Executive Vice Chairman of the Company and Chief Promoter. He was appointed Director in 1994 and took over as Executive Vice Chairman in 1998. According to the Petition,

original Respondent No.3 claims himself to be a Managing Director and original Respondents 4 and 5 are claiming themselves to be appointed as Directors.

3.3 It is claimed that it is closely held public company. Some of the Petitioners are closely related to Respondent No.2. It was 100% export oriented unit which was set up and the factory was bonded with Customs and Central Excise Department. Due to recession in international market, Company could not make profits, however, original Respondent No.2 who was earlier a Director continued with the production. As shareholders, Petitioners had faith in Respondent No.2. The poor financial condition of the Company forced the Board of Directors consisting of Respondent No.2 and original Petitioners 8 and 14 to close down the operations and the affairs were carried on with skeleton staff. Total net worth eroded. In such situation, Respondent No.2 filed reference before Hon'ble Board of Industrial and Financial Reconstruction (BIFR) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and it was registered as Case No.366/2001 on 17.09.2002. BIFR appointed IDBI as Operating Agency under Section 16(2) of the SICA. According to the Petitioners, there was AGM of shareholders in 2002 when the accounts were last produced and thereafter, there was EOGM on 26.12.2006 held at the instance of Respondent No.2. Only on 26.12.2006 in the EGM, Petitioners came to know that original Respondent No.2 had entered into an agreement on 09.10.2003 with original Respondent No.3 and he had

agreed to transfer shares for Rs.1 Crore, subject to conditions as mentioned in the agreement. According to the Petitioners, Respondent No.2 did not have authority or Power of Attorney to enter into such agreement. Respondent No.2 explained to the Petitioners in the EGM dated 26.12.2006 that due to financial condition of the Company, he was compelled to enter into agreement although Respondent No.3 was aware that shares of the Chief Promoter and Petitioners, totalling to an extent of 51%, were pledged with IDBI and thus shares belonging to Respondent No.2, other family members or other promoters could not be sold or transferred to anybody. The Petition claimed that in such meeting on 26.12.2006, Petitioners came to know regarding activities of Mr. K. Ranganathan, Chartered Accountant who was an associate of Respondent No.3 and had brought about such agreement. The Company Petition claims that Respondent No.3 using signed letters of Respondent No.2 and printing his own letterheads, got up various Board Resolutions appointing himself and his relatives – Respondent Nos.4 and 5 as Additional Directors. Further Resolutions were got up of Board and General Meeting purported to have been held on 29.09.2003, whereby Respondent No.3 appointed himself as Managing Director for 5 years with effect from 03.09.2003. Petitioners claimed that no such AGM was held and the Petitioners had no Notice of any such AGM and the Minutes were fabricated.

3.4 The Petitioners further claimed that Respondent No.3 while filing Form No.23 changed his own stand claiming that he was appointed as

Managing Director on 6<sup>th</sup> February, 2004 in the Board Meeting and thus contradicted himself with the earlier statement of having been appointed as MD on 3<sup>rd</sup> September, 2003 which it was claimed was ratified in AGM purported to be held on 29<sup>th</sup> September, 2003. According to the Petitioners, no AGM took place on 29<sup>th</sup> September, 2003.

3.5 Original Petitioners claimed that Respondent No.3 made small payments to various authorities styling himself as MD of the Company and had been running the unit and making profits. According to the Petitioners, induction of Respondents 3 to 5 in the Board was not recognised by BIFR in proceeding dated 27<sup>th</sup> December, 2004. Petitioners claimed that Respondent No.3 illegally gained entry in the factory and took control of the unit and by spending few amounts, ran the unit continuously for 4 years making huge profits without brothing for overheads or without maintaining accounts. Respondent No.3 paid at least Rs.3 Lakhs per month since 4 years on electricity bills, which itself showed maximum output.

3.6 According to the Petition, the agreement between Respondent No.2 and Respondent No.3 was entered privately. The Petitioners claimed that they had asked Respondent No.2 to remove Respondents 3 to 5 and restore himself as Executive Vice Chairman and rest are persons who were on the Board before illegal agreement. Petitioners claimed that shareholders passed Resolution directing Respondent No.2 to take over possession of the factory.

3.7 Respondent No.2 could not sell shares on behalf of others knowing well that it is sick company and there could not be change of management without permission of BIFR and also, when the shares were already pledged. Petition claimed that Respondent No.3 is a politician with political clout and was holding on to the possession even though he and his associates did not have a single share in the Company.

3.8 Petitioners and other shareholders requested for calling EGM on 03.09.2007 under Section 169 of the Companies Act, 1956 ('old Act', in brief) in order to pass Resolution for removal of Respondents 3 to 5 and to take other decision. The Notice of 03.08.2007 for EGM fixed for 03.09.2007 was issued. Respondent No.3 on receiving Notice, to suppress rights of shareholders filed OS 469/2007 before III Additional Chief Judge, City Civil Courts, Hyderabad claiming himself to be Managing Director and obtained ex-parte Ad-interim Injunction. The actions of contesting Respondents were in violation of SICA. The agreement was illegal. The Respondents gained access to the factory by backdoor entry without the consent of BIFR or the shareholders or the banks and the financial institutions. The shareholders never approved the contesting Respondents as Directors.

3.9 It is the case that temporary injunction obtained in OS 469/2007 was later on vacated and EOGM was held on 2<sup>nd</sup> January, 2008.

3.10 As per the Company Petition, the Petitioners filed the Company Petition and Company Law Board on 16.07.2008 by Interim Orders restrained contesting Respondents from functioning as Managing Director/Directors. Against the said Order, CA 14 and 16 of 2008 was filed in the High Court of Andhra Pradesh. The Company Appeals came to be dismissed in favour of the Petitioners.

