

COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.15 of 2018

[Arising out of Order dated 14.11.2017 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.81/2011 (TP No.60/HDB/2016)]

IN THE MATTER OF:

Before NCLT

Before NCLAT

- | | | |
|---------------------------------------------------------------------------------------------------------------------|--------------------------|----------------|
| 1. Starlite Spintech Limited
Plot No.14, Road No.2,
Banjara Hills,
L.V. Prasad Marg,
Hyderabad – 500033 | Original Petitioner | Appellant No.1 |
| 2. Mr. Sanjay Patwari,
Plot No.151A,
Old MLA Colony,
Road No.12,
Banjara Hills,
Hyderabad – 500033 | Original Respondent No.7 | Appellant No.2 |
| 3. Mr. Ramgopal Patwari,
Plot No.14, Road No.2,
Banjara Hills,
L.V. Prasad Marg,
Hyderabad – 500033 | Original Respondent No.8 | Appellant No.3 |

Versus

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------------|
| 1. Dijaya - Malind
Properties (India) Pvt. Ltd.
1-11-220/A,
Gurumurthy Lane,
(Adjoining Lane to
Reebok Store) Begumpet,
Hyderabad – 500016,
Andhra Pradesh | Original Respondent No.1 | Respondent No.1 |
| 2. Dijaya - Malind J.V. | Original Respondent No.2 | Respondent No.2 |

(Mauritius) Limited
Suite No.307,
St. James Court,
St. Denis Street,
Port Louis,
Republic of Mauritius

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------|
| 3. Tan Seng Chye
No.20, Jalan Damai
Jaya, Batu 9, Cheras
Selangor 43200
Malaysia | Original Respondent No.3 | Respondent No.3 |
| 4. Dickson Tan Yong Loong
No.8, Jalan TR 5/2
Tropicana Golf and
Country Resort
Petaling Jaya 47410,
Malaysia | Original Respondent No.4 | Respondent No.4 |
| 5. Tong Kein Onn
No.8, Lorong Burung
Sintar 3, TAMAN Bukit
Maluri, Kepong
Kuala Lumpur 52100
Malaysia | Original Respondent No.5 | Respondent No.5 |
| 6. Murugayah Kanpathy
No.86, Jalan Cincin,
Section 11,
4000 Shah Alam,
Selangor DE,
4000 Malaysia | Original Respondent No.6 | Respondent No.6 |
| 7. Dijaya (Mauritius) Limited
Suite No.307,
St. James Court,
St. Denis Street,
Port Louis,
Republic of Mauritius | Original Respondent No.9 | Respondent No.7 |
| 8. S.N.R.L. Investments | Original Respondent No.10 | Respondent No.8 |

Limited
 C/o First Island Trust
 Company Ltd.
 Suite No.308,
 St. Denis Street,
 Port Louis,
 Republic of Mauritius

9. Dijaya Corporation Original Respondent No.11 Respondent No.9
 Behard
 C-06-02, 6th Floor,
 Block C Wisma TT
 No.1, Jalan PJS 8/15
 Dataran Mentari,
 461050 Petaling Jaya
 Selangor Darul Ehsan,
 Malaysia

For Appellant: Shri Kuljeet Rawal, Advocate

For Respondents: Shri Arun Kathpalia, Sr. Advocate with Shri Lzafeer Ahmad, Ms. Madhulika Murthy, Shri Utkarsh Srivastava, and Ms. Bani Brar, Advocates (Respondent Nos.1 to 5)

Mr. Koshy John, Advocate (Respondent No.7)

Shri Abhay Pratap, Shri Prithu and Shri Sidharth, Advocates (Respondent No.9)

J U D G E M E N T

(08th January, 2019)

A.I.S. Cheema, J. :

1. The Appellant No.1 – Original Petitioner (hereafter referred as ‘Petitioner’) filed CP No.81/2011 (TP No.60/HDB/2016) against the Respondents complaining oppression and mismanagement of Respondent No.1 (hereafter referred as ‘Company’). In the Company Petition, present Appellants 2 and 3 were arrayed as Respondents 7 and 8. The learned

National Company Law Tribunal, Hyderabad Bench ('NCLT', in short) dismissed the Company Petition on 14.11.2017. The present Appeal is filed against the dismissal and original Respondents 7 and 8 have become Appellants 2 and 3, arraying original Petitioner as Appellant No.1.

