

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 389 of 2017

[Arising out of Order dated 18th October, 2017 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in Company Application No. 6 and 86 of 2017 in Company Petition No. 21 of 2016]

IN THE MATTER OF :

1. **Kole Investment and Trading Company Private Limited,
Having its Registered Office at
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune - 411 001.**

**... APPELLANT NO. 1
(Original Petitioner No.1)**

2. **Takwe Investment and Trading Company Private Limited,
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune - 411 001.**

**... APPELLANT NO. 2
(Original Petitioner No.2)**

3. **Mogara Investment Company,
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune - 411 001.**

**... APPELLANT NO. 3
(Original Petitioner No.3)**

4. **Takale Investment Company,
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune - 411 001.**

**... APPELLANT NO. 4
(Original Petitioner No.4)**

5. **Hattarki Investment Company,
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune - 411 001.**

**... APPELLANT NO. 5
(Original Petitioner No.5)**

6. **Vasantgad Investment and Trading Company Private Limited,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.

... APPELLANT NO. 6
(Original Petitioner No.6)

- Versus -

1. **Mrs. Sulochana Neelkanth Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.

... RESPONDENT NO. 1
(Original Petitioner No. 7)

2. **Kalyani Consultants Private Limited,**
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.

... RESPONDENT NO. 2
(Original Respondent No.1)

3. **Gaurishankar Neelkanth Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.

... RESPONDENT NO. 3
(Original Respondent No. 2)

4. **Rohini Gaurishankar Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.

... RESPONDENT NO. 4
(Original Respondent No. 3)

5. **Sheetal Gaurishankar Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.

... RESPONDENT NO. 5
(Original Respondent No. 4)

6. **Viraj Gaurishankar Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.

... RESPONDENT NO. 6
(Original Respondent No. 5)

7. **Daffodil Management Services Private Limited,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**
- ... RESPONDENT NO. 7
(Original Respondent No. 6)**
8. **Aboli Investment Private Limited,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**
- ... RESPONDENT NO. 8
(Original Respondent No. 7)**
9. **Mr. Shrikrishna Narhari Inamdar,
11/13, Botawala Building,
3rd Floor, Horniman Circle,
Fort,
Mumbai – 400 023.**
- ... RESPONDENT NO. 9
(Original Respondent No. 8)**
10. **Mr. Dilip Ganesh Karnik,
Resident of : Shri Ram 1102,
B-4, Model Colony,
Shivji Nagar,
Pune – 411 016.**
- ... RESPONDENT NO. 10
(Original Respondent No. 9)**
11. **Shevanti Investment Company,
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.**
- ... RESPONDENT NO. 11
(Original Respondent No.10)**
12. **Kalyani Exports and Investment Private Limited,
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.**
- ... RESPONDENT NO. 12
(Original Respondent No.11)**
- Present: Shri Amit Sibal , Senior Advocate with Shri Rajendra Barot,
Shri Rohan A. Rajadhyaksha, Ms. Roopali Singh, Ms. Anshika Mishra,
Shri Aditya Gupta and Ms. Sayobani Basu, Advocates
for the Appellants.**

Dr. U.K. Chaudhary, Senior Advocate and Shri Ravi Kadam, Senior Advocate with Shri Karan Malhotra, Shri Prateek Kumar, Shri Yash Chokani, Shri Himanshu Vij, Shri Amit Kadam, Shri Snehal Kakrania, Shri Amit Kadam, Shri Kanwar Vivswan Singh, Ms. Poonam Sampat and Shri Sachin Mandlik, Advocates for Respondent No. 1.

Ms. Neha Nagpal, Shri Mahesh Aggarwal and Shri Rajeev Kumar, Advocates for Respondent No. 10.

WITH

Company Appeal (AT) No. 391 of 2017

[Arising out of Order dated 18th October, 2017 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in Company Application No. 6 and 86 of 2017 in Company Petition No. 21 of 2016]

IN THE MATTER OF :

**1. Gaurishankar Neelkanth Kalyani,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**

**... APPELLANT No. 1
(Original Respondent No. 2)**

**2. Rohini Gaurishankar Kalyani,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**

**... APPELLANT No. 2
(Original Respondent No. 3)**

Versus

**1. Mrs. Sulochana Neelkanth Kalyanai,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**

**... RESOPNDENT No. 1
(Original Petitioner No. 7)**

**2. Kole Investment and Trading
Company Private Limited,
Having its Registered Office at
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.**

**... RESOPNDENT NO. 2
(Original Petitioner No.1)**

3. **Takwe Investment and Trading Company Private Limited,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ... RESPONDENT NO. 3**
(Original Petitioner No.2)
4. **Mogara Investment Company,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ... RESONDENT NO. 3**
(Original Petitioner No.3)
5. **Takale Investment Company,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ...RESPONDENET NO. 4**
(Original Petitioner No.4)
6. **Hattarki Investment Company,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ... RESPONDNET NO. 6**
(Original Petitioner No.5)
7. **Vasantgad Investment and Trading Company Private Limited,**
Having its Registered Office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ... RESPONDENT NO. 7**
(Original Petitioner No.6)
8. **Kalyani Consultants Private Limited,**
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.
- ... RESPONDENT NO.8**
(Original Respondent No.1)
9. **Sheetal Gaurishankar Kalyani,**
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.
- ... RESPONDENT No.9**
(Original Respondent No. 4)

10. **Viraj Gaurishankar Kalyani,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**
- ... RESPONDENT NO. 10
(Original Respondent No. 5)**
11. **Daffodil Management Services
Private Limited,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**
- ... RESPONDENT NO. 11
(Original Respondent No. 6)**
12. **Aboli Investment Private Limited,
Resident of 221/D,
Parvati Niwas, Kalyani Nagar,
Pune – 411 006.**
- ... RESPONDENT NO. 12
(Original Respondent No. 7)**
13. **Mr. Shrikrishna Narhari Inamdar,
11/13, Botawala Building,
3rd Floor, Horniman Circle,
Fort,
Mumbai – 400 023.**
- ... RESPONDENT NO. 13
(Original Respondent No. 8)**
14. **Mr. Dilip Ganesh Karnik,
Resident of : Shri Ram 1102,
B-4, Model Colony,
Shivaji Nagar,
Pune – 411 016.**
- ... RESPONDENT NO. 14
(Original Respondent No. 9)**
15. **Shevanti Investment Company,
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.**
- ... RESPONDENT NO. 15
(Original Respondent No.10)**
16. **Kalyani Exports and Investment
Private Limited,
Having its registered office at :
Shangrila Garden, First Floor,
B&C Wing, Opposite Bund Garden,
Pune – 411 001.**
- ... RESPONDENT NO. 16
(Original Respondent No.11)**

Present: **Shri Amit Sibal, Senior Advocate with Shri Rajendra Barot, Shri Rohan A. Rajadhyaksha, Ms. Roopali Singh, Ms. Anshika Mishra, Shri Aditya Gupta and Ms. Sayobani Basu, Advocates for the Appellants.**

Dr. U.K. Chaudhary, Senior Advocate and Shri Ravi Kadam, Senior Advocate with Shri Karan Malhotra, Shri Prateek Kumar, Shri Yash Chokani, Shri Himanshu Vij, Shri Snehal Kakrania, Shri Kanwar Vivswan Singh and Shri Sachin Mandlik, Advocates for Respondent No. 1.

Ms. Neha Nagpal, Shri Mahesh Aggarwal and Shri Rajeev Kumar, Advocates for Respondent No. 14.

J U D G E M E N T

A.I.S. Cheema, J :

Company Appeal (AT) No. 389 of 2017 has been filed by the Appellants against the impugned order dated 18th October, 2017 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai ('NCLT' in brief) in Company Application No. 6 of 2017 in Company Petition No. 21 of 2016. The Company Petition was filed under Sections 241, 242 and 244 of the Companies Act, 2013 ('Act' in brief). These appellants are shown as Petitioners Nos. 1 to 6 in the Company Petition. They claimed that they filed the Company Application No. 6 of 2017 to bring it on record of the Company Petition that these appellants had neither approved nor authorised the filing of the company petition on their behalf. Present Respondent No. 1 – the Original Petitioner No. 7 (hereinafter referred as 'P7') had illegally usurped authority on behalf of these appellants to drag them in the litigation. These Appellants claimed that they informed the Original Petitioner No. 7 and the concerned advocates that Original Petitioner No. 7 had no authority to act on

their behalf. They prayed to the learned NCLT to delete their names from the Company Petition. By the impugned order, this request has not been allowed and hence the present appeal.

2. As regards the Company Appeal (AT) No. 391 of 2017, the same is also filed against the same impugned order of the NCLT. The appellants in this appeal are Original Respondents Nos. 2 and 3 (hereinafter referred to as 'R-2 & R3') as arrayed in the Company Petition. These Appellants are the Contesting Respondents in the Company Petition. The Company Petition has been filed against the respondents on the ground of alleged 'oppression and mismanagement' in Respondent No. 1 Company – Kalyani Consultants Private Ltd. These appellants filed Company Application No. 86 of 2017 (appears to be of 2016) referred to by them as 'Maintainability Application' under Rule 11 of the National Company Law Tribunal Rules, 2016. By the said application, they challenged the maintainability of the Company Petition which had been filed. After hearing the parties, by the impugned order, the application was rejected and NCLT held that the Company Petition was maintainable. Thus, the appeal.

3. At the time of hearing of these appeals before us, the parties mainly argued from the paper-books of Company Appeal (AT) No. 391 of 2017 treating the same as lead matter. Thus, unless mentioned otherwise, we would be referring to documents and pages from the paper-books of this appeal. Respondent No. 1- Original P7 has filed compilation of documents also, which has been referred to by counsel of both sides. We will refer to this compilation as Convenience Compilation ('CC' in brief) and pages from the same.

We will refer to the Petitioners and Respondents in the manner in which they have been arrayed in the Company Petition pending before the NCLT referring to them in brief as P1, P7 etc.

4. Having heard the counsel for the contesting parties, it would be appropriate to refer to material facts and developments in brief as appearing and culled out from the written and oral submissions and the records.

A. Dr. Neelkanth A. Kalyani (hereinafter referred to as 'Dr. Kalyani') had set-up a Private Trust called 'NS Trust' sometime in 1999 with the following trustees.

1. Dr. Neelkanth Kalyani
2. Sulochana Kalyani (Respondent No. 1-Original Petitioner No. 7)
3. D.G. Karnik (Original Respondent No. 9) and
4. S.N. Inamdar (Original Respondent No. 8)

The Trust held 99% shares in P1 to P6 companies.

B. P7 filed Company Petitions Nos. 19 to 26 of 2011 due to certain developments in P1 to P6 Companies (and 2 more companies of the Group) claiming rectification in the register of members of those companies. P1 to P6 are investment companies (who are holding and controlling the flagship company- M/s. Kalyani Consultants Private Limited (KCPL) – Respondent No. 1). The above litigation of Company Petitions Nos. 19 to 26 of 2011 was filed by P7 making allegations that shares of investment companies, present P1 to P6 arrayed in those

different matters as Respondent No. 1, had been illegally transferred in favour of present R2 on the basis of fabricated documents purporting to be resignation of P7 dated 6th July, 2007 and her rights had been written-off. The resignation letter dated 6th July, 2007 and alleged Deed of Relinquishment dated 7th July, 2007 were questioned. Dispute was raised regarding the alleged gift by Dr. Kalyani of his shares to present R2 also. Dr. Kalyani passed away on 24th August, 2013. Those petitions which were before the Company Law Board (CLB), Mumbai were decided by common judgement dated 18th May, 2015 along with company applications which had been filed. These petitions related to P1 to P6 and 2 more companies of the Group. The CLB held that the transfers were void but on the ground of limitation and suppression of facts went on to dismiss the company petitions filed by P7 (the copy of order is at CC-Page 1).

- C. P7 carried the matter to the High Court of Judicature at Bombay in its Ordinary Original Civil Jurisdiction and the Company Appeal (L) No. 41 of 2015 with accompanied appeals came up before the Hon'ble Single Judge of the High Court and by judgement dated 7th June, 2016 (CC-Page 52), the company appeals were allowed. In paragraph 24 of the judgement, the Hon'ble High Court observed as under :-

“24. Coming now to the merits of the determination by the CLB of the illegality of the transfer itself under Section 111 read with Section 108 of the Act, it is pertinent to note that there are two transfers in the present case – one, from the four joint holders, namely, Dr. Kalyani, Sulochana, DGK and SNI to Dr. Kalyani as a sole holder and two, from Dr.

Kalyani to Gaurishankar. These transfers were admittedly accomplished on different dates. The share certificate placed on record shows in the memorandum of transfers overleaf that the first transfer in favour of Dr.Kalyani was effected on 17 September 2007, whilst the second transfer from Dr. Kalyani to Gaurishankar was effected on 22 November 2007. There is no explanation, however, on record as to how the names of Sulochana and DGK were replaced by the names of Rohini and Gaurishankar ‘holders’ of the shares on the face of the share certificate. No such transfer is recorded in the memorandum of transfers overleaf. There is no share transfer from for transfer of shares between the original holders to the new four joint holders (said to be the co-trustees of the trust after the purported resignations of Sulochana and DGK and co-option of Rohini and Gaurishankar in their place, as required by Section 108 of the Act. Apart from this glaring lapse, the CLB has also noted the following admitted position for holding the transfers to be in contravention of Section 108:

- (i) There is no instrument of transfer as required by Section 108 produced on record by the answering Respondents;*
- (ii) The answering Respondents did not produce the register of members of the company to controvert the Petitioner’s case that the transfers did not actually take place;*
- (iii) No minutes of the Board of Directors or of any transfer were placed*
- (iv) The purported annual returns filed with the Registrar of Companies did not relate to the transfers claimed to have been executed.*

Based on these facts and applying the law laid down by the Supreme Court in the case of “Mannalal Khetan Vs. Kedar Nath Khetan” and followed by our Court in “Shirish Finance and Investment (P) Ltd. Vs. M. Shreenivamlu Reddy”, holding

that execution of valid transfer deeds within the meaning of Section 108 is a mandatory requirement of a valid transfer of shares, the CLB held the impugned transfers to be invalid and not in compliance with the provisions of Section 108. There is no error of law to be found in this analysis and the finding arrived at by the CLB on the basis thereof.”

D. The Company Appeals were allowed in terms of prayer clause (a) in the Company Petitions. The prayer clause (a) of the Company Petitions which was allowed by High Court reads as under (CC-Page 83) :-

“Relief (a) in Company Petition Nos. 19 to 26 of 2011:-

(a) the Company Law Board be pleased to :

- i. Order and direct Respondent No. 1 to forthwith remove the names of Respondent Nos. 2 and 3 from the Register of Members of Respondent No. 1 in respect of the said shares and on Share Certificate issued by Respondent No. 1; and*
- ii. Order and direct Respondent No. 1 to reinstate the names of the said four trustees i.e. the Petitioner, Respondent No.2, Mr. Shrikrishna N Inamdar and Mr. Dilip Ganesh Karnik on the Register of Members of Respondent No. 1 in respect of the said shares and on Share Certificate.*
- iii. Order and direct Respondent No. 1 to rectify its register in accordance with Section 111(4) of the Companies Act, 1956.”*

(It may be mentioned that in these Company Petitions, Respondent No. 2 was Dr. Kalyani and Respondent No. 3 was Respondent No. 2 of present Petition).

- E. The Hon'ble Single Judge, by another order dated 7th July, 2016, passed Orders in the nature of speaking to Minutes and made certain corrections in the orders passed by him in Company Appeal (L) Nos. 41 to 48 of 2015 (CC-Page 54).
- F. It appears that Respondent No. 2 and others filed Special Leave Petition (SLP) against this order of the Hon'ble High Court and the Hon'ble Supreme Court did not find any reason to interfere with the impugned orders and the S.L.P. (Civil) No. 22800 of 2016 with other connected SLPs came to be dismissed on 8th August, 2016 (CC-Page 89).
- G. Thus, in this first round of litigation, P7 succeeded and the reliefs as sought by P7 in Company Petitions Nos. 19 to 26 of 2011, as reproduced above, stood in her favour.
- H. P7, with such judgement and orders in her favour having legal effect of restoring her name and names of the Joint Holders in the share certificates of P1 to P6 companies constituting 99% of shareholdings and as P1 to P6 Companies were investment companies controlling flagship company M/s. Kalyani Consultants Private Limited (Respondent No.1), after sending letters to Respondents for compliance of the judicial orders, filed the present Company Petition No. 21 of 2016 on 29th August, 2016 to take up the issues of 'oppression and mismanagement' in Respondent No. 1 company.

5. It appears that after her succeeding in the earlier round of litigation, P7 had addressed various letters to P1 to P6 dated 12th August, 2016, 26th August, 2016 and advocates' letter dated 12th September, 2016 calling upon them to comply with the orders passed by the courts. Later on, there was brief reply dated 16th September, 2016 (CC-Page 98) by P1 to P6 denying allegations contained in the advocates' letter dated 12th September, 2016. P1 to P6 vide letter dated 3rd October, 2016 (CC-Page 99) alleged that there were no irregularities and claimed to rely on Board Resolution dated 26th August, 2016. Subsequently, R2 and R3 filed C.A. 86 of 2016 and claimed that by a meeting of the Board of Directors held on 26th August, 2016, the Judicial Orders were complied but that new Trustees were appointed and on the basis of legal opinion, there was automatic vesting/transfer/transmission of shares and the earlier judicial orders were complied with. Considering the stand of the P1 to P6 in the Board meeting in which Respondents Nos. 2 and 3 were stated to have passed such resolutions, P7 filed Contempt Petitions Nos. 3/2017 to 10/2017 making allegations of contempt of the orders which had been passed by the Hon'ble High Court in Company Appeals Nos. 41 to 48 of 2015. The Hon'ble Single Judge of the High Court of Judicature at Bombay in the contempt petitions considered the history of litigation. The present P7 has filed Company Petition No. 21/2016 was also pointed out. Hon'ble Judge heard Counsel for both sides regarding the allegations whether or

not contempt has been made out and observed in Para 19 of order dated 29th March, 2017 (CC-Page 111) as under:-

“19. Since this Court has to take a prima facie view in the matter, this Court need not deal with each and every submissions made by the parties at a great length. A perusal of the order passed by Shri Justice S.C.Gupte clearly indicates that the order passed by the Company Law Board on 18th May, 2015 has been set aside and prayer clause (a) of the Company Petition No. 22 of 2011 filed by the petitioner came to be allowed. Special Leave Petition against the said order is admittedly dismissed.”

6. It was then observed in Para 21 :-

“21. A perusal of the share certificate prima facie indicates that the names of the petitioner and Shri Dilip Ganesh Karnik though have been restored on the first page of the share certificate as per the resolution dated 26th August, 2016, the names of Dr. Neelkanth Annapa Kalyani and Mr. Gaurishankar Neelkanth Kalyani have not been removed on the second page contrary to the orders dated 7th June 2016 and 7th July 2016 allowing prayer clause (a) of the company petition. The respondent nos. 1, 2 and 3 have also entered the names of Mr. Shrikrishana Narhari Inamdar. Mr. Gaurshankar Neelkanth Kalyani and Mrs. Rohini Gaurishankar Kalyani on the said share certificate.”

7. The Hon'ble High Court Judge observed that in his prima facie view, Respondents Nos. 1 to 3 in the contempt petitions had wilfully violated the orders passed by the High Court dated 7th June, 2016 read with order dated 7th July, 2016 and, *inter alia*, ordered :-

“(i) Office is directed to issue show cause notice upon the Respondent Nos. 1 to 3 under the provisions of Contempt of Courts Act, 1971, Article 215 of the Constitution of India, and under Rule 1035 of the High Court (O.S.) Rules, 1980, returnable on 23rd June 2017 as to why appropriate action should not be initiated against them under the aforesaid provisions for deliberate violation of the orders dated 7th June 2016 and 7th July 2016 passed by this Court in various appeals filed by the petitioner;

xxx

xxx

xxx”

8. It is in the context of facts mentioned as above and developments in the litigation that we are required to consider whether the Company Petition No. 21 of 2016 as filed by the Petitioners before the NCLT is maintainable or not. Copy of the Board Meeting Resolution relied on by the appellants in the present two appeals has been filed at CC-Page 102. Counsel for both sides agree that the similar Board Meeting Resolutions are there with regard to the six companies P1 to P6. These Minutes show that Original Respondent No. 3 presided over these meetings as Chairperson and Respondent No. 2 was there as Director. The Item No. 4 in this document had agenda to comply with the High Court’s order dated 7th June, 2016. The document claims that it was resolved as under :-

“RESOLVED THAT on the face of Share Certificate No. E-9 only the following names be reflected and all alterations on the face of the share certificate be removed.

- 1) *Dr. Neelkanth A. Kalyani*
- 2) *Mrs. Sulochana N Kalyani*
- 3) *Mr. Shrikrishna N. Inamdar*
- 4) *Mr. Dilip G. Karnik.”*

9. It appears that then agenda Item No. 5 was taken up with the following title and the initial few paragraphs are recorded as under :-

“5. TO CONSIDER AND NOTE THE EFFECT OF INTIMATION RECEIVED FROM THE TRUSTEES OF N.S. TRUST ALONG WITH FORMS UNDER SECTION 187 (C) OF THE COMPANIES ACT, 1956, AND FORMS UNDER SECTION 89 OF THE COMPANIES ACT, 2013, POINTING OUT CHANGES IN TRUSTEES AND BENEFICIAL OWNERS :

Dr. Neelkanth A. Kalyani, Mrs. Sulochana N. Kalyani, Mr. Shrikrishna N. Inamdar and Mr. Dilip G. Karnik filed declarations in the years 1999 and 2000 with the Company in Form No. 1 prescribed under the Companies (Declaration of Beneficial Interest in Shares) Rules, 1975, in pursuance of Section 187 (C) of the Companies Act, 1956, declaring that Dr. Neelkanth A. Kalyani and Mrs. Sulochana N. Kalyani, beneficiaries of N.S. Trust, held beneficial interest in 6833 shares bearing Nos. 1 to 3 and 5 to 6834 (all inclusive). The same persons had also filed Form 11 with the Company in the years 1999 and 2000. The Company had filed with the Registrar of Companies the Return in Form 111 in the years 1999 and 2000 in relation to the above declaration.

N.S. Trust had informed the Company that (1) Mrs. Sulochana N Kalyani resigned as Trustee of the N.S. Trust by letter dated 6th July, 2007; (ii) Mr. Dilip G Karnik resigned as Trustee of N.S. Trust by letter dated 22nd June, 2006; (iii) Their resignations were accepted by N.S. Trust in a Meeting held on

12th July, 2007; (iv) Mrs. Sulochana N Kalyani relinquished her beneficial interest in the N.S. Trust on 7th July, 2007; and (v) Dr. Neelkanth A Kalyani had expressed his desire to transfer income/corpus of N.S. Trust to himself as beneficiary of the Trust.

Based on the information and documents provided by the Trustees of N.S. Trust. The Company had altered the names of members as appearing on the face of the share certificate by striking out name of Mrs. Sulochana N. Kalyani and Mr. Dilip G Karnik. The striking out without following procedure has been held to be illegal. The same is directed to be rectified and a resolution has been passed for such rectification.

Mr. Gaurishankar Kalyani and Mrs. Rohini Kalyani were appointed as Trustees of N.S. Trust (with effect from 10th July, 2007) as noted in the minutes of meeting of the Board of Trustees dated 12th July, 2007. Dr. Neelkanth A Kalyani expired on 24th August, 2013. The new Trustees of N.S. Trust, Mr. Gaurishankar N. Kalyani and Mrs. Rohini G. Kalyani desire to follow the procedure for transmission of the shares to their names as the shares have vested in them on the relevant date, i.e. date of their appointment, by operation of law on account of their being Trustees or being appointed as Trustees and have submitted Form I under provisions of the Companies (Declaration of Beneficial Interest in Shares) Rules, 1975, for representing their names as members of the Company.

The Companies Act, 2013, has now come into force. The aforesaid persons have also filed Form MGT - 4 under the Companies (Management and Administration) Rules, 2014, along with the relevant documents.”

10. The Minutes then claimed that oral opinion of counsel has been taken that the shares automatically vest in the Trustees by operation of law and as such the Company is bound in law to register the transmission in their favour and that such registering the transmission after complying with the order of the High Court will not amount to contempt of court. The minutes then record resolution, the relevant part of which reads as under:-

“After discussion the following resolution is passed :

“RESOLVED THAT the resignation of Mr. D.G. Karnik and Mrs. Sulochana Kalyani and the appointment of Mr. Gaurishankar N. Kalyani and Mrs. Rohini G. Kalyani, as Trustees and the requisite forms and legal opinion be and are hereby noted. Given the demise of late Dr. Neelkanth A. Kalyani on 24th August, 2013, the shares bearing nos. 1 to 3 and 5 to 6834 are transmitted to (i) Mr. Shrikrishna N. Inamdar (ii) Mr. Gaurishankar N. Kalyani (iii) Mrs. Rohini G. Kalyani.”

11. Thus P7 after succeeding in the earlier round of litigation was allowed to enter from the ‘front door’ which itself was converted into ‘exit door’ by R2 and R3 the moment P7 entered.

12. R2 and R3 in C.A. No. 86 of 2017 (Maintainability Application) (Copy Annexure-3 Page 452 in Volume –III) pleaded (at Pages 465-467) as under:-

“(vii) In other words, the Hon’ble Bombay High Court held that the striking out of the names of SNK and DGK and their replacement by RGK and GNK as holders on the share certificates of the 8 Investment Companies (with the exception of Respondent No. 10 herein where the alteration was not challenged) was illegal on account of the proper procedure not

having been followed and the said alterations were directed to be rectified. A copy of the Order dated June 7, 2016, passed by the Hon'ble Bombay High Court is annexed as Annexure A -5 to the present Petition. A special leave petition filed against the Order dated June 7, 2016, passed by the Hon'ble Bombay High Court before the Hon'ble Supreme Court came to be dismissed on August 8, 2016.

(viii) Thereafter, meetings of their respective Boards of Directors of each of the 8 Investment Companies were held on August 26, 2016, at which the following events transpired:

- (1) The respective Boards of Directors of the 8 Investment Companies passed resolutions and reinstated the names of NAK, SNK, SNI and DGK on the respective share certificates and the respective Registers of Members. Thus, each of the 8 Investment Companies complied with the said Order passed by the Hon'ble Bombay High Court;*
- (2) The respective Boards of Directors thereafter noted the sequence of events which had taken place during the lifetime of NAK in relation to shares of each of the 8 Investment Companies and thereafter noted that the new Trustees of N.S. Trust, i.e. GNK and RGK, desired to follow the procedure for transmission of the shares to their names as the shares have vested in them on the relevant date, i.e. date of their appointment, by operation of law on account of their being Trustees or being appointed as Trustees. Further, it was also noted that GNK and RGK have submitted Form I under provisions of the Companies (Declaration of Beneficial Interest in Shares) Rules, 1975, for representing their names as members of each of the 8 Investment Companies and that since the Companies Act, 2013,*

has come into force, the Trustees of N.S. Trust have also filed Form MGT-4 under the Companies (Management and Administration) Rules, 2014, along with the relevant documents.

- (3) *Thereafter, the respective Boards of Directors of the 8 Investment Companies also noted that the Trustees of N.S. Trust have informed the 8 Investment Companies respectively that they have taken an oral legal opinion that upon appointment of new trustees, the shares automatically vest in the trustees by operation of law and as such each of the 9 Investment Companies are bound in law to register the transmission in their favour.”*

Thus, R2 and R3 justified their action with regard to the Minutes dated 26th August, 2016. The learned counsel for the Appellants has also argued on above lines to justify said Board Resolution dated 26th August, 2016. He is then relying on Section 75 of the Indian Trusts Act, 1882 which reads as under :-

“75. Vesting of trust property in new trustees.—

Whenever any new trustee is appointed under section 73 or section 74, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustee.—*Every new trustee so appointed, and every trustee appointed by a Court either before or after*

the passing of this Act shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.”

13. On this basis, the learned counsel for the appellants has submitted that they complied with the judicial orders but then gave effect to the law as appearing from such provision and transmission was ratified. It has been submitted for the appellants that in view of Board Meeting dated 26th August, 2016, P7 was now no shareholder in P1 to P6 Companies and thus even if P1 to P6 Companies are Investment Companies of Respondent No. 1, P7 has got no rights. She is not a shareholder in Respondent No. 1 Company. It has been argued that after filing the present Company Petition, P7 has filed Company Petitions Nos. 63 to 68 of 2017, where she is seeking insertion of her name in P1 to P6 companies. Thus, according to the counsel for appellants, whether or not her name should be inserted as shareholder in P1 to P6 is a subject-matter of Company Petitions Nos. 63 to 68 of 2017 and till this is decided, present Company Petition No. 21 of 2016 filed by P7 cannot be maintained by her as she is not a Member of Respondent No.1 and she nowhere fits in the requirements of maintaining petition under Section 241 read with Section 244 of the Act.

14. Learned counsel for the appellants referred to Section 56 of the Act which deals with transfer and transmission of securities. It is submitted that under sub-Section (1) of Section 56 for transfer and transmission of

securities, proper instrument of transfer in such form as is prescribed is necessary. Sub-Section (2) reads as under :-

“56. Transfer and transmission of securities.—

xxx

xxx

xxx

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.”

15. Thus, it has been submitted that in view of the information received from the Trust, Original Respondents Nos. 2 and 3 were justified in the Board Meeting Resolution which has been passed relating to P1 to P6 and the Companies are entitled to make entries in the Register of Members and the shares on the basis of operation of law. It has been further argued that in the present Company Petition No. 21 of 2016, the reliefs which are sought are not against P1 to P6 and the reliefs sought are against Respondent No. 1 Company and the disputes being raised on the basis of earlier litigation are not relevant in the present Company Petition. Company Petition Nos.63 to 68 of 2017 show that P7 is not a shareholder in those companies and she wants to be added as a shareholder. It is further argued that the Company Petition No. 21 of 2016 has been signed by P7 against columns for persons authorised by P1 to P6 Companies to sign and P7 has also put her signature for herself as P7. It is argued that she has no authority from P1 to P6 to file the petition i.e. Company Petition

No. 21 of 2016. As per NCLT Rules, she requires authorisation to file the same on behalf of P1 to P6 which authorisation she does not have.

16. Learned counsel for the appellants submitted that in Company Petition No. 21 of 2016 disputes are being raised that the shares of P1 to P6 in the Respondent No. 1 company have been diluted but P1 to P6 have themselves not filed the petition and the present petition as filed by P7 thus is not maintainable. It is argued that on the date on which the present Company Petition No. 21 of 2016 was filed, P7 had no rights in P1 to P6 and thus could not maintain petition against Respondent No. 1 company. Relying on the case of **Rajahundry Electric Supply Corporation Ltd. Vs. A. Nageshwara Rao and others reported in (1955) 2 SCR 1066**, counsel submitted that maintainability of the petition has to be decided on the basis of facts existing on the date of presentation of petition.

17. Learned counsel for the appellants further submitted relying on the judgement in the matter of **Purshotam Dass Goel Vs. Hon'ble Mr. Justice P.S. Dhillon and others. reported in (1978) 2 Supreme Court Cases 370**, that merely because contempt has been initiated, it does not make difference and it does not amount to saying that the parties have been held guilty of contempt. Reliance is placed also on **"Dr. Ved Prakash Vs. Moti Lal Nehru Medical College" reported in 1983 SCC OnLine All 639.** Counsel submitted that the appellants are confident that when the contempt petitions are taken up, they will be able to convince the High

Court that there is no contempt. Referring to judgment in the matter of **Real Value Appliances Ltd. Vs. Canara Bank and Others etc.** reported in (1998) 5 S.C.C. 554, it has been submitted that conduct of a party is immaterial and when statutory requirements are required to be followed, equity does not apply. If P7 is not shareholder of R1 she cannot maintain Petition it is stated. The submission is that when Section 244 of new Act requires that the petition can be maintained subject to compliance of the provisions of that section, unless it is shown that P7 is member of R1, the petition cannot be maintained and should have been dismissed.

18. Counsel for the appellants in Company Appeal (AT) No. 389 of 2017 adopted the arguments of the learned counsel for the appellants in Company Appeal (AT) No. 391 of 2017, claiming that P7 has no authority or Board's Resolution in her favour to file petition on their behalf.

19. Against this, learned counsel for the contesting Respondent of Appeals –Original P7 - Sulochana N. Kalyani referred to the Company Petition No. 21 of 2016 as has been filed before the learned NCLT. The counsel pointed out the reliefs sought and prayers made in the Company Petition. He also referred to the pleadings. Reference was made to Paragraph 9 of the company petition which reads as under :-

“9. Petitioner No.7 is the wife of Late Dr. Neelkanth Annapa Kalyani (“NAK”), who was a leading industrialist and well reputed businessman in India. NAK amongst others, promoted and incorporated KCPL in the year 1973 and expired on or about 24 August 2013. Petitioner No. 7

alongwith Respondent Nos. 8 and 9 are joint shareholders of each of the six Investment Companies, holding approximately 99% of the total equity shareholding of in each of Petitioners Nos. 1 to 6. In turn Petitioner Nos. 1 to 6 presently hold 42.5% shareholding of the Respondent No. 1 company i.e. KCPL and upon the setting aside of the Impugned Issue/ Impugned Allotment would hold 85% shareholding of KCPL. As set out in detail hereinbelow, the Petitioners are aggrieved by the illegal and mala fide actions of Respondent Nos. 2, 3, 4 and 5 whereby they have systematically usurped control of Petitioner Nos. 1 to 6 and thereafter Respondent Nos. 1 and 11, by abusing the position of illegal and wrongful dominance over Petitioner Nos. 1 to 6 and Respondent Nos. 1 and 11. In fact the illegalities with which Respondent Nos. 2 to 5 have acted are so manifest that in face of the order of the Hon'ble Bombay High Court and the Hon'ble Supreme Court of India, the Respondent Nos. 2 to 5 are still preventing the transfer of 99% shareholding in favour of Petitioner No 7 and Respondent Nos. 8 and 9. Respondent Nos. 2 to 5 have finally conducted the Impugned Allotment in favour of Respondent nos. 2, 6 and 7 (wherein Respondent Nos. 6 and 7 are entities controlled by Respondent nos. 2 to 5). Petitioner No. 7 is filing the present Petition in her capacity as a member and as first joint holder of shares carrying majority equity shareholding (99%) in each of Petitioner Nos. 1 to 6. Petitioner No. 7 has, in fact, addressed a communication to Petitioner Nos. 1 and 6 to initiate appropriate proceedings to set aside the Impugned Issue and Impugned Allotment. However, as expected, since the boards of the Petitioner Nos. 1 to 6 are even present being illegally controlled by Respondents Nos. 2 and 3 (the very wrongdoers who are in control of KCPL and responsible for the Impugned Issue and Impugned Allotment), no such

action has been initiated against KCPL by Petitioner Nos. 1 to 6. Hence, Petitioner No. 7 is constrained to initiate the present Petition for and on behalf of and in the names of Petitioner Nos. 1 to 6, being the first joint holder of 99% shareholding in Petitioner Nos. 1 to 6. It is submitted that since the directors of the Investment Companies (viz. Respondent Nos. 2 and 3) are themselves the wrongdoers against the respective companies and have acted mala fide, illegal and their personal interest is in conflict with their duty in such a way that they will not take steps to seek redress for the wrong done to the Investment Companies, the shareholders are entitled to take steps to redress the wrong. Therefore, Petitioner No. 7 is entitled to file the present Petition in her own name and in the names of and on behalf of the six Investment Companies. Strictly in the alternative, and without prejudice, the present petition may be treated as a proceeding based on the doctrine of derivative action.....”

20. Referring to these pleadings, it has been argued that P7 sufficiently laid down the basis of filing the petition and her capacity to sign on behalf of P1 to P6 and her own-self. It is argued that the wrongdoers, R2 and R3, are themselves in control of P1 to P6 and R1 as the Board Resolution dated 26th August, 2016 signed by just R2 and R3 shows and thus P7 who is having the judicial orders in her favour must be held to be competent to file the petition as has been done.

21. It has been further submitted by the learned counsel for the Original P7 that Company Application No.86/2017 (Volume-III Page 453) questioning the maintainability has been filed by Respondents Nos. 2 and

3 is verified by Respondent No. 3 - the daughter-in-law of P7. According to the counsel, in the maintainability application, respondents picked up stray sentences to pick holes but if the concerned Para 9 is read as a whole, it becomes clear that P7 is entitled to maintain the petition as has been brought. It has been submitted that the sole basis of challenge from the side of the respondents to the capacity of P7 is based on the Board Resolution alleged to be dated 26th August, 2016 which according to the counsel is an effort to over reach the adverse judgements already passed against the contesting Respondents, and is now subject of contempt.

22. According to the counsel for Original P7, the earlier litigation shows as to how P7 had brought proceedings for rectification of the Register of Members and shares relating to P1 to P6 and other two companies. Having succeeded in that rights of P7 cannot be suspended by artificial means of such Board Resolution.

The facts as laid before the CLB in Company Petition No. 19/2011 to 26/2011 (CC-Page 1) need to be referred to. In those petitions, filed by P7, Respondent No. 2 was Dr. Kalyani and present R2 was arrayed as Respondent No. 3 and present R3 was arrayed as R4 and R5 was arrayed as Respondent No. 5. In the Judgement CLB in Paragraphs 4.1 to 4.5 referred to facts as were put up for P7 before the CLB, Mumbai. The same are as follows :-

“4.1 The Petitioner is one of the Trustees of a private family trust, namely, N.S. Trust, Which has been settled under an

Indenture of Trust dated 10/4/1999 (hereinafter referred to as "the Indenture" in short). 'The Respondent No. 1 is a private limited company incorporated for the purposes of holding and/or facilitating investments of the Late Dr. Neelkanth Kalyani and Mrs. Sulochana Kalyani, the Respondent No.2 (since deceased) and the Petitioner, respectively, therein (hereinafter referred to as "the Kalyani Family"). The Respondent No.2 (since deceased) was the husband of the Petitioner. The Respondent No. 3 was the son of the Petitioner and Respondent No. 2. The Respondent No.4 is the wife of the Respondent No.3. The Respondent No.5 is the son of the Respondent Nos. 3 and 4.

4.2 That the Petitioner was appointed as one of the trustees of the trust, being "N.S. Trust", which was created for the purposes of holding shares of various investment companies of Late Respondent No.2. This was done to secure the interest, firstly, of Late Respondent No.2 and the Petitioner, and secondly, upon demise of both of them, to secure the Respondent Nos. 3 and 5.

4.3 That the Respondent No.1 is an investment company incorporated for the purposes of holding and and/or facilitating investments of the Kalyani Family, who owns diverse business interests, which are held by incorporated entities. The Kalyani Family exercises ultimate ownership and/or control over these business interests through a network of investment companies. The flagship companies of the Kalyani Family are substantially owned and and/or controlled through 9 investment companies, one being Takle Investment Company (the Respondent No. 1 herein) and 8 other companies.

4.4 The Share Certificates of the Company were issued in the names of the Trustees/Original Members, namely, the Petitioner, the Respondent No.2, Mr. Shrikrishna Narhari

Inamdar (SNI) and Mr. Dilip Ganesh Karnik (DGK) on behalf of the Trust.

4.5 That the Respondent No.4 the present Director of the Respondent No. 1 Company, and, therefore, control and/or dominates the affairs of it. In 2005 she was appointed as Managing Director of Kalyani Forge Ltd. Around the same time, she also started to look after the Kalyani Family companies and business affairs. She had illegally and/or wrongfully gained the confidence of the Respondent Nos.2 and 3, who are both unfit, and under her illegal and/or wrongful dominance and/or undue influence, and thereafter, has placed herself in a position where she exercises undue influence and/or Illegal control over them.”

23. Learned counsel for Original P7 also referred to the pleadings for the P1 to P6 and contesting Respondents as were put up as reply in the earlier round of litigation, which CLB recorded in its judgement dated 18th May, 2015 and which reads as follows :-

“5.1 In reply filed on behalf of the Company, it is stated that the Company has acted in accordance with law pursuant to the documents executed by the Petitioner in relation to the transfer of impugned shares and hence the Petition deserves to be dismissed.

5.2 In the reply filed by the Contesting Respondents, they have stated that the Petitioner is no longer a trustee or a beneficiary of the N.S. Trust ('the said trust'). It is stated that by a letter dated 6/7/2007, addressed to the Board of Trustees of the N.S. Trust, the Petitioner had tendered her resignation as a trustee from the said date and requested the Board of Trustees to accept her resignation and relieve her of

her duties as trustee.

5.3 *It has been further stated that by a Declaration of Relinquishment executed on 7/7/2007, the Petitioner had stated that she has sufficient income of her own; she is of an advanced age and after discussions and deliberations with her husband i.e. Respondent No.2 (since deceased) herein had decided to relinquish all benefits in the income and corpus of the said N.S. Trust. By the said Deed of Relinquishment, the Petitioner relinquished all her Rights as a beneficiary under the N.S. Trust. The said declaration was irrevocable and permanent.*

5.4 *It is further averred that by a letter, also dated 7/7/2007, addressed to the Respondent No.2 and Mr. S. N. Inamdar (the then Trustees of the said Trust), the Petitioner inter alia stated that 'by a declaration dated 7/7/2007, the Petitioner had relinquished all her rights to all the benefits of the Trust, i.e. both, to the income or the corpus of the Trust. By the said letter, the Petitioner further stated that she had voluntarily and on her own relinquished all the rights and benefits to which she was entitled to. By the said letter, the Petitioner also requested the two addressees to act as Trustees of the Trust without considering her as a beneficiary. A copy of the aforesaid declaration dated 7/7/2007 was also sent to the two addressees under cover of the said letter.*

5.5 *It is further pleaded that by a letter dated 10/7/2007, addressed by the Respondent No. 2 to the Board of Trustees of the N.S. Trust, the Respondent No.2 inter alia stated that he was a Trustee and beneficiary under the Trust Deed dated 10/4/1999. By the said letter, the Respondent No. 2 stated that the Petitioner had also resigned from office of the Trustee without nominating anybody and therefore, he co-opted his*

son, the Respondent No. 3 herein, and his daughter-in-law, Respondent No. 4 herein. By the said letter, the Respondent No.2 also stated that this appointment would come into effect with immediate effect. By the said letter, the Respondent No. 2 also stated that in terms of clause AC (a) of the said Trust Deed, he nominated Respondent No. 4, his daughter-in-law to be Chairperson of the Board of Trustees.

5.6 It is further pleaded the Mr. D. G. Karnik, who was one of the Trustees of the Trust, resigned as a Trustee on 22/6/2006. It is further stated that a meeting of the Board of Trustees of the N.S. Trust was held on 12/7/2007, when the Respondent Nos. 2 to 4 were present. At the said meeting the resignation of the Petitioner and Mr. Dilip Karnik was placed before the Trustees and both the resignations were accepted. The minutes of the meeting also record that Mr. Manohar Basappa Hanarki, the Settler of the said Trust, had agreed to the co-option of himself and the Respondent No.4 as Trustees of the said Trust. At the said meeting, the Respondent' No.2 also expressed his desire to distribute/transfer the income/corpus of the Trust. The proceedings of the said meeting was recorded in the Minutes of meeting dated 12/7/2007.”

24. In the arguments, reference is made by the counsel for P7 to the judgement of Hon'ble High Court dated 7th June, 2016 in Company Appeal (L) No. 41/2015 and others (CC-Page 52), where the High Court referred to the case of P7 and her grievances, *inter alia* as follows, put up in the earlier round of litigation :-

“(v) In or about February / March 2011, the matters reached the stage of full-blown unrest, whereupon a search was caused to be taken in the records of various statutory

authorities, including the Registrar of Companies, in respect of Kalyani family companies. Upon these inquiries, Sulochana claims to have gained knowledge of the following :

- (a) Annual returns of Respondent No.1 for the year ending 31 March 2008 revealed a purported transfer of shares owned by the trustees (as transferors) in favour of Dr. Kalyani (as transferee);
- (b) Annual returns of Respondent No.1 for the year ending 31 March 2009 revealed a purported transfer of the shares by Dr. Kalyani to Gaurishankar.
- (c) Sulochana was purportedly shown as having ceased to be a Director of Respondent No.1 with effect from 7 January 2010. The purported resignation letter in this behalf was signed by Gaurishankar as a Power of Attorney holder though no such power was contained in the Power of Attorney and Gaurishankar had no authority to do so, besides by reason of the cancellation of the Power of Attorney itself on 19 January 2010 as recounted above. Nearly eight months after the date of the purported resignation, Form 32 was filed with the Registrar of Companies on 4 January 2010 in respect of Sulochana's resignation.
- (vi) After some correspondence between the parties, the present company petition was filed before the CLB (being Company Petition No.19 of 2011), wherein Sulochana prayed for cancellation of the transfer of the impugned shares and rectification of the relevant documents. Her case was based on the following grievances :
 - (a) By virtue of Section 153 of the Act, Respondent No.1 company was not entitled to take cognizance of the trust and was, therefore, obliged in law to only look at

and treat Sulochana, Dr. Kalyani and DGK and SNI as its members and joint shareholders of the impugned shares;

- (b) There was no instrument of transfer of shares duly executed by and on behalf of these joint shareholders and accordingly, the registration of such transfer was not in accordance with the provisions of Section 108 of the Act, which are mandatory in nature;*
- (c) In the absence of a valid instrument of transfer, the shares continued to vest in Sulochana and other trustees and their names should not have been removed from the register of members in respect of the impugned shares.”*

25. It has been argued that the question of locus of P7 was questioned in the earlier round of litigation also and the High Court had in the above judgement observed :-

“6. The questions of locus of the Petitioner as one of the four joint holders to present a rectification petition and non-joinder of other joint- holders/co-trustees can be taken up together. The argument of the Respondents is that the Petitioner holds the subject shares as a joint holder and trustee of N.S. Trust along with other joint holders and co-trustees and cannot maintain in her own right a rectification petition and in any event, her co-trustees who jointly hold the shares with her ought to have been joined as necessary parties to the petition. The Respondents rely on Section 48 of the Indian Trusts Act in this behalf, which provides that when

there are more trustees than one, all must join in the execution of the trust except where the instrument of trust otherwise provides. The argument is devoid of substance. Section 153 of the Companies Act provides that no notice of any trust, express, implied or constructive, shall be entered on the register of members. A company cannot take cognizance of any trust and is obliged in law to treat the trustees who may be holding shares in it as merely joint holders. The four trustees of N.S. Trust have, thus, been mere joint holders of the impugned shares qua the company. If it is the case of the Petitioner, as such joint holder, that without compliance with the provisions of Section 108, and particularly, her having executed any transfer deed, the shares are transferred, she is but an aggrieved person and can certainly apply for rectification in her individual capacity. When she does so apply, she is not executing the trust within the meaning of Section 48 of the Trusts Act, but seeking redressal as a 'person aggrieved' under Section 111(4) of the Companies Act. In that case, there is no need to join the other joint holders, even if they be co-trustees, as necessary parties. These joint holders cannot be termed as parties who ought to have been joined. The Petitioner, accordingly, had the locus and, as rightly held by the CLB, need not have joined the other joint holders/co-trustees as parties to the petition.”

26. Thus it is argued for P7 that in earlier round itself effect of Section 153 of the Companies Act, 1956 was considered and no such transmission by operation of law was claimed. Section 153 of old Act reads as under :-

“153. Trusts not to be entered on register.— *No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture-holders.*”

Learned counsel has then criticized the minutes of the meeting dated 26th August, 2016 (CC-Pages 102) to submit that after the litigation was over in the Supreme Court, P7 sent letters and even notice through advocates calling upon P1 to P6 which were in control of Respondent Nos. 2 and 3 to comply with the judicial directions and orders but the contesting Respondents of the Petition did not respond or disclose any such resolution dated 26th August, 2016. It has been argued that Respondent No. 2 sent brief letter dated 16th September, 2016 (CC-Page 98) to the counsel of P7 in reply to the notice dated 12th September, 2016 which had been sent by counsel for P7, just to deny that the respondents were controlling the process of rectification of Register of Members or that they have committed willful disobedience of the orders. It has been argued by the learned counsel for P7 that the Board Meeting dated 26th August, 2016 claims that Respondent No. 2 was also present in the meeting in which Chairperson was Respondent No. 3. The Minutes are purported to have been signed on 13th September, 2016. If this was so, there was no reason why Respondent No. 2 while signing letter dated 16th September, 2016 (CC

Page 98) made no reference to any such Board Meeting of 26th August, 2016. The argument made on behalf of P7 is that this is a fabricated Board Resolution which has been subsequently created dishonestly antedating it to the date of filing Company Petition No. 21 of 2016, which was filed on 29th August, 2016. Right to proceed with the Petition cannot be taken away relying on such doubtful Resolution dated 26th August, 2016.

27. Learned counsel for P7 has submitted that it was only after the Company Petition No. 21/2016 was filed that Respondents Nos. 2 and 3 came up with letter dated 3rd October, 2016 (CC-Page 99) and filed maintainability application and then P7 came to know of any such resolution, being put up as a defence.

