

**+NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**  
**COMPANY APPEAL(AT) NO.02 OF 2018**

(Arising out of the Judgement and Order dated 15.11.2017 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP No.84(ND)/2013, RT CP No.29/Chd/Pb/2016)

**IN THE MATTER OF:**

1. Mr. Arun Kumar Goyal,  
R/o 17, 18, 19 Apex Nagar,  
Barewal Road, Near Westend Mall,  
Ludhiana-141001.
  
2. Mr.Ravi Nandan Goyal,  
R/o 17, 18, 19 Apex Nagar,  
Barewal Road, Near Westend Mall,  
Ludhiana-141001. Appellants.

Versus

01.M/s Aar Kay Chemicals Pvt Ltd,  
39-C, Udhampur Singh Nagar,  
Ludhiana-141001.

02.Mr.Vijay Kumar Goyal,  
R/o 15B-146/6 Yash Chaudhary Market,  
Dhuri 148024.

03.Mr. Achhru Ram Sharma,  
349 A.P.Enclave,  
Dhuri 148024 Punjab

04.Mrs Nirmal Sharma,  
349 A.P. Enclave,  
Dhuri 148024 Punjab

05.Mr. Puneet Singla,  
Kothi Opposite PSEB  
Malerkotla Road,  
Dhuri 148024  
Punjab

06.Mr. Pawan Kumar Singla,  
Kothi Opposite PSEB  
Malerkotla Road,  
Dhuri 148024  
Punjab

07.Mr. Paarshotam Dass Garg,  
352, AP Enclave,  
Dhuri 148024 Punjab

08.MR. Vijay Shibe  
House No.XX-3297/3  
Behind Sigma diagnostics Ltd  
Gurdev Nagar, Ludhiana  
Punjab

09.M/s Rajasthan Plantation Company Ltd,  
20 B, Kanti Nagar, Banati Park,  
Jaipur  
Rajasthan 302019

10.Mr. Sanjay Arora,  
753/1 Gurdev Nagar,  
Ludhiana  
Punjab

11.Ms Santosh Arora  
753/1 Gurdev Nagar, Ludhiana,  
Punjab.

12.Ms Sushma Arora  
Dhab Basti,  
Amritsar.

13.Mr. Kewal Kant Arora  
18 A New Golden Colony,  
Amritsar.

14.M/s Lallu Mal & Sons HUF  
Ward No.8, House No.219,  
Tehsil Mohalla, Dhuri  
Punjab.

15.M/s Ricela Health Foods Ltd  
(Previously A.P. Solvex Ltd0  
2<sup>nd</sup> floor, Jewel Plaza,  
College Road, Civil Lines,  
Ludhiana.

16.M/s A.P. Organics Ltd  
2<sup>nd</sup> floor, Jewel Plaza,  
College Road, Civil Lines,  
Ludhiana.

17.M/s Gupta Vinod Kumar & Associates,  
7, 2<sup>nd</sup> floor, Surya Shopping Arcade  
National Road, Ghumar Mandi,  
Ludhiana, Punjab

18.Mr. Rajesh Bhambri,  
Company Secretary,  
House No.7, Phase III,  
Sarabha Nagar Exten,  
Pakhowal Road,  
Ludhiana

19.Mr. Ankur Mahindru  
Company Secretary  
C/o P.S. Communication,  
Booth No.329, Sector 37-D,  
Chandigarh.

20.Mr. Shiv Kumar Goyal,  
A.P. Enclave, Sangrur Road,  
Dhuri 148024

21.M/s A.P. refinery Pvt Ltd,  
1649, New Prem Nagar,  
Ludhiana 141001

22.Registrar of Companies,  
Corporate Bhawan, Plot No.4B  
Sector 27 B, Madhya Marg,  
Chandigarh 160019.

23.Regional Director,

Northern Region,  
A-14, Sector-1,  
PDIL Bhawan,  
Noida (UP).

Respondents

**For Appellant:-** Mr. Krishnendu Datta and Mr. Arnav Kumar, Advocate.

**For Respondents:** - Mr. Salman Khurshid, Senior Advocate with Ms Tushita Ghosh, Mr. Gaurav Mehta, PCS and Mr Aniruddha Choudhury, Advocates for Respondent No.1 to 9, 15, 16..

