

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL(AT) NO.01 OF 2018**

(ARISING OUT OF ORDER DATED 16.8.2017 PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH, AHMEDABAD IN T.C.P. NO.42/397-398/NCLT/AHM/2016)

IN THE MATTER OF:**Before NCLT****Before NCLAT**

01. Atmaram B. Agarwal,
904, Madhav Gems,
A-Wing, Old Vaisad Road,
Vapi-396191

Petitioner No.1

1st Appellant

02 Anita A Agarwal
904, Madhav Gems,
A-Wing, Old Vaisad Road,
Vapi-396191

Petitioner No.2

2nd Appellant

03. Vatika Filaments Pvt Ltd
209, Shree Shyam Chambers,
Opp. Sub Jaal, Ring Road,
Surat 395002

Petitioner No.3

3rd Appellant

Vs

01. Supriya Prints Pvt Ltd,
236-266 GIDC Sachin,
Surat 394230

Respondent No.1

1st Respondent

02. Pradeep Kumar Binani,
J-919, ashirwad Palace,
Bharat Road,
Surat, Gujarat.

Respondent No.2

2nd Respondent

03. Vinodkumar Maheshwari,
1004, Shiv Pooja Market,
Ring Road,
Surat.

Respondent No.3

3rd Respondent

- 04.Mr. Manish Pradeep Binani,
J-919, Ashirwad Palace,
Bhatat Road,
Surat. Respondent No.4 4th Respondent
- 05.Ramniranjan s. Agarwal,
11-A, Raj Vaibhav Apartment,
Surat. Respondent No.5 5th Respondent
- 06.Pankajkumar Ramniranjan Agarwal,
11-A Raj Vaibhav Apartment,
Parle Point,
Surat. Respondent No.6 6th Respondent
- 07.Anandkumar Purshotamla Bhartiya,
1036/37, Anupam Market,
Ring Road,
Surat. Respondent No.7 7th Respondent
- 08.Banwarilal Chhatilal Saraiya,
501-B, Suryaprakash Residency,
City Light Road,
Surat 395007 Respondent No.8 8th Respondent
- 09.Shri Anshukumar S. Agarwal,
401, Suramya Apt,
City Light Road,
Surat 395007 Respondent No.9 9th Respondent
- 10.Regional Manager,
Gujarat Industrial Development
Corporation Ltd
2nd Floor, Vanita Vishram Building,
Athwagate,
Surat 395001 Respondent No.10 10th Respondent

For Appellant: Mr. Atmaram, Director-Party-in-person.

For Respondents: Mr. P. Nagesh and Mr. Dhruv Gupta, Advocates for Respondent No.2 and 3.

Mr. Manish Binani, Respondent No.4 in person.

JUDGEMENT**MR. BALVINDER SINGH, MEMBER (TECHNICAL)**

1. The present appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 impugning the order dated 16th August, 2017 passed by the National Company Law Tribunal (NCLT), Ahmedabad Bench, Ahmedabad in T.C.P. No.42/397-398/NCLT/AHM/2016 vide which the NCLT has held that there are not acts of oppression and mismanagement and disposed of the petition.

2. The brief facts of the case are that the 1st respondent company was incorporated in the name of Aman Prints Pvt Ltd on 8.3.1995 and its name was changed to Supriya Prints Pvt Ltd on 21.7.2005. The authorised, issued, subscribed and paid up capital of the 1st respondent company is Rs.1,75,00,000/- divided into 17,50,000 Equity Shares of Rs.10/- each. The appellants are collectively holding 5,83,275 Equity shares constituting 33.33% share capital in the 1st Respondent. 1st respondent company was promoted by Shri Natverlal R Giliwala and Shri Manish N.Giliwala. 5th and 9th Respondent took over the 1st respondent and were appointed as Directors of the company on 26.5.2005. 5th Respondent resigned as Director of 1st respondent on 10.11.2007.

3. 1st appellant was appointed as Director of 1st respondent on 16.9.2010. 2nd respondent was appointed as Additional Director on 28.7.2010 and 2nd respondent vacated his office as Director of 1st respondent w.e.f. 1.10.2010 as his appointment was not regularized by the Members of 1st respondent at the AGM held on 30.9.2010.

4. It is stated that the 1st appellant and 2nd respondent entered into Memorandum of Understanding dated 16.11.2010 with 6th, 7th, 8th and 9th Respondent by virtue of which 6th, 7th, 8th and 9th Respondent handed over the possession of Dyeing and Printing Unit situated at Plot Nos 263 and 266 at GIDC, Sachin, Surat alongwith other assets and liabilities w.e.f. 16.7.2010. By executing the said MOU, 6th to 9th Respondent relinquished and/or released all their rights, title and interest in the business and assets of 1st respondent. Pursuant to execution of the said MOU the 5th to 9th respondents sold their entire shareholding to the appellants and 2nd respondent, their family members and their associate companies which is event from the Annual Return made upto 30.9.2011 of 1st respondent. It is stated that on executing the MOU, 6th to 9th Respondent made an application to 10th respondent to transfer the land of 1st respondent situated at Sachin, Surat in favour of 1st Appellant and 2nd respondent (Page 139 – 147).

5. It is stated that the 1st respondent availed credit facilities from Sutex Cooperative Bank Ltd and Appellant No.1 and 2nd Respondent being the directors of the 1st respondent stood as guarantors for the said credit facilities. 2nd respondent also introduced 3rd respondent as guarantor to the said credit facilities. It is next stated on default in payment to the Bank, Bank sent Demand Notice dated 9.2.2012 to 1st appellant, 2nd respondent and 3rd respondent. Notice was sent as 1st appellant and 2nd respondent was director of 1st respondent and also guarantors to the credit facilities. 3rd respondent was only the guarantor to the credit facilities availed by 1st respondent.

6. It is stated that 1st appellant and 2nd respondent entered into MOU dated 6.4.2012 with Rehmat Trading Company on behalf of 1st respondent for

selling the machineries of 1st respondent for a sum of Rs.2,95,00,000/- (Rupees Two crores ninety five lakhs only). M/s Rehmat Trading Company paid an advance of Rs.50 lakhs on execution of MOU and Rs.50 lakhs by selling part machinery. The balance amount was also paid by Rehmat Trading Company. The whole proceeds received from sale of machineries was deposited with Sutex Cooperative Bank Ltd.

7. It is next stated that the said bank issued another demand notice of Rs.3,17,19,173.72 to 1st appellant, 2nd respondent and 3rd respondent being directors/guarantors of 1st respondent. On receipt of demand notice from the Bank, 1st appellant and 2nd respondent executed a Power of Attorney dated 15.10.2012 in favour of Shri Chetan Chandrakantbhai Mehta, Branch Incharge of Bank authorising the Bank to sell the property of 1st respondent situated at Sachin, Surat as the company had already sold its machineries and hand discontinued manufacturing operations. 1st respondent continued to pay instalment and interest to the Bank and 1st respondent had a Fixed Deposit Receipt with the Bank and the said FDR was also credited in loan account of 1st respondent and the Loan Account balance was reduced to Rs.2,43,13,881/- (Page 15, Para 15 of appeal). It is stated that after executing Power of Attorney to the Bank there was no pressure from the bank and the 1st respondent was continuously paying the instalments.

8. It is stated that the Respondent Nos 5 to 8 executed an Authority Letter dated 15.2.2013 (Page 177) in favour of Mr. Jaibhagwan Gupta on the basis of purported Board Meeting of 1st respondent dated 12.8.2010 authorising him to sign deeds, documents, and papers required in connection with

transfer of immovable property situated at Plot No.263 and 266, Road No.2, GIDC, Sachin, Gaabheni, Taluka Ghoryasi, Distt. Surat. It is next stated that 1st respondent through 2nd respondent executed a Memorandum of Understanding and Agreement to Transfer deed 15.2.2013 (Page 179) thereby transferring immovable property for Rs.2,46,13,881/- being the outstanding bank loan and interest amount and all other outstanding dues of relevant department whose NOC is required.

9. It is stated that on 19.2.2013 the 3rd respondent made payment of aggregate amount of Rs.2,43,13,881/- through RTGS to Bank against Machinery Loan Account No.834177 and the Bank vide letter dated 23.3.2013 intimated 1st appellant that the said loan account had been closed on 19.2.2013. It is stated that the 1st respondent has huge cash in hand, bank balance, investment, deposits, inventories, trade receivables and other current assets approximately Rs. 4 crores which were disclosed in the Audited Annual Accounts of 1st respondent for F ended 31.3.2012, however the 2nd to 4th Respondent have siphoned/misappropriated all these assets. It is also stated that the 1st respondent had also some fixed deposits.

10. It is stated that the Bank released the documents relating to plot of land to 3rd respondent. It is further stated that the appellant made request to 10th respondent not to transfer the said plot of land in favour of anyone without his physical presence. It is stated that the 10th respondent intimated the appellant that his request cannot be considered that as per Board Resolution of the 1st respondent, the plot of land was transferred in the name of 3rd respondent and a deed of assignment has been executed and the same has been registered by paying proper stamp duty. It is stated that the 10th

respondent illegally transferred plot of land to 3rd respondent in collusion with Respondent No.2 and 6 to 9 and the said transfer is not valid. The appellant prayed for the following reliefs before the NCLT:-

- a) appointment of independent Chairman to manage the affairs of the first respondent company superseding the Board of Directors.
- b) to appoint auditor for carrying out independent, complete and impartial audit of the first respondent company,
- c) to appoint an inspector to conduct enquiry with regard to the dealings and transactions of the first respondent company,
- d) to direct respondents No.2 and 4 to restrain from in any manner dealing with the affairs of the first respondent company, its funds entering into any agreement and conducting any meeting in absence of petitioner No.1 etc.

11. Reply was filed by Respondent No.1, 2 and 4 stating that the petition is barred by principle of Res Judicata, since the Civil Suit No.131/13 is pending and on the ground that appellant No.1 filed Special Civil Application No.7735/2013 on the file of High Court of Gujarat. It was also stated that 2nd respondent was appointed as Additional Director and the appellant No.1 never objected for the appointment of 2nd Respondent as Director. It was stated that the EOGM was held and convened on 17.12.2012 in accordance with Articles of Association of the Company. It is also stated that the loan was taken from the Bank and no other person was ready to give bank guarantee, therefore, 3rd respondent gave his personal guarantee for the term loan and cash credit sanctioned by the Bank. It is also stated that the appellant has not produced any evidence that his signatures was forged by 3rd respondent in the Resolution passed by the Board of Directors on 1.8.2012. It is also stated that

if the company fails to pay outstanding loan amount of the Bank then the guarantor is liable to pay the said amount. It is stated that the bank loan was paid by the 3rd respondent and the plot of land was transferred in his name after following due process of law.

12. After hearing the parties, learned NCLT passed the impugned order dated 16.8.2017. The operative portion of the impugned order is as under:-

“79. Petitioners failed to place material on record to establish the alleged acts of oppression and mismanagement. The allegation of syphoning of funds by respondent No.2 has also not been established. Moreover, respondent No.2 gave explanation stating that Income Tax refund amount of Rs.15 lakhs has been credited to the loan account of Benani Polychem Ltd. Further, petitioner No.1 at more than one place reiterated that plot Nos 263 to 266 are the only property of the first respondent company after the machinery etc was sold by the first respondent company. The said plots were also transferred to respondent No.3. The first respondent company ceased to operate. In these circumstances there is no point in appointing Managing Committee to manage affairs of the first respondent company. There is also no need to order for auditing the accounts of the first respondent company.

80. In view of the above discussions it is held that EOG of the first respondent company conducted on 17.12.2012 is not a valid EOGM. The issues relating to resolutions dated 01.08.2012 and 15.10.2013 and MOU dated 15.02.2012 and the first order passed by respondent No.10 on 25/28th March, 2013 can only be decided

in the civil suit. In view of the finding that there are no acts of oppression or mismanagement and the only property of company i.e. plots No.263 to 266 are subjudice in Civil Court, no relief need be granted in this petition.

81. Petition is disposed of accordingly.

82. The pending applications are closed. No order as to cost.”

13. Being aggrieved by the said order the appellant has preferred this appeal.

14. The appellant stated that the Board Resolution dated 12.8.2010 (Page 333) and Authority letter dated 15.2.2013 (Page 177) are forged and illegal as it is signed by resigned directors. The appellant further stated that the deed of conveyance and assignment (Page 306 to 320 of Vol 2) is illegal because it is signed by Mr. Jai Bhagwan Gupta as Authorised person of R5 to R8 who resigned on 15.1.2011 (Volume 5- Page 214-223).

15. It is stated by the appellant that R10 was requested vide letter dated 15.2.2013 (Page 184 of Vol1) by ex-directors R6,7,8,9 and present director R2 to cancel the application form for transfer of plots and stated that new form is being submitted. It is stated that the appellant No.1 had written a letter dated 21.2.2013 (Page 228 of Vol 2) to 10th Respondent requesting him not to transfer the said plot of 1st respondent without his physical presence. It is stated that the 10th Respondent replied vide letter dated 22.2.2013 (Page 229 of Vol) that it is none of the business of Appellant No.1 to stop the transfer of plot. 10th respondent also stated that a resolution dated 1.8.2012 (Page 334 Vol 2) duly signed by Appellant No.1. Appellant No.1 sought these documents from 10th respondent but the same was denied and then appellant No.1

sought these documents RTI and the same were supplied but by then the final order was passed by 10th Respondent on 28.3.2013 and the property was transferred in the name of 3rd respondent.

16. The appellant stated that the transfer application signed by R5,6,7, 8 in favour of 1st and 2nd appellant is a legal document, because 5th to 8th respondent after getting their 100% consideration from 1st and 2nd appellant signed the transfer application dated 6.4.2011(Page 146). It is stated that neither the 10th Respondent or any legal body can cancel the above said transfer application form. It is stated that only 1st appellant and 2nd respondent have legal rights to deal with the above said transfer application.

17. The appellant stated that the resolution dated 17.7.2012 (Page 337 Volume 2) relating to the inspection of records of the company is after thought. It is stated that the Hon'ble CLB vide order dated 13.6.2013 directed 2nd respondent to allow inspection of records of 1st respondent to 1st appellant. Since the records was with 2nd respondent, 2nd respondent asked 1st appellant to come to Vijay Lodge, Surat on 6.7.2013. On reaching there, 2nd respondent stated that there is a resolution dated 17.7.2012 in this regard.

18. Reply on behalf of 2nd respondent has been filed. 2nd respondent stated that there is no case of oppression or mismanagement and the entire case is only regarding transfer of 1st respondent plot of land to 3rd respondent who discharged the company's loan to the bank. It is stated that the case regarding transfer of land is still pending in civil court filed by appellant. It is stated that the appellant has denied 2nd respondent being director of 1st respondent but has admittedly functioned as director of 1st respondent with 2nd respondent as co-director during 2010 to 2013 i.e. until filing of Company

Petition No.58 of 2013. It is stated that the loans were sanctioned by Bank in April 2011 and 3rd respondent was guarantor for the loan which was accepted by 1st appellant. The loan taken by company was utilised for company business and was also paid back to bank being the loan of earlier promoters. It is stated that 1st appellant was looking after day to day commercial matters until October, 2011.

19. It is stated by 2nd respondent that an MOU dated 6.4.2012 was signed by appellant and 2nd respondent for sale of machineries as company was closed in October, 2011 due to business failure, machinery loan could not be paid and bank issued demand notice dated 9.2.2012. In the MOU itself it was agreed that company's land can be transferred to guarantor who pays company's loans. This MOU was acted upon for sale of machineries and contents of MOU not disputed by appellant.

20. It is stated that land of 1st respondent leased by 10th respondent was not transferred by mutating the names of appellant and 2nd respondent since mortgage loan was not discharged by appellant and 2nd respondent. 10th respondent has filed affidavit before High Court (In Appeals Page No.351 to 374).

21. It is stated that Board resolution dated 17.7.2012 passed for appellant being in charge of accounts, audit etc. Board resolution dated 1.8.2012 passed authorising 2nd respondent for bank transactions including for discharge of loans, transfer of 1st respondent property etc. Board resolution dated 14.9.2012 passed for disposal of 1st respondent land for discharge of outstanding loans to bank. It is stated that Board Resolution dated 15.10.2012 (Page 340) was passed as the business activities was stopped and

loan is not repaid then in such case if guarantor repays the loan then the legal rights of the property would transfer to him. It is next stated that full payment of outstanding loans to bank was made by 3rd respondent on 19.2.2013 and thereafter on 21.2.2013 the appellant started objections against transfer of loan to 3rd respondent. It is stated that during 14.9.2012 to 19.2.2013, the appellant had no objections about transfer of land and was waiting for discharge of loan by 3rd respondent. It is stated that after discharge of loan by 3rd respondent, the appellant started objection to bank against release of title deeds, to 10th respondent seeking non-execution of lease/transferring lease in favour of 3rd respondent, filed civil suit, filed Special Civil Application in Gujarat High Court, filed FIR and thereafter filed CP No.58/2013. It is stated that the Board Resolutions dated 17.7.2012, 1.8.2012, 14.9.2012 and 15.10.2012 denied by appellant but actions taken in pursuance of these resolutions were fully in the knowledge of appellant. Civil Suit for same remedy filed by appellant is still pending in Surat.

22. 3rd respondent stated that appellant and 2nd respondent acquired 1st respondent in July, 2010 and there were only two directors. 1st respondent took loan from the Bank and 3rd respondent was persuaded by both appellant and 2nd respondent to give personal guarantee for the loan sanctioned by the Bank. 3rd respondent executed all the relevant documents with the said bank as a guarantor. 1st respondent committed default in repayment of loan and it resulted in the Bank issuing recall notice to 1st respondent and its director and also to 3rd respondent as guarantor.

23. It is next stated that appellant and 2nd respondent entered into a MOU on 6.4.2012 (Page 137-145 of IA No.100/2016) that if there is any further

default in payment of loan by 1st respondent, 3rd respondent was given to right to transfer or sell the company' movable and immovable assets and to pay the outstanding loan of 1st respondent. The MOU further states that in the event 3rd respondent pays the outstanding loan, the moveable and immoveable assets of 1st respondent will be transferred in favour of 3rd respondent and a registered conveyance deed will be executed in four of 3rd respondent.

24. It is stated that as per resolution dated 14.9.2012 (Page 337-A), 1st respondent surrendered the lease hold property to the bank which was given as an equitable mortgage for the finance obtained from the bank. It is further stated that 1st respondent passed a resolution on 15.10.2012 (Page 340) resolving inter alia that as the right to transfer the property is being given to the Bank for recovery of the loan amount, first preference should be given to 3rd respondent as a guarantor to pay the loan amount and if 3rd respondent accepts and repays the loan amount then the property should be transferred in favour of 3rd respondent. It is next stated as the Bank failed to locate a best buyer for the said property, pursuant to the request made by appellant and 2nd respondent, 3rd respondent recouped all his resources and gathered a sum of Rs.2,46,13,881/- and repaid the said outstanding loan on 19.2.2013 which was outstanding to Bank. It is stated that after payment of entire loan to the Bank on 19.2.2013, the appellant started objecting and writing to Bank, 10th respondent and filing civil suit in Gujarat High Court.

25. It is stated that the appellant was only interest in the immoveable property of 1st respondent acquired by 3rd respondent would be evident from the submissions made by the appellant before Hon'ble Company Law Board, recorded in the order dated 19.5.2014 that 1st appellant who was present in

person on 15.5.2014 undertook to pay the dues together with up to date interest to 3rd respondent which he has paid to the Bank subject to the conditions that the 3rd respondent returns back the assets of the company.

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

27. The appellant argued that that the Board Resolution dated 12.8.2010 and Authority letter dated 15.2.2013 (Page 177) is forged and illegal and it is signed by Resigned Directors. Appellant further argued that the Resolution dated 12.8.2010 is not there in the compliance certified issued by Practicing Company Secretary for FY 2011.

28. Learned counsel for the respondent argued that Board Resolution dated 12.8.2010 was signed by the erstwhile directors of company and is a valid Board Resolution as R6 to R8 resigned on 15.1.2011 and R2 was the director of the company on 12.8.2010. Learned counsel for the respondent further argued that 2nd respondent was director of the company on 12.8.2010. Learned counsel for the 2nd respondent further argued that the said resolution may not be in the Compliance Certificate as Appellant No.1 became a director only on 16.9.2010. Learned counsel for respondent further argued that there are many resolutions signed by 1st appellant and 2nd respondent and one such Resolution dated 19.1.2011 (Vol 5 Page 310) which is also not in the Compliance Certificate (Vol 1, Page 185). Learned counsel for the respondent argued that in the MOU dated 16.11.2010 (Vol 1, Page 99 to 101), which is also signed by appellant, the ex-Directors agreed to cooperate in all proceedings where their personal attendance was required or any supporting documents, if required. Learned counsel for the Respondent argued that it is on this basis that the Authority letter dated 15.2.2013 in favour of Jai

Bhagwan Gupta was granted which is also in the knowledge of 1st appellant and 2nd respondent. Learned counsel for the Respondent further argued that the signature of the 9th respondent was not required because his name was in the record of 10th respondent.

29. We have heard the parties on the above issues. We have perused the MOU dated 16.11.2010 (Annexure P-5 Page 96 to 101). We observe that the said MOU is duly signed by the appellant. We also observe that at para 11 page 99 it is clearly mentioned **“That the parties of the second part shall co-operate in all proceeding where their personal attendance is required or any supporting documents are required.”** As 6th to 8th respondent had resigned on 15.1.2011, therefore, the authority letter was got signed from them in terms of the MOU dated 16.11.2010. Further 1st appellant became director of 1st respondent on 16.9.2010, therefore, he cannot state that the Board Resolution dated 12.8.2010 is a forged and illegal document. Therefore, the Deed of conveyance dated 4.3.2013 in favour of 3rd respondent was signed by Mr. Jai Bhagwan Gupta on the basis of Resolution dated 12.8.2010 as he was authorised by 5th to 8th Respondent, as in the books of GIDC the names of the erstwhile directors were on record and only they could sign the conveyance deed. It is to be noted that Board of Directors take a decision through Resolutions and the decisions could be taken by the Board of Directors to authorise any body not necessarily the Member of the Board of Directors so that follow up action on the Board Resolution can be taken to logical conclusion. Once decision to dispose off the property has been taken by the Board and in terms of MOU ex-Directors has already agreed to cooperate in the matter for transfer of property. In the light of the decision

taken by Board, that the application signed by the ex-Directors can not be termed as illegal.

30. The appellant argued that 1st appellant and 2nd respondent on 16.11.2010 (Franking on 22.12.2010) signed Memorandum of Understanding and Undertaking Agreement with 6th to 9th respondent. According to MOU, 1st appellant and 2nd respondent acquiring the entire share capital of 1st respondent from 6th to 9th respondent alongwith the industrial undertaking together with land, building, plant and machineries and other assets described in the said MOU. Appellant further argued letter dated 15.2.2013 (Page 184 Vol 1) is written to 10th respondent by 6th to 9th respondents as ex-directors and 2nd respondent as present director to cancel the application form for transfer of plot dated 6.4.2011 and submitting new application form for the transfer of the plot. Appellant argued that the said letter is forged and illegal.

31. Learned counsel for the respondents argued that the letter dated 15.2.2013, as stated by 1st appellant, was given by ex-directors 6th to 9th respondent and 2nd respondent as present director on the basis of Resolution dated 1.8.2012 (Page 334 Vol 2). The said letter intimated 10th respondent to cancel the application dated 6.4.2011 as no action was taken by 10th respondent on the said application dated 6.4.2011 for transfer of plot in favour of 1st appellant and 2nd respondent. 10th respondent had acted on the letter dated 15.2.2013 and not on the letter dated 6.4.2011 as it was withdrawn.

32. We have perused the Board Resolution dated 1.8.2012 and the letter dated 15.2.2013 and we find no illegality in this.

33. Appellant argued that Transfer application signed by 5th to 8th Respondent in favour of 1st appellant and 2nd respondent is legal document which is on record of 10th respondent. The said document was signed by 5th to 8th respondent after getting their 100% consideration from 1st appellant and 2nd respondent, therefore, neither 10th respondent nor any legal body can cancel the above said transfer application form and only 1st appellant and 2nd respondent have legal rights to deal with the above said transfer application. Appellant argued that the loan taken from Bank is in the name of 1st appellant and 2nd respondent so only by paying transfer fee the names of 1st appellant and 2nd respondent can be recorded in 10th respondent record, but 2nd respondent had a pre-planned strategy in his mind, did not pay the transfer fee. Appellant argued that the statement of 10th respondent in letter dated 22.2.2013 that the name of 1st appellant is not considered is an illegal statement.

34. Learned counsel for the Respondent argued that 5th to 8th respondent signed the transfer application form on 6.4.2011. These respondents resigned on 15.1.2011. 1st appellant and 2nd respondent could not take any steps for transfer of plot in favour of 1st appellant and 2nd respondent with 10th respondent because 1st respondent was in heavy losses and 10th respondent's transfer fee and Registry charges was approx. Rs.20 lakhs. Respondent further argued that the loss in 2011-12 was Rs.1,21,73,888/- and 1st appellant was in the management of the affairs of 1st respondent and no steps were taken by 1st appellant to arrange for the transfer fees.

35. We have heard the parties on this issue. It is not disputed that the 1st appellant was in the management of the affairs of 1st respondent and, during

the year 2011, 1st respondent was in heavy losses. It is for both the 1st appellant and 2nd respondent to take steps for transfer of plot in their names.

We observe that both are liable for not transferring the plot in their names.

36. Appellant argued that the Resolution dated 1.8.2012 was notarized on 4.12.2012. Appellant argued that if the existence of Resolution was on 1.8.2012 then why it was not produced at the time when Power of Attorney was given to the Bank.

37. Learned counsel for the respondent argued that Resolution dated 1.8.2012 is not notarized but attested by notary. 2nd respondent was solely authorized by this Resolution. The forensic expert's report (Addl. Document by 2nd Respondent diary No.3729, Page 160 to 174) confirms the signature of 1st appellant on the resolution dated 1.8.2012. This resolution was attached by 1st appellant to the Company Petition before the CLB. Respondent further argued that processing of the conveyance deed and liaisons with 10th respondent and 3rd respondent was done by 2nd respondent on the basis of the Resolution dated 1.8.2012 which is known to 1st appellant. Respondent further argued that as neither 1st appellant nor 2nd respondent were on the record of 10th respondent, 5th to 8th respondent were requested by 2nd respondent to execute the conveyance deed as their names were on the record of 10th respondent.

38. We have heard the parties and gone through the documents. We observe that the Resolution dated 1.8.2012 is not notarized but is attested by notary and 1st appellant is signatory to the same.

39. Learned counsel for the appellant argued that the Resolution dated 14.9.2012 is forged. Learned counsel argued that the resolution was never in

existence rather a letter dated 14.9.2012 was prepared by Bank on behalf of 1st respondent and designed the letter as Resolution No.2.

40. Learned counsel for the Respondent argued that the Resolution dated 14.9.2012 is also signed by 1st Appellant (V-2 Page 338, annexure P-33) and 1st appellant vide his letter dated 4.7.2013 (Addl Documents by R-2, Diary No.3729, page 17 to 19) confirms the resolution dated 14.9.2012 and states that the original is not in his possession as the same was deposited with the Bank. Learned counsel for respondent further argued that the Resolution dated 14.9.2012 was passed as Ban gave a notice on 7.9.2012 to 1st respondent and 3rd respondent. Learned counsel for the respondent further argued that based on the Board Resolution, power of attorney was given by 1st appellant and 2nd respondent in favour of Branch Manager of the Bank.

41. We have heard the learned counsel for the parties. We observe that the Resolution dated 14.9.2012 at Page 338 Vol 2 is duly signed by 1st appellant. In the light of 1st appellant's signature on Board Resolution it cannot be said that this is a forged document, is not convincing.

42. Appellant argued that the Resolution dated 15.10.2012 is forged. It further argued that the Bank did not accept the said Resolution and asked 2nd respondent to withdraw the Resolution. The said Resolution was withdrawn by 2nd Respondent on 17.10.2012 as accepted by 2nd Respondent in the letter given by 2nd Respondent to 10th Respondent.

43. Learned counsel for the Respondent argued that the Resolution dated 15.10.2012 is not forged as it was given to Bank by 1st appellant and 2nd respondent. Learned counsel for the Respondent further argued that 1st appellant in his rejoinder (Addl. Documents by 2nd Respondent, Diary

No.3729, Pg67, para 38) confirms the passing of the Board Resolution dated 15.10.2012 and also admits the power of attorney dated 15.10.2012 to sell the land. Counsel further argued that the Resolution accepted by 1st appellant gives the right to the bank to transfer the property for recovery of the loan and first preference should be given to 3rd respondent to pay the loan amount and if 3rd respondent accepts and repays the loan amount then the property should be transferred to 3rd respondent.

44. We have heard the parties on this issue. We have gone through para No.38 of Addl Documents filed by 2nd respondent vide Diary No.3729 and observe that the appellant in his rejoinder before NCLT has stated that Board Meeting took place on 15.10.2012 and Resolution was passed and power to attorney in favour of Bank was given to sell, transfer, assign, handover possession and to create interest right etc

45. Learned counsel for the appellant argued that right to sell the property of 1st respondent was with the bank as per Power of Attorney which was given to the Bank by 1st appellant and 2nd respondent but 3rd respondent got transferred 1st respondent based on forged resolutions.

46. Learned counsel for the respondent argued that the power of attorney was in favour of the Bank which was duly signed by 1st appellant and 2nd respondent. Learned counsel for the respondent further argued that a Board Resolution dated 15.10.2012 was passed by given first preference to 3rd respondent to purchase the property if he clears the loan. It is argued that as the Bank did not accept the resolution dated 15.10.2012, 2nd respondent on the basis of Resolution dated 1.8.2012 took steps to execute the conveyance deed and for transferring the plot in favour of 3rd respondent.

Learned counsel for the respondent further argued that the Resolution dated 1.8.2012 was duly signed by 1st appellant. It is next argued that the bank was putting pressure to clear the loan on 1st appellant, 2nd and 3rd respondent, 3rd respondent made the payment to the Bank. On making/clearing the loan the property was transferred in the name of 3rd respondent.

47. We have heard the parties on this issued. It is not disputed that the Power of Attorney was given in favour of the Bank by 1st appellant and 2nd respondent with the power to sell, transfer, assign, handover possession and to create interest right etc. As the Bank was unable to locate a best buyer then Board Resolution dated 15.10.2012 was passed and then it was also made clear to the bank that the loan is not being repaid and in such case if the guarantor repays the loan amount then the property and legal rights of company should be transferred in favour of the guarantor. Guarantor, 3rd respondent cleared the loan and property was transferred in his favour. However, if the appellant was interested to take the property then he should have repaid the outstanding loan. No such offer was made by the appellant, earlier and subsequent offer would be of no use.

48. In view of the foregoing observations and discussions we find no merit in the appeal. The appeal is accordingly dismissed. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

Dated:25-4-2019
New Delhi
bm