NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.203 OF 2017

(ARISING OUR OF ORDER DATED 13TH MARCH, 2017 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HYDERABAD IN CP NO.109/2012 (TP NO.95/HDB/2016).

IN THE MATTER OF:	**Before NCLT**	**Before NCLAT**
01.P. Ram Bhoopal Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	1st Petitioner	1st Appellant
02.G. Vishnu Bhoopal, Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	2nd Petitioner	2nd Appellant
03.Sree Ram Reddy, Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	3rd Petitioner	3rd Appellant
04.Sarojini Sree Ram Reddy, Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	4th Petitioner	4th Appellant
05.Saraswathi Priya Reddy, Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	5th Petitioner	5th Appellant
06.Tripti Reddy, Plot No.265H, Road No.10, Jubilee Hills, Hyderabad-500033	6th Petitioner	6th Appellant

07.Giridhar Reddy, Flat No.303, Sree Matha Nilayam, Srinagar Colony, Kesava Nagar, Hyderabad-500073	7th Petitioner	7th Appellant

Versus

01.Pragnya Riverbridge Developers Ltd, 305, 3rd Floor, Topaz Building, Amrutha Hills, Panjagutta, Hyderbad-500082. Registered Office now at Opp. GIET College, Chakradwarabhandam Diwancheruvu Rajanagaram Mandal, Rajahmundry, Guntur, Andhra Prades 53329	1st Respondent	1st Respondent
02.Pragnya Capital I Private Ltd, C/0 IMM Limited, Les Cascadas Edith Cavell Street, Port Louis 742CU001 Mauritius.	2nd Respondent	2nd Respondent
03.Subba Rao Dukkipati Plot No.143/A, Road No.10, Jubilee Hills, Hyderabad-500033.	3rd Respondent	3rd Respondent
04.Gopal Menon, 140, Franklin street, Apt. 3A, New York, 010013 United States of America	4th Respondent	4th Respondent
05.Padmanabhan Balasubramanian, 6-3-787, Flat No.509, Royal Pavilion, Next to RBI Staff Quarters, Ameerpet, Hyderabad-500016	5th Respondent	5th Respondent
06.Talatam Srinagesh	6th Respondent	6th Respondent

Plot No.269, 2nd floor,
Road No.12, MLa Colony,
Banjara Hills,
Hyderabad-500034

07. Educomp Infrastructure and School Management Ltd, 308 Udyog Vihar, Phase-II, Gurgaon Haryana-122001.	7th Respondent	7th Respondent

For Appellant:-Mr. Darpan Wadhwa, Senior advocate with Ms Tine Abraham, Mr. Anurag Misra and Ms Vatsala Kumar, Advocates.

For Respondents: - Ms Ananya Kumar, Mr. Rajat Joneja, Advocates.

J U D G M E N T

BALVINDER SINGH, MEMBER (TECHNICAL)

The appellants, original petitioners, have filed this appeal, under Section 421 of the Companies Act, 2013, being aggrieved by the impugned order passed in CP No.109/2012 (TP NO.95/HDB/2016) and Company Application No.72/2016 filed in National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT in short) whereby the Company Petition and company application were dismissed on 13th March, 2017.

2. The brief facts of the case are that the 1st respondent was originally promoted by one Mr. Lakshmi Prabaakar and Mrs Ratna Kumari. Both the promoters and one Mr. Sathya Venkata Srinivas Borusu were the first directors of the company. 1st respondent was registered as a private limited company under the name "Vision Heights Private Ltd". The company was subsequently got converted as a Public Limited Company and correspondingly the name was changed as "Vision Heights Limited". The name of the company was again changed on 10.07.2012 and presently the name of the company is "Pragnya Riverbridge Developers Limited". 1st respondent is engaged in the business of construction, development and sale of properties.