1.1 We will refer to the parties in the manner in which they were arrayed in NCLT.

2. The original Petitioner in the Company Petition referred to various details as to how the original Petitioner became shareholder in the Company (Respondent No.1) and further developments so as to make the following prayers in the Company Petition:-

- “a) The Board of Directors of the 1st Respondent be superseded by a Committee constituted by this Hon'ble Board consisting of a nominee of the Petitioner, a nominee of the Respondent, and an Administrator / Independent Director/ Special Officer appointed by this Hon'ble Board to take charge over the management and affairs of the Company in terms of a scheme of management framed by this Hon'ble Board which would be, in supersession of the Articles of Association of the 1st Respondent and in supersession of all Agreements which purport to vest parties with rights in affairs of the 1st Respondent, and of all books, papers, records and documents of the Company as well as its assets and properties.
- b) All decisions, including but not limited to managerial, administrative, and legal decisions taken by the Board of Directors of the 1st Respondent at its Board Meetings held on 16th August 2010, and 2nd September 2010 be declared and set aside as null and void.

- c) Direct the 2nd, 9th, 10th and 11th Respondents and their affiliates/associates not to carry on any commercial activity in India directly in their own names or indirectly in any other name/s, other than through the 1st Respondent, which is similar to those objects of the 1st Respondent as stated in the Memorandum of Association of the 1st Respondent.
- d) Appropriate reliefs be passed under and in accordance with sections 402 of the Companies Act, 1956;
- e) Costs of and incidental to this Petition be paid by the Respondents;
- f) Such further order or orders and/or direction or directions be given as to this Hon'ble Board may deem fit and proper;"

The original Respondents 1 to 6 and 9 to 11 had filed Reply in NCLT and opposed the Company Petition. After letting the parties complete the pleadings and after hearing the matter, the Petition came to be dismissed. The present Appeal has been filed referring to various facts of the matter and the relief sought is as under:-

“(a) Set aside the impugned order dated 14.11.2017 passed by the National Law Tribunal Hyderabad with its Bench at Hyderabad in CP No. 81/11 titled Starlite Spintech Limited Versus Dijaya – Malind Properties (India) Pvt. Ltd.;

(b) While setting aside order dated 14.11.2017, this Hon'ble Court be pleased to observe that observations made by the NCLT Hyderabad in para 24 and 28 or otherwise are bad in law uncalled for and extraneous to subject lis in view of arbitral proceedings pending before Arbitral Tribunal at Hyderabad.

(c) Pass any other order as this Hon'ble Court deem fit and proper in view of facts and circumstances of the case. Such other directions as it deems fit and proper.

(d) Cost be awarded in favour of the Appellant.”

3. Before referring to the paragraphs objected to from the Impugned Order, it would be appropriate to refer to some of the facts to understand the dispute.

4. It is stated by the Petitioner in the case put up in NCLT:-

a) That Original Respondent No.2 – Dijaya-Malind JV (Mauritius) Limited is a subsidiary of original Respondent No.9 - Dijaya (Mauritius) Limited.

b) Original Respondent No.9 is subsidiary of Respondent No.11 – Dijaya Corporation Berhard, which Respondent No.11 is a listed Company in Malaysia Stock Exchange.

c) Original Respondent No.10 – S.N.R.L. Investments Limited, a company of Mauritius has 22% equity shares of original Respondent No.2 – Dijaya-Malind JV (Mauritius) Limited.

d) Respondent No.11 is ultimate holding Company of Respondent No.1 Company – Dijaya-Malind Properties (India) Private Limited.

e) The original Petitioner is public limited company with 68 shareholders.

f) Petitioner acquired interest in Respondent No.1 Company as per Shareholders Agreement dated 09.04.2007. Petitioner has 26% of paid up share capital of Respondent No.1 and Respondent No.2 has 74,000/- ordinary shares, i.e. 74% of paid up capital of Respondent No.1 Company. These Companies are the only shareholders of Respondent No.1 Company.

g) Respondents 3 to 5 were nominee Directors of Respondent No.2 on the Board of Respondent No.1.

Respondent No.6 is nominee Director of Respondent No.2 on the Board of Respondent No.1. (Respondent No.6 has controlling interest of 22% in Respondent No.10)

Respondents 7 and 8 were nominee Directors of the original Petitioner on the Board of Respondent No.1.

5. Reference now needs to be made to the following facts emerging from record:-

a) It appears that one M/s. Telangana Spinning and Weaving Mills Limited (later on name changed to M/s. Starlite Global Enterprises (India) Ltd.) (hereafter referred as 'Telangana Spinning') had become sick industrial company and was owner of a piece of land in RR District of Andhra Pradesh and BIFR had sanctioned rehabilitation scheme. There was need to raise funds to pay secured creditors. Original Petitioner submitted bid dated 13th August, 2003 for purchase of the land which was

accepted by Asset Sale Committee and approved by BIFR. The Petitioner then authorized from time to time several persons for purpose of executing sale agreements/sale deeds, in respect of portion of the said land in discharge of its obligations under the said bid, BIFR approval and agreement dated 22.03.2004.

These recitals can be found in the document “Deed of authorization & Declaration of ‘No Interest’” dated 22.11.2006 (Diary No.5224 Page 9 – documents filed by Respondents 1 and 2). By such deed, original Petitioner unconditionally and irrevocably nominated and authorized Telangana Spinning to enter into development agreement which had been examined by the Petitioner with original Respondent No.2 - Dijaya-Malind JV (Mauritius) Limited for development of the said plot for eventual sale as undivided shares.

b) Thereafter, the Articles of Association of Respondent No.1 Company (Diary No.3812 - Page 3) show that Respondent No.1 Company came to be incorporated on 12th January, 2007.

c) Company Petition 22/2007 came to be filed by one Ishwarlal Patwari and other 8 Petitioners against Telangana Spinning and 16 others which included original Respondent No.7 – Sanjay Patwari and Respondent No.8 – Ramgopal Patwari. In this Company Petition filed against Telangana Spinning, CLB passed Orders on 6th March, 2007 (Diary No.3812) inter alia directing that allotment of further shares in the matter

of Telangana Spinning and dealing with the fixed assets of the Company henceforth would be subject to outcome of the Company Petition.

d) After such Order dated 06.03.2007 had been passed, record shows (Page – 35 Diary No.5224) that original Petitioner executed Shareholders Agreement with Respondent No.2 - Dijaya-Malind JV (Mauritius) Ltd. so as to have shares in Respondent No.1 Company - Dijaya-Malind Properties (India) Pvt. Ltd. As per this agreement, Respondent No.2 would be having 74% of the paid up share capital and Petitioner was to have the remaining 26%. This was done is not in dispute. One of the recitals states that the parties are desirous to become shareholders of Respondent No.1, who has been or about to be appointed as Property Developer to undertake property development on portion of land of M/s. Telangana Spinning, in the first instance. The Petitioner joined Respondent No.1 Company.

e) On the same date of 9th April, 2007, Telangana Spinning (with Respondent No.8 signing as MD) as land owner and Respondent No.2 - Dijaya-Malind JV (Mauritius) Ltd. as Developer and Respondent No.1 - Dijaya-Malind Properties (India) Pvt. Ltd. referred as subsidiary entered into “Deed of Novation cum Joint Development Agreement cum General Power of Attorney” (Page – 77 Diary No.5224) (“Deed of Novation”, in short). In this Deed of Novation, one of the recitals marked “E” read – “the plot is currently free from all encumbrances” has become cause of dispute (which we will refer later).

f) Copy of CP 22/2007 (Diary No.5224 – Page 194) shows that present Respondent No.8 - Ramgopal Patwari and Respondent No.7 - Sanjay Patwari with other members of the family were Directors in Telangana Spinning. Respondent - Ramgopal Patwari has been referred in that Company Petition as Managing Director of Telangana Spinning.

6. In NCLT, original Petitioner, inter alia, raised one dispute relating to issue of 8,00,000 11% convertible preference shares of first Respondent to the second Respondent. Regarding this, no more dispute is raised in Appeal or at the time of arguments and thus, we will not enter into details.

7. The original Petitioner claimed in NCLT that Respondent No.11, the ultimate holding Company of Respondents 1 and 2 and its nominee Directors without the knowledge of nominee Directors of the Petitioners, unilaterally and illegally issued legal Notice dated 17.05.2010 on behalf of Respondents 1 and 2 to M/s. Telangana Spinning asking Telangana Spinning to rectify certain breaches in the Agreement dated 9th April, 2007. Petitioner claimed that it had strongly opposed the allegations made in the Notice and had given a Reply dated 22.06.2010 to Respondent No.2. Original Respondents 7 and 8, the nominee Directors of original Petitioner received Notice dated 30.07.2010 of Board Meeting proposed to be held on 16.08.2010 in Malaysia with Agenda which included subject of rectification of Notice for rectifying breach in Notice dated 17.05.2010 and to approve Notice of termination of the deed. Petitioner pleaded that original Respondents 7 and 8 were issued letter dated 4th August, 2010 with

modified Agenda which was to read as “To ratify the notice of Termination of Deed” dated 3rd August, 2010. Petitioner claimed that it had addressed letter dated 11.08.2010 to Respondent No.2 claiming that termination of the Agreement dated 9th April, 2007 in Board Meeting convened on 16th August, 2010 was an issue that could not be decided in Board Meeting and it could be decided only at a General Meeting of shareholders as the termination of the agreement would result in loss of substratum of the Respondent No.1 Company. Petitioner claimed that it also objected to the holding of meeting at Malaysia on short notice.

8. The Petitioner further claimed in NCLT that original Respondents 3 to 6 caused a legal Notice dated 3rd August, 2010 sent to Telangana Spinning whereby the Agreement dated 9th April, 2007 was purportedly terminated and demand was made of repayment of Rs.12,70,80,000/- and damages as Rs.1,81,08,344/-. According to Petitioner, such Notice was sent even before the proposed meeting dated 16th August, 2010 could be held. Petitioner claimed that original Respondents 7 and 8 then received Notice dated 12th August, 2010 informing that the Board Meeting of Respondent No.1 which was to be held at Malaysia, will be held on 02.09.2010. Petitioner claimed that in the Board Meeting dated 2nd September, 2010, the termination of Deed of Novation cum Joint Agreement cum GPA was confirmed.

9. Petitioner further claimed in NCLT that in the Meeting dated 2nd September, 2010 registered Office of the Company was also shifted without

there being agenda for the subject. Petitioner further claimed in NCLT that its nominee Directors received Notice dated 3rd December, 2010 for a Board Meeting convened on 29th December, 2010 in Malaysia. It was objected to by the Petitioner by communication dated 22nd December, 2010. Yet another Notice dated 9th March, 2011 was received for Board Meeting at Malaysia on 31.03.2011 and Petitioner objected vide communication dated 24th March, 2011 claiming that there was no need to call such Board Meeting when commercial operations had yet not started. The Respondent No.1 replied vide Notice dated 7th April 2011 denying the contentions raised by the original Petitioner. Further contentions were raised regarding other meeting similarly called for on 29th June, 2011 for which Notice dated 06.06.2011 had been received. Petitioner claimed that Respondents 3 to 6 - nominees of Respondent No.2 on the Board of Respondent No.1 were acting against the interest of Respondent No.1. Petitioner further claimed that Respondents 1 and 2 had commenced arbitration proceedings against Telangana Spinning and had also initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act', in brief). It claimed that Respondent No.1 was being used as a tool to further their own agenda. Petitioner claimed that legal action against Telangana Spinning was started with intention to defeat rights of the Petitioner.

10. Against this, contesting Respondents 1 to 6 and 9 to 11 after referring to the documents, claimed that Notices of the Board Meetings were duly sent to the nominee Directors of the Petitioner and which fact is

not in dispute. According to them, Telangana Spinning entered into Deed of Novation Agreement dated 9th April, 2007 in which huge investment was made by Respondents. The Petitioner was aware of Interim Orders dated 16th March, 2007 passed by CLB but has entered into the Agreement causing huge loss to the Respondents. The Managing Director of Respondent No.1 was empowered to issue the Notice. The Notice was discussed and was ratified in the Board Meeting. Notice of sufficient days was given of the Board Meeting. The Company had right to terminate the Agreement in order to protect the interest of the Company and the Petitioner could not question merits of the decision of the Board.

11. NCLT in the Impugned Order (para 8) mentioned that the main cause for filing of the Petition was termination of the deed of Novation cum Joint Development Agreement dated 9th April 2007. It referred to the various documents and discussed the averments which were made by the parties. It would be appropriate to reproduce paragraphs 24 and 28 of the Impugned Order regarding which grievance has been made in the prayer of this Appeal. We are reproducing para – 27 also for reference. The same reads as under:-

“24. It is also not in dispute that CP No.22 of 2007 was filed by Ishwarlal Patwari and others before the then CLB, Chennai under section 111A, 235, 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956, by inter-alia seeking to allow proportionately representation of the petitioners the Board of Directors of the Company; to declare Board meeting held on 11.02.2002 and consequently resolutions; to declare the annual returns dated 31.07.1997 and 22.09.1997 as null

and void. The CLB passed interim order dated 16.03.2007, by inter-alia stating that any allotment further shares and dealing with the petitioner. **So the contention of the petitioner that the land in question is free from all encumbrances is not borne out of record.** And the contentions raised contrary by the petitioner are not tenable.”

[Emphasis supplied]

“27. It is also not in dispute that the quorum for conducting said board meeting is maintained and the Board is also fully empowered by Articles of Association of R1 Company and the same is also in consonance with provisions of the Companies Act, 1956/2013. As stated supra, the Respondent No.7 & 8 who are nominee directors of the Company, are given due notice for conducting of impugned board meeting. They have also expressed their inability to attend the board meeting due to their pre-occupation with activities in Hyderabad. It is settled position of law by various judgements rendered by various courts that Tribunal cannot interfere with wisdom of a Company to take decision(s) in the best interest of Company unless there is an arbitrary exercise of powers contrary to extant Articles of Association of a Company and taken contrary to principles of natural justice. Share holders and their Board of Directors of a Company are best judges to take decisions and run the affairs of a company. Tribunal/Court cannot interfere in the policy matters of a Company, which are taken by duly constituted Board of Directors by following articles and memorandum of Association of a Company and principles of natural justice. In the instant case, it is not the case of petitioner that they are not associated with impugned action as their nominee Directors are still on Board and they are given due notice for the impugned meeting conducted by the Company. However, as stated supra, for the reasons best known to them, they have not availed the opportunity of it. It is an admitted fact that a proper notice is given for meeting, Board meeting in question was conducted strictly in accordance Memo and Articles of Association of R-1 Company and the

decisions taken are falls within competency of Board of Directors, as detailed supra. It is also relevant to point out here that minutes of Board meeting held on 2nd September, 2010 was duly communicated to the nominee Directors of the petitioners. And subsequent meetings, as detailed supra, were conducted duly giving proper notice to the nominee directors of the petitioner. As rightly contended by the learned senior counsel for respondent, the impugned action cannot come under the ambit of section 397/398 of the Act, 1956 as held in the case of **Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.** [AIR 1965 Guj 96], where, the Hon'ble Gujarat High Court has categorically and in no uncertain terms observed as follows:

“A resolution may be passed by the board of directors which may in the passing contravene a provision of law, but it may be very much in the interest of the Company and of the shareholders. Such a resolution may be attacked as invalid in a suit or other appropriate proceeding, but not being oppressive to the minority shareholders or prejudicial to the interests of the Company, it cannot be challenged in a petition under section 397 or 398.”

The above finding was upheld by the Hon'ble Supreme Court in the case of **Sangram Singh Gaekwad v. Shantadevi P. Gaekwad** (supra). Thus, even assuming that the Board Resolution dated September 2, 2010 confirming the terminating the said Agreement is in contravention of Section 293 of the Companies Act (now Section 180 of Companies Act, 2013), the same cannot be deemed to be oppressive under Section 397 and 398 of the Companies Act (now Section 241 and 242 of the Companies Act, 2013).

28. As stated supra, there is an arbitration proceeding pending before City Civil Court. The Respondent is also stated to have appointed its arbitrator namely, Shri K. Gopinathan, and petitioner also appointed its nominee namely Justice Usha Mehta (Retd.) Judge of Delhi High Court. The contentions of the petitioner that they are not concerned with

the Starlite Global Enterprises (India) Limited, it is not a party to arbitration proceedings are not all tenable and baseless. Admittedly, Starlite Global Enterprises Limited formerly known as TSWM and which is stated in the Company petition itself. And all the Agreements in question are interlinked with petitioner, TSWM, and respondents and the cause of action for the impugned action in the present petition and arbitration proceedings as mentioned supra, arise out of various agreement executing among the same parties. Moreover, the Respondent No.7 & 8 are nominee Directors in R-1 Company and also Directors in Starlite Global Enterprises Limited. When the issue in question in the present company and in arbitration proceedings arise out of same cause of action, principles of natural justice demands that court/Tribunal should not entertain cases, which leads multiplicity of litigation. It is also not in dispute, as discussed supra, in all the agreements in question, there is an arbitration clause available.”

11. Coming to the para – 24, it has been argued for the Appellants that they are aggrieved by the portion of the Order where NCLT observed that the contention of Petitioner that the land in question is free from all encumbrance, is not borne out of record and should not have been recorded as according to the learned Counsel, that was the matter which was already pending before the Arbitrators. According to the Counsel, such observation would affect the Appellants in the arbitration proceedings. According to the learned Counsel, this observation of NCLT was wrong because the Deed of authorization & Declaration of ‘No Interest’, which was executed, was dated 22.11.2006 in favour of Telangana Spinning and such document was executed before the CLB Order dated 16th March, 2007 and thus, the Development Agreement was prior to the passing of CLB Order

and so the observation of NCLT highlighted in above para - 24, was erroneous. The learned Counsel also referred to the pleadings of the parties to assert the point. It is argued that the Development Agreement dated 22.11.2006 may be read with Deed of Novation dated 9th April, 2007 for subject matter pending before Arbitration of 3 Hon'ble Members headed by retired Judges of the Hon'ble the Supreme Court of India.

12. Against this, the learned Counsel for Respondents submitted that the original Petitioner had filed the Company Petition on behalf of its sister concern Telangana Spinning/Starlite Global to set aside the decision taken by Respondent No.1 Company in its meeting dated 2nd September, 2010 ratifying the termination of the Deed of Novation. It has been argued that the Petition was rightly dismissed by NCLT as Sections 397 and 398 of the Companies Act, 1956 ('old Act', in brief) could not be invoked so as to encompass dispute relating to contractual matters. The termination of that Agreement in no way affected the rights of the original Petitioner as a shareholder of Respondent No.1 Company and thus, the Company Petition was misconceived and rightly dismissed. It has also been argued by the learned Counsel for the Respondents that the Company Petition was filed as a counter blast to the arbitration proceedings which had been invoked by original Respondents 1 and 2 against Telangana Spinning/Starlite Global. The Petition was filed to set aside the decisions taken on 2nd September, 2010. Telangana Spinning/Starlite Global had already filed Counter claim in the arbitration proceedings and for the same cause of

action, the Company Petition was sought to be maintained. The Respondents have defended the termination of the agreement. According to the learned Counsel for Respondents, the Appellant No.1 and Respondent No.2 are the only shareholders and it would not make any difference whether the decision relating to termination is taken or ratified by the Board Meeting or the General Body Meeting. Counsel for Respondents defended the decision taken by learned NCLT.

13. Having gone through the matter and the various disputes raised by the Petitioner themselves relating to the termination of the Agreement of Deed of Novation with Telangana Spinning, the reference had been laid by the Petitioner itself and in that context, the learned NCLT was bound to discuss the material placed before it in order to consider whether oppression and mismanagement was made out. Thus, the disputed observation in para – 24 appears to be there. If the Board Resolution dated 2nd September, 2010 is seen, and is read with Notice for rectification dated 17th May, 2010 and Notice of termination of Agreement (Page – 137 - Diary No.5224), the grievance was founded on Deed of Novation entered on 9th April, 2007, which was subsequent to the CLB Order dated 6th March, 2007. Keeping in view such documents available on record, we are not interfering so as to delete the disputed sentence from para – 24 of the Impugned Order, which reading the Order as a whole, was in the context of deciding the allegations of oppression and mismanagement.

14. Coming to para - 28 of the Impugned Order which we have reproduced above, the learned Counsel for the Appellants submitted that observation of NCLT was wrong when it mentioned that all the agreements in question were interlinked with the Petitioner, Telangana Spinning and Respondents and cause of action for the Impugned action in the present petition and arbitration proceedings were arising out of various agreements which had been executed "among the same parties". The objection of the Counsel was that the various agreements were not between the same parties. We do not find that this makes any material difference to the Petitioner. The agreements are matter of dispute before the Hon'ble Arbitrators and merely because of such use of word "same parties" by NCLT, will not change the documents. The purport and context of the sentence is material. The NCLT rightly refrained from interfering on the basis of such documents and reiterated that the agreements included Arbitration Clause. When the original Petitioner was asserting before NCLT that by issuing Termination Notice, substratum of Respondent No.1 would be lost, the Petitioner itself invited NCLT to enter into the contents of the documents. When NCLT did this, the Petitioner cannot turn around and say that this or that observation in paragraphs - 24 and 28 of the Impugned Order should not have been made. The only observation which we find necessary to make with reference to the objections raised with regard to paragraphs - 24 and 28 of the Impugned Order, is that the observations and comments of the learned NCLT in the Impugned Order and our observations and comments, in this present Judgement with

regard to the Agreements, which are matter of dispute before the Hon'ble Arbitrators, will not weigh for the purpose of decision of the Arbitration proceedings. NCLT and this Appellate Tribunal have looked into this matter basically, to consider and decide whether case of oppression and mismanagement has been made out.

15. Although the prayers in the Appeal raised grievances regarding para – 24 and 28 of the Impugned Order, at the time of arguments, learned Counsel for the Appellants raised further contentions and submitted that the Company Petitioner had raised grievances making allegations regarding 4 Board Meetings, i.e. Board Meetings dated 02.09.2010, 29.12.2010, 31.03.2011 and 29.06.2011, but NCLT dealt with only the meeting dated 02.09.2010. It has been argued that NCLT did not consider the grievances raised by the Petitioner in its letter dated 11th August, 2010 (Diary No.3521 – Page 3) objecting to holding meetings at Malaysia; NCLT did not also consider that the matter concerned deserved to be taken up in General Body Meeting as termination of Development Agreement would destroy the substratum of the Company; holding Meeting at Malaysia could be exception but it had become routine; the Petitioner had sent even letter dated 14.06.2011 (Diary No.3521 – Page 19) raising protest to the Meeting called on 29.06.2011; in the Meeting dated 2nd September, 2010, the registered office of the company was shifted without there being Agenda.

16. Against this, according to the learned Counsel for the Respondents, the termination of the Agreement was done in Board Meeting which was validly called after giving sufficient Notice. The Agreement did not tantamount to undertaking under Section under Section 273 of the old Act and termination of such agreement did not require holding of shareholders Meeting. Even otherwise, the shareholders being only Appellant No.1 and Respondent No.2, it would not make any difference. It has been argued that the Companies Act, 2013 or the old Act did not provide for any restriction on Board of Directors to hold Meetings outside India. The Counsel further pointed out that the Appellants 1 and 2 had without any objections attended and participated in several Board Meetings of the Respondent Company, which were held in Malaysia. Counsel referred to Minutes of the Board Meetings dated 23rd March, 2007, 31st January, 2008, 27th June, 2008, 14th April, 2009 and 26th March, 2010, copies of which, it is submitted, have been field with documents filed by the Respondents which show that for various such meetings, the representative Directors of the Appellants were attending Meetings at Malaysia and earlier never objected or complained of inconvenience. The argument is that the Appellants 2 and 3 should be stopped from raising such grievances which are afterthought. The Counsel submitted that the Appellant No.2 has attended Board Meeting even vide video conferencing which is permitted under the Articles of Association of this Company. It has been further argued that it has been wrongly claimed by the Appellants that the registered office was shifted to Malaysia. In the meeting dated 2nd

September, 2010, the office was merely shifted to another place in the same city of Hyderabad. The argument is that it has already been held in various Judgements that this by itself does not constitute oppression in the absence of material to show that the Company incurred heavy expenses for shifting the Office. It has been argued by the learned Counsel for the Respondents that Notices of all Board Meetings were duly sent to the representatives of the Appellant – Petitioner and if the Board did not find the grievances raised in the letters dated 11.08.2010 and 14.06.2011 to hold substance, the decision of the Board cannot be questioned on the judicial side. It has been argued by the learned Counsel for Respondents that the Petitioner is holding brief for its sister concerns - Telangana Spinning/Starlite Global against which the Respondents 1 and 2 have initiated arbitration proceedings and only because the Petitioner has some shares in Respondent No.1 Company, it is trying to create difficulties inside the working of the Company. It is argued that the Respondents 1 and 2 had taken steps for protection of the interest of Respondent No.1 Company.

17. With regard to meeting dated 02.09.2010, the learned NCLT observed in para – 20 and 21 as under:-

“20. The Petitioner has got issued a reply dated 11.08.2010 (Page 165) and 18.06.2010 (page 149 to 153) by denying all the contentions raised by respondents. Subsequently, the R-1 Company issued a notice dated 12.08.2010 to Board of Directors proposing to conduct Board meeting on 02.09.2010, by inter alia notifying agenda to ratify the notice for rectifying breach notice dated 17.05.2010, to rectify the notice of termination of

the deed dated 03.08.2010, among other agenda mentioned therein. In pursuant to the above notice R.G. Patwari (R-8) & Sanjay Patwari (R-7) the nominee Directors of petitioner, have addressed a joint letter dated 27.08.2010 to the Chairman of R-1 Company by expressing their inability to attend the proposed Board Meeting to be held on 02.09.2010 in Malaysia, due to their pre-occupation at Hyderabad, India and request the Chairman to grant leave to absence (page 182). The R-1 & R-2 dated 19.08.2010 (Page 179 to 181) by informing them that impugned action is being taken strictly in accordance with law and that too in the better interest of R-1 Company and it can be done the Board Directors Meeting and not in the General Body Meeting of the shareholders as contended. They have denied that the impugned termination would lead to destruction of substratum of the Company.

21. As proposed, the meeting of the Board Directors of R-1 Company was held on 02.09.2010 at Board Room (Page 185). The minutes of the Board Meeting are filed at (Page 185 to 193). During this meeting 4 Directors have attended with leave of Ramgopal Patwari and Sanjay Patwari, who are nominee Directors of petitioner. The issue of ratification issuance of notice for rectifying the breach dated 17.05.2010 and the notice of termination of agreement dated 03.08.2010 was taken up during the meeting. After discussing the entire issue as per the above notices and the dissent note made by the nominee Directors of the R1 Company, the Board ratified and confirmed the notices as required under Article 38 of Articles of Association of the Company and also authorized the Managing Director to take consequential action to implement the decisions.”

Original Respondent No.8 appears to have sent letter dated 11th August, 2010 to original Respondent No.2 accepting receipt of Notice dated 30th July, 2010 and subsequent Notice of Amendment to the Agenda. He stated that he had objection to the meeting being held at Kuala Lumpur at

such short Notice. The objection goes away as the Meeting initially proposed on 16th August, 2010 was postponed to 2nd September, 2010. The original Petitioner has not pointed out as to how termination of this business venture of the Company was required under any of the provisions to be placed before the General Body. We recall the Shareholders Agreement (Page 35 - Diary No.5224) where the recital mentioned that the Respondent No.1 has been or is about to be appointed as Property Developer with reference to Telangana Spinning “in the first instance”. In such circumstance, to call the said agreement entered and its termination to be substratum would not be appropriate in our view. Nothing is shown that there is any restriction on the place where Board of Directors should hold their meetings. Learned Counsel for the Respondents has rightly pointed out even earlier meetings which were being held in Malaysia and which were held without any grievances. The disputes now being raised regarding travelling and other allowances, we find, are only for the purpose of raising grievances. The point, which is pinching the original Petitioner, is the termination of the agreement and rest of the disputes, it appears to us, are being raised to drag the matter to the NCLT. Even regarding the meetings dated 29.12.2010 and 31.03.2011, we have already referred to Notices being sent to the representatives of the original Petitioner. The pleadings of the original Petitioner itself showed receipt of Notices and added that the Petitioner had informed its inability to attend the meeting on 29.12.2010 and had sent its comments/submissions. Even regarding the Meetings of 31.03.2011, the Petitioner had informed by communication

dated 24.03.2011 claiming that there was no need to hold the meeting. As regards the letter of protest dated 14.06.2011, original Respondent No.7 accepted receipt of letter dated 06.06.2011 proposing to hold meeting on 29.06.2011 in Malaysia. This Respondent claimed that he was travelling abroad and could not attend the Meeting at Malaysia and sought leave of absence. He noted that he could participate by teleconferencing and wanted to know the procedure. He wanted the Company to inform the policy regarding payment of to and fro air fare, hotel and other dues, etc. Alternately, he suggested holding of the Meeting at Hyderabad. With regard to the Agenda which had been proposed, he offered his comments Agenda-wise. With regard to the Agenda No.5, he mentioned that he was interested as Managing Director of “Starlite Global Enterprises (India) Ltd.” He stated that he should not comment with regard to the portion of material events and commitment in the Directors Report. Thus, he had sought leave of absence with so many other queries being raised. Going through the material, we do not find that there was anything procedural which could be termed as illegal or in the facts of the matter of such a nature which could be called oppressive.

18. No oppression and mismanagement is proved. We do not find any substance in the arguments raised by the Counsel for the Appellants in this Appeal.

19. We dismiss the Appeal with observation that observations and comments of the NCLT and us in this Judgement with regard to the

Agreements in dispute, which are pending for decision before the Hon'ble Arbitrators, are for the purpose of deciding present matter if oppression or mismanagement is proved and will not weigh for the purpose of decision of the arbitration proceedings.

No Orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn