NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.65 of 2018

[Arising out of Order dated 01.01.2018 passed by National Company Law Tribunal, Hyderabad Bench in C.P. No.08/59/HDB/2017]

IN THE MATTER OF:

M/s. Vestal Educational Services Pvt. Ltd.
Door No.30-15-6/1,
Mallela Sri Rama Murthy Street,
Vijaya Building,
S.R. Puram,
Vijayawada – 520002

…Appellant
(Respondent No.1)

Versus

1. Shri Lanka Venkata Naga Muralidhar
S/o. (Late) Lanka Viswanadham,
Flat 164, 6th Floor,
Srila Heights, East marredpalli,
Secunderabad - 500026

Respondent No.1
(Original Petitioner)

2. Ms. K.V.V.L. Kumari
W/o. Kadimcherla Seethayya,
Director, Vestal Educational Services Private Limited,
R/o. No.17, II Floor, Malviya Nagar,
New Delhi – 110017

Respondent No.2
(Original Respondent No.2)

3. Mr. Koruprolu Veera Venkata Subba Rao,
Director, Vestal Educational Services Private Limited,
R/o. 6-3-562/14/4, Vijaya Apartments,
Erramanzil, Hyderabad – 500008

Respondent No.3
(Original Respondent No.3)

4. Mr. Nitin Sharma,
Director, Vestal Educational Services Private Limited,
R/o. R-1/32, Vijay Vihar, Uttam Nagar,
New Delhi – 110059

Respondent No.4
(Original Respondent No.4)

5. Mr. Dhirendra Kumar Asri,
Director, Vestal Educational Services Private Limited,
R/o. A-604, Gayatri Apartments,
Plot No.9, Sector 9, Dwarka,
New Delhi – 110045

Respondent No.5
(Original Respondent No.5)

For Appellant: **Shri Tarun Johri and Shri Ankit Saini, Advocates**

For Respondents: **Shri Arun Kathpalia, Sr. Advocate with Shri J. Krishna Dev, Ms. Bani Brar and Shri Siddharth Nath, Advocates (Respondent No.1)**

Shri Arun Khatri and Shri Gagan Deep Panwar, Advocates (Respondent Nos.2 and 3)

J U D G E M E N T

(16th November, 2018)

A.I.S. Cheema, J. :

1. This Appeal has been filed against Impugned Order and Judgement dated 1st January, 2018 passed under Section 59 and 62 of the Companies Act, 2013 ('Act', in brief) by National Company Law Tribunal, Hyderabad Bench ('NCLT', in short) in CP No.08/59/HDB/2017.

2. The Company Petition was filed by present Respondent No.1 – LVN Muralidhar – original Petitioner, Ex. Director of Respondent No.1 Company (present Appellant) claiming that deposits made by him to the extent of Rs.1.54 crores in the account of Respondent No.1 Company (hereafter referred as 'Company') was in the nature of loan paid to save mortgaged properties and not for allotment of shares as was done by the Company in purported Resolutions dated 18.12.2014 and 31.03.2015. NCLT accepted the claim of Petitioner and declared the allotment of shares null and void and held that the amount deposited by the Petitioner was loan and deserved to be repaid with interest.

3. Copy of the Petition filed by original Petitioner (Annexure – 14 Page – 177) shows that the Petitioner filed the Petition under Sections 59 and 62 of the Act and referred to the objects of Appellant Company (hereafter referred as – 'Company') which were to run and operate schools, colleges, etc. and stated that he was one of the shareholders of the Company who had previously acted as Director from December, 2006 to October, 2011. Petitioner stated that to establish infrastructure for the educational institution, the then Board of Directors (which included him) had decided to avail loan of Rs.10 Crores from State Bank of India in 2009 and for the purpose, Petitioner was one of the personal guarantors. The term loan became NPA in 2013 (which would be after the Petitioner ceased to be Director in October, 2011). The Petition claimed that the Company entered into a one-time settlement with the Bank and the State Bank issued letter

dated 5th August, 2014 settling at Rs.5,50,000,00/- out of the then total liability of Rs.7,25,000,00/- which was to be paid in 5 instalments as provided in the sanction letter. Petitioner claimed that the Respondent Company could not arrange to meet the one-time settlement scheme also in the time frame and the bank threaten to cancel OTS at which time the Directors of the Company (other Respondents in the matter) approached the Petitioner in November, 2014 and requested him to lend Rs.1,54,000,00/-. He accepted and deposited the amount through various remittances on different dates between December, 2014 to March, 2015 in the account of the Appellant Company which was at the State Bank of India.

4. Petitioner claimed that he sent reminders to the Company for repayment of the amount and also sent legal Notices dated 3rd June, 2015 and 18th June, 2015 asking for payment of the amounts which he had advanced. The Notice sent to the Company came back unserved but the other Notice sent to Director – KVV Subba Rao (Respondent No.3) was served. Meanwhile, the Company sent a courier letter to the Petitioner showing latest shareholding as on 31st March, 2015 and on verification, Petitioner found that the amount lent by him had been converted into equity without his knowledge, intimation or authorization. He claimed that he had never made any request to allot shares and the Company had illegally with intention to defraud and to avoid to pay his money allotted the shares. According to him, the action of the Respondent Company was

afterthought. After he had issued the Notices, the Company recorded PAS 3 with the Registrar of Companies on 3rd July, 2015, to show the allotment of shares dated 18.12.2014 and 31.03.2015.

5. The Petitioner claimed in the Petition that he immediately filed complaint with ROC on 12th August, 2015, copy of which he filed. Company submitted letter to ROC on 6th January, 2016. Referring to the same and provisions of Section 62(1)(a)(i) of the Act, Petitioner claimed that there was neither any offer nor Notice by the Company and no postal acknowledgement had been filed or proof given of sending offer letter dated 18th December, 2014. He also pleaded that there was no material to show that he had accepted the letter of offer and claimed that the amount deposited by him was to the operating account of the Company and not to any special account opened to receive the amounts relating to purported rights issue. On such basis, the original Petitioner sought to set aside the shares allotted and to direct the Company to repay his amount with interest.

6. The Appellant – original Respondent No.1 Company through the Respondent No.2 - Director - Ms. KVVL Kumari filed counter in NCLT. The Respondent Company claimed that the original Petitioner and one B.V. Babu had established the Company which was closely held by their relatives and friends. The Petitioner was controlling the affairs of the Company since incorporation. It referred to the establishment of the Vizag International School and accepted that the Company had availed term loan

of Rs.10 Crores and that the founder promoter including Petitioner were under obligation to provide personal guarantee and securities in the form of immovable properties towards securities for repayment of the term loan. The counter shows admission of the Company that personal properties, guarantees and pledge of shares was there by the promoters including Petitioner. Counter stated that the Petitioner held through one of his Companies – M/s. Annapurna Gardens Private Limited (as detailed in the counter) which was also given as security for repayment of loan in favour of SBI. The counter then referred to particulars as to how the Company managed to bring up building and its operations and as to why due to agitation of bifurcation of State, the company landed in difficulties. The counter claimed that the lending bank filed application before Debt Recovery Tribunal at Hyderabad and the promoters including Petitioner decided to compromise with the lending bank. According to the Company, in order to avoid distress sale of immovable properties which had been offered as securities, decision was taken to compromise with the lending bank. The bank claimed that on 18.12.2014, the Board of Directors decided to make equity call. Para 12, 13 and 14 of the counter are as follows:-

> 12. It is further submitted that the Board of Directors of the First Respondent Company in its meeting held on 18th December, 2014 decided to make equity call to all the existing Shareholders for subscription of shares on Right issue basis to meet the Funds requirement of OTS payable to the Bank with a view to save the Educational Institution being developed by the First

Respondent Company and to get rid of the Loan and offered 85,00,000 equity shares of nominal value of Rs.10 each at par on proportionate basis. It is further submitted that all the Promoters of the First Respondent Company including the Petitioner herein have brought their respective Amounts to save the Educational Institute and in that process, the Petitioner herein in order to save his Immovable Properties worth Crores of Rupees agreed to bring in the necessary Funds enabling the First Respondent Company to meet the payment to the Bank.

13. It is further submitted that in that process, several deliberations and discussions held among the existing Shareholders including the Petitioner and his associates of the First Respondent Company, wherein, it was categorically agreed that each of the Promoter shall bring in their proportion of the Amounts into the Company after the sale of their properties mortgage with the bank and in consideration thereto, the Company shall Issue further Share Capital to the existing Shareholders in terms of Section 62 of the Companies Act, 2013.

14. It is further submitted on that understanding only, the Petitioner herein in all invested a sum of Rs.1.54 Crores in First Respondent Company. It is further submitted that the Other Founder Promoters and Shareholders who were guarantors to the loan account and given securities in favour of SBI also brought their respective Amounts aggregating to Rs.6.88 Crores towards the subscription to right issue amounting to Rs.8.50 Crores and other allotments into the Company and accordingly paid the entire Amount towards Repayment of Loan to the Lending Bank. It is further submitted that since the existing Shareholders have agreed for Issuance of Additional Share Capital, for the Amounts brought in by the respective Shareholder, the procedure for Issuance of Additional Share Capital does not arise."

7. The counter then referred to the shareholding as on 18th December, 2014 and the subsequent shareholding as on 31st March, 2015 to say that the shareholding of the original Petitioner has risen from 1.64% to 12.14%. In para – 22 of the counter, Respondent Company (Appellant) claimed that due to inadvertence, the Company could not file Return of allotment in Form PAS 3 in respect of 46, 69, 222 and 37, 56 , 011 equity shares with the Registrar of Companies and it was filed on 3rd July, 2015 with additional fees. Respondent Company claimed that deposit made by the Petitioner could not be treated as debt and there was no kind of arrangement or agreement to treat the same as debt. The Petitioner through his Companies – M/s. Annapurna Gardens Private Limited and M/s. Lastaki Management Consultants Pvt. Ltd. had filed winding up petitions against the Appellant Company which were pending in the High Court. With regard to Section 62, the counter claimed:-

> "26. It is further submitted that as regards Issuance of Mandatory Notice as required under Section 62(2) of the Companies Act, 2013, it is submitted that pursuant to the collective decision taken at the Meeting of the Board of Directors of the First Respondent Company, the Petitioner herein has remitted the Amounts and as such, there is no need to obtain specific consent from the Petitioner herein. It is further submitted that remittance of Amounts by the Petitioner indicates the consent for Issuance of Additional Share Capital and thus, the entire Process of Allotment of Shares on 24th January, 2015 and also on 31st March, 2015 was in strict compliance with the Provisions of the Companies Act, 2013 and as such, the present Petition filed with malafide intention."

8. The learned NCLT heard both sides and referred to the pleadings of the parties in details and the admitted facts. The arguments and counter arguments of the parties as made before the NCLT and which have been repeated before us have been referred to by NCLT in its Impugned Order. NCLT framed following issues:-

> "(a) Whether the Company petition is maintainable under section 59 & 62 of the Companies Act 2013;
>
> (b) Whether money Rs.1,54,000,00/- paid by the Petitioner is towards the share Application money or as a loan;
>
> c) Whether the impugned shares are issued in accordance with law or not;
>
> (d) If so, what is the relief, the petitioner is entitled for."

9. As the pleadings of parties would show and as noted by NCLT, the fact that the original Petitioner was earlier Director and the fact that loan of Rs.10 Crores was taken from State Bank of India is not in dispute. The loan became NPA is also not in dispute as well as the fact that one-time settlement was arrived at is also not in dispute. The fact that the original Petitioner deposited Rs.1.54 Crores in the account of the Company held at the State Bank of India is also not in dispute. The Petitioner acted as Director from December, 2006 till October, 2011 is also undisputed. It appears that after he ceased to be Director in October, 2011, he did not take interest in the affairs of the Company.

10. NCLT in its Impugned Order considered Section 59 as well as Section 62 of the Act and observed in para – 12 of the Judgement as follows:-

> "The main issue in the instant case, as discussed supra, is not calling upon the shareholders to pay the unpaid share capital. As stated supra, it is the money in question paid by the Petitioner to the Company to re-pay loan to its Banker and its repayment to the petitioner. In fact, whether the Company has given proper notices or not, to petitioner about the impugned allotment of shares cannot be main issue and clubbing together both the issues are not proper. Even if it is accepted issue of notice offering impugned shares, admittedly, the petitioner has not given any consent for the alleged offer, and this is ultimately accepted by Company also by saying that the petitioner has conveyed his acceptance over phone. In fact, the Company has not produced any evidence with regard to issue of notice offering shares, and its acceptance of impugned shares by the petitioners. The contention of Company on **'phone acceptance"** is not tenable in the light of strong denial by the petitioner, and it is hereby rejected. It is to be held that there is no offer and acceptance for the issue of impugned shares."
>
> [Emphasis supplied by underline]

10.1 NCLT has then referred to the complaint filed by the Petitioner with Registrar of Companies as well as the complaint he lodged on 17th December, 2015 with the Institute of Company Secretaries against Mr. Vikas Chandra, the Company Secretary of the Appellant Company who filed PAS 3 without verifying necessary documents. NCLT noted the prima facie opinion of the Company Secretary for initiating action against Mr. Vikas Chandra and observed:-

> "the above facts and Circumstances clearly shows/establish that the petitioner has paid 1,50,00000/- *(Sic - read - 1,54,00,000)* to the Company and the Company has failed to return the money as agreed upon, and, on the contrary, it had tried to establish a counter case that the money in question was deposited with the Company for issue of impugned shares. As stated supra, the Company Secretary also failed to scrutiny the relevant documents while filing PAS-3. The Company cannot put the petitioner to test to prove that the money in question was given as loan, after having accepted it. As stated supra, it is the responsibility of Company to disprove that the money in question was not taken as loan by producing relevant evidence, as the receipt of money is not at all in question/dispute. Therefore, the impugned allotment of shares is liable to be declared as illegal and void."

10.2 For such and other reasons as recorded, the learned NCLT set aside the allotments made by the Appellant Company and directed paying back of the amount paid by the Petitioner. In the last para of the Impugned Order, there appears to be error regarding the figure. There is no dispute between both the parties that the amount deposited by the Appellant was of Rs.1.54 Crores. However, in the last part of the Impugned Judgement, the figure got referred as Rs.1,50,00,000/- (instead of Rs.1,54,00,000/-). We are told by the Counsel for Respondent No.1 that he has moved rectification application before NCLT on this count. Looking to admitted fact regarding the figure, there should not be difficulty on this count.

11. Aggrieved, the present Appeal is raising grounds and it has been argued for the Appellant Company that there was no documentary evidence that Rs.1.54 Crores was given as a loan. According to the

Appellant, NCLT should have considered the purport and intent behind OTS proposal and objections which were to infuse funds towards equity capital. According to the Appellant, it was error on the part of NCLT to hold that the amount was to be treated as a loan. The sale of jointly held mortgaged properties which were sold jointly and the sale proceeds which were deposited into the bank towards equity infusion was a decision taken by promoters which according to the Appellant, included the original Petitioner. According to the Appellant, original Petitioner subscribed to the fund in the Company having knowledge about the terms of the offer and issuance of shares, its ultimate utilization and objective of the funds raised which is to be treated as implied consent to the subscription of shares under the rights issue and thus according to the Appellant, the original Petitioner could not deny non-receipt of offer letter. It has been argued by the learned Counsel for the Appellant that NCLT wrongly put burden on the Company to show that the amount was not a loan.

12. According to the Appellant by letter dated 18.12.2014 (Page 151 – Annexure A-9), offer was made regarding issue of 85,00,000 equity shares at par on Right issue basis to existing shareholders and the original Petitioner was shown as entitled/offered 1,39,541 shares. It is argued that Annexure A-10 (Page – 158) shows the deposits made by the original Petitioner in the account held in State Bank of India. Reference is made to another Board Meeting dated 31st March, 2015 (Annexure 12 – Page 165) vide which 14,00,459 shares were allotted to the original Petitioner.

According to the Appellant, there was implied consent towards subscription of shares under the Rights issue and in the facts of the matter, the petition should have been dismissed by NCLT.

13. Against this, the learned Counsel for Respondent No.1 – original Petitioner has supported the Judgement of the NCLT and submitted that because the original Petitioner was caught in a situation where his personal guarantees were there and as his properties were involved in the security given to the bank, the original Petitioner wanted to come out of the situation to save his properties and his assets. According to the Counsel, the liability payable to the State Bank of India was of the Appellant Company and to help out the Company in the situation and to save his own interest, the original Petitioner had deposited the money so that the one-time settlement does not fail. According to him, the Appellant sent legal Notices on 10.06.2015 and 18.06.2015 (Reply - Diary No.3916 Page – 61 and 65) and only after such Notices were issued by the original Petitioner claiming back the money, the Appellant Company disclosed that it had done allotment of shares on 18.12.2014 and 31.03.2015. According to the Counsel, this was an afterthought and documents were created subsequent to the Notices issued by the Appellant which is clear from the fact that the PAS 3 was submitted only on 03.07.2015. The Counsel referred to the cognizance taken by the Institute of Company Secretaries to initiate action against Company Secretary who had filed the PAS without verifying any documents. According to the Counsel, the letter of offer dated

18.12.2014 (Page – 151) was also a document subsequently created for which there is no proof of offer having been sent to the original Petitioner or any other shareholders and even if it was to be said that such offer was sent, the same could not be accepted in the absence of any document to show acceptance by the Petitioner of such offer. The Counsel submitted that for the subsequent allotment said to have made on 31st March, 2015, even this procedure was not tried to be shown and simply allotments of shares were recorded. The shares are to be allotted in proportion of the existing shareholding and not on the basis of the money deposited by the Petitioner, which according to the Counsel was towards discharging liability of the Company towards the Bank and thus could have been treated only as loan. According to the Counsel, the deposit was not in any special account opened for deposit of monies towards preferential offer made. The learned Counsel for Respondent No.1 – original Petitioner referred to the counter filed (Diary No.3916) to submit that the original Petitioner had resigned not only from the Board of Directors of Appellant Company on 25.10.2011 but also resigned from the other Company – Vestal group including Vestal Schools Private Limited and was not taking any interest into the affairs of those Companies. It has been argued that if the allotments of shares shown on the basis of the two decisions dated 18.12.2014 and 31.03.2015 are cross-checked with the amounts deposited by the original Petitioner, there is mismatch and it cannot be said that there was any link between what amount was being deposited in the Bank with what was stated to be allotment of shares against the

deposits. The learned Counsel referred to the prima facie opinion recorded by the Director (Discipline) under the Company Secretaries Act, copy of which has been filed at Page – 95 with the counter (Diary No.3916) to submit that the Director had, prima facie, found that the Company Secretary had failed to verify the documents and records to show the share application form of the complainant was there or that he had submitted any letter of acceptance or that specific amounts as per letter of offer were deposited. According to the Counsel, the disciplinary proceeding against the Company Secretary – Mr. Vikas Chandra had been completed and he has been found guilty during pendency of the present litigation. It has been further argued by the learned Counsel for Respondent no.1 – original Petitioner that Annexure – R-11 filed with the counter (Page – 107) shows that when on September 4, 2015, the original Petitioner had sent e-mail to K. Seethayya who has 76% shareholding in the holding Company of the Appellant, sending draft of "Facility Agreement" with regard to the amounts being deposited, K. Seethayya never responded that already shares had been allotted and so question of entering into such documents did not arise. On such basis, the argument is that the document relating to alleged Board Meeting dated 18.12.2014 and 31.03.2015 as well as the alleged offer letter dated 18.12.2014 have been created subsequently just to avoid returning money of the original Petitioner.

14. We have gone through the record and the Impugned Order as well as heard the learned Counsel for respective parties. Admittedly, earlier the

original Petitioner was Director of the Company when loan was taken from State Bank of India and the properties of the Director including Petitioner, were mortgaged and there were personal guarantees given to which the original Petitioner was party. Since 25.10.2011, the original Petitioner was no more Director in the Company. The record shows that the Petitioner was keen that the properties should not go in distress sale in proceedings initiated by the State Bank and agreed to the one-time settlement. While the Petitioner claimed that the amount deposited by him for settlement of the liability of the Company, the Appellant Company and other Respondents of this Appeal claim that in the process to pay back the amounts due to the bank, the Respondents to the Company Petition had resolved that against the amounts to be paid to the Bank, shares would be issued. Looking to such claims made by the rival parties, naturally the burden is on the Respondents to show when the payments made by the original Petitioner, he had agreed that against the said amount, shares be issued to him. Apart from this, it would be necessary for the Appellant Company and the other Respondents to show that the necessary procedures under the Companies Act, especially Section 62 of the Act were complied. The Appeal claims that on 05.12.2013, the founder promoters and Respondent No.1 (i.e. original Petitioner) agreed with Directors for exploring OTS proposal and utilize sale proceeds as equity enabling the Appellant company to make payment under OTS. For this, the Appellant wants to rely on OTS proposal sent to the Bank on 05.12.2013 filed with the rejoinder in this Appeