

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.400 of 2017

[Arising out of the order passed by National Company Law Tribunal, Ahmedabad Bench on 20.09.2017 in TP No.108/397-398/NCLT/AHM/2016 (New) CP No.76/397-398/CLB/MB/2015 (Old)]

IN THE MATTER OF:

Pinakin Kharwar
10-A, Pallavi Apartments,
Next to Empire Motors,
Opposite to Rundh Jagat Naka,
Dumas Road, Piplod,
Surat – 395007, Gujarat

... Appellant
(Original Petitioner)

- Versus -

- 1. M/s. Nagina Processors Pvt. Ltd.**
Plot No.5535, GIDC Sachin,
Surat
- 2. Shri Rakesh Thakordas Mandlewala**
114, Rukshmani Maher Nagar,
Adajan Char Rasta, Adajan,
Surat – 395009
Gujarat, India
- 3. Shri Yogesh Thakordas Mandlewala**
114, Rukshmani, Mather Nagar,
Adajan Char Rasta, Adajan,
Surat – 395009
Gujarat, India

... Respondents
(Original Respondents)

With

I.A. No.174 of 2018

IN THE MATTER OF:

Pinakin Kharwar, Surat

... Applicant

Vs.

M/s. Nagina Processors Pvt. Ltd. & Others, Surat

... Respondents

And

Company Appeal (AT) No.403 of 2017

[Arising out of the order passed by National Company Law Tribunal, Hyderabad Bench on 20.9.2017 in TP No.109/397-398/NCLT/AHM/2016 (New) CP No.77/397-398/CLB/ MB/2015 (Old)]

IN THE MATTER OF:

**Pinakin Kharwar
10-A, Pallavi Apartments,
Next to Empire Motors,
Opposite to Rundh Jagat Naka,
Dumas Road, Piplod,
Surat – 395007, Gujarat**

**... Appellant
(Original Petitioner)**

- Versus -

- 1. M/s. Rudraksh Synthetics Pvt. Ltd.
GIDC, Sachin,
Surat**
- 2. Shri Naresh Thakordas Mandlewala
114, Rukshmani Maher Nagar,
Adajan Char Rasta, Adajan,
Surat – 395009
Gujarat, India**
- 3. Shri Hemant Thakordas Mandlewala
114, Rukshmani Maher Nagar,
Adajan Char Rasta, Adajan,
Surat – 395009
Gujarat, India**

**... Respondents
(Original Respondents)**

With

I.A. No.173 of 2018

IN THE MATTER OF:

Pinakin Kharwar, Surat

... Applicant

Vs.

**M/s. Rudraksh Synthetics Pvt. Ltd. & Others, Surat ...Respondents
Present: Shri Suryanarayanan and Ms. Garima Bajaj, Advocates for the
Appellant**

Shri Dhiren R. Dave, PCS for Respondents

J U D G E M E N T

A.I.S. Cheema, J. :

1. These two appeals arise out of 2 Impugned Judgements and Orders passed in 2 Company Petitions filed by the Appellant – Original Petitioner. First Appeal - CA 400 of 2017 is arising out of TP No.108/397-398/NCLT/AHM/2016 (New) CP No.76/397-398/CLB/MB/2015 (Old) while Second Appeal - CA 403 of 2017 is arising out of TP No.109/397-398/NCLT/AHM/2016 (New) CP No.77/397-398/CLB/ MB/2015 (Old). The First appeal relates to Respondent No.1 Company - M/s. Nagina Processors Pvt. Ltd. (in short, “Nagina”) while the Second Appeal relates to Respondent No.1 - M/s. Rudraksh Synthetics Pvt. Ltd. (in short, “Rudraksh”) in that matter. CA 400 of 2017 has Respondent No.2 - Shri Rakesh Thakordas Mandlewala and Respondent No.3 - Shri Yogesh Thakordas Mandlewala who are brothers of Respondents 2 and 3 in CA 403 of 2017 namely Respondent No.2 - Shri Naresh Thakordas Mandlewala and Respondent No.3 - Shri Hemant Thakordas Mandlewala. Original Petitioner filed both the Company Petitions together before the Company Law Board, Mumbai which were later on taken up before the National Company Law Tribunal, Ahmedabad as transferred petitions. We will refer to the matter of M/s. Nagina Processors Pvt. Ltd. as the “First petition” and the matter relating to M/s. Rudraksh Synthetics Pvt. Ltd. as the “Second petition”.

First Petition – M/s. Nagina Processors Pvt. Ltd.

2. In this Company Petition, Petitioner claimed that he is shareholder of Respondent No.1 Company - Nagina Processors Pvt. Ltd. since 16.05.2011. According to Petitioner, the petition was inter connected with the other petition filed against Rudraksh Synthetics Pvt. Ltd. and the petition should be read and clubbed with the petition filed in the matter of Rudraksh Synthetics Pvt. Ltd. Petitioner claimed to be printing master and that he along with the two Respondents in the matter of Rudraksh Synthetics Pvt. Ltd. reached to an understanding to start a process house. The Petitioner claimed that the understanding was that Petitioner and Respondents 2 and 3 in the matter of Rudraksh Synthetics Pvt. Ltd. would each invest 50%. Petitioner's group will invest 50% and those Respondents 2 and 3 would invest 50%. The venture was started as quasi partnership. The Petitioner and Respondents 2 and 3 in the matter of Rudraksh Synthetics Pvt. Ltd. identified Respondent No.1 Company - Nagina Processors Pvt. Ltd. which had huge tract of land at the plot shown in the cause title. The process house of Nagina Processors Pvt. Ltd. had been demolished by the erstwhile owners. The petitioner and brothers of Respondents 2 and 3 in the matter of Rudraksh Synthetics Pvt. Ltd. took over Nagina Processors Pvt. Ltd. by way of acquisition of shares with a view to construct and start a process house in the vacant land of Nagina Processors Pvt. Ltd. Since Petitioner was employed as Printing Master in another process house and he is a technical person, he left the modalities of shares transfer/acquisition of Nagina Processors Pvt. Ltd., etc. to the complete say of Respondents 2 and 3 and the Company named as M/s. Rudraksh Synthetics Pvt. Ltd. was incorporated. The object of Rudraksh

Synthetics Pvt. Ltd. was to construct and operate process house/factory for dyeing and printing fabric in the land owned by group company - Nagina Processors Pvt. Ltd. The Petitioner claimed that Rudraksh Synthetics Pvt. Ltd. was incorporated. According to Petitioner, he did not know the nitty gritty of Company Law and relied on the Respondents 2 and 3 of the matter of Rudraksh with regard to incorporation, modalities of subscription of shares, allotment etc. and so did not insist on his name being incorporated in the original acquisition documents of Respondent No.1 Company - Nagina Processors Pvt. Ltd. as well as his name being one of the founder members in Rudraksh Synthetics Pvt. Ltd.

3. It is pleaded by the Original Petitioner in the matter of M/s. Nagina Processors Pvt. Ltd. that he was promised directorship as well as 50% shareholding in the Company, subject to investing 50% of the capital of Respondent No.1 Company and its sister concern - Rudraksh Synthetics Pvt. Ltd. which set up process house in the land owned by Respondent No.1 Company - Nagina Processors Pvt. Ltd. Petitioner agreed to the proposal of Respondents 2 and 3 in the matter of Rudraksh Synthetics Pvt. Ltd. and accordingly invested 50% of the required funds.

4. In the matter of Nagina Processors Pvt. Ltd., Petitioner claimed that he was allotted 3,000 shares on 30th June, 2011, 6,000 shares on 15th December, 2011 and his wife Priti Kharwar was allotted 3,000 shares on 30th June, 2011. This was out of total issued shares of 99,520. Thus according to him, although the understanding was to issue 50% shares to his group, he and his wife were allotted only 12.06% equity shares of

Respondent No.1 Company - Nagina Processors Pvt. Ltd. Although he was promised but he was not made Director of Respondent No.1 Company - Nagina Processors Pvt. Ltd. He pleaded that the process house of Rudraksh Synthetics Pvt. Ltd. on the land of Respondent No.1 Company - Nagina Processors Pvt. Ltd. started functioning in 2010 after civil works were completed.

Second Petition – M/s. Rudraksh Synthetics Pvt. Ltd.

5. In this matter also, the Original Petitioner raised similar contentions to show that the Respondents 2 and 3 in the matter of Rudraksh Synthetics Pvt. Ltd. and he had identified the land of Nagina Processors and as to how the land was acquired and the companies in both the petitions came to be incorporated. He claimed he did not know nitty gritty of the Companies Act and so did not ensure his name at the time of incorporation. In the Respondent No.1 - Rudraksh Synthetics Pvt. Ltd. in the second petition, the Petitioner was appointed as a Director. Here also, he claimed that he was promised 50% shares but was issued only 3 lakhs shares at Rs.10/- each on 11th September, 2010 and 1 lakh shares on 28th October, 2010 and 1 lakh shares on 1st November, 2010 and 2 lakhs shares were allotted to his wife on 28th December, 2010. According to him, the returns in the office of Registrar of Companies showed the date of allotment as 12th May, 2011. His grievance is that he and his wife were issued shares which are to the extent of 32.66% of the issued share capital in spite of understanding that he would be given 50% of the shares.

5.1 In this second petition also, the Petitioner referred to the process house of Rudraksh Synthetics being constructed on the land of Nagina Processors and starting of the working. Petitioner claimed that the Respondents started telling him that the process house was running in loss. He was working in the process house on monthly remuneration of Rs.2 lakhs. According to Petitioner, Respondents were saying that the process house was running in loss and he was not allowed to draw monthly salary saying that there were huge outstandings and losses. According to him, after number of meetings, it was mutually decided to stop the process house and to sell the property of Rudraksh and Nagina to curtail the losses. The production activity was stopped with effect from 1st February 2013 with the understanding that the property of Rudraksh, i.e. process house and Nagina's land would be sold to interested buyers. Petitioner claimed that after this, he joined one Ravi Exports Ltd. as printing master for his livelihood. It is his case that as the Respondents quoted very high prices, no sale could materialize and although Respondents collected outstanding from the market, no accounts were given to Petitioner and he was not given outstanding salary. Petitioner claimed that Respondents 2 and 3 in the matter of Rudraksh restarted the process house in June, 2013 in spite of objections of the Petitioner and without giving account to him. The Petitioner claimed that the persons, who are now running process house of the Company of Rudraksh which is standing on the land of Nagina Processors, are Directors of Devi Processors Pvt. Ltd. which is another process house of Surat. He claims that his salary as Printing Master till June, 2013 @ Rs.2 lakhs per month had not been paid by the Respondents

2 and 3 and salary for 18 months was outstanding. He had earlier been given authorisation to operate banks of Respondent No.1 – Rudraksh in the Allahabad Bank but this was revoked by the Respondents 2 and 3 as they had the majority in the Board of Directors. The Petitioner claimed that he was not involved in the activities of Respondent No.1 – Rudraksh Company since February, 2013 and in May, 2014, he came to know from the market that Respondents 2 and 3 handed over the process house to Mitul Mehta, Ramesh Pandya and Madhubhai of Devi Processors. Petitioner claimed that since inception, no notices of Board Meetings or General Body Meetings were sent to him and no such meetings were ever held by Respondents 2 and 3 in the matter of Rudraksh and no accounts were circulated or supplied to the shareholders.

5.2 Petitioner pleaded in the matter of Rudraksh that Notice dated 20th August, 2015 was received by him on 25th August, 2015 convening Board Meeting on 29th August, 2015 with Agenda to consider notice under Section 169 of the Companies Act, 2013 (new Act in brief) which notice was given by Respondent No.3 – Hemant Thakordas Mandlewala in the matter of Rudraksh proposing to convene Extra Ordinary General Meeting to remove Petitioner from Board of Directors. The ground claimed was that he was not attending day-to-day work of the Company and that he was disclosing trade secrets to rivals. Petitioner claimed that he gave detailed reply to the letter but a Notice dated 29th August, 2015 was issued by Respondents 2 and 3 convening Extra Ordinary General Meeting on 8th October, 2015 which Notice was received on 14.09.2015. The Petitioner

accordingly claimed oppression and mismanagement on the basis that he was not issued 50% shares as agreed; that he was being threatened of removal from the post of Director; that he was side lined from management decisions; and that process house was restarted without his concurrence and no accounts were being shown and no Board or General Body Meetings had been convened since 2010 till the date of filing of petition and that the day-to-day management of the only major asset - process house had been handed over to 3rd party since May, 2014 without the knowledge of Petitioner.

5.3 The Petitioner inter alia prayed in the second petition in the matter of Rudraksh to NCLT: -

B. "To hold that handing over the process house (only major asset of the respondent number 1 company) to unrelated 3rd parties without the concurrence of the one third shareholders of the company is per se illegal and to order repossession of the asset of the company by the shareholders of the company with order for accounts for the period of the process house being under the illegal occupation/encroachment of 3rd parties, and to order necessary investigation in this regard through an independent Commissioner to be appointed by the Honourable Company Law Board."

5.4 He further prayed:-

“H. Since the respondents no 2 and 3 have illegally given up the possession and interest of the Respondent no 1 Company and Nagina in the land and the process house located in plot no 5535, GIDC, Sachin, Surat by fraud and acting against the interests of the Company, they should pay back the amounts earned by the illegal occupants to the Respondent no 1 Company from May 2014 with interest at 18% per annum, failing which civil and criminal actions be initiated against the Respondents 2 and 3 by the company for acting against the interests of the company.”

6. In the first petition in the matter of Nagina also, similar averments have been made as seen in the matter of Rudraksh and inter alia prayers ‘a’ and ‘c’ read as under:-

“A. To hold that handing over the land (only major asset of the respondent number 1 company) to unrelated 3rd parties not connected with Respondent No.1 Company or Rudraksh Synthetics P Ltd. (lessee of Respondent No.1 Company) without the concurrence of the shareholders of the company is per se illegal and to order repossession of the asset of the company by the shareholders of the company with order for accounts for the period of the land being under the illegal occupation/encroachment of 3rd

parties, and to order necessary investigation in this regard through an independent Commissioner to be appointed by the Honourable Company Law Board.”

- C. Since the respondents no 2 and 3 has illegally given up the possession and interest of the Respondent no 1 Company is the land at plot no 5535, GIDC, Sachin, Surat by fraud and acting against the interests of the Company, they should pay back the amounts earned by the illegal occupants to the Respondent no 1 Company from May 2014 with interest at 18% per annum, failing which civil and criminal actions be initiated against the Respondents 2 and 3 by the company for acting against the interests of the company.”

Impugned Order in the first petition - M/s. Nagina Processors Pvt. Ltd.

7. The Impugned Order in the first petition shows that the learned NCLT considered the pleadings put up by the Petitioner and one IA 8 of 2016 filed by the Respondents 2 and 3 in the matter of Nagina claiming that the Petitioner was not eligible to file the petition. Respondents 2 and 3 in matter of Nagina denied the allegations made against them. They had also filed a reply and put up a case that Petitioner is only one of the member out of 18 members and there were no allegations of oppression and mismanagement against them. They denied that there was

understanding to give 50% of the shareholding in the matter of Nagina Processors to the Petitioner or to appoint him as a Director. Those Respondents claimed before NCLT that detailed reply had been filed in the TP No.109/397-398/NCLT/AHM/2016 (i.e. the second petition). The learned NCLT then discussed the rival claims and regarding claim of Petitioner that he was to be given 50% of the shareholding, NCLT was of the view that no material had been placed on record that he was promised to be given 50% of shareholding. The NCLT then discussed the matter relating to EOGM called in the matter of Rudraksh and observed that it is a fact that Petitioner worked as printing master in Rudraksh Synthetics which is housed in the land of Nagina Processors till May, 2013 and had then joined Ravi Exports Ltd. in May, 2013. NCLT observed that in the matter of Nagina Processors, although Petitioner is shareholder, he cannot question the action in the matter of Rudraksh Synthetics P. Ltd. of handing over the process house to Devi Processors P Ltd. NCLT was stating it was act of oppression and mismanagement qua shareholding of the Petitioner in the matter of Nagina Processors. (Thus although Petitioner claimed link between the Petitions and even Respondents of Nagina claimed that detailed reply is filed in the other petition, NCLT treated the matters separate). As regards maintainability in the matter of Nagina Processors, NCLT found that the Petitioner and his wife constituted more than 10% of the share capital and they were eligible to file the petition. It was observed that although Petitioner claimed that no Notices of General Meetings were ever issued to him, the grievance was raised only when EOGM had been called in the other matter relating to Rudraksh Synthetics. Thus, the NCLT

concluded that the Petitioner in the matter of Nagina Processors was not entitled to any relief and offered option to the Petitioner and his wife to seek exit and disposed of the Company Petition accordingly.

Impugned Order – in second Petition relating to Rudraksh Synthetics P. Ltd.

8. In this Judgement also, the learned NCLT after referring to the pleadings of the Original Petitioner referred to the pleadings of the Respondents. The Respondents in the matter of Rudraksh Synthetics accepted that the Petitioner was employed as printing master in Rudraksh Synthetics Pvt. Ltd. Respondents in that matter claimed before NCLT that the investment of Petitioner in that Company was zero and that Petitioner had no money to start business and they had given funds to the Petitioner and his wife to become member of the Company and Rs.63 lakhs were transferred to their accounts by the Respondents and then Petitioner invested in the Company of Rudraksh. They denied that there was understanding to give him 50% of the shares and Directorship as well as employment. Respondents accepted that the Petitioner was made Director on 5th February, 2011 with powers to sign cheques and operate Bank Accounts. Petitioner was working as fulltime printing master in Rudraksh Synthetics on monthly salary of Rs. 2 lakhs. Respondents claimed in NCLT that the Petitioner started creating hurdles. He withdrew the salary in cash and that he had run away from the employment of the Company and joined another company and started making allegations that the Respondents were not letting him continue. According to them, Petitioner was removed as authorized signatory with his knowledge. They denied that they had

done acts of oppression and mismanagement. Proprietary firms – Naresh Chemicals, Shwe Hinthra Trading Company and Krishna Sales had issued Notices dated 7th October, 2015 asking Petitioner to repay the amounts transferred to him but Petitioner replied denying borrowing. Petitioner denied in NCLT that the investment made by him in the Respondent Company, Rudraksh Synthetics was after the amounts were given to him.

8.1 In the rejoinder before NCLT, the Petitioner claimed that the Respondents 2 and 3 and their family members had siphoned funds and falsified accounts. In the Financial Statement ending 31st March, 2014, out of total purchase of Rs.1.5 crores, purchases from 5 related parties amounted to Rs.1.47 crores and it was an example of siphoning of funds. The Petitioner insisted before NCLT that there were no convening Board Meetings and Annual General Meetings and no such Notices were given to him at any point of time and Respondents had not produced any record of any such Meetings or minutes.

9. NCLT considered such rival cases put up by the parties and the submissions and in the matter of Rudraksh Synthetics also, NCLT discussed the claim of Petitioner that he was to get 50% of the shares but found that Petitioner could not show any document to show that there was arrangement/agreement to give 50% of the paid up share capital to him.

10. Although the Respondents before NCLT tried to show that the amount invested by the Petitioner in the Company was transferred from accounts of Naresh Mandlewala (Respondents 2 in the matter of Rudraksh Synthetics) as well as Rakesh Mandlewala (Respondent No.2 in the first

petition), and some Rameshbhai Shah and Rohit Patelwala, NCLT considered the rejoinder of Petitioner and discussing the rival claims concluded that the theory cooked by the Respondents that they had funded the Petitioner to subscribe the shares did not merit acceptance considering the Annexure 'A' reply notices issued by the Petitioner to his lenders. NCLT concluded that there is investment of the Petitioner in the Respondent Company - Rudraksh Synthetics but there was no proof of understanding to give 50% shares. Petitioner and his wife were given 32.66 % of paid up share capital of Rudraksh Synthetics.

10.1 These findings of NCLT against the Respondents are not challenged by them by way of Appeal and are thus no more in dispute.

11. NCLT discussed the claim of Petitioner that 5 lakhs shares had been issued to Respondents 2 and 3 on 20th April, 2010 and 12th May, 2011. However, NCLT found that the Petitioner was raising objection to this only in the Company Petition filed in September, 2015 and thus held that the Petitioner could not be heard questioning such allotment more so when the Petitioner had been Director till he was removed on 8th October, 2015.

12. NCLT further discussed the claim of Petitioner regarding his removal as Director and took note of the Notice dated 20.08.2015 served on the Petitioner on 25.08.2015 and the reasons communicated for his removal. NCLT observed that the Petitioner had worked for considerable time in the process house of the Respondent Company between 2011 and 2013 and thus, must be knowing trade secrets and processing secrets of

the Respondent Company - Rudraksh and did not accept the argument that if Petitioner was not attending to day-to-day affairs since May, 2013, he could not have revealed trade secrets. NCLT took note of the Notices issued for Board Meeting dated 29.08.2015 and subsequently for EOGM dated 08.10.2015 and found that it was not a case that Petitioner was removed without giving Notice or without giving sufficient opportunity to explain. NCLT discussed the Rulings cited and observed that the removal of Petitioner as Director was on certain grounds which were sufficient for removal of the Petitioner as Director. Considering the procedure followed, NCLT held that his removal as Director had to be upheld. According to the NCLT, removal as Director could not be said to be an act of oppression and mismanagement.

13. As regards handing over of the process unit to Devi Processors, in Para – 32, the impugned Judgement rules as under:

“32. The action of handling over the process unit Rudraksh by Respondents no. 2 and 3 to Devi Processors is a business decision which ought to have been taken in a Board Meeting with due notice to petitioner, but such act cannot be taken as act of oppression unless it is shown that prejudice or loss has been caused to petitioner and his wife as shareholders. After petitioner left the 1st Respondent company and when Respondents failed to run the process house there is no other alternative left to

Respondents no. 2 and 3 except to handover process house to some other person.”

13.1 Thus, the NCLT discarded the claim of Petitioner even on this count and concluded that there was no oppression and mismanagement. NCLT, however, held that Petitioner had invested huge amount of money in the Respondent Company and in Nagina Processors Pvt. Ltd. Even in the absence of proof of oppression and mismanagement, NCLT decided to offer the Petitioner fair market value for the shares he and his wife were holding if he was ready to walk out of the Respondent Company. It directed Respondents 2 and 3 to purchase the shares of Petitioner and his wife if they are willing to sell their shares in the market value fixed by the Independent Valuer to be appointed by the Tribunal. It gave option to the Petitioner to file application, and rejected other reliefs sought.

14. Aggrieved by the similar Impugned Judgement and Orders passed in the 2 Company Petitions, the present appeals have been filed by the Original Petitioner. In the appeals, the Appellant –Original Petitioner has raised similar grounds as in the Company Petitions claiming that oppression and mismanagement is there and that meetings were not being held and the Respondents 2 and 3 have handed over the property to the third party and that it was necessary to get restored the physical possession of the process house/factory from third party to whom the same had been given away by the Respondents.

I.A.s 173 of 2018 and 174 of 2018 in the Appeals

15. Before these appeals were taken up for hearing, the Appellant – Original Petitioner filed application IA 173 of 2018 in CA 403 of 2017 and IA 174 of 2018 in CA 400 of 2017. Appellant claimed that the Respondents in the two Appeals had filed Annual Reports and Financial Statements in December, 2017 with ROC without issuing any Notices for Annual General Meetings and without holding any Annual General Meetings. The Appellant pointed out that respective Respondents 2 and 3 in the Appeals had transferred their shares and shares of their group members to the group headed by Shri Mitul Mehta who had admittedly been handed over the only fixed assets and business of the Respondent No.1 Company without fulfilling any mandatory procedures as per the Articles of Association of the Respondent No.1 Company and that third party interest had been created to the detriment of the Appellant. The IAs claim that the NCLT dismissed the Company Petitions on 20th September, 2017, and then these returns have been filed. We refer to IA 173 of 2018 for mentioning some of the details.

15.1 IA 173 of 2018 states, the appeal was filed on 13th October, 2017 and Notice was issued in December, 2017. When MCA portal was checked on 26th January, 2018, the Appellant came across 3 Annual Returns for the Years 2015 – 2016 and 2016 – 2017 filed in December, 2017. He also found Financial Statements and other documents filed for the years 2015 – 2016 and 2016 – 2017 in December, 2017. Appellant has filed copies of such filings. The Annual Returns and Financial Statements were of preceding two years filed in December, 2017 after the Impugned Order was

passed by the NCLT and show oppression and mismanagement on the part of the Respondents “before and during the hearing of the Company Petition”. The Appellant and shareholders were never served Notice of any Annual General Meeting held on 30th September, 2016 and 30th September, 2017. No minutes of the Annual General Meetings, Director’s Report, Auditors Report and Annual Accounts have been served on the shareholders. According to the Appellant, there is false evidence making false statements and perpetrating fraud on the shareholders. The Appellant pointed out that Annual Return of 2015 – 2016 disclosed transfer of shareholding by Respondents 2 and 3 and their group of shareholders to the group of Mitul Mehta of Devi Processors Pvt. Ltd. They have handed over the entire undertakings/assets/business (factory of Respondent No.1 Company) to Mitul Mehta of Devi Processors Pvt. Ltd. without following any statutory procedures and without obtaining approval of shareholders. In the course of adjudication of the Company Petition in NCLT, Respondents 2 and 3 did not disclose that they had already transferred their shares to Mitul Mehta on 15th December, 2015 itself and it shows that the Annual Returns and Financial Statements filed in 2017 are false and fraudulent. Thus, the Impugned Orders of NCLT is required to be set aside and the matter should be remanded. It is claimed that as per the Articles of Association, there is provision not to transfer shares to outsiders without giving Notice to existing shareholders giving option for them to buy the shares. The Respondents filed false pleadings before NCLT and perpetrated fraud on existing shareholders including Appellant and the shares transferred on 15th December, 2015 need to be annulled.

16. Similar application disclosing similar facts from documents has been filed by way of IA 174 of 2018 in CA 400 of 2017.

17. On behalf of Respondents, Respondent - Hemant Mandlewala (Respondent No.3 in CA 403 of 2017) has filed combined reply to the IA 173 – 174 in both the appeals. He has claimed that he is Director in M/s. Rudraksh Synthetics and was filing reply in both these IAs. He has claimed that the applications are false and that new facts and documents were being introduced. It is claimed that it was admitted fact that the Petitioner was fully aware and had given consent and understanding to sell the mill/property. He referred to the pleadings in the petition relating to Rudraksh Synthetics, Para – A4 that production was stopped with effect from 1st February, 2010 with understanding to sell the mill/property of Rudraksh and Nagina to interested buyers. This Respondent claims that with consent of all the Directors, the Company's mill/property was decided to be sold. It is denied that the possession was handed over without consent of Petitioner. This Respondent relies on Article 13 of Articles of Association giving powers to Board of Directors to admit persons to membership. The decision to transfer shares was taken at properly convened Board Meeting and with the consent buyers were found as no Single Director/Shareholder was capable enough to run the unit. Accordingly, buyers were identified and assets were sold but Petitioner was asking value much higher than fair market value. With consent buyers were identified and handed over possession of assets. However, as the litigation was on, obeying the Orders of the Judiciary as law abiding

citizens, the Respondents did not file the Annual Returns and accounts showing effect of share transfer with ROC. Respondents have denied the averments made in the application in Para – 19. The Respondents stated in the reply/counter affidavit (para – 19) that before CLB on date of mentioning of petition, they had agreed to maintain status quo with regard to shareholding pattern. According to Respondents, they never filed and implemented share transfer decision until the outcome of the petition. They filed and implemented the same in December, 2017 when there was no stay. Thus the Respondents want the IAs to be rejected.

18. In common rejoinder filed by the Appellant – Original Petitioner to the I.A.s, he has denied the averments made by the Respondents in the common reply. According to him, there was violation of Interim Orders of NCLT since December, 2015/March 2016 by the 2 Respondent Companies as is evident from the reports and enclosures which they have filed in the MCA website on 6th December, 2017; the shares transferred were effected in December 2015/March, 2016 behind the back of NCLT and in violation of Articles of Association of the two Respondent Companies. According to him, no Notices of General Body Meetings which are said to have been held as claimed in the Returns filed by the two Companies, were actually given to the Petitioner or his wife who are holding shares in the two Respondent Companies. According to the Appellant – Original Petitioner, he came to know in January, 2018 about these Returns filed. The Returns disclosed violation of Interim Orders of September, 2015 passed by CLB. The Appellant and his wife held substantial shares in both the Respondent

Companies and they had no Notices. According to the Appellant, the Respondents are extracting part of the paragraph of the Company Petition to defend their action. According to him, if his entire pleadings are considered, it would be clear that the Respondents told the Appellant that the process house is running on no loss no profit basis since beginning and on the pretext of huge outstanding and losses, even the salary of the Appellant for his services as production in charge of the factory/process house was not being paid from August, 2011. The Appellant has mentioned in the common rejoinder that because of this, the decision in January, 2013 was to sell the fixed asset/immovable property of the two Companies to curtail/freeze the losses to the minimum. The decision was taken in January, 2013 and the production activity was stopped with effect from 1st February, 2013. According to him, in January, 2013, again the Respondents started the process house without the consent of the Appellant and in spite of his objection. Thus, the decision to sell the Company's immovable property/assets was given a go-by and not acceded to by the Respondents in June, 2013 itself. No accounts were given to him since inception. Thus according to him, the "informal decision" between the Appellant and the Respondent in January, 2013 regarding sale cannot be relied upon by the Respondents as process house was re-started by them in June, 2013 itself. This informal decision was referred in the Company Petition in the pleadings by the Appellant to depict actual chain of systematic and planned events orchestrated and carried out by the Respondents. The Appellant has denied that he had given any consent for finding buyers or the buyers (Mitul Mehta) of Devi Processors group, are

his friends. Respondents have not disputed that the process house/entire fixed assets of the two Companies were handed over to the Mitul Mehta group in March, 2014. According to him, there was no Board/General Body Meeting in violation of the Companies Act. Appellant claims that the whole approach of the Respondents from January, 2013 culminating in share transfers effected from December, 2015/March, 2016 (which also effectively means that entire shareholdings of the Respondents as well as the fixed assets of the Companies were transferred to 3rd parties even before completion of pleadings in NCLT) has come out in the open. Thus, there has been abuse and misuse of judicial process by the Respondents. The handing over of the factories/fixed assets of the Respondent Companies in March, 2014 was one of the series of acts of oppression and mismanagement by the Respondents. He has denied that not a single Director/shareholder was capable enough to run the unit at that time. The Appellant has denied other averments also and claimed that in violation of the September, 2015 Interim Orders of NCLT, Respondents effected the share transfer and handed over the assets of the Companies to 3rd parties and they created 3rd party rights in Company statutory records to render the Company Petition/Appeal infructuous. He was never informed about the handing over of the assets, by the Respondents and he came to know the same only from market. All the other averments of the Respondents are also dealt with and denied by the Appellant – Applicant.

18.1 Counsel/P.C.S. for both sides have been heard on lines of such respective cases of parties in the Appeals and the IAs.

19. At the time of arguments, learned counsel for the Appellant referred to Orders dated 29.09.2015 which were passed when both the Company Petitions were moved before the CLB on 29.09.2015.

The common Order passed read as under:

“Common Order

On the Company Petitions 76(GUJ)/2015 & 77(GUJ)/2015 moved by the petitioner primarily seeking for a restraint order on proposal to remove him as director from the company by invoking Sec 169 of the Companies Act 1956, for having the respondents side given an undertaking to maintain status quo over the shareholding and fixed assets of the company, the same being agreed by the petitioner counsel, this petition is posted for filing reply by the respondents within six weeks hereof, rejoinder, if any, within six weeks thereof, subjecting the petitioner’s removal to the outcome of the main petition.

2. Since this matter belongs to Mumbai Bench, instead of posting this matter for hearing, parties are at liberty to mention the matter as and when the need arises.”

20. It is apparent that in both the Company Petitions, the above common Order had been passed on 29th September, 2015. Pleadings of Respondents referred above shows Respondents were aware and knew that they had to maintain status quo over the shareholding and fixed assets

pending litigation. Thus, the Respondents were required to maintain status quo over the shareholding as well as the fixed asset of the Company. In the face of such Order, if the copies of Annual Returns and Financial Statements now filed by the Respondents with ROC are seen (copies of which have been filed with the Interlocutory Applications 173 of 2018 in CA 403 of 2017 as well as IA 174 of 2018 in CA 400 of 2017), it is apparent on the face of record that the Respondents 2 and 3 of both the appeals who are 4 brothers, along with their group of shareholders transferred off all their shares in the 2 Companies during the pendency of these petitions. These Returns show how the picture changed between 2015 – 2016 and 2016 – 2017. The entire shareholding of these Respondents were transferred by them to 3rd parties who had already been introduced in the property of Company in 2014 initially shown by the Respondents as only persons who were running the process house as they branded the Appellant a deserter. The Respondents 2 and 3 of both the appeals appear to have continued to be shown as Directors although in the subsequent returns, their shareholding is shown as zero. These returns show dates of Board Meetings and AGM. For example, in the matter of Rudraksh (CA 403 of 2017), IA 173 of 2018 shows as page – 49 that the AGM was held on 30th September, 2016. The Appellant is claiming that he and his wife were not given any such Notice of the Meeting. Respondents denied this but do not produce any proof of sending Notice to the Appellant and his wife or proof of service on them, although admittedly the Appellant and his wife have 32.66% shareholding in the Company of Rudraksh. At page – 64 is the Director's Report for 2015 – 2016 in IA 173 of 2018 showing that there was

a Board Meeting dated 15th May, 2015. In NCLT, the Appellant was claiming that no meetings were being held and no Notices had been issued. Now, the Respondents show a Board Meeting in the Director's Report but nothing is shown that the Appellant had been given any such Notice for the said Board Meeting. The subsequent Board Meeting dated 29.08.2015 and EOGM dated 8th October, 2015, however, were in dispute in the learned NCLT. Although in NCLT case put up is that Petitioner has been removed from the post of Director of Rudraksh in the EOGM dated 8th October, 2015, the Director's Report in the matter of Rudraksh at page – 66 claims that the Appellant had resigned on 8th October, 2015. Resignation would be matter under Section 168 while removal is subject of Section 164 of New Companies Act. In NCLT, Respondents appear to have walked away with Orders in favour without showing copy of Resolution, regarding removal as Director being passed.

