NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.337 of 2017

(Arising out of order dated 04.10.2017 passed by the National Company Law Tribunal, Chennai Bench, Chennai in Company Petition No.CP/21/66(1)/CB/2017).

In the matter of:

	Before NCLT	Before NCLAT
1. Mr. Mahendra G. Wadhwani, 15, Linking road, Opp Arya Samaj Mandir, Mumbai-400054.	**Objector**	**Appellant**
Versus		
1. M/s Reed Relays & Electronics India Ltd, 617/618, Gobachandiram, Kottamadugu Panchayat, Thali Post, Krishnagiri district, Tamil Nadu-635118	**Applicant**	**1st Respondent**
2. Securities and Exchange Board of India, 69, 2nd Floor, Regal Building, 16, Sansad Marg, Police Colony, Connaught Place, New Delhi-110001.		**Respondent No.2**
3. Regional Director, South Region, Ministry of Corporate Affairs, Chennai, 5th floor, Shastri Bhawan, 26, Haddows road, Chennai-600006.		**Respondent No.3**
4. Registrar of Companies, Stock Exchange Building, II Floor, 683, Trichy Road, Ramanathapuram, Sowripalayam, Coimbatore-641005		**...Respondent No.4**

Present: **For appellant: Shri Virender Ganda, Senior Advocate with Shri Vipul Ganda, Shri Mohit Oommen, Ms Shreya Jain, Advocates and Ms Mamta Rajaji, CS.**

Shri Delep Goswami, Shri Anirrud Goswami, Advocates and Shri S. Eshwar Sabapathy, PCS for Respondent No.1.

Shri Arpan Behl (ELP) and Shri Sahil Khanna, Advocate for Respondent No.2.

JUDGMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. The present appeal has been preferred under Section 421 of the Companies Act, 2013 by the appellant against the impugned order dated 04.10.2017 passed by the National Company Law Tribunal, Chennai Bench, Chennai (hereinafter referred to as the 'Tribunal') in Company Petition bearing Company Petition No.21/66(1)/CB/2017nd 1642/2016) wherein the Tribunal has passed an order confirming the Reduction of Share Capital.

2. The brief facts of the case are that the Respondent No.1 is a company incorporated under the Companies Act, 1956. Respondent No.1 was a listed company at Madras Stock Exchange, which was a Regional Stock Exchange. With the advent of nationwide stock exchanges, trading of securities in such Regional Stock Exchanges (RSE) started to decline and Madras Stock Exchange discontinued its operations. To safeguard the interest of shareholders of such companies, SEBI issued guidelines in the form of Exit Circulars. With the de-recognition of the Madras Stock Exchange, the shares of the Respondent No.1 were moved to the Dissemination Board of National Stock Exchange for delisting of shares on the derecognized Stock Exchanges under Regulation 28(2) of the

Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and thus were out of the control of the Respondent Company. As per instructions of SEBI on Exit Circular, the Board of Directors of Respondent No.1 at their meeting held on 13.10.2016 decided to pay off capital of the non-promoter shareholders of the company by providing an exit to them. Respondent No.1 appointed M/s P. Pattabiramen and Company as Chartered Accountants to carry out valuation of the shares of the company. The Chartered Accountant submitted their report and the value that they presented as per Discounted Free Cash Flow method of valuation is Rs.107/- per share. The Company, as per report of Chartered Accountant, decided that the same value be paid to every share held by non-promoter shareholder of the company, as a part of the reduction in the share capital of the company. The company despatched notices, explanatory statement, resolution for reduction of capital by cancelling 641962 shares out of 1076809 shares and paying a sum of Rs.107/- for each cancelled share of face value of Rs.10/-each to the shareholders. As the amount paid per share was more than the face value of the shares, the remaining amount is to paid from the securities premium account and also from the general reserves of the company for which a special resolution of the company was passed in which 89.56% shareholders cast their vote in favour of the special resolution for reduction of capital. Therefore, the Respondent No.1 filed an application under Section 66(1) of the Companies Act, 2013 before the Tribunal praying for reduction of share capital resolved on by the special resolution.

3. Mr. Dilip Kumar Surana, being a shareholder, alongwith four other shareholders have filed the objections stating therein that the SEBI circular dated 10.10.2016 prescribed the procedures for giving exit opportunity to the public shareholders of the exclusively listed companies of De-recognised/Non-operational/Existed Stock Exchanges placed in the Dissemination Board and the Respondent company did not give such an exist opportunity as per the said circular. The objector further stated that the Net Asset Value and Discounted Cash Flow methods were employed to arrive at the value of shares and the consideration was fixed as per the Discounted Cash Flow method at Rs.107/- for each share to be cancelled. The objectors contended that votes of public shareholders and promoters have not been counted separately which would have shown the defeat of the resolution passed on the proposed reduction of shares capital. The objector stated that the valuation of shares has not been done in consultation with the designated stock exchange and by an independent valuer from the panel of expert valuers of the designated stock exchange as prescribed in the SEBI circular dated 10.10.2016. The objector stated that while determining the value, the present available cash and bank balance, non-current investment and liabilities was not considered. Therefore, the valuation of the shares is devoid of merits and therefore, should stand rejected.
4. After hearing the parties the Tribunal passed the following order:

"23. ***We confirm the reduction of shares capital of Applicant company by approving the minutes of Special Resolution dated 12.12.2016 passed by the shareholders for reduction of share capital from Rs.1,07,68,090/- consisting of 10,76,809 equity shares of Rs.10/- each fully paid up to Rs.43,48,470/- consisting of 4,34,847 issued, subscribed and paid up equity shares of Rs.10/- each, fully paid up by cancelling 6,41,962 issued, subscribed and paid-up equity shares of Rs.10/- each, being the shares held by non-promoter shareholder (as defined in the explanatory statement) of the 1st Respondent Company, and paying against the shares cancelled a sum of Rs.107/- per equity shares of Rs.10/-.***

24.In terms of the above, the necessary alteration shall be made in the Memorandum of Association by reducing the amount of share capital and of its shares accordingly by the applicant company. The copy of the altered Memorandum of Association and minute approved alongwith the order shall be delivered to the ROC by filing E-form INC-28, within thirty days of the receipt of copy of the Order. Accordingly, the Registry shall prepare an Order in FORM No.RSC-6 as per the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 and issue to the applicant."

5. Being aggrieved by the said impugned order the shareholders/objector, Mr. Mahendra G. Wadhwani has filed the present appeal under Section 421 of the Companies Act, 2013.
6. Notices were issued to the Respondents as per order dated 17.10.2017 of this Appellate Tribunal. The Appellant Tribunal further ordered as under:

> ***"In the meantime, no payment be made to any of the shareholders pursuant to the impugned order dated 4th October, 2017 passed in Company Petition No.21/66(1)/CB/2017"***

7. Learned counsel for the appellant submitted that the SEBI Circular dated 29th December, 2008 provided that the Exclusively listed company are required to either seek listing at other stock exchange with nationwide trading facilities or promoters to provide exit option to the non-promotor shareholders as per SEBI Delisting Guidelines after taking shareholders' approval for the same within a time frame to be specified by SEBI, failing which the companies shall stand delisted through operation of law.
8. Learned counsel for the appellant further submitted that the SEBI Circular dated 30th May, 2012 also provides that the Exclusively Listed Companies which fails to obtain listing, will cease to be a listed company, will be moved to Dissemination Board.
9. Learned counsel for the appellant next contended that as per SEBI Circular dated 22.5.2014, Exclusively Listed companies may also opt

for voluntary delisting in terms of SEBI (Delisting of Equity Shares) Regulation, 2009 under Regulation 4 (4) and 23 which, inter alia provide for determination of value by an independent valuer and the promoters shall not employ the funds of the company to finance exit opportunity.

10. Learned counsel for the appellant submitted that the SEBI Circular dated 17th April, 2015 allows a time line of eighteen months within which such companies shall obtain listing upon compliances with the listing requirements of the nationwide stock exchange or to provide exit opportunity to shareholders.

11. Learned counsel for the appellant states that the combined reading of the exit circulars reveals that each of the circular is supplementing each other and not in supersession of each other and are required to be complied with harmoniously.

12. Learned counsel for the appellant submitted that as per the exit mechanism prescribed, the fair price of the shares is to be determined by an independent valuer in the panel of the designated stock exchange and the promoters shall purchase the shares in the DB at that price.

13. Learned counsel for the appellant stated that the Board of Directors in its Meeting on 13.10.2016 decided to reduce 641962 equity shares held by non-promoter/public/majority shares holders and stated that the Resolution passed in that meeting is illegal.

14. Learned counsel for the appellant further stated that the promoters used the company funds to purchase the shares of non-

promoters/public/majority shareholders and without giving any option to such shareholders to accept or reject the offer so made.

15. Learned counsel for the appellant stated that they have used the method of valuation of shares other than that determined by a registered Merchant Bank. Further the promoters who hold only 40.39% shares as against 59.61% of shares of non-promoters have enriched themselves by using company funds and not putting their own funds and became 100% shareholders of the company and the shares held by non-promoters stood cancelled.

16. Learned counsel for the appellants further stated that the non-promoters shareholding is being paid at Rs.107 per equity shares as share price which is much less than the Fair Market Value (to be determined as per the Exit Circulars and the Delisting Regulations), shall be liable to pay capital gain tax on the difference of FMV being much higher to the aforesaid sale consideration of shares and cost of acquisition. This would lead to an absurd situation of outflow of income tax more than the sale consideration actually received.

17. Reply on behalf of Respondent No.1 has been filed. Learned counsel for the Respondent No.1 stated that the present appeal has been filed by the appellant is an attempt to mislead and misdirect the Appellate Tribunal. Learned counsel further stated that notice was issued to Regional Director and three months' time was fixed for filing objections by all concerned including Regional Director. Respondent No.1 despatched copy of notice through speed post on 15.3.2017 and the said notice was also published in newspaper on 15.3.2017. The

appellant sent his objection to Regional Director, southern Region vide letter dated 23.3.2017 with copies to Respondent No.1. It is stated that the Regional Director did not file his objection upto the statutory time of three months and the Tribunal has rightly passed the impugned order dated 04.10.2017. Respondent No.1 further stated that the appellant is wrongly and mischievously referring to and relying upon the said Regional Director's time barred affidavit dated 18.9.2017 during the ex parte hearing of this appeal on 17.10.2017. Respondent No.1 has stated that when the Appellant was aware of the existence of the affidavit dated 18.9.2017 of Respondent No.3, the appellant also did not point out/insist on consideration of the said affidavit during the course of hearing before the Tribunal. Therefore, the appellant is precluded from raising the same in this appeal.

18. Learned counsel for the Respondent No.1 submitted in his reply at para 3(L) stated that there is nothing legally wrong in not mentioning about the Regional Director's affidavit dated 18.9.2017 in the impugned NCLT judgement and order dated 4th October, 2017. Learned counsel further submitted that since the Respondent No.3 in his time barred affidavit dated 18.9.2017 had referred to and incorporated the objections of the complainants, including those of the appellant, the Tribunal during the arguments considered all the objections and examined them on their merit and thereafter rejected the same by a reasoned order.

19. Learned counsel for the Respondent No.1 stated that the appellant have not pointed out the correct law and facts before this

Appellate Tribunal due to which the Hon'ble Appellate Tribunal has passed the ex parte order dated 17.10.2017 directing that "no payment be made to any shareholders pursuant to the impugned order dated 4th October, 2017 passed by the Tribunal".

20. Learned counsel for the Respondent No.1 that no objections were received from the creditors, Registrar of Companies and Regional Director, Southern Region within the three months' time specified for the purpose. Learned counsel for the Respondent No.1 further stated that the Tribunal during the arguments considered all the objections and examined them on their merit and thereafter rejected the same by a reasoned order. Therefore, the ex parte order dated 17.10.2017. passed by this Appellate Tribunal on this ground alone deserves to be set aside and vacated.

21. Learned counsel for the Respondent No.1 has further argued that the appellant is a habitual litigant and has filed various cases before appropriate forum against unlisted companies and the Courts have termed such a litigant as a 'cantankerous litigant' attempting to frustrate and delay the results of judicial determination. Learned counsel further argued that when e-voting/ballot papers were forwarded to the shareholders of the company, the appellant was having originally 6200 shares but since the company gave exit option the appellant acquired another 5487 shares during the period 31.12.2016 uptil 24.2.2017 from 6 shareholders even though the shares of the company were not traded. Learned counsel for the Respondent No.1 has

stated that this Appellate Tribunal should take note of this and take such action as it may deem fit and proper.

22. Learned counsel for the Respondent No.1 submitted that it has complied all the provisions as laid down in Companies Act, 2013 in respect of reduction of share capital and further stated that Section 100 of the Companies Act, 2013 nowhere states that the promoters of the company will have to bring in their own funds, if any shares of non-promoters are being extinguished or paid off in pursuance to SEBI mandated exit circular and also because the shares of the company got delisted from the Madras Stock Exchange. Learned counsel for the Respondent No.1 further stated that there is nothing unfair or inequitable in the transactions, therefore, there cannot be any objection to allowing a company limited by shares to extinguish some of its shares without dealing in the same manner with all other shares of the same class.

23. Learned counsel for the Respondent No.1 further submitted that the said Section nowhere states that the promoters of the company will have to bring in their own funds, if any shares of non-promoters, are being extinguished or paid off in pursuance to SEBI mandated exit regulations and also because the shares of Respondent No.1 got delisted from the Madras Stock Exchange. Learned counsel further submits that Special Resolution dated 12.12.2016 was passed for the purpose and the same was confirmed by the impugned order dated 4.10.2017.

24. Learned counsel for the Respondent No.1 submitted that the appellant has levelled the allegation of Fraud against it. He further submitted that mere mention of "fraud" is not sufficient and appellant has to give the particulars of fraud with dates and time which the appellant has failed to provide.

25. Learned counsel for the Respondent No.1 submitted that utilising of Securities Premium Account in paying off shareholders is permissible under sub-section (1) of Section 52 of the Companies Act, 2013. He further stated that therefore, the contention of the appellant that the share premium reserve can be utilized only for "buy back" of shares as per Section 52(2)(c) is erroneous and untenable. Learned counsel has relied upon the judgement ***In re:Nestle India Ltd (MANU/DE/2751/2008)*** wherein reference was made to Madras High Court decision in ***Parry's Confectionary Ltd (2004) 122 Comp Cas 99.***

26. Learned counsel for the Respondent No.1 relied upon the decision of Hon'ble Supreme Court in ***G.L. Sultania Vs SEBI (2007-5-SCC 133)*** stressing that the Hon'ble Supreme Court has held that the Court does not act as an expert in valuation of shares which is a technical and complex problem which can be appropriately left to consideration of experts in the field of accountancy. Learned counsel further drew the attention of the Court towards Hon'ble Supreme Court decision in ***Hindustan Lever Employees' Union Vs Hindustan Lever Ltd, (1994) 2 SCL 157 (SC)*** stating that the Hon'ble Supreme Court rejected the argument that merely because some other method could be resorted to,

which could possibly be more favourable to the objector but that alone cannot militate against granting approval to the scheme propounded by the company and the Court's obligation is to be satisfied that valuation was in accordance with law and it was carried out by independent body. The Court's jurisdiction is not to ascertain with mathematical accuracy the valuation of shares.

27. Learned counsel for the Respondent No.1 stated that National Stock Exchange gave its no-objection to the proposal of the Respondent No.1.

28. Learned counsel appearing on behalf of the Respondent No.2 during the arguments submitted that the Circular dated 10.10.2016 is applicable retrospectively. Learned counsel drew out attention of said circular at para 7 which states that ***"The provisions of this Circular are applicable to the exclusively listed companies of all de-recognised/non-operational stock exchanges which are exited/in the process of exit in terms of exit circular dated May 30, 2012."***

29. Respondent No.3 had filed his affidavit before the Tribunal which, as per the appellant, was not considered by the Tribunal while passing the impugned order. The appellant has annexed the copy of the affidavit filed by the Respondent No.3 before the Tribunal. In his affidavit the Respondent No.3 had stated that the Respondent No.1 had listed the reasons for the reduction of the shares which is on the basis of the various SEBI Circulars for the companies delisted from the Regional Stock Exchanges and kept under the dissemination board.

The SEBI Circular has provided exit option to such companies to either list the shares in any one of the recognised stock exchanges or opt for the voluntary delisting of their shares under SEBI norms. It is stated by the Respondent No.3 that the Respondent No.1 proposed to exit the non-promoter shareholders at a premium of Rs.97/- per share who forms the majority of the shareholders i.e. 59.61% of the equity shares. It is next submitted that the company has furnished the voting by the equity shareholders on the resolutions of the company by e-voting and also by postal ballot.

30. It is next stated in the report that the Respondent No.3 has received complaints from the shareholders and the main complaints are as under:

a) Company has stated that the valuation was done on Discounted Cash Flow Method(DCF) and Net Assets Value(NAV) and the company has taken the DCF method of valuation and has not sent the valuation report alongwith the notice to the shareholders.

b) The complainants have further stated that a perusal of the financial statement of 31.3.2016 reflects the book value of each shares is at Rs.356/- per share without the underlying assets.

c) The complainants has stated that the non promoter shareholders are in a majority and after their exit the promoter shareholders are the sole beneficiaries and the amount of premium arrived at by the promoter shareholders are unfair.

d) The shareholders has stated that in the voting by evoting and by postal ballot if the promoter shareholders are removed the majority shareholders have voted against the scheme. The scrutinizer should have stated the voting by the promoter and non-promoter shareholders separately for better appreciation of the facts.

e) The complainant shareholders have stated that the company has not done the valuation by an independent valuer selected from the panel of valuers empanelled by SEBI as per its Circular dated 10.10.2016 and hence it is against the SEBI mandated regulations.

f) The complainants has requested that notice of the scheme may be given to SEBI.

31. Respondent No.3 has given his views/opinion/observation on each of the complaint. As regards complaint (a) above the Respondent No.3 has stated that as per SEBI regulations the valuer should only recommend which valuation should be adopted by the company for the exit scheme. In this case the valuer states that the company may take valuation of the shares on the basis of either the DCF method or the NAV method. Respondent No.3 has stated that the action of the valuer is incompatible with the SEBI regulations and guidelines. Respondent No.3 has further stated that as per NAV method the value of the share is Rs.351/- per share. In the DCF method the valuer has not taken the Cash and Bank Balance of Rs.22.40 crore, Non current investments of Rs.49.91 lacs and liabilities of Rs.65.91 lacs. Respondent No.3 further

stated that the valuer has himself admitted that if the above figures are taken for DCF method of valuation then the share valuation shall be an incremental amount of Rs.207 per equity shares. Respondent No.3 has questioned the valuation under DCF and stated on oath that the valuer has done the valuation at the bidding of the Company and not as a neutral person as is expected of him. Respondent No.3 has stated when this issue was taken up with the Company, the company replied that the valuation of DCF method is taken as the company is a going concern and not otherwise. Therefore, the Respondent No.3 stated that as for the outgoing shareholders are concerned it is a closing of the company and hence they should have been paid as per the NAV valuation only and not as per the valuation arrived at by the DCF method.

32. As regard complaint No.(b), Respondent No.3 have stated that how the complainants have arrived at this valuation is not clear. But on the other hand, it is stated that the valuation arrived by the complainants-shareholders is very close to the value of the shares valued at NAV method i.e. Rs.351 per share by the company valuer. Respondent No.3 further stated that complainants –shareholders has force in their arguments and the company should have considered the highest valuation arrived at by the valuer for existing non-promoter shareholders who are in majority. Respondent No.3 further stated that the company will be having sufficient reserve, after making the above payment to non promoters, and the beneficiary will be the promoters and the value of their shares post payment will increase significantly.

33. As regards complaint No.(c), Respondent No.3 has stated that in view of the complaint No.(b) there is some force in the submission of the non-promoter shareholders.

34. As regards complaint No.(d), Respondent No.3 has submitted that as explained in earlier paras there is some force in the submission of the non-promoter shareholders and the shareholders submission.

35. As regard complaint No.(d), Respondent No.3 has stated that the scrutinizer should have segregated the voting by the promoters and the existing non promoter shareholders. The scrutinzer also should have mentioned clearly as to how many shareholders participated along with the Number of shares held by each share holder.

36. As regard complaint No.(e), Respondent No.3 has also stated that if the valuation has not been done by the SEBI empanelled valuers list then the valuation could not be said to be done as per the SEBI regulations and for this reason also the scheme of reduction of capital could not said to be validly offered.

37. As regard complaint No.(f), Respondent No.3 has stated that the submission of complainant-shareholder is reasonable as the company is stating that it is exiting the non-promoters as per SEBI circulars, therefore, provision of Section 66(2) of Companies Act, 2013 requires that wherever necessary notice to SEBI should also be given. Respondent No.3 also stressed that it is a fit case for giving notice to SEBI and SEBI may also be heard.

38. Respondent No.3 further stated that as per SEBI guidelines dated 10.6.2009 Chapter II Clause 4(4) that no promoter shall directly or

indirectly employ the funds of the company to finance an exit opportunity provided under Chapter IV or an acquisition of shares made pursuant to sub-regulation (3) of the Regulation 23. Respondent No.3 further stated that on the other hand the promoters are enriching themselves at the cost of the company i.e. utilising the share premium account and part of the General Reserve to exit the non-promoters shareholders. Respondent No.3 further states that as per Chapter IV clause (5) the shareholders should be given an opportunity in accordance with Chapter IV, but in the present case it is not voluntary exit but a compulsory exit of the non-promoter equity shareholders which is against grain of the SEBI regulations.

39. Respondent No.3 has lastly observed that exit scheme submitted by the promoter reveals that the promoter shareholders has instead of following the SEBI guidelines in letter and spirit has flouted the guidelines with impunity on various aspects and stated that the petition may be disposed of on merits.

40. We have heard the learned counsel for the parties and perused the entire record.

41. Learned counsel for both the parties argued on the various issues/counter issues raised in the appeal. We find that the learned counsel for the appellant mainly stressed on the issue that the affidavit dated 18.9.2017 of the Respondent No.3 was not considered by the Tribunal whereas the Learned counsel for the Respondent No.1 argued that since the same was not filed within the statutory period, therefore, the Tribunal was legally right in not taking the same into consideration

while passing the impugned order dated 4.10.2017. Therefore, first of all we will decide this issue.

42. Learned counsel for the appellant has argued that the affidavit dated 18.9.2017 of the Respondent No.3 which was filed before the pronouncement of judgement dated 4.10.2017 was not considered by the Tribunal. Learned counsel further argued if the same would have been considered by the Tribunal then the order dated 4.10.2017 would have been different. Learned counsel for the Respondent No.1 argued that the Respondent No.3 had not filed their objection/affidavit during the statutory period of three months, therefore, the Tribunal was right in pronouncing the judgement and there is no illegality in it. Learned counsel for Respondent No.1 in his summary of arguments dated 23.2.2018 at para 3 submitted that ***"R1 Company came to know of RD's aforesaid Report for the first time from the Appeal Paperbook."*** On the other hand, the Respondent No.1 in his counter affidavit at para 3 (L) of preliminary objections has submitted as under:

> ***".....Thus the said affidavit could not have been legally taken on record by the Hon'ble NCLT Chennai Bench. Therefore, there was nothing legally wrong in the Hon'ble NCLT Chennai Bench not mentioning about the Regional Director's affidavit dated 18.9.2017 in the impugned NCLT judgement and order dated 4th October, 2017. However, the Answering Respondent would like to mention that since the Regional Director (Southern Region) in his time-barred affidavit dated 18.09.2017 had referred to and***

incorporated the objections of the complainants, including those of the appellant, the Hon'ble NCLT, Chennai Bench, during the arguments considered all the objections and examined them on their merit and thereafter rejected the same by a reasoned order....."

43. Going through the impugned Judgement, we do not find that the important issues as raised by Respondent No.3, Regional Director were considered and discussed. When affidavit by an important authority like Respondent No.3 had been filed public interest required to consider it and not ignore it on technicalities. We need to have that views of NCLT on the points raised by Respondent No.3.

44. From the above it is clear that the Tribunal has not considered the observations/opinion given by the Respondent No.3, Regional Director, Ministry of Corporate Affairs.

45. Respondent No.3 filed his affidavit dated 18.9.2017 either before 20.9.2017 or after 20.9.2017 but the judgement was pronouncement on 4.10.2017. Therefore, it is clear that the affidavit dated 18.9.2017 was filed before 4.10.2017. It was in the interest of all the parties that the Tribunal should have given an opportunity to the parties to make their submissions on the said affidavit complying with the principle of natural justice. The said affidavit was not considered while pronouncing the judgement which was filed with the Tribunal before the pronouncement of judgement on 4.10.2017.

46. In view of the above discussions, we are not giving our judgement/decision on the other various issues/counter issues raised

by the parties in the appeal. The impugned order dated 4.10.2017 passed by the Tribunal is set aside. The matter is remanded back to the Tribunal to re-hear the matter, NCLT shall take into consideration the affidavit dated 18.9.2017 of Respondent No.3 and after giving due opportunity to all the parties to argue on the same, decide the Company Petition expeditiously in terms of Section 422 of the Companies Act, 2013. Earlier evidence will also be evidence in the cause. The parties are also given opportunity to argue on the other issues as well before the Tribunal. No order as to cost.

47. Parties are directed to appear before the NCLT, Chennai Bench, Chennai on 28th May, 2018 and no separate notice would be necessary.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi

Dated:17-4-2018