

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No.43 of 2018**

[Arising out of Order dated 09.11.2017 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.69 of 2009 (TP No.43/HDB/2016)]

<b><u>IN THE MATTER OF:</u></b>	<b>Before NCLT</b>	<b>Before NCLAT</b>
1. Mr. Ajay Kumar Kedia Kedia Overseas Ltd. 19-2-226, Mir Alam Tank Road, Bahadurpura Hyderabad 500064 Telangana	Original Respondent No.4	Appellant No.1
2. Mr. Mahesh Kumar Kedia Flat No.304, Studio Sycamore Apts, Rd No.4, Banjara Hills, Hyderabad 500029 Telangana	Original Respondent No.2	Appellant No.2
3. Mr. Umesh Kedia 5-9-30/1/4/3, Road No.5 Basheerbagh, Hyderabad 500029 Telangana	Original Respondent No.3	Appellant No.3
4. Smt. Anitha Kedia Flat No.304, Studio Sycamore Apts, Rd No.4, Banjara Hills, Hyderabad 500029 Telangana	Original Respondent No.6	Appellant No.4
5. Smt. Komal Kedia Flat No.304, Studio Sycamore	Original Respondent No.7	Appellant No.5

Apts, Rd No.4,  
Banjara Hills,  
Hyderabad 500029  
Telangana

**Versus**

- |  |                           |                 |
|--|---------------------------|-----------------|
| 1. Smt. Anita Kedia<br>5-9-30/1/4/3,<br>Rd. No.5<br>Basheerbagh,<br>Hyderabad 500029<br>Telangana        | Original Petitioner       | Respondent No.1 |
| 2. M/s. Shruthi Agro<br>Farms Ltd.<br>19-2-226,<br>Mir Alam Tank Road,<br>Bahadurpura,<br>Hyderabad – 64 | Original Respondent No.1  | Respondent No.2 |
| 3. Pankaj Kedia<br>5-9-30/1/4/3,<br>Road No.5,<br>Basheerbagh,<br>Hyderabad – 500029                     | Original Respondent No.8  | Respondent No.3 |
| 4. Smt. Aruna Kedia<br>5-9-30/1/4/3,<br>Rd. No.5,<br>Basheerbagh,<br>Hyderabad – 500029                  | Original Respondent No.10 | Respondent No.4 |
| 5. Sri Vijender Kedia<br>5-9-30/1/4/3,<br>Rd. No.5,<br>Basheerbagh,<br>Hyderabad – 500029                | Original Respondent No.11 | Respondent No.5 |

**For Appellants:**

**Shri Vivek Sibal and Shri Yash Patel, Advocates  
Shri Arun Kumar Malavi, FCA**

**For Respondents:**

**Shri Hari Krishna, Shri Milind G. Gokhale, Shri  
Ashok Kumar Juneja and Ms. Renu Tyagi, Advocate  
(Respondent No.1)**

**Shri Virender Ganda, Senior Advocate with Ms. Shelly Khanna and Shri Rahul Bhardwaj, Advocates**

**Dr. S.V. Rama Krishna, Advocate (Respondent No.2)**

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

**(2<sup>nd</sup> September, 2019)**

**A.I.S. Cheema, J. :**

1. This Appeal has been filed by the Appellants who were original Respondents 4, 2, 3, 6 and 7 respectively, being aggrieved by the Impugned Judgement and Order dated 9<sup>th</sup> November, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT – in short) in CP No.69 of 2009 (TP No.43/HDB/2016). There were 11 Respondents in the Company Petition which was filed by Respondent No.1 – Anita Kedia, wife of Jitender Kedia (the Appellant No.4 - Anitha Kedia, wife of Appellant No.2 – Mahesh Kedia has similar name. Whenever we refer to Anita Kedia, unless the context shows otherwise, the reference would be to original Petitioner – Anita Kedia, wife of Jitender Kedia). The Respondents in Appeal are original Petitioner, R1, R8, R10 and R11 respectively. It is clear that the Appeal Memo has not followed any system or logic while arraying the parties in Appeal. As such we will be referring to the parties, in the manner in which they were arrayed in the Company Petition which can be seen from the Impugned Order. Original Respondent No.5 – Gulzarilal Kedia was not arrayed as party in the Appeal. It appears that he has now expired. The original Respondent No.9 – Registrar of Companies is also not party to the Appeal.

2. The Company Petition was filed before the Company Law Board at Chennai. Copy of the Company Petition as was basically filed has been filed along with the Replies by the Appellants with Diary No.6357. It appears that the Company Petition filed on 21<sup>st</sup> August, 2009 was dismissed in default on 5<sup>th</sup> June, 2014 and later on was restored. At subsequent point of time, the Company Petition was amended, copy of which is at Annexure A-2 filed by the Appellants. The amendment appears to have been contested by the parties but was allowed and the amended Company Petition was taken on record. The amended Company Petition separately shows the portions which were added. The Appellants at the time of Appeal have tried to claim prejudice on the basis that after the amended Company Petition was filed, they did not get opportunity to file Reply to the amended Company Petition. At this stage itself, we record that when the parties have throughout the litigation aggressively pursued the litigation, and discreetly keep quiet so that they can later claim prejudice, on technicalities we would not interfere, especially, when all the necessary facts and documents were before the Tribunal and the learned NCLT took a considered view which is based on documents. The parties were and have been given sufficient opportunities to put on record whatever case they wanted to.

### **Case of Original Petitioner**

3. In a nutshell, the case put up by the original Petitioner in the Company Petition as was filed, was that the original Respondents 2 to 5

should be restrained from acting as Directors of the original Respondent No.1 Company – Shruthi Agro Farms Ltd. (Company – in short). That, Respondents 2 and 4 had resigned on 7<sup>th</sup> April, 2004 and Respondent No.3 resigned on 8<sup>th</sup> April, 2004 which resignations were accepted and they had also disinvested all their holdings. Original Respondent No.5 - Gulzarilal Kedia, who was inducted as Additional Director on 9<sup>th</sup> April, 2004, had also resigned on 18<sup>th</sup> December, 2004. The original Petitioner prayed that the Registrar of Companies (Original Respondent No.9) should be asked not to take cognizance of Form 32 which was filed on 9<sup>th</sup> February, 2005 purporting to be under signature of original Respondent No.5 - Gulzarilal Kedia who had resigned earlier on 18<sup>th</sup> December, 2004. Company Petition referred to various documents of transfer like sale deeds, gift deeds, etc. giving particulars and claiming that the property of the Company was simply sold off or transferred mainly by original Respondent No.2 – Mahesh Kedia to their relatives. Original Petitioner claimed that she came to know about the transactions when Company Secretary - CS Vasanth Bajaj verified ROC records and when Application was filed for certified copy of the Form 32 said to have been submitted by original Respondent No.5 - Gulzarilal Kedia, it was found missing from ROC record leading the Petitioner to file complaint dated 14.11.2006 (R-VOL.2 – Page No.268). Then the original Petitioner sought setting aside of the documents of transfer as detailed by her in the Company Petition.

4. Record shows that the original Respondents contested the Company Petition and the NCLT after considering the pleadings and arguments put forth before it, framed following **issues**:-

“17. After considering various contentions raised by all the parties as briefly stated supra, the following main issues, apart from other issues, arise for consideration in the case:

1. Whether the Company Petition is maintainable under Section 397/398 of the Companies Act, 1956 in the light of allegation that the petitioner is not holding minimum 10% shareholding of the Company, as prescribed under Company law;
2. Whether Respondent No.2 to 4 have resigned as Directors of the Company and again re-appointed as additional Director as contended by them;
3. Whether the respondent No.5 has resigned as contended by the petitioner and the Company;
4. If the resignations are validly made and accepted by the Company, what is validity of impugned transactions made by them;
5. Whether the Form 32 filed by Respondent No.5 on 09.02.2005 is valid or not, in the light of his resignation as Director/Chairman made as early as on 18.12.2004;
6. If so, what is the relief, the petitioner is entitled for.”

The issues were answered in favour of the original Petitioner for which NCLT recorded detailed reasons and passed the following **operative directions/Orders:-**

- “1) Hereby declared that the respondent Nos 2 to 4 herein ceased to be Directors of the Company with effect from 9.04.2004, and they have also ceased to be members of the Company;
- 2) Hereby declared that the Respondent No.5 is also ceased to be a Director of the Company with effect from 18.12.2004;
- 3) Hereby set aside the impugned registered document Nos.3440 of 2006, 6722 and 6723 of 2006 and unregistered sale deed vide file No.791/AR/08 dated 07-01-2008, Registered document No.3640 of 2008 and 143 of 2008 dated 10.01.2008 and another document Nos.6720/2006 and 6721 of 2006 by declaring them as illegal and void abinito having been executed without any authority;
- 4) It is hereby directed the Registrar of Companies, (Respondent No.9) to effect necessary changes with respect to the Board of Directors of the Company and not take cognizance of form No.32 filed on 09.02.2005 and communicate the action taken to the petitioner and the Company within a period of three weeks from the date of receipt copy of order.
- 5) CA No.94 of 2017 is hereby dismissed as having no merits.
- 6) No order as to cost.”

5. Being aggrieved, the present Appeal has been filed by the Respondents 2 to 4, 6 and 7. We will refer to the Appellants as the contesting Respondents.

**Case put up by Appellants/Contesting Respondents**

6. The Appeal claims, and it has been argued for the Appellants that the Company Petition filed by the original Petitioner claiming to be shareholder of the Company, was a collusive Petition as the Company is managed by her husband – Jitender Kedia (Managing Director) who in his Replies filed, admitted the factual assertions made by the original Petitioner and the same were relied on by NCLT to pass the Impugned Order. The Appellants claim that the Form 32 filed on 8<sup>th</sup> February, 2005 under the signature of original Respondent No.5 - Gulzarilal Kedia was questioned in the Company Petition filed in August, 2009 and thus, it was time barred claim. According to the Appellants, it was not a case of oppression and mismanagement. The original Petitioner did not hold more than 10% shareholding in the Company when the Petition was filed. The shareholding of the Company till 31.03.2004 was 16,54,020 shares with 24 shareholders. Originally no shares had been allotted to Anita Kedia – wife of Jitender Kedia till 21.02.2004. The paid up capital, in Annual Return filed by Jitender Kedia (counter signed by original Petitioner) for Financial Year 2004 – 2005 for AGM held on 30.09.2005, suddenly increased to 21,24,000 shares and the number of shareholders was shown only as 8 for the period 2004 – 2005, which was reduced from 24 shareholders. Although Annual Return mentioned list of shareholders but the same was not enclosed with Annual Return filed with ROC. It is also mentioned that if new shares were allotted, procedure required by Section



81 was not followed. The claim of the original Petitioner that these Respondents had transferred their shares is denied by the Appellants/Respondents claiming that original Petitioner with her husband - Jitender Kedia conspired against the shareholders to execute fraudulent Share Transfer Forms to register share transfers in her name by misusing blank signed Share Transfer Forms which were available with Jitender Kedia, Managing Director for the purpose of offering security for obtaining loans from the banks and outside agencies. They also claimed that there was no payment of consideration against said transfers. It was closely held Company. Appellants claim that Share Transfer Forms were fraudulent and somewhere consideration was shown as Rs.5/- per share and somewhere it was shown as Rs.10/- per share. The book value of shares was about Rs.800 per share. The Appellants also claim that the original Petitioner and her husband - Jitender Kedia had acted against the interest of the Company as there was illegal execution of sale deed No.10670/2006, transferring the property of Company in favour of Jitender Kedia through another Director Mr. Rajesh Agarwal (claimed by the original Petitioner as appointed Additional Director on 11<sup>th</sup> December, 2004). Appellants claim that the original Respondent No.2 – Mahesh Kedia filed OS 2196 of 2007 in this regard and Judgement was passed in favour of Respondent No.2 – Mahesh Kedia which dispute is now pending in Appeal. The Appellants have tried to defend the unregistered sale deed dated 07.10.2003 which has been questioned by the original Petitioner claiming that admittedly on that date Respondent No.2 – Mahesh Kedia

was Director of the Company. The Appellants claim that proceedings on the revenue side regarding that sale deed and gift settlement deed document No.143 of 2008 were pending. Appellants admit that Appellants 1 to 3 (original Respondents 2 to 4) did resign in April, 2004 but claim that original Respondent No.2 – Mahesh Kedia was re-inducted as Additional Director on 8<sup>th</sup> December, 2005 in which original Respondent No.5 - Gulzarilal Kedia submitted Form 32 on 8<sup>th</sup> February, 2005. According to the Appellants (contesting Respondents), Gulzarilal Kedia never resigned as claimed by the original Petitioner. They claim that Gulzarilal Kedia had filed counter Affidavit in 2009 and also submitted newspaper advertisement dated 22.07.2009 mentioning that Jitender Kedia had obtained some signatures on blank papers from him. Appellants (contesting Respondents) claim that Form 32 appointing original Respondent No.2 – Mahesh Kedia and Umesh Kedia was valid. They claim that the resignation of Gulzarilal Kedia was fabricated by the original Petitioner. According to the Appellants, the original Petitioner did not hold 10% shareholding. They also want to claim that one Kailash Narayan Bhangadia had filed another CP 43/2009 claiming that he had been illegally divested of his shares by the original Petitioner and Jitender Kedia but the said Petition was stayed in Writ Petition by the High Court. With regard to Sale Deed dated 21.2.2006, questioned by Petitioner, Original Respondents claim that it was executed to raise funds of Company.

7. The Respondent No.1 – Anita Kedia – original Petitioner and the Counsel for Respondent No.2 Company have also been heard. These parties have supported the Impugned Order raising various arguments as have been noted by the NCLT also.

The Respondent No.1 - Petitioner has filed documents from the Company Petition. For the sake of convenience, the different volumes were directed to be properly numbered and they have been numbered as R-VOL.1 to R-VOL.5. These are filed with Diary No.4051.

**Can it be claimed that Original Respondents 2 and 4 were duly re-inducted back as Directors**

8. Having gone through the matter, there is no dispute regarding the fact that original Respondents 2 to 4, who were earlier Directors, had submitted resignation letters in April, 2004. Copies of those documents are at R.VOL.1 Pages – 93 to 97, which show their resignations and the appointment of original Respondent No.5 - Gulzarilal Kedia as Additional Director w.e.f. 09.04.2004. Then there is resignation of original Respondent No.5 - Gulzarilal Kedia at Page – 98 of the R-Vol.1 resigning from the post of Chairman-cum-Director (which of course Appellants are questioning). R-Vol.1 at Page - 74 has Annual Return of the Company filed after AGM of 29.09.2006 showing one Shri Rajesh Aggarwal inducted as Director w.e.f. 11<sup>th</sup> December, 2004.

9. In the light of the above documents and admitted facts, if the Appellants want to claim that they were re-inducted as Directors, it would

be burden on them to show as to how and that legally they got re-inducted. Apparently, if Respondent No.5 - Gulzarilal Kedia had resigned on 18<sup>th</sup> December, 2004, he could not have submitted Form 32 on 8<sup>th</sup> February, 2005, copy of which is at Page – 112 and 113 of R-VOL.3. This Form claimed that original Respondent No.2 – Mahesh Kedia and original Respondent No.3 - Umesh Kedia had been reappointed as Additional Directors on 7<sup>th</sup> February, 2005.

It appears that original Respondent No.5 - Gulzarilal Kedia recorded and notarized Affidavit dated 8<sup>th</sup> August, 2013 (Volume R3 – Page 59) claiming that original Respondents – Mahesh Kedia and Umesh Kedia had resigned from the Board of Directors on 09.04.2004; he claimed that he had himself resigned on 18<sup>th</sup> December, 2004 and the changes had been informed to ROC. This Respondent No.5 - Gulzarilal Kedia appears to have been the father of Mahesh Kedia, Umesh Kedia and Jitender Kedia. He executed the Affidavit claiming that in the course of litigation between the brothers, he has come to know that a fresh Form 32 was filed on 05.02.2005 stating that original Respondents – Mahesh Kedia and Umesh Kedia had been re-nominated as Directors and the Form 32 bore his signature. He claimed that he has sent a letter dated 18.12.2013 to the Registrar of Companies that he had ceased to be Director from 18<sup>th</sup> December, 2004 and that he had not appointed Mahesh Kedia and Umesh Kedia as Directors. No doubt the Appellants have claimed that in 2009 Gulzarilal Kedia had executed another Affidavit and given in newspaper

that Jitender Kedia had taken some signatures on blank papers from him but such notarized Affidavit of 2013 is also on record. Unfortunately, Gulzarilal Kedia is said to have expired on 12<sup>th</sup> September, 2018. The point remains that it is burden on the original Respondents 2 and 3 to show that they were duly re-inducted. Merely referring to Form 32 signed by late Gulzarilal Kedia would not be sufficient. There is no material to show that there was any Board Resolution re-inducting these parties as Directors. Again, even if they were re-inducted as Additional Directors, it is not claimed by Appellants and there is no material that in following AGM, they were continued as Directors.

10. Rather, the original Petitioner has pointed out that in 2005 when these contesting Respondents issued Notice under Section 169 read with Section 257 of the earlier Companies Act, 1956 the Company had informed that they had already transferred their shares and also that they were no more Directors. Copy of the document is at Page – 73 of R-VOL.3. This document shows that the Company addressed letter to original Respondent No.2 – Mahesh Kedia on 19<sup>th</sup> January, 2005 and communicated as under:-

“As you are aware that you have transferred the shares held by you in the Company and the Company has effected the transfer of 7,00,202 equity shares standing in your name in the board meeting held on 30.01.2004 & 09.04.2004 vide duly filled share transfer forms and certificates lodged with the Company.

Accordingly we regret to inform you that you are no longer a member of the Company. Hence, you do not

have the right to call for an EGM or propose a Director as stated in your letter under Sec.169 read with Sec.257 of the Companies Act.”

On the photocopy of the letter filed, there is copy printed of the Postal Receipt of registration of the letter with the Post Office, and also photocopy of acknowledgement of Respondent No.2 – Mahesh Kedia is there. It also bears stamp and signature of the Office of Registrar of Companies along with date of January, 2005. Similarly, there are other documents at Page – 85 of R-VOL.3 addressing similar letters to original Respondent No.4 – Ajay Kedia, at page – 90 of the Volume; letter addressed to Vijendra Kedia, at Page – 94 of the Volume; and at Page – 300 of R-VOL.4 letter addressed to Respondent No.3 - Umesh Kedia. These are documents from the Company informing these persons that they are no more shareholders and could not convene meeting. These documents show postal receipts as well as acknowledgements. They also bear Receipt Stamps and signature with date from office of ROC. There is no reason to doubt the endorsements. Thus on one side, where the Appellants are trying to claim that on Form 32 submitted under signatures of late Gulzarilal Kedia, the original Respondents 2 and 3 had been re-inducted, there were letters from the Company informing these persons as mentioned in the letters that they had divested their shareholdings and were not even members. Thus, according to us, the contesting Respondents – Appellants have not been able to show that once having resigned, how they were re-inducted as Directors; or that the same was done legally. In fact, the Company

questioned their membership itself and there is no material to show that when the Company sent such information, these original Respondents made any efforts by filing any Company Petition to claim that they have not transferred their shares and original Respondents 2 and 3 were duly reappointed as Additional Directors and then Directors.

**Do Appellants show they still are Shareholders?**

11. The Appellants have tried to claim that Jitender Kedia had blank Share Transfer Forms with him which was given for the purpose of offering security to obtain loans from banks and outside agencies and that the same were misused to show transfer of shares in favour of the original Petitioner. The fact remains that signatures on the Forms are not in dispute. The Appellants also claim that the original Petitioner did not have 10% shareholding. However, if documents at R-VOL.3 Pages 29 to 57 are perused, the following picture emerges:-

Transfers	Shares	Transfer From No.	Date
R2 transferred to Petitioner (Pages 29 and 34)	2,00,202	034594	30.01.2004
	5,00,000	160490	09.04.2004
R3 transferred to Petitioner (Pages 42 and 44)	20,000	160489	09.04.2004
	3,74,000	160491	09.04.2004
R4 transferred to Petitioner (Page 52)	13,000	034596	30.01.2004
R8 transferred to Petitioner (Page 54)	15,600	160488	09.04.2004

R11 transferred to Petitioner (Page 56)	4,000	160484	09.04.2004
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These forms were acted upon and taken on Record by the Company in 2004 itself. In the face of such documents, we discard the claim of the Appellants that blank Share Transfer Forms were misused. We have already referred to the Reply notices sent by the Company to these persons (copies of which are at Pages – 73, 85, 90 and 94 of R-VOL.3 and Page – 300 of R-VOL.4) in January, 2005, which documents we have already referred in earlier paragraphs. As mentioned, the Appellants do not appear to have filed any Company Petition to claim restoration of their names in the records of the Company in the Register of Members. It is not the case of the Appellants that in the Annual Returns and the Returns filed by the Company, they were still shown as shareholders even after 2004-2005. Taking into consideration the shareholding of the Company and the facts appearing showing original Respondents 2 to 4, 8 and 11 transferring their shares as above, we are unable to accept the contentions being raised by these Respondents that they were still members of the Company and that original Petitioner did not have the necessary shareholding to maintain the Company Petition. There is substance in the Company Petition filed by the original Petitioner that in the closely held Company by the family, those who had resigned and divested their shareholding were continuing to meddle in the affairs of the Company and thus, affairs of the Company were getting mismanaged and the Company Court was required to interfere



to save the Company from mismanagement. The original Petitioner also claimed that such Respondents were holding themselves out as Directors of the Company and were even executing sale deeds of the properties of the Company which properties were required to be protected and thus, at the instance of such erstwhile members and Directors who continue to purport themselves to be members and Directors, she was suffering oppression and the interest of the Company required that the Company Court should protect the Company.

### **Illegal Transfers**

12. Before going to the amended Company Petition, we refer to the averments made by the original Petitioner in the Company Petition as was initially filed which made out a case of original Respondent No.2 being party to various questionable transfers of properties of the Company. The Appellants have filed the copy of Company Petition with Diary No.6357, which we have referred. As we have found the original Respondent No.2 had resigned in April, 2004 as Director and there is no evidence to establish that he was duly re-inducted as Director and there is also evidence to show that he had divested his shareholding, it becomes apparent that after April, 2004, Respondent No.2 could not have claimed to be a Director or member. In this background, now if the Company Petition is seen, the original Petitioner pointed out the following actions on the part of the contesting Respondents, which we examine with Documents on record:-

a) On 21.02.2006, original Respondent No.2 posed himself as Director to execute registered sale deed document No.3440 of 2006 before the Sub-Registrar Office, Rajendra Nagar for transferring the agricultural land Survey No.476 at Manchurevulu Village in favour of his son – original Respondent No.4 who claim to be Director of M/s. Kedia Overseas Limited. According to original Petitioner, Respondent No.2 was Managing Director and shareholder of M/s. Kedia Overseas Limited. She has pointed out documents in this regard at R-VOL.1 Page 101.

In the Reply, original Respondent No.2 claimed that this document was executed for raising funds of the Company and that he was authorized. However, the document does not claim that he was authorized. There is no Resolution of the Company supporting the transfer nor authority shown.

b) Original Petitioner pointed out in the Petition that on 12.05.2006, Respondent No.2 – Mahesh Kedia executed two sale deeds before the Sub-Registrar, Shamshabad by registered document Nos.6722 and 6723 transferring property of the Company to Pankaj Kedia, his relative. Survey No.191 and 194 to the extent by 3 acres and 4.25 acres situated at Shamshabad were transferred. She pointed out document at R-VOL.1 Page 121.

c) Original Petitioner referred to Shailesh Agarwal, brother-in-law of original Respondent No.2 executing gift deed on 18.09.2008 by Document No.3640 of 2008 in favour of original Respondent No.6, wife of original

Respondent No.2. This document was executed before Sub-Registrar, Gandipet and agricultural land of 5.25 acres - Survey No.476 of Manchirevula of RR District, Andhra Pradesh was gifted. In the arguments, the document is shown at R-VOL.1 - Page 151. The document shows (at Page - 153) Shailesh Agarwal claimed that he had acquired the property of the Company in discharge of monetary liability.

d) The original Petitioner pointed out and it is argued that on 07.10.2003, Original Respondent No.2 executed unregistered sale deed. (R-VOL.2 Page 176) on non-judicial stamp. It was relating to Survey No.504(P) and 503 - 2.35 acres at Manchirevula, RR District transferred to Anil Kumar Jhunjhunwala. According to Petitioner, this person was relative of original Respondent No.2. It is the case of original Petitioners that original Respondents 2 to 4 applied on 7<sup>th</sup> January, 2008 for validating the proceedings before District Registrar, RR District and in validation file No.791/AR/08 (R-VOL.2 Page 177), the validation was done in 2008. The original Petitioner pointed out that this Anil Kumar Jhunjhunwala executed gift deed within another three days on 10<sup>th</sup> January, 2008 in favour of Mrs. Komal Kedia (original Respondent No.7) who is wife of original Respondent No.4 and daughter-in-law of original Respondent No.2. Thus, this Komal happens to be daughter of Anil Kumar Jhunjhunwala. The said gift deed has been pointed out by the original Petitioner at Page - 183 of R-VOL.2.

13. It is clear from the above that the above transfers were clearly suspicious acts on the part of the original Respondents concerned. The transfer Documents were entered into in name of Company without showing Authority. None of the transfers are supported by any Resolution of the Company permitting the transfer nor the persons signing as transferors on behalf of the Company even claiming that they were authorized. Merely standing and claiming to be Director would not be enough. Such transfers in favour of such near relatives without showing the money flowing to the Company, are clearly unacceptable actions. The misdeeds get compounded in the contexts of the facts that the contesting Respondents and, especially, Respondent No.2 – Mahesh Kedia had already resigned as Director and had divested his shareholdings in 2004. The situation does not help original Respondent No.2 to claim that on 07.10.2003 when the unregistered sale deed was executed, he was admittedly a Director because unregistered sale deed would not be acceptable in law. When the validation proceeding is claimed to have been conducted in 2008, apparently, original Respondent No.2 had no business to take part in the validation proceeding.

14. Although learned Counsel for the Appellants expressed so much of concern that the Appellants were not given opportunity to meet the amended Company Petition. If we peruse the amended Company Petition, which is at Annexure –A2 of the Appeal (Page – 122), the new facts amended petition brought on record are at Page – 133, which were to the

effect that original Respondent Nos.2, 10 and 11 transferred by registered sale deed No.7620/2006 (see R-VOL.2 Page – 212) land to Aruna Kedia, original Respondent No.10 and that by document No.6721/2006 (see R-VOL.2 Page – 241) land in favour of original Respondent No.11 - Vijender Kedia. In the Appeal, although the Appellants were given all the required time to argue, nothing is shown as to how these transfers which are evident from registered documents, which are on record, could be justified. To repeat, the Appellants have not been able to support their actions from any Board Resolutions or any authority from Board of Directors of the Company. We have gone through the Impugned Order and we find that the learned NCLT has rightly set aside these various transactions.

15. We discard the argument that the Company Petition could not have been filed against the Appellants, if the original Petitioner claimed that they had divested their shareholding and were no more members and that the original Petitioner should have gone to the Civil Court. The Appellants are not rank outsiders. The Appellants apparently are claiming to be still shareholders and Directors and purported to act in such capacities. The transactions show contesting Respondents transferring Company properties to their immediate family members or near relatives. Considering the facts and issues involved, such factors cannot be considered and decided by any Civil Court as it would be a matter for the Company Court - NCLT to deal with. The actions of the original Respondents are on the basis of their claims as Directors and members of

the Company and such actions can be dealt with and decided by NCLT alone and thus, we discard the arguments of the learned Counsel for the Appellants that the Company was collusive and that Petition was not maintainable under Section 241 and 242 of the Companies Act, 2013 or the analogues provisions of the earlier Companies Act.

16. We do not find any substance in this Appeal. The Appeal is dismissed with costs. Each of the Appellants will pay Rs.1 Lakh as costs of the Appeal to the original Respondent No.1 Company.

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

[Balvinder Singh]  
Member (Technical)

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