



**459 170** ... Respondent No. 4

**5. Mrs. Vanitha Mahesh,  
W/o Mr. Triplicani  
Gowrishankar Mahesh,  
No. 145, 2<sup>nd</sup> Main Raod,  
Rangareddy Gardens,  
Neelankarai, Chennai-  
600 041** ... Respondent No. 5

**6. Mr. Krishan Rangamani  
Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600 033** ... Respondent No. 6

**7. Mr. Srinivas Meher Saride,  
245 Ennisbrook Dr. Se Smyrna,  
Ga 30082 2435,  
Cobb County, USA** ... Respondent No. 7

**8. Sri Kesavan Advisory Service  
Pvt. Ltd., Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600033** ... Respondent No. 8

**9. Garuda Consulting Pvt. Ltd.  
No. 18/26, Pappathiammal Street,  
Kodambakkam,  
Chennai – 600024** ... Respondent No. 9

**10. Mr. R. Mahalingam  
No.18/26, Pappathiammal Street,  
Kodambakkam,  
Chennai – 600024** ... Respondent No. 10

**11. Mr. K. Bhaskaran**

**M.G.R. Street, Sirukalathur,  
Sripermbudur (TK),  
Kancheepuram Dist.  
Tamil Nadu- 602105 ... Respondent No. 11**

**12. Genie Solutions Pvt. Ltd.  
Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600 033 ... Respondent No. 12**

**13. Mr. Sreekesh Krishnan  
Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu – 600 033 ... Respondent No. 13**

**14. M/s Kerns Aero Products Pvt. Ltd.  
6A (NP), Developed Plot,  
Eeatuthangal,  
Chennai-600097 ... Respondent No. 14 ... Respondents**

**WITH**

**Company Appeal (AT) No. 183 of 2019**

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

**1. Wayne-Burt Petrochemicals  
Pvt. Ltd., A-10, Sipcot  
Industrial Park,  
Irungattukotai, Sriperumbudur  
Taluk, Chennai 602105  
Through its Director ... Respondent No.1**

**2. Triplicani Gowrishankar Mahesh  
Director  
M/s Wayne-Burt Petrochemicals  
Private Limited, Residing at No. 145,**

**2<sup>nd</sup> Street, Rangareddy Gardens,  
Neelankarai,  
Chennai-600 041**

**... Respondent No. 2**

**...Appellants**

**Versus**

**1.Chain Tools & Products**

**Pvt. Ltd., No. 54, Sidco  
Industrial Estate, Kuruchi,  
Coimbatore, Tamilnadu  
-600 041**

**....Petitioner No. 1**

**2.Mr. R. Vashudevan**

**S/o K.R. Raguavan,  
#1, 22<sup>nd</sup> Cross Street,  
Indira Nagar, Adayar,  
Chennai- 600 020**

**... Petitioner No. 2**

**3.Mr. Santosh Kumar Thati,**

**H. NO. 8-2-308, Shivaji Nagar,  
Old Bus Stand, Siddipet,  
Telangana – 502 103**

**... Respondent No. 3**

**4.Mr. Justin Lim Hwa Tat,**

**2, East Coast Avenue,  
#01-12, Singapore-  
459 170**

**... Respondent No. 4**

**5. Mrs. Vanitha Mahesh,**

**W/o Mr. Triplicani  
Gowrishankar Mahesh,  
No. 145, 2<sup>nd</sup> Main Raod,  
Rangareddy Gardens,  
Neelankarai, Chennai-  
600 041**

**... Respondent No. 5**

**6. Mr. Krishan Rangamani**

**Old No. 10/1, New No. 12/1,**

**Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600 033 ... Respondent No. 6**

**7. Mr. Srinivas Meher Saride,  
245 Ennisbrook Dr. Se Smyrna,  
Ga 30082 2435,  
Cobb County, USA ... Respondent No. 7**

**8. Sri Kesavan Advisory Service  
Pvt. Ltd., Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600033 ... Respondent No. 8**

**9. Garuda Consulting Pvt. Ltd.  
No. 18/26, Pappathiammal Street,  
Kodambakkam,  
Chennai – 600024 ... Respondent No. 9**

**10. Mr. R. Mahalingam  
No.18/26, Pappathiammal Street,  
Kodambakkam,  
Chennai – 600024 ... Respondent No. 10**

**11. Mr. K. Bhaskaran  
M.G.R. Street, Sirukalathur,  
Sripermbudur (TK),  
Kancheepuram Dist.  
Tamil Nadu- 602105 ... Respondent No. 11**

**12. Genie Solutions Pvt. Ltd.  
Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu- 600 033 ... Respondent No. 12**

**13. Mr. Sreekesh Krishnan**

**Old No. 10/1, New No. 12/1,  
Varadappan Street,  
West Mambalam, Chennai,  
Tamil Nadu – 600 033 ... Respondent No. 13**

**14. M/s Kerns Aero Products Pvt. Ltd.  
6A (NP), Developed Plot,  
Eeatuthangal,  
Chennai-600097 ... Respondent No. 14 ... Respondents**

**Present:-**

**For Appellant:- Mr. Anuj Tiwari, Mr. Sandeep Bisht, Mr. Shikhar  
Shrivastava, Advocates for Appellant.**

**For Respondent:- Mr. Aakash Lodha, and Mr. Ravi Raghunath, Advocates  
for R1 and R2.**

**J U D G M E N T**

*[23<sup>rd</sup> July, 2020]*

**JARAT KUMAR JAIN, J.**

The Appellants Wayne Burt Petro Chemicals Pvt. Ltd. and its Director Triplicani Gowrishankar Mahesh filed these Appeals under Section 421 of the Companies Act, 2013 (in short “the Act”) against the order dated 01.04.2019 and 04.07.2019 passed by National Company Law Tribunal, Chennai, Bench (in short ‘Tribunal’). By the impugned order dated 01.04.2019 the Tribunal rejected the preliminary objection and held that the Petition CP No. 110 of 2019 is maintainable as not hit by Section 244 of the Act. Whereas, by the impugned order dated 04.07.2019 the Tribunal stayed the call notice of the Appellants and

directed the Appellants to file reply of the Petition within 15 days. These Appeals were heard together and disposed of by this common Judgment.

2. Brief facts of the Appeals are that M/s Chain Tools and Products Pvt. Ltd. and Mr. R Vashudevan Respondent No. 1 and 2 filed a Company Petition stating that on 30.03.2015 the Appellant Company allotted 87972 shares to the Respondent No. 2 for a sum of Rs. 4,83,84,600/- and on 21.05.2017 allotted 2,32,937 shares to Respondent No. 1 for a sum of Rs. 12,81,15,350/-. Respondent No. 1 and 2 stated that they together hold 19.38 % of the issued, subscribed and paid up share capital of the Appellant Company. It was alleged that the huge funds of the Appellant Company were entrusted to Appellant No. 2 and Respondent No. 3 to 5 after, which they started acting detrimental to the interest of the Respondent No. 1 and 2 (Petitioners) by directing the investments in unscrupulous and unwanted means with sole purpose for advancement of their personal agendas. Some of the illegalities, fraud and manipulation are mentioned in Para 5 of the Petition. It was further alleged that Appellants and Respondent No. 3 to 7 failed to comply with the basic mandates and compliances required to be followed by the Company. They are indulged in oppressive and illegal practices. On these allegations Respondent No. 1 and 2 filed Company Petition under Sections 130, 213, 241 and 244 of the Act.

3. The Appellants herein filed a preliminary counter on the maintainability of the Petition stating that Respondent No. 1 and 2 herein have not paid the

consideration towards the shares allegedly, held by them, except Rs. 90 lakhs and therefore, in terms of Section 244 (1) (a) of the Act, the Petition is not maintainable and is liable to be dismissed.

4. The Respondent No. 1 and 2 stated that they hold 2,32,937 and 87,972 fully paid up shares respectively, representing 14.07% and 5.31 % of the share capital and thus they together hold 19.38% of the paid up share capital of the Appellant Company. For this purpose, they placed reliance on the list of shareholders as on 31.03.2016, financial statements (01.04.2014 to 31.03.2015 & 01.04.2015 to 31.03.2016) and form PAS-3 (Return of Allotment) under Section 42(8) of the Act, read with Rule 12(1) of the Companies (Prospectus and Allotment of Securities) filed by the Appellant Company before the Registrar of Companies. Thus, they satisfy the requirement under Section 244(1)(a) of the Act.

5. After hearing Learned Counsel for the parties, the Tribunal by the impugned order dated 01.04.2019 rejected the preliminary objection holding that the Appellants have admitted receipt of a sum of Rs. 17.65 crores towards the allotment of shares to the Respondent No. 1 and 2 and against the money the shares were allotted and thereafter, shown as capital. It was also held that as long as, these shares have not been nullified or reduced or cancelled, the Respondent No. 1 and 2 as per the record of the Appellant Company, are to be construed as eligible to proceed against the Appellants under Section 241 of the

Act. Section 244 of the Act, provides that when call money is not paid then only the Petition filed by the Respondent No. 1 and 2 is hit by Section 244 of the Act and not otherwise. Being aggrieved with this order, Appellants filed Company Appeal (AT) No. 181 of 2019.

6. As aforesaid the Tribunal rejected the objection and directed the Appellants to file their reply of the Main Petition within 4 weeks. The Appellants instead of filing reply of the Petition sent a notice to the Respondent No. 1 and 2 to pay the final call money. The Tribunal by the impugned order dated 04.07.2019 deprecated such notice because the Tribunal has already dealt with the issue of maintainability of the Petition and therefore the Appellants were directed not to proceed with respect to the shares allotted to the Respondent No. 1 and 2 until further orders and were also directed to file reply of the Petition within 15 days failing which the Company Petition will be decided, as per the averments and material placed by the Respondent No. 1 and 2. Being aggrieved with this order, Appellants filed Company Appeal (AT) No. 183 of 2019.

7. Learned Counsel for the Appellants submit that one Mr. Mallaya Sampath Kumar the original promotor of Respondent No. 1, and Appellant No. 1 entered into an MOU for transfer of certain shares held by Appellant No. 1 in Cetex Petro Chemicals Pvt. Ltd. in favour of Mallaya Sampath Kumar for a total consideration of Rs. 20 Crores. For allotment of Cetex Shares Mr. Mallaya transferred Rs. 2 Crores on 05.06.2013 and thereafter, 14.75 Crores between 05.01.2015 to

03.03.2015. In terms of the MOU Appellant No. 1 transferred 80,23,198 shares of Cetex worth Rs. 18,05,21,955/- to Mr. Mallaya. In its reply to the notice dated 08.10.2018 Respondent No. 1 and 2 categorically asserted that the entire amount of Rs. 14.75 Crores was remitted to the Appellants towards acquisition of the Cetex Shares. The Respondent No. 1 in its Balance Sheet for the financial years 2015- 16 and 2016-17 showed that the amount of Rs. 14.75 Crores were paid for investment in Cetex Shares. Thus, admittedly, the Respondent No. 1 has not made any investment in the Appellant Company. For this purpose, the Appellants placed reliance on an audited Balance Sheet of the Respondent No. 1 Company.

8. Leaned counsel for the Appellants further contended that the Appellants by mistake but in good faith appropriated the sum of Rs. 14.75 crores paid by Respondent No. 1 Company towards the issue of shares and showed Respondent No. 1 and 2 as holder of fully paid up shares of Appellant Company. Such bonafide mistakes in the financial statement of the Company are rectifiable under Section 131 of the Act. Learned Tribunal has erroneously placed reliance on the incorrect entries in the financial statement and on such statements decided the issue of maintainability of the Petition.

9. Learned Counsel for the Appellants pointed out that the Appellants had initiated proceedings under Sections 241 and 242 of the Act, in relation to Cetex Shares which is pending. The Respondent No. 1 and 2 knowing well that except

Rs. 90 Lakhs no payment has been made by them for acquisition of the share of the Appellant Company. The Respondents no.1 & 2 have apprehension that appellant would initiate further action against them for the non-payment of the shares, and as a counter blast this petition has been filed. Such Petition is false and misconceived and is not maintainable. However, Learned Tribunal has erroneously held that the Petition is maintainable in view of Section 244 (1) (a) of the Act.

10. Learned Counsel for the Appellants submitted that the Learned Tribunal erroneously stayed the call money notice dated 01.07.2019 vide impugned order dated 04.07.2019 without their being any Application and no such subject matter is pending before the Tribunal. The impugned order dated 04.07.2019 is therefore without jurisdiction and hence is liable to be set aside.

11. Per Contra, Learned Counsel for the Respondent No. 1 and 2 submitted that they held 2,32,937 and 87,972 fully paid up shares respectively, representing 14.07% and 5.31% of share capital and they together hold 19.38% of the paid up share capital of the Appellant Company .For this purpose, they placed reliance on the Appellant Company's documents i.e. list of shareholders as on 31.03.2016, financial statements for financial year 2014-15 & 2015-16 and Return of Allotment filed by the Appellant Company with the Registrar of Company. Appellants have admitted in their preliminary counter that they have received a total sum of Rs. 17.65 Crores form the Respondent No. 1 and 2 and

they have allotted above referred shares to the Respondent No. 1 and 2. Therefore, Learned Tribunal has rightly held that the Respondent No. 1 and 2 satisfy the requirement under Section 244(1) (a) of the Act.

12. Learned Counsel for the Respondent contended that the allegation that no payment has been made for the shares allotted by the Appellant Company is false. The Respondent No. 1 and 2 paid total sum of Rs. 35.26 crores against which Appellant Company allotted shares worth Rs. 34.44 Crores i.e. 3,20,909 shares of Appellant Company and 71,25,499 share of Cetex Petro Chemicals Ltd. to the Respondent No. 1 and 2 and 39,02,119 shares of Cetex Petro Chemicals Ltd. to Sampath Kumar Mallaya.

13. Learned Counsel for the Respondent No. 1 and 2 further contended that the plea of bonafide mistake in Accounts has been raised for the first time during the course of argument before this Appellate Tribunal. No such plea was raised in preliminary counter dated 28.01.2019 or additional preliminary counter dated 11.03.2019.

14. Learned counsel for the Respondent No. 1 and 2 further submitted that the notice dated 28.09.2018 issued under Section 8 of the Insolvency and Bankruptcy Code, suffers many infirmities and the notice is defective. So far as, the reply to notice dated 08.10.2018 by Respondent No. 1 and 2 is concerned the sum of Rs. 14.75 Crores has been paid by them to Appellant Company for allotment of shares.

15. Learned Counsel for the Respondent No. 1 and 2 submitted that it is settled law that when at an initial stage the objection in regard to maintainability of the Petition is raised then only the averments in the Company Petition and the documents enclosed thereto are to be looked into and the defense of the Applicant challenging the maintainability of the petition is not to be considered. Learned Tribunal on the basis of the pleading in the Petition and enclosed documents held that the Respondent No. 1 and 2 hold above referred fully paid up shares and they together hold 19.38% of the paid up share capital of the Appellant Company.

16. Learned counsel for the Respondent No. 1 and 2 submitted that by the impugned order dated 01.04.2019 when the Tribunal held that the Respondent No. 1 and 2 hold fully paid shares in the Company then there was no occasion for the Appellants for issuing call notice dated 01.07.2019. Such notice is improper, illegal and against the financial statements of the Appellant Company. Therefore, Learned Tribunal has rightly, stayed the notice and directed Appellants to file their reply to the Petition.

17. We have heard the Learned Counsel for both the parties and perused the written submissions and also the material documents. Admittedly, the Appellants instead of filing reply to the Petition, filed preliminary objection that in terms of Section 244(1) (a) of the Act the petition is not maintainable because

the Respondent No. 1 and 2 has not paid the consideration towards the shares allotted to them.

18. Learned Tribunal by the impugned order dated 01.04.2019 rejected the objection and held that the Appellants have admitted the receipt of sum of Rs. 17.65 Crores towards the shares allotted to the Respondent No. 1 and 2 and the amount shown as capital in the Financial Statements. Thus, Respondent No. 1 and 2 together hold 19.38% of the paid up share capital of the Appellant Company. Therefore, the Petition is not hit by Section 244 (1) (a) of the Act.

19. Firstly, we have considered the scope of enquiry under Section 244 (1)(a) of the Act. At an initial stage maintainability of the company Petition on certain preliminary objection is analogous to the power of Civil Court to decide the Application for rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure. The Hon'ble Supreme Court in the Case of Bhau Ram Vs Janak Singh (2012) 8 SCC 701 has laid down the law that to decide the Application for rejection of plaint under Order 7 rule 11 CPC, the Court is precluded from considering the defense of the defendants and their evidence. The Court has to look into the pleadings in the plaint and the documents annexed with the plaint. The stand of the defendants in the written statement or in the Application is wholly immaterial for deciding the application under Order 7 Rule 11 of the CPC.

20. It is settled law that an objection as to maintainability of the Company Petition is only to be allowed at an initial stage if there is absolutely, no doubt

that the Petition is not maintainable. It is general principle that a Petition is to be thrown out at an initial stage if it is unarguable on the demurrer. The issue of qualification was a mixed question of fact and law and the correct position is required to be ascertained on hearing the parties on merits.

21. In the light of this preposition of law we have examined the facts of Company Appeal (AT) No. 181 of 2019. Learned Tribunal considered the averments in the Company Petition and documents i.e. list of shareholders, financial statements for relevant years and return of allotment filed by the Appellant Company before Registrar of Companies, in which it is shown that the Respondent No. 1 and 2 hold 2,32,937 and 87,972 fully paid up shares respectively and thus they together hold 19.38% of the paid up share capital of the Appellant Company. Hence, the Tribunal rightly found that the Petition is not hit by Section 244 (1) (a) of the Act.

22. The Appellants have admitted in their preliminary counter dated 28.01.2019 that they have received a total sum of Rs. 17.65 crores. However, for the first time, it is argued before this Appellate Tribunal that Rs. 14.75 crores received against the allotment of Cetex Company Shares and by mistake Rs. 14.75 Crores were appropriated towards the allotment of shares to the Appellant Company. In the considered opinion of this Tribunal such plea cannot be considered at this stage.

23. Thus we are of the view that Respondent No. 1 and 2 at an initial stage satisfied that they hold 19.38% of the paid up share capital and therefore, they satisfy the requirements under Section 244(1) (a) of the Act. It is however made clear that issue of qualification in the present Petition is a mixed question of fact and law and therefore, the correct position is required to be ascertained on hearing the parties on merits as well. In other words the issue of maintainability of the Petition is still open and it will be decided finally after hearing the parties on merits. Therefore, we do not find any fault in the impugned order dated 01.04.2019.

24. Now, we have considered the impugned order dated 04.07.2019. The Tribunal while passing the impugned order dated 01.04.2019 observed that

“it is clear that this section is applicable when calls or made for call money, against which when call money is not paid then only the Petition filed by the Petitioners is hit by Section 244 of the Companies Act, 2013, not otherwise”

It seems that the Appellants tried to take advantage of this observation and sent a call notice to the Respondent No. 1 and 2. Such notice is deliberately, sent to disturb the findings of the impugned order dated 01.04.2019. In such a situation, Learned Tribunal by the impugned order dated 04.07.2019 rightly stayed the call notice and directed the Appellants to file their reply to the Petition within 15 days otherwise the Petition be decided as per the pleadings and

material available on record. We find no error in impugned order dated 04.07.2019.

25. With the aforesaid, we find no merit in these Appeals. Therefore, the Appeals are dismissed. However, no order as to costs. Interim order passed in Appeals are vacated. The parties are directed to appear before the Tribunal on **17<sup>th</sup> August, 2020** for further proceedings.

Registry is directed to send the copy of this Judgement to National Company Law Tribunal, Chennai.

(Justice Jarat Kumar Jain)  
Member (Judicial)

(Balvinder Singh)  
Member (Technical)

(Dr. Ashok Kumar Mishra)  
Member (Technical)

**NEW DELHI**  
SC