NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.256 of 2018

[Arising out of Order dated 08.06.2018 passed by National Company Law Tribunal, New Delhi Bench in C.A No.405 of 2012 in C.P No.25 of 2007]

IN THE MATTER OF:	**Before NCLT**	**Before NCLAT**
1. Amritsar Swadeshi Woollen Mills Private Limited B-5 Kalindi Colony, New Delhi 110 065	Original Respondent No.1	Appellant
Versus		
1. Mr. Vinod Krishan Khanna W-80, Anupam Gardens PO – IGNOU New Delhi 110 068	Original Petitioners	Respondents
2. Mr. Vimal Krishan Khanna 121, Race Course Road, Amritsar Punjab		
3. Mrs. Asha Khanna W-80, Anupam Gardens PO-IGNOU New Delhi – 110 068		
4. Mr. Rahul Khanna W-80, Anupam Gardens PO-IGNOU New Delhi – 110 068		
5. Mrs. Chandrakanta Khanna 121, Race Course Road Amritsar Punjab		

For Appellant: **Shri Jayant Mehta, Shri Sharath Sampath, Shri Parth Kochatta, Shri Rajat Mehra, Ms. Kriti Bhalla and Shri Shubhankar, Advocates**

For Respondents: **Shri Krishnendu Datta, Shri Ashish Verma and Shri**

Aditya Gupta, Advocates

J U D G E M E N T

(1st April, 2019)

A.I.S. Cheema, J. :

1. This Appeal is filed by the original Respondent No.1 Company against the Impugned Order dated 8th June, 2018 passed by the National Company Law Tribunal, Bench – 3, New Delhi in CP 25/2007 and CA 405/2012, which was filed in the Company Petition. By the Company Application 405/2012, original Respondents had sought passing final orders directing present Respondents - original Petitioners and other shareholders of their group to transfer their entire shareholding to the original Respondents or their nominees as per the Valuation Report dated 20.07.2012, which had been received. The NCLT rejected the objections raised by the original Petitioners to the Valuation Report and directed the Petitioners to sell their entire shareholding held by them in original Respondent No.1 Company as on the date of filing of the Petition to the Respondents jointly or severally at the fair price of Rs.10.35 per share as arrived at by the Independent Valuer appointed by consent by CLB. The NCLT also directed that the fair value of the shares should be paid along with interest calculated at 9% per annum (simple interest) from 01.04.2007 till actual date of payment. The present Appeal has been filed by the Company seeking setting aside and modification of the Order passed by the NCLT to the limited extent of grant of interest.

A Few Facts

2. The Respondents – original Petitioners filed the Company Petition on 14.03.2007 making grievances of oppression and mismanagement against the Appellant and other 8 Respondents arrayed in the Company Petition. The Petition was filed before the Company Law Board. It appears that after some hearings, on 1st April, 2011, CLB passed the following order:-

> "In the facts and circumstances of this case where the petitioners do not see eye to eye with the other parties, in the interest of the Company, the Petitioners are even willing to go out of the company on receipt of fair valuation for their shareholding. For the purpose of determining fair valuation of the R-I's shares on repeated hearings the parties were required to give/suggest name of a Valuer to which both parties would agree. However, even on this small issue the parties have not been able to decide a name of a valuer to which both parties would agree.
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> The petitioner has provided a list containing the name of three valuers. The parties at some point of time are said to have met S.S. Kothari Mehta & Co. at serial No.2 in the list of valuer. The respondents have not provided the CLB with any list, nor are they willing to provide one. In view of these facts of the case, S.S. Kothari Mehta & Co. (CAs. 146, Tribune Complex, Ishwar Nagar, Mathura Road, New Delhi – 65), whose consent to take up valuation on record are hereby appointed as valuer to determine the fair value of the shares of the R-I Company as on 14.03.2007 (the date of filing of the petition) within a period of 30 days. The valuer is thereafter required to hear the objections, if any, of both the parties within 15 days and thereafter submit final valuation report to the R-I Company, to the petitioner and to the CLB within further period of 15 days from the hearing of the objections of the parties. The valuer fee be negotiated by the R-I company and the petitioner and be shared by the petitioner to the extent of 15% and the remaining by the company. This order shall come into effect after 2 weeks from today."

3. Subsequently, another Order was passed on 11th August, 2011, which reads as under:-

> "Matter mentioned CA No.412/11 Earlier order of the CLB appointing the Valuer is modified to the extent that now the Valuer should be S.C. Vasudeva whose consent has been taken by the parties. Other terms of the earlier order of the CLB shall continue to be in operation. Matter to be mentioned after Valuation."

The Valuation Report dated 20.07.2012 came to be filed on 23.07.2012 (Annexure A-4 – Page 69).

4. One of the Respondents filed CA 405/2012 on 9th August, 2012 (Annexure A-5 – Page 337) with the following prayer:-

> "a. Pass final order(s) directing the petitioners and other shareholders of their group to transfer their entire shareholding to the Respondents or to their nominees."

5. Present Respondents – original Petitioners filed Reply to such Application which was seeking final directions and raised various objections to the Valuation Report. Copy of the same is at Page – 350 of the Appeal. The original Petitioner No.1 who signed the Reply made following prayer:-

> "In view of the submissions made above, it is prayed that the Hon'ble Board may be pleased to:
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> (i) reject the valuation of Rs.10.35/- ("Ten rupees and forty-four paise") (sic) made by the valuer, S.C. Vasudeva & Co., and approve the fair value worked out by the petitioner through a

professional Chartered Accountant, having regard to the prevailing market rates of real assets (land), as well as machinery and structures, and direct the company accordingly.

(ii) In the alternative, direct the respondents to transfer the shares of all the other shareholders to the petitioners at the share price worked out by S.C. Vasudeva & Co.

(iii) Pass orders for any other relief the Hon'ble Board deems appropriate in the facts and circumstances of the case."

6. The Impugned Order shows that when these developments were taking place in the CLB, Orders were passed on 01.07.2014, which have been reproduced in the Impugned Order and show that since the original Petitioners raised objections even the original Respondents' side sought comments of the Valuer to the objections raised by the Petitioners. After hearing the parties, the CLB had allowed CA 114/2014 to refer objections to the Valuer and seek response. Meanwhile, the matter came to be transferred to the NCLT. NCLT heard the parties and in the Impugned Judgement and Order considered the averments raised by the original Petitioners relating to the method of valuation adopted by the Valuer; the claim that there has been under valuation in relation to the immovable properties; that the valuation should be based on prevailing market rates in the year 2012 – 2013 and that the Valuer had not given sufficient opportunity to the original Petitioners. NCLT discussed the material before it and did not find fault with the valuation done.