**JUDGEMENT**  
**(16<sup>th</sup> April, 2019)**

**JUSTICE A.I.S. CHEEMA, MEMBER (JUDICIAL)**

1. This appeal has been filed by the appellants, original petitioners, being aggrieved by part of the judgement and order passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP No.84(ND)/2013 , RT CP No.29.Chd/Pb/2016 by which judgement the NCLT has upheld the rights issue of 27,100 shares and directed the Respondent No.1 company, Aar Kay Chemicals Pvt Ltd, (hereinafter referred to as the ‘Company’) to take fresh decision relating to appointment of Respondent Nos.3, 6, 7 and 8 as Directors in the first meeting of its members to be held and further given the direction to Company to take fresh decision relating to transfer of 9040 shares.

2. The appeal gives particulars regarding the background as to how the company came to be acquired. In brief, it is stated that the appellants and family group (“appellant group”) alongwith 4 other promotors (Respondent Nos.2,3,6 and 7) had set up a company called A.P. Solvex Pvt Ltd (APS/Ricela in short). The Respondent Nos.2,3,6 and 7 are “Respondent Promoters group” are contesting respondents, who are represented by Respondent No.2 to 8. Similar to APS/Ricela, the said promoter groups also set up another company

called A.P. Organics Pvt Ltd (APO in short). The companies were engaged in the business of manufacturing extraction of rice bran oil. They were set up as quasi-partnership. The Appeal then refers to how the shareholdings changed making averments like “understanding”, “oral understanding” “decided” etc. It appears that disputes arose between the parties somewhere around 2010 and as per the appeal, in 2010 the appellant group held 34.7% of the shareholding and the APS group hold 36.6% and other erstwhile promoters hold 28.7% shares. The appeal makes reference to an attempt at settlement in 2010 when it is stated that an arbitration agreement (Annexure-6 Page 164) was entered into to aver that under the arrangement the appellant group was to retain the present company. Although the appeal claims that the arbitration agreement was entered into by all the 5 promoters groups the document at Annexure A-6 does not bear the signatures of the appellants and is titled as “letter of authorisation for arbitration”. The appellants have not given details as to what happened of such documents and if it was acted upon or given up. The appeal claims that the Respondents under the pretext of settlement talks forged and fabricated records and committed a series of illegal acts mentioned as under:-

3. **Alleged Illegal Acts:**

- a) Illegal appointment of Respondent No.6 and 7 as Directors of the Respondent No.1 Company on 14.8.2010.
- b) Illegal transfer of 9040 shares of Respondent No.1 company from erstwhile promoters/shareholders to Respondent No.2,3,4, 5 and 6.
- c) Illegal resignation of Respondent No.20 as Director on 25.6.2012.

- d) Illegal appointment of Respondent No.3 and 8 as Directors of Respondent No.1 company on 16.8.2012.
- e) Illegal rights issue of 27081 equity shares by Respondent No.1 company on 13.10.2012.

4. It is claimed that these acts have been considered by the Learned NCLT and although while decision relating to acts (a) to (d) have been held in favour of the appellants and act (e) has not been held in favour of the appellants grievance is made claiming that the illegal rights issue of 27081 shares should have been set aside and the NCLT should not have directed taking fresh decision of appointing R-3, R-6 to R8 as directors as well as grievance is made that the NCLT should not have directed to take fresh decision regarding 9040 shares.

