NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 207 of 2017

[Against the order dated 5th May, 2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in T.P. No. 31/397-398/NCLT/AHM 2016 (New), C.P. No. 3/397-398/CLB/MB/2013(Old)]

IN THE MATTER OF:

1. Belfin Spa (A Company incorporated Under the laws of Italy)
Via Piave-66, Busnago,
Italy.

2. Mr. Sergio Bellazzi,
Borgazzi 18
Monza (Mb),
Italia.

3. Ms. Rita Bellazi
Borgazzi 18
Monza (Mb),
Italia.

... Appellants
(Original Petitioners)

- Versus -

1. Cima Shyam Springs Private Limited,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.

2. Mr. Jaimin Girish Patel,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.

3. Mr. Hemal Patel,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.

4. Shyam Management Services Pvt. Ltd.,
Regd. Office at : Madhukunj,
GundaFalia, Rajmahal Road,
Vadodara,
Gujarat – 390001.

5. Shyam Marketing Pvt. Ltd.
Regd. Office at : Cooperative House,
3rd Floor, Old Padra Road,
Vadodara,
Gujarat – 390015.

6. Shyam Industries Ltd.,
Regd. Office at : 465, GIDC
RamangavdiPor,
Vadodara – 391243,
Gujarat.

7. Pinakin Raman Amin
Of Indian Inhabitant,
Amin Khadki, MotaGhar,
Varnama,
Vadodara – 391240
Gujarat.

... Respondents
(Original Respondents)

Present: Ms. Armin Wandrewala, Shri Akshay Vani, Shri Manan Jaiswal, Shri Neel Kamal and MLS Vani, Advocates for the Appellants.

Dr. U.K. Chaudhary, Senior Advocate with Shri Jayant K. Mehta, Ms. Avanti T. Chandele, Ms. Manisha Chaudhury, Shri Himanshu Vij, Ms. Anisha Mahajan, Shri Rahul Kukreja and Shri Karan Malhotra, Advocates for the Respondents.

J U D G E M E N T

A.I.S. Cheema, J. :

The original Petitioners are in Appeal against part of impugned order dated 5th May, 2017 passed by National Company Law Tribunal,

Ahmedabad, ("NCLT", in brief) in T.P. No. 31/397-398/NCLT/AHM 2016 (New), C.P. No. 3/397-398/CLB/MB/2013(Old). (The parties are same as arrayed in the impugned order). The Company Petition was filed under Section 397 and 398 of the Companies Act, 1956 ("old Act", in brief). The Respondent No.1 Company, M/s. Cima Shyam Springs Private Limited (hereinafter referred as Company) is private limited company. The Company has been incorporated on 26.09.2008 as private limited company with authorized share capital of 45,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital as per balance sheet for year ending 31st March, 2011 was 3,65,63,990 divided into 36,56,399 equity shares of Rs.10/- each. The Appellant No.1 Company incorporated in Italy is shareholder initially holding 51.36% of the equity shares. Due to illegal allotments of additional equity shares by Respondents, the percentage of shareholding of Appellant No.1 is reduced to 39.87%. As Appellants are based in Italy, the Company at Vadodara was being managed by Respondents 2 and 3. The Appellants have filed chart Exhibit D regarding chronology of events. Charts E and F are filed to show illegal allotments and meetings. According to the Appellants, several Board Meetings as well as General Body Meetings were called by Respondents 2 and 3 with either no notice to the Appellants or very short notice to the Appellants which made it impossible for them to attend such meetings. The Respondents 2 and 3 did not provide copies of minutes of various meetings. Only on 5th January, 2013 when Respondent No.2 filed affidavit in NCLT, the Appellants came to know that the Respondents 2 and 3

(hereinafter referred as "Respondents") had held Board Meeting on 28th February, 2011 and allotted 45,500 equity shares to Respondent No.4 and 50,000 equity shares to Respondent No.5. This was confirmed when they took online search on the portal of Ministry of Corporate Affairs on 3rd March, 2014. In Board Meeting dated 28th February, 2011 by another Resolution, the Respondents had issued fully convertible unsecured debentures of 22,86,000 divided into 2,28,600 debentures of Rs.10/- each to Respondent No.4.

2. The Appellants claimed that the Respondents (2 and 3) convened Board Meeting on 19.04.2011 vide purported Notice dated 12th April, 2011 which was not received by the Appellants and passed the Resolution converting 35% of the total value of debentures into equity shares and allotted 80,010 equity shares to Respondent No.4.

3. It is claimed that the Appellants were shocked to know that in Board Meeting dated 18.05.2011, the Appellant No.2 had been removed from the Board on the pretext of Section 283 of the old Act. Even thereafter, the Appellants were served Notice and Agenda of Board Meeting of 2nd July, 2011. The Appellants 2 and 3 travelled from Italy but were prevented from attending the Board Meeting and the Respondents (2 and 3) on that date further decided to allot 15 lakhs equity shares. Respondent No.4 was allotted 3,83,334 equity shares on 07.07.2011.

4. The Appellants claimed that on 18.09.2011, the Respondents issued 1,46,666 equity shares to Respondent No.4 and 2,40,400 equity

shares to Respondent No.6. This was learnt only when online search was taken on 3rd March, 2014.

5. As per the Appellants, the Respondents issued 38,590 equity shares to Respondent No.4 and 41,420 equity shares to Respondent No.7 on 25th July, 2012.

6. According to the Appellants they did not know how or on what basis the first issue of shares dated 28th February, 2011 and 2nd issue of shares dated 28th February, 2011 were made. They did not receive any Notice of such meeting. Similar is the claim regarding the 3rd issue of shares dated 19th April, 2011. The 4th issue of shares dated 2nd July, 2011 was without consent of the Directors nominated by the Appellant No.1 namely, Appellants 2 and 3 who were illegally barred from attending the Board Meeting. The 5th issue of shares dated 18th September, 2011 was also without Notice to the Appellants. The Appellants did not receive any Notice of the Board Meeting/Extra Ordinary General Meeting. Similarly, the 6th issue of shares on 25.07.2012 was also without Notice to the Appellants. Thus, the Appellants claimed that these Board Meetings and all these issue of shares were illegal. The NCLT vide impugned order upheld the contentions of the Appellants relating to the 3rd issue of shares and 6th issue of shares accepting that the same was invalid. The Appellants have challenged the findings of the learned NCLT regarding issue of shares, in disputed Meetings.

7. According to the Appellants, the act of the Respondents of reducing the majority shareholding to minority is an act of oppression and mismanagement as there were either no Notices issued or very short Notices were issued. The act of not letting the Appellants participate in Board Meeting when they had travelled from Italy to India is oppressive. The NCLT erred in putting blame on the Appellants regarding non-working of machine supplied by sister concern of Appellant No.1 and it failed to appreciate that the order placed itself was for an used machine. NCLT wrongly upheld EOGM dated 18th June, 2011 on the basis of quorum and failed to appreciate that there was no adequate Notice to the Appellants.

8. The Appellants thus want that part of the Impugned Order which is not in their favour should be upset and the increase and issue of all shares in disputed meetings should be set aside.

9. Against this, the Respondents claimed that the old Act is silent regarding the minimum time period to be given for sending of Notice to Directors of the company for Board Meeting. Article 25 of the Articles of Association of Respondent Company requires 7 days' clear Notice for "General Meeting". Thus according to Respondents, the Appellants cannot claim that there was short Notice for the various Board Meetings and Extra Ordinary General Meetings and Annual General Meeting. It is claimed that Section 81 of the old Act did not apply to private companies and further issue of capital can be made in any manner as deemed fit by the Directors. The Respondents claimed that initially there was a letter of intent executed

on 03.10.2008 between the parties. Subsequent Shareholder Agreement, though draft, remained to be executed. For the purpose of working capital, Respondent Nos.2 and 3 had approached Bank of Baroda which in turn required enforcement of credit limit of Rs.9 crores subject to personal guarantee and collateral securities which Respondents 2 and 3 gave but the Appellants did not join the Loan Agreement. Respondents claimed that the Appellants did not bring any funds except for initial investment of 1.82 crore. The Wafios Coiler Machine meant to produce coiler springs was arranged by Appellants from their sister concern, Unimatic URL, Italy which was received on 10.10.2009. Instead of a working machine, used machine had been supplied and it fell in frequent repairs. The Respondents referred to the disputes due to the machine arising between the parties. According to them, the Appellants had started their own factory for managing automobile springs in Goa and thus, indulged in parallel and competing business. The Appellants refused to provide any financial help although they knew about the financial difficulties of the Respondent Company. The Respondents claimed that the Appellants were informed about the Board Meeting to be held on 19.04.2011 vide e-mail Notice dated 12.04.2011. In Board Meeting dated 18.05.2011, Appellants 2 and 3 were removed from the Office of Director in accordance with Section 283(1)(g) of the old Act. However, Appellant No.3 filed Form – 32 with Registrar of Companies illegally claiming herself to be appointed as Director of the Respondent Company in July, 2011, that too after Respondents had filed Form of vacation of Office. Appellants suppressed material information

regarding removal of Appellant No.3 from position of Director and filed illegally Form – 32 with Registrar of Companies. Respondents claimed that for Board Meeting dated 28.02.2011, Notice dated 22.02.2011 with Agenda relating to issue of equity shares and issue of debentures had been sent. In substance, the defence of the Respondents is that proper Notices had been sent. According to them, the reduction of Appellants' shareholding was inevitable as fresh funds were required for the business of Respondent No.1 Company as it was incurring losses due to failure of the Appellants to fulfil any promise regarding technology, expertise, machinery supplies and funding of the Company. The AGM, EGM and BM were validly and lawfully held. The Respondents want the appeal to be dismissed.

10. The learned NCLT in its Impugned Order has reproduced the cases as were put up by respective parties before the NCLT and the submissions made by the parties in Paragraphs 1 to 15. In Para – 16, NCLT formulated points for determination. Para – 16 reads as under:

> "16. Basing on the pleadings of both the parties and the rival `contentions, the following points emerge for determination;
>
> (1) Whether the amendments carried out in view of the order of the Company Law Board dated 22.8.2014 made in CA No.146 of 2014 cures the technical defects pointed out by the Respondents in filing the Petition;

(2) Whether the Letter of Intent dated 3.10.2008 and draft Shareholders Agreement of August 2010 are binding on the parties in respect of the shareholding pattern of 1st Respondent Company as 51% : 49%;

(3) Whether Petitioners are entitled to file this Petition claiming reliefs under Section 397 and 398 without taking recourse to arbitration as provided in the draft Share Purchase Agreement;

(4) Whether share certificates were not provided to Belfin, and, if so, whether it amounts to act of oppression or mismanagement;

(5) Whether Mr. Sergio Bellazzi (2nd Petitioner) was illegally removed as Director of the Company under Section 283 of the Companies Act by filing E-Form dated 18th May, 2011;

(6) Whether issue of 95,500 equity shares to Shyam Group (45500 equity shares to Respondent No.4 and 50000 equity shares to Respondent No.5) and issue of 228600 - 11% Convertible Debentures of Rs.10 each to Respondent No.4 in the Board Meeting purported to have been held on 28th February, 2011 is invalid on the ground that no proper notice has been given to the Petitioners and on the ground that Respondent No.2 and Respondent No.3 who are said to be

interested Directors participated in the said Board Meeting and voted in favour of the Resolution;

(7) Whether the issue of 80010 equity shares to Shyam Group (Respondent No.4) being conversion of 35% of debentures into equity in the purported Board Meeting on 19th April, 2011 is invalid on the alleged ground of no notice to the Petitioners;

(8) Whether the Resolutions passed in the purported Board Meeting dated 18th May 2011 are invalid for want of notice to the Petitioners;

(9) Whether the increase of Authorised Share Capital to Rs.6,00,00,000 and issue of equity shares to the extent of 15,00,000 in more than one tranch in the purported EGM held on 18th June, 2011 is invalid on the ground that no notice was given to the Petitioners;

(10) Whether Petitioners are prevented from attending the Board Meeting dated 2.7.2011 and whether the offer of Rights Issue of equity shares of Rs.10 each to the extent of 15,00,000 is invalid;

(11) Whether the issue of 3,83,334 equity shares allotted to Shyam Group (Respondent No.4) on 7th July, 2011 is invalid;

(12) Whether the EGM dated 11th August, 2011 is invalid on the ground of short notice;

(13) Whether the issue of 3,87,066 equity shares to Shyam Group (1,46,666 equity shares to Respondent No.4 and 2,40,400 equity shares to Respondent No.6) in the Board Meeting held on 18th September, 2011 is invalid for want of notice to the Petitioners;

(14) Whether the AGM dated 27th September, 2011 is invalid on the ground of short notice;

(15) Whether the issue of 80,010 equity shares to Shyam Group (Respondent No.4 and Respondent No.7) on 25th July, 2012 is invalid for want of notice to the Petitioners;

(16) Whether Respondents failed to provide inspection of books of accounts and records to the 1st Respondent Company and failed to provide copies of Minutes of Meeting to the Petitioners;

(17) To what relief."

10.1 The learned NCLT then proceeded to record reasonings and findings with reference to the points for determination which NCLT had framed. In Para – 38, NCLT observed as under:

"38. In view of the above discussions and the findings on Points No.7 and 15, it can be concluded that 35% of the debentures which were converted into equity share capital by issuing 80010 equity shares to Shyam Group (Respondent No.4) on 19.4.2011 and another 80010 shares which were allotted to Respondent No.4 and 7 on 25th July, 2012 are held to be illegal and liable to be set aside. The very fact that shares were allotted to Respondents only to the exclusion of Petitioners amount to act of oppression, although it is made for the requirements of 1st Respondent Company. The winding-up of 1st Respondent Company is not in the interests of Company or its shareholders."

10.2 In subsequent paragraphs, the NCLT discussed the situation that in Cima Shyam Company, there is no possibility of Belfin Spa and Respondents together conducting the affairs and a deadlock was there. It discussed and directed that accounts of the Company should be audited by Chartered Accountant and it was necessary to consider the cancellation of shares allotted to Respondents 4 to 7 by the Tribunal in the Impugned Order and fixing fair value of shares of Respondent No.1 Company. Further directions have been given regarding appointment of Auditors for the purpose and that after the report of Chartered Accountant is finalized, fair value shall be assessed by Independent Valuer and the date of valuation would be date of filing of the petition. The Impugned Order refers to the

name of the "Independent Valuer" and other directions have been given for the findings arrived at.

11. The present appeal is against the reasonings and findings recorded by the learned NCLT for points other than point No.7 and 15 as referred to in Para – 38 of the Impugned Order, which has been reproduced above.

12. At the time of arguments, no serious disputes are raised with regard to findings of NCLT with regard to POD 1 to 4 and 16. We have seen the reasons and findings recorded by NCLT with regard to POD 1 to 4 and find no reason to interfere in these aspects. As regards other aspects, we have heard learned counsel for both sides.

Arguments in brief for Appellants

12.1 In short, the learned counsel for Appellants submitted that the Appellants who were 51% have been reduced to 39.89% in shareholding by the acts of Respondents. She stated that the Respondents either sent no Notice or sent short Notices for the Board Meetings or EOGM or AGM. It is argued by the learned counsel for the Appellants with reference to Point of Determination (POD) 5 that while dealing with POD 8, NCLT came to conclusion that there was no material placed on record to show that Notice of Board Meeting held on 18.05.2011 was sent to the Petitioners/Appellants and that the same was received by them and in spite of this, no clear finding was recorded against POD 5 and POD 8. The learned counsel argued with reference to POD 6 and Board Meeting dated

28th February, 2011 that on that date the Respondents issued shares of the Company without Respondents showing as to how there were applications received for issuance of shares. Nothing was shown as to how pricing guidelines as mandated by law were followed. The service of Notice of this meeting was also not proved. In Para – 38 of the Impugned Judgement with reference to another point, NCLT observed that issuing of shares to the exclusion of Petitioners amounted to act of oppression but did not apply the same analogy while dealing with POD 6 relating to meeting dated 28th February, 2011. She submitted that on 28.02.2011, the Respondents confirmed the earlier minutes of meeting dated 29.09.2010 which was about 5 months earlier meeting. According to her, the alleged E-mail Notice does not show complete address of the Appellants when the address mentioned is compared with other documents where receipt of Notice is not in dispute. She submitted that with incomplete address, the E-mail would not go. According to her, even if the Notice was to be considered the Agenda was totally vague and suddenly the Board had taken up further issue of shares and also illegally issued convertible debentures. She submitted that even if it was to be stated that on 22.02.2011 a Notice was issued, it would be hopelessly short Notice for the meeting on 28.02.2011 leaving only three working days for Appellants who were based in Italy. The argument is that such Board Meeting and its Resolutions could not be upheld.

13. Learned counsel for the Appellants further submitted that the reasonings recorded by the learned NCLT with reference to POD 11 which dealt with the issue of 3,83,334 equity shares to Shyam Group (Respondent No.4) on 7th July, 2011 is vague and inconclusive. She submitted that EOGM dated 18.06.2011 was held on short Notice and although the Respondents tried to block out the Appellants 2 and 3 by filing E Form – 32 with ROC claiming that on 18.05.2011 they ceased to be Directors, still Notice was sent to the Appellants for Board Meeting dated 02.07.2011 to attend which meeting the Appellants came down from Italy but they were prevented from attending the Board Meeting. According to her, preventing the Appellants from attending the Board Meeting itself amounted to oppression and the equity shares issued to Shyam Group on 07.07.2011 to the extent of 3,83,334 could not be upheld. Similarly, it is claimed that the issue of 3,87,066 equity shares to Respondent Nos.4 and 6 on 18th September, 2011 also cannot be upheld for want of Notice to Petitioners.

14. The learned counsel for Appellants further criticized the Impugned Order for the reasonings recorded in para – 35 of the Impugned Order where NCLT accepted that Petitioners being residents of Italy, Notice of one week is short Notice for AGM dated 27.09.2011 but still upheld the meeting observing that in the AGM no major decision was taken except approval of accounts of the Financial Year ending 30th March, 2011 and appointment of Statutory Auditors. According to her, the right of the

Appellants to look into the accounts and for a voice regarding appointment of Statutory Auditors cannot be taken away by giving short Notice. According to the counsel, the point for determination held against the Appellants should have been held in favour of the Appellants.

Arguments in brief for all Respondents

15. Against this, learned counsel for Respondents argued that reduction in the shareholding of the Appellants from 50.02% to 39.87% was inevitable as funds were required to be infused in the business for existence of Respondent No.1 Company which was incurring losses since date of incorporation. It has been submitted that the Appellants invested Rs.1.82 crore as initial investment and subsequently did not bring in any more funds although the Company was in financial distress. The Appellants did not join the bank guarantees in respect of loan raised by the Respondents to run the business and they also refused to invest funds. According to them, the sole test relating to liability of issuance of shares is whether it was done in the larger interest of the Company even if incidentally it benefited the Directors in any manner. It has been argued that the Companies Act does not specify any time period for sending Notice relating to Board Meetings of the Directors. The Articles of Association of Respondent Company are silent with regard to Notices for the Board Meetings but Article 25 specifies that for General Body Meeting, it can be called with 7 days' Notice. Thus according to Respondents, the Notices issued for the various Board Meetings, EOGM and AGM could not be

faulted with. It is also argued that Section 286 of the old Act which deals with meetings of the Board of Directors does not say that every item which is to be discussed at the Board Meeting must be specified in the Agenda. According to the Respondents, the law does not require an Agenda for the Meeting of Board of Directors and any business whatsoever can be transacted at the Board Meeting. Alternatively, it is claimed that it would only be an irregularity which cannot vitiate transfer of shares. It is claimed that allotment of 80010 equity shares to Respondent No.4 on 19.04.2011 and further 80010 equity shares to Respondent Nos.4 and 7 on 25.07.2012 by the Company to the exclusion of Appellants was done by way of conversion of debentures could not have been held as oppressive as conversion was inevitable as per law. The Respondents argued that the Appellants did not approach NCLT with clean hands and Appellants 2 and 3 were removed as Directors on 18.05.2011 in accordance with Section 283(1)(g) of the old Act for not attending 3 consecutive Board Meetings on 28.02.2011, 19.04.2011 and 18.05.2011. It is argued that Appellant No.3 herself, however, filed Form No.32 with Registrar of Companies illegally and reappointed herself as Director in July, 2011. It is also submitted by the Respondents that the Appellants 2 and 3 indulged in parallel and competing business and even there was poaching of employees. Appellants established another Company in Goa by name Cabe Springs and Fasteners India Pvt. Ltd. where Mr. Alessandro Cuomo the representatives of the Appellants in Respondent Company was the Director of the other Company at Goa. Even that Company was engaged in manufacturing springs for

washing machines which was the main object of Respondent Company. The learned counsel submitted that Unimatic URL and Cabe SRL, sister concerns of Appellants supplied degraded machinery to Respondents and to harass Respondents filed summary suit in Civil Court at Vadodara to claim cost of machinery. It was dismissed by the Civil Court and appeal was filed at High Court which was also dismissed on 18.07.2017. Thus, the Appellants were working against the interest of Respondent Company.

16. It has been argued by the learned counsel for Respondents that the appeal deserves to be dismissed.

17. Having considered the matter as was brought before the learned NCLT and the Impugned Order and having heard counsel for both sides we now proceed to discuss the points raised.

Board Meeting dated 28.02.2011

18. The minutes of this Board Meeting are at page – 298 in Volume – II of the Appeal. It was held by Respondent Nos.2 and 3 as Managing Director and Director. The minutes confirmed previous minutes of Board Meeting held on 29th September, 2010. The first issue taken up appears to be allotment of shares. The Minutes record that a list showing share application money received for allotment of equity shares has been placed before the meeting. The Resolution proceeds to resolve issue of 95,500 equity shares to be allotted to the applicants as shown in the Allotment Statement. The Allotment Statement is not part of the Minutes or on Record. However, it appears that 45,500 equity shares were allotted to

Respondent No.4 and 50,000 equity shares were allotted to Respondent No.5. The contention of the counsel for Appellants is that these are sister concerns of the Respondents 2 and 3. This is not disputed. The Minutes dated 28th February, 2011 further show that Respondent No.2, the Managing Director in the meeting "informed the meeting that fully convertible 11% debentures are to be issued to the following persons; details of whom have been placed before the meeting". The Managing Director thus "informed" and the other Director who is his brother appears to have agreed. Both these Respondents proceeded to issue fully convertible 11% debentures. Debentures of Rs.22,86,000/- divided into 2,28,600 debentures of Rs.10/- each appear to have been issued to Shyam Group – Respondent No.4.

19. We find substance in the argument of the learned counsel for Appellants that this meeting on 28th February, 2011 which was after almost 5 months of the earlier meeting dated 29th September, 2010, the Respondents have not shown anything as to how there was Resolution to invite applications for shares, how pricing of the shares was settled and how without offering the shares to existing shareholders, suddenly further shares were issued to parties who are not members of the Company and were basically outsiders. The Agenda of this Meeting is at Page – 297 and the Agenda merely is

> "1) Issue of equity shares, 2) Issue of debentures, 3) To consider any other matter as may be brought forth during the meeting".

We find that this Agenda when read with the Minutes must be said to be clearly vague. The Agenda did not specify if questions relating to issue of equity shares and questions relating to issue of debentures, leave aside, convertible debentures was to be discussed or the Meeting was for actual issue of the equity shares and debentures. Clearly, there were no meeting papers circulated nor sufficient particulars in the Agenda to know as to what business would actually be conducted in the Meeting. The learned counsel for Appellants has rightly argued referring to Para – 29 of the Impugned Order that the learned NCLT while dealing with E-mail Notice and the Agenda relating to Board Meeting dated 19th April, 2011 found that Agenda to be vague relating to allotment of 80010 equity shares to Shyam Group by way of conversion, but the learned NCLT did not consider vagueness of the Agenda of Meeting dated 28th February, 2011 while dealing with POD 6. We reject the argument of counsel for Respondents that law does not require and so agenda itself is not required. When law requires holding of meeting eyes cannot be closed to the basics.

20. The learned counsel for the Appellant has drawn our attention to the Notice dated 22nd February, 2011. (copy of which is at Page- 295). She stated that in this, the Notice is purported to be sent to "Rita Bellazzi", "Bellazzi Sergio". While, the CC has been marked to "Hemal Patel", giving

complete address - “jaimin@cimashyam.com”. The argument of the learned counsel is that if this document of e-mail purporting to forward the Notice of Board Meeting dated 28.02.2011 is compared with other documents like at Page – 150, 380 or 365 which relate to other correspondence, it is clear that this e-mail did not contain the correct and complete e-mail address of the Appellants. Her argument is that in other correspondence where complete address is there like “rbellazzi@cimabelfin.com” or “sbellazzi@mac.com”, the e-mail reached. The counsel submitted that looking to the technology, if there is even a dot less or space more in writing the e-mail address, the e-mail would not go. The argument is that the Appellants had not received the Notice of Board Meeting dated 28.02.2011 in which apart from the fact that the Agenda was vague, major decisions were taken regarding further issue of shares and issue of convertible debentures.

21. We find that it is for the Respondents to prove that Notice was duly sent and served on the Appellants who were majority shareholders. The document at Page – 295 regarding address of the Respondents in the e-mail is quite vague and even the Agenda relied on by the Respondents is vague and there is no material to show on what basis the share application money had been invited and further shares issued to outsiders and on what basis decision to issue 11% convertible debentures was taken.

22. With regard to the Board Meeting dated 28.02.2011 and the equity shares and convertible debentures issued, the learned NCLT dealt

with the point of determination as POD 6. The discussion in Para -28.1 referred to the e-mail dated 22nd February, 2011 and the Agenda and discarded the contention of the Petitioners that they had not been given any Notice. Although in Para – 35.2 dealing with AGM dated 27.09.2011, the NCLT itself found that for Petitioners who were residents of Italy, one week's Notice is short Notice, the NCLT did not apply the same yardstick while dealing with the Board Meeting dated 28.02.2011. The counsel for Appellant has pointed out that 22nd February, 2011 was Tuesday and 28th February, 2011 was Monday, which in effect left only three working days for residents of Italy to take Visa, prepare and come down, even if the Notice was to reach them.

22.1 In Para – 28.1 of the Impugned Order, the learned NCLT did not discuss if the Agenda was vague when compared with the Resolutions passed. NCLT discarded the arguments of Appellants that Respondents 2 and 3 were interested Directors in the allotment of shares and debentures in the Meeting on 28th February, 2011 by observing (in Para 28.2) that the provisions of Sections 295 to 302 nowhere specifically state that shares shall not be allotted to a Company wherein one of the Directors of the Company has got the interest. The learned NCLT did not consider the Articles of Association (copy at Page – 110 of Appeal Volume I) which in Article – 3 placed restriction on transfer and number of Members. Sub-clauses c and d of Article 3 reads restrictions as under:-

"[c] Prohibits any invitation to the public to subscribe for any shares in or debentures of the Company.

[d] Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives."

Article 6 reads as under:-

"Shares at the disposal of Directors

6. The shares shall be under the control of the Directors who may allot or otherwise dispose off the same or any of them to such persons, in such proportions and on such terms and conditions and at par, at premium or at discount [subject to the provisions of the Act] as they may from time to time think proper."

22.2 The above Clauses of Article – 3 and Article 6 when they are kept in view and spirit of these Articles is considered, it can be seen that the shares at the disposal of Directors also were under the control of the Directors subject to the provisions of the Act. There was prohibition to accept deposits from persons other than members, Directors or their relatives. We do not think that sister concerns of the directors could be included in the meaning of "Relatives". However, in the present matter, the Respondents 2 and 3 issued convertible debentures to Respondent No.4 who turned out to be their sister concern. The learned counsel for the

Appellants has relied on the Judgement in the matter of **"Needle Industries (India) Ltd. vs. Needle Industries Newey India Holdings Ltd."** reported in 1981 SCC (3) 333 to submit that when the matter related to private limited company between closely held groups, even if Section 81 of the old Act did not apply, still the principles of Section 81 were required to be followed and Respondents 2 and 3 who were in positon of Trustees in India for the Appellants who were based in Italy, it was not justified on the part of the Respondents to issue further shares without first offering the same to existing members and also issuing convertible debentures, paving way for soon converting them to further issue of shares to their sister concerns who as far as the Company was concerned were outsiders. We find substance in these submissions.

22.3 In Para – 28.4, the learned NCLT discussed that the Appellants did not contribute after initial investment and Respondents had to run the business of the Company and thus there was need to increase the share capital to allot further shares. The learned NCLT concluded that allotment of 95,500 equity shares to Shyam Group, i.e. Respondents 4 and 5 could not be declared as illegal. The learned counsel for the Appellants has argued that the Appellants came to know about such meeting dated 28.02.2011 only after Company Petition was filed and Respondents filed reply. She referred to correspondence on record to show that the Appellants had deputed Mr. Alessandro Cuomo, an engineer in spring manufacture and who was knowing production and sales of springs to

come down to India and work in the Company. The learned counsel referred to e-mails of 2010 in this regard. The learned counsel for the Appellants pointed out the Minutes of Meeting dated 16th March, 2011 (Page – 266 of the Appeal). Mr. Alessandro Cuomo participated on behalf of the Cima and Mr. Girish Patel and Mr. Devang Patel participated for Shyam party The relevant part of the Minutes is reproduced below:-

> "During the meeting both parties analized data coming from company consultants about the financial situation. Both parties already were aware about the financial stress the company is passing through due to the starting of mass production.
>
> After that myself, Mr. Alessandro Cuomo, appointed by Mr. Emilio Bellazzi, communicated to Shyam party the will of Cima party to wind out the JV CimaShyam Pvt. Ltd.
>
> The Three solutions available are:
>
> - Shyam party buyout Cima shares
> - Bankruptcy of CimaShyam
> - Cima party buyout Shyam shares
>
> According to this list Mr. Girish asked as first option to investigate about the possibility Shyam party to buyout all Cima shares.

Cima party is available to discuss this option as first if the matter regarding the payment of machineries arrived from Italy has a special priority on the discussion that will follow.

Both party agreed to go ahead on this solution after investigating on all different ways to work it out. Both parties are agree to wait for CA Mr. Mehta suggestions offered by the Indian law.

Both parties are agree to update this meeting after we will receive all options from company CA, anyway not later than 12 days from today."

22.4 Learned counsel for the Appellants submitted that when such Meeting took place between the parties because of which the Minutes (as seen at Page – 266) were sent, the Appellants were not aware and did not know that the Respondents 2 and 3 had already brought about a Board Meeting as claimed on 28.02.2011.

22.5 The learned counsel for the Respondents referred to document at Page – 237 which is dated 20th May, 2009 from the Bank of Baroda to the Company. It is submitted that the Company was in need of funds and when Bank of Baroda was approached, they had laid down terms and conditions as can be seen from the Annexures. According to him, the Respondents 2 and 3 had given security of their personal property to raise the funds. In answer to a query put up by us to the learned counsel,

whether there was a Board Decision that further credit facilities are to be availed, learned counsel submitted that the Appellants never said that it was not necessary. The learned counsel referred to document at Page – 266 and e-mail at Page – 265 by which the Minutes of Meeting dated 16th March, 2011 were circulated to submit that the Appellants were merely interested in winding up and did not contribute funds. Looking to the various e-mails exchanged between the parties which are available on record, what appears is that Mr. Alessandro Cuomo on behalf of the Appellants sent e-mails to the Respondents with copies to the Appellants. The e-mails show Mr. Cuomo going on asserting that he was representing the majority shareholders and in the process he wanted to look into the management which appears to have been resisted by the Respondents. In these various e-mails, the Respondents do not appear to be referring to the Board Meeting dated 28th February, 2011 in which they allotted 95,500 equity shares to Respondents 4 and 5 or issued convertible debentures to Respondent No.4. Although the Respondents are submitting that there was need to bring in funds and so further issue of shares became necessary, Respondents have not brought to our notice any material other than pointing out a letter of Bank of Baroda dated 20.05.2009 which is at Page – 237 to show as to what was the state of business and what were the plans regarding expansion and for what specific purpose how much funds were necessary. On the basis of a letter of 2009 from the Bank, suddenly on 28th February, 2011 large numbers of equity shares were issued and convertible debentures were issued without there being material to show

that majority shareholders, i.e. the Appellants were involved in the decision making. The Appellants 2 and 3 were Directors and proof of service of Notice of Board Meeting to them was necessary. What is shown by the Respondents, we find as not reliable. If things were in order, Respondents would have referred in correspondence to the change of shareholding. NCLT accepted defence on this count of need of funds without seeking documents. Merely showing terms laid by bank for credit limit or loan is not enough.

23. For such reasons, we find that the reasonings recorded by the learned NCLT in upholding allotment of 95,500 equity shares to Respondents 4 and 5 cannot be upheld by us. NCLT did not also look into the correctness of issue of convertible debentures on 28.02.2011. The debentures issued were soon converted into shares by the Respondents 2 and 3, to the extent of 80010 equity shares which was done on 19.04.2011 in Board Meeting.

24. While dealing with Point No.7, which was relating to issue of 80010 equity shares to Respondent No.4 by way of conversion of 35% debentures into equity shares in the purported Board Meeting on 19th April, 2011, the learned NCLT in Para - 29 referred to the Agenda to find that it had no mention about allotment of equity shares to Shyam Group by way of conversion. The NCLT thus held the point against the Respondents and set aside such conversion. The Respondents have not filed Appeal against such setting aside of 80010 equity shares on

19.04.2011 and thus the Impugned Order to this extent becomes final and no further discussion regarding this Meeting is called for except for the mention that regarding this Meeting also, the case of the Appellants is that they did not receive Notice dated 12.04.2011. Just one day after the said Notice dated 12.04.2011, there appears correspondence exchanged between the parties, copies of which are at Page – 270 and 271 which is dated 13th April, 2011. The correspondence is silent regarding any upcoming Board Meeting dated 19.04.2011. In ordinary course, if the Respondents 2 and 3 were uncomfortable with the working of Mr. Alessandro Cuomo, one would expect that while writing e-mail on 13th April, 2011, Respondent No.2 would request Appellant No.3 to come down for the Board Meeting fixed for 19.04.2011 so that other aspects also could be discussed and sorted out.

The Board Meeting dated 18th May, 2011

25. The learned NCLT discussed POD 5 containing the question of illegal removal of Appellant No.2, Sergio Bellazzi as Director for which E Form was filed on 18th May, 2011. In POD 8, NCLT dealt with the Resolutions passed in the Board Meeting dated 18th May, 2011.While dealing with POD 5 regarding E Form submitted, the case of the Appellants regarding illegal removal as Director was discussed in Para - 27. The Respondents claimed before NCLT that Appellants 2 and 3 both vacated the office of Director automatically from 18.05.2011 in view of Section 283(1)(g) of the old Act. The NCLT discussed the provisions and the claim

of Appellants that they could not attend due to non-receipt of notices or insufficient notices and the case of Respondents that if Petitioners were absent from 3 consecutive meetings, it would be case of vacating of Office. Reference was then made to the Form – 32 and the claim of Respondents that Appellant No.3 had subsequently filed Form – 32 without authority. In Para – 27.1, NCLT observed as under:-

> "27.1 The question of vacation of office of Directorship by the Petitioners under Section 283(1)(g) cannot be solely attributed to the Respondents. At the same time, it has to be seen whether the absence from three consecutive meetings of the Board of directors is on account of want of notice or on account of short notice. Therefore, this issue also relates to the notice to the Respondents regarding the Board Meeting."

(In the last sentence, there is clerical error as the issue related to Notice to Petitioners and not Respondents.)

26. Thus, the NCLT did not record any finding as such whether the Appellants 2 and 3 were illegally removed when on 18.05.2011 they got Form 32 filed (as at Page 339). Respondents have argued that the Appellants 2 and 3 as Directors representing the Appellant No.1 did not attend Board Meetings on 28.02.2011, 19.04.2011 and 18.05.2011 and so there was deemed vacating of office of Director and that is why E Form – 32 which is at page – 339 in the record of appeal had been filed with ROC. We have already held that it is not proved that Appellants were served with

the Notice dated 22.02.2011 for the Board Meeting dated 28.02.2011. The NCLT itself has held while discussing Resolution dated 18th May, 2011 in POD 8 that no material had been placed on record by the Respondents to show that Notice of Board Meeting held on 18th May 2011 was sent to the Petitioners and that it was received by the Petitioners. When the Respondents were counting even the meeting dated 18th May, 2011 to rush to submit E Form 32 (as at Page – 339), the alleged claim of vacating of office of Director by the Appellants 2 and 3 cannot be upheld. The finding of the learned NCLT below POD 8 against the Respondents has not been challenged by the Respondents by filing any appeal. When Notice was not proved the Resolutions of Board Meeting dated 18.05.2011 will have to be held as invalid.

27. The Minutes of the Board Meeting dated 18th May, 2011 are at Page – 353 in the appeal. The Minutes referred (at Page – 354) to Appellants 2 and 3 as "Existing Directors". The Resolution taken was that there was need to improve authorised capital and margin money for new equipments and the Company needs increased authorised capital and also there was need to make further issue of capital approximately to the extent of Rs.130 lakhs. In this Resolution, the Respondents recorded that "These shares are proposed to offer to the existing shareholders subject to i.e. any shareholder who do not take up the shares offered to them then the board would decide……." Having earlier issued shares to Respondents 4 and 5, without offering to Appellants, now the Respondents were

themselves laying on record wisdom that further shares need to be first offered to existing Shareholders.

27.1 In this same Resolution, there is discussion in Subject No.6 that the machine supplied by Unimatic SRL – Italy "is not performing as per customers product requirement" and the option would be either to return the machine to the supplier or the other option would be to upgrade the machine at the cost of supplier. We are referring to this because although this is a contractual matter between the Company and Unimatic SRL – Italy regarding which some issue has been made to show the Appellants in bad light, the Minutes themselves show that it was a question of non-performance of machines "as per customers' product requirement". Learned counsel for the Appellants has submitted that the Order (Page 254) itself was for a second hand machine. We do not think that the contractual dispute regarding machine should be allowed to cloud the issues regarding oppression and mismanagement.

28. The Minutes dated 18th May, 2011 further show Respondents taking decision on one hand that there is need to increase the share capital and on the other decision was being taken that the Company would not require the vast land that Company had purchased and hence, decision was taken to dispose of land. We are aware that these factors are internal management of the Company but they are relevant facts for appreciating the conduct of the parties as the Respondents in subsequent EOGM dated 18.06.2011 proceeded to get the authorised share capital increased from

4,50,00,000 to 6 crores, Minutes of which are at Page – 353. Coming back to the Resolution dated 18th May, 2011, the Minutes dated 18th May, 2011 must be held as not binding on the Appellants as no Notice of the same was given to the Appellants. To recall, NCLT has held the Resolutions passed in the purported Board Meeting dated 18th May, 2011 as invalid for want of Notice to the Petitioners and this is not challenged by the Respondents by filing Appeal. This would also take away the base for the EOGM called on 18.06.2011.

EOGM dated 18.06.2011

29. The case of the Appellants regarding this EOGM is that there was short Notice. Respondents claimed that Notice dated 24th May, 2011 was sent to the Appellants. Copy of the Notice dated 24th May, 2011 is at Page – 359 of the record. Typically, what purports to be e-mail (as at Page 358) forwarding the Notice does not show complete e-mail address of Appellants 2 and 3. However, it appears that this time hard copy had also been sent and the Appellants received the same on 13th June, 2011. The Appellants reacted by sending e-mail and also writing letter dated 15th June, 2011 (copy of which is at Page – 362). Portion of the letter is reproduced below:-

> "Subject: Notice of Convening of the Extraordinary General Meeting on June, 18,2011
>
> Dear Jaimin,
>
> On June 13, 2011, we received a Notice dated May 24, 2011 signed by you stating that an Extraordinary General Meeting (EGM) of Cima Shyam Springs Pvt. Ltd. (the

> "Company") would be held on June 18, 2011 to transact the special business mentioned in the said Notice. At the outset, we wish to bring to your attention that this notice is null and void as a minimum of 21 days prior notice is required to convene an EGM as a matter of law in the absent of the consent of members holding 95% of the share capital to shorter notice. As per my email dated June 13, 2011, we do not consent to holding the meeting at shorter notice. Therefore, since the Notice dated May 24, 2011 was received by us only on June 13, 2011, it is not an accidental omission to give proper notice and will invalidate the proceedings at any EGM held on June 18, 2011."

29.1 The letter then refers to the fact that the Appellants understand that there was a Board Meeting on 18th May, 2011 to convene EGM and even Notice of that Board Meeting had not been served on them. The letter shows that on 13th June 2011 itself by e-mail, the Appellants had requested the Respondents to postpone the EGM as they need more days to travel down. It has been argued by the learned counsel for the Appellants that when the Notice reached the Appellants on 13.06.2011 that the EOGM was on 18.06.2011, it hardly left 4 – 5 days for the Appellants to attend the meeting and it was clearly a short Notice. The Appellants claimed that it was necessary to give 21 days' Notice as per law. The Respondents have argued that as per Articles of Association, Article 25 for General Meeting, 7 days' clear Notice is the only requirement. According to us, it would be necessary for the Respondents to prove not only the issue of Notice but service of Notice on the Appellants. Looking to the documents discussed above relating to the EOGM dated 18.06.2011, we find that for Appellants who are resident at Italy, when Notice was received on 13.06.2011 there

was clearly short Notice for the EOGM. We find no reason to suspect the reaction of the Appellants as recorded in their letter dated 15th June, 2011.

30. The learned NCLT while dealing with POD 9 with regard to EOGM dated 18th June, 2011 discussed the rival cases which were put up by the parties and while dealing with the letter dated 15.06.2011 discussed above and the e-mail dated 13.06.2011 concluded as under:-

> "Therefore, the letter dated 15.6.2011 and the E-mail dated 13th June, 2011 sent by Belfin Spa to the 2nd Respondent clearly show that they have got knowledge of the EOGM scheduled to be held on 18th June, 2011 and the Agenda of the Meeting on 18th June, 2011. The Company informed the Petitioner that EOGM was scheduled to be held on 18th June, 2011 and to complete the directions given in the EOGM they are calling for the Board of Directors meeting on 2nd July, 2011. It appears that there was sufficient quorum for the EOGM held on 18th June, 2011."

30.1 The learned counsel for the Appellants rightly criticised this finding that it was not a question of sufficient quorum for EOGM but the question was whether there was sufficient Notice for the Appellants to attend the EOGM. The discussion of the learned NCLT does not show that it discussed the alleged forwarding e-mail of 24.05.2011 and the incomplete e-mail addresses as seen at Page – 358.

31. From the reasons above, we find that the NCLT wrongly held POD 9 in favour of the Respondents. The EOGM called suffered from sufficient Notice to the Appellants, who are majority shareholders and thus, the decisions taken for increase in authorised share capital cannot be upheld and deserve to be set aside.

Board Meeting dated 02.07.2011

32. It appears from record that after the EOGM which was held on 18.06.2011, the Respondents sent an e-mail (as at Page – 365) to the Appellants declaring holding of the EGM and claiming that it had been validly concluded and informed the Appellants that Board Meeting is to be held on 2nd July, 2011 and that the increased shares would be offered to existing shareholders etc. This e-mail which is at Page – 365 gives detailed e-mail addresses of the Appellants (unlike what is appearing at Page – 358 relating to Notice dated 24.05.2011). The Appellants reacted by e-mail dated June 21, 2011 (copy of which is at Page – 367). It appears that they were insisting with their assertion of requirement of 2 members of the Appellant to be necessary for the quorum. We are not entering into correctness of such assertion. The point here is that this time the e-mail dated 18th June, 2011 (as at Page – 365) reached the Appellants and the Appellants 2 and 3 appear to have come down to India. The Resolution regarding Board Meeting dated 02.07.2011 is at Page – 305. Inter alia, in addition to Resolution to sell land of Company there was the Resolution regarding "Right issue of shares" taken resolving that equity shares of the

Company of Rs.10/- each to the extent of 15 lacs shares be offered to all the existing shareholders of the Company on right basis. There is further Resolution regarding sending information and calling willingness of the members and the Respondents 2 and 3 were authorised to accept the applications to the extent existing entitlement of a particular member etc. It is then further resolved as under:

> "RESOLVED FURTHER THAT the time period for making application @ Rs.4 per share is upto 15.07.2011 and on or after 15th July, 2011 the committee of the Board of Directors may allot the shares that are not taken up by any other shareholders and upon the payment of Rs.6/- per share, the allotment by the committee of the board be finalize the allotment in accordance with the above resolution."

33. Thus, as per this Resolution, the time period given for making applications was up to 15.07.2011. This we are observing because soon after this meeting dated 02.07.2011, on 07.07.2011, the Respondents appear to have held Board Meeting and issued 3,83,334 shares to Shyam Group.

34. Coming back to the Board Meeting Minutes dated 02.07.2011, the Respondents 2 and 3 recorded that the Appellants 2 and 3 had been absent from all the Board Meetings continuously for a period of 3 months without availing leave and so as per Section 283(1)(g), their Office of Directorship stood vacated. In the same Resolution, however, there is also

Resolution by the Respondents 2 and 3 to appoint the Appellants 2 and 3 as Additional Directors. This Board Meeting dated 02.07.2011 was confirming the previous Board Meeting Minutes dated 18th May, 2011. When it has been found that the Appellants had no notice of the Board Meeting dated 18.05.2011, such Resolution passed on 2nd July, 2011 resolving that the Appellants 2 and 3 vacated by operation of law cannot be upheld.

35. The case of the Appellants with regard to this meeting dated 02.07.2011 is that they did come down to India and had gone to attend the Board Meeting but they were kept waiting outside and later on it was declared to them that the Meeting is already over. In this regard, the Appellants sent protest letter dated 4th July, 2011 (copy of which is at Page 377). The letter was addressed to the Respondent No.2 and the Board of Directors. Part of the letter needs to be reproduced which is as under:-

> "..... On receiving your notice, by way of our email dated 6/11/2011 (June 11th 2011) we requested you to postpone the board meeting until after July 2, 2011 due to the inability of the directors to travel from Milan, Italy to India on that date. However, you refused to grant the minimum courtesy to us and insisted that the meeting be held on Saturday, July 2, 2011. We note that an extraordinary general meeting (EGM) of the Company had already been held on June 18, 2011, despite the absence of Belfin Spa due to lack of sufficient notice, owner of 51.36% of the paid up capital of the Company, and decisions had been taken to sell off the undertaking of the Company. In view of the decisions to sell the land, plant and machinery of the Company taken at the EGM, which the undersigned directors believe are not in the best interests of the Company, we immediately purchased air tickets to travel to Vadodara.

We arrived in Baroda on Friday July 1, 2011 in order to be able to attend the meeting on July 2, 2011 at 11:00 a.m." ..... "At approximately 6:30 p.m. on July 1, 2011, we sent you a taxi message informing you that our lawyer, Mrs. Viswanathan, would be arriving from Delhi as an invitee at the board meeting on the flight available from Delhi which arrives at 11.30 a.m. We requested you to postpone the board meeting from 11:00 a.m. to 12:00 noon and to organize the car and driver to pick up Mrs. Viswanathan. You had replied to our earlier text message but did not reply to this one. In the evening, we were invited for dinner at your residence. While at your residence, Ms. Rita Bellazzi confirmed with you verbally that the meeting from 11:00 a.m. to 12:00 noon and you replied "no problem".

On Saturday, July 2, 2011 at 11:05 a.m., the undersigned two directors of the Company, along with Mr. Alessandro Cuomo, arrived at the registered office of the Company and were seated in one of the rooms of the registered office next to the entry to the office. We were greeted by your wife, Mrs. Amrita Patel and we provided the name of our lawyer who was arriving at 11:30 a.m. on the first flight from Delhi so that your driver could pick her up at the airport. Your driver then picked up our lawyer at the airport.

At 11:40 a.m., you personally came into the waiting room at where we were seated and asked us to be seated in the office of your father, Mr. Girish Patel. We note that, in addition to yourself and Mr. Girish Patel, Mr. Hemal Patel and Mr. Mankind Patel were also present.

We were seated in the office of Mr. Girish Patel until our lawyer, Mrs. Viswanathan, arrived at 11:50 a.m. Immediately on her arrival, we asked you to commence the board meeting. We note that your consultant, Mr. Shah, was present at the meeting as an invitee although you had never informed us of his presence.

However, instead of starting the board meeting, your consultant, Mr. Shah, an invitee, started demanding that we turn off our mobile phones and refused to let us use our laptops to take notes. In the interests of being polite, we agreed to do the same although it is not required by law or common courtesy. Despite our courtesy, your consultant started various dialogues which were not relevant to the agenda for the board meeting. In a further attempt to have a constructive board meeting, we requested you several times to commence the board meeting since we have travelled all the way from

> Milan, Italy to Vadodara only for the purposes of attending the board meeting you had scheduled on July 2, 2011. However, you repeatedly stated that "the board meeting is over. ……."

35.1 The above contents of the letter sent soon after the Meeting dated 02.07.2011 vividly describe what Appellants claim to have happened on 02.07.2011 when they had come down for the Board Meeting called by Respondents. The fact that the Appellants 2 and 3 did come down to India for the meeting is not in dispute looking to the facts of the matter which show that after the Appellants were thus kept waiting and not allowed to participate, the Appellants 2 and 3 proceeded to their hotel and held what could be said to a cross Board Meeting minutes of which are at Page – 391. This meeting was held according to the Appellants at 2.00 p.m. The Appellants decided that Mr. Ing. Alessandro Cuomo would be alternate Director for Appellant No.2 and Mrs. Rossana De Cristofaro would be alternate Director for Appellant No.3. Some more Resolutions are also recorded as well as the Resolution to convene Extra Ordinary General Meeting on 25th July, 2011. The Respondents 2 and 3 of course reacted and called another Meeting on 18.07.2011 (copy at Page – 396) diluting these Resolutions taken on 2nd July, 2011 by Appellants in the Meeting held by them at Welcome Hotel, Baroda. We are not entering into the question of validity or otherwise of Board Meeting held by the Appellants at the Hotel. Reference has been made because it shows that the Appellants 2 and 3 did in fact travel down to India for the Board Meeting which had been called by the Respondents on 02.07.2011. There was no

reason for them not to participate at the address of the Company in the Board meeting which had been called by the Respondents. They had reached the Company Office at 11.05 a.m. They were representing the Appellant No.1 which was major shareholder of the Company and they had come down as Directors. They were almost in equal strength with Respondents 2 and 3 and had no reason to be afraid of or to shy away from the Meeting called by the Respondents. We are thus, inclined to accept the case of the Appellants that when they did come down for the Meeting dated 02.07.2011, the Respondents 2 and 3 assured and indirectly prevented them from attending the Meeting. As discussed, while the Appellants 2 and 3 were kept out waiting, the Respondents 2 and 3 were resolving inside that Appellants 2 and 3 are absent and cessation under Section 283(1)(a) is attracted. This is shocking behaviour. The Meeting has to be held to be illegal and acts of Respondents 2 and 3 were oppressive of Appellants.

36. The learned NCLT discussed POD 10 and 11 referred above in Para – 32 of the Impugned Order. If the reasonings and findings recorded by the learned NCLT with regard to POD 10 and 11 which had been framed, are perused, what can be seen is that the learned NCLT discussed the case which was put up by the Appellants and their letter dated 4th July, 2011. The Appellants had argued before the NCLT that the Respondents did not reply to their letter dated 4th July, 2011 (which letter is at page 377). The NCLT then proceeded to discuss the fact that the Appellants 2 and 3 had

a Board Meeting on 02.07.2011 at 2.00 p.m. at Welcome Hotel and referred to the Resolution they had taken and referring to such events concluded that it was "not necessary to give weight" to the letter dated 4th July, 2011 even in the absence of reply by the Respondents. The learned counsel for the Appellants has rightly argued that the learned NCLT failed to discuss the case of the Appellants that they had been left out, high and dry, from the Board Meeting which the Respondents held, and non-reply to letter dated 04.07.2011 should be held against Respondents. She submitted that because the Appellants were not allowed to participate in the Board Meeting, they had no option but to go and hold meeting on their own which was a natural reaction. Her submission is that the question is not of legality or otherwise of the Board Meeting held by the Appellants but the question is whether it was right on the part of the Respondents 2 and 3 to effectively prevent the Appellants 2 and 3 from participating in the Board Meeting for which the Appellants 2 and 3 had travelled the long distance from Italy to India. She rightly submitted that the NCLT failed to discuss this aspect which was material and wrongly ignored the letter dated 04.07.2011 sent by the Appellants soon after the developments dated 02.07.2011 and which was not responded to by the Respondents.

37. For These reasons, we are unable to agree with the learned NCLT in its finding recorded in Para – 32.1 that the Board Meeting held on 02.07.2011 by the Respondents cannot be said to be illegal or invalid. We find that it was oppressive on the part of the Respondents 2 and 3 to

prevent the Appellants 2 and 3 from participating in the Board Meeting for which they had travelled to India. In Para – 32.1 of the Impugned Order, the learned NCLT without discussion upheld the issue of 3,83,334 shares to Shyam Group on 7th July, 2011 because of its finding regarding the Board Meeting held on 02.07.2011. We have held that the removal of Appellants 2 and 3 as recorded by the Respondents in the Board Meeting Minutes at Page – 305 cannot be upheld. We recall here the observation made by us (Supra) that in spite of Resolution in the Minutes dated 02.07.2011 by the Respondents giving time for applications up to 15.07.2011, the Respondents without waiting for 15.07.2011 proceeded to issue 3,83,334 shares to Shyam Group on 7th July, 2011. The Respondents have not placed before us material as to how the issue of shares to Shyam Group on 07.07.2011 could be justified, especially when we are finding the Meeting dated 02.07.2011 of Respondents as illegal because Respondents wrongfully prevented Appellants 2 and 3 from participating in the Board Meeting dated 02.07.2011.

EOGM dated 11.08.2011

38. It appears that the Appellants had given requisition for calling EOGM vide requisition dated 28.06.2011. Respondents 2 and 3 in view of the requisition appear to have issued Notice dated 28.07.2011 (copy of which is at Page – 381) calling EOGM on 11th August, 2011. The Appellants have questioned the acts of Respondent referring to e-mail dated 01.08.2011 (copy of which is at Page – 380) submitting that there was short

Notice for this EOGM. According to the learned counsel for the Appellants, the NCLT has itself while dealing with General Body Meeting dated 27.09.2011 observed that one week's Notice for AGM to the Petitioners is short Notice. However, for the EOGM dated 11.08.2011, the NCLT held that the Petitioners (Appellants) cannot canvas that there was short Notice for EOGM called on 11th August, 2011. Looking at the e-mail Notice dated 1st August, 2011 for EOGM fixed for 11.08.2011, keeping in view Article 25 of the Articles of Association of the present Company (copy of which is at Page – 110), we do not interfere with the conclusion drawn by the learned NCLT below POD 12 that the Appellants cannot canvas that there was short Notice for EOGM dated 11th August, 2011.

Board Meeting dated 18.09.2011

39. It appears that there was Board Meeting dated 18th September, 2011 in which 3,87,066 equity shares were allotted to Shyam Group i.e. 1,46,666 shares to Respondent No.4 and 2,40,400 equity shares to Respondent No.6. The Appellants claimed before the learned NCLT that they came to know about this when they carried out search on the website of ROC on 3rd March, 2014. The objections of the Appellants have been brushed aside by the learned NCLT in this regard making observations that on "18th September, 2011", Petitioner No.2 was removed as Director under Section 283 of the Companies Act and so Petitioner cannot canvas that there was no Notice for the Board Meeting dated 18th September, 2011. Probably, the NCLT wanted to refer to the Board Meeting dated

02.07.2011 in which Appellants 2 and 3 were removed as Directors. We have already found that the alleged Board Resolution dated 02.07.2011 treating the Appellants 2 and 3 as having vacated the office of Directors as well as the earlier Form submitted by the Respondents 2 and 3 on 18.05.2011 regarding vacating of office by Appellants 2 and 3, cannot be upheld. In this view of the matter, the finding recorded by NCLT below POD 13 that Appellants cannot claim want of Notice of the Board Meeting dated 18th September 2011, cannot be upheld. It has to be held that the decision taken by the Respondents 2 and 3 in alleged Board Meeting dated 18.09.2011 allotting 3,87,066 shares to Respondents 4 and 6 need to be set aside.

AGM dated 27.09.2011

40. Regarding this AGM, the Appellants appear to have claimed that they were sent Notice of the Meeting on 16.09.2011. This can be seen from the discussion of the learned NCLT. If the AGM was on 27.09.2011 and Notice had been received on 16.09.2011, recalling Article No.25 of the Articles of Association referred above, we do not interfere with the dispute raised regarding EOGM dated 27.09.2011.

Board Meeting dated 25.07.2012

41. In this Board Meeting, it appears 80010 equity shares were allotted to Respondent No.4. The learned NCLT dealt with this aspect in Point No.15 and found that no document had been filed to show whether the shares were allotted on 25.07.2012 on the basis of Resolution passed

in Board Meeting or in EGM and no Notice of such Meeting had been filed before the Tribunal. NCLT concluded that the allotment could not be held as valid. It set aside the allotment in Para – 38 of the Impugned Order which we have reproduced earlier. There is no appeal on this count and we need not discuss this aspect any further.

42. It has been argued by the learned counsel for the Respondents relying on the Judgement in the matter of **Sangramsinh P. Gaekwad and Others vs. Shantadevi P. Gaekwad (DEAD) Through LRS. and Others"** reported in (2005) 11 SCC 314 that the Hon'ble Supreme Court in this Judgement referred to the earlier Judgement in the matter of "Dale & Carrington Invt. (P) Ltd. and Another vs. P. K. Prathapan and Others" (2005) 1 SCC 212 and observed in Para - 61 of the judgement that the Judgement in the matter of "Dale & Carrington Invt. (P) Ltd. and Another vs. P. K. Prathapan and Others" is not an authority for the proposition that the purported fiduciary duty of a Director towards the shareholder is absolute although the transaction in question may not have a direct co-relationship with the affairs of the Company. The learned counsel referred to Para – 63 of the Judgement to submit that the Directors have the power to issue additional capital shares and in the process may obtain pecuniary gain but only when such pecuniary gain is obtained through ulterior motive, they would be answerable to the shareholders. Thus, according to him, the present Respondents 2 and 3 had the authority to issue additional capital shares and their acts could not be faulted. He also submitted that

in the same Judgement in the matter of Sangramsinh (Supra) in Para – 204, the Hon'ble Supreme Court observed that when a decision is taken on a business consideration, it is trite, the Court should not ordinarily interfere.

42.1 In the matter of "**Dale & Carrington Invt. (P) Ltd. and Another vs. P. K. Prathapan and Others"** (Supra) in Para – 15 of the Judgement, the Hon'ble Supreme Court referred to Judgement in the matter of Needle Industries as under:-

> "15. M/s. Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. is a judgment of this Court in which amongst various other aspects the power of Directors regarding issue of additional share capital was also considered. This Court observed: (SCC p. 339)
>
> "The power to issue shares is given primarily to enable capital to be raised when it is required for the purposes of the company but it can be used for other purposes also as, for example, to create a sufficient number of shareholders to enable the company to exercise statutory powers, or to enable it to comply with legal requirement as in the instant case. Hence if the shares are issued in the larger interest of the company, the decision cannot be struck down on the ground that it has incidentally benefited the Directors in their capacity as

> shareholders. So if the Directors succeed, also or incidentally, in maintaining their control over the company or in newly acquiring it, it does not amount to an abuse of their fiduciary power. What is objectionable is the use of such power simply or solely for the benefit of Directors or merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company. Where the Directors seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in their fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. But if the power to issue shares is exercised from an improper motive, the issue is liable to be set aside and it is immaterial that the issue is made in a bona fide belief that it is in the interest of the company."

42.2 Hon'ble Supreme Court observed in Para – 20 of the Judgement in the matter of Dale & Carrington that the principal deduced from the cases was that when powers are used merely for an extraneous purpose like maintenance or acquisition of control for the affairs of the Company, the same cannot upheld. In the facts of that matter, Hon'ble Supreme Court upheld the setting aside of allotment of additional shares in favour

of one Ramanujam who was found guilty of oppression and High Court had found that Ramanujam had played fraud on the minority shareholders by manipulating the allotment of shares in his favour. We keep in view the principles laid down by the Hon'ble Supreme Court in these Judgements.

42.3 Learned counsel for the Appellants has referred to the Judgement subsequent to the Judgement in "Sangramsinh P. Gaekwad and Others vs. Shantadevi P. Gaekwad (DEAD) Through LRS. and Others" which has been considered in the matter of **"Kamal Kumar Dutta and Another vs. Ruby General Hospital Ltd. and Others"** reported in (2006) 7 SCC 613. In this matter, one Dr. Kamal and Dr. Binod who were NRIs along with an Indian entrepreneur, Sajal who was the younger brother of Dr. Kamal, incorporated Hospital Company. Soon after the Hospital started showing signs of prosperity, differences arose between Dr. Kamal and his brother Sajal and Sajal tried to take over management and control of the Company by reducing Dr. Kamal to minority and removed Dr. Kamal and Dr. Binod from Directorship of the Company. This led to the two Doctors filing Company Petition. In Para – 46 of the Judgement, the Hon'ble Supreme Court discussed facts of that matter as under:-

> "We would show that how a subtle attempt was made to show that several notices were given to the major shareholders of the company at their local address in India knowing fully well that both the appellants are NRIs. The outstanding feature is that the Appellant 2, Dr. Binod

Prasad Sinha has been shown as an NRI but notice to him was sent at the address PO Hirapur, District. Dhanbad, Bihar and those notices have even been sent with very short interval. The meeting was convened on 13-4-1996 and the notice was sent on 8-4-1996. Likewise, another meeting was scheduled to be held on 5-9-1996 and the notice was sent on the very same day i.e. 5-9-1996; the date of meeting was 2-12-1996 and the notice was sent on 28-11-1996; the date of meeting was 12-3-1996 and the notice was sent on 8-3-1996; the meeting was to be held on 27-3-1996 but the notice was sent on 22-3-1996. Apart from this, it was known to the respondent Sajal Dutta who is the brother of Appellant 1 that whenever his brother comes to Calcutta he does not stay in his house yet the notices were sent to Jodhpur Park, Calcutta. This shows lack of probity on the part of Respondent 2 to somehow or the other oust his brother from the majority shareholding. Similarly, on the basis of such resolution, Dr. Binod Prasad Sinha, Appellant 2 was ousted from the Directorship under Section 283(1)(g) of the Act on the ground that he has not attended the meeting and he has no interest whatsoever. Similarly, Appellant 1 was also ousted in the meeting which was held on 7-2-1996 when another meeting scheduled to be held on 16-2-1996 and it was

within the knowledge of Sajal Dutta that his brother was likely to attend the meeting to be held on 16-2-1996. But suddenly the meeting was held on 7-2-1996 and Appellant 1 was stripped off his chair as the Managing Director of the company. Hence, Sajal Dutta became the Managing Director in place of Dr. Kamal Kumar Dutta and the minutes of the said meeting dated 7-2-1996 were not brought forward in the meeting of 16-2-1996 in which Dr. K. K. Dutta was present."

42.4 The Hon'ble Supreme Court discussed the issues raised in that matter and allowed the appeals setting aside the Order of Single Judge of High Court passing limited direction that all the Resolutions which had been passed by the Board of Directors or in the Annual General Meeting or Extra Ordinary General Meeting with regard to raising of funds of Rs.40 lakhs in the meeting of 19.4.1995 and the meeting dated 16.2.1996 whereby the Appellant No.1 was stripped off his powers as Managing Director, the Resolution by which Dr. Binod Prasad Sinha was removed from the office of Director and other Resolutions by which the shares were allotted to the subsidiary company of Sajal Dutta or other persons were bad and Hon'ble Supreme Court restored the position on 19.4.1995 in that matter. Hon'ble Supreme Court recorded further directions relating to disposal of that matter. The learned counsel for the Appellants is right in her submission that this Judgement of Hon'ble Supreme Court is close to

the facts of the present matter where the record shows that the Appellants were kept in the dark while the Respondents 2 and 3 went ahead to issue equity shares to their sister concerns and when the Appellants came down, they were prevented from participating in Board Meeting and thus, there was oppression and mismanagement.

43. Learned counsel for the Respondents submitted that the Respondents had sent e-mail dated 26th May, 2011 to the Appellants copy of which is at Page – 356. It is stated that this e-mail was sent after the Board Meeting dated 18th May, 2011 and thus, the argument is that the Appellants had acquiesced to the acts of the Respondents and so cannot make grievances. We have gone through this e-mail which is at Page – 356 of the paper book. It simply makes a general reference that at Board Meeting held on 18.05.2011, it is decided to call for an Extra Ordinary General Meeting of the Company, a Notice regarding which would go to the Appellants. The e-mail then talks about sending of hard copies of Notice if desired by the Appellants and seeks local address in India. It mentions that the Respondent No.2 would be sending e-mail communication in addition to the hard copy etc. This communication does not specify what decisions were taken in the alleged Board Meeting dated 18th May, 2011 except for informing that an Extra Ordinary General Meeting of the Company is going to be called. We have already discussed as to how for EOGM dated 18.06.2011, short Notice was sent and when the Appellants came down for Board Meeting on 02.07.2011, they were prevented from

attending. Thus, it cannot be said that the Appellants had acquiesced to the Respondents increasing the share capital in the EOGM dated 18.06.2011 and their subsequent acts of shutting out the Appellants and issuing shares to their sister concerns.

44. Before parting, one other argument of the Respondents needs to be answered. The learned counsel for the Respondents referred the document at Page – 280 of the paper book which relates to "Cabe Springs and Fasteners India Pvt. Ltd." incorporated on 7th September, 2011 (this would be after the EOGM dated 11th August, 2011). The learned counsel for Respondents submitted that Mr. Alessandro Cuomo who was sent down to India by the Appellants admittedly as their Representative set up this Company in Goa. On the basis of this document, the argument raised is that this Company set up in Goa also was for the purpose of manufacturing springs for machines which was similar to the business of the Respondents Company and thus, the argument is that the Appellants had set up rival business. The learned counsel for the Appellants has countered this by submitting that Mr. Alessandro Cuomo was their Representative and had come down on behalf of the Appellants to look into the affairs of the Company. If at subsequent stage he incorporated any such company, that cannot be ground against the Appellants to hold that they have set up a rival business. We find that before such incorporation of the said Company at Goa, much developments had taken place between the present parties to show that the Respondents were oppressing the

Appellants and there was already talk regarding buying out. There is also no material to show business done by the Company at Goa and any effect on Respondent No.1 Company. Thus, we will not attach any undue weight to this argument of the learned counsel for the Respondents.

45. We find that the Respondents 2 and 3 are guilty of oppression and mismanagement. Winding up of the Company, however, we find will not be in interest of Members. We agree with NCLT on this count.

46. To conclude:-

We note NCLT has already set aside 80010 equity shares by conversion in Meeting dated 19.04.2011 and 80010 shares issued on 25.07.2012.

a) We set aside the allotment of 95,500 equity shares to Respondents 4 and 5 and the decision to issue convertible debentures as taken by Respondents 2 and 3 on 28.02.2011.

b) We set aside the Resolutions taken in Board Meeting dated 18.05.2011 and E Form 32 dated 18.05.2011 submitted to the ROC and removal of Appellants 2 and 3 as Director in Board Meeting dated 02.07.2011. Appellants 2 and 3 shall be treated to have been Directors.

c) We set aside Resolution and increase of Authorized Share Capital as done in EOGM dated 18.06.2011.

d) We set aside the Resolutions taken in Board Meeting dated 02.07.2011 and 3,83,334 equity shares allotted to Respondent No.4 regarding which Respondents 2 and 3 took decision on 02.07.2011 and which were issued on 07.07.2011.

e) We set aside the Resolution dated 18.09.2011 and the 3,87,066 equity shares allotted to Respondents 4 and 6 on 18.09.2011.

46.1 We hold that decisions taken in the Board Meetings, EOGMs and AGM discussed in this Judgement regarding which there was no Notice or short Notice to the Appellants, are not binding on the Appellants. We restore shareholding as it stood ante 28.02.2011.

47. At the time of submissions regarding the reliefs to be granted, the learned counsel for Respondents took up the issue that the Appellants had at one stage offered winding up, the learned counsel for the Appellants submitted that the Appellants were still open for the parties to buy out each other if status quo ante February, 2011 is restored. Referring to the documents at Page – 266 relating to the meeting between the representative of the Appellants with Respondents 2 and 3, the learned counsel submitted that the offer of Appellants was still open to buy the

shares of each other. She submitted that the Appellants were, however, not willing for buy out if the additional shares issued to the other Respondents was to be upheld.

47.1 The Impugned Order shows that the learned NCLT has on setting aside the debentures which were converted into equity shares on 19.04.2011 and set aside the 80010 shares which were allotted to Respondents 4 and 7 on 25th July, 2012, discussed that the situation in the Company was such that the possibility of Belfin Spa and Respondents working together was not possible. NCLT considered the dispute between the parties regarding amounts actually invested and dispute over the assets of the Company and found it expedient to direct accounts of the Company to be audited by Chartered Accountant since the date of incorporation till the Impugned Order. NCLT further appointed Chartered Accountant to do the needful and laid down fees etc. It has then directed that on receipt of the report of the Chartered Accountant, fair value of the equity shares will be assessed by Independent Valuer and as to the date of valuation what is just and equitable in the facts and circumstances of the case is the date of filing of petition. According to the learned counsel for the Appellants, this date should be from the date of Order. However, we do not find any reason to interfere regarding this aspect as the NCLT has given reasons that ordinarily it has to be date of filing of the petition and also relied on passage from the Judgement of *Scotish Co-operative Wholesale Society's* case. It has then repeated the claim of Respondents that the

Petitioners had only made initial investment. In Para – 42 of the Impugned Judgement, NCLT recorded that as the Respondents were now in the management of the Company the first right to purchase the shares of Petitioners should be with the Respondents. Even in the Minutes dated 16th March, 2011 relating to Meeting between parties (Page – 266 of the Appeal), the Minutes referred to the solutions available as:-

— Shyam party buyout Cima shares

— Bankruptcy of Cima Shyam

— Cima party buyout Shyam shares

47.2 Thus even at that time, the parties between themselves were also of the view that first option should be for the Respondents 2 and 3 to buy out the shares of the Cima Group.

48. Reading the Judgement of NCLT with the findings recorded by us, all the shares issued to Respondents 4 to 7 stand set aside. We hold that there appears to be no scope for the groups of Appellants on one side and Respondents 2 and 3 on the other to work together and run the Company.

48.1 We further direct:-

It is just and expedient, as directed by the learned NCLT, to direct that the accounts of first Respondent Company be audited by a Chartered Accountant from the date of incorporation of the Company till the date of Order passed by NCLT taking into consideration the cancellation of all

shares allotted to Respondents 4 to 7 and fix the shareholding of Petitioners and Respondents 2 and 3 which shall be one of the basis for determining the fair value of shares for Respondent No.1 Company.

48.2 As directed by NCLT, M/s. ACHR & Associates (now SARC & Associates) at 308, Shail Complex, Opp. Madhusudan House, Off.C.G. Road, Navrangpura, Ahmedabad is appointed as "Auditors" to audit the accounts of first Respondent Company from the date of incorporation of the Company till the date of Order of NCLT. As we have set aside the allotment of shares, the auditor while auditing shall also check if the money for all allotments illegally done was actually received by the company and its utilisation. The Chartered Accountant shall file his Audit Report before NLCT on 2nd July, 2018 serving copies of the same on the Appellants and Respondents 1 to 3. The fee of the Chartered Accountant is initially fixed at Rs.50,000/- payable by 1st Respondent Company but later on to be shared by the parties in proportion to their shareholding. The Chartered Accountant is at liberty to claim further amount in the same proportion from the parties after his work is completed and before filing of the Report. The 1st Respondent Company shall bear all the necessary expenses of the Chartered Accountant for the purpose of carrying out the works of auditing the accounts of the 1st Respondent Company.

48.3 After the Report of the Chartered Accountant is finalized, the fair value of equity shares of the 1st Respondent Company shall be assessed by

an Independent Valuer. As directed by the NCLT, the date of valuation is the date of filing of the Company Petition in NCLT.

48.4 M/s. A.R. Gaudana & Associates, at 502-D, Shaily Complex, B/h. Old Gujarat High Court, Opp: Loha Bhavan, Navrangpura, Ahmedabad – 380009 is appointed as "Independent Valuer" to value the shares of the 1st Respondent Company as on the date of filing of petition. His fee is fixed at Rs.50,000/- initially payable by 1st Respondent Company but later to be shared by the parties in proportion to their shareholding. The 1st Respondent Company shall bear all the necessary expenses of the Independent Valuer for the purpose of assessing the fair value of the shares of the 1st Respondent Company. The Independent Valuer shall file his Report before the NCLT on 2nd August, 2018.

49. The Respondents 2 and 3 will have the first right to purchase the shares of the Appellants – original Petitioners in 1st Respondent Company, but not below the fair value fixed by Valuer, and in case Respondents 2 and 3 fail to purchase the shares of the Petitioners – Appellants at the value fixed by the NCLT, the Respondents 2 and 3 must sell their shares at the fair value determined by the Independent Valuer to the Petitioners – Appellants. After filing of the Report by the Independent Valuer, the Appellants and Respondents 2 and 3 would be at liberty to file application before the NCLT within two weeks from the date of service of the Valuer Report on them, to determine the mode and manner in which the transfer of shares shall take place.

50. NCLT may, if necessary, extend the above date fixed for Audit Report and date fixed for Report of Independent Valuer, if necessary. NCLT will ensure carrying out of these Orders and if Auditor/Valuer have any difficulties, or for any other reasons it becomes necessary, may pass such further and other Orders deemed fit in the interest of justice to both sides.

51. The appeal is allowed in terms of above directions and orders with costs quantified at Rs.1 lakh to be paid by Respondent No.2 – Mr. Jaimin Girish Patel and Rs.1 lakh by Respondent No.3 - Mr. Hemal Patel from their personal accounts, to the Appellants.

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

[Balvinder Singh]
Member (Technical)

New Delhi

25th April, 2018

/rs/nn