3.11 The amended Company Petition claims that the Petitioners filed CA 43/2009 and particulars of the amendments, which were sought, are also included. The Company Petition referred to the fact that the Respondent did not file counter in the proceedings and only filed CA raising preliminary issues of maintainability. The Petitioners referred to the counter they had filed and the Orders passed by CLB on 16.07.2008. Reference was made in the amended Petition to observation of BIFR recognising only Respondent No.2 as Representative of the Company. The amended Company Petition referred to contenting Respondents opening current account with Syndicate Bank in contravention of Orders of BIFR and the Petition claims that the contesting Respondents falsely cooked up/fabricated copies of EOGM dated 01.05.2004 for purported issue of 12 Crore of equity shares to their friends and relatives so as to bring down the stakes of Petitioners below 10%. The Petition claimed that no such EGM was held and although Respondents claimed by Board Resolution dated 30.04.2004 to have issued 1,13,00,000 equity shares of Rs.10/- each and to have collected 50 paise as application money, in fact, the share money

never came to the Company accounts. Such alleged EOGM and Board Resolutions of 2004 were filed with Registrar of Companies only on 5<sup>th</sup> August, 2008. The Petitioners pointed out that in OS 469/2007 filed by the contesting Respondents even in 2007, they had claimed that the paid up share capital was only Rs.11.70 crores.

3.12 The Company Petition claimed removal of Respondents 3 to 5 as Managing Director/Directors and to hold that their actions did not bind the shareholders of the Company; to declare agreement dated 9<sup>th</sup> October, 2003 as not binding on the Company or Petitioners; investigate the affairs and award damages of Rs.2 Crores against contesting Respondents; declare that the Board consisting of Respondent No.2 and Petitioners 8 and 14 as the legal Board of Directors; to declare the Board Meetings and Resolutions held and passed by contesting Respondents as illegal; to declare the issue of 1,13,00,000 as equity shares issued by contesting Respondents are not binding on the Company.

4. Perusal of the Impugned Order shows that the learned NCLT took note of such Company Petition and documents relied on. The contesting Respondents appear to have filed Reply dated 07.07.2010 followed by written submissions dated 13<sup>th</sup> March, 2017. NCLT noted their defence. The contesting Respondents challenged the maintainability of the Company Petition. According to Respondents, when the matter was ceased before BIFR, the Company was declared sick Company. As such, the Petition before CLB could not be maintained. The contesting Respondents

claimed before NCLT that the amended Company Petition was filed at the instigation of original Respondent No.2. The Petitioners were kith and kin namely, son, daughter, wives, sister-in-law, cousins and employees of Respondent No.2. Original Petitioners 8 and 14 were Directors and they were reappointed on 26.12.2006 is not borne out from their affidavit, it was claimed.

4.1 Contesting Respondents denied that Respondent No.2 was working as Executive Chairman. They claimed that he does not have the requisite value of shares. They denied that Petitioners held 10.33% of total paid up share capital. According to them, original Respondent No.2 resigned in 2003 and he was not a shareholder nor Director. The contesting Respondents denied EGM dated 26.12.2006 held at the instance of original Respondent No.2. They claimed that illegal Resolutions were passed. According to the contesting Respondents, when most of the Petitioners were residing with Respondent No.2, they could not claim that they do not have knowledge of agreement dated 9<sup>th</sup> October, 2003. It was claimed that Respondent No.2 agreed to transfer shares and received Rs.100 Lakhs between 09.10.2003 till 13<sup>th</sup> February, 2006. They denied allegations made against the Chartered Accountant. They denied that blank papers or resignation letter fabricated of Respondent No.2 had been used. It was claimed that original Respondent No.3 repaid several bank loans. He was senior Politician from reputed family. They denied EGM held at the instance of Petitioners.



5. Original Respondent No.2 - D. Srinivasa Rao appears to have filed Reply dated 22<sup>nd</sup> February, 2017 and written submissions dated 6<sup>th</sup> March, 2017 in NCLT. The learned NCLT took note of the averments and submissions. Original Respondent No.2 claimed that due to CA - K. Ranganathan, he had entered into the agreement with Respondent No.3. There were failures to comply with the conditions and thus he had terminated the said agreement by letter dated 14<sup>th</sup> October, 2006. He claimed to be a victim of trap laid by Respondent No.3 with the help of one – Raman. He had not consulted other shareholders, relatives or friends before entering into agreement as he was hopeful that core issues of the Company would be settled. He claimed that the EGM dated 26.12.2006 was held by the shareholders and the shareholders resolved to restore the position of Respondent No.2 and original Board of Directors and to take over the possession of the Company. According to him, the agreement was only as security for possible investment. The agreement was not adopted by memorandum or Articles of Association. This Respondent again referred to the Orders passed by CLB dated 16.07.2008 that Respondents 3 to 5 have no authority to manage the affairs or alienate or sell assets. The Order came to be upheld by the High Court on 28.01.2009 and Hon'ble Supreme Court declined to interfere. He claimed that contesting Respondents fabricated balance sheets and the proceedings were illegal.

6. The learned NCLT heard detailed arguments of the parties and in para – 9 of the Impugned Order framed following issues:-

- “i) Whether the present Company Petition is maintainable under section 397 and 398 of the Companies Act, 1956 since respondents are questioning the maintainability itself on the ground that petitioners are not holding minimum 10% of requisite shares as contemplated under Section 399 of the companies Act. 1956 and whether they were not properly authorized by Powers of Attorney etc.;
- ii) Whether agreement in question dated 09.10.2003, which is basis for the entire dispute in question is validly executed and, if so, whether it is binding on the Company and its shareholders, what rights accrues to Respondent No.3 to 5 and whether it is still valid or not etc.
- iii) Whether the re-appointments of Respondents No.2, 8 & 14 as Executive Vice-Chairman and Managing Director and the Directors are valid under law or not.
- iv) Whether the Respondent Nos.3 to 5 are holding any shares in the Respondent No.1 Company and hold any position especially, after their removal as such as per EGM dated 02.01.2008.
- v) If so, what is the relief, the petitioners are entitled for.”

