

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.274 OF 2017

(Arising out of the order passed by National Company Law Tribunal, Kolkata Bench, Kolkata on 12.07.2017 in C.P. No.49/2016)

IN THE MATTER OF:

	Before NCLT	Before NCLAT
1. Devinder Singh Shant 26, Strand Road, Kolkata 700001	1 st petitioner	1 st appellant
2. Jasjit Pal, 26, Strand Road, Kolkata 700001	2 nd petitioner	2 nd appellant
3. Neelu Singh, 26 Strand Road, Kolkata 700001.	3 rd petitioner	3 rd appellant

Vs

01.Goldstar Enclave Pvt Ltd 26 Strand Road, Kolkata 700001	1 st respondent	1 st respondent
Presently at 8, Old China Bazar Street, 1 st Floor, Room No.101, Kolkata 700001		
02.Deepak Kumar Daga, 11 Clive Row, Kolkata 700001.	2 nd respondent	2 nd respondent
03.Kanak Mall Banthia, 63, Radha Bazar Street, Room No.42, 3 rd Floor, Kolkata 700001	3 rd respondent	3 rd respondent
04.Randhir Kumar MIG E-6, Phase III, Niva Park,	4 th respondent	4 th respondent

Brahmapur,
Kolkata-700096

05.Dipak Kumar Rathi, 47A, Kali Krishna Tagore Street, Kolkata-700079.	5 th respondent	5 th respondent
06.Aztech Conglomerate Pvt Ltd, 7/1B, Grant Lane, 3 rd Floor, Room No.28, Kolkata 700012.	6 th respondent	6 th respondent
07.ACP Financial Consultants Pvt Ltd, 18, N.S.Road, Back Gate, First Floor, Kolkata 700001.	7 th respondent	7 th respondent
08.Champalal Jaichandlal Pvt Ltd, 91, N.S. Road, 2 nd floor, Kolkata-700001.	8 th respondent	8 th respondent
09.Cornation Traders Pvt Ltd, 4, Biplabi Anukul Chandra Street, Kolkata 700027	9 th respondent	9 th respondent
10.Corus Steel Pvt Ltd, 33/1, Netaji Subhas Road, 8 th Floor, Room No.865, Kolkata 700001.	10 th respondent	10 respondent
11.Diksha Suppliers Pvt Ltd, 301/E, B.B. Ganguly Street, Kolkata 700012.	11 th respondent	11 th respondent
12.EPOCH Mercantile Pvt Ltd, 1, Old Court House Corner, Kolkata 700001.	12 th respondent	12 th respondent
13.Ghilomanuddin Saudagar, 18, N.S.Road Back Gate 1 st floor, Kolkata 700001.	13 th respondent	13 th respondent
14.Goodview Vintrade Pvt Ltd, 6A, Saklat Place, 4 th floor, Kolkata 700072.	14 th respondent	14 th respondent

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| 15. Janpack Suppliers Pvt Ltd,
18/1 Maharishi Devendra Road,
2 nd Floor, Room No.10,
Kolkata | 15 th respondent | 15 th respondent |
| 16. Kushal Infotech Pvt Ltd,
4 Ballav Das Street,
Kolkata-700007. | 16 th respondent | 16 th respondent |
| 17. Lemongrass Deal Trade Pvt Ltd
P-17, Kalakar Street, 6 th floor,
Room No.1
Kolkata 700007. | 17 th respondent | 17 th respondent |
| 18. Mahadev Tradecom Pvt Ltd,
18/1, Maharishi Devendra Road,
Kolkata-700007. | 18 th respondent | 18 th respondent |
| 19. Maharaja Vanijya Private Ltd,
64 BB Ganguly Street,
Kolkata 700012. | 19 th respondent | 19 th respondent |
| 20. Matribhumi Commodities Pvt Ltd,
4 Ballar Das Street,
4 th floor, Room No.415,
Kolkata-700007. | 20 th respondent | 20 th respondent |
| 21. Maximum Financial Advisory Pvt Ltd,
7/1B, Grant Lane,
Kolkata 700012. | 21 st respondent | 21 st respondent |
| 22. Minerva Textile Pvt Ltd,
P-221/1 Strand Bank Road,
3 rd Floor, Kolkata 700001. | 22 nd respondent | 22 nd respondent |
| 23. Ontime Merchandise Pvt Ltd,
4, Vivekanand Nagar Colony,
P.O. & P.S. Regent Park,
Kolkata 700040 | 23 rd respondent | 23 rd respondent |
| 24. Proper Dealcom Pvt Ltd,
4, Vivekanand Nagar Colony,
P.O. & PS Regent Park,
Kolkata 700040. | 24 th respondent | 24 th respondent |
| 25. Ramdeo Business Pvt Ltd.
64 BB Ganguly Street,
Kolkata 700012. | 25 th respondent | 25 th respondent |

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| 26.Ranjeet Singh,
3590, New Friends Colony,
Ground Floor,
New Delhi-110065. | 26 th respondent | 26 th respondent |
| 27.Ridhi Sidhi Commotrade Pvt Ltd,
7/1B Grant Lane,
3 rd Floor,
Room No.28,
Kolkata-700012. | 27 th respondent | 27 th respondent |
| 28.Shanti Dealers Pvt Ltd,
Paschim Banerjee Pada,
Makardah,
Kahardah-1
Domjur,
Howrah-711409. | 28 th respondent | 28 th respondent |
| 29.Shri Tulsi Realty Pvt Ltd,
64 A, Hemanta Basu Sarani
(9, BBD Bagh East),
2 nd floor, Room No.17,
Kolkata 700001. | 29 th respondent | 29 th respondent |
| 30.Silverpoint Infratech Pvt Ltd,
4 Ananta Bhawan,
94 Vivekanand Nagar,
P.O. Podrah,
Andhul Road,
Near West Bank Hospital,
3 rd floor, Room No.301,
Howrah 711109 | 30 th respondent | 30 th respondent |
| 31.Solty Suppliers Pvt Ltd,
4 Vivekananda Colony,
P.O. & PS Regent Park,
Kolkata 700040. | 31 st respondent | 31 st respondent |
| 32.Suryodya (India) Pvt Ltd
46, Strand Road,
Kolkata 700007 | 32 nd respondent | 32 nd respondent |
| 33.Sunraj Comtrade Pvt Ltd,
8 Old China Bazar Street,
1 st floor,
Room No.101,
Kolkata 700001. | 33 rd respondent | 33 rd respondent |