3. Mr. Lakshmi Prabaakar was managing the affairs of the 1st respondent right from its incorporation. However, after a particular point of time when the construction work started the company had to mobilize funds to meet the working capital requirements. Mr. Lakshmi Prabakaar was unable to mobilize such funds and also could not manage the day to day affairs of the company. Therefore, it was decided to raise funds by way of issue of further shares to interested parties. At that point in time Mr. Lakshmi Prabaakar, through the 3rd and 5th Respondents, came to know about M/s Pragnya Capital I Pvt Ltd, 2nd Respondent herein, a Private Equity fund based at Mauritius. After several round of discussions, the 2nd respondent decided to invest in the 1st respondent and accordingly issued a Letter of Interest (LOI) on 14.7.2011 indicating its preference to invest Rs.23 crores for acquiring 71.388% of the shares of 1st respondent in connection with the residential portion of the project only. Accordingly, a Share Purchase Agreement with the 1st respondent and the major shareholder, M/s Vision Ventures Ltd was entered on 28.9.2011. Thereafter, 2nd respondent invested US $ 5 million in 1st respondent and 2,29,81,818 equity shares of Rs.10/- each were allotted to the 2nd respondent. Mr. Lakshmi Prabaakar alongwith Mrs Ratna Kumari and other friends and associates invested Rs.1.50 crores for which equity shares were allotted to them. Shareholding pattern after the said investment stood as follows (Page 305):-

S.No.	Names of shareholders	Number of shares	Percentage shreholding
1	Lakshmi Prabaakar	10,14,781	3.24
2	Ratna Kumari	5,06,800	1.62
3	Vision ventures Ltd	63,88,503	20.41
4	Subba Rao, 3rd Respondent	90,000	0.29
5	Ram Prasad	70,000	0.22
6	Venkat	100	0.00
7	PVRK Prasad	100	0.00
8	Nageswara Rao	100	0.00
9	Seshavani	75,000	0.24

10	B.T. Nageswar	1,19,000	0.35
11	Kiranmai	70,000	0.22
12	Pragnya Capital I Private Ltd	2,29,81,818	73.41
	Total	3,13,07,202	100.00

4. Later on the appellants purchased the shares held by Mr. Lakshmi Prabhaakar, his associates and also from Vision Ventures Ltd during February, 2012, only after confirming that the 2nd respondent would confine itself to residential portion as agreed by them, excluding the commercial portion, in the Letter of Interest and Shareholders agreement. Respondent No.6, a director of 1st respondent, vide email dated 29.2.2012 (Page 237) agreed upon the steps to ensure that the appellants step into the shoes of the erstwhile promoters alongwith exclusive rights to the commercial portion of Project. Respondent No.6 confirmed that the commercial portion of the Project would be demerged in favour of the appellants and a new SHA will be signed. In terms of Clause 7 of the SHA (Page 199), a No-Objection Certificate dated 2nd March, 2012 was issued on behalf of 2nd Respondent approving the transfer of share in favour of the appellants. The appellants held 26.60% shares and Respondent No.2 held 73.40 shares in 1st Respondent. 1st Appellant was appointed as the promoter director of 1st respondent as is evident from Form 32 of the 1st Respondent (Page 244). The shareholding pattern post such transfer of shares in 1st respondent company stood as under:

S.No.	Names of shareholders	Number of shares	Percentage shreholding
1	Ram Bhoopal, 1st Appellant	31,92,792	10.20
2	Vishnu Bhoopal 2nd appellant	51,32,492	16.40
3	Pragnya Capital I Private Ltd	2,29,81,818	73.40
4	Sree Ram reddy, 3rd Appellant	20	0.00
5	Sarojini Reddy, 4th	20	0.00

	Appellant		
6	Sarswathi Priya, 5th Appellant	20	0.00
7	Tripti Reddy, 6th Appellant	20	0.00
8	Giridhar Reddy, 7th appellant	20	0.00
	Total	3,13,07,202	100.00

5. Soon after the transfer of shares was complete, as per appellant, the nominee directors of 2nd respondent began to conduct the affairs of 1st Respondent in a manner oppressive and prejudicial to the minority shareholders of the company. Nominee directors further acted in complete breach of the conditions upon which the appellants had invested in 1st respondent. Therefore, the appellants filed company petition before the NCLT seeking following relief from the oppressive acts and mismanagement by the Respondents.

i) To regulate the conduct of the affairs of the first respondent company in future;

ii) To direct the Respondents to adhere to the Joint Development Agreement dated 19.6.2009 so that the first respondent company would not be committing breach of the said agreement due to the acts/omissions of the second respondent.

iii) To direct the Respondents to adhere to the Letter of Interest dated 14.7.2011 and Share Holders Agreement dated 28.9.2011 and not to deviate from the said agreements.

iv) To direct the Respondents to take suitable steps to demerge the non-residential portion of land to and in favour of an entity owned and managed by the petitioners, subject to the provisions of Section 391 to 394 of the Companies Act, 1956.

v) To declare the Resolutions passed at the Board Meeting held on 5.11.2012 with regard to Demerger, New Share Purchase Agreement and Leasing out of School Premises to M/s Educomp Infrastructure and School Management Limited as null and void;

vi) Any other order which in the opinion of this Hon'ble Bench is just and equitable and thus render justice.

6. After hearing the parties, the NCLT passed the impugned order dated 13.3.2017, the relevant portion of which is as under:

"22. Xxxxxx However, after considering the material on record, found those allegations are not meritorious and found the affairs of the R1 company being run in accordance with law. The Tribunal cannot interfere in the affairs of a company as long as its affairs are being conducted in accordance with law. We have taken note of the statement of the Respondents that they are not depriving the rights of the shareholders including the petitioners in the affairs of the R1 company. We hope that the respondents would honour their commitment and to follow relevant law with reference to the rights of a shareholder, especially the Petitioners herein, who were admittedly holding 26.6% of shareholding of the R1 company. They may also be permitted to participate in the affairs of the R1 company in accordance with law. However, the Petitioner are not entitled to any reliefs as prayed for as they have failed to make out any case in their favour.

23. In the result, the Company Petition bearing C.P. No.109/2012 and C.A. No.72/2016 are hereby dismissed. All the interim orders passed in this case, which are in force as on today, are hereby vacated, and all pending CAs also stands dismissed. However, the first petitioner may be continued as Director till the next Annual General Meeting of R1 company, and he will also be eligible for re-election as Director in accordance with law. No order as to costs."

7. Being aggrieved by the said impugned order dated 13.3.2017 the appellants, original petitioners, have filed the present appeal.

8. The appellants have stated that the Respondent have failed to act upon the conditions and assurances based on which the appellants had invested in 1st respondent. The appellants further stated that the 2nd respondent is

seeking to usurp the entire Project when its investment was only qua the residential portion of the Project.

9. The appellants have averred that the Respondents failed to execute a new Share Holding Agreement with the Appellants, demerge the commercial portion of the Project and incorporate the same in the Article of Association of 1st respondent, despite several requests from the Appellants in letter dated 28th February, 2012 (Page 251) and email dated 8th August, 2012 (Page 254).

10. The appellants submitted that they have a legitimate expectation that the commercial portion of the Project will be demerged in their favour as they have stepped into the shoes of the erstwhile promoters. The appellants further stated that they have invested only on the basis of an understanding between the parties and it would be unfair and prejudicial to allow the Respondents to ignore the same now. The appellant have drawn the attention of the Appellate Tribunal to the decisions in the cases of ***" Paul Martyn Bennet Vs Peter Allen Bennett 2002 WL 820106 (Para 120, 125), Ebrahimi Vs Westbourne Galleries Ltd & Others (1972) 2 WLR 1289 (Page 21, 22); Sh Gurmit Singh & Others Vs Polymer Papers Ltd & Others (2005) 123 CompCas 486 (CLB) (Para 25)*** to support his contentions.

11. The appellants submitted that the breach of express assurances given by the Respondents and actions of the Respondents not permitting the Appellants to exercise their rights under the SHA, amounts to oppression. The correspondences exchanged between the parties are binding assurances which formed the basis of the Appellants' investment and part of the consideration paid by the Appellants for the transfer of shares from the

erstwhile promoters. The appellants submitted that the Hon'ble NCLT has erred in holding that the appellants have failed to produce any documents to show that the commercial part of the Project would be demerged.

12. The appellants submitted that they objected to the nominee directors of 2nd Respondent entering into a master collaboration agreement with 7th respondent for development of a school on the commercial area of the Project. The appellants submitted that this is in direct contravention of the appellants' rights and amounts to oppression and mismanagement.

13. The appellants submitted that the respondents have sought to remove Appellant No.1, minority shareholder director, from the Board of 1st respondent on several occasions. However, the appellant No.1 continued to be a director of Respondent No.1 by virtue of order dated 2nd December, 2013 of Hon'be Company Law Board, Chennai and order dated 3rd November, 2016 of the NCLT, Hyderabad Bench (Page 406 and Page 518). Subsequently the appellant No.1 was removed from directorship of 1st Respondent on 5th August, 2017.

14. The appellant No.1 submitted that the Respondents have also refused to share information about litigation going against 1st respondent and acquisition of additional land for the Project and other affairs of the 1st Respondent. The appellant No.1 further submitted that the respondents did not allow appellants to access to company related information and kept the books of accounts at 2nd respondent's office instead of Registered Office of 1st respondent. The appellant No.1 submitted that they were deprived of full participation in the affairs of 1st respondent despite having invested Rs.8.5 crores in it.

15. The appellants submitted that 1st respondent has engaged employees of its affiliate entities for carrying out accountancy and management works of 1st respondent. The appellant No.1 submitted that Respondents have issued further capital by way of rights issue merely to dilute the shareholding of the minority shareholders group. The appellants further submitted that they are struggling to subscribe to the requisite number of shares in order to ensure that they maintain at least 25% shareholding.

16. The appellant submitted that the Hon'ble NCLT failed to appreciate that the rights of the minority shareholders of 1st respondent are being oppressed by the nominee directors of 2nd Respondent in 1st respondent. The appellants further submitted that the NCLT failed to appreciate that the rights and interests of the erstwhile promoters was duly transferred in favour of the appellants as the they have stepped into the shoes of the erstwhile promoters and are entitled to all rights pertaining to the commercial portion of the Project.

17. Reply on behalf 2nd Respondent has been filed. 2nd respondent submitted that he is a majority shareholder of 1st respondent and presently holding approximately 74.8% of shares and 2nd respondent have invested Rs.23 crores approximately. 2nd respondent submitted that the appellants acquired the entire shareholding of the original promoters in 2012 and joined 1st respondent. 2nd respondent further submitted as the appellants had purchased the shareholding of the original promoters, the consideration for the shareholding was paid to the original promoters (Page 239). 2nd respondent submitted that, therefore, the appellants are neither investors in

1st respondent nor are they party to the SHA dated 28.9.2011 under which they are claiming reliefs.

18. 2nd respondent further stated that the appellants contended that under the SHA, 2nd respondent was obliged to demerge the commercial property of 1st respondent in favour of the appellants and that the failure of 2nd respondent to do so constitutes oppressions.

19. 2nd respondent submitted that the appellants are seeking specific performance of the SHA and nothing further. 2nd respondent submitted, without prejudice to the fact, that there is no obligation under the SHA, or any other document, to demerge the commercial property, as claimed. 2nd respondent further submitted that it is settled law that mere contractual disputes cannot form the subject matter of a petition under Section 397 and 398 of the Companies Act, 1956. 2nd respondent submitted that the corporate property belongs to the company and members have no direct proprietary rights to it but merely to their 'shares' in the company. 2nd respondent further submitted that the appellants subscribed to the share capital of 1st respondent and not a portion of the property/assets of 1st respondent.

20. 2nd respondent submitted that the appellants are relying upon their rights under the SHA for which they were not even the parties. 2nd respondent further submitted that the appellant No.1 had vide letter dated 28th February, 2012(Page 251) had clearly stated that the SHA has become defunct. 2nd respondent further stated that neither the original promoters nor the appellant have acted in terms of the SHA.

21. 2nd respondent stated that no representation was ever made that commercial portion of land of 1st respondent would be demerged in favour of

the appellants. 2nd respondent further stated that the appellants did not invest in 1st respondent but they had acquired shares held by the original promoters.

22. 2nd respondent submitted that no detailed particulars of allegations qua dealings with Vision Ventures Ltd, regarding appointment of Key Management Personnel, alleged delay in filing of Annual Returns provided by the appellants.

23. 2nd respondent stated that no just and equitable cause for winding up has been shown by the appellants and no case is made out that alleged oppressive conduct is causing prejudice to the minority shareholders or interfering with their proprietary rights as shareholders. 2nd respondent submitted that there is no infirmity in the impugned orders which dismissed the company petition.

24. As last 2nd respondent submitted that the appeal filed by the appellants may be dismissed.

25. We have heard the learned counsel for both the parties and perused the record.

26. The first issue raised by the learned counsel for the appellant is that the respondent has failed to act upon the conditions and assurances based on which they have invested in 1st Respondent and that the 2nd respondent's investment was only qua the residential portion of the project. On the other hand, learned counsel for the 2nd respondent argued that there is nothing in the SHA, or any other agreement entered into between the parties, which can lead to the conclusion that the shareholding of 2nd respondent in 1st respondent is such that it enjoys restricted rights of participation in relation

to the company's assets or activities. Learned counsel for the respondent further argued that it is settled law that on incorporation of a company, the corporate property belongs to the company and members have no director proprietary rights to it but merely to their "shares" in the company. Learned counsel for the respondent further argued that the shares in a company consist of a congeries of rights and liabilities, which are a creature of the Companies Act and the Memorandum and Articles of Association of the Company. Thus, control and management is a facet of the holding of shares. Shares and the rights which emanate from them, flow together and cannot be dissected.

27. We are of the opinion that when anyone purchases/subscribes to the share capital of a company, to say that such purchase/subscription relates only to a portion of the property/assets belonging to the company cannot be countenanced in law. It is the company which owns the assets and shareholders have shares in the company and not in specific assets or part of assets of the company. Therefore, we find the argument of 2nd respondent convincing.

28. The next issue raised by the learned counsel for the appellant is that the Respondent failed to execute a new SHA with them to demerge the commercial portion of the project and incorporate the same in the Article of Association of 1st respondent. Learned counsel for the appellants further argued that they have a legitimate expectation that the commercial portion of the Project will be demerged in appellant's favour, as they have stepped into the shoes of the erstwhile promotors. Learned counsel for the appellants further argued that the appellants have invested on the basis of an

understanding between the parties, it was unfair and prejudicial to all by the Respondents to ignore the same. Learned counsel appearing on behalf of the respondent argued that after transfer of shares by the original promoters of 1st respondent to the appellants, the earlier SHA no longer subsists. Learned counsel for the 2nd respondent further argued that the 1st respondent being a public limited company, could not refuse to register transfer of shares from the original promoters to the appellants and that since the transfer was not in accordance with the terms of the SHA, 2nd Respondent no longer remained bound by that agreement vis a vis the appellants.

29. We are in agreement with the Respondent that 1st respondent being a public company cannot normally refuse to register transfer of shares from the original promoters to the appellants. As regards the issue raised by the appellant that the commercial portion of the project will be demerged in appellants' favour is concerned, no fresh SHA or fresh agreement entered on the subject have been put up to establish that appellants have such right to commercial property. Further we have noted that the appellants were not even parties to the earlier SHA signed between the original promoters and the 2nd respondent and the appellant has himself stated in its communication dated 28.2.2012 (Page 251) that the SHA has become defunct since it was not incorporated in the Articles of Association of 1st respondent. The communication is prior to the date of transfer of shares in the name of appellant. Therefore, the appellants cannot be permitted to approbate and reprobate on the validity of the SHA to suit their convenience from time to time.

30. The next objection raised by the appellant is that despite his objections, the nominee directors of 2nd respondent entered into a master collaboration agreement with 7th respondent for development of a school on the commercial area of the Project and that this is direct contravention of the appellants' rights and amounts to oppression and mismanagement. Learned counsel for the respondent drawn our attention to the Minutes of the Board Meeting held on 5.11.2012 at Item No.26-"*Review and Approve the Master Collaboration Agreement and Lease Deed with M/s Educomp Infrastructure & School Management Ltd, New Delhi"* (Page 273 of Appeal). Learned counsel for the Respondent argued that in this Meeting the Chairman informed the Board about company's proposal to lease the school building to 7th respondent to run the school. Learned counsel further stated that the 1st appellant objected to it and stated that **"his family has interest in that and same cannot be leased." (Page 273, 3rd para of the Appeal).** Learned counsel for the respondent further argued that since the property belongs to the 1st respondent, therefore, the company's interest will be first seen. Learned counsel for the respondent further drawn our attention to the letter dated 30.11.2012 (Page 278) of 1st appellant to 1st respondent on the subject "Correction in the Minutes before attesting the same". Learned counsel for the respondent argued that in his said letter dated 30.11.2012 the 1st appellant have pinpointed certain Items which were not properly recorded or requires corrections. In this letter dated 30.11.2012, there is no mention of Item No.26 which relates to *Review and Approve the Master Collaboration Agreement and Lease Deed with M/s Educomp Infrastructure & School Management Ltd, New Delhi".* Learned counsel for the respondent, therefore,

reiterated that the 1st appellant has no objection to it otherwise he would have mentioned the same in the letter dated 30.11.2012.

31. We have gone through the arguments and perused the record and we are of the opinion that while 1st appellant was watching his family interest but the interests of 1st respondent should always remain paramount. Therefore, we are not convinced with the argument of 1st appellant. These are business decisions decided as per corporate procedure. We cannot substantiate our opinion in it when no arbitrariness is show.

32. The other issue raised by the Learned counsel for the appellant that the appellant No.1 being only representative of the minority shareholders of 1st respondent was removed and he continued to be director as per orders of CLB and at last he was again removed from directorship of 1st respondent held on 5th August, 2017. Learned counsel for the 1st appellant further argued that the respondents have refused to share information about 1st respondent litigation, acquisition of additional land for the Project and other affairs of 1st respondent. Learned counsel for the appellants further argued that the respondents have also hindered the appellants' access to company related information by illegally keeping books of account at 2nd respondent's office instead of 1st respondent registered office. Learned counsel for the 2nd respondent submitted that appellant No.1 being a Director of 1st respondent was invited to attend all its Board Meetings and had access to all records of the 1st respondent. Learned counsel for the 2nd respondent argued that the 1st appellant never sought any documents from the 1st respondent, therefore, it does not lie in the mouth of the appellants to either state that they were not aware of any fact or that any documents that were requested, were not shared

with them. Learned counsel for the 2nd respondent further argued that 1st appellant's allegation with regard to keeping of books of accounts of 1st respondent at the office of 2nd respondent and not at 1st respondent registered office, this is a gross distortion of facts, particularly when 2nd respondent does not have an office of its own in Hyderabad and the books are kept at 1st respondent registered office and are always available for inspection.

33. As regards appointment of director is concerned, 1st appellant was initially appointed as Director and he was not re-elected when his tenure was over. However, he was being continued as such by virtue of the interim orders of Company Law Board and Tribunal. However, the company petition filed by him was dismissed in March, 2017, therefore, the interim orders merges in the main order. After the final order has been passed in the company petition, there was no relief granted to the appellant, the company is to be managed/regulated with respect to the provisions of Companies Act/Article of Association of the company. The retirement of the director and re-election or not to re-elect the director is the normal routine in the company matters. If a person is not re-elected after he has retired in terms of the Companies Act/Article of Association of the Company, no grievance of his re-election can be raised by a person.

34. As regards the other allegations regarding refusal to share information about 1st respondents' litigation, acquisition of additional land for the Project, other affairs of 1st respondent, hindered the appellants' access to company related information by illegally keeping books of account at 2nd respondent's office instead of 1st respondent registered office is concerned, these are the issues relating to operational maters for running a company and grievance

raised are quite vague for us to give directions. Appellants are free to adopt procedures under the Act and Rules.

35. In view of the foregoing discussions, we find no merit in the appeal and the appeal filed by the appellants is dismissed. No orders as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi
Dated: 16-11-2018