21. If IA 174 of 2018 is seen, the Annual Return (Page – 12) claims AGM was held on 30th September, 2015 for the Financial Year 2014 – 2015. Annual Return for 2015 – 2016 (Page – 30) claims AGM was held on 30th September, 2016. Annual Return for 2016 – 2017 as at Page – 48 shows AGM held on 30th September, 2017. The Appellant is claiming before us that he was not given any Notices for any such AGMs. Respondents have failed to show documents which they should be having to the contrary.

21.1 Director's Report for the Year 2015 – 2016 in the matter of Nagina (Page – 114 of IA 174 of 2018) is accompanied by Annexure 'A' showing (at page 119) shareholding of the promoters (Respondents 2 and 3 in CA 400

of 2017) having 3,000 and 18,000 shares respectively. This, when compared with Annexure 'A' with the Director's Report for the year 2016 – 2017 (Page – 152 of IA 174 of 2018) shows shareholding of these Respondents to be zero.

21.2 Considering pleadings and Annexures filed with the IAs, it is quite obvious that the Respondents 2 and 3 in both the Appeals and their group have transferred off all their shareholding to 3rd parties. When the Appellant was making grievances in the NCLT also and has claimed here also that he was kept out of the affairs of the Companies and he was making grievances that the properties of the Companies have been handed over to 3rd parties, the Respondents merely showed admissions in pleadings with regard to Notices issued for the Board Meeting dated 29.08.2015 and EOGM dated 8th October, 2015 with reference to Rudraksh but do not appear to have disclosed any other documents to support any of the other meetings on which they have now relied on to show that they have conducted the affairs of the Companies as per the Companies Act. It is clear case of oppression of the Appellant in both the matters.

22. We find that NCLT wrongly and lightly ignored the grievances of the Appellant that the Respondents have handed over the properties of the Companies to 3rd parties – Devi Processors by saying that it was a business decision. NCLT accepted that the decision should have been taken in Board Meeting and Notice should have been given to Petitioner but it was not done so, but gave no weight to it saying that no loss was shown to Petitioner. We do not agree with such reasonings. When the only asset of

the Nagina was the land and the only asset of Rudraksh was the factory/process house, if the whole of these assets had been handed over to Devi Processors and Appellant who was holding 32.66% share (with his wife) in Rudraksh and was holding 12.06% shareholding in the Company of Nagina, he had a right to know how these assets had been handed over by Respondents who were professing to say that they have been handed over only for running the business. Even if it was for only running the business, as a majority shareholder, he was entitled to know as to what was the decision, Board Meeting or General Body Meeting Resolutions under which the substratum of the Company had been handed over. As the documents now show, it was not a mere handover of running of the business but the business itself had been sold behind the back and without the knowledge of the Appellant group which is serious act of oppression.

23. Looking to the documents filed with IA 173 and 174 of 2018, we find that these acts of the Respondents reflecting from the documents were not merely hit by the principles of *lis pendens* but also there was no material to show that the Appellant and his wife were given the concerned Notices of the Meetings for holding these AGMs and approving the Financial Statements. The Appellant has argued that before transfer of these shares, no Notice was given to him or his wife offering to sell the shares to him or his wife. Learned counsel for the Appellant, for example, referred to Articles of Association in the matter of Rudraksh, which mention at Page – 139 as under:-

“TRANSFER AND TRANSMISSION OF SHARES

Restriction on transfer of share

13. Save as hereinafter provided no share shall be transferred to a person who is not a member of Company so long as any Member or any person selected by the Directors as one whom it is desirable in the interest of the Company to admit to membership is willing to purchase the same at the fair value.

Director’s discretion to decline registration of any transfer

14. The Directors may at any time in their absolute and uncontrolled discretion and without assigning any reason whatsoever, decline or acknowledge any proposed transfer of shares and their power or discretion to refuse such transfer shall not be affected by the fact that the proposed transferee is already a registered member of the Company. Without prejudice to the generality of the aforesaid power, the Directors may in particular so decline in any case in which the Company has a lien upon the shares [or any of them] or whilst any shareholder executing the transfer is either alone or jointly with any person or persons indebted to the Company on any account whatsoever, or whilst any moneys in respect of the shares desired to be transferred [or any of them] remain unpaid or unless the transferee is

approved by the Board. The registration of the Transfer shall be conclusive evidence of the approval of the transferee by the Board.

Transfer of shares how to be made

15. Except where the transfer is made pursuant to Article 20, the person proposing to transfer any share [hereinafter called "proposing transferor"] shall give notice in writing [hereinafter called "the Notice"] to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as fair value of the shares and shall constitute the Directors as agent for the sale of the shares to any member of the Company or person selected as aforesaid willing to purchase the shares [hereinafter called the "Purchasing Member"] at a price so fixed or at the option of the purchasing member at the fair value to be fixed in accordance with Article 17 hereinafter appearing. A transfer notice may include several classes and in such case it would operate as if it were a separate notice of each share. A transfer notice shall not be revoked except with the sanction of the Directors.

Shares comprised in the transfer notice how to be dealt

16. Except where the transfer is made pursuant to Article 20, the shares comprised in any transfer notice shall be dealt with as under:

[a] The Board shall forthwith give notice to all the members of the company and specify the price of the shares to be sold and invite each of them to state in writing within 7 days from the date of the said notice whether he is willing to purchase any and if so what maximum number of the said shares.

[b] After the expiration of said 7 days the Board shall allocate the said shares comprised in the transfer notice to or amongst the members or member who shall have expressed their or his willingness to purchase as aforesaid, but so that in case of competition, they shall rank for acceptance *pari passu* in proportion to shares held by them and if any shares cannot be apportioned, such shares shall be offered to them in order determined by lot, and directors shall cause such lots to be drawn accordingly.

[c] If shares are not taken up by the person to whom they are offered in accordance with the foregoing provisions and the company finds a purchasing

member within the space of three months after the expiration of the said 7 days it shall give notice thereof to the purchasing member and proposing transferor who shall be bound upon payment of fair value as fixed in accordance with Article 17 hereof to transfer the shares to such purchasing member or members.”

(Emphasis supplied)

23.1 We do not agree with P.C.S. for Respondents that under Article 13 Respondents – Directors had complete discretion to transfer shares to any person. The learned counsel for the Appellant rightly submitted that in the face of such Articles of Association when read as a whole, the shares could not have been transferred by Respondents 2 and 3 of each of the appeals and their group without the same being first offered to the other existing members. Reading Article 13 with 14 and 15 and other Articles makes it clear that “any person” referred in Article 13 also has to be what is referred in Article 15 as “Purchasing Member”. Article 13 read with 15 shows that a member proposing to transfer shares will have an option to let his shares be offered to Members as a whole or to person selected, which reading the provisions as a whole, has to be from out of the members. Otherwise nothing prevented mention in Article 13 to state “any person not a member”. We are not ready to read in between the lines of Article 13 to say that “any person” means “any person not a member” as the Respondents are trying to submit. We find that the Respondents have not

shown any material that any of the provisions of the Companies Act were followed before transfer of their complete shareholdings and they had followed such Articles of Association to justify their transfers to third parties or that they had sent Notice to the Appellant and his wife offering the shares and on decline, the shares were transferred to 3rd parties.

24. Apart from the fact that the actions of the respective Respondents 2 and 3 were not in consonance with the Companies Act or Articles of Association, the acts of the Respondents were also in violation of the Interim Orders passed by the Company Law Board on 29th September, 2015 in these Company Petitions and are acts of serious contempt. We do not find any substance in the arguments of the Company Secretary of the Respondents that there was no violation because the Respondents, although they transferred the shares, did not act upon the transfer till the Company Petitions were disposed and appeal period came to an end. In our view, the shares were transferred, as is clear from the copies of Annual Returns and Financial Statements which are annexed with the Interlocutory Applications 173 and 174 of 2018 on the dates as can be seen in those documents. After handing over the assets of the Companies to 3rd parties in 2014 in the name of running of business and after transfer of their complete shareholdings, respective Respondents 2 and 3 appear to have remained as mere front Directors during the pendency of the litigation to avoid attention and after the NCLT disposed the matter filed these Annual Returns and Financial Statements with ROC which has exposed them to the fact that they had indeed transferred off their shareholdings

and properties of the Companies during pendency of the litigation itself and in violation of the CLB orders.

25. In CA 403 of 2017 in Para – 17, NCLT found that the Original Petitioner did not file any document to show that there is arrangements/understanding to give 50% of paid up share capital to Petitioner and his wife. NCLT found that Petitioner had made investments but did not prove that there was understanding to give 50% share capital to him and his wife. In 1st Petition also similar finding is there. We are not disturbing these findings. In Para – 20 of the Impugned Order in the matter of Rudraksh, NCLT dealt with the dispute raised by the Petitioner regarding further allotment of 5 lakhs shares to Respondents 2 and 3 on 20.04.2010 and 12.05.2011. NCLT found that the grievance was raised only in September 2015 when petition was filed and Petitioner had been Director till 8th October, 2015. NCLT thus did not disturb the said allotment. Considering the delay in raising the dispute on that count, we are not disturbing this finding also.

26. In the Impugned Order in CA 403/2017 in Para – 23 to 29, NCLT dealt with the grievances raised by the Petitioner that he was wrongly removed from the post of Director. NCLT considered the contention of the Petitioner that he was not getting Notices of Board Meetings and General Meetings. This was pushed aside with the observation that the Petitioner had knowledge that he was not called for such meetings but did not raise objection till it was proposed to remove him by Notice dated 20.08.2015. NCLT observed that the Petitioner being printing master had technical

experience and had worked in the Respondent Company till May, 2013 from 2011 and held that the Petitioner “must know what are the trade secrets and the processing secrets of the first Respondent Company”. NCLT considered the fact that the Notice of Board Meeting dated 29.08.2015 had been sent on 20.08.2015 and so it was not a case that the Petitioner was removed without giving Notice. NCLT discussed that Notice of the EOGM had also been served. Referring to these aspects, NCLT concluded that there was Notice and that there were certain grounds for his removal and that there were sufficient reasons to remove him as Director and thus, concluded that his removal had to be upheld.

26.1 The reasonings recorded by the NCLT do not show that any Resolution was brought to its notice of EOGM dated 8th October, 2015 for removal of the Petitioner. It merely recorded that Notice had been issued of EOGM and that the Notices having been served of the Board Meeting and the EOGM, the removal was required to be upheld. NCLT accepted the contention raised by the Respondents in the Notice under Section 169(2) which Notice was given by Respondent No.3 to the Board of Directors (Appeal Page – 187 [CA 403 of 2017]) that the Petitioner was not attending the Company’s day-to-day activities and was sharing Company’s secrets. Looking at this Notice gives weight to the contention of the Petitioner that Board Meetings as such were not being held. Had it been so, and if the Petitioner had not attended, the Respondents would have claimed that the Director had not attended 3 Board Meetings and had ceased to be Director. Instead the Respondents thought it appropriate to issue Notice as seen at

Page – 187 of the Appeal claiming that the Petitioner was “not attending company’s day-to-day activities”. Looking to the case put up by the petitioner and the pleadings of Respondents and considering the acts of Respondents in these 2 Appeals purporting to only let 3rd party “run” the process house, we find substance in the case put up by the Petitioner that an excuse as such was given to the Petitioner of there being losses and process house was closed for short time and when Petitioner got diverted for his livelihood to some other entity, the Respondents of both the Company Appeals passed off the assets of the Company to 3rd parties in the name of running of business and during pendency of the petition have transferred their complete shareholdings and thus in effect substratum of the Company was transferred. It appears from record that the Petitioner was a technical person in the matter of running of process house and was not smart enough to ensure his name being included in the promoters when the Companies were set up but did contribute money and his physical efforts in setting up of the process house and running of the same. Only because he had the technical knowledge of running of the process house would not be sufficient to say that he was, entering in the “sharing Company’s trade secrets”. The bald statement was not supported by any material in NCLT and NCLT wrongly concluded that there were sufficient grounds for removal of the Petitioner as Director. The Company Petitions were filed in September, 2015 and Petitioner had sought restraint order regarding his removal. In the common Order of CLB dated 29.09.2015, which we have referred above, CLB had recorded that Petitioner’s removal would be subject to the outcome of the main petition. We have considered

the reply which the Petitioner had given on 28.08.2015 when he was given Notice of the Board Meeting fixed for 29.08.2015 and had raised various grievances which he raised in the Company Petitions also that Board Meetings and General Body Meetings were not being held nor Notices sent and that the Notice dated 20.08.2015 purported to approve previous Board Meeting Minutes without mentioning date of alleged Meeting. He raised so many other grievances also that he was not being allowed to participate and had no access to information or documents. The NCLT did not consider these contents nor the case of Petitioner that he was side lined on a pretext. Taking overall conspectus of the matter, we find that the Notice given by Respondent No.3 (Appeal Page 187) was only an excuse to remove the Original Petitioner from the post of Director. The Resolution of EOGM is also not brought to our notice. We find a case of oppression as well as mismanagement of affairs of the Company. As such, we set aside the findings of the NCLT upholding removal of the Petitioner as Director. We hold that the Petitioner shall be treated to have continued as Director of the Respondent No.1 Company - Rudraksh Synthetics Pvt. Ltd.

27. Even in the matter of Nagina (CA 400 of 2017) our earlier discussion shows that the Respondents 2 and 3 in that Company Petition who are brothers of Respondents 2 and 3 in the matter of Rudraksh joined together and let the land and structure change hands and allowed the business to be taken over by 3rd parties and had subsequently transferred their shares illegally. Nothing is shown by Respondents in the matter of Nagina also how land of the Company was allowed to be taken over by 3rd

Party and how their transfer of complete shareholding could be supported in law.

28. Respondents 2 and 3 in both Petitions have not shown what was the consideration for transfer of the whole business and properties of the Companies to third party.

28.1 We thus reject the arguments being raised by Respondents against the Appellant, as having no substance. We find Respondents in both the matters guilty of oppression of Appellant and his group and they mismanaged the Companies.

29. We are of the view that winding up of the Company would unfairly prejudice the Appellant and his wife who are also members and other members, but otherwise the facts justify making up a winding up order. At the same time, we find that the Appellant who is 32.66% shareholder in the matter of Rudraksh and 12.06% shareholder in the matter of Nagina (considering his shares and the shares of his wife), and also contributed substantial investment and also his efforts in running of the process house needs a fair deal. It appears that the Petitioner and Respondents 2 and 3 of both the Company Petitions (Company Appeals) would not be able to get along and that would not be in the interest of the Company and it would be appropriate that fair value of the shares is ascertained and parties get option to quote higher price. It is necessary that accounts should be audited and the claim of Petitioner regarding outstanding salaries in the matter of Rudraksh are also checked by the auditor and if there are dues, the Petitioner is entitled to the same.

Further Reasons, Findings and Directions

30. Looking to the fact that Respondents in both the appeals have handed over the assets of the Company to 3rd party, Devi Processors P Ltd., in the name of running of business, it is necessary that Administrator should be immediately appointed so that the value of the shareholding is not diluted. Respondents cannot be allowed to take advantage of their wrongs and thus, it is necessary that the value of shareholdings should be ascertained as on the date of this order.

31. We find that the Respondents 2 and 3 in both these appeals suppressed material facts from the NCLT and during the pendency of the litigation in NCLT went about as if they were still the whole and soul of the Respondent Companies. Such actions cannot be looked upon lightly. We find that the Respondents indulged in acts of oppression and have mismanaged the Companies. We hold that the transfer of shareholdings from the group of Respondents 2 and 3 in both these Company Appeals during pendency of the Company Petitions, as appearing from Annual Returns and Financial Statements filed with IA 173 of 2018 and 174 of 2018 were all illegal and cannot be upheld, and the transfers are set aside.

32. We direct the ROC not to accept such transfer of shareholdings from Respondents 2 and 3 and their group in both the Appeals as reflected in these Annual Returns and Financial Statements. We restore the shareholdings in both the Companies to the stage of filing of the petitions. On receipt of copy of this Judgement, we direct NCLT to immediately

appoint (even if parties do not appear as is being directed infra) an Administrator who will handle the affairs of these Companies.

33. NCLT, Ahmedabad is requested to immediately appoint an Independent Auditor/Audit Firm in both the Company Petitions to audit the accounts from the date of incorporation of the respective Companies. The Chartered Accountant/CA Firm shall file Audit Reports before the learned NCLT on date to be fixed by NCLT at the time of appointment. The NCLT may give further directions regarding fees to be paid to the Auditor/Audit Firm.

34. After the Reports of the Chartered Accountant/CA Firm are finalised, fair value of the shares of Respondent Companies in both the Company Petitions shall be assessed by an Independent Valuer. The fair value of the shares shall be as on the date of this Order in NCLAT. The value shall not be less than the value at which Respondents in these petitions transferred their shares pending these petitions/appeals (which transfers we have set aside *supra*). NCLT is requested to pass further orders regarding the appointment of the Independent Valuer on fees etc. to be paid to the Independent Valuer.

35. Expenses of the CA/CA firm and Independent Auditor shall be paid from the accounts of Respondent No.1 Company in the respective matters.

36. In the matter of **“Namech Consultants Private Limited and Another vs. GE Thermometrics India Private Limited and Others”**

reported in ILR 2008 KAR 1187 Judgement of the Hon'ble High Court in the Company Petition which had come up before it shows that after considering the facts of that matter and adjusting equities, High Court directed that when the Report demonstrating price of the shares is received, the same should be made known to each group and then each group shall quote in sealed cover before the CLB the competitive price of each share which shall be higher than the present price determined by the Chartered Accountant agreeing to buy the shares of other group or to sell its shares to the other group. We find that in the set of facts of the present matters, this would be appropriate procedure. Accordingly we direct in present matters:-

On receipt of report regarding fair value of the shares from Independent Valuer, the same shall be made known to the group of Appellant and his wife on one side and Respondents 2 and 3 and their group of members on the other, in each of these petitions. Each of the group in the respective petitions shall be given opportunity to quote in sealed cover before NCLT the competitive price of each share of the respective company in the concerned petition, which shall be higher than the price determined by the Independent Valuer of each share in the concerned company, agreeing to buy the shares of the other group or to sell its shares to the other group at the said higher price and the group quoting its price higher than the one quoted

by the other group shall have first option to buy the shares of the group quoting the lower price. Thereafter, the learned NCLT shall pass appropriate orders directing the group quoting higher price to purchase the shares of the other group quoting lower price.

37. NCLT may pass further suitable directions and orders, necessary for implementation of the above directions.

38. Both the appeals are disposed accordingly. Respondents 2 and 3 in CA 400 of 2017 shall each pay costs of Rs.1 lakh to the petitioner, from their personal accounts.

39. Respondents 2 and 3 of CA 403 of 2017 shall also each pay costs of Rs.1 lakh to the Petitioner from their personal accounts.

40. I.A. 173 and 174 of 2018 are also disposed as above.

41. Registry to immediately send by e-mail/speed post copy of this Judgement to NCLT, Ahmedabad.

42. Parties are directed to appear before NCLT, Ahmedabad on 04.06.2018.

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

[Balvinder Singh]
Member (Technical)

New Delhi
28th May, 2018
/rs/nn