



wanted to give effect to the same for about 9 years, and finally the Tribunal passed the following order on 20<sup>th</sup> January 2017: -

*"The petitioner seeks execution of the order dated 11.06.2008 passed by the erstwhile Company Law Board. The observations of the Ld. Presiding Officer were:*

*"The allegations of acts of oppression and mismanagement of the affairs of NHEL resulting in the depletion of its reserves remained uncontroverted. Though it was a fit case for winding up of NHEL, such an order would clearly prejudice the interests of the petitioner 1 and other shareholders",*

2. *Having come to the conclusion that the acts of the respondents were oppressive to the petitioners herein, the Id. Presiding Officer ordained exit of the petitioners subject to payment of a fair value of their shares by the Respondents. At that point of time, the petitioners held 40,940 shares being 20.47% equity in the Respondent No. 1 Company.*

3. *The only asset of the Respondent No. 1 Company is land measuring 13.811 sq. yds. at Ludhiana. Upon a fair valuation being assessed,*

*the value of each share was quantified at Rs.706.73 per share. This valuation however was not acceptable to the petitioners and was impugned before the Hon'ble High Court of Delhi in Co. Appeal (S.B) No.18/2008. The Hon'ble High Court of Delhi, in its order dated 05.03.2013, while observing that the impugned order did not spell out the consequences of non-payment, also set aside the valuation and remanded back the case to the Company Law Board for a fresh assessment of the assets of the company. Accordingly, a Local Commissioner as well as a Chartered Accountant were appointed by the CLB. Report in this respect is on record. While the site plan and the report have been prepared by the Local Commissioner, in the absence of any cooperation from the respondents, based on whatever record was made available by the petitioners, the share was valued at Rs. 1624/- by adopting a book value method for valuation for the equity share.*

*4. It is submitted by the Id. Counsel for the petitioners that other than their own equity, the petitioners now also claim another 8.19% in the*

company, being 25% of the shares which have devolved upon petitioner no. 1 upon the death of his deceased parents and through the HUF, increasing his stake to 28.66%.

5. The matter has been listed a few time before this Bench and the parties were directed to be present in person. While Respondent No. 3 has neither paid the full cost imposed by this Bench and the Hon'ble High Court of Delhi, nor appeared before this Bench, his counsel Mr. H.K.Dhariwal has vehemently opposed any claim made by the petitioners or their entitlement in lieu of the shareholding. Other than generally resisting the petitioners' entitlement, no basis to oppose the claim has been put forth. He however admits the petitioners' shareholding in the respondent Company. Needless to say that the respondents have neither impugned the decision of the Company Law Board permitting exit of the petitioners on fair valuation of their holding, nor the directions passed by the Hon'ble High Court of Delhi in CO(s) No.18/2008.

6. Respondent No. 4 has also not appeared in Court nor paid the cost imposed. A written submissions however is on record which apart from repudiating the petitioners' entitlement, admits and fortifies the claim of the petitioners to the extent of 28.66% equity in the Respondent Company.

7. Though the shareholding of the petitioner is not disputed by the respondents, they are neither willing to give any money in lieu of the shareholding to enable them exit, nor are they willing to part with any portion of the immovable property. Their intention is clearly to deprive the petitioners of their entitled shares. In the event of failure to pay the petitioners their entitlement in terms of the valuation report, the petitioner would be entitled to a portion of the Company's asset being the immovable property in proportion to their shareholding. A site plan of the Company's land measuring 13.811 sq. yards has been placed on record. A portion being 207 feet by 164 feet 7/1/2 inches, being 3867.08 sq. yards is demarcated being equivalent to 28.66% share. Since the petitioners seek execution of the previous order,

*the demarcated portion in Red on the site plan is directed to be transferred in favour of the petitioners against their shares to enable them exit. No objection has been placed by any of the respondents to the site plan till date.*

*8. Ld. Counsel for the respondents' submits that there is building constructed on the aforesaid property, which fact is not substantiated by the photographs he seeks to show the Court. On the other hand, Ld. Counsel for the petitioner has confirmed that the apportioned area of land is vacant with no construction thereon. It is therefore being clarified that the petitioner shall only be entitled to a vacant piece of land without any construction thereon. It is also being directed that the portion of land under petitioners' possession, other than the demarcated portion shall be handed over to Respondent No. 1 through Respondents 3 & 4.*

*9. Accordingly, the site plan, 'Exhibit A' is being confirmed as the share of the petitioners. The obdurate and recalcitrant attitude of the respondent emerges large in the proceedings. It*

*appears that they are neither willing to pay the petitioners nor execute the conveyance deed in their favour. The Respondents are however given 15 days' time to either pay the petitioners in terms of valuation of their equity or execute a conveyance deed in their favour, failing which, the petitioners would be at liberty to approach this forum for appointment of a Local Commissioner to execute the conveyance deed in their favour.*

*10. The petitioners shall deposit their shares with the Bench Officer which shall be surrendered to the respondents for a consequential reduction in the share capital.*

*11. To come up for compliance on 21.03.2017."*

The appellants have challenged the said order before this Appellate Tribunal but taking into consideration the relevant facts and attitude of the appellants, the Appellate Tribunal by order dated 6<sup>th</sup> June 2017 observed and directed as follows:-

*"From the record, we find that the Company Petition was filed in the year 2006 by Respondents Mr. Nagesh Kumar and Mrs. Renu Mehra. The Appellants are Respondents therein. For one or other*

*reason, the Appellants are buying time and matter is pending for eleven years.*

*Under Section 422 of the Companies Act, 2013, the petitions were required to be disposed of within three months. However, more than ten months have passed after constitution of the Tribunal but it has not been disposed of in view of time taken by the Appellants that too in the manner as noticed above. We find that just to delay the Company Petition, the Appellants have played a dubious role in preferring the defective appeal without enclosing Vakalatnama, without enclosing the copy of the impugned order and without affidavit and asking for time from the Tribunal on the ground that they have preferred the appeal and same is pending. In the circumstances, we direct the Tribunal to dispose of the Company Petition preferably within one month without granting unnecessary adjournment to the parties. The Appellants who are Respondents before the Tribunal should not be granted time on any ground.*

*It would be also open to the Tribunal to decide as to what action is to be taken against the*



*Respondents. The appeal is dismissed with aforesaid observation.*

*Let a copy of this order be forwarded to National Company Law Tribunal, New Delhi."*

After the remand of the case to Tribunal and to give effect to the earlier order of the Tribunal, the respondents, who are the petitioners before the Tribunal requested the Tribunal to get the order dated 20<sup>th</sup> January 2017 implemented by appointing the Local Commissioner so as to execute a conveyance deed on behalf of the 1<sup>st</sup> Respondent Company in favour of the respondents/petitioners in terms of the order dated 20<sup>th</sup> January 2017 passed by the Tribunal. Prayer was also made to dispensed with the requirement of depositing share certificate by the respondents/petitioners with the Bench Officer and to direct cancellation of the shareholding of the respondents/petitioners with the consequential reduction in the equity share of the company. The Tribunal taking into consideration all the relevant facts and the earlier orders passed by Company Law Board appointed one Shri Amit Bhagat, Advocate, as the Local Commissioner get a conveyance deed executed on behalf of 1<sup>st</sup> respondent company after physically ascertaining the measurement as given in the draft conveyance deed within a period of one month from the date of the order.

Learned counsel for the appellants submits that already conveyance deed has been executed in favour of the respondent but the same has been disputed by the respondents. There is nothing on record

to suggest that any conveyance deed was executed by the company in favour of the Respondents/Petitioners.

In the circumstances, we find no ground to interfere with the impugned order and dismiss the appeal with cost of Rs. 1,00,000/- (Rs. One Lac only) to be paid by appellants in favour of 1<sup>st</sup> and 2<sup>nd</sup> respondents/petitioners within 45 days.

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

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

sm