The reasons recorded by the NCLT show that the NCLT answered the issues in favour of the original Petitioners and in para – 23 passed the following Orders:-

- “23. In the result, the Company petition bearing CP No.87 of 2007 is disposed of with the following directions:
  - a) We hereby declare that the agreement dated 9.10.2003 deemed to be terminated, and it would not confer any rights to respondent

Nos.3 to 5 in respect of any terms and conditions mentioned therein;

- b) We hereby declare that holding of Board Meeting and passing of resolutions dated 30.04.2004, 2.6.2004, and subsequently by Respondent No.3 to 5 are illegal and they would not bind Respondent No.1 Company;
- c) We hereby declare that the issue and allotment of 1,13,00,000 equity shares are illegal and without any authority and alleged allottees would not get any rights out of it;
- d) We hereby declare that Respondent No.3 to 5 ceased to be MD/Directors w.e.f. 02.01.2008 and they are not holding any shares in the Respondent No.1 Company consequently held that Respondent No.2 and his associates deemed to be legally constituted Board of Directors;
- e) We further declare Respondent No.3 to 5 are not eligible to be appointed as Directors of Respondent No.1 Company in view of decrees passed in two suits and they are also hereby restrained from interfering with the affairs of Company as per decree passed in OS No.86 of 2008;
- f) Consequently directed Respondent Nos.3 to 5 not to associate/interfere with the Company in any manner immediately and un-conditionally so as to manage the affairs of Company by duly elected Board of Directors as restored by shareholders in their meeting dated 26.12.2006 and 02.01.2008. The Shareholders of the Company are free to manage its affairs as per law;
- g) Respondent Nos.3 to 5 are directed to pay a cost of Rs.1,00,000/- (Rupees One Lakh) each to the Petitioners amounting to a total cost of Rs.3 Lakhs within a period three weeks from date of receipt copy of this order.”

7. Aggrieved, the Appellants – original contesting Respondents have filed this Appeal arraying the Company as Appellant No.1. The Appeal is raising various grounds and it is argued by the learned counsel for Appellants that the original Petitioners were not holding minimum 10% of the requisite shares considering the further shares which had been issued by the contesting Respondents, and the share capital of the Company was 11.7 crores. It is also argued that NCLT could not have terminated the agreement dated 9<sup>th</sup> October, 2003 as the validity of the agreement was subject matter for Civil Court to decide. According to him, original Respondent No.2 had received consideration of Rs.100 Lakhs and this should have been considered. It is argued that the Company Petition was a surrogate petition filed by the Petitioners who were near relatives and friends of Respondent No.2. The argument is that the contesting Respondents entered into onetime settlement with secured creditors and dues of banks, creditors, employees and statutory authorities were settled. The NCLT failed to consider BIFR Order which held EGMs conducted by the original Respondent No.2 to be invalid. IDBI Bank had requested Stressed Assets Stabilization Fund to provide update relating to issues of change of management and which had submitted Report to BIFR and it was observed that original Respondent No.3 should be recognised as the promoter of the Company. It is argued that the criminal proceedings initiated by original Respondent No.2 were decided in favour of the

contesting Respondents. The learned Counsel for the Appellants referred to the Resolutions passed where original Respondent No.2 and Petitioner Nos.8 and 14 resigned as Directors and the contesting Respondents came to be appointed as Directors. According to him, Respondent No.2 had sold shares as per agreement, to the original Respondent No.3 and did not hold any share and could not have conducted EOGMs to take back the control of the Company.

8. Learned Counsel for the Appellants referred to Notice which was issued (Page – 767) to increase issued and subscribed capital of Company regarding which Form – 23 (Page – 764) was filed. He referred to the extract of EOGM dated 31.05.2004 (Page – 769) to submit that EOGM agreed to issue and allot 1,13,00,000 shares to investors whether or not such investors were existing members of the Company at par. The Counsel referred to Board Meeting dated 02.06.2004 (Page – 772) which approved allotment of shares to 468 applicants who had deposited 50 paise application monies and list of which shareholders has been filed.

9. Learned Counsel for Appellants objected to the Power of Attorneys filed with the Company Petition empowering original Petitioner No.1 to file the Company Petition stating that the concerned members were not informed as to what Petition was being filed. According to the learned Counsel for Appellant, the EOGMs held by the original Respondent No.2 on 26.12.2006 and 02.01.2008 were illegal and the Resolutions could not have been passed to remove the contesting Respondents.

10. It is argued by the learned Counsel that although original Respondent No.3 paid the amount as per the agreement to original Respondent No.2 but Respondent No.2 failed to transfer the shares. According to him, the contesting Respondents have support of the 468 shareholders to whom contesting Respondents had issued shares after EOGM held by them on 31.05.2004. It is argued that those people should have been made party to the litigation.

11. The original Respondent No.2 (present Respondent No.1 in Appeal) argued the Appeal in person. He submitted that on 16.07.2008, CLB had restrained the contesting Respondents from interfering with the affairs of the Company and the High Court and the Supreme Court upheld the Orders and thus acts of contesting Respondents in continuing to interfere with the affairs of the Company were illegal and they could not have represented the Company before BIFR. He referred to the Judgement passed in OS 86/2008 whereby vide Order dated 5<sup>th</sup> November, 2015, contesting Respondents were held as no more Directors of the company and that they could not hold themselves out as Directors. According to him, although he personally entered into agreement with Respondent No.3, the Respondent No.3 did not honour the agreement and he had terminated the same.

11. Petitioner No.1 – present Respondent No.2 has argued for himself and other Petitioners that the original Petitioners constituted 10.33% of the total paid up share capital and CLB had decided the maintainability of

the Petition by detailed order dated 16.07.2008 and contesting Respondents were restrained from functioning as Managing Director/Directors. The said Order became final when it was dismissed by the Hon'ble High Court on 28<sup>th</sup> January, 2009 and the SLP filed against the High Court Order came to be dismissed by the Hon'ble Supreme Court. Although the Appellants have tried to question maintainability on the basis that wife of original Respondent No.2 died during pendency of the Petition, it is argued by the Counsel for original Petitioners that maintainability of the Petition is based on the date of filing of the Company Petition and on that date, the Petitioners did have the required percentage. The original Petitioners support the Power of Attorney filed by the shareholders in favour of Petitioner No.1. It is argued that original Respondent No.3 colluded with CA - K. Ranganathan and other non-shareholders to forge Minutes dated 29.09.2003 (Page 477) to show his appointment as MD and Auditor respectively. The Counsel referred to the names appearing in the said document purporting to be Resolution of AGM and submitted that none of the persons shown to have appeared in the AGM were shareholders of the Company. It is argued that original Respondent No.3 claimed to have signed those Minutes as Chairman although he was not appointed as Director to conduct the meeting as required by Clause 30(1)B of the Articles of Association of the Company. According to the original Petitioners, the agreement dated 09.10.2003 between original Respondent No.3 and Respondent No.2 is not binding on the original Petitioners and original Respondent No.2 has no authority to sell his shares to original

Respondent No.3. The shares were already pledged to IDBI and the concerned agreement was illegal. The original Petitioners referred to the contents of the agreement dated 09.10.2003 to submit that it has averments that Respondents 3 to 4 are to be inducted from date of agreement, however, an EGM is shown as of 29.09.2003 (Page – 684). The Petitioners claimed that the shareholders – Petitioners had no Notice of any such EGM. It is argued by the original Petitioners that the contesting Respondents filed Forms – 23, 29 and 32 with ROC on 08.03.2004 relating to their appointments as MD/Directors in Board of Directors' Meeting dated 06.02.2004, which was subject to approval of financial institutions and shareholders at ensuing AGM. According to original Petitioners, the shareholders did not give their approval to contesting Respondents and they should be treated as having ceased to be MD/Directors w.e.f. 02.09.2004 in view of Section 260 of the Companies Act, 1956. The Board Meetings dated 30.04.2004 and 02.06.2004 held by contesting Respondents have no legal effect as there was no approval of financial institutions and no approval of shareholders was obtained for appointing the contesting Respondents as Directors. It has been argued by learned Counsel for original Petitioners that on 27.12.2004, BIFR declared the Company as a sick company and appointed IDBI as Operating Agency. At that time, BIFR did not treat the contesting Respondents as the Director and treated original Respondent No.2 as representing the Company. It is argued that in the EGM held on 26.12.2006, original Respondent No.2 was appointed as Director. The Appellants - contesting Respondents were



neither Directors nor shareholders of the Company. Referring to the Company Petitions filed, the learned Counsel for original Petitioners submitted that CLB vide Order dated 16.07.2008, restrained contesting Respondents from functioning as MD/Directors or from alienating or selling assets of the Company. These Respondents filed OS 469/2007 dated 19.03.2011 (Page – 712) before City Civil Court, Hyderabad to stall the EGM. The Civil Court and High Court allowed the holding of EGM and the EGM was held on 02.01.2008, which became final and it was uncontested in any Court. The OS 469/2007 filed by the Appellants was dismissed for default on 19.03.2011 and thus, the EGM dated 2<sup>nd</sup> January, 2008 held by the shareholders of the Company cannot be questioned. The contesting Respondents opened bank account in Syndicate Bank violating BIFR Order dated 27.12.2004 to illegally take away money of the sale of yarns. The balance sheets filed with ROC between 2003 – 2004 till 2008 – 2009 were fabricated as the contesting Respondents could not be treated as Directors. The contesting Respondents issued bogus shares of Rs.11.30 Crores violating Section 63, 81 and 67 of the Act without there being any real infusion of money. It is argued that there was no Notice of any such EGM issued to the shareholders and such issue of shares at par to outsiders in violation of the Articles of Association, was clearly illegal. The Counsel also submitted that there was theft of valuable Company machinery and yarn which was produced and sold. The huge electricity bills showed that much production was done but the sales did not reflect

in the balance sheets of the Company. The Counsel for contesting Respondents has thus supported the Judgement of the NCLT.

12. We have heard Counsel for both sides. Although so many issues are being raised, however, we find that in this matter, the following are essential factors.

13. There is no dispute regarding the fact that the Company was not doing well and original Respondent No.2 moved BIFR on 18.08.2001 making reference under Section 15(1) of SICA which came to be registered as Case No.366/2001. There is copy of record of proceedings dated 17.09.2002 (Page – 669) which shows that BIFR heard original Respondent No.2 who appeared with CA - K. Ranganathan and representatives of 4 banks and ESIC, and directed further investigations into the accounts of the Company. IDBI was appointed as Operating Agency under Section 16(2) of the SICA.

14. It appears that subsequently on 9<sup>th</sup> October, 2003, original Respondents 2 and 3 entered into agreement (copy at Page – 678) where original Respondent No.2 represented himself as “seller” and claimed that he was representing himself and shareholders of 80 Lakhs equity shares in the Company. Original Respondent No.3 was shown as the “buyer”. The introductory clause mentioned that the “Sellers and Buyers have discussed the various issues involved and have decided to carry out the change of management of the Priyaranjani Fibres Ltd. from the sellers to the buyers”. The Seller – original Respondent No.2 claimed that he was

holding 80 Lakhs equity shares together with his relatives, friends and associates, which they would like to dispose of. On the date of the agreement, it appears that only Rs.8 Lakhs out of Rs.100 Lakhs were paid. Clause 4 of the agreement stated that the seller agreed to continue as Director on the Board of Directors of the Company until the transfer of management to the buyer is agreed to by all the institutions, Banks, BIFR, etc. or as long as buyer desires. It is nobody's case that before original Respondent No.2 entered into any such agreement, there was any Board Resolution of the Company or any decision of the shareholders of the Company authorising the original Respondent No.2 to promise to transfer 80 Lakhs shares, which were admittedly not fully belonging to the Respondent No.2. More importantly, when the agreement was claiming transfer of management, there is nothing to show that there was any shareholders' Meeting or decision to permit one of the Directors – Respondent No.2 to part with the Management of the Company to the Respondent No.3. Clause – 4 of the Agreement itself states that for transfer of management, the institutions, Banks and BIFR, etc. have to agree. Nothing is shown that any such consents were sought and granted. If the substratum of the Company itself was being handed over, according to us, it could not have been done without a prior approval of the shareholders in meeting of the shareholders. Apart from this, when jurisdiction of BIFR had already been invoked and BIFR had already directed investigation/enquiry under Section 62 of the SICA, in our view, it was a subject matter before BIFR to decide whether the Company has become a

sick industrial company and whether it is practicable for the Company to make its net worth exceed the accumulated losses within a reasonable time, as would be required to be seen under Section 17 of SICA. At further stage, it was for BIFR to look into the question relating to preparation and sanction of schemes under Section 18. In such situation, it was beyond the capacity of original Respondents 2 and 3 to sit down and enter into agreement dated 9<sup>th</sup> October, 2003 on their own deciding “to carry out the change of management”. Once jurisdiction under SICA had been invoked, no such agreement without approval of BIFR could have been entered into and thus, the acts on the part of original Respondents 2 and 3 to pass Resolutions on their own to slice away original Respondent No.2 and original Petitioners 8 and 14 from the position of Directors and introduce contesting Respondents as Additional Directors and Resolutions passed on such count cannot be approved and deserve to be ignored.

15. Apart from above, (at Page – 683) what appears is an extract of Board Meeting Resolution dated 03.09.2003 inducting Respondent No.3 as Additional Director and also appointing him as Managing Director subject to approval in AGM. The Resolution also recorded that the original Respondent No.2 was tendering resignation as Executive Vice Chairman and MD and that he will continue as Director. The complete Resolution is not before us and we do not know if the other two Directors (original Petitioners 8 and 14) were or not present in any such meeting. This act, in

the face of agreement dated 9<sup>th</sup> October, 2003 is also prior to the agreement dated 9<sup>th</sup> October, 2003.

15.1 Then there is what is shown as EGM dated 29<sup>th</sup> September, 2003 (Page – 684) appointing Respondent No.3 as Managing Director for 5 years w.e.f. 3<sup>rd</sup> September, 2003. This is again before the said agreement dated 9<sup>th</sup> October, 2003. Even for this alleged AGM, there is no material to show that the shareholders had been given Notice and that the same were served on the shareholders. Then there is a Form 23 (Page – 686) filed appointing original Respondent No.3 as Managing Director by way of ordinary Resolution of the Board. The Resolution is attached (Page – 687) claiming that Respondent No.3 was appointed as MD for 5 years w.e.f. 6<sup>th</sup> February, 2004. This does not match with the alleged AGM (Page – 684) which stated that Respondent No.3 was appointed MD for a period of 5 years w.e.f. September, 2009. If he had already been appointed for 5 years on 3<sup>rd</sup> September, 2003, there would not be need arising to again appoint him for 5 years on 6<sup>th</sup> February, 2004. Yet again, there is a document of Board Meeting chaired by original Respondent No.3 dated 6<sup>th</sup> February, 2004 (Volume - 5 – Page 1212) co-opting contesting Respondents 4 and 5 as Additional Directors and regarding that, original Respondent No.2 and the other two Directors (Petitioners 8 and 14) had resigned. Resignation of original Petitioners 8 and 14 do not appear to be there.

The original Petitioners have questioned these Resolutions. According to Petitioners, there was no meeting of any EOGM to permit

appointment of original Respondent No.3 as Managing Director and there was no AGM in which the shareholders agreed to continue these contesting Respondents as regular Directors. Contesting Respondents have not shown us any Notices being issue of said EGMs. Even if it was to be stated that original Respondent No.2 cooperated with the contesting Respondents initially for passing of such Resolutions, there is no material to show that the other two Directors – original Petitioners 8 and 14 were given Notices of the Board Meetings and there is no material to show that Notices were given to the shareholders of the said EOGM dated 29.09.2003 or any Board Meeting approving continuation of original Respondents 3 to 5 as Directors. Result would be that these Respondents could not have been treated as Directors in the absence of approval by General Body. The learned Counsel for the original Petitioners submitted that the complete Resolution of AGM dated 29.09.2003 (extract of which is referred above at Page – 684) is available at Page – 525 (Volume 2 para – 2). The Counsel for Petitioners referred to the persons shown as present in AGM and referring to each of the names of the persons shown as present, the Counsel argued that none of the persons shown as Chairman or Member were actually shareholders of the Company. Thus, according to him, these documents were got up documents. The learned Counsel for the Appellants – contesting Respondents did not in Reply try to show us that any of these persons shown as members, was a shareholder of the Company. Thus we find no reason to not accept the submissions made for Petitioners.

16. Now on one hand, we have the present original Respondents 3 to 5 who have not proved on record that there was any duly constituted and held General Body Meeting of the shareholders in which they were continued as Directors. On the other hand, we have the original Petitioners and original Respondent No.2 claiming that there was an EOGM held on 26<sup>th</sup> December, 2006. Original Respondent No.2 appears to have sent a Notice dated 14<sup>th</sup> October, 2006 to the contesting Respondent No.3 (Page – 1240) terminating the agreement dated 9<sup>th</sup> October, 2003. We are not entering into the legal niceties regarding the termination of the agreement. We have referred to this document in the factual background. After this termination dated 14<sup>th</sup> October, 2006, original Respondent No.2 appears to have sent Notice dated 30.11.2006 to the shareholders (copy at Page - 1235) calling for EOGM on 26<sup>th</sup> December, 2006. He has sent the Notice claiming to be Director. There is copy of Resolution of the said EOGM at Page – 1242 of the Appeal where details were recorded that earlier Form – 32 had been submitted of Respondent No.2 resigning as Director on 09.02.2004, subject to approval of BIFR, financial institutions and banks. The Resolution mentioned that in record of proceedings of BIFR dated 27.12.2004, this aspect was noted and that the Resolution noted that original Respondent No.2 being Chief Promoter would be continued as Director in the light of BIFR proceedings dated 27.12.2004. Taking such stock, the Resolution came to be passed that original Respondent No.2 is being appointed as Executive Vice Chairman for 5 years. Appointments of original Petitioners 8 and 14 were also made as Directors.

17. Original Petitioners and original Respondent No.2 are in agreement of such Resolution passed on 26.12.2006. The Appellants 2 to 4 (contesting Respondents) who have not been able to show us that they were continued as Directors by the General Body or that they are shareholders, can hardly be heard questioning the procedure of holding such EOGM.

18. Apart from the EOGM on 26<sup>th</sup> December, 2006, we have on record Notice dated 03.08.2007 (Page – 707) issued by original Respondent No.2 under Section 169 of the old Companies Act seeking to hold the EOGM on 3<sup>rd</sup> September, 2007. By this Notice, EOGM was sought to be called for removing Respondents 3 to 5 from the position of Directors. This Notice was challenged by original Respondents 3 to 5 by filing Original Suit 469/2007 before the Chief Judge, City Civil Court at Hyderabad (Page – 712 of the Appeal). These original Respondents as Plaintiffs sought injunction against the original Respondent No.2 holding the EOGM. The said Civil Court by Ad Interim Injunction dated 27.08.2007 (Page – 741) restrained the holding of the meeting. It is stated that the temporary Injunction was vacated on 06.11.2007 and against the said Order, CMA 1015 of 2007 was filed in the High Court of Andhra Pradesh by contesting Respondents which came to be dismissed on stage of admission. In the meanwhile, the original Petitioners filed the Company Petition before CLB on 28.09.2007 and CLB passed orders dated 10.10.2007 (Page – 358) holding the Petitioners to be entitled to exercise their rights as members of



the Company against which High Court of Andhra Pradesh declined to interfere as per Orders which may be seen in CMA.MP.2391/2007 in MA.CMA.No.1015/2007 (Page 356 of the Appeal). The original Respondent No.2 referring to the earlier Notice, which was issued in EOGM dated 3<sup>rd</sup> September, 2007, issued the Notice for holding the EOGM on 2<sup>nd</sup> January, 2008 (Page – 1273) and it appears that EOGM was held and the extract of the Resolution has been filed at Page – 1275 removing contesting Respondents from the positions of Directors. Other Resolutions also appear to have been passed.

19. At Page – 283 of the Appeal, there is copy of CLB Order dated 16.07.2008. CLB took note of the litigation between the parties and also took note of the proceedings which had taken place till then, before BIFR. NCLT noted the Meetings on which the contesting Respondents were relying to claim their rights and observed:-

“The aforesaid meetings, not making any reference to the agreement dated 09.10.2003, though seriously disputed, the respondents have not chosen to produce any materials whatsoever, other than the bare minutes or extract of minutes of the relevant meetings, to substantiate any proper and valid appointment of the third respondent as Managing Director of the Company. All these developments are subsequent to the reference made to BIFR and when BIFR is seized of the matter, without however, consent or approval of BIFR and hence the appointment of the respondents 3 to 5, as Managing director/Directors of the Company, is hit by the provisions of section 32 of SICA, by virtue of the principles enunciated in ***K. Sitarama Raju Vs. Board for Industrial and Financial Reconstruction and Others (supra)***. The assertion of Shri V.S. Raju, learned Counsel, that any change in the management has to be approved by BIFR is equally applicable to the

appointment of the respondents 3 to 5 as Managing Director/Directors of the company, especially when such contentious appointment has been made when the reference made under SICA is pending before BIFR. The representation of the third respondent as director of the Company, at the BIFR proceedings held on 27.12.2004 has not been recognised by BIFR.”

CLB then referred to the proceeding dated 27.12.2004 before BIFR where BIFR had questioned the CA as to what authority Respondent No.3 had to attend the hearing and whether introduction of Respondent No.3 “will not amount to backdoor change of management”. Some explanations were given by the CA to come out of the queries raised, which is not material for us. Thus, learned CLB taking overall conspectus of the developments till then, came to a conclusion at the preliminary stage of this Company Petition itself so as to direct:-

“In view of my foregoing conclusions and considering paramount interest of the Company, the respondents 3 to 5 are hereby restrained to function as Managing Director/Directors of the Company and further prohibited from selling any of the fixed assets of the Company, until disposal of the company petition. Towards this end, the respondents will file reply to the main petition by **14.08.2008** and rejoinder to be filed by **29.09.2008**. The matter will be heard on **10.09.2008 at 2.30 P.M.**”

[Emphasis supplied]

20. Against this Order, the contesting Respondents filed two Appeals CA 14/2008 in the name of the Company and CA 16/2008 in their own names. Hon’ble Single Judge of the High Court of Judicature, Andhra Pradesh heard the parties and passed a Judgement dated 28<sup>th</sup> January,

2009 analysing all the details. The Hon'ble High Court analysed the provisions of SICA and the Judgements referred. After referring to the provisions of SICA and Order dated 27.12.2004 of BIFR, it was observed:-

“Thus a reading of the above order dated 27.12.2004 passed by the BIFR, while declaring the 1<sup>st</sup> respondent company as a sick industrial company and appointing IDBI as its operating agency, sets out the facts that the 2<sup>nd</sup> respondent herein has made certain attempts to part with the shares of the company in favour of the 3<sup>rd</sup> respondent and that an attempt has also been made to change the composition of the Board of Directors. But, importantly, the same has not been approved by the BIFR. BIFR continued to recognize the 2<sup>nd</sup> respondent as the Executive Vice-chairman cum Managing Director of the 1<sup>st</sup> respondent company as of 27.12.2004. It had therefore doubted the locus of the 3<sup>rd</sup> respondent/appellant to have taken part in the proceedings before the BIFR. It is worthy to notice that these vital issues have not yet been resolved by the BIFR so far.

In this context and fact situation, can it be said that the Company Law Board does not have any jurisdiction to entertain the application moved by the respondents – petitioners?”

In 2009, when Hon'ble High Court was deciding such Appeals of the contesting Respondents, competency of the original Petitioners to maintain the Company Petition was not disputed. It was observed by the High Court “On the count of the competency of the petitioners, who have approached the Company Law Board, there is no dispute” The Hon'ble High Court dealt with the issues raised whether when BIFR was considering the matter, the Company Petition could be maintained, and analysing the facts and the law it was observed :-

“Bearing these legal principles in mind, if we examine and analyse the fact situation prevailing, the following facts are liable to be held as established.

- (1) The 1<sup>st</sup> respondent company has been registered under Section 16 of the SICA Act on 17.9.2002 by the BIFR at the instance of the 2<sup>nd</sup> respondent.
- (2) The 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent have entered into an agreement subsequently thereto on 9.10.2003.
- (3) No prior permission of the BIFR has been obtained for effecting any change of the constitution of the Board of Directors.
- (4) There are grave discrepancies noticed in the assertions of the 3<sup>rd</sup> respondent with regard to the agreement referred to supra, the dates of induction of the respondents 3 to 5 and the dates on which the necessary meetings, which are said to have been conducted, be it the meetings of the General Body or the Board of Directors.
- (5) That the company is being operated as is *prima facie* shown from the monthly electrical energy consumption to the order of nearly Rs.3.00 Lakhs, but however, no corresponding sales have been brought to the books of account.
- (6) BIFR has not so far accorded any approval to the status of respondents 3 to 5 and in particular the 3<sup>rd</sup> respondent has not yet been recognized as the Managing Director of the 1<sup>st</sup> respondent company and on the contrary while issuing show-cause notice as on 27.12.2004, the 2<sup>nd</sup> respondent has been treated/continued to be treated as the Managing Director of the Company.”

High Court observed that CLB rightly considered it appropriate to injunct the contesting Respondents from claiming or functioning as Managing Director or members of the Board of Directors for the Company and the said Order could not be termed as unjust or perverse. High Court held that there was no conflicting situation between the jurisdictions of the Company Law Board and the BIFR. In the result, Hon'ble High Court discussed the two Appeals brought about by the contesting Respondents and did not interfere with the Order of CLB dated 16.07.2008. It seems that contesting Respondents filed SLP to the Hon'ble Supreme Court which came up before the Hon'ble Supreme Court with No.CC 6539/2011 and the same was dismissed by the Hon'ble Supreme Court on 1<sup>st</sup> August, 2011 observing that the SLP being against Interim Order, the same was being dismissed (Page – 336).

21. From the developments as noted above, the legal position is that the contesting Respondents were restrained from interfering with the affairs of the Company by holding themselves out as Managing Director/Directors. With such Order being in force since 16.07.2008, which was upheld till the Hon'ble Supreme Court, the contesting Respondents do not appear to have paid respect to the Judicial Orders.

22. The contesting Respondents in spite of CLB Order dated 16.07.2008 which restrained them, went ahead to file on 5<sup>th</sup> August, 2008 back dated Resolutions and Forms to show that in 2004, Notice dated 01.05.2004 (Page – 767) had been issued to increase issued and

subscribed capital of the Company and that EOGM was held on 31.05.2004 (Page – 769) permitting issue and allotment of 1,13,00,000 shares to investors (may be members or not) and that earlier Board Meeting has been held on 30.04.2004 (page 770) to convene the EOGM and that on 02.06.2004, Board Meeting was held accepting applications of 468 persons for allotment of the shares. (Now they disclosed list of 468 shareholders [page – 776 to 815]). Such filings done after the Restraint Order of CLB, were not only in violation of CLB Order but in the circumstances, we accept the arguments of the learned Counsel for original Petitioners that these were back dated got up documents which cannot be relied on. It is rightly argued by the learned Counsel for original Petitioners that if really contesting Respondents had brought about an EOGM on 31.05.2004 and increased the subscribed share capital, it is surprising that when they had earlier filed OS 469/2007 (Page – 712 of the Appeal), they still pleaded in para – 3(b) that the issued subscribed and paid up capital of the Plaintiff No.1 Company is Rs.11.70 Crores divided into 1,17,00,000 equity shares of Rs.10/- each. This does not take account of what is said to have been issued in 2004. According to him, this itself shows that the claim of issue of further shares was not true and these documents were unreliable. It has also been argued that there is no material to show that other than taking share application money, any other amount was received. It is further argued by the learned Counsel for original Petitioners that the Annual Reports filed for year ending 2004 – 2007 were also filed only subsequently, which becomes clear from what

was observed by Institute of Chartered Accountant when they took action against CA - K. Ranganathan as can be seen from the document at Page – 554. They held the CA guilty of misconduct and took lenient view of only reprimanding him. In the circumstances, we find that documents relied on by contesting respondents of further issue of shares, that too, without following any provision of the Companies Act of making offer to existing shareholders, do not inspire confidence.

23. The learned Counsel for the Appellants referred to an Order of BIFR passed later on, on 22.11.2011 (Page – 428) to say that BIFR had after declaring the Respondent Company as sick company on 27.12.2004, in this Order recognised the original Respondent No.3 and his group to be managing the Company. Thus, according to the Counsel, contesting Respondents were found to be managing the Company. We have gone through this Order dated 22.11.2011 of BIFR. It reproduced the earlier Orders which had been passed by BIFR and the submissions made on behalf of the contesting Respondents and deliberated as to which group is in actual control of the Company. BIFR appears to have been impressed with the payments made by contesting Respondent No.3 to the Banks and observed in the last para of the proceeding that the Bench was satisfied that the group of contesting Respondents has been managing the Company since 2003 and has mobilized substantial fund to discharge the Company's liabilities. It went on to observe that the Bench was satisfied that original Respondent No.2 had duly sold all his 80 Lakhs shares for a consideration

to Respondent No.3 in 2003 and that he had never denied this sale. It further went on to declare that Respondent No.3 does not hold any shares in the sick company. It went on to refer that Respondent No.3 Company should continue to manage the affairs of the Company. Although such Order was passed by BIFR and the contesting Respondents want to rely on the same, fact remains that original Respondent No.2 carried Appeal No.31/2012 before Appellate Authority for Industrial and Financial Reconstruction (Copy of the Order is at Page – 1686) and the Appellate Authority stayed this Order dated 22.11.2011 till the Appeal is disposed of. Counsel for both sides agree that with the Insolvency and Bankruptcy Code coming into force and further developments, the proceeding before BIFR and the Appellate Authority under SICA have abated. Apart from this, although the Appellants wanted to rely on the BIFR Order, it was clearly passed without considering the CLB Order dated 16.07.2008 and the High Court Order dated 28.01.2009 as can be seen from para – 1.4 of that proceeding and the fact that there was no discussion of these judicial orders passed maintained till the Hon'ble Supreme Court. In our view, when such Order of CLB was there, even if it was at the interim stage, when it had been maintained, the contesting Respondents could not have continued to project themselves as Managing Director/Directors before BIFR and any such actions could not be given any legal recognition. Again it was beyond the jurisdiction of BIFR, if the 80 Lakh shares had been duly sold.



There is yet another Judgement (Page – 370) in the matter of OS 86/2008 dated 05.11.2015 passed by III Additional District Judge, Ranga Reddy in Suit filed at the instance of original Respondent No.2 against contesting Respondents seeking to restrain contesting Respondents from interfering into the affairs of the Company. Contesting Respondents contested the suit by filing written statements and cross-examined original Respondent No.2 who was Plaintiff in that suit. Later, these Respondents did not lead their evidence and Court heard arguments and decided the suit, holding that present contesting Respondents were not Directors and permanently restrained them from interfering in the affairs of the Company. The Judgement appear to be on merits though the Decree (Page – 367) marked Defendants as Ex-parte. Even if marked ex-parte, the Decree is there and binds contesting Respondents. They cannot hold themselves out as Directors or that they are in management.

24. If the contesting Respondents on one side claim that Respondent No.3 infused money by paying the banks, the original Petitioners on the other side are pointing out huge electricity bills showing production of yarn but lack of amounts being shown as coming in the accounts of Company. Looking to the conduct of contesting Respondents as has been discussed above, which shows effort on their part to hold on to the Company although it is apparent that they do not have any share in the Company and are not even Directors, we would not rely on such Respondents.

25. Before parting, we are disposing of one contention raised by the learned counsel for Appellants that the Power of Attorneys executed by original Petitioners 2 to 50 in favour of original Petitioner No.1 did not duly authorize original Petitioner No.1 with power to file the Company Petition. The argument is that under Sub-Section (3) of Section 399 of the Companies Act, 1956 where members give consent in writing to another member to file the Petition, it has to be an intelligent consent and there cannot be blanket consent. The Counsel placed reliance on Judgement in the matter of **“M.C. Duraiswami Vs. Sakthi Sugars Ltd.”** (reported as “MANU/TN/0529/1978”) which Judgement was followed in the matter of **“The Kuttanad Rubber Co. Ltd. and Ors. Vs. K.T. Ittiyavirah and Anr.”** (reported as “MANU/KE/0025/1994”). We have gone through these Judgements. Facts of the matter of M.C. Duraiswami show that the Appellant therein had filed with the Petition, letter of consent signed by 147 shareholders to satisfy the requirements of Section 399 of the old Act. The Company filed preliminary objections and in support of the objections, 73 Affidavits sworn to by 73 out of 147 persons, whose signatures found a place in the Annexures to the Petition, were filed. The contention in those Affidavits was that these persons were asked by the Appellant that an Extra Ordinary General Meeting was to be called for in connection with fixation of cane price, they should sign a letter or statement of consent to that effect and that it was in that context that they signed the paper placed before them by the Appellant. The Affidavits claimed that those persons never gave the consent to a Company Petition being instituted by the

Appellant therein. It was in this context that the Hon'ble High Court had found that requirements to Section 399(3) of the old Act were not satisfied. In the present matter, however, we have seen the consents which were filed with the Company Petition, which were titled as 'Power of Attorney' and detailed recitals are there empowering original Petitioner No.1 to engage and appoint Counsel to conduct and defend legal proceedings in any Court of Law, Tribunal or Company Law Board and to sign Vakalatnama, pleadings etc. These documents are of 2007, copies of which are at Pages – 641 to 667. Going through these documents, it cannot be said that the concerned members, who were referring to their Share Folio numbers and number of shares and who were authorizing the original Petitioner No.1, did not know that they were authorizing the Petitioner No.1 to move Courts, Tribunals, CLB with regard to protecting their interests as well as the interests of the Company. Those Petitioners have not questioned the act of Petitioner No.1 maintaining the Petition on their consent. Contesting Respondents cannot profess to have entered their brains to say that they did not give intelligent consent. Thus, on this count, we do not find that there is any defect made out.

26. We do not find any reason to interfere with the Impugned Order except for a small portion. We find that direction 'A' of the operative order of para – 23 of the Impugned Order (reproduced earlier) was not well worded and needs to be modified. The original Petitioners have not sought declaration of termination of the agreement dated 9<sup>th</sup> October, 2003. It was

an agreement between original Respondents 2 and 3. Whatever legal effect it had viz-a-viz original Respondent No.2, was matter between original Respondent Nos.2 and 3. In the absence of any material to show that the original Petitioners were party to such agreement or that the Company was party to such agreement, the declaration should have been that the said agreement is not binding on the original Petitioners and the Company and would not confer any rights on the contesting Respondents viz-a-viz the shareholders of the Company. We are proceeding to modify the Impugned Order only to that extent. However, we will impose costs on the Appellants for continuing to drag the company in litigation, although the contesting Respondents have no case.

27. We pass following Order:-

### **ORDER**

(A) We maintain the Impugned Order passed by the learned NCLT with modification in direction 'A' of para – 23. We substitute direction 'A' of the Impugned Order with the following:-

“A. We hereby declare the agreement dated 09.10.2003 as not binding on the Respondent Company and the Petitioners – shareholders. The said agreement, which is between original Respondents Nos.2 and 3, is not binding on the Company and other

shareholders and does not confer rights viz-a-viz the Company and original Petitioners.”

(B) Except for this modification in Impugned Order, the Appeal stands dismissed with costs imposed on the Appellants 2 to 4. Each of the Appellants 2 to 4 shall pay costs of Rs.1 Lakh each from their own funds, to be deposited in the accounts of the Company – original Respondent No.1 – M/s. Priyaranjani Fibres Ltd.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

*/rs/nn*