

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No.369 of 2017**

[Arising out of Order dated 07.08.2017 passed by National Company Law Tribunal, Division Bench, Chennai in TCP No.234 of 2016 (CP 100/2011)]

**IN THE MATTER OF:**

1. Abdusalam Kurikkal Manjeri Puthusseri  
Suhara Manzil, Majeri – 3  
Nelliparambu, P.O.  
Karuvambram, Malapuram  
Malapuram – 676 123  
Kerala  

...Appellant No.1  
(Original Respondent No.2)
  
2. Mohamed Kutty Chelat  
Chelat House  
Niramaruthur,  
Tirur – 676 109  

...Appellant No.2  
(Original Respondent No.3)
  
3. Pocker Ullattil  
Jasmine Villa,  
Jayanthi Road, Nallalam,  
Kozhikode – 673 027  

...Appellant No.3  
(Original Respondent No.4)

**Versus**

1. Ayoli Abdulla  
Kunnakkad House  
Oorakkam Melmuri  
Malappuram District  
Kerala  

...Respondent No.1  
(Original Petitioner)

2. M/s. Meezan Realtors Private Ltd.  
5/34, II Level, Galleria Trade Centre,  
Puthiyara P.O., Mavoor Road,  
Calicut – 673004, Kerala  
Through its authorised representative

...Respondents No.2  
(Original Respondent No.1)

**Present: Shri Ritin Rai, Shri Vidur Bhatia and Ms. Kritika Bhardwaj,  
Advocates for the Appellants**

**Dr. K.S. Ravichandran, PCS and Ms. S. Manjula Devi, Shri Dev  
Prakash and Shri Haris Beeran, Advocates for the Respondents**

### **J U D G E M E N T**

**A.I.S. Cheema, J. :**

1. Respondent No.1 – Original Petitioner filed TCP 234 of 2016 (CP 100/2011) which has been disposed vide Impugned Order dated 07.08.2017 by the National Company Law Tribunal, Division Bench, Chennai (in short, 'NCLT'). The Company Petition was initially filed before Company Law Board, Chennai Bench, Chennai and was earlier dismissed as not maintainable by CLB, on 20.11.2015. The said Order was set aside by the Hon'ble High Court of Kerala, Ernakulam in CA 13/2015 vide Judgement and Order dated 17<sup>th</sup> June, 2016. The matter was remitted back to the NCLT and now NCLT has by the Impugned Order allowed the Company Petition which had been filed under Sections 111, 397, 398, 402 and 406 of the Companies Act, 1956 ('old Act', in short). Aggrieved by the Impugned Order, the present Appeal is filed by the 3 Appellants (Original Respondents 2, 3 and 4). The Respondent No.2 in this Appeal "M/s.

Meezan Realtors Private Ltd.” (hereafter referred as Company) is the Company relating to which the petition was filed.

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

**Pleadings of Petitioner (Respondent No.1)**

3. Respondent No.1 – original Petitioner went to the Company Law Board (‘CLB’ in short)/NCLT with the Company Petition claiming in short that the Respondent Company was incorporated on 25<sup>th</sup> August, 2003 with authorized share capital of Rs.1 lakh divided into 1,000 equity shares of Rs.100/- each. He is the subscriber to the Memorandum of Association. He holds 500 shares of Rs.100/- each which is equivalent to 50% of the share capital. The other subscriber was Salahuddin Nalakath. (see Articles of Association at Page 105 of the Appeal).

3.1 In the Company Petition para – 6(a)(i), the Appellant pleaded (and which is not disputed in the NCLT by Respondents in their counter [para – 13 Appeal page – 392] and thus undisputed) that the Petitioner and Salahuddin are the first Directors. Article 29 of Articles of Association prescribes holding of at least 5 equity shares in the Company as qualification for continuing as Director and that such shares shall be taken within two months from date of appointment. The Petitioner pleaded that Salahuddin failed to pay the share subscription amount in respect of the shares which he had agreed to subscribe in the Memorandum within time

specified by Section 270 of the old Act and thus he vacated the office on 5<sup>th</sup> November, 2003 as per Section 283(1)(a) of the old Act. Soon thereafter, Respondent No.2 - Abdusalam was admitted as Director on 29<sup>th</sup> August, 2003. The Petitioner referred to two Forms 32 in this regard filed with the petition.

3.2 Pleadings on the above count were not disputed and thus are admitted facts. Similarly, in the pleadings, it was not disputed that the Company did not issue any shares to Respondent No.2 at any time after incorporation.

3.3. In the Company Petition, the original Petitioner referred to facts as regards entering into agreement of sale whereby the seller had agreed to convey 152 cents of land to the Company but conveyed only 38 cents and for the balance, suit was required to be filed having No.OS 82/2006 for specific performance before Sub Judge – III, Kozhikode. He pleaded that the suit was pending. Petitioner claimed in the petition that while he was managing the affairs of the Company, the Respondent No.4 – Pocker Ullattil surprisingly filed affidavit in that original suit claiming that the Petitioner was not authorized to represent the Company under the pretext that shareholders of imaginary entity “Meezan Group” had by General Body Meeting on 9<sup>th</sup> December, 2010 resolved to confer on him the power to manage affairs of Meezan Group including Respondent Company. Petitioner claimed that this was done to wrest control of the valuable property of Respondent Company and to hijack the profits. The

Petitioner in Petition referred to the contents of the Affidavit filed in that suit that in a meeting of Board of Directors purportedly held on 27<sup>th</sup> April, 2011 under the chairmanship of one Panakkadu Hameed Ali Shihad Thangal (hereafter referred as - said Thangal), it was resolved to entrust the entire control of all the businesses of Meezan Group with Respondent No.4. Petitioner claimed that the said Affidavit also mentioned regarding purported Board Meeting dated 27<sup>th</sup> April resolving to transfer entire share of Petitioner to Respondent No.4. Petitioner claimed that said Thangal was unrelated person of the Company and could not have chaired the Board Meeting and Petitioner claimed that by purported Resolution by imaginary entity, power of management of the Company cannot be dealt with and are not binding on the Company. The petition then referred to further contents of the said Affidavit whereby Respondent No.4 sought to substitute himself in place of the Petitioner, in that litigation. Petitioner claimed that Respondent No.4 was doing this with intention to usurp the management and to highjack the property of the Company and to misappropriate revenues. Petitioner pleaded in para – 6(a)(viii) of the Petition:-

- “viii. The Petitioner submits that he had not consented to the purported transfer of shares as alleged to have been made on the 27<sup>th</sup> April 2011 and he was merely coerced by the 4<sup>th</sup> Respondent along with few other persons with a threat to his life and bodily harm, to transfer the shares held by him in the Respondent Company to the 4<sup>th</sup> Respondent. When he was coerced to sign a share transfer form which was first signed by the 2<sup>nd</sup> Respondent as the 1<sup>st</sup> holder and the Petitioner was forced to sign it as a 2<sup>nd</sup> holder. The Petitioner submits that the transfer deeds executed by the Petitioner is invalid

as the date of presentation of the said transfer deed was 16<sup>th</sup> November 2010 and the same has not been revalidated before its acceptance in a board meeting, even if it is to be assumed that such a board meeting was in fact conducted. Further the above referred transfer deed contains the joint signatures of both the Petitioner and the 2<sup>nd</sup> Respondent as the transferors, for transfer of 100 Equity Shares of the Respondent Company as if to imply that the Petitioner and the 2<sup>nd</sup> Respondent are the joint holders of such 100 Equity Shares, which is invalid and erroneous *prima facie*.”

3.4. Based on above, the Petitioner claimed coercion. He further pleaded that he came to know on 13<sup>th</sup> December, 2011 from a friend telling him that he was no more Director and because of which he took inspection of the records on the portal of Ministry of Corporate Affairs and came to know about unauthorized and incorrect filings done by Respondents through Respondent No.2. He claimed that Form – 32 had been filed by Respondents appointing Respondent No.3 as Director and Respondent No.4 as Managing Director pursuant to purported Board Meeting dated 25<sup>th</sup> September, 2011. He claimed that he had no knowledge of Notice of any such meeting which could not have been held without Notice to him; he claimed that another Form 32 without his knowledge or consent was filed changing the designation of Petitioner from Managing Director to Director vide purported Board Meeting dated 15<sup>th</sup> September, 2011. He claimed that he had no Notices of such Board Meetings. Petitioner claimed that his name was also surprisingly excluded from list of shareholders in the Annual Returns filed for financial year ending 31<sup>st</sup> March, 2011; Form

20B recorded transfer of shares to Respondents 2, 3 and 4 which could not have been done without authority of the Board which alone could authorize transfer of shares. Petitioner claimed that Respondent No.2 had no right to induct any other person as Director. Respondent No.2 in collusion with Respondent Nos.3 and 4, fraudulently without knowledge of Petitioner clandestinely and illegally transferred shares of the Petitioner to the 3<sup>rd</sup> Respondent. The impugned filings were done by Respondent No.2 on 12.09.2011. Petitioner claimed that Respondent No.4 fraudulently acquired shareholding of the Petitioner. The prayers of the petition read as under:-

- “1) Declare that the acts set out and complained of herein are acts of mismanagement and are oppressive to the Petitioner.
- 2) Set aside the transfers purported to have been made to the 4<sup>th</sup> Respondent by the Petitioner and the 2<sup>nd</sup> Respondent and the subsequent transfers made by the 4<sup>th</sup> Respondent to the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondent and thereby direct rectification of register of members.
- 3) Declare as void all the documents that have been filed under the digital signature of the 2<sup>nd</sup> Respondent.
- 4) To declare that the removal of Petitioner from the post of managing director as invalid and null and void.
- 5) Direct that action be taken against Respondents 2 to 4, pursuant to provisions of Section 628 of the Companies Act, 1956.
- 6) To examine the conduct of the 2<sup>nd</sup> and 4<sup>th</sup> Respondents in terms of Section 539 to 544 read with Section 406 and with Schedule XI of the

Companies Act, 1956 and pass appropriate orders in respect of the same.

- 7) Order the 2<sup>nd</sup> to 4<sup>th</sup> Respondents to pay the Petitioner the costs of this Petition; and
- 8) Pass such other order that the Bench think deem fit.”

**Pleadings of Respondents 2 to 4 (Appellants)**

4. In defence, the Appellants – original Respondents 2 to 4 filed counter (Appeal page – 387). In the counter para – 5, these Respondents claimed that the Petitioner had transferred his entire shareholding to the extent of 1,000 shares by executing Share Transfer Form on 27.04.2011. They claimed that Petitioner willingly divested his entire shareholding and he has no locus standi to maintain the petition. They admitted pleading of appointment of Respondent No.2 as Director as mentioned in the Petition. According to them, the Board of Directors of the Company in its meeting held on 28.05.2011 considered and approved transfer of shares to the extent of 330 shares each held by Respondent No.4 in favour of Respondent Nos.2 and 3. The counter referred to the copy of minutes filed. As mentioned, they admitted para – 6(a)(i) of the Petition. They admitted that no fresh shares were issued to Respondent No.2 but pleaded that unsubscribed 500 equity shares of the other promoter - Salahuddin had been transferred to Respondent No.2 on 05.11.2003. They claimed that in that meeting even the original Petitioner was present and with the counter attached copy of minute of Board of Directors said to have been held on 05.11.2003.



(Such meeting dated 05.11.2003, however, has been denied to have been held by the Petitioner in his rejoinder (Page – 430 para – 8).)

4.1 In the counter, Respondents accept regarding the pending suit but claim that the suit was by the Company. Respondents claimed that Meezan Group was not an imaginary entity but collectively refers to Meezan Jewellers Ltd., Meezan Realtors Pvt. Ltd. (present Company) and Walker Foot Care, etc. which are under same management. According to them, Meezan Realtors and Meezan Jewellers although separate legal entities, management and control of both are in the hands of same persons. The counter claimed that the Company had authority to decide who should represent the Company in the suit. They claimed that the Affidavit in the suit filed by Respondent No.4 referred to said Thangal regarding his leadership and not Chairmanship. It was pleaded that said Thangal did not chair the meeting.

4.2 We reproduce para – 19 of the counter which reads as under:

“19. Further, when the petitioner was the Managing Director, the first respondent company had collected Rs.2,24,10,000/- (Rupees two crore twenty-four lakh and ten thousand only) as Share Application money from prospective investors, but did not allot the shares or even increase the authorised capital of the first respondent company. When the investors came to know about the *mala fide* intent of the petitioner (who was also the Managing Director of Meezan Jewellers Limited, a company under the same management) they raised a great hue and cry, which attracted mass attention and adverse media coverage.

Considering the restive nature of the community at large, the management of the Meezan Group of companies held a General Meeting of the first respondent company, as also of the other companies of the group, on 27.04.2011. Since the matter had attracted mass concern, the Board thought it fit to invite Panakkadu Hameed Ali Thangal, a great persona and spiritual leader, to the meeting. He, however, did not act as Chairman of the meeting. Panakkadu Hameed Ali Thangal acted as a mediator and facilitator to resolve the deadlock in management. Thus, there is no question of Panakkadu Hameed Ali Thangal acting as ‘chairman’ of the meeting, and the allegations in this regard are categorically denied. In the said meeting, it was resolved to transfer the management and control of the first respondent company from the hands of the Petitioner to the fourth respondent. In pursuance of this decision and in complete accord therewith, the Petitioner tabled before the Board a duly signed Share Transfer Form to transfer all the shares held by him to the fourth respondent, which was unanimously approved in the meeting. Thus, the petitioner is not holding any shares in the first respondent company. Therefore, he is not a member of the Company and has no business enquiring into the affairs of the first respondent company.”

[Emphasis supplied]

4.3 Thus, Respondents claimed a Joint “General Meeting” of Respondent Company and other companies on 27.04.2011 and vaguely referred to Board Meeting also on same date.

4.4 Respondents claimed that if the share forms were invalid as claimed by the Petitioner, he is himself responsible for the same. According to them, Petitioner had not denied that he signed the forms and was only disputing the signing of Respondent No.2 on the form as joint holder. The

counter then tried to show mismanagement of the Company by the Petitioner. Respondents claimed that as per Clause 43 of Articles of Association, the Board of Directors has power to appoint Managing Director and Respondent No.4 was appointed Managing Director in Board Meeting dated 25.09.2011 and thus he had authority to file Affidavit in the original suit. Respondents pleaded that in Board Meeting dated 09.08.2011 (copy of which is not referred) 3<sup>rd</sup> and 4<sup>th</sup> Respondents were made Additional Directors and they were later confirmed as Directors in AGM dated 30.09.2011 (copy at Page 424). Respondents further pleaded that the Petitioner acquiesced to the transfer of shares on 27.04.2011 and after 7 months, he was making grievances of coercion. They claimed that the Petitioner had not approached police authorities to file complaint if he was threatened with death or bodily harm. It is pleaded that after the Petitioner transferred his shares with effect from 27.04.2011, he did not have the qualifying 5 shares as per Article 29 of Articles of Association and his Office stood vacated and thus according to the Respondents, they were not required to give any Notice to the Petitioner about the meetings. According to them, it was the acts of Petitioner which created fear and restiveness and the first Respondent company had to move swiftly to restore credibility and confidence in the Board, which is what was done. They claimed that all the meetings held by the Respondents had the required quorum. According to them, the Company Petition deserved to be rejected.

**The Case of Appellants in Civil Suit**

5. Co-ercion is claimed and hence we re-produced parts of pleadings as above. Before proceeding further, looking to the fact that the Petitioner is claiming coercion in taking his signature on transfer forms, looking to the admitted fact of Respondent No.4 filing affidavit in OS 82/2005, a copy of which had been filed at Page – 166 of the Appeal, it would be appropriate to reproduce para – 3 of that Affidavit to know as to the stand Respondents took in that suit regarding the incident date 27.04.2011. Para – 3 of that Affidavit (page – 167) is as under:-

- “3. In order to save the properties of Meezan group, a general body meeting of the share holders and directors were held on 09.12.2010 as Deshaposhini Auditorium, Kozhikode and in the said meeting the petitioner herein, who inter-alia is at present the Managing Director of Meezan Jewellers being the Major shareholder has been conferred with power to control, manage and look after the business of all the concerns of Meezan group including Meezan Jewellers, Meezan Realtors and M/s. Walker Foot Care etc. In the said meeting a sub committee was also formed in order to save the company properties under the Headship of petitioner. The minutes of the board of directors along with resolutions produced here with will establish the above aspect. Subsequently on 27.4.2011 another meeting of board of directors was convened under the leadership of Janab Panakkadu Hameed Ali Shihad Thangal, in which it was resolved that all the entire control of all the business of Meezan Group shall be conferred on the petitioner. It was also decided that the shares held by Mr. A. Abdulla, the then Managing Director of plaintiff company and the other director of the company shall be transferred in favour of the petitioner herein and thereafter Mr. A. Abdulla will cause (cease) to have any association with the

petitioner company and on such transfer of shares, petitioner herein shall be the Managing Director. Accordingly on 27.04.2011 itself, shares of Mr. A. Abdulla in the plaintiff company was transferred to the petitioner herein as per section 284 of the Companies Act and necessary applications to transfer the share certificate etc. as envisaged under the Companies Act has been submitted to the registrar of Companies also, which fact is evident by document No.4 produced in the list. Therefore, on 27.04.2011 the petitioner herein is appointed as the Managing Director of Plaintiff Company, who having purchased the share of A. Abdulla and the other director and ever since from 27.04.2011, Mr. A. Abdulla ceased to have the Power to represent the company as having lost all association with the same. Thereafter, the petitioner herein is making all the sincere and earnest efforts to protect the assets of the plaintiff company as also the assets of its sister concerns, of course under the active support and co-operation of the members of the sub committee who are members of director board. It is pertinent to be noted in this connection that on 04.8.2010, there was a compromise entered into between the plaintiff and defendant in the above suit through mediators, in which it was agreed that the plaintiff schedule properties are to be partitioned between the parties without paying any consideration to each other. The terms of the compromise which was executed in white paper and signed by all the parties and witnesses are herewith produced.”

[Emphasis supplied]

5.1 The above Affidavit filed by Original Respondent No.4 (Appellant No.3) claimed a General Body Meeting of “Meezan Group” and taking of decision to entrust all powers with him of entities mentioned including the present Company. Thus it is claimed “Meezan Group” (admittedly not a legal person) was holding meeting even with regard to present Company.

On 27.04.2011, Meeting of Board of Directors is claimed with presence of an outsider and transfer of shares to Respondent No.4 becoming MD on 27.04.2011 itself was claimed.

### **Observations of High Court**

6. When earlier order of CLB was carried in Appeal to the Hon'ble High Court of Kerala, The Hon'ble High Court had looked into the pleadings referred above and the case which was put up before the Hon'ble High Court. Copy of the Judgement is filed with the counter in this appeal by Respondent No.1 – original Petitioner. The Judgement's para – 26 reads as under:-

“26. As discernible from the document produced as Annex.R1(a) and R1(d) in the additional affidavit filed by the respondents, the so called minutes of the meeting of the Board of Directors of Meezan Jewellers Ltd. and Meezan Realtors Pvt. Ltd. are written on 'Classmate' note book, the pages of which are not even numbered consecutively, as mandated by sub-section (1) of Section 193 of the Act, a provision intended to ensure the authenticity of the minutes of proceedings of general meeting and of the proceedings the Board of Directors of a Company incorporated under the Act.”

(The comments relate inter alia to Minutes of present Company as put up to Hon'ble High Court.)

6.1 The Hon'ble High Court then referred to provisions of the Companies Act as found in Sections 193, 194 and 195 of the old Act to observe that in order to have evidentiary value under Section 194 or to

draw presumption under Section 195 of the old Act, the minutes should be one kept in accordance with the provisions of Section 193. In para – 32 of the Judgement, the Hon’ble High Court recorded its findings as under:-

“32. When the fact that, on incorporation of the 1<sup>st</sup> respondent Company the appellant was issued with 500 equity shares, equivalent to 50% of the issued share capital of the Company, and the further fact that he was managing the affairs of the Company as its Managing Director are not in dispute, the burden is heavily upon the respondents to prove that the appellant ceased to be a share holder of the said Company on account of the alleged transfer of his entire shareholding to the 4<sup>th</sup> respondent and vacated the office of the Director of the Company, as provided under Section 283(1)(a) of the Act. Though the respondents would contend that, the alleged share transfer was with the approval of the Board of Directors of the 1<sup>st</sup> respondent Company, none of the documents produced along with Annex. A9 counter filed before the CLB or the additional affidavit filed before this Court would indicate any such approval/sanction. In such circumstances, we find no reason to sustain the finding in Annex.A12 order of the CLB that appellant ceased to be a shareholder of the 1<sup>st</sup> respondent Company and hence he has no locus standi to file the Company Petition. The question as to the locus standi of the appellant to maintain the Company Petition requires fresh consideration with reference to the original minutes of the meetings of the Board of Directors of the 1<sup>st</sup> respondent Company and other statutory records.”

[Emphasis supplied]

6.2 For such reasons, the earlier Order of CLB questioning locus standi of Petitioner, came to be set aside and the matter was sent back to NCLT. The observations of Hon’ble High Court put question marks to the Minutes on unnumbered pages and that too in Note Book to show Minutes to allege transfer of shares by Petitioner to Respondent No.4.

**Observation in Impugned Judgement and Order**

7. NCLT on remand, gave opportunities to parties and heard both the parties and in para – 8 of the Impugned Order, stated that the main question involved was whether or not purported transfer of shares by the Petitioner is in accordance with the provisions of the Companies Act and the Articles of Association of the Company. In paragraphs – 9 and 10 of the Impugned Order, NCLT observed:-

“9. Findings on this issue will certainly have bearing on the *locus standi* of the Petitioner to file the Petition but this issue cannot be treated as a preliminary issue, because it is a mixed question of facts and law. Therefore, we proceed to examine the circumstances under which the purported transfer of shares of the Petitioner took place. Under para 6(vi) of the Petition, it is mentioned that a meeting of the Board of Directors purportedly held on 27<sup>th</sup> April, 2011 of the imaginary entity ‘Meezan Group’ under the chairmanship of one Panakkadu Hameed Ali Thangal (for short, Hameed Ali Thangal), it was resolved to entrust the entire control of all the business of Meezan Group with 4<sup>th</sup> Respondent and it was also resolved to transfer the entire shares held by the Petitioner to 4<sup>th</sup> Respondent. In relation to this fact, the Respondents under para 19 of their counter admitted that Hameed Ali Thangal, who is great leader, was invited to the Board Meeting of the Meezan Group’ companies in which it was resolved to transfer the management and control of the 1<sup>st</sup> Respondent company from Petitioner to 4<sup>th</sup> Respondent and the Petitioner tabled before the Board a duly signed share transfer form to transfer all the shares held by him to the 4<sup>th</sup> Respondent, which was unanimously approved in the meeting. This clearly establishes that it was a meeting of the ‘Meezan Group’ but not that of the Board of the 1<sup>st</sup> Respondent company, which is the independent entity governed by the provisions of the Companies Act and its Articles of Association. There is no notice of General meeting, no agenda, no explanatory statement. No reason to hand over the management of 1<sup>st</sup> Respondent



company to 4<sup>th</sup> Respondent. There is no explanation, as to why the shares of the Petitioner were transferred to 4<sup>th</sup> Respondent. Thus, the procedure adopted in the purported meeting is all unknown to law. The question arises that as to why an outsider viz., Hameed Ali Thangal will interfere in the management of the 1<sup>st</sup> Respondent Company. In actual, it was on behest of the said outsider that the Petitioner was coerced to put his signature on the Share Transfer Form to transfer the shares to Respondent no.4. Obviously, the motive behind such action was make eligibility of Respondent No.4 for being appointed as Director as required under para 29 of the Articles of Association of the 1<sup>st</sup> Respondent company, which provides as under:-

*“The qualification of a Director shall be holding in his own name 5(five) Equity Shares in the Company. The Directors appointed or elected shall take the qualification shares within two months from the date of their appointment.”*

10. Thus, this act of Respondent No.4, in connivance with the great man, clearly amounts to coercion and undue influence because it is nowhere mentioned that the Petitioner offered to sell his share to 4<sup>th</sup> Respondent with or without consideration. There was no properly constituted Board of the 1<sup>st</sup> Respondent company, to give the required approval to the transfer of the shares held by the Petitioner in 1<sup>st</sup> Respondent company. Thus, the act of removing the Petitioner from the position of the Managing Director to Director, and transfer of his shares to Respondent No.4 and appointment of 4<sup>th</sup> Respondent as Managing Director of the 1<sup>st</sup> Respondent Company is contrary to law and the Articles of Association of the 1<sup>st</sup> Respondent Company.”

[Emphasis supplied]

8. NCLT then referred to Articles 15 to 18 of the Articles of Association and highlighted Article 16 which provided that no member shall be entitled to transfer his shares in the Company except with the previous sanction of the Board of Directors. NCLT held that if such Article

is kept in view, the purported transfer was not in accordance with the Articles of Association as there was no previous sanction of the Board as per Article 16. Then the learned NCLT referred to Form 32 submitted by the Respondents themselves which showed that the designation of the Petitioner was changed from Managing Director to Director. On this basis, learned NCLT found fault with the meetings held as there was no Notice to the Petitioner. NCLT held that Petitioner fulfilled requirements under Section 399 of the old Act to maintain the petition. It found that the Company was not liable to be wound up as the winding up would prejudice the shareholders. It allowed the Petition setting aside the transfers purported to have been made to Respondent No.4 and the subsequent transfers from Respondent No.4 to Respondent Nos.2 and 3. NCLT directed that Respondent No.2 would continue as Director till next AGM and then the Company may decide whether or not to continue him as Director. NCLT declared that removal of Petitioner as MD was invalid. The Petitioner was placed back in position as MD with effect from 27.04.2011. The documents filed by Respondents after 27.04.2011 under the digital signature of Respondent No.2 have been declared as null and void.

**Arguments of Appellants (Original Respondents 2 to 4)**

9. Against the Impugned Orders, the learned counsel for Appellants – original Respondents 2 and 3 has submitted that the original Petitioner had voluntarily transferred his entire shareholding in favour of Respondent No.4 on 27.04.2011 and exited the Company. It is argued that the NCLT

failed to appreciate that Respondent No.1 had not disputed that the Form was having his signature. According to the counsel, although Petitioner claimed coercion, he has not raised the grievance for 7 months. He had not filed any police complaint and only belatedly, after the Appellants raised grievance on this count, the original Petitioner filed the police complaint. But even in that, the police have found that the transfer was voluntary. It is argued that although it was not the case of Petitioner that said Thangal coerced the Petitioner, still the NCLT held that the Petitioner was coerced by said Thangal. According to the counsel, the Petitioner coercively mismanaged the affairs of the Company and thus NCLT could not have held that there was no reason for the Petitioner to hand over management of the Company. According to the learned counsel, the Petitioner had transferred off all his shareholdings and he could not have maintained Petition. The learned counsel submitted that there were no sufficient pleadings to spell out coercion and thus NCLT wrongly held that the share transfer forms were signed by way of coercion.

**Arguments of Respondent No.1 (Original Petitioner)**

10. Against this, the learned PCS for Respondent No.1 – original Petitioner submitted that the Petitioner was running the Company and he was the MD. The Company had only 500 shares issued which were issued to the Petitioner. Respondent No.2 was Director but he had not been issued any shares. The shares allotted to Salahuddin were not paid for by him and thus Salahuddin did not hold the shares and although Salahuddin

earlier was made Director, he was discontinued. Pleadings regarding this fact are not in dispute. Even regarding Respondent No.2, the argument of the learned PCS is that Respondent No.2 was made Additional Director on 29.08.2003. Thereafter, no General Body Meeting took place and thus Respondent No.2 also must be said to have been discontinued. The argument is that in the circumstances, Respondents could not have held the various meetings as are tried to be shown as held. The argument of the Petitioner is that original Petitioner had made efforts to get valuable property of the Company and the original Respondents are trying to take away that property and with this object, they have filed certain Forms with ROC to show as if they have taken over the Company. The learned PCS submitted that the original suit has been later on decided and the property has been directed to be registered in the name of Company keeping the question of directorship separate. According to PCS, the Form 32 submitted by the Respondents themselves claimed that the status of the original Petitioner was changed from MD to Executive Director and thus according to him, Respondents did not dispute that he was Director and in that case, no meetings could have been held without Notice to him. The learned PCS stated that admittedly no Notices were sent to Respondents by Petitioner and when they themselves submitted Form 32 showing Petitioner as Executive Director, the meetings held must be held to be illegal even on that count.

11. It is further argued by the learned PCS for original Petitioner that the Form relied on was dated 15.11.2010 and was used on 27.04.2011 and if Section 108(1)(a) of the old Act is seen, the Form was clearly invalid and thus could not have been acted upon. It has been argued that the original Petitioner who was coerced, was aware of the invalidity of the Form, his status in the Company and believed that without his participation, no meeting can take place and thus did not fear any harm although the Forms had been taken coercively and thus did not immediately react. He, however, reacted when the Affidavit came to be filed in the original suit and he checked the portal and ROC and coming to know about all the filings which had been done under the signature of Respondent No.2 and which were done on 12.09.2011, the original Petitioner moved CLB for relief. PCS supported the Judgement and reasons recorded by the learned NCLT and according to him the appeal deserved to be dismissed.

12. We have heard the parties and perused the record.

13. From the pleadings, it is not in dispute that the original Petitioner along with Salahuddin Nalakath incorporated the Respondent Company and is the subscriber of 500 out of 1000 equity shares of the Company and has been the Managing Director of the Company till the disputes arose. It is not in dispute that Salahuddin did not pay for the shares allotted to him and thus was discontinued at the initial stage itself. It is not in dispute that on Salahuddin vacating office in 2003, Respondent No.2 - Abdusalam was admitted as Director on 29<sup>th</sup> August, 2003. Although the Respondents

pleaded that the unsubscribed 500 shares meant for Salahuddin were transferred to Respondent No.2 on 05.11.2003 and tried to show the Minutes of Board of Directors dated 05.11.2003, the same has been disputed by the original Petitioner and Respondents have not brought material to show that indeed Respondent No.2 was issued unsubscribed 500 equity shares of Salahuddin in 2003. The subsequent conduct of Respondents also shows them taking shifting stands.

14. Undisputedly on 27.04.2011, the original Petitioner was the person who was managing the affairs of the Respondent Company. This is crucial date on which date Petitioner claims that he was coerced to sign share transfer forms while the Respondents claim that as the Petitioner had mismanaged the company, there was unrest and thus the Petitioner had executed the share transfer forms.

15. We first take up the share transfer forms which are said to have been executed by the original Petitioner. Copies of the forms are at Annexure - A3 (Pages – 196 and 197 of the Appeal). If these documents are perused, they appear to be bearing stamps on the top, dates of which show that the concerned forms had been presented to the prescribed authority under Section 108(1A) on 15.11.2010. In the column relating to transferor, the first name put is of original Respondent No.2 – Abdusalam Kurikkal Manjeri Puthusseri and the second name which has been put is of the original Petitioner – Ayoli Abdulla. One Form relates to shares having distinctive numbers from 1 to 500 and the other relates to 501 to 1000. It

is nobody's case that these shares were in the joint names of the Respondent No.2 and the original Petitioner in that order. In the forms where signature of the original Petitioner is there, date added is 27.04.2011. At the foot of these 2 documents, the approval date by the Respondents allegedly for the Company is shown as 15/05/2011. Respondents are trying to say that these transfers were taken on record in Board Meeting dated 15/05/2011 (Minutes at Annexure A5 – Page 200). If section 108(1A) of the old Act is perused, it reads as under:-

“[(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and –

- (a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and
- (b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company, —
  - (i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (a) or within [twelve months] from the date of such presentation, whichever is later;
  - (ii) in any other case, within two months from the date of such presentation.]”

16. If the above provision is perused, it is quite clear that the Respondent Company could not have acted upon these forms to accept the transfer of shares as the forms were not stamped and used in the time specified by above provisions.

17. Respondents claim that on 27.04.2011 itself, there was a Board Meeting for which they rely on Annexure A4 - Page 199. It is not the case of Respondents that any Notice had been issued for this Meeting dated 27.04.2011. Admittedly, on 27.04.2011, the original Petitioner was still the shareholder and Managing Director even as per the Respondents. The transfer of shares as per the case of Respondents themselves has been recorded only in meeting of 15.05.2011. Thus the original Petitioner was admittedly given no Notice of this meeting dated 27.04.2011. The original Petitioner is not even shown as participant in this meeting although the Respondents went on to claim that there was no coercion on the original Petitioner for executing the share transfer forms on 27.04.2011. If this Annexure – A4 minutes dated 27.04.2011 is seen, the Respondents appear to have picked up Salahuddin who had to give up his connections with the Company in 2003 itself for admittedly not subscribing and paying for the shares and was not a shareholder. This Salahuddin is shown as present and Respondent No.2 is the other person shown as present. Respondent No.2 purported to become Chairman. The minutes say that they approve previous Board Meeting without mentioning as to which previous Board Meeting of what date they are referring. Apparently, they did not have any



record or link of the earlier happenings in the Company. Then a Resolution is recorded that Salahuddin is being appointed as “Director” (and not Additional Director as the law would require) and Resolution is passed subject to approval of the shareholders. Salahuddin Nalakath is in this manner appointed as Director w.e.f. 27.04.2011 itself. The Resolution then authorized Respondent No.2 to file necessary Form - 32 with the Registrar of Companies. Clearly this would be act of illegally constituted Board.

18. The next meeting is at Annexure A5 – Page 200. It is minutes of 15.05.2011. Although Annexure – A3, the two forms showed the transferors as if they were joint holders, this Annexure - A5 shows the Petitioner and Respondent No.2 as separate transferors. Against Petitioner, Folio No.1 is shown and against Respondent No.2, Folio No.3 is shown. This meeting held by Respondent No.2 and said Salahuddin was clearly again by illegally constituted Board (like on 27.04.2011) and it recorded transfer of the shares of Petitioner to original Respondent No.4 - Pocker. It further recorded that Pocker wanted to transfer part of his shares to Respondent No.3 – Mohd. Kutty and Respondent No.2 – Abdusalam. Thus, on one hand, transfer is being shown from Respondent No.2 to Respondent No.4 and then on other hand Respondent No.4 again transfers part of the shares to Respondent No.2. Why the exercise, Respondents do not say. These transfers are then recorded in what is shown to be the third meeting dated 28.05.2011 (Annexure A6 – Page 202). The documents brought forth by the Respondents then have minutes of EOGM (Annexure A7 – Page 204)

confirming appointment of Salahuddin as Director and accepting transfer of shares. Then, what is approved by EOGM is set aside by Board Meeting (?) (Annexure A9 – Page 207) where Salahuddin Nalakath is dumped for the same reason for which he had to leave the Company in 2003, namely that he had not subscribed to at least 5 shares as per the Articles of Association. But then this was a fact always known and still the Respondents conveniently picked up Salahuddin Nalakath to show holding of earlier meetings and then simply removed him. We have already referred to observations made by the Hon'ble the High Court when the matter had earlier gone to the High Court where the Hon'ble High Court had questioned the so called minutes written on Classmate Notebooks and requirements to comply Section 194 and 195 of the old Act regarding maintaining of the minutes. Hon'ble High Court had also observed that documents produced did not show that the Board of Directors had granted prior approval/sanction for the transfer of the shares. In the background of such context, the Respondents appear to have brought forth such minutes and included in one of the minutes (dated 15.05.2011) that on 27.04.2011, Petitioner handed over share transfer forms in favour of Respondent No.4 and it was not possible to get previous approval and hence, the shares were being transferred on that day. Thus an explanation appears to have been put by the Respondents in the Minutes. And then, all these Minutes are in contrast to the case put up in Civil Suit in Affidavit of Respondent No.4 (Appellant No.3) that the shares were transferred and he became Managing Director on 27.04.2011 itself.

19. Taking an overall conspectus, we seriously doubt these minutes recorded by Board of Directors, which Board was not lawfully constituted. The Respondents themselves through Respondent No.2 filed Form 32 on the basis of meeting dated 25.09.2011 changing the designation of Petitioner from Managing Director to Executive Director. There is yet another Form 32 submitted by Respondent No.2 purporting to state that the Petitioner was Director and was now being designated as Executive Director. This form is based on some meeting dated 15.11.2011. Copy of that meeting is at Page 217 of the Appeal. The Minutes record that the Petitioner – Ayoli Abdulla, who has been Managing Director, his designation needs to be changed from Managing Director to Director, w.e.f. 15.11.2011. This would be against the Minutes dated 25.09.2011 (Annexure A9 – Page 207) where Respondent No.4 had been designated by these three as Managing Director w.e.f. 25.09.2011. If the Respondents were treating the original Petitioner, still as Managing Director or Director, admittedly they never gave any Notice of any such meetings to the original Petitioner. They blow hot and cold in the same breath. In the face of these documents put up by them, Respondents also claim that as Petitioner transferred all his shares on 27.04.2011, he ceased to be Director in view of Articles of Association and no Notice was required to be given to him. Reading of these various minutes and the forms submitted at the hands of Respondent No.2 and the case put up by Respondents shows that the documents are not beyond suspicion. It is the case of the original Petitioner

that after coercing him to sign the forms, the Respondents with the help of Respondent No.2 went on submitting Forms to the ROC and it was only when in the Civil Suit, the Respondent No.4 filed Affidavit that he came to know about what Respondents were up to.

19. Coming to the question of coercion of the original Petitioner, we have purposely referred to the Company Petition and Reply of the Respondents which was filed in NCLT, in some details and we have purposely reproduced portions from the Affidavit of Respondent No.4 which he had filed in the Civil Suit and we find by referring to these details that the pleadings themselves (including what the Respondents have claimed), disclosed that the Petitioner was coerced to sign the transfer forms. Had it been a normal execution of forms, there would not have been so many questionable acts on record. The Respondents themselves in the case put up in the Civil Court and in the pleadings in NCLT demonstrated, what they call, that there was “restive nature of the community at large” and that “Subsequently on 27.4.2011 another meeting of board of directors was convened under the leadership of Janab Panakkadu Hameed Ali Shihad Thangal, in which it was resolved that all the entire control of all the business of Meezan Group shall be conferred on the petitioner.” i.e. Respondent No.4 in his affidavit in the Civil Court. The pleadings as well as the Affidavit in Civil Court does show that there was an atmosphere created and a pressure built to coerce the original Petitioner to sign the share transfer forms. It is not the case of Respondents that Petitioner

transferred the shares for any consideration. There is no good reason for him to simply give up his control as Managing Director. There is substance in the claim of Petitioner that due to valuable property involved in Civil Suit, Respondents tried to take over. We discard defence that silence of Petitioner after 27.04.2011 till filing of Petition should be held against him regarding claim of co-ercion. There is substance in what Petitioner has argued that although he was co-erced to sign the forms, he did not react immediately as he was rest assured that without his involvement no Board Meeting could be held. The Respondents are changing stands even where some time they say there was General Body Meeting of Meezan Group where shareholders of different companies of alleged Meezan Group had assembled and sometime they referred to Board Meeting of Respondent No.1 Company. We have already mentioned there is no material to show that there was any validly called Board Meeting on 27.04.2011.

20. For such reasons, we do not find that there is any error in the Impugned Judgement and Order passed by NCLT. The NCLT has rightly allowed the Company Petition and set aside the transfers purportedly made to Respondent No.4 and further transfers they made *inter se* themselves. The NCLT rightly restored the original Petitioner as Managing Director and the further directions it has given to ROC for ignoring the findings done under the digital signature of Respondent No.2. We do not wish to interfere.

21. Although we are proceeding to dismiss the Appeal, we are directing the Registrar of Companies at Kerala to check the Returns etc. filed by Respondent No.1 Company and see if records, as required to be filed and kept under the Companies Act and Rules, are being maintained or not. If not, to take suitable action.

22. The Appeal is dismissed with costs of Rs.50,000/- to be paid by each of the Appellants (Total Rs.1,50,000/-) to Respondent No.1 from their own pocket.

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

[Balvinder Singh]  
Member (Technical)

New Delhi

7<sup>th</sup> September, 2018

*/rs/nn*