Operating Part of Impugned Order (in para 146) reads as under:-

***“xxx The instant petition is disposed of with the following directions:-***

- i) The original Board of Directors comprising of P-2, R-2 and R-20 as directors of R-1 company is restored;***
- ii) The respondent company in the first meeting of its members shall take fresh decision of appointing R-3, R-6 to R-8 as directors;***
- iii) The meetings of the Board of Directors and the shareholders meeting be hence forth convened by complying with various provisions of the Companies Act,***

**2013, the rules and regulations framed thereunder and to serve the notices of all the meetings in writing as required by law.**

- iv) The respondents to hand over all the statutory record which may be in their possession in the Board meeting to be convened for this purpose.**
- v) The newly constituted Board of Directors shall be competent to take the necessary decisions as may be required in view of the observations made in this judgement; and**
- vi) The decision dated 14.08.2010 in transferring 9040 shares of erstwhile promoters/shareholders is set aside and R-1 company shall take fresh decision on the transfer of these 9040 shares keeping in view the observations made in the judgement that the transferors have not questioned the passing of consideration.**
- vii) The petition to claim rest of the reliefs is dismissed.**

**All the pending miscellaneous applications stand disposed of”**

5. We have heard the learned counsel for the appellant as well as the contesting respondents and perused the record. The respondents have not filed the appeal against the impugned order although partly the observations were against the contesting respondents and certain directions were given to the respondents to take fresh decision. Learned counsel for the appellant has

tried to impress upon us that the findings recorded against the respondents should be treated as final because Respondents did not file appeal and if illegal acts (a) to (d) were found against the respondents then the alleged illegal act (e) should also have been held against the respondents as the said rights issue dated 13<sup>th</sup> October, 2012 was executed at the behest of a Board which was held as not legally competent.

6. In order to avoid repetition and for clarity of the fact we propose to refer to the alleged illegal acts and the reasoning and findings recorded by Learned NCLT as well as arguments in substance, and make our observations so as to understand the reasons for the Operative Order of the Learned NCLT.

7. **Alleged illegal Act 'a'**

a. **Illegal appointment of Respondent No.6 and 7 as Directors of the Respondent No.1 Company on 14.8.2010.**

(i) The appellant claims and it is argued that Respondents 6 and 7 were purportedly appointed as Director in Board Meeting held on 14.8.2010 and Form 32 showing the said appointment was filed by Respondent No.7 after 7 months on 22.3.2011. According to the appellants no such Meeting took place and forged and anti-dated documents were filed to justify their appointment. It is also claimed that the company was not carrying on any business and there was no requirement of such additional director.

(ii) The impugned order dealt with this aspect in paras 103 to 116. NCLT noticed the case put up by the appellants and noted the contentions of the Respondents who pointed out that when the

matter came up before Company Law Board an order dated 11.3.2015 was passed. Both the parties had admitted that the company being closely held company there had been no requirement to send notice of the Board Meeting as parties were working on mutual trust and such observations of the Company Law Board were never challenged by the appellants-petitioners by way of any appeal. Respondents also brought to the notice of NCLT the balance sheet for the year ending 31.3.2010 which showed that the Meeting had taken place on 14.8.2010 and during the meeting original petitioner No.2 had signed the same. NCLT recorded that the counsel for the original petitioners stated that this was done at the instance of the Respondents. NCLT observed that even if there was no practice to issue formal Notice of the Board Meeting at least agenda should be available. In Impugned Order para 113 it is observed:-

***“The authenticity of the minutes of the meeting dated 14.8.2010 would thus have to be determined on the basis of the prima facie evidence. The first circumstance is that Form No.32 with regard to the appointment of R-6 and R-7 as Additional Directors on the basis of meeting dated 14.8.2010 was filed on 22.3.2011 i.e. after a gap of about seven months of the date of meeting. Copy of Form No.32 is at Annexure P-10. Form No.32 of appointment of these respondents as Directors on the basis of AGM dated***

***30.9.2010 was filed on 18.4.2011 under the digital signatures of R-2.”***

The above paragraph of the Learned NCLT shows that the NCLT found fault with the Respondents for not filing the Form 32 with ROC for a period of 7 months from the date of Meeting. However, the NCLT did not consider that if the appointment of R6 and R7 was in public domain on 22.3.2011, the same was never challenged by raising any grievance or filing a company petition till January, 2013 when present CP 84(ND)/2013 was filed that too after the contesting respondents had also filed another company petition against the present appellants.

Para 115 of the impugned order shows that the appointment of Additional directors was also taken up for approval as Director in the General Body Meeting held on 30.9.2010. The original petitioners and Respondent No.20 did not attend the said Meeting and the Learned NCLT (without referring to the Company Law Board order) observed in para 116 that there was no evidence of service of notice, on petitioners.

We refer to these factors for the purpose of appreciating how and why NCLT in the ultimate operative order did not come down heavily against the respondents, and gave directions for taking fresh decisions, which are questioned by appellants.

## 8. Alleged Illegal Act ‘b’

- b. Illegal transfer of 9040 shares of Respondent No.1 company from erstwhile promoters/shareholders to Respondent No.2,3,4, 5 and 6.

i) Regarding this, the appellants claim and it is argued that the contesting respondent group transferred 9040 shares from erstwhile promoters to Respondent No.2 to 6 on 14.8.2010 to create illegal majority. It is claimed in the Annual Return for the financial year 2010 it was recorded that on 14.8.2010 following happened:-

Transferor	Transferee	Number of shares
Kewal Kant Arora Respondent No.13	Vijay Kumar Goyal Respondent No.2	250
Santosh Arora Respondent No.11	AR Sharma Respondent No.3	1450
Sanjay Arora (Respondent No.10)	Mrs Nirmal Sharma (Respondent No.4)	4470
Satish Arora	Mrs Nirmal Arora (Respondent No.4)	1120
Lallu Mall & Sons (Respondent No.14)	Puneet Singla (Respondent No.5)	250
Sushma Arora (Respondent No.12)	Pawan Kumar Singla (Respondent No.6)	1500
	Total	9040

The appellants claimed before NCLT and it is argued that such transfers of shares by the transferors were in violation of Article 15 to 17 of the Articles of Association as none of the transferees except one were existing shareholder and the transfer was done without the consent of the Board. It is claimed that the Respondent Group filed forged, fabricated annual return of 2009-10 on 1.4.2010.

ii) This is dealt with by NCLT in paragraph 117 to 122 of Impugned Order. It was claimed before the NCLT by the appellants that the transferors had not given any notice with regard to the intention to sell the shares nor they were offered to existing shareholders and violated Articles of Association. The Respondents claimed before NCLT that these transfers related back to 1998 when the Respondent company Aar Kay was taken over. The impugned order records detail as were brought before NCLT to show that when the R1 company was taken over it had issued 34000 shares out of which 20850 shares were held by Sanjay Arora group, 3850 shares held by Kamal Arora group and 9300 shares by independent outsiders were there and out of these 20850 shares held by Sanjay Arora group, 2600 shares were transferred to original petitioners No.2, 6100 shares to appellant No.1 and 3050 shares to original respondent No.7 in the year 1998. The balance of 9040 shares (which are now disputed) were transferred to R2 to R6 for which the sale consideration had been paid in the year 1998 itself but the transfer deeds could not be executed and lodged with the company due to internal disputes.

The Respondents brought on record before NCLT evidence to show payment of Rs.5,00,800/- from the account of Original Respondent 4, Nirmal Sharma. The account statement was filed showing entries of withdrawal on 20.8.1998 and two drafts in the name of Original Respondent 10 Sanjay Arora and Original respondent 11, Santosh Arora. The respondents also brought on record an affidavit of transferors in this regard. With such case before NCLT, it observed:-

***“However, since the transfer of these shares was not recorded in the register of R-1 company for 12 years and there being challenge to the meeting dated 14.8.2010 for which notices are not shown to have been served upon P-2 and R-20, who were also the directors of R-1 company and that the transfer deeds came into being only on 7.8.2010, this transfer of 9040 shares cannot be held valid and therefore liable to be set aside. R-1 company shall now be called to make a fresh decision on the transfer of these 9040 shares held by the erstwhile shareholders/promoters, keeping in view that the factum of passing of consideration of the sale to the transferors in the year 1998 is not being disputed by the Transferors themselves.”***

It is clear that the title to the shares was transferred in 1998 itself. Procedure remained to be done was of bringing the names on the register of members in the company and for reasons recorded in above para 122 although NCLT held that the transfer noted by the company could not be held valid and was to be set aside, still it was conscious that consideration had been paid in 1998 was not being disputed by the transferors and transferee and thus gave directions (vi) in the operative order. In effect transfer of title in 1998 has been accepted but the requirement to follow procedure under the Companies Act to make entry in the register of members has been insisted upon.