28. Counsel for P7 submitted that the documents on the basis of which the Board Resolution is said to have been passed were already under consideration before the CLB and the High Court. Reference has been made to Paras 17 and 18 of the judgment of the High Court in Company Appeal No. 41/2015 and others (CC-Pages 72-73) dated 7th June, 2016, which is as follows:-

“17. That takes us to the question of the time of accrual of a cause of action for claiming rectification of register. The cause of action, in a case of fraud or misrepresentation in the matter of transfer of shares, would naturally arise when the fraud or misrepresentation is noticed by the aggrieved party. Even here, the CLB has clearly erred in the present matter. The impugned order proceeds on the footing that the cause of action has arisen in the present case on the date of execution

of the purported documents of transfer by the Petitioner. The Petitioner's case before the CLB was that she had not signed the alleged documents of transfer and in any event, her signatures were obtained by misrepresentation and without knowledge on her part of the real nature of the transaction. The Petitioner's case was that the execution of documents, which was said to be a fraudulent act, came to light when the Petitioner took inspection of records in 2011. That is when the fraud or misrepresentation was noticed and that is when the cause of action for rectification arose. The CLB considered a so-called concession by learned Counsel for the Petitioner at the hearing in that the signatures themselves were said to be not seriously disputed, or "impliedly accepted", as the CLB puts it. The CLB says that Counsel "confined his arguments by saying that the Petitioner was having no knowledge of having signed these documents". Though, it is highly debatable whether the record of the case bears out such concession, such concession certainly does not lend itself to the further conclusion drawn by the CLB on the basis of such concession that the Petitioner had knowledge of having signed the documents. It is one thing to not to dispute the signatures and quite another to say that the signatory actually knew that he was signing a document of transfer of shares, especially in the face of a specific case in the alternative, which was pressed at the Bar, that the Petitioner signed the documents inadvertently in routine course or more seriously, the signatures were obtained by misrepresentation and without letting the Petitioner know the real nature of the transaction. The CLB has not come to this conclusion on the basis of any analysis of evidence, but simply deduced it from the so-called concession of Counsel. That is clearly impermissible and has led to miscarriage of justice.

18. We may now take up the case of suppression of material documents and facts, which is the other ground on which the petition was dismissed by the CLB. The CLB found that the various documents executed by the Petitioner, which purported to transfer the subject shares and which were used by the Company to effect the transfer, were deliberately not disclosed by the Petitioner; and that such non-disclosure amounted to suppression of material documents and facts, calling for dismissal of the petition. The documents were : (i) Letter dated 6.7. 2007 addressed by the Petitioner to the Board of Trustees of N.S. Trust tendering her resignation as a trustee, (ii) Declaration of relinquishment executed by the Petitioner on 7.7.2007 in respect of all benefits in the income and corpus of the trust, (iii) Letter dated 7.7.2007 addressed by the Petitioner to Dr. Kalyani and SNI inter alia requesting the latter to act as trustees and without considering her as a beneficiary, (iv) Letter dated 10.7.2007 addressed by Dr. Kalyani inter alia co-opting Gaurishankar and Rohini on the Board of Trustees and nominating Rohini to be the chairperson of the Board, (v) Resignation dated 22.6.2007 by DGK resigning from the trust, (vi) Minutes of Board of Trustees dated 12.7.2007 accepting the resignation of the Petitioner and DGK, and (vii) Letter dated 20.7.2007 addressed by SNI to the Board of Trustees conveying his consent to distribute/transfer the income/corpus to the sole beneficiary of the trust, viz. Dr. Kalyani. Apart from these documents, it is said that the share certificate which bears the signature of the Petitioner shows her knowledge of (i) transfer of shares to Dr. Kalyani as far back as on 17.9.2007 and (ii) further transfer from Dr. Kalyani to Gaurishankar by a registered gift deed on 22.11.2007. It is submitted that suppression of these facts and documents justified the dismissal of the petition.”

29. It has been argued for P7 that R2 and R3 were at that time controlling P1 to P6 and had put up such defence and claims based on such documents, which were not accepted and rectification was allowed. The High Court had allowed rectification of the Register of Members and shares of P1 to P6 when it allowed the prayer (as was made before the CLB in C.P. No. 19 of 2011 to 26 of 2011) and the removal of the names of Respondents Nos. 2 and 3 as arrayed in those petitions from the Register of Members and Share Certificates and restoration of the name of present P7, and present Respondents Nos. 8 and 9. It is argued that this would relegate the position of parties to 2007 when wrongly these names and name of now deceased Dr. Kalyani were removed. All subsequent rights assumed and acts committed of Respondents Nos. 2 and 3 vis-à-vis P1 to P6 would stand nullified and according to the learned counsel once names of P7 and her joint holders were restored in the share certificates, instantly Respondents Nos. 2 and 3 would have had no authority to pass further resolution as recorded in Agenda 5 of the Minutes dated 26th August, 2016. Even otherwise, it has been submitted that Respondents Nos. 2 and 3 who have taken control over P1 to P6 and who relied on the documents mentioned above to claim their authority did not put up any such plea earlier before the CLB or the High Court that by operation of law, the Company could directly delete the names of P7 and other co-shareholders. Learned counsel submitted that when in earlier litigation it has been clearly held that provisions of Section 108 of the old Act had not been followed and although even at that time documents regarding trust were

tried to be relied upon to claim transfer of shares and still it was held that compliance of Section 108 of old Act was necessary and at that time no such stand was taken that following procedure of Section 108 was not necessary due to transmission by alleged operation of law, no such plea could now be entertained. The submission of the counsel is that the contesting Respondents Nos. 2 and 3 are abusing process of law as they are in control of P1 to P6 and Respondent No. 1. Relying on the same documents which were taken up as defence in the earlier round of litigation, now a new plea has been taken which cannot be entertained.

30. Learned counsel for P7 relied on the case of **Stadrned Private Ltd. and others Vs. Kshetra Mohan Saha and others** reported in 1968 **SCC OnLine Cal 16**. In Para 4, the facts involved in that matter were as under :-

“4. On 28th April, 1959 Sridhar Sikdar presented a petition to this Court for rectification of share register as his name was removed from the register, On 10th September 1959 there was an order relegating the parties to a suit. In the year 1959, suit No. 388 of 1959 was filed in the City Civil Court, and on 29th March, 1963 there was a decree and Sridhar was declared owner of the ten shares and there was a decree for rectification On 23rd May, 1966 there was a board-meeting of the company when further shares were issued. On 26th May, 1966 the petition forming the subject-matter of the appeal was filed under Sections 397 and 398 of the Companies Act. On 18th June, 1966 the register of the Company was rectified and the name of Sridhar Sikdar was inserted. I have referred to these facts because of the controversy between the parties as to

whether Sridhar Sikdar is a person who has a right to apply under Section 397, of the Companies Act. The controversy, in short, is that it is alleged by the company that only a member has the right to apply and Sridhar Sikdar was not a member in the date of the petition whereas the contention on behalf of the respondent Sridhar Sikdar is that he has a right to apply under Section 397 because he has been declared to be the owner of the shares and there was an order for rectification of the shares and, therefore, he was a member.”

31. Learned counsel submitted that the judgement in the matter of *Rajahmundry (supra)* relied on by the appellants was also considered by the High Court in the matter of ‘*Stadrned*’ and the High Court held in Para 27 of the judgement as under :-

“27. Counsel for the respondent rightly contended that the company in the present case could not take advantage of its own wrong by not putting the name of Sridhar Sikdar in the register of members. The decree was there. It may be that the decree was not enforced by the decree-holder Sridhar Sikdar. The legal effect of rectification is that he remained the member and the entry in the register by striking out his name amounted to no entry at all. The result is that Sridhar Sikdar satisfies the provisions contained in Section 399(1)(a) of the Companies Act and was entitled to apply under Sections 397 and 398 of the Companies Act.”

Thus the learned counsel submitted that when the litigant holds a decree in his favour of rectification and orders like the present case are in favour, it is immaterial whether the name is entered or not in the Register of Members or Shares or what other decision the Company takes, their right to maintain the petition exists.

32. Counsel for P7 further relied on **Pulbrook Vs. Richmond Consolidated Mining Company reported in 1878 Chancery Division Vol. IX 610**, in which, at Page 615, observations were that when a name has been struck out of the register and the register is rectified, the effect would be exactly the same as if it had never been put in and this is the meaning of word 'rectified'. On the basis of such observation, in the matter of Pulbrook, the counsel submitted that once the Register is rectified to insert the names of P7 and Respondents Nos. 8 and 9, the effect would be that they are to be treated as if they were never deleted and all further acts committed or rights assumed by Respondents Nos. 2 and 3 must be said to be illegal.

33. As regards the plea taken by the appellants that they have given effect to provisions of Section 75 of Indian Trust Act, 1882, learned counsel for P7 submitted that firstly no such legal effect could be claimed and compliance of Section 108 of the Act would still be necessary and no such plea could be taken in view of the observations made by Hon'ble Supreme Court in the matter of **State of U.P. Vs. Nawab Hussain reported in (1977) 2 SCC 806**. Referring to the observations at Page 812 of the said

judgement, the argument is that if a plea could have been taken by the party in a proceeding between him and the opponents but was not taken he would not be permitted to take that plea against the same party in a subsequent proceeding.

34. Learned counsel for the P7 further relied on the judgement in the matter of **Dr. Satya Charan Law and others Vs. Rameshwar Prasad Bajoria and others** reported in (1949) Federal Court Reports 673, where the shareholders filed the suit against the Directors of the Company and the flagship company was joined as Co-plaintiff. The defence put in written statements and question arose whether the company had been properly impleaded as plaintiff. While the Single Judge held the issue in negative, the Division Bench of High Court held the same in affirmative. When the matter was carried to the Federal Court, discussing the law it was held that (at Page 687 of the Report) :-

“The correct position seems to us to be that ordinarily the directors of a company are the only persons who can conduct litigation in the name of the company, but when they are themselves the wrongdoers against the company and have acted mala fide or beyond their powers, and their personal interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the shareholders must in such a case be entitled to take steps to redress the wrong. There is no provision in the articles of association to meet the contingency, and therefore the rule which has been laid down in a long line of cases that in such circumstances the majority of the shareholders can sue in the name of the company must

apply. In MacDougall v. Gardiner and Pender v. Lushington, specific reference was made to the fact that the directors, being the custodians of the seal of the company, were the persons who should normally sue in the name of the company, but nevertheless it was held that the majority of the shareholders were entitled to sue in the name of the company when relief was sought against the directors themselves.”

35. The learned counsel for P7 referring to the above finding of the Federal Court submitted that on the same analysis when P7 is in the position to show malafide acts of Respondents Nos. 2 and 3 in their approach to the P1 to P6 and Respondent No. 1, the present company petition arraying P1 to P6 as petitioners cannot be thrown out as ‘not maintainable’, in the back drop of Judicial Orders in her favour.

36. We have heard counsel for both the sides. The detailed and exhaustive submissions appear to have been made also before the learned NCLT which referred to the submissions and in Paragraph 6.3 of the impugned judgement observed as under :

“6.3 By virtue of the directions of the Hon'ble High Court the Petitioner (P7) at least has a right to contest her claim. Under these circumstances, it shall be unjustifiable and rather unlawful to debar P7 of her lawful right of hearing enshrined under the Statute. She must not be deprived of this basic right. The summum jus on careful reading is that the doctrine, subject to exception, Injuria propria non cadet beneficium facientis if to be applied then also a Petitioner is entitled for hearing on the merits of the case. if this case is foreclosed at

this preliminary stage, then the grievance of the petitioner shall never be addressed pertaining to the alleged wrong transfer of shares. If this interim prayer of the petitioner challenging the said transfer, shall be nothing but double jeopardy to the Petitioner. No observation of this Interlocutory Order shall cause prejudice or be prejudged, in any manner, on the merits of the main Petition. Resultantly it is hereby held that the Petition is “maintainable” and the Application deserves rejection.”

37. We have also heard the parties in detail. We find that the present company petition is at the initial stage. Basis to challenge maintainability is the disputed Board Resolution which has attracted Notice of Contempt. Even ignoring the issue of notice of contempt, in the face of earlier litigation and Judicial Orders discussed above Petition as brought cannot be said to be baseless on count of maintainability. P7 has in the Company Petition given particulars on the basis of which she has filed the Company Petition. Respondents Nos. 2 and 3 questioned her right to maintain the petition on the basis of Board Resolution which is subject-matter of the contempt. We do not wish to discuss aspects which would be subject-matter of consideration in the contempt proceedings. We have deliberately reproduced the submissions made by counsel for both sides in details and extracted portions from the earlier litigation as above as we find that when the case being put up by the Appellants is juxtaposed with the case as is being put up by Original P7, the hollowness of the case of Appellants

becomes writ large. We do find that the learned Judge of the NCLT rightly observed in few words that it would be unjustifiable and rather unlawful to debar P7 of her lawful rights of hearing before the NCLT. We have carefully gone through the case being canvassed by the Appellants, their arguments and rulings relied on vis-à-vis the defence of P7 to show maintainability. R2 and R3 controlling P1 to P6 and R1 earlier defended the litigation with a clutch of documents to claim that shares had been “transferred” to them. Having lost, they have now passed Board Resolution to claim that earlier they had not submitted forms under Section 187-C of the old Act and now the same have been submitted and so the shares are “transmitted” to them by operation of law. Not having taken any such plea earlier, by such juggling of words cause of justice cannot be allowed to be defeated. We find that the submissions made by the learned counsel for P7 has substance and the Company Petition filed by P7 on behalf of the P1 to P6 and herself is maintainable. No doubt, P7 has filed CP 63 to 68 of 2017 also seeking rectification of Register of Members that it should be in line with Judicial Order dated 7th June, 2016 read with order dated 7th July, 2016 passed by the High Court and setting aside of the purported Resolution dated 26th August, 2016 but the present company petition cannot be said to be not maintainable because such further litigation has been forced upon P7. On the basis of the judicial orders already in favour of P7, with regard to rectification of the Register of members and share certificates as regards P1 to P6, P7 is competent to maintain the present Company Petition 21/2016 against Respondents considering her

pleadings in the petition referred above and the documents available on record.

38. We are purposely not making detailed comments as the matter of contempt and further CPs filed- C.P. Nos. 63 to 68/2017 are pending. For present Company Petition we find it sufficient to note that considering the Judicial Orders in her favour, in earlier round of litigation and position of P7 and her co-shareholders restored, P7 has a legal right to maintain the Company Petition for P1 to P6 against R1 and other contesting Respondents, as first joint holder of shares carrying majority equity shareholding of 99% (in view of the Judicial orders) in P1 to P6 who has a grievance that shares of P1 to P6 in R1 have been illegally diluted. Her pleadings referred above make out a case.

39. We do not find any substance in these appeals and it clearly appears to us that the appellants through Original Respondents Nos. 2 and 3 are abusing the process of law and the Appeals deserve to be dismissed with heavy costs to be paid by Respondents Nos. 2 and 3.

40. Company Appeal (AT) No. 391 of 2017, has been filed by Original Respondent No. 2 and 3. Company Appeal (AT) No. 389 of 2017 has been filed by Original Respondent No. 3 signing for Original P1 to P6. The costs need to be saddled on these Respondents accordingly.

41. We pass the following Order :-

(a) Company Appeal (AT) No. 389 of 2017 is dismissed with costs quantified at Rs. 1,00,000/- (Rupees One Lac Only) to be paid by the

Original Respondent No. 3 – Rohini Gaurishankar Kalyani who has signed this appeal on behalf of the Appellants. The costs shall be paid from her personal account to Respondent No.1 (Original P7) arrayed in the appeal.

- (b) Company Appeal (AT) No. 391 of 2017 is dismissed with costs quantified at Rs. 1,00,000/- (Rupees One Lac Only) to be paid by Appellant No. 1 and Rs. 1,00,000/- (Rupees One Lac Only) to be paid by Appellant No. 2 (Original Respondents Nos. 2 and 3) to Respondent No. 1 (Original P7).

The costs shall be paid by these Appellants from their personal accounts.

- (c) Observations made by us in this Judgement are limited to decide issues raised in these Appeals. The pending contempt proceedings or C.P. Nos. 63 to 68/2017 between the parties, would naturally be decided without being influenced by observations made by us.

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

[Balvinder Singh]
Member (Technical)

New Delhi

21st December, 2017.

/ng/nn