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| 34. Manav Sales Pvt Ltd,
14, Netaji Subhas Road,
4 th floor,
Kolkata 700001 | 34 th respondent | 34 th respondent |
| 35. Subham Cements Pvt Ltd,
8 Old China Bazar Street,
1 st floor,
Room No.101,
Kolkata 700001. | 35 th respondent | 35 th respondent |
| 36. Seabird Abasan Pvt Ltd,
8 Old China Bazar Street,
1 st floor, Room No.101,
Kolkata 700001. | 36 th respondent | 36 th respondent |
| 37. Subdhan Merchants Pvt Ltd,
8 Old China Bazar Street,
1 st floor, Room No.101,
Kolkata 700001 | 37 th respondent | 37 th respondent |
| 38. Chinmoy Ghatak,
Chartered Accountant
Partner of M/s C. Ghatak & Co,
107, N.S.C. Bose Road,
Sripal Apartment,
Gr. Floor,
Kolkata 700040. | 38 th respondent | 38 th respondent |
| 39. Derasary Kishan Kumar,
Chartered Accountant,
Prop
K Derasary & Co,
155, Lenin Sarani,
Nigam Centre,
1 st Floor,
Room No.3,
Kolkata 700013. | 39 th respondent | 39 th respondent |

Present: For Appellant:- Mr Ratnako Banerjee, Senior advocate, Mr. Shaunak Mitra, Mr. Kunal Godhwani, Advocates and Mr. Manoj Bhantia, CS.

For Respondents: - Mr. Jayant K. Mehta, Ms Pratiksha Sharma, Mr. Ankit Acharya, Mr. Sajat Jain, Advocates for Respondents 1, 8, 33, 34, 35, 36 and 37.

And

COMPANY APPEAL(AT) NO.281 OF 2017

IN THE MATTER OF:

01. Deepak Kumar Daga, 11, Clive Row, Kolkata 700001.	2 nd respondent	1 st appellant
02. Kanak Mall Banthia, 63, Radha Bazar Street, Room No.42, 3 rd Floor, Kolkata 700001	3 rd respondent	2 nd appellant
03. Dipak Kumar Rathi, 47A, Kali Krishna Tagore Street, Kolkata-700079.	5 th respondent	3 rd appellant
04. Champalal Jaichandlal Pvt Ltd, 63, Radha Bazar Street, Room No.42, 3 rd Floor, Kolkata-700001.	8 th respondent	4 th appellant
05. Sunraj Comtrade Pvt Ltd, 8 Old China Bazar Street, 1 st floor, Room No.101, Kolkata 700001.	33 rd respondent	5 th appellant
06. Manav Sales Pvt Ltd, 14, Netaji Subhas Road, 4 th floor, Kolkata 700001	34 th respondent	6 th appellant
07. Subham Cements Pvt Ltd, 8 Old China Bazar Street, 1 st floor, Room No.101, Kolkata 700001.	35 th respondent	7 th appellant
08. Seabird Abasan Pvt Ltd, 18 N.S. Road, 1 st floor, Back Gate, Kolkata 700001.	36 th respondent	8 th appellant
09. Subdhan Merchants Pvt Ltd, 18 N.S. Road, 1 st Floor, Back Gate,	37 th respondent	9 th appellant

Kolkata 700001

Vs

01.Devinder Singh Shant 26, Strand Road, Kolkata 700001	1 st petitioner	1 st respondent
02.Jasjit Pal, 26, Strand Road, Kolkata 700001	2 nd petitioner	2 nd respondent
03.Neelu Singh, 26 Strand Road, Kolkata 700001.	3 rd petitioner	3 rd respondent
04.Goldstar Enclave Pvt Ltd 26 Strand Road, Kolkata 700001	1 st respondent	4 th respondent

Presently at
8, Old China Bazar Street,
1st Floor,
Room No.101,
Kolkata 700001

(Respondents No.5 to 33 deleted at the risk of the appellants vide order dated 23.11.2017)

For Appellant: - Mr. Jayant K. Mehta, Ms Pratiksha Sharma, Mr. Ankit Acharya, Mr. Sajat Jain, Advocates.

Present: For Respondent:- Mr Ratnako Banerjee, Senior advocate, Mr. Shaunak Mitra, Mr. Kunal Godhwani, Advocates and Mr. Manoj Bhantia, CS.

And

COMPANY APPEAL(AT) NO.322 OF 2017

IN THE MATTER OF:

01.Goldstar Enclave Pvt Ltd 8, Old China Bazar Street, 1 st Floor, Room No.101, Kolkata 700001	1 st respondent	1 st appellant
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Vs

01.Devinder Singh Shant	1 st petitioner	1 st respondent
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26, Strand Road,
Kolkata 700001

02.Jasjit Pal,
26, Strand Road,
Kolkata 700001

2nd petitioner

2nd respondent

03.Neelu Singh,
26 Strand Road,
Kolkata 700001.

3rd petitioner

3rd respondent

For Appellant: - Mr. Jayant K. Mehta, Ms Pratiksha Sharma, Mr. Ankit Acharya, Mr. Sajat Jain, Advocates .

Present: For Respondent:- Mr Ratnako Banerjee, Senior advocate, Mr. Shaunak Mitra, Mr. Kunal Godhwani, Advocates and Mr. Manoj Bhantia, CS.

JUDGEMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. These three appeals arise out of impugned Judgement and Order dated 12.7.2017 passed in Company Petition No.49/2016 filed by the Appellants – Original Petitioners, under Section 421 of the Companies Act, 2013.

2. The brief facts of the case (Company Appeal (AT) No.274/2017) are that the Goldstar Enclave Pvt Ltd (hereinafter referred to as the ‘Company’) was incorporated on 27th May, 2011 and the original petitioners were promoters and original subscribers to the Memorandum and Articles of Association of the Company. The Company was incorporated to take advantage of a valuable business opportunity of promoting and making construction at Premises No.7E, Nellie Sengupta Sarani at which the well known Globe Cinema Hall in Kolkata was located. The 1st and 2nd appellant put in money into the 1st respondent as share application money and also arranged for funds through companies and entities in

the 1st respondent for the purpose of acquiring 50% of the said Globe Cinema hall. It was also agreed between 1st appellant and Late Meghraj Daga that balance 50% undivided interest will be acquired through a company by the name of Dhansri Abasan Pvt Ltd which was in the control of Late Meghraj Daga and one Jain family.

3. The original petitioners were very close to one Mr. M.R.Daga who was their Chartered Accountant and was also their trusted financial advisor as well as their statutory auditor. The 1st appellant (original 1st petitioner) had involved M.R. Daga in the project regarding the Globe premises and it was agreed between them that they would be equal joint venture partners in the project. It was also agreed that 50% of the Globe premises would be owned by appellants (original petitioners) and that the balance 50% share in the premises would be acquired by M.R. Daga in the name of one Dhansri Abasan Pvt Ltd (hereinafter referred to as 'Dhansri') which was a company owned and controlled jointly by the Daga and Jain families. As per the agreement the Globe premises was acquired jointly in equal shares by the Company and Dhansri in July, 2011, acting through appellants and M.R.Daga respectively. Due to certain fund requirements in January, 2012 further allotment of shares in the Company was made in favour of the appellants. Some shares were also allotted to 6th to 32nd Respondents who were in reality holding such shares as the nominee of the appellants. These respondents had been introduced to the appellants by M.R. Daga. The appellants continued to be majority shareholders and the only directors of the company even after allotment of shares to 6th to 32nd Respondents.

4. It is stated that Mr. M.R. Daga died on April 29, 2013 and in his place 2nd respondent, Mr. Deepak Kumar Daga, son of Mr. M.R. Daga, was entrusted to look after all financial affairs pertaining to all businesses and personal accounts of

appellants, original petitioners, and 2nd respondent got signed the required documents from the appellants which were required for compliance purposes and the appellants signed the same without scrutinizing the same. It is stated that the appellants infused further funds into the company from time to time and in lieu of such funds the appellants brought in by the appellants, at a Board Meeting of the Company held on March 15, 2013 further 9,90,000 equity shares of Rs.10/- each were issued and allotted in favour of the Appellants Nos.1 and 2. Due to allotment of these shares the shareholding the appellants in the company came to be 67.49% and the relevant Form 2 for such allotment was filed with the Registrar of Companies on 5th April, 2013 and was duly certified by the 2nd Respondent himself. The appellants state that the only business of the company was and is dealing with the constructed areas at the Globe premises, 50% of which belong to the company. It is stated that several shops at the said premises were sold to third parties jointly by the company and Dhansri in view of their equal joint share in the same. It is stated that the appellants, original petitioners, and Dhansri (represented by 2nd respondent and one Nitin Jain) signed an allocation sheet for division of the entire premises between Dhansri and the company in February, 2014. It is stated that accordingly large part of Dhansri's share of and in the Globe premises was transferred for valuable consideration in favour of the company in February, 2014 and as a result the appellants came to hold 70% shares approximately in the said premises.

5. It is stated that the appellants were shocked to learn after returning from an overseas vacation, in the first week of October, 2014, that 2nd Respondent had purported to take several wrongful and illegal steps in an attempt to oust the appellants from management of the company and to reduce the appellants to a

minority shareholder in the company. The appellants were shocked to see the following wrongful, illegal and oppressive acts of 2nd respondent who was acting in collusion and conspiracy with some of the other Respondents:

i) The allotment of 9,90,000 shares made in favour of Appellant No.1 and Appellant No.2 on 15th March, 2013 had allegedly been cancelled.

ii) 4,30,000 shares held by Appellant No.2 in the company and 2,35,000 shares held by Appellant No.3 in the company were somehow illegally shown to be transferred to 33rd Respondent who was never a shareholder of or connected to the company in any manner and was at that point in time, a company owned and controlled by the 2nd respondent and/or his nominees.

iii) The Respondents No.2, 3 and 4 and later the Respondent No.5 were all allegedly appointed as Directors of the Company.

iv) The Appellant Nos 2 and 3 were shown to have allegedly resigned as Directors of the Company on April 2, 2014.

v) The Appellant No.1 was allegedly removed as Director on September 24, 2014.

vi) The registered office of the company was allegedly shifted from 26 Strand Road, Kolkata to 8 Old China Bazaar Street, Kolkata on 31st July, 2014.

vii) A large percentage of shares held by Respondents Nos 6 to 32 of and in the company were allegedly shown to have been transferred to Respondent Nos 34 to 37.

6. The appellants state that their shareholding had been illegally reduced from approximately 67% as on March 15, 2013 to less than 17% and the appellants have been illegally removed and/or shown to have ceased to be Directors of the company. It is stated that all these acts were done at the instance of 2nd respondent by manipulating and forging documents and also taking advantage of

the good faith and trust reposed in him by the appellants. The appellants further stated that the company had been illegally and wrongly taken over by the appellants' chartered accountant i.e. 2nd respondent who had also manipulated and fabricated documents and records and had also committed fraud on the appellants by his deliberate and illegal acts. The appellants state that there was no reason whatsoever for the appellants to suddenly give up their valuable shareholding in the company in favour of complete strangers and outsiders and to resign as directors. The appellants state that in these circumstances the appellants filed Company Petition No.49 of 2016 before the Tribunal under Section 397 and 398 of the Companies Act, 1956 complaining of the aforesaid acts of oppression and mismanagement and seeking appropriate reliefs. Reply were duly filed by the respondents and the rejoinder was filed by the original petitioners.

7. After hearing the parties, the NCLT vide impugned order dated 12th July, 2017 held as follows:

- i) The cancellation of 9,90,000 shares is held to be invalid and, therefore, the Petitioner's shareholding remains as it was on 15th March, 2013.
- ii) The transfers of shares of the Appellant Nos 2 and 3 held in the Company were upheld.
- iii) The removal of the Appellant No.1 as director was held to be null and void and the Respondents were directed to reinstate him as a director of the company.
- iv) The resignation of P2 and P3 was held to be invalid.
- v) The alleged appointment of the Respondent Nos 2 to 5 as directors of the Company were set aside as such alleged appointments were made in violation of the statutory norms.

vi) The Respondents were directed to file requisite forms with the Registrar of Companies, West Bengal as per the Companies Act, 2013 and the relevant rules thereunder.

vii) The Respondents were given liberty to appoint directors after following due procedure under law subject to the condition that the parties would have proportionate representation on the Board and in management of the company in terms of their shareholding.

8. Being aggrieved by the said impugned order dated 12th July, 2017 the appellants (original petitioners) filed the appeal being Company Appeal (AT) No.274/2017, the original 2nd, 3rd, 5th, 8th, 33rd, 34th, 35th, 36th and 37th respondent filed the appeal being Company Appeal (AT) No.281 of 2017 and the original 1st respondent filed the third appeal being Company Appeal (AT) No.322/2017. The appellants (original petitioners), original 1st respondent and other respondents filed the appeals by challenging the impugned order dated 12th July, 2017, the portion of the impugned order which was not in their favour. In company Appeal (AT) No.274/2017 the appellants have prayed for the following reliefs:

- a) The findings and directions in the impugned order dated July 12, 2017 with regard to the alleged transfer of shares of appellant Nos 2 and 3 to Respondent No.33 be set aside and such alleged transfer of shares be declared null and void and of no effect;
- b) The purported transfers of shares made by Respondent No.7, 10, 11, 12, 14, 17, 19, 20, 21, 22, 23, 24, 25 and 29 in favour of Respondent No.34 to 37 be set aside and declared null and void and of no effect;

- c) The alleged change of registered office of the company from 26, Strand Road, Kolkata to 8, Old China Bazar Street, Kolkata be set aside and declared null and void and of no effect;
- d) The directions in the impugned order giving liberty to the respondents to appoint Directors of the Company be set aside;
- e) Ad-interim orders in terms of prayers above;
- f) Costs;
- g) Such further or other order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

9. Being aggrieved by the said order dated 12th July, 2017, the original 2nd, 3rd, 5th, 8th, 33rd, 34th, 35th, 36th and 37th respondents filed the appeal being Company Appeal (AT) No.281/2017 the appellants have sought the following relief:

- i) Set aside that part of the impugned order dated 12.07.2017 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in C.P. No.49 of 2016 titled as Devinder Singh Shant & Ors Vs Goldstar Enclave Pvt Ltd & Ors whereby cancellation of 9,90,000 shares is held to be invalid and consequential effect on respondent's shareholding as held vide the said order;
- ii) Set aside the direction of the impugned order to reinstate Respondent No.1 in the Board of Directors in the Company and set aside that part of the impugned order where resignation of Respondent No.2 and 3 has been held to be invalid.
- iii) Set aside that part of the impugned order where appointment of the appellant No.1 –Deepak Daga, Appellant No.2-Kanak Mal Banthia and

appellant No.3 Deepak Kumar Rathi to the Board of Director has been set aside;

iv) Set aside that part of the impugned order which directs appointment of Directors subject to the condition that both parties will have proportionate representation in the Board and Management of the appellant.

v) Rule Nisi in terms of prayers above;

vi) Rule so issued be made absolute on hearing the parties and/perusing the cause that may be shown;

vii) Partial stay of operation of that part of the said impugned order in terms of prayers made in para (i-iv) above till the disposal of the instant appeal

viii) Ad-interim orders in terms of the prayers above;

ix) Costs of and incidental to this petition be cost in the cause;

x) such other and/or further order/orders be passed as to this Hon'ble Court may deem fit and proper.

10. The original 1st respondent filed the third appeal being Company Appeal (AT) No.322 of 2017, and prayed for the following reliefs:-

i) Set aside that part of the impugned order dated 12.07.2017 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in C.P. No.49 of 2016 titled as Devinder Singh Shant & Ors Vs Goldstar Enclave Pvt Ltd & Ors whereby cancellation of 9,90,000 shares is held to be invalid.

ii) Set aside the direction of the impugned order whereby resignation of Respondent No.2 and Respondent No.3 has been set aside and direction to reinstate Respondent No.1, Respondent No.2 and Respondent No.3 in the Board of Directors in the Company, has been given.

