

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.270 OF 2018

In the matter of:

Jai Mahal Hotels Pvt Ltd

Appellant

Vs

Rajkumar Devraj & Ors

Respondents

With

COMPANY APPEAL (AT) NO.271 OF 2018

In the matter of:

Rajkumar Vijit Singh & Anr

Appellants

Vs

Rajkumar Devraj & Ors

Respondents

With

Company Appeal (AT) No.329 of 2018

In the matter of;

Rambagh Palace Hotel Pvt Ltd

Appellant

Vs

Rajkumar Devraj & Ors

Respondents

Present:

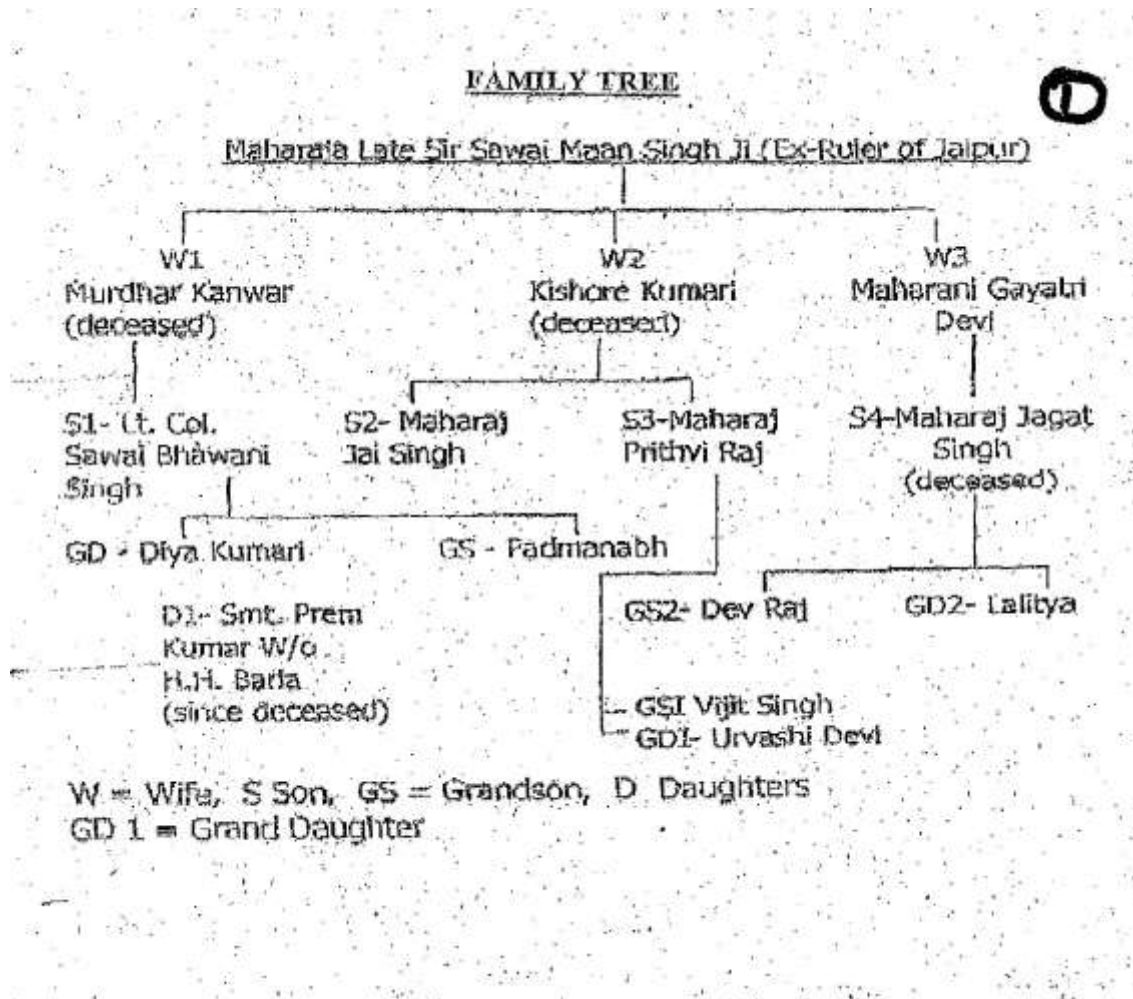
For Appellants: Dr. U.K. Chaudhary and Mr. Sanjiv Sen, Sr. Advocates with Ms Manisha Chaudhary, Mr Dhruv Gupta, Mr Sayan Ray and Mr. Soumo Palit, Mr Himanshu Handa, Advocates.

For Respondents: Mr Salman Khurshid, Sr Advocate with Mr Abhishek K Rao, Mr. Shailesh Suman, Ms Bhavya Bharti and Ms Tushita Ghosh, Ms Sanchita, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J

To determine the issue involving these appeals it is desirable to refer the family tree of the contesting parties which is as under:



JAI MAHAL HOTELS (Pvt) LIMITED

Rajkumar Devraj and Rajkumari Lalitya, showing them as residents of Bangkok, Thailand (Petitioners/1st and 2nd Respondents herein) filed Company Petition 30(ND) of 2006 before the Company Law Board, Principal Bench, New Delhi under Section 397, 398, 399 read with Section 237(b), 402 and 403 of the Companies Act, 1956 (now Section 241, 242 of the Companies Act, 2013) against M/s Jai Mahal Hotels (Pvt) Ltd, Maharaj Prithvi Raj, Rajkumar Vijit Singh and another alleging oppression and mismanagement on their part. They raised dispute in relation to the 5050 equity shares of Jai Mahal Hotels (Pvt) Ltd (1st respondent company/appellant herein). It was Company Appeal (AT) No.270, 271 and 329 of 2018

alleged that additional shares of the company were raised by denying right of the petitioners (1st and 2nd respondent herein). The challenge was made on the ground that the same was not informed to Maharani Gayatri Devi and not to the petitioners (1st and 2nd respondent herein).

2. National Company Law Tribunal, Bench III, New Delhi vide judgement dated 01.08.2018 allowed the company petition and passed the following orders:-

“I) All the resolutions which have been passed in the meetings of the Board of Directors, or in the Extraordinary General Meeting or Annual General Meeting with regard to appointment of Respondent No.4 to Respondent No.8 as directors of the 1st respondent company including those passed in the Board of Directors meeting held on 31.03.1999 and 27.03.2001 and their subsequent confirmation of Respondent No.5 to 8 in the general meeting held on 30.08.2001 are hereby set aside and in relation to the strength and directors of the Board, this Tribunal restores the position ante immediately upon the death of Late MJS.

II) Similarly, all the resolutions which have been passed in relation to the increase in the authorized capital of the 1st respondent in the Board Meeting or in the Extra Ordinary General Meeting dated 27.03.2001 are set aside and in relation to the same this Tribunal restores the position ante 27.03.2001 and any forms filed in this regard with the Registrar of Companies, NCT of Delhi and Haryana shall also stand cancelled.

III) Consequently, all the resolutions passed either in the Board Meeting held on 28.04.2001 in relation to the resolution allotting additional capital of the 1st respondent company to the 2nd and 3rd respondents aggregating to 60,882 equity shares of Rs.100/- each are set aside and, in this regard, restore the position ante immediately upon the death of Late MJS. The 1st respondent company shall rectify its register of members reflecting the status quo ante prior to allotment of 60,882 equity shares as its paid-up equity capital and any forms filed in this regard with the Registrar of Companies, NCT of Delhi and Haryana shall also stand cancelled. The petitioners shall be entitled to any consequential benefits which had accrued, if any, to these equity shares.

IV) The Board of the 1st respondent company shall be reconstituted with Respondent No.2 and 3 along with three nominees to the Board to be appointed by petitioner4s within a period of four weeks from the date of this order and the said nominations to the Board shall not be opposed by respondents 2 and 3 and the nominees otherwise qualify for appointment as such. The Chairman for the reconstituted Board shall be elected by itself.

V) The duly reconstituted Board in compliance with (IV) as above shall convene a meeting of shareholders by way of an Extra Ordinary General Meeting within a period of eight weeks from the date of reconstitution of the Board and the shareholders of the 1st respondent company will be at liberty to confirm or reject the

candidature of all or any of the persons of the Board re-constituted as per (IV) above and to choose such persons to the Board of the company in accordance with law, to manage the affairs of the 1st respondent company thereafter.

VI) No major policy decision in relation to the affairs of the 1st respondent company shall be taken by the existing Board consisting of Respondents No.2 and 3 till the Board of the Company is re-constituted in terms of paragraph (IV) as above.

VII) Mr. Amarjit Chopra, FCA, Chartered Accountant having Mobile No.098101-00299 is hereby appointed as an independent auditor to conduct a Special Audit in respect of the accounts of the 1st respondent company and the said audit shall be carried out from 05.02.1997, being the date of demise of Late MJS, until the period 31.03.2018. The purpose of the Special Audit shall be in relation to identifying any siphoning of amounts of the 1st respondent company by the other respondents as well as in relation to identifying transactions, if any prejudicial to the interest of the 1st respondent company. The amounts so identified resulting in the siphoning or leakage of funds and thereby loss to the 1st respondent company shall be duly recovered from such of the respondents who had been party to the same. The 1st respondent company and other respondents and persons in the management of the company shall duly co-operate with the auditor appointed herein by making available all documents including books of

accounts in this regard. The fees payable to the auditor shall be negotiated with the auditor by the parties and the petitioners will be responsible to pay the same to be suitably reimbursed by the 1st respondent company and recoverable from other respondents, if found culpable to funds leakage.

VIII) Reliefs, other than those granted above, however which may have been sought for, if any, stands denied.

IX) Respondents 2 to 4 shall be liable to pay costs of Rs.10 lakhs (Rupees Ten Lakhs) to the petitioners.

X) The Company Petition is accordingly disposed of in the above terms along with all Company applications, if any, pending.”

Rambagh Palace Hotel (P) Ltd

3. Another Company Petitioner No.59(ND)/2008 was filed by Rajkumar Devraj and Rajkumari Lalitya, showing them as residents of Bangkok, Thailand (Petitioners/1st and 2nd Respondents herein) before the Company Law Board, Principal Bench, New Delhi under Section 397, 398,399 read with Section 237(b), 402 and 403 of the Companies Act, 1956 (now Section 241, 242 of the Companies Act, 2013) against M/s Rambagh Palace Hotel (PRT) Ltd, Maharaj Prithvi Raj, Maharaj Jai Singh, Rajkumar Vijit Singh and another alleging oppression and mismanagement on their part. In the said case no specific judgement was delivered. The said case was heard by National Company Law Tribunal, Court III, New Delhi alongwith Company

Petition No.30/2006 but no specific finding has been given therein. On 28th August, 2018 the Tribunal passed the following order:-

“In the light of Order passed by this Tribunal on 1st August, 2018, the matter was posted for clarifications in relation to CP-59/ND/2008. The petitioner has filed a note on the point of difference in CP-30/2006 and CP-59/2008. However, in relation to Respondent and other respondents, there has been no appearance to clarify the position. In the circumstances, let the matter be posted for the appearance on the part of Respondents on 26.9.2018.”

4. M/s Jai Mahal Hotels Pvt Ltd and Rajkumar Vijit Singh alongwith Maharaj Prithvi Raj have challenged the aforesaid order dated 1st August, 2018 passed in Company Petition No.30/2006.

5. In the aforesaid background, we will deal with the relevant facts and case of Jai Mahal Hotels Pvt Ltd, to understand the dispute between the parties.

Jai Mahal Hotels (Pvt) Ltd

Facts of the Case:

6. At the age of 8 years, Late Maharaj Jagat Singh was given in adoption by late Maharani Gayatri Devi and Late Maharaja Sawai Man Singh to Late Maharaj Bahador Singh as adopted son.

7. Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), the children of Late Maharaj Jagat Singh have claimed to have got several

properties mutated in their names belonging to Late Maharaj Bahadur Singh's family claiming that Late Maharaj Jagat Singh was the adopted son of Late Maharaj Bahadur Singh.

8. Late Maharaj Jagat Singh was married on 10.05.1978 to a Thai National. The marriage was not successful and two children were born namely Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), who are holding Thai Passports and stayed all along in Thailand away from Late Maharaj Jagat Singh.

9. In the covenant entered into by Late Maharaja Sawai Man Singh Ji, amongst various properties declared to be his private properties, was one Palace known as 'Jai Mahal Palace'. A Partnership Deed was entered into on 18.10.1980 wherein and whereunder the said Jai Mahal Palace was envisaged to be run by a Partnership firm. The name of the Partnership Firm was 'Jai Mahal Palace Hotel'. In fact the partners of the said firm were Late Maharaja Jagat Singh and Maharaja Prithviraj Singh (Respondent No.4). As per Clause 6 of the Partnership Deed the net profit or loss of the Partnership was to be divided between the two partners in equal share. M/s Jai Mahal Palace Hotel Pvt Ltd, the appellant herein was incorporated as a Private Limited Company on 5.8.1981.

10. The entire affairs of the company from its inception till date were looked after by Maharaj Prithviraj Singh (Respondent No.4). The hotel has won several international awards solely on account of its efficient management. For 11 years prior to his death, Late Maharaj Jagat Singh attended only 4 Board Meetings. Similarly he only attended 3 out of 15 Governing Body

Meetings during his life time. Late Maharaj Jagat Singh used to reside mostly in London and did not take any interest in running the appellant company.

11. Since the marriage of Late Maharaj Jagat Singh was not a success, on 17.1.1985 Late Maharaj Jagat Singh entered into an agreement for divorce with his wife. The final divorce came about on 24.12.1990.

12. On 01.06.1984 during the lifetime of Late Maharaj Jagat Singh, the partnership firm M/s Jai Mahal Palace Hotel was dissolved and on distribution of its assets among the partners of the firm the property "Jai Mahal Palace building" and land came to the share of the Appellant.

13. On 02.06.1984 and so also during his lifetime, an agreement was executed for 60 years with Indian Hotels Company Ltd/The Taj Group, allowing it to run the hotel on a minimum guaranteed business profit basis and the agreement was extended for another 15 years.

14. On 28.08.1985 another similar agreement was executed between Indian Hotels Company Ltd/The Taj Group Bombay and the appellant.

15. Late Maharaj Jagat Singh divorced his wife i.e. mother of Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), on 24.12.1990. His wife and children abandoned him totally and there was practically no contact whatsoever, till the death of Late Maharaj Jagat Singh.

16. Late Maharaj Jagat Singh executed a Will dated 23.06.1996 by which he bequeathed his entire property and estate to his biological mother Late Maharani Gayatri Devi, thereby specifically disinherited his children i.e. Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent).

Subsequently, Rajkumari Lalitya (2nd Respondent), attained the age of majority on 03.02.1997. Immediately thereafter Maharaj Jagat Singh passed away on 05.02.1997.

17. On 27.03.2001, Special Resolution was passed which increased the authorised share capital of the Appellant company. According to appellants on this date the contesting Respondents were not legal heirs of Late Maharaj Jagat Singh and had no rights etc in the 5050 shares. Maharani Gayatri Devi was the sole legal heir and due notice was given to the legal representatives of Late Maharaj Jagat Singh.

18. Maharani Gayatri Devi by her letter dated 10.04.2001 addressed to appellant company, declined to subscribe to any further allotment of shares and requested the company to offer the shares to other existing shareholders. All actions of the appellant company were specifically approved by her.

19. The case of the appellant is that the Tribunal sought to nullify this letter by mysteriously relying on a non-existent affidavit of Maharani Gayatri Devi's Secretary which is nowhere on record and neither pleaded by the Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), in its rejoinder as referred to in the impugned judgement.

20. Further case of the appellant is that as on 28.4.2001 when the shares of the company was allotted, the contesting respondents were not legal heirs of Late Maharaj Jagat Singh on this date and had no rights in any of the affairs of the appellant company. Maharani Gayatri Devi was the sole legal heir and had approved of all the actions of the company.

21. In March 2006, Maharani Gayatri Devi herself discovered the Will of Late Maharaj Jagat Singh in which he had totally disinherited contesting respondents from his estate. The Will is stated to be discovered by Maharani Gayatri Devi while going through the papers and articles belonging to Late Maharaj Jagat Singh. Maharani Gayatri Devi did not enjoy good relations with the contesting respondents at all.

22. On 30.03.2006 the present Company Petition No.30(ND) of 2006 which according to appellant was filed hopelessly barred by limitation and latches by the contesting Respondents challenging the past and concluded acts of the appellant company, in particular the share allotment dated 27.03.2001.

23. According to appellants as on this date, the contesting Respondents had no right, title or interest in the 5050 shares standing in the name of Late Maharaj Jagat Singh. It was submitted that in view of the judgement of the Hon'ble Supreme Court dated 23.09.2015, Maharani Gayatri Devi was the sole beneficiary from 05.02.1997 till 2009. Thereafter, the validity of the company petition must be tested on the date of filing. According to appellants the company petition clearly was not maintainable as on the date of filing. There is no whisper in the rejoinder regarding the Secretary of Maharani Gayatri Devi filing an affidavit rebutting the validity of the letter dated 10.04.2001, whereby Maharani Gayatri Devi specifically declined to subscribe to any further allotment of shares and approved all actions of the Company.

24. The appellant, Jai Mahal Hotels Pvt Ltd received a letter from Maharani Gayatri Devi requesting transmission of all the 5050 shares standing in the name of Late Maharaj Jagat Singh in her favour in view of the Will dated

23.06.1996. Maharani Gayatri Devi applied for such transfer of 5050 shares as they were standing in the name of Late Maharaj Jagat Singh which were transferred. Subsequently, Maharani Gayatri Devi expressly approved the further allotment of further shares in 2001 and expressly declined to subscribe to any further allotment of shares as is evident from her letter dated 10.04.2001.

25. Maharani Gayatri Devi filed an application before the District Judge, Jaipur being Probate Petition No.327 of 2006 for grant of probate on the basis of the aforesaid Will in May 2006 after discovering the Will sometime in March, 2006. Maharani Gayatri Devi also withdrew her earlier statement on 26.04.2006 in the Succession Case No.134 of 1996.

26. The Appellant Company replied to Maharani Gayatri Devi on 03.07.1996 expressing its difficulty to transmit the shares lying in the name of Late Maharaj Jagat Singh to Maharani Gayatri Devi or any other Claimant till resolution of pending disputes.

27. Case No.134/1998 for succession and Case No.327/2006 being heard simultaneously but separately, Maharani Gayatri Devi filed an application for consolidation before the District Judge, Jaipur to avoid the likelihood of conflicting decisions in both the cases.

28. A perusal of the reply filed in the consolidation application in Probate Case No.327 of 2006 by the contesting Respondents shows the extent of hostility that they harboured towards Maharani Gayatri Devi. The contesting respondents contended that the actions of the Maharani Gayatri Devi were

with malafide and oblique motive. The High Court on 20.08.2008 stayed the proceedings of Succession Case No.134/1998.

29. On 14.11.2008 the health of Maharni Gayatri Devi became very unstable and she fell terminally ill. Appellant alleged that Rajkumar Devraj and Rajkumari Laliyta (1st and 2nd Respondent) forced and coerced Maharani Gayatri Devi and allegedly forged the signatures of Maharani Gayatri Devi and entered into a compromise.

30. It is alleged that Rajkumar Devraj and Rajkumari Laliyta (1st and 2nd Respondents) coerced the ailing Maharani Gayatri Devi and allegedly forged her signatures on a joint petition for bringing the Settlement on record, which was apparently filed before the Court of the District Judge which in turn, ruled that Probate Petition No.327/2006 was being withdrawn by Maharani Gayatri Devi. Affidavits of hand writing experts, demonstrating how the signatures of Maharani Gayatri have been forged and fabricated by the contesting Respondents have subsequently been obtained by the appellant company.

31. On 19.02.2009 the District Judge Jaipur issued Succession Certificate in Succession Case No.134/1998. Succession certificate was issued jointly in the names of Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondents).

32. Maharani Gayatri Devi executed her Will dated 10.5.2009 bequeathing her entire estate to the contesting 1st and 2nd respondents (Rajkumar Devraj and Rajkumari Lalitya). The authenticity of the alleged Will is under challenge before the District Judge, Jaipur.

33. On 15.7.2009, Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), applied to the appellant company for transfer of the ownership of shares in their name though they with their late mother never residing with Late Maharaj Jagat Singh and had severed all connections. According to appellant the claim was belatedly made despite knowing that Late Maharaj Jagat Singh completely disinherited them.

34. On 3.9.2009 the appellant company refused the transmission of shares till the time the said disputes were resolved by a court of competent jurisdiction. The contesting respondents preferred a petition before the Company Law Board sometime later under Section 111 of the Companies Act, 1956.

35. On 29.09.2009 Maharani Gayatri Devi passed away.

36. On 07.11.2009, application under Section 111 of the Companies Act, 1956 was filed by the contesting Respondents challenging the appellant's refusal to transfer shares of Late Maharaj Jagat Singh to them and for seeking transmission of shares in their favour, being C.P. No.16/111/2009 before the Company Law Board, New Delhi Bench.

37. Princess Urvishi Devi's group subsequently applied on 15.6.2010 to company for transfer of shares as Legal Representatives of Late Maharaj Jagat Singh/Maharani Gayatri Devi

38. Appellant sent letter dated 09.07.2010 to Urvashi Devi's Group declining transmission of shares.

39. On 21.09.2010, application for implementation on behalf of Princess Urvashi Devi's group filed in Section 111 proceedings initiated by contesting Respondents before Company Law Board.

40. Princess Urvashi Devi's group also filed petition under Section 111 of the Companies Act being C.P. No.22/111/2010 before the Company Law Board, New Delhi Bench.

41. By Judgment and order dated 16.03.2011 the Company Law Board which decided petitions under Section 111 filed by both the groups viz the contesting respondents and the Urvashi Devi Group held that the Board exercising its summary jurisdiction under Section 111 cannot decide complicated questions of fact and law which undisputedly arise in the present case where the title to the shares standing in the name of the Late Maharaj Jagat Singh is under serious dispute.

42. Subsequently, on 16.03.2011, the Company Law Board stayed the proceeding in the present matter sine die till the adjudication of the appeal in the Section 111 Petition.

43. Rajkumar Dev Raj and Rajkumari Lalitya (1st and 2nd Respondent/petitioners) moved before the Delhi High Court in CO.A(SB No.25/2011, CO.A(SB) No.49/2011, CO.A(SB) No.50/2011 against Jai Mahal Hotels Pvt Ltd & Others. Smt Urvashi Devi and others also moved before Delhi High Court vide CO.A(SB) No.27/2011, CO.A(SB)75/2011, CO.A(SB) 76/2011 against Jai Mahal Hotels Pvt Ltd against the order dated 16th March, 2011 passed by the Company Law Board. By Decision dated 12th December, 2012 the Single Bench of Delhi High Court held that 1st and 2nd Respondent were Company Appeal (AT) No.270, 271 and 329 of 2018

entitled for 5050 shares having derived rights from Maharani Gayatri Devi based on compromise/settlement deed dated 14.11.2008 followed by her Will under which she had bequeathed the said share holding thereafter in favour of her grandchildren i.e. 1st and 2nd respondent and the order of District Judge dated 19th February, 2009.

44 Though the aforesaid finding has been given based on right derived from Maharani Gayatri Devi pursuant to settlement dated 14.11.2018, no finding was given with regard to right accrued to 1st and 2nd Respondent by way of inheritance. Jai Mahal Hotels Pvt Ltd moved before Hon'ble Supreme Court against the said judgement in Civil Appeal No.7914/2015 which was heard alongwith other Civil Appeal etc. Hon'ble Supreme Court vide its judgement reported in (2016) 1 SCC 423 held:-

“20. In the present case, as already observed, there is no real dispute between the parties. The DR Group followed the due procedure. It had the succession certificate in its favour apart from the transfer deed from GD, who admittedly inherited rights from LMJS. Will in favour of GD is beyond any dispute. Thus, the DR Group derived rights from the GD by documents executed by her in her lifetime and conveyed to the Company. Even if the Will of GD is not taken into account, for purposes of issue of rectification, the documents executed by GM clearly entitled the DR Group to have the rectification made.

*21. The decisions in **Mulraj, Manohar Lal, Ajudh Raj and Chiranjilal Shrilal Goenka** (supra) are of no relevance to a*

situation where the beneficiary of the interim order itself opts to proceed with the matter in respect of which stay is granted by the higher court. In the present case, GD having settled the matter and having herself sought rectification, the interim order granted at her instance could be no bar against the DR Group. The decisions sought are thus, of no relevance to such a situation.

22. We sum up our conclusion as follows:

(i) LMJS executed Will in favour of the mother-GD which is not in dispute.

(ii) GD and DR jointly obtained succession certificate;”

(iii) GD signed the transfer deeds and communicated the same to the Board of Directors; and

(iv) The civil court vide order dated 28th July, 1991 declined to grant temporary injunction finding no prima facie case against the succession certificate.

23. In above circumstances, even in summary jurisdiction, the CLB had no justification to reject the claim of the DR Group. The High Court rightly reversed the said order.

24. In view of the above, we find no merit in these appeals. The same are dismissed with costs quantified at Rs.5 lakhs in each of the appeals.”

45. Learned counsel for the appellant, Jai Mahal Hotels Pvt Ltd, and Rajkumar Vijit Singh in Company Appeal (AT) No.271 of 2018 submitted that Company Appeal (AT) No.270, 271 and 329 of 2018

in view of the finding of the Hon'ble Delhi High Court and the Hon'ble Supreme Court, the legal position of the contesting 1st and 2nd Respondents (Rajkumar Devraj and Rajkumari Lalitya) is clear and have binding effect on the contesting respondents. It was submitted that 1st and 2nd respondent are now estopped from contending that they inherited the properties after the death of Maharaj Jagat Singh to claim their right as in 2000-2001.

46. It was contended that Maharani Gayatri Devi being the legatee herself bequeathed her rights in favour of 1st and 2nd respondents by duly signing the transfer deeds and the Will dated 10th May, 2009, the respondents cannot claim any right on any other shares on the ground of inheritance. Maharani Gayatri Devi being the absolute legatee in terms of the decision of Delhi High Court and Hon'ble Supreme Court in terms of the Will dated 23rd June, 1996, Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondent) had no interest in this estate for the purposes of those proceedings, the shares of Late Maharaj Jagat Singh prior to 14th November, 2008. According to them the Tribunal wrongly held that Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondents) inherited their right being the legal heirs of Late Maharaj Jagat Singh.

47. According to appellants the alleged acts of oppression occurred around the year 2001 cannot be entertained on two grounds as Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondents) who were not legal heirs of Late Maharaj Jagat Singh in view of the Will executed in favour of Maharani Gayatri Devi who subsequently bequeathed her right. Therefore, there was no fiduciary duty on the part of the Company to issue forms to the contesting

respondents i.e. Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondents).

48. It was further submitted that conduct of the proceedings is based on entire wrong averments which has been relied upon by the Respondents before the Tribunal and are not based on record. Further according to appellants the past and concluded actions of the appellant company completed in the year 2001, are not open to any challenge by the contesting respondents who became shareholders of the company only in 2015 and acquired interest in the shares on 14.11.2008 and 19.2.2009 only. The company petition is also barred by limitation.

49. The stand of the contesting respondents, Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), is summarised as follows:-

a) Maharaj Jagat Singh owned 5050 shares representing 99% of the issued and subscribed capital of the company. Maharaj Jagat Singh expired on 05.02.1997 leaving behind 1st and 2nd Respondent, Rajkumar Devraj and Rajkumari Lalitya, and Maharani Gayatri Devi, mother, as his Class I legal heirs as per the Schedule to the Hindu Succession Act, 1956.

b) Upon the death of Maharaj Jagat Singh, the shares belonging to him devolved equally upon the 3 Class I legal heirs as per the general rules of succession provided in Section 8 of the Hindu Succession Act, 1956 and the said shares stood instantaneously transmitted to the legal heirs by operation of law.

c) Under the 2nd proviso to Section 108 of the Companies Act, 1956, the Company was bound to register the above transmission. This statutory provision for registration of transmission has been duly recognised in the Articles of Association of the Company.

d) However, inspite of the clear mandate, both under the statute and the Articles, the Company did not register the transmission. Instead, Maharaj Prithvi Raj, who was managing the company led the legal heirs to believe that succession certificates are necessary for the registration. As admitted in the letter dated 06.05.2003, Maharaj Prithvi Raj filed the case for succession certificates in the year 1998 on behalf of the legal heirs for the debts and securities including the 5050 shares in the company. This letter has never been denied by Maharaj Prithvi Raj.

e) Even though the Company did not register the above transmission, the class I legal heirs were entitled to petition under Sections 397 and 398 of the Companies Act, 1956 on 05.02.1997 itself since Maharaj Jagat Singh's right to participate in the process of the Company vested with the 3 class I legal heirs upon his death.

f) The above entitlement is based on the salubrious principle that to preserve and protect the interest of the estate of the deceased member upon his death, the legal heirs ought to be seen to have stepped into the shoes of the deceased member immediately upon his death.

g) Since 2/3rd of the 99% shareholding of Maharaj Jagat Singh was transmitted to the contesting respondents and since the same is for in excess of the 10% threshold under Section 399 of the Companies Act,

1956, a petition under Section 397 and 398 was maintainable by the contesting respondents by themselves.

h) Issue of transmission of 5050 shares has been decided in favour of the contesting respondents by the Hon'ble High Court of Delhi and the same has been reaffirmed by Hon'ble Supreme Court.

i) The present dispute relates to creation of a new majority from 1% to 94% by Prithvi Raj Group in their own favour.

j) In the year 2001, in one stroke, shareholding of Maharaj Prithvi Raj Group surged from 1% to 94%. This new majority was created by Maharaj Prithvi raj and his son Rajkumar Vijit Singh in their own favour behind the back of the persons representing 99% shareholding of the Company. The company did not benefit in any manner from the above. Only Maharaj Prithvi Raj and his son Rajkumar Vijit Singh benefited at the expense of the Company.

k) The contesting respondents had a pre-emptive right to participate in the above issue and allotment of shares. However, no notices as required under law, were sent to them. The above issue and allotment was mala fide and the only motive was to gain control of the Company. As such the entire allotment ought to be set aside. Reliance was placed on decision of Hon'ble Supreme Court in *Dale & Carrington Vs PK Prathapan (2005) 1 SCC 212*.

l) This illegal feat of creating a new majority was achieved by the following acts:

- i) The Board composition was changed by inducting the wife of Rajkumar Vijit Singh and two others on the Board. None of these Directors were shareholders.
- ii) The changed Board composition was used to go dramatically increase the authorised capital of the Company tenfold from Rupees Ten Lakh to Rupees One crore.
- iii) The entire allotment of 60882 shares was made in favour of Maharaj Prithvi Raj (58794 shares) and Rajkumar Vijit Singh (10000 shares)
- m) The contesting respondents, Rajkumar Devraj and Rajkumari Lalitha, had always asserted their succession rights. They laid claim on Maharaj Jagat Singh's shareholding in the company on the basis of their succession. But Maharaj Prithvi Raj and his son Rajkumar Vijit Singh insisted upon succession certificates for registration of the transmission, thereby delayed the transmission. Late Maharaj Prithvi Raj and his son Rajkumar Vijit Singh diluted the 99% shareholding to 6%.
- n) The entire process of the impugned alteration in the shareholding and Board position of the company was conducted surreptitiously, behind the Contesting Respondents', Rajkumar Devraj and Rajkumari Lalitha, back and without notices required under law.

o) Even after the contesting respondents, Rajkumar Devraj and Rajkumari Lalitya, were deliberately and actively kept in dark by their uncle Maharaj Prithvi Raj who gave them false assurances.

p) The contesting respondents, Rajkumar Devraj and Rajkumari Lalitya, trusted their uncle. They realised that their trust was breached when they came to know about the impugned alteration in November, 2005.

q) CP No.30/2006 was filed on 30.03.2006, soon after the contesting respondents came to know of the impugned alteration. In view of Section 17 of the Limitation Act 1963, the Petition is not time barred nor hit by delay and laches.

r) In any case, the effect of the impugned alteration is continuous and perpetual and as such the cause of actions is a continuing one.

50. Reliance has been placed on the decision of the Hon'ble Supreme Court as the appellant's case of disinheritance of the contesting respondents by the Will dated 23.6.1996 has been rejected by the Hon'ble Supreme Court.

Findings.

51. The judgement passed by the Delhi High Court and affirmed by the Hon'ble Supreme Court is binding on both the appellants and the contesting Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondents). The Hon'ble Delhi High Court in para 38 of the judgement has held as under:

“38. Admittedly these shares were in the name of Jagat Singh who had bequeathed them to his mother Maharani Gayatri Devi and

she in terms of a settlement arrived at between her grandchildren followed by her Will had bequeathed the said share holding thereafter in favour of her grandchildren i.e. the petition group.....”

52. The Hon’ble Supreme Court vide Judgement dated 23.9.2015 categorically upheld and further clarified the above legal position as follows:

“9...The GD (Gayatri Devi) who was the legatee herself bequeathed her rights in favour of the DR (Dev Raj)Group by duly signing the transfer deeds and communicating the same to the Board of Directors. She also executed Will dated 10th May, 2009. Mere fact that the same had been challenged was no bar to the claim of the DR Group.”

53. In fact, the Hon’ble Supreme Court in its para 20 has settled the chain of succession vis-à-vis the 5050 shares of Late Maharaj Jagat Singh as follows:

“...20 The DR Group followed the due procedure, it had the succession certificate in its favour from the transfer deed from GD, who admittedly inherited rights from LMJS. Will in favour of GD is beyond any dispute. Thus the DR Group derived rights from the GD by documents executed by her in her lifetime and conveyed to the Company. Even if the Will of GD is not taken into account, for purposes of issue of rectification, the documents executed by GD clearly entitled the DR Group to have the rectification made.”

22. We sum up our conclusion as follows:

(i) LMJS executed Will in favour of the mother-GD which is not in dispute.

(ii) GD and DR jointly obtained succession certificate;”

54. In view of the aforesaid findings of the Delhi High Court and the Hon’ble Supreme Court of India, it is evident that Rajkumar Devraj and Rajkumari Lalitya had no interest in the estate and for the purposes of these proceedings the shares of Late Maharaj Jagat Singh in the Company before 14.11.2008. In other words after the said demise of Late Maharaj Jagat Singh in 1997 Maharani Gayatri Devi became the absolute legatee and legal heir of Late Maharaj Jagat Singh’s estate in terms of the undisputed will dated 23.6.1996. Therefore, Succession Certificate dated 19.02.2009 issued by the District Judge, Jaipur jointly in the name of Maharani Gayatri Devi and Rajkumar Devraj and Rajkumari Lalitya based on compromise/settlement deed dated 14.11.2008 relating back to 05.02.1997 i.e. the date of death of Late Maharaj Jagat Singh cannot be relied upon.

55. In *Banarsi Dass Vs Teeku Dutta (Mrs) and Anr (2005) 4 SCC 449*, the Hon’ble Supreme Court held that that the succession certificate does not establish title of the grantee. The relevant paragraph 14 reads as under:-

“The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to parties paying debts to representatives of deceased persons. All that the Succession Certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A Succession Certificate is intended as noted above to

protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a Certificate under the Act, or is compelled by the decree of a Court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. In order to succeed in the succession application the applicant has to adduce cogent and credible evidence in support of the application. The respondents, if they so chooses, can also adduce evidence to oppose grant of succession certificate. The trial court erroneously held that the documents produced by the respondents were not sufficient or relevant for the purpose of adjudication and DNA test was conclusive. This is not a correct view. It is for the parties to place evidence in support of their respective claims and establish their stands. DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in Goutam Kundu's case (supra). Present case does not fall to that category. High Court's judgment does not suffer from any infirmity. We, therefore, uphold it. It is made clear that we have not expressed any opinion on the merits of the case relating to succession application.”

56. In view of the aforesaid position of law we hold that Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondents) can not claim title on the basis of succession certificate dated 19.2.2009.

57. The Hon'ble Supreme Court finally settled all aspects relating to succession of original 5050 shares which belong to Late Maharaja Jagat Singh. The Hon'ble Delhi High Court and Hon'ble Supreme Court considered the Will of Maharaja Jagat Singh dated 23.06.1996; Will of Maharani Gayatri Devi dated 10.05.2009 and succession certificate dated 19.02.2009. The lis pertaining to the company, Rajkumar Dev Raj and Rajkumari Lalitya (1st and 2nd Respondents) and Maharaj Prithviraj and his sons, all of whom are parties to the present appeals relating to 5050 shares of appellant company was finally decided which has reached finality. Thus, the Tribunal was bound by such final and binding determination relating to these original 5050 shares

which belong to Maharaja Jagat Singh and it is not open to it to give any contrary finding with regard to original 5050 shares disregarding the decision of the Hon'ble Supreme Court.

58. The alleged acts of oppression complained of by 1st and 2nd respondents occurred around 2001. Maharani Gayatri Devi on the death of Maharaj Jagat Singh on 5th February, 1997 became his sole legatee by virtue of Will dated 23.6.1996. Therefore, Rajkumar Dev Raj and Rajkumari Lalitya (1st and 2nd respondents) cannot claim inheritance on original 5050 shares to be legal heirs of Late Maharaj Jagat Singh on his death i.e. 5.2.1997. Once the claim of Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd Respondent), on the total original 5050 shares of Late Maharaj Jagat Singh is determined by Hon'ble High Court and Hon'ble Supreme Court on the basis of Will issued in favour of Maharani Gayatri Devi and giving legatee herself bequeathed her rights in favour of Rajkumar Dev Raj and Rajkumari Lalitya, they cannot claim their right on such shares by way of inheritance on the death of Maharaj Jagat Singh, which will amount to altering the finding of Hon'ble Delhi High Court and Hon'ble Supreme Court.

59. The Tribunal failed to consider the abovesaid aspects and wrongly held that Rajkumar Devraj and Rajkumari Lalitya (1st and 2nd respondents) inherited the shares of Late Maharaj Jagat Singh on 5.2.1997 on the death of Maharaj Jagat Singh.

60. The Tribunal noticed a contention of the contesting respondents that the Secretary of Maharani Gayatri Devi has filed an affidavit rebutting the

validity of the letter dated 10.4.2001 by which the Maharani Gayatri Devi had specifically declined to subscribe to any further allotment of shares and approved all actions of the company. Maharani Gayatri Devi's Secretary stated to have alleged in an affidavit that the document dated 10.4.2001 was forged and fabricated. However, on record no such averment was made in the petition or rejoinder by the contesting respondents neither any such affidavit was ever in the record of the Tribunal let alone being a part annexed to any proceedings. This is a mysterious and perverse finding of fact given by Tribunal and it is not known as to why the Tribunal referred to such affidavit and the rejoinder when in fact there is none. It may be noted that the Respondents have not dealt with either the letter dated 10.4.2001 of Maharani Gayatri Devi or the imaginary affidavit filed by the so-called Secretary of Maharani Gayatri Devi either in the pleadings or in the arguments.

61. Maharani Gayatri Devi by her letter dated 10.04.2001 specifically records the following:-

- a) That she herself had received the notice in her capacity as the legal heir of the estate of Late Maharaja Jagat Singh;
- b) That she herself left it open to the Company to offer the shares to other existing shareholders and declined to subscribe to any shares.

62 Therefore, the contesting Respondents' company petition deserved to fail in terms of Section 399 of the Companies Act, 1956 (Section 244 of Companies Act, 2013) as they were not shareholders nor did they have any right, title or interest in the shares and the grounds taken in the company

were grossly inadequate to invoke the equity jurisdiction of this Tribunal under Section 397/398 of the Companies Act, 1956. Thus it ought to have been dismissed. Maharani Gayatri Devi was at all material times including in 2001 the sole legatee of Late Maharaja Jagat Singh.

63. Thus crucial letter dated 10.4.2001 has neither been denied nor been dealt with by the Respondents and the Tribunal has attempted to nullify this letter based on a mysterious/imaginary affidavit of the so called Secretary of Maharani Gayatri Devi.

64. In view of the aforesaid finding we hold that past and concluded actions of the appellant company completed in 2001, were not open to any challenge by the contesting respondents, Rajkumar Dev Raj and Rajkumari Lalitya (1st and 2nd Respondent) who became shareholders of the company much later only on 14.11.2008/19.2.2009.

65. Apart from the fact that the cause of action have taken place in 2001, in absence of any explanation, the application under Section 397 and 398 of the Companies Act, 1956 filed in the year 2006 is fit to be dismissed on the ground of delay and latches.

66. In view of the aforesaid finding the impugned judgement dated 1st August, 2018 passed by the Tribunal in Company Petition No.30/2006 cannot be upheld. It is accordingly set aside. Company Appeal (AT) No.270/2018 and Company Appeal (AT) No.271 of 2018 which relates to Jai Mahal Hotels Pvt Ltd are allowed.

67. In so far as Company Appeal (AT) No.329/2018 which relates to Rambagh Palace Hotel (P) Ltd is concerned, in absence of any specific clarification we are not giving any finding but the finding given in this judgement will also govern the claim and counter claim of the parties in Company Petition No.59(ND)/2008. The Company Appeal (AT) No.329/2018 stands disposed of with aforesaid observation and directions. No cost.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

New Delhi

Dated:12 -03-2020

Bm