#### 9. Alleged Illegal Act ‘c’

(c) Illegal resignation of Respondent No.20 as Director on 25.6.2012.

- i) The appellants claim that on 26.6.2012 original respondent No.2 filed form No.32 attaching the resignation of Respondent No.20 as Director on 25.6.2012. According to the appellants, Respondent No.20 never resigned as Director. The appellants claim that the attachment with Form No.32 contained forged signatures of Respondent No.20.
- ii) Learned NCLT dealt with this aspect in para 125 to 130 of Impugned Order. NCLT appears to have considered the case put up by the appellants that the resignation letter attached with the form was computer typed and signatures on the same had been placed from other scanned signatures bearing the signatures of Respondent No.20 Shiv Kumar Goyal. In para 126 of the impugned order itself NCLT observed that aspect can not be affirmatively determined in the summary proceedings, but fact of the matter is that no resolution accepting the resignation was passed. It also observed in para 128 that the issue of authenticity of resignation letter of R-20 could be determined by production of original letter which the respondents have not been able to do.

In para 129 NCLT noted the statement of counsel for respondents made before Company Law Board on 11.3.2015 that on 27.11.2013, P2 and R20 continued to be directors of the company. NCLT also referred to judgements of High Court of Punjab & Haryana in CADP No.22/2015 that R20 had been recognised as Director in the order dated 21.8.2015. It concluded that it could not be accepted that original petitioner No.2 and R20 ceased to be Director in terms of Section 283(1)(g) of the Companies Act.

From what NCLT discussed, we find it interesting to see that the original petitioners claimed that the original respondent No.20 had not signed Annexure 5 filed with Form 32. Original Respondent 20 did not file petition questioning the contesting Respondents. What the original respondent No.20 wanted to say in this regard is nowhere considered by NCLT. Be that as it may, the other aspect is that although such form of resignation relating to Respondent No.20 was uploaded with the Ministry on 26.6.2012, Respondent No.20 or the appellant reacted to the same immediately is not demonstrated. The petition was filed only in June, 2013. In operative order (i) NCLT restored the Board of Directors comprising of P2, R2 and R20 and in direction (ii) directed Company to take fresh decision with regard to R 3, 6 to 8 as directors and (in the context that practice of giving Notice was not made) directed in (iii) to follow the Companies Act, Rules and Regulations. We have noted reasons why such directions have been given by the Learned NCLT.

10. Alleged Illegal Act 'd'

d.Illegal appointment of Respondent No.3 and 8 as Directors of Respondent No.1 company on 16.8.2012.

i) With regard to this, the appellants point out that the Respondent group filed Form 32 on 17.8.2012 and 21.8.2012 to show that R3 and R8 has been appointed as directors on 16.8.2012. The appellants claim that the appointments were illegal as no proper Board of Directors Meeting had been held to appoint them as Director. The appellant claim that there was no need to appoint Additional Directors as the company was not carrying on any

business as the only major Solvent Extraction Plant was already leased to APS/Ricela.

ii. The only observations and findings of the NCLT in this regard is in para 131. By the time NCLT was discussing this aspect, NCLT could see that original petitioners who has silently watched things over a time were trying to get things undone. Consequently in para 131 and 132 the NCLT observed as under:

***“131. The next challenge in the instant petition is inducting of two more Directors in August, 2012 namely R-3 and R-8. It was contended that R-3 and R-8 were appointed as Addl. Directors on 16.8.2012 by an illegally constituted Board of Directors. It was further submitted that in fact, there was no need for bringing any more Directors for the management of R-1 company, as it was not carrying any operation. Its entire premises was leased out. It was further contended that this appointment was made by the respondents to consolidate their own position in the Board of Directors of R-1 company.***

***132. The question then arises is whether working and business of a company, which is incorporated under the Companies Act, can be brought to a standstill in a case where the aggrieved persons choose to remain silent for a period of more than two years of alleged commencement of the acts of oppression and mis-management. If the***

*petitioners have chosen to file the petition in June 2013 by alleging that they were kept away from the management of the company from the middle of the year 2010, all the acts done by the company in the interregnum cannot be set at naught. The only course available may be to restore the position of petitioner No.2 and R-20 as the Directors, who are said to be illegally removed or deemed to have vacated the office. This, however, cannot undo various other acts which the petitioners have been silently watching. The continuity in the business and management of a company has to be upheld as it involves various statutory compliances and answerable for tax compliances. In view of the above only the other acts relating to internal decisions may be put to challenge and set as naught.”*

Considering such facts arising from the record, NCLT, gave directions (i) and (ii) in the final operative order and in direction (iii) asked the company to follow the various provisions specially relating to service of notice. This appears to have been directed considering the CLB order dated 11.3.2015 noted in impugned order para 105 that initially the parties had not been following procedure of sending of formal notices.

11. We have referred to the above illegal acts (a) to (d) considering that the parties referred and made submissions regarding them, and that, Appellants have questioned the Impugned Order directions (ii) and (vi) as to why should

NCLT have directed Company to take “fresh decisions”. The Appeal further questions alleged Illegal Act ‘e’.

12.

Alleged Act ‘e’

e. Illegal rights issue of 27081 equity shares by Respondent No.1 company on 13.10.2012.

i. According to the appellants on 13.10.2012 the respondent company increased share capital and made illegal and unlawful rights allotment of 27081 shares to Respondent No.2,3,4,5,6 and 7 increasing the shareholding of Respondent Group from 54% to 69.8% inclusive of illegal transfer of 9040 shares. Copy of Form 2 downloaded from MCA website is annexed with the appeal at Annexure A-11.

ii. The appeal claims and it is argued that the appellant No.2 as a director had received notice dated 8.8.2012, on 12.8.2012. The notice had been issued by Respondent No.2 calling for Meeting of the Board on 16.8.2012. According to the appellants this notice did not make mention regarding rights issue and it was not part of the agenda. According to the appellants by this time when notice A-12 (Page 206) was issued Respondent had already created a majority in the Board and shareholders. According to the appellants on 16.8.2012, although it was not part of the agenda the illegal Board of Directors comprising of R3, R6, R7 and R8 took decision to increase the subscribed and paid up capital by offering rights issue to existing shareholders. According to appellants, A2 was not present in the Meeting. Copy of the Minutes have been attached at Annexure A-13 (Page 208). Notice for rights issue dated

15.9.2012 was received by the Appellant Group. Copy of Notice dated 15.9.2012 has been placed at Annexure A-14, Page 222.

iii. The appellants claim that at this time the appellant and respondent groups were still discussing the matter/disputes in good faith in the family mediation. The appellants state that when such offer letter came they objected to the illegal rights issue on the basis that company had no operation and there was no need for fresh infusion of equity funds. According to the appellants without prejudice to their objection, in such discussions, the appellants group in family mediation requested Respondent Group to release the unsecured loan of approximately Rs.1.5 crores which stood in their favour in the books of APS and APO so that they can subscribe to the rights issue. The appellant states that the respondents group precluded the appellant group from subscribing to the rights issue by blocking their funds which was lying in APS/Ricela as unsecured loans and subsequently made rights issue allotting shares to Respondent No.2 to 7 as detailed in the appeal para 26(vi). The appellants claim that as illegal transfer of 9040 shares to Respondent No.2 to 6 has been set aside they could not have been given benefit to rights issue. According to the appellants after such rights issues on 13.10.2012 the respondents being in majority filed CP 131/ND/2012 on behalf of the Respondent No.1 company against A.P. Refinery Pvt Ltd which came up for hearing on 16.10.2012. According to the appellants the rights issue was illegally executed and there was no need for raising such funds and the funds raised were used only in litigation.

iv. Learned NCLT dealt with this issue in para 133 to 139 of Impugned Order. NCLT noticed that the respondents had attached proof of service of notice for the Board Meeting to P-2 and R-20 through Aakash Ganga Courier service and found that inspite of notice the original petitioners No.2 and Respondent No.20 did not attend the Board Meeting on 16.8.2012. It was observed in para 135 as under:-

***“Admittedly the petitioners did not apply for the allotment of the said equity shares, though it was submitted that the petitioners considered this matter before the Arbitrators and also informed them that their unsecured loan of approximately Rs.1.5 crores was standing in their favour in the books of account of APS and APO, which may be released in their favour and use the same to subscribe in the rights issue.”***

NCLT considered the arguments of the appellants that while they were still discussing the unsecured loan of Rs.1.5 crores they received notice on 15.10.2012 with regard to CP 131/ND/2012 filed by the Respondent Group. In para 138 of the impugned order NCLT observed as under:—

***“The notices for the Board Meeting for 13.10.2012 are dated 5.10.2012 as at pages 330-331 of the sur-rejoinder and addressed to P-2 and R-20 respectively and these were sent by speed post on 6.10.2012 as per the postal receipts at page 332 of the sur-rejoinder. The earlier notice dated 8.8.2012 of the Board meeting scheduled for 16.8.2012***

***were sent to the P-2 and R-20 by courier service as at page 329 of the sur-rejoinder. The learned counsel for respondents further submitted that after issuing the shares on the rights issues basis as per decision taken on 13.10.2012, the return in Form 2 was filed with ROC, which was in the public domain. The minutes of the meeting dated 13.10.2012 are attached at page 361 of the sur-rejoinder as Annexure SR-38, which shows on agenda item No.4, the decision to allot 27,081 equity shares of additional allotment to respondents Purshotam Garg, Nirmal Sharma, Achhru Ram, Pawan Kumar, Puneet Singla and Vijay Goyal in the ratio as mentioned in the decisions of the Board.”***

- v. With regard to the challenge of the appellants that there was no need of additional funds was countered by the contesting respondents in NCLT by pointing out that in 2011-2016 apart from the lease amount, R-15 company had spent Rs.2,78,66,088/- on the modernization and expansion of Solvent and Extraction Plant of R1 company. NCLT also noticed that R15 company to whom the lease was given of R1 company had contributed Rs.62,57,218/- per annum which was many times higher than the lease amount from the earlier R21 company in 2007-10. In fact NCLT considering these aspects decided the other grievance also made by the appellants alleging loss on account of lease amount which was discussed in para 144 of the impugned order. NCLT concluded

***“So, it cannot be said that additional equity share was not required by the company. The petitioners having been admittedly received with the notices of the Board Meetings dated 16.8.2012, the offer letter for the rights issue and also the notice of the Board Meeting, having not participated or brought any proof of having made any offer to purchase additional equity shares, are now estopped from challenging this decision having delayed so such to challenge this decision.”***

Although the appellants are trying to show us that the funds raised were utilised for litigation, considering these observations of the Learned NCLT and also taking note of the observations of the NCLT in para 144 of its judgement we find that the contesting respondents cannot be said to be mismanaging the company. Even from the lessee the contesting respondents ensured that Solvent Extraction Plant of the Company gets materially expanded.

13. It is the argument of the learned counsel for the appellants that if illegal transfer of 9040 shares to Respondent No.2 to 6 had been set aside, the privilege shares could not have been issued to them. We discard this argument. The reason for this is that although the NCLT while dealing alleged transfer of 9040 shares stated that the transfer of 9040 shares cannot be held to be valid and was liable to be set aside, what NCLT actually was doing was to direct following of procedure for rectification of register of members by omitting entry made without following proper procedure for making the entry.

It is quite apparent and clear that the NCL was accepting that there has been a transfer with regard to ownership of these shares in 1998 itself. As such only the following of procedure for making entry in the register of members was the requirement which was to be duly conducted. The transferees had paid in 1998 will not lose right or title to the shares only because proper procedure was not followed by the company while taking note of the transfer. Consequently, there would be no justification to deprive them of subsequent rights issue.

14. We are unable to accept the submissions being made on behalf of the appellant for reasons discussed above. Considering the impugned order for reasons discussed above, we decline to interfere with the same. There is no substance in the appeal.

**ORDER**

The appeal is dismissed. No orders as to costs.

(Mr. Balvinder Singh)  
Member (Technical)

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

New Delhi

bm