- iii) Set aside that part of the impugned order where appointment of the present Board of Directors (comprising of Deepak Kumar Daga, Kanak Mall Bantia and Dipak Kumar Rathi) has been set aside.
- iv) Set aside that part of the impugned order which directs appointment of Directors subject to the condition that both parties will have proportionate representation in the Board and Management of the appellant.
- v) Rule Nisi in terms of prayers above;
- vi) Rule so issued be made absolute on hearing the parties and/perusing the cause that may be shown;
- vii) Partial stay of operation of that part of the said impugned order dated 12.07.2017 passed by the Hon'ble National Company Law tribunal, Kolkata Bench in C.P. No.49 of 2016 titled as Devinder Singh Shant & Ors Vs Goldstar Enclave Pvt Ltd & Ors in terms of prayers made in para (i-iv) above.
- vii) Costs of and incidental to this petition be cost in the cause;
- viii) such other and/or further order/orders be passed as to this Hon'ble Court may deem fit and proper.

COMPANY APPEAL (AT) NO.274/2017

11. The appellants in the above appeal argued that the 1st respondent company belongs to them and they were always majority shareholders and the only directors. The appellants further argued that by a deed of conveyance dated 9.7.2011, 1st respondent and another company i.e. Dhansri Abasan Pvt Ltd each acquired 50% undivided share of and in the Globe Cinema Hall premises with the objective to constructing a shopping centre-cum-multiplex. The appellants further argued that 6,65,000 shares of Goldstar held by appellants Nos.2 and 3 have been illegally transferred in favour of 33rd respondent (a company controlled by 2nd

respondent). The appellants further contended that the registered office of the company has been illegally shifted. The appellants further argued that the shares of 6th to 32rd Respondent has been illegally transferred to 34th to 37th respondent. The appellants further argued that 33rd respondent did not hold any shares in the Goldsar prior to the alleged transfer and there is a restriction in Article 8(1) for transfer of shares to a non-member unless unanimously approved by the Board of Directors. The appellants argued that they were the only directors at that time and they deny any such transfer. The appellants further argued that as no unanimous approval has been shown, therefore, the transfer would be nullity and void being violation of Article 8(1). The appellants further argued that no consideration for transfer of such shares has been paid by 33rd respondent. The appellants further argued that the purported consideration shown for a sum of Rs.45 lacs to appellant No.2 and Rs.23.5 lacs to appellant No.3 was actually return of loans earlier given by the said appellants to 33rd respondent as is appearing in the Bank statement of 33rd respondent and balance sheet of 33rd respondent for the period 2011-12, 2013-13 and 2014-15. The appellants further argued that the Balance Sheet for 2014-15 of 33rd respondent has been signed by 2nd respondent as director of 33rd respondent.

12. The appellants further argued that 5,22,000 shares were alleged transferred by 7th, 10th, 11th, 12th, 14th, 17th, 19th to 25th and 27th to 32nd respondent in favour of 34th to 37th respondent and were allegedly approved at purported Board Meetings held on 8.4.2013, 7.5.2014 and 25.7.2014. The appellants argued that 34th to 37th respondent did not hold any shares in 1st respondent prior to the alleged transfer. Learned counsel appearing on behalf of the appellants strongly argued that for the first time in the reply filed on behalf of 1st respondent before

this Appellate Tribunal, the alleged minutes of meetings of 1st respondent of 8.4.2013, 7.5.2014 and 25.7.2014 have been produced without the leave of the Appellate Tribunal. Learned counsel further argued that these minutes were not produced before the Tribunal and the same are forged, fabricated and manufactured minutes and the Appellate Tribunal should not take them into consideration.

13. Learned counsel for the appellant argued that the shifting of registered office of 1st respondent was adjudicated at all by the Tribunal though the same was under challenge in the company petition. The appellants further argued that they have no knowledge of filing of Form INC 22 ROC and are also not aware when the Meeting took place as no notice was served on them and are also not aware of minutes of the meeting in which the decision was taken to shift the registered office. The appellants further argued that the attendance sheet filed of an alleged Board Meeting is a forged and fabricated document and the signature of appellant No1. on the same is forged.

14. Learned counsel appearing on behalf of 1st respondent submitted that the on 10.6.2013, 2nd appellant and 3rd appellant sold 4,30,000 shares and 2,35,000 shares respectively to 33rd respondent for a total consideration of Rs.68,50,000/- (Rupees sixty eight lakhs fifty thousand only and Rs.4500000/- (Rupees Forty five lakhs only) respectively. It is next submitted that pursuant to the said transactions the entire secretarial compliance with respect to transfer of shares were duly carried out by the 1st respondent. 33rd respondent submitted the original shares for transfer supported by share transfer deed and duly witnessed and stamped, Board Meeting dated 31.8.2013 was convened and notice for Board Meeting was issued to 1st to 3rd appellants. The original share certificates were duly endorsed

on reverse in favour of 33rd respondent by 1st respondent by approving above transfer on 31.8.2013. Learned counsel further stated that the said share certificates are not in possession of the appellants.

15. Learned counsel for the 1st respondent submitted that Annual Return filed with Form 20B on 15.4.2014 for AGM held on 30.9.2013. An affidavit was filed by Devinder Singh Shant as Director of 1st respondent and 1st appellant confirming shareholding in Annual return and filed with ROC as correct. Balance Sheet as on 31.3.2014 was duly signed by 1st appellant and 2nd and 4th respondent. Learned counsel further submitted that 2nd and 3rd appellant were directors of 33rd respondent on the date of the share transfer.

16. Learned counsel for the 1st respondent further submitted that the transfer of 732000 shares by 7th, 10th, 11th, 12th, 14th, 17th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th and 29th respondent to 34th to 37th respondent of 1st respondent is concerned it is stated that there was no specific prayer for rectification of Register of members of the 1st respondent, therefore, no appeal lies for the above issues.

17. Learned counsel further submitted that the shares were transferred by the approval of the directors of 1st respondent and in accordance with the law. Learned counsel further submitted that it cannot be believed that the directors of 1st respondent contend that they signed the documents of the 1st respondent without looking at the annexures and, therefore, their signatures should be taken to be non-est factum i.e. signature did not carry their mind. Learned counsel for 1st respondent submitted that the appellants could not explain as to why they are not in possession of 665000 shares and 990000 shares which is the subject matter of dispute.

18. Learned counsel appearing on behalf of 8th, 33rd, 34th, 35th, 36th and 37th respondents submitted that on 10.6.2013, 2nd appellant and 3rd appellant sold 4,30,000 shares and 2,35,000 shares respectively to 33rd respondent for a total consideration of Rs.68,50,000/- (Rupees sixty eight lakhs fifty thousand only and Rs.4500000/- (Rupees Forty five lakhs only) respectively. It is next submitted that pursuant to the said transactions the entire secretarial compliance with respect to transfer of shares were duly carried out by the 1st respondent. 33rd respondent submitted the original shares for transfer supported by share transfer deed and duly witnessed and stamped, Board Meeting dated 31.8.2013 was convened and notice for Board Meeting was issued to 1st to 3rd appellants. The original share certificates were duly endorsed on reverse in favour of 33rd respondent by 1st respondent by approving above transfer on 31.8.2013. Learned counsel further stated that the said share certificates are not in possession of the appellants. Learned counsel further submitted that the 33rd respondent have provided inspection of such original share certificate held by them under Section 84 of the Companies Act, 1956 to the appellants on 3.3.2017 and 6.3.2017 as directed by the NCLT, Kolkata. Learned counsel further submitted that 2nd and 3rd appellant were directors of 33rd respondent since the year 2008 and even after the date of the disputed share transfer. This position has been admitted by the appellants on Page 39, 48 of FIR and the appellants have themselves disclosed at the rejoinder to the reply filed by 33rd respondent.

19. Learned counsel for respondent further submitted that the shares were transferred with the approval of the directors of 1st respondent and in accordance with the law. Learned counsel further submitted that it cannot be believed that the directors of 1st respondent contend that they signed the documents of the 1st

respondent without looking at the annexures and, therefore, their signatures should be taken to be non-est factum i.e. signature did not carry their mind. Learned counsel for respondent submitted that the appellants could not explain as to why they are not in possession of 665000 shares and 990000 shares which is the subject matter of dispute.

COMPANY APPEAL (AT) NO.281 OF 2017

20. Learned counsel for the appellants in above Appeal submitted that they have invested an amount of Rs.9,47,00,000/- (Rupees Nine Crores forty seven lakhs only) in 4th respondent and whereas the Respondents contribution is only to the extent of Rs.97,66,000/- (Rupees ninety seven lakhs sixty six thousand only). The appellants submitted that they were holding 84% shares in the 4th respondent and after the impugned order have been reduced to 55% only.

21. Learned counsel for the appellants submitted that the first issue that arose for consideration before the Tribunal was as to whether 9,90,000 shares of the 4th respondent were validly allotted to respondents. The appellant submitted that the Tribunal has not decided this aspect at all despite it being specifically in issue. The appellants submitted that the Learned Tribunal in para 2 Page 15 of the impugned order has recorded that ***“this aspect has not been contested by either of the parties.”*** Learned counsel appearing on behalf of the appellant submitted that this conclusion of the Learned Tribunal is ex facie unsustainable being contrary to the record in as much as the appellant had specifically and pointedly questioned this allotment in reply affidavit filed by 1st respondent before the Tribunal at para 4(g) to 4(j) at Page 19-27 and also reply affidavit filed by 2nd

respondent before the Tribunal at para 6 at page 21-22; para 10 at page 33-34; para 15 at page 58-62

22. Learned counsel appearing on behalf of 1st, 2nd and 3rd respondent in Company Appeal (AT) No.281 of 2017 submitted that the 1st to 3rd Respondent remained majority shareholders and the only directors of 4th respondent. Learned counsel appearing on behalf of 1st to 3rd respondent submitted that due to wrongful and oppressive acts committed by the appellants, the shareholding of 1st to 3rd Respondent was illegally reduced from over 67% to less than 17% and 1st to 3rd Respondents were all illegally shown to have ceased to be directors. Learned counsel for the Respondents submitted that it is wrong that the share allotment made on 15.3.2013 is not contested by the parties. The allotment was allegedly cancelled at a Board Meeting of April 8, 2013 which was denied by 1st to 3rd Respondent. It is further submitted that the allotment of shares is conclusive proof of issuance of shares and the same is not dependent on any subsequent further acts to perfect the allotment. Learned counsel further submitted that the it was specifically provided in Board Resolution of 15.3.2013 that the money for the allotment be transferred to the share capital account. It was further held that issuance of share certificates and/or entering the name of the allottee in the Register of members is not a condition precedent for an allotment to be effect. Learned counsel for the Respondents submitted that no reason was given for resignation of the Respondents and it is unbelievable that the promoters of the 4th respondent who were the only directors resigned as director without any reason. Learned counsel submitted that it could not be ruled out that certain signed documents might have been in possession of the 1st appellant for compliance of certain formalities and that these documents have been converted into alleged

resignation letters. Learned counsel submitted that the resignation letters are forged documents. It is next submitted that Form DIR-12 was filed with ROC only on 9.9.2014 i.e. more than five months after alleged resignation of 2nd and 3rd Respondents as Directors. Learned counsel submitted that the explanation given by 1st appellant that time was need to understanding filing requirements under the new Companies Act is unbelievable and absurd and 1st appellant is a practicing Chartered Accountant.

23. Learned counsel for the 1st to 3rd Respondent submitted that the NCLT has given its findings at page 27 of the impugned order that the Respondent was illegally removed from the directorship of the 4th Respondent. Learned counsel further submitted that the appointment of 1st to 3rd appellant as director of 4th respondent is illegal and not according to the statutory provisions relating to the same (Page 28-29 of the impugned order). Learned counsel for Respondent further submitted that the NCLT has rightly observed in the impugned order that ***“It has also been alleged in the Reply affidavit of R1 that R2 to R4 were appointed as Directors after P2 and P3 expressed intention to resign as Director. However, in the reply of R3, R8, R 34 and R37, it has been alleged that R2 to R4 were allegedly appointed Directors prior to P2 and P3 expressing their intention to resign. Therefore, the respondents are not even sure of their own stand which shows that the whole story of resignation of P2 and P3 and appointment and R2 to R4 as Directors is manufactured”***.

COMPANY APPEAL (AT) NO.322 OF 2017

24. Learned counsel appearing on behalf 1st appellant in Company Appeal (AT) No. 322 of 2017 submitted that the assumption of the Ld. Tribunal with regard to the main issue of invalid allotment of 9,90,000 shares was incorrect as the Tribunal proceeded on the premises that the parties did not contest the factum of allotment of 9,90,000 shares. Learned counsel submitted that the assumption of the Tribunal is ex facie unsustainable as the same is contrary to the record since the 1st Appellant has categorically questioned and disputed this allotment in its Reply Affidavit filed before the Tribunal. Learned counsel submitted that this issue has been adjudicated in a lop sided manner and a bare perusal of the impugned order shows that the case has been prejudged with a bias against the 1st appellant and the Tribunal has formed a prima facie view that the 999000 equity shares could be allotted by the Respondents to themselves and they could be allowed to increase their controlling stake.

25. Learned counsel for the 1st appellant submitted that the position of the joint venture which was formed in 2011 is that several shop owners have opened standalone shops after purchasing the same from both the owner companies (1st appellant and DAPL) and invested huge sums for making shopping complex functional. Learned counsel submitted that the 1st appellant is prevented from dealing with the remaining more than 50 shops and food court area, which will render the market operationally unviable, visually unappealing and uninviting in terms of retail attractiveness, low footfall of customers in the absence of food court and till multiplex also becoming full fledged operation. Learned counsel further submitted that the effect is that not only the 1st appellant company is suffering from negative publicity resulting in irreparable loss of goodwill and brand value of the 'Globe' venture, but the 1st appellant is also receiving claims of losses from the

stakeholders whose third party rights have been created, are continuing in nature and who are burdening the company with their claim of damages. Learned counsel for the 1st appellant submitted that the group of members of the appellant company, excluding Respondents, was the highest contributory of the capital of the company and it was due to their efforts that the kind of fund arranged were infused and used in the appellant company. Learned counsel for 1st appellant submitted that the Tribunal erred in not appreciating the peculiarities of the instant case and partly allowed the Company Petition filed by the Respondents to the grave detriment of the company and without considering the long term loss which is likely to be caused to the Company if the Respondents are allowed to participate in the day to day functioning of the company.

26. Reply on behalf of 1st to 3rd Respondent in Company Appeal (AT) No.322 of 2017 has been filed. Learned counsel for the 1st to 3rd Respondent. In the reply the 1st to 3rd respondent has reiterated its submission as stated in Company Appeal (AT) No.274/2017 as appellants. Learned counsel for the 1st to 3rd Respondent submitted that the Tribunal has correctly passed the impugned order except to the extent challenged by the Respondents herein in Company Appeal (AT) No.274 of 2017 which is pending adjudication before this Appellate Tribunal. Learned counsel for the 1st to 3rd respondent further submitted that the Tribunal has noted and adjudicated all the issues raised by all the parties and as such the instant Company Appeal (AT) No.322 of 2017 is liable to be set aside.

27. We have heard the Learned counsel for the parties and perused the entire record in these three appeals. Before we proceed, we would like to state that during the course of arguments the parties were making averments against parties of each other for filing documents in these appeals which were not before the Company appeal (AT) No.274, 281 and 322 of 2017

Tribunal and the parties were then trying to explain the documents which they have filed to justify their filing. The Appellate Tribunal informed the parties that the appeal basically is to be confined only to pleadings and documents which were before the Tribunal below. However, the parties were directed to file affidavits disclosing the list of description of documents and their page numbers in the paper books in the appeals, which documents were not before NCLT and Reasons for not producing these documents in the Tribunal below and the necessity for their production in these appeal.

28. As per directions of this Appellate Tribunal vide order dated 27.4.2018, the appellants in Company Appeal (AT) No.274/2017 has filed IA No.545 of 2018 stating therein that the following documents have been filed by them which were not part of the Tribunal below.

- i) Balance Sheet of 33rd respondent filed with ROC for the year 2014-15 (Pages 3810-3819 of Volume No.XIV).

29. Learned counsel appearing on behalf of the appellants in Company Appeal (AT) No.274/2017 argued that the Balance Sheet of the 33rd respondent for the year 2014-15 is extremely relevant for adjudication of appeal. Learned counsel further argued that one of the main grounds of challenge by the appellant in this appeal relates to the failure of NCLT to set aside the illegal transfer of 6,65,000 shares of 1st respondent held by 2nd and 3rd appellant in favour of 33rd respondent which is a company controlled by the 2nd respondent. Learned counsel for the appellants argued that the 2nd respondent had manipulated and fabricated records and documents in support of their allegation that the 2nd and 3rd appellants had purportedly transferred an aggregate of 665000 shares held by them in 1st respondent in favour of 33rd respondent in the Financial Year 2014-15. Learned

counsel further argued that such transfer never took place and such transfer in any event have been in violation of Article 8 of the Articles of Association of 1st respondent and would thereby be rendered null and void. Learned counsel for the appellant argued that the transfer of shares by 2nd and 3rd appellant in favour of 33rd respondent is a false and afterthought allegation is that no consideration was paid by 33rd respondent for any such alleged transfer of shares. Learned counsel for the appellants further argued that the amount paid by 33rd respondent to 2nd and 3rd appellant was actually repayment of loan earlier given by 2nd and 3rd appellant to 33rd respondent which are evidenced by the Balance Sheet of 33rd respondent. The said balance sheet was signed by 2nd respondent and from this Balance Sheet it is evident that there was no consideration whatsoever paid by 33rd respondent. Learned counsel for the appellants submitted that the Balance Sheet of the 33rd respondent for the year 2014-15 was only filed with ROC on 20th October, 2016 by which time the pleadings before the NCLT had been completed and the matter was fixed for hearing. Learned counsel further argued that thereafter the appellant inadvertently not checked if any further returns or statements had been uploaded by 33rd respondent. It is when the impugned order was passed that the appellants' notice was brought to the balance sheet filed by 33rd respondent for 2014-15. Learned counsel for the appellants submitted that the said document is extremely relevant and necessary for effective and proper adjudication of the issues in the appeal and the said document is, in fact, the respondents' own document which has not been disputed even in the reply filed to the appeal. Learned counsel for the appellants argued that if this document is taken into consideration then the judgement would be materially different.

30. Similarly the appellants in Company Appeal (AT) No.281 of 2017 has filed IA No.561 of 2018 stating therein that the following documents alongwith reasons have been filed by them which were not part of the Tribunal below.

- a) Statutory record of Board Meeting dated 24.1.2012 (Notice dated 24.1.2012, Attendance Sheet, Minutes, Certificates and draft notice for approval to hold EOGM on 23.2.2012) and Proof of service on petitioner of notice of EOGM held on 23.2.2012 (Pages No.3 to 4 of IA No.561/2018)
- b) Notice dated 8.3.2013 and Minutes of EOG dated 1.3.2013. (Page No.5 of IA No.561/2018)
- c) Minutes –Board Meeting on 8.4.2013 (Page No.6 of IA No.561/2018)
- d) Statutory record of Board Meeting dated 31.8.2013 such as Notice dated 23.8.2013, Minutes (Page No.7 of IA No.561/2018).
- e) Minutes of the Board Meeting dated 2.9.2014 (Page No.8 of IA No.561/2018)
- f) Extract of Forensic Report with covering letter (Page No.9 and 10 of IA No.561/2018).

31. Learned counsel appearing on behalf of the appellants in Company Appeal (AT) No.281 of 2017 argued that the pleading in support of the said document is sufficiently made before NCLT and it is statutory record of the company. Learned counsel further argued that non-disclosure of the same, despite availability of the same shall prejudice the case of major investors/stakeholders in the company and as an abundant precaution, the said document is sought to be placed on record in the interest of justice for adjudication of the matter. Learned counsel for the appellants argued that since these documents were not placed by original petitioners and is nowhere disputed by them, the R-1 seeks to place the same on

record to highlight invalid procedure followed for convening the meeting where the petitioners were the only parties present to take the unilateral decision to illegally allot 990000 shares to themselves to the prejudice of the other stakeholders. Learned counsel for the appellants argued the respondents for the first time in CA 274/2017 challenged the transfer of 2,10,000 shares on the ground that the same is in violation of Clause 8 of the Articles of Association. Learned counsel for the appellants argued that if this document is taken into consideration then the judgement would be different.

32. The parties are relying and referring the above documents and were agitating that these are the vital documents for disposal of the appeal. We are surprised to hear that these are the vital documents and the parties have not filed these documents before the NCLT and the impugned order has been passed by the Tribunal in absence of these documents.

33. We have gone through these documents filed by parties in appeal but which were not before NCLT and find that these documents merit consideration before the decision is made which may impact the outcome of company petition. We have gone through the Balance Sheet of 33rd Respondent (Page 474 of Appeal Paper Book) for the years 2011-12 and 2012-13 and find that Rs.68,50,000/- has been shown as loan from related party. We have also gone through the Balance Sheet of 33rd respondent filed by the appellant in Company Appeal (AT) No.274/2017 vide IA No.545/2018 for the years 2013-14 and 2014-15 (Page 3810-3819 of the Appeal Paper Book) and find that there is no loan outstanding but investment has been shown representing that the loan has been repaid by this company in between and it has also made investment for the same amount necessitating looking into actual transfer of money both for repayment of loan as well as Company appeal (AT) No.274, 281 and 322 of 2017

acquisition of shares of the same value. We have not examined this issue in detail because we have no benefit of examination of the NCLT over the issue. It is in the interest of fairness that NCLT must look into so called vital documents as the company petition has been decided by the NCLT.

34. The impugned order dated 12.7.2017 is quashed and set aside. The matter is remanded back to the NCLT to take these documents into consideration and hear both the parties afresh in the light of the documents and then decide the company petition. It is clarified that if the parties have any other vital document which they feel is necessary for adjudication of the company petition, one opportunity may be given to the parties to place the said document on record so that the similar situation, as exists today, is avoided. NCLT Kolkata is directed to rehear parties and consider record including further documents filed in Appeal and pass the orders as deemed necessary.

35. The Appeals are disposed accordingly. No orders as to costs. Parties are directed to appear before the NCLT, Kolkata on 12th October, 2018.

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

(Mr. Balvinder Singh)
Member (Technical)

Dated: 19-9-2018

New Delhi

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