7. It would be appropriate to reproduce the last part of the Impugned Order relating to the dispute of interest. Part of para – 18 and rest of the paragraphs read as follows:-

> "When this Tribunal, in view of the Petition having been filed in the year 2007 and more than a decade had elapsed and whether in the case of Valuation Report being sustained by this Tribunal and thereby direct sale of shares consequent thereto whether the Respondents will be willing to pay interest, the Respondents vehemently expressed its unwillingness to pay interest more so in view of the delay having occasioned due to Petitioners. In relation to grant of interest, this Tribunal is aware it is not a Court of Recovery and that the claim of the Petitioners is in relation to oppression and mismanagement and not a money claim. However, it is to be seen that both parties have agreed to a valuer to be appointed and have also consciously agreed to a valuation date in order to enable the Petitioners to walk out of the Company. Thus, R1 Company has effectively utilized the funds of the Petitioners in relation to its business fully knowing that the funds are required to be refunded back. In the circumstances, being a Court of Equity in relation to matters touching upon oppression and mismanagement Petition and exercising equitable jurisdiction, this Tribunal is unable to accept the stand of the Respondents that they are not inclined to pay any interest. In this connection, this Tribunal would once again wish to refer to the decision of Hon'ble Supreme Court passed in the matter of Dr. Renuka Datla v. Solvay Pharmaceuticals B.V. cited earlier and be guided by it particularly paragraph 19 which is extracted hereunder:
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> > "19. In the result, IAs Nos. 2 to 4 of 2002 are liable to be rejected. However, there is one direction concerning interest which we consider appropriate to give in the given facts and circumstances of the case. Though the grant of interest, as prayed for by the petitioners, from 31.05.2002 –the stipulated date of submission of valuation report - is not

> called for, we feel that the ends of justice would be adequately met if the respondents concerned are directed to pay the interest at the rate of 9 per cent on 8.24 crores, which is the value of shares fixed by the valuer, for a period of twelve months. True, the petitioners contested the valuation and thereby delayed the implementation of settlement. However, having regard to the bona fide nature of the dispute and the fact that the respondents have retained the money otherwise payable to the petitioners during this period of twelve months and could have profitably utilized the same, we have given this direction taking an overall view."

19. Going through the above decision of Hon'ble Supreme Court since the monies which were otherwise payable to the Petitioners having been retained all along by the Respondents and having utilized the same, we feel that the ends of justice could be adequately met if the Respondents in the main C.P. are directed to pay interest @ 9% per annum on simple interest basis. Hence, taking into consideration the facts and circumstances and in the interest of justice, the following directions/orders are passed:

i) The Petitioners are directed to sell their entire share holding held by them in Respondent No.1 Company as on the date of filing the Petition to the Respondents either jointly or severally at the fair price of Rs.10.35 per share as arrived at by the Independent valuer upon consent appointed by CLB.

ii) The Petitioners shall hand over their share certificate(s) along with duly executed share transfer forms to the Respondents and the Respondents shall simultaneously hand over crossed demand draft/pay order favouring the Petitioners for the amounts payable as purchase consideration as computed in accordance with the fair value of share at Rs.10.35 per share along with interest calculated @ 9% per annum (simple interest)

from 1.4.2007 till the actual date of payment within a period of 2 months from the date of this order.

iii) The compliances, as above, shall be made before the Bench Officer of this Tribunal.

The CP stands disposed of in light of the above terms along with all pending Company Applications, if any, and there will be no order as to cost."

We have heard the Counsel for the Appellant – original Respondent No.1 (Company) and the Counsel for present Respondents – original Petitioners. It has been argued by the learned Counsel for the Appellant that the Order dated 1st April, 2011 passed by CLB was a consent Order and now when NCLT was passing the Impugned Order, the direction of NCLT was in the nature of the executing Court and NCLT could not vary the consent Order. Argument is that as the said consent order did not provide for grant of interest, the same could not have been granted by NCLT vide Impugned Order. It is argued that the original Petitioners had expressed willingness to quit and because of that, the Order dated 1st April, 2011 was passed. On 11.08.2011 substituting S.C. Vasudeva as Valuer in place of S.S. Kothari Mehta & Co. took place, but other terms of the Order dated 01.04.2011 were directed to continue to be in operation. It is claimed that when the Valuer prepared draft Valuation Report, the original Petitioners – present Respondents did not object and the Report came to be finalized and was filed in NCLT. The present Appellant filed CA 405/2012 for execution of the Valuation Report and the original Petitioners for the first time filed Reply raising objections and made various

grievances. It is claimed that as per Section 634-A of the Companies Act, 1956 ('old Act', in brief), any Order passed by CLB was in the nature of a decree and thus NCLT could not have given any direction which was not included in the original Order. According to the Counsel, the Orders dated 01.04.2011 and 11.08.2011 should be treated as final Orders. Unlike Section 31 of the Arbitration and Conciliation Act, 1996 in the Companies Act, there is no provision for grant of interest on valuation fixed for the shares to be transferred in the Companies Act. It has been argued that in the Reply, which was filed by the original Petitioners – present Respondents, there was no prayer for grant of interest and thus, NCLT could not have granted the interest.

8. Learned Counsel for the Appellant referred to various Orders passed by NCLT (copies at Page – 585 to 597) to claim that the original Petitioners – present Respondents were protracting the proceedings before NCLT and thus, they were not entitled to interest, when the objections raised by them prolonged the matter. It is argued that the Respondents have not filed Appeal against the Impugned Order, vide which Valuation Report has been accepted and thus, it must be said that the objections raised by the Appellants had no substance and they were responsible for protracting of the matter. The argument is that only if the Appellant had wrongly withheld payment, the Appellant could be made liable for interest but not otherwise. It is further argued that if Annexure – 9 filed with the Appeal, which is a statement of year-wise earnings of the Company certified by the CA, is perused even if it was to be said that the Appellant

had used amount payable to the Respondents' share, the total accumulated earning after tax of the Appellant is Rs.2.15 Crores for the period 01.04.2012 till 31.03.2017. The argument is that the Respondents' share would come to hardly Rs.48 Lakhs but the liability fastened on the Company is Rs.2.87 Crores and thus is unreasonable.

9. In support of the arguments made, the learned Counsel for the Appellant relied on some Judgements, which we will refer later.

10. Against the above submissions of the learned Counsel for the Appellant, it has been argued for the present Respondents that the Order dated 1st April, 2011 could not be said to be a decree. As the Respondents – Petitioners expressed willingness to quit on fair valuation, the Order was passed calling for report. It was not that the Respondents had accepted any particular valuation. Procedurally, the Respondents were entitled to raise objections before the Valuer and to the Valuation Report when it was filed. Respondents were not given due opportunity before the Valuer. The Respondents exercised their right to raise objections to the Valuation Report, which they did, and only because they raised objections to the Valuation Report, could not be a reason to not grant interest which they were entitled to. The learned Counsel for the Respondents referred to the Reply filed by the Respondents in NCLT to demonstrate that the objections raised by the Respondents (Petitioners) were valid objections and the Valuer had not given basis for the valuation and thus, the Respondents were objecting. It is argued that as the present Impugned Order accepted

the Valuation Report but granted interest which compensated the Respondents and thus, though Respondents were aggrieved by the acceptance of the Valuation Report, they have not filed the Appeal and only because they have not filed the Appeal cannot be calculated as acceptance that the objections raised by them were not valid. It has been submitted by the learned Counsel for the Respondents that copies of the orders filed by the Appellant to show that delay was because of the Respondents in NCLT, has no substance as out of the 13 Orders referred, in 8 of the Orders, it can be seen that the Respondents were not responsible for the adjournments. The Counsel at the time of arguments put on record copies of other 12 Orders passed in NCLT during the relevant time to show that even the Appellant did take adjournments and that the delay occurred sometime to accommodate the original Respondents, sometime due to the Petitioners and at some other times also, because the learned NCLT had reasons to adjourn the matter. Thus, according to the Counsel, the Respondents cannot be blamed for the time taken for deciding the question on Valuation of the Report and passing of the Impugned Order.

11. It has been argued by the Counsel for Respondents that the Order dated 01.04.2011 is not a decree. It is not any adjudication. That Order did not freeze any price. It was merely a stage in the proceedings. NCLT had merely acted on the expression of the Respondents (Petitioners) that they were willing to quit and called for Valuation Report. According to the Counsel, it cannot be said to be final Order or even Interim Orders. It was only an Interlocutory Order – one stage of proceeding which required

further steps to be taken. It has been argued that when the Valuation Report was received, procedurally, parties were required to be heard to accept or not the Valuation Report and as the Respondents had grievances, they raised the same which is an ordinary procedure. Only because Respondents raised objections cannot be reason to deny interest to the Respondents for the money of Respondents used by the Appellant and other original Respondents who are not made party to the Appeal.

12. The learned Counsel for Respondents referred to Page – 496 of the Appeal to show exchange of e-mails with the Valuer to argue that when the matter was before the Valuer, the Respondents had asked for giving basis of the valuation but the Valuer did not share copy of the final report or documents because the Appellant objected. Consequently, the Respondents were forced to raise objections when the matter came back to NCLT.

13. It is argued by the Counsel for Respondents – Petitioners that as no sooner the Valuation Report came to NCLT, the CA 405/2012 was filed and thus, it cannot be said that the Petitioners had conceded to the Valuation Report. It is argued by the Respondents – Petitioners that the Valuer had neither shown documents nor shared documents with the Respondents – Petitioners while finalizing the Valuation Report. The Respondents – Petitioners had invested huge amounts in the Company and the Company had given dividend only once. It is profit making company and cannot claim hardship in payment of interest. Relying on Section 402

of the old Act and Section 242 of the new Act, it is claimed that the NCLT has all the powers to pass suitable Orders including directions to pay interest. The learned Counsel stated that the Respondents wanted to end the litigation and although the Valuation amount as has been recorded by the Valuer is less, the Respondents decided to be content with the interest granted and thus, did not file Appeal. The money to which the Respondents were entitled was used for commercial purposes by the Company and thus that the interest awarded is justified. The Counsel for Respondents – Petitioners has also relied on certain Judgements to support the grant of interest by NCLT.

14. Learned Counsel for the Appellant relied on Judgement in the matter of "**Manish Mohan Sharma and Others versus Ram Bahadur Thakur Ltd. and Others"** reported as (2006) 4 SCC 416 and Judgement in the matter of **"Byram Pestonji Gariwala versus Union Bank of India and Others"** reported as (1992) 1 SCC 31 to submit that in view of Section 634-A as was existing under the old Act, NCLT could not go beyond the said order and which, according to the Appellant, was a consent order. Judgement in the matter of Manish Mohan Sharma was with reference to Section 634-A as was existing in the old Act. In the new Act of 2013, corresponding Section with such wordings existing in old Section 634-A is not there. Old Section 634-A read as under:-

> "**634A. Enforcement of orders of Company Law Board.—**

> Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,-
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> (a) in the case of an order against a company, the registered office of the company is situated, or
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> (b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.
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> [Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002.]"

Coming back to the Judgement in the matter of "Manish Mohan Sharma", para – 3 of the Judgement shows that in that matter when disputes arose in the Company, the matter was ultimately resolved between the parties with the persuasion of CLB and the terms of family settlement were set down in the memorandum of family arrangement and transfer document. CLB by Order dated 19.08.1999 (para – 4 of the Judgement), recorded history of the dispute and the fact that suggestion of the CLB had been accepted by the parties in settlement arrived at between them and that the tea estates and other assets had been identified to be given to the MMS Group and passed detailed order as has been referred to by the Hon'ble Supreme Court. Thus, there was a Memorandum of family arrangement as well as detailed Order of the CLB. It appears later on, CBS Group filed application seeking for recalling of the Orders of the Company Law Board including Order dated 19.08.1999 (See para – 9 of

the Judgement). In para – 19 of the Judgement, Hon'ble Supreme Court observed that the Order dated 19.08.1999 was not an interim order as was being contended by the Respondents and the issues which have been resolved thereby could not be reopened or reargued for different disposal of those issues. In paragraphs – 25 and 26, Hon'ble Supreme Court observed as under:-

> "25. The order dated 19-8-1999 was in fact a preliminary decree. Final disposal of the matter or the final decree would be after full implementation of the terms of MOFA and the Transfer Document. The interim orders passed relating to joint management were therefore directed to be continued until such time.
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> 26. Significantly, the Company Law Board in the order dated 19-8-1999 had itself recorded that if there was any difficulty in the implementation of the order "the parties shall be at liberty to apply to us for implementation of this order". Yet when the application was made for such implementation, the Company Law Board did not abide by its own direction."

15. In this context, Hon'ble Supreme Court referring to Section 634-A observed that CLB when it deals with an application under Section 634-A sits as an executing Court and is subject to all the limitations to which the Court executing a decree is subject. The Hon'ble Supreme Court first found that the CLB and High Court in that matter had erred in refusing to execute the Order dated 19.08.1999.

16. Judgement in the matter of Byram Pestonji (supra) was referred to by learned Counsel for Appellant to submit that Hon'ble Supreme Court observed in para – 43 that a Judgement by consent is intended to stop

litigation between the parties just as much as a Judgement resulting from a decision of the Court at the end of a long drawn out fight.

17. Appellant has relied on Judgement in the matter of **"Consulting Engineers Services (I) Ltd. versus Kaikhosrou K. Framji"** 2002 (65) DRJ 52 in relation to enforcement of Order of CLB passed under Section 634-A. Para – 3 of that Judgement shows that in that matter before the CLB, a settlement in writing was arrived at by which original Petitioners/Respondent had agreed to sell shares of all the 3 companies, to the Appellant Company which had agreed to purchase the shares at a fair value to be determined. Para – 3 of the Judgement then refers to the terms of settlement which were as many as 8 different terms. In view of the matter, Hon'ble High Court found the Order dated 28th May, 1998 to be an Order contemplated under Section 634-A and that it could be enforced by the Board. The argument that it was only a facilitatory one and not final, was rejected.

18. The Appellant has then relied on the Judgement in the matter of **"National Thermal Power Corporation Limited versus Madhya Pradesh State Electricity Board and Others"** reported in (2011) 15 SCC 580 with regard to question of interest. That was a matter arising under the Electricity Act. Applicability of Section 62(6) of the Electricity Act of 2003 was considered. Provisional tariff was collected by the NTPC, which was a power generating company, from distribution licensees (the purchaser Electricity Board). This provisional tariff later on turned out to exceed the

final tariff which came to be determined. NTPC duly and immediately extinguished tariff collected from distribution licensees. The generating company was not found to be responsible for delaying the determination of final tariff. It was found that the generating company had not deliberately or by force or threat and collusion received the excess tariff. In such facts of the matter, it was found that there was no justification to pay interest for the concerned period and generating company could not be saddled with the same. In that context, Judgement in the matter of **"South Eastern Coalfields Ltd. vs. State of M.P. and Ors,"** (2003) 8 SCC 648 came to be discussed by the Hon'ble Supreme Court. The learned Counsel arguing for the Appellant then referred to the Judgement in the matter of **"Rameshwar Dass Gupta versus State of U.P. and Another"** Reported as (1996) 5 SCC 728 and submitted that the executing Court has no power to enlarge the decree.

18.1 Perusal of that Judgement shows that it was a service matter and the UP Public Service Tribunal had passed the following Order:-

> "The petition is partly allowed. The OPs Nos. 1 and 2 are directed to consider the confirmation of the petitioner on Group 1 post and consequent promotion to Class II and Class I post from the date on which his junior Sri Ram Niwas was promoted to such post with all consequential benefits of seniority, salary, pension etc., arising therefrom."

At the time of execution, the Executing Court in addition to the salary, gratuity and pension, awarded interest at 12% per annum from the date of the execution till the date of the Order. This was challenged and

the High Court observed in that matter that the Executing Court had no power to enlarge the decree. In SLP to the Supreme Court, Hon'ble Supreme Court observed that it is well settled legal position that an executing Court cannot travel beyond the Order or decree under execution.

19. Counsel for Appellant relied on the Judgement in the matter of **"Shivshankar Gurgar versus Dilip"** reported as (2014) 2 SCC 465. That was the matter under the MP Accommodation Control Act, 1961. In that matter, there was a compromise dated 25.07.2004 and the Respondent had agreed to pay the amount within a period of 6 months and that if the defendant violates any of the conditions, the Plaintiff would be entitled to get possession of suit accommodation. It appears that at the time of execution, the executing Court recorded the finding that the Respondent paid the entire amount due under the decree in the executing Court, although such a payment was made beyond the period of 6 months stipulated in the compromise decree. The executing Court held that the compromise decree was void in relation to eviction relief and the same could not be ordered contrary to the provisions of M.P. Accommodation Control Act. The Hon'ble Supreme Court found that the executing Court could not have enlarged the time and found that the tenant was clearly in arrears of rent which he acknowledged by the compromise and executing Court's Order dismissing the landlord's execution petition cannot be maintained.

20. Counsel for the Appellant then relied on the Judgement in the matter of **"State of Punjab and Others versus Harvinder Singh"** reported in (2008) 3 SCC 394. In that matter, there was a money decree and in the decree, there was no mention of interest. In that context, Hon'ble Supreme Court found that executing Court did not have power to award interest, if it was not mentioned in the decree.

21. Appellant then relied on the Judgement in the matter of **"State of Punjab and Others versus Krishan Dayal Sharma"** reported in (2011) 11 SCC 212 to submit that in the absence of pleadings and directions in the Judgement or Decree which is under execution, it is not open to the executing Court to award interest. This was a matter in which, it was found that the Respondent was entitled to promotion as Deputy Superintendent of Police w.e.f. 09.09.1964, the date when his juniors were promoted as Deputy Superintendent of Police. In that context, the decree was passed that the Respondent (as in the Supreme Court) was entitled to all benefits, rights and privileges which he would have drawn had he been promoted on 09.09.1964. At the time of execution, the said Respondent claimed the arrears of salary and other benefits with compound interest of 12% per annum. The objection of the same was rejected by the executing Court. In this context, the Hon'ble Supreme Court observed in the absence of pleadings and directions in the Judgement or Decree which is under execution, it is not open to the executing Court to award interest.

22. Reliance is placed by the Appellant on Judgement in the matter of **"State of Orissa and Another versus Mamata Mohanty"** Reported in (2011) 3 SCC 436 to buttress the argument that without there being pleadings, relief could not be granted. It was a service matter relating to Lecturers and the High Court had in some of the matters granted benefit of UGC scale w.e.f. 01.06.1984 which was a date prior to 01.01.1986 which could not be granted, being beyond the recommendations of the UGC relied on.

23. In the matter of **"Messrs. Trojan & Company versus RM. N.N. Nagappa Chettiar"** reported in 1953 SCR 789, on which Appellant relied, the amount of Plaintiff therein had been credited in the sum of Rs.6762-8 on account of purchase of the shares. The Plaintiff had pleaded that the transaction was not authorized by him and it had been made in contravention of his instructions and he claimed compensation on the ground of breach of instructions. In the alternative, he did not claim ground of failure of consideration. The High Court had found that a claim for damages in respect of a particular transaction may fail, that circumstance was no bar to the making of a direction that the defendants should pay the plaintiff the money actually due in respect of that transaction. The Hon'ble Supreme Court found (para – 22) that it was unable to uphold the view taken by the High Court on the point. It was well settled that decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found.

24. The learned Counsel for the Appellant at the time of arguments referred to and relied on the above Judgements. Now, we proceed to refer to the Judgements which were relied on by the learned counsel for the Respondents at the time of arguments.

25. The learned Counsel for the Respondents referred to the Judgements in the matter of **"Renuka Datla Vs. Solvay Pharmaceutical B.V. & Ors"** reported in MANU/SC/0853/2003 / (2004) 1 SCC 149. This Judgement has been referred to and relied on by the learned NCLT also, which we have mentioned above. If this Judgement is perused, it appears that it related to dispute regarding shareholding in Companies. The matter went up in SLP before the Hon'ble the Supreme Court of India. In para – 3 of the Judgement, the Hon'ble Supreme Court referred to the terms of settlement. It was observed:-

> "Shri Malegam should give opportunity to the respective parties to make their submissions. The valuation of Shri Malegam shall be regarded as final and binding on all the parties to the settlement. The relevant date for valuation was fixed as 31st March, 2001. The payment for shares shall be made within two weeks of the submission of the valuation report and the statutory approvals thereof failing which the respondents shall pay interest at the rate of 15% p.a. simultaneously with receipt of the total consideration for 4.91% shares, the petitioner shall effect the transfer of shares."

Further terms were also referred to. Para – 4 of the Judgement shows that Mr. Malegam submitted his valuation report, that is covering letter dated 28.09.2002. After assessing the intrinsic worth of the two Companies as going concerns, the value of 4.91% shares was arrived at,

at Rs.8.24 crores. The Hon'ble Supreme Court then referred to the salient features of the valuation in that matter. Para – 12 of the Judgement shows that the Petitioners objected to the valuation by filing IA Nos.2, 3 and 4 of 2002 wherein a prayer was made to submit the supplementary valuation report for reasons as mentioned in the para. Petitioners submitted before the Hon'ble Supreme Court that notwithstanding the finality attached to the decision of the Valuer, the Court can intervene if the valuation was made on a fundamentally erroneous basis or a patent mistake has been committed by the Valuer. Hon'ble Supreme Court observed that even accepting the principle, it was unable to hold that the valuation in that matter, was vitiated by a demonstrably wrong approach or a fundamental error going to the root of the valuation. The Hon'ble Supreme Court after considering the Report in that matter, concluded that the Valuer approached the question of valuation having due regard to the terms of settlement and applying standard methods of valuation and that the valuation had been considered from all appropriate angles. Para – 20 and 21 of the Judgement read as under:-

> "20. In the result IA Nos. 2 to 4/2002 are liable to be rejected. However, there is one direction concerning the interest which we consider it appropriate to give in the given facts and circumstances of the case. Though the grant of interest, as prayed for by the petitioners, from 31.05.2002 -- the stipulated date of submission of valuation report is not called for, we feel that the ends of justice would be adequately met if the respondents concerned are directed to pay the interest at the rate of 9 per cent on 8.24 crores, which is the value of shares fixed by the Valuer, for a period of 12 months. True, the petitioners contested the valuation and thereby delayed the implementation of

> settlement. However, having regard to the bona fide nature of the dispute and the fact that the respondents have retained the money otherwise payable to the petitioners during this period of 12 months and could have profitably utilized the same, we have given this direction taking an overall view.
>
> 21. In the result IAs 2, 3 and 4 of 2002 are dismissed subject to the above direction as to payment of interest. The SLP(c) Nos. 18035, 18041-18042 of 2002 shall stand disposed of in terms of the settlement on record coupled with the direction to pay the sum of Rs. 8.24 crores representing the value of 4.91% shares together with interest @ 9 per cent for a period of 12 months within a period of four weeks from today subject to the receipt of share transfer forms and the fulfillment of other formalities by the petitioners. The suits which have given rise to these SLPs, and other suits and proceedings mentioned in the Memorandum of settlement shall stand dismissed as withdrawn. Accordingly, the SLPs are disposed of. No order as to costs."

26. The Counsel for the Respondents then referred to and relied on Judgement in the matter of **"Suryakant Gupta and Ors. Vs. Rajaram Corn Products (Punjab) Ltd. and Ors."** reported in MANU/PH/0400/2009. It is a Judgement by the Hon'ble High Court of Punjab and Haryana. In the Judgement, Hon'ble High Court referred to various Judgements of Hon'ble Supreme Court and High Courts which were cited before the Hon'ble High Court and in para – 12 of the Judgement observed:-

> "12. To paraphrase the points adverted to by the above decisions:
>
> (i) the company court has power to take note of even subsequent events to give appropriate directions; (ii) the complete loss of substratum of the assets of the company could be sufficient ground for directing

> winding up of the company for just and reasonable cause as provided under Section 433(f) of the Companies Act; (iii) where the company is run by the members of the family or between close friends and relatives, the partnership principles thereby applicable for dissolution of a partnership, shall equally apply for winding up of the affairs of the company ; and (iv) the complete lack of transparency and systematic disposal of the assets of the company without involving the shareholders in the decision making would constitute oppression and mismanagement."

The learned Counsel for the Respondents relied on the above para of the Judgement to submit that the Company Court had powers to take note of subsequent events to give directions and thus, according to the Counsel, NCLT rightly exercised its powers to give directions for payment of interest.

27. Reliance was then placed by the Respondents on the Judgement in the matter of **"Rakhra Sports Private Ltd. and others Vs. Khraitilal Rakhra and others"** Reported as MANU/KA/0068/1993: ILR 1993 KARNATAKA 920. In that matter, the Company Judge had directed the Respondents to pay Petitioners Rs.600 per share subject to further valuation. In Appeal, the Hon'ble High Court further took into consideration value of goodwill, reputation and assets of the Company and other factors and found in para – 105 of the Judgement that the value of an equity share at Rs.820 in that matter seemed to be as quite fair and reasonable. In para – 106 it was observed:-

> "106. The valuation has to relate back to September 30, 1988 (the date on which the payment at Rs. 600 per share to the petitioners were recorded, subject to further valuation).

> Therefore, it is just and equitable that petitioners should be paid interest on his balance sum receivable by them. We direct the payment of interest on the balance sum payable by the contesting respondents to the petitioners at the rate of 10 per cent. per annum with effect from October 1, 1988, till the date of payment."

Counsel for Respondents on basis of such Judgement supported the ground of interest.

28. The learned Counsel for Respondents has argued that in law and equity, interest needs to be allowed by way of restitution. He relied on Judgement in the matter of **"South Eastern Coalfields Ltd. Vs. State of M.P. and Ors."** (referred supra) reported as MANU/SC/0807/2003: (2003) 8 SCC 648. Perusal of the Judgement shows that it was found by the Hon'ble Supreme Court that a party finally found to be entitled to a relief in terms of money, would be entitled to be compensated by the award of interest, which would also be payable in equity. The Appellants before the Hon'ble Supreme Court were operating coal mines in the State of M.P. The Central Government enhanced the royalty payable from coal and the State Government was entitled to recover the same from the Appellant, who would pass on the burden on their purchasers. The Appellant challenged the hike in royalty in the High Court of MP. An Interim Order was passed and subsequently, the Notification came to be quashed. In Appeal, the Order of High Court was set aside. Later on, the State Government claimed interest from the Appellant @ 24% per annum with regard to the period when the enhanced royalty was delayed. The Appellant passed on the claim to their consumers who challenged the same and succeeded in the High

Court in reducing the interest from 24% to 12%. The Hon'ble Supreme Court while dismissing the Appeal, held that the interest would be payable even in equity and on the basis of the principle of restitution, which is recognized in Section 144 of the Code of Civil Procedure. In para – 26 of the Judgement, Hon'ble Supreme Court observed:-

> "26. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties."

Thus, apart from Section 144 of CPC, the source of restitution is rule of justice, equity and fair play.

29. Counsel for Respondents relied on Judgement in the matter of **"Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors."** reported in MANU SC 1123/2018: 2018 (13) SCALE 381 and referred to para – 83 of the Judgement to refer to the principle that the act of Court shall harm no man is a maxim firmly rooted in our jurisprudence. It is further argued by the Counsel for Respondents that under the Companies Act, the Court has wide powers to grant interest. The Counsel referred to the Judgement in the matter of **"Syed Mahomed Ali Vs. M. R. Sundaramurthy and Ors."** reported as MANU/TN/0089/1958 where in para – 3, the Hon'ble Supreme Court referring to Section 402 and 406 of the Indian Companies Act, 1956 had observed that the Sections give ample

jurisdiction to the Court to dispose of the matter in the larger interests of the Company.

30. We keep in view the facts as appearing and as laid above in the various Judgements relied on by both sides and the ratio of the above Judgements and proceed to appreciate facts of the present matter, so that keeping in view the law, justice can be done in the matter.

31. We firstly take up the Order dated 1st April, 2011 passed by CLB (typed copy of which is at Page - 65 of the Appeal and which we have reproduced earlier). The Appellant is claiming that this was a consent Order. Unlike what we have seen in the Judgements being referred to by the parties, in present matter, there is nothing like consent terms recorded or signed by the parties. In this Order dated 01.04.2011, the CLB recorded "the Petitioners are even willing to go out of the Company on receipt of fair valuation for their shareholding". Nothing is shown that this willingness was placed before CLB by way of any writing on the part of the Respondents – Petitioners. However, the fact indeed remains that this Order recorded the willingness and the Order was never challenged. Thus, it was the Respondents – Petitioners who are said to have expressed willingness to go out of the Company on receipt of fair valuation for their shareholding. The Order does not record that the original Respondents in the petition are also willing to pay and let the Petitioners go taking fair valuation for their shareholding. Thus the original Respondents, sitting on the fence, let the matter proceed to get the fair valuation done and once

the report came, they appear to have found the valuation suitable and immediately one of them (signing for the Company and himself - without showing authority for Company) filed CA 405/2012. Ordinarily, an Order is referred to as consent Order when both the sides agree to passing of a particular Order. Sometimes, the terms settled are incorporated in the Order passed and then it is stated that both sides agree to the same and Order is passed as a consent Order. Sometimes, draft Order is prepared and consents of the Counsel for both sides are recorded that they agree to passing of such Order and then the same is treated as consent Order. In the present matter, there is only consent recorded of the original Petitioners, which is also to the limited extent that they are willing to go out of the Company on receipt of the fair valuation. In fact, except for the initial part of such willingness of the original Petitioners, rest of the Order shows that the parties were not even on Board even as to the name of Valuer and CLB proceeded to take up the name from the list of 3 Valuers referred to by the Petitioners. The CLB recorded that the original Respondents have not provided the CLB with any list, nor are they willing to provide one. The CLB then proceeded to record that S.S. Kothari Mehta & Co. have consented to take up valuation on record and thus proceeded to appoint the said CAs directing "valuer to determine the fair value of the shares of R-1 Company as on 14.03.2007 (the date of filing of the petition) within a period of 30 days". The Order of 01.04.2011 does not record that the original Petitioners and/or Respondents had agreed to such date of 14th March, 2007 for the purpose of valuation. Thus, we find it difficult to

treat this Order as a consent Order of both parties which left only execution to be done. It was an Order passed on the bare basis that Respondents – Petitioners had expressed willingness to go out of the Company on receipt of fair valuation and with this object, CLB proceeded to appoint Valuer and fixed a date of valuation.

32. The Appellant has on the basis of Section 634-A of the old Act stressed that this was an Order required to be treated as a decree made by Court in a suit pending. We have already noted the Judgements relied on by the Appellant but when we examined this Order of CLB, it could be seen that CLB had itself directed the Valuer to determine the fair valuation of the shares within a period of 30 days and "thereafter" the Valuer was required to hear objections, if any, of both the parties within 15 days and "thereafter" submit final Valuation Report to the original Respondent No.1 Company, to the Petitioners and to the CLB within further period of 15 days from the hearing of the objections of the parties. It was not an Order which stated that the Valuation Report of the Valuer, once submitted, shall be treated as final and the Petitioners shall transfer their shares to the Respondents without demur. When the Valuation Report is prepared and submitted, the party had a right to address the CLB/NCLT to either accept the report or question the valuation and manner of valuation. Apparently, the Order dated 01.04.2011 required further application of mind on the part of NCLT with regard to the Valuation Report on its receipt. The execution which this Order dated 01.04.2011 required was that the Valuer should give the Report which was done. The further binding part of the

Report is on the Respondents – original Petitioners that they are to go out of the Company on receipt of fair valuation. The Respondents – original Petitioners have not backed out from this willingness recorded in Order dated 01.04.2011. But then, they do have a right to address NCLT whether the valuation Report is correct. We discard the argument of the Counsel for Appellant that it was merely an executing Court and should have enforced the Valuation Report as it is. If this was to be accepted, it would mean that once Valuation Report is received, it should be accepted as it is or rejected as a whole. It would amount to putting fetters on the powers of the Tribunal. There is no Section shown under the new Act with wordings like Section 634-A of the old Act. In fact, even under the old Act, Proviso inserted in Section 634A vide Section 124 of Act 11 of 2003 mentioned that:-

> "Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002"

Now the Tribunal while dealing with a Company Petition complaining oppression and mismanagement covered in Section 241 read with Section 242 of the new Act, Section 242 has wide enough powers to pass Orders with regard to any matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made. In fact, although the Counsel for Appellant stressed that Order dated 01.04.2011 was consent Order and that it was a final Order which required to be implemented as it is, the record shows that this very Order on 11.08.2011 (Page – 68 of the Appeal) underwent a change when CLB modified this

Order dated 01.04.2011 to the extent that it changed the Valuer so as to then appoint S.C. Vasudeva in place of S.S. Kothari Mehta & Co. This Order changing the Valuer does not say that the change of Valuer was consented by the parties. In fact, although the Order dated 01.04.2011 had fixed the date of valuation as on 14.03.2007, the Report of the Valuer (Page – 17) shows that the Valuer himself changed the date of valuation to 31st March, 2007. This can be seen from the para – 1.7.2 of the Report. This was done keeping in view practical difficulties involved and the date of valuation was changed from 14.03.2007 to 31st March, 2007. This may have been done considering the fact that 31st March would be financial year ending. The point is that the Order dated 01.04.2011 did undergo changes with regard to the Valuer as well as the date of valuation. All this naturally required NCLT to apply itself, especially, when the Respondents – original Petitioners filed Reply to CA 403/2012 which was filed by the Appellant, and raised objections. The Impugned Order passed by NCLT on 8th June, 2018 is basically Order which took up CA 405/2012 and considering the Valuation Report and the objections, has actually disposed the Company Petition. In our view, the Order dated 01.04.2011 was interlocutory Order which required the Valuer to give Report which was subject to acceptance of the CLB/NCLT. The material part of the Order, which had finality, was that the Petitioners were willing to go out on receipt of fair valuation.

33. The Appellant has tried to say that on receipt of the Report dated 20.07.2012 which came to NCLT on 23rd July, 2012, the Appellant had

promptly filed CA 405/2012 on 9th August, 2012 and prayed that the Petitioners and other shareholders of their group should transfer the entire shareholding to the Respondents or to their nominees. What the Appellant is trying to say is that the Appellant was prompt and did not delay. But then the Respondents – original Petitioners had grievances which they raised in the Reply (Page – 350 of the Appeal). It has been argued and the Reply claimed before NCLT that draft Report dated 24th May, 2012 was received by the Respondents – Petitioners on 31.05.2012, but that it gave no details regarding valuation of land, building and machinery and that they had requested the Valuer to supply the details. Original Petitioners claimed that when they pursued the matter further with Valuer, he informed on 02.07.2012 that they had sought no objection from the Appellant Company to submit copies of Valuation Reports of the approved Valuer to the Respondents – Petitioners, but the Company had by letter dated 28.06.2012 strongly objected. These facts are borne out from the exchange of e-mail (copies of which are available in the Appeal at Pages – 494 to 497). The Reply filed by the original Petitioners in NCLT claimed that the draft Report was finalized without taking into account views of the Respondents – Petitioners. They claimed that they were able to get the copy of the final report only from the CLB. (It needs to be recalled that the Order dated 01.04.2011 had specifically directed the Valuer to give copy of the Valuation Report to R-1 Company and the Petitioner and the CLB). The Reply filed by original Petitioners then raised disputes regarding the valuation done and other comments on various aspects. The Reply sought

rejection of the valuation of Rs.10.35 and requested to approve fair value obtained by the original Petitioners through CA having regard to prevailing market rates of several assts.

The Impugned Order passed by NCLT shows that it went into various details to discard the objections raised by the original Petitioners and rejected their request that they could not avail opportunities to raise objections prior to the filing of final report. This part of the Impugned Judgement of NCLT has become final as the original Petitioners have not challenged the Impugned Order. However, we have referred to the above aspects from the limited point of view to see whether the conduct of the original Petitioners was such as would have disentitled them to an Order of interest. We do not see that there is any finding holding that the Respondents had raised frivolous grounds. Going through the Impugned Order, we find original Petitioners had bona fide disputes. May be, that their grievances have now not been accepted. When the legal position is that the Respondents had a right to look into the Valuation Report and raise disputes, and when they bona fide raised the same, only because they raised objections, it would not mean that the NCLT should have deprived them of interest, if NCLT was coming to a decision that they were entitled to interest.

34. Regarding the other arguments raised by the Appellant that the Petitioners had on various occasions caused adjournment, the Counsel for the original Petitioners has rightly pointed out other Orders from the record

to show that if at times the Petitioners had reason to seek time, there were other times when the original Respondents were also taking time. According to us, by referring to such Orders, one cannot conclude that this or that party is responsible for delay. The Impugned Order does not record that the Petitioners had been protracting the matter or that they were purposely causing delay.

35. As regards grant of interest, we find that while disposing the Company Petition, if the NCLT had got the Valuation Report available with it under Section 241 read with Section 242 of the new Act, it was for the NCLT to take a decision regarding whom the Petitioners should be directed to transfer their shares, and, to provide for matters which are just and equitable. The learned NCLT rightly relied on Judgement in the matter of "Renuka Datla". In that matter, which we have already referred, in fact parties had settled the disputes in the Supreme Court and terms of mutual settlement were also reduced to writing. There were even particulars like payment for the shares to be made within two weeks of the submission of the Valuation Report and the Statutory provisions thereof "failing" which, the Respondents shall pay interest @ 15% per annum. Still the Petitioners in that matter objected to the valuation by filing Interim Applications as can be seen from para – 12 of the Judgement and the Hon'ble Supreme Court heard the matter and while rejecting the IAs did consider grant of interest which was claimed by the Petitioners from 31.05.2002 – the stipulated date of submission of Valuation Report, but did not grant the same from that date and found that the ends of justice would be adequately

met if the Respondents were directed to pay interest @ 9% on 8.25 Crores which was the value of shares fixed by the Valuer, for a period of 12 months. The learned Counsel for the Appellant submitted that in this matter, the Hon'ble Supreme Court granted interest but it was only for 12 months. The submission which was made in alternative by the Counsel for Appellant is that if at all interest is to be granted, it should be only for 12 months. Going through the Judgement in the matter of "Renuka Datla", we find that it can be compared with the facts in the present matter. As regards 12 months mentioned in para – 20 of that Judgement, what appears to us is that in that matter, the Valuation Report was dated 28.09.2002 and the Judgement in the matter of "Renuka Datla" was passed on 30th October, 2003 which was period of 13 Months. 12 Months stated by Hon'ble Supreme Court were not mentioned giving any reason. Thus, it was a matter based on its facts, Hon'ble Supreme Court gave directions as deemed fit in interest of justice.

36. One of the arguments of the learned Counsel for Appellant is that interest could not have been granted by NCLT from 01.04.2007 as the amount of the value of the shares came to be crystalized only on 20.07.2012 when the Report was analysed and filed on 23.07.2012. On the other hand, fact remains that when the Order was passed by CLB on 01.04.2011 it had sought determination of fair value from the date of 14.03.2007. The original Petitioners were not in management of the Company and the original Respondents were in-charge and continued to utilize the investment made by the original Petitioners in the shares. They

naturally knew that liability to pay has arisen. While they continued to enjoy the management of the Company, original Petitioners kept waiting. We have pondered over this aspect and we find it necessary to strike balance between both the parties so that justice is done to both. We have no doubt that in the circumstances, grant of interest is justified by NCLT which it was competent to order. However, it appears to us that to balance the equity and do justice between both the parties, it would be appropriate that instead of disturbing the dates, we reduce the rate of interest from 9% per annum (simple interest) to 6% per annum (simple interest).

37. While we were considering this matter and found it just to take decision as above, it occurred to us that the parties had not adverted to certain aspects which arise from the manner in which the operative Order has been drafted by the learned NCLT. Consequently, we posted this matter back for further arguments by our Order dated 31st January, 2019 and called upon both the sides to address us on the following aspects:-

> "The impugned order vide which the Company Petition has been disposed, has directions against the Respondents 1 to 9 as arrayed in the Company Petition relating to buying of shares. Only Respondent No.1 Company has filed present Appeal. It does not appear to be a case of Section 68 of the Companies Act. What is the effect?"

38. We have then further heard Counsel for both sides on the above Court query. Learned Counsel for the Appellant Company has submitted with regard to the Court query that no such objection has been raised by the Respondents and it should be deemed to be waived by the

Respondents. However, we are discarding this because it is a Court query raised by us on the basis of record.

39. Going through the Impugned Order as a whole and the final Order, which has been passed by the learned NCLT, which we have reproduced in this Judgement - para -7 (supra), it is clear that the learned NCLT was not articulate when it directed the Petitioners to sell their entire shareholding held in the Respondent No.1 Company to "the Respondents". It was necessary for NCLT to clearly identify the Respondents as Respondent No.1 was a Company and the other Respondents were shareholders. Rights and Procedure for Company to buy back its shares and Rights and Procedure for sale of shares inter-se shareholders are different. The Impugned Order nowhere even slightly or in the passing indicates that the learned NCLT had in its mind to order buy back of shares by the Company. Learned Counsel for both the sides tell us that in a case of oppression and mismanagement, NCLT has a right to even direct buy back of shares without the powers being circumscribed to rely on decisions of the Company in that regard. We have no doubt that in the facts of a given matter when case of oppression and mismanagement is there and NCLT finds it just, it can direct Company also to buy back shares. It has the authority to do so. But then that should be stated. There is not a word even remotely stated in the Impugned Order that NCLT found it appropriate that it should direct the Company to buy back its shares. Sub-Section (2)(b) and (c) of Section 242 of the Companies Act, 2013 relating to powers of the Tribunal read as under:-

> "(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—
>
> (a) .....
>
> (b) the purchase of shares or interests of any members of the company by other members thereof or by the company;
>
> (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
>
> ....."

It is apparent that if it was a case of purchase of shares by the Company, further directions would be required relating to reduction of its share capital. There is no such thing in the present matter and we find that in the Impugned Order, there was a casual or clerical error where the words "Respondents" should have clarified the same as "Respondents 2 to 9".

40. Now the question arises as to what is the effect when this Appel has been filed only by Respondent No.1 Company and not the other original Respondents.

41. Learned Counsel for the Appellant submitted that Order XLI of the Code of Civil Procedure, 1908 (CPC – in short) Rule 4 and 33 provide that one of the plaintiffs/defendants can file an Appeal and the said Appeal enures to the benefit of all plaintiffs/defendants and it is argued that even if one of the parties file the Appeal, if the Appeal succeeds, the benefit would go to all the other parties also.

42. Order XLI Rule 4 and 33 of CPC read as under:-

"ORDER XLI

APPEALS FROM ORIGINAL DECREES

> **4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.—**Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiff or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiff or defendants, as the case may be.
>
> .....
>
> **33. Power of Court of Appeal.—**The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:]"

Relying on the above provisions of CPC, it is argued that these provisions have been interpreted by the Hon'ble Supreme Court and Hon'ble High Courts in various Judgements as under:-

"i) Karan Singh Sobti and Anr. Vs. Sri Pratap Chand and Anr. AIR 1964 SC 1305 (Paragraph 23)

ii) Ratan Lal Shah Vs. Firm Lalmandas Chhadammalal and Anr. 1969 (2) SCC 70 (Paragraph 3)

iii) Chandramohan Ramchandra Patil And Ors. Vs. Bapu Koyappa Patil (Dead) Through Lrs. And Ors. (2003) 3 SCC 552 (Paragraph 12 – 15)

iv) Parwati Kuer & Ors. Vs. Manna Lal Khetan AIR 1956 PAT 414 (FB) (Paragraph 20-24)

v) Brij Mohan Lal Murli Dhar Vs. Raj Kishore and Anr. AIR 1959 P&H 555 (Paragraph 7 & 8)"

The learned Counsel submitted that the reasonings given and conclusions arrived at by the NCLT in the Impugned Order with regard to interest is common to all the original Respondents and in the present Appeal, only the award of interest has been challenged which is common to all the other Respondents and thus, even if the Company has filed an Appeal without impleading other Respondents, the benefit can be given to all the other Respondents. The learned Counsel submitted that Section 421 of the new Companies Act provides that "any person aggrieved" by an Order of the Tribunal may prefer an appeal to the Appellate Tribunal and thus according to him, it does not make a difference even if the other Respondents did not file independent Appeals. The argument is that this Appellate Tribunal can exercise its powers to varying the decree in favour of non-appealing Respondents even if they have not been made parties to the Appeal or did not file independent Appeals. It is also argued relying on Section 11 of the National Company Law Appellate Tribunal Rules, 2016

(Rules – in short) that this Tribunal has inherent powers to pass such Orders or give directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal. It is stated that even if CPC as such does not apply, the principles of CPC can be invoked, and applied.

43. Against this, the learned Counsel for the Respondents argued that the original Respondents 2 to 9 did not appeal against the Order of interest and it is only the Company which has come up in the Appeal and it is stated that the Impugned Order in the nature of decree became final against the other Respondents. The argument is that provisions of Order XLI Rules 4 and 33 would not apply considering the facts of the present matter and the said provisions cannot be so applied so as to reopen decree which has become final.

44. Looking to the provisions of the Companies Act and settled principles, there is no difficulty in stating that rights of shareholders to purchase and sell shares of the Company are clearly distinct from the provision as to when a Company may purchase its own shares or other specified securities by way of buy back under Section 68 of the Companies Act, 2013. When the NCLT directs the Company to buy back shares and when the NCLT directs the shareholders to buy out each other, these are two distinct factors giving rise to different reasons for being aggrieved by the Orders. Thus, an appeal by the Company that it could not have been directed to buy back, would not be on the same ground as that of a

shareholder. However, in the present mater, as we have mentioned, it was not a case of buy back which has by error crept in the Impugned Order.

45. In the circumstances of the present matter, although only the Company filed this Appeal and did not even claim to say that it was on behalf of the other Respondents, although we are proceeding to find that the directions of buy back shares are not the direction to the Appellant Company, still we propose to amend the Impugned Order so as to make it clear. We need not resort to Order XLI of CPC. It is settled law when a matter is before NCLT or before this Appellate Tribunal, arising under Sections 241 and 242 of the new Act, read with Rule 11, irrespective of what the parties plead, say or do, the paramount consideration of the Tribunal is to keep in view as to what is in the interest of the Company. The interest of parties is subservient to interest of Company. It is necessary for the Tribunal to first consider interest of the Company. The health of the Company reflects on the health of economy and that is what matters. CLB had found that the parties do not see eye to eye and found it appropriate to get valuation done so that original Petitioners could go out of the Company. As such, they should be able to leave but with fair value and fair interest. We find no restrictions on us under the Companies Act to make an Order which ought to have been passed, which would be in the interest of justice, irrespective of the factor whether or not the other original Respondents filed the Appeal or not.

46. We thus proceed to pass the following order:-

ORDER

A. We maintain the Impugned Order with modifications and reproduce as under:-

"i) The Petitioners are directed to sell their entire share holding held by them in Respondent No.1 Company as on the date of filing the Petition to the Respondents **2 to 9** either jointly or severally at the fair price of Rs.10.35 per share as arrived at by the independent valuer upon consent appointed by CLB.

ii) The Petitioners shall hand over their share certificate(s) along with duly executed share transfer forms to the Respondents **2 to 9** and the Respondents **2 to 9** shall simultaneously hand over crossed demand draft/pay order favouring the Petitioners for the amounts payable as purchase consideration as computed in accordance with the fair value of share at Rs.10.35 per share along with interest calculated **@ 6%** per annum (simple interest) from 1.4.2007

till the actual date of payment within a period of 2 months from the date of this order.

iii) The compliances, as above, shall be made before the Bench Officer of this Tribunal.

The CP stands disposed of in light of the above terms along with all pending Company Applications, if any, and there will be no order as to cost."

B. With the above modification, the original Respondents 2 to 9 shall do the above compliances in NCLT within 2 months from the date of this Order in Appeal failing which the original Petitioners would be entitled to get these Orders executed.

The Appeal is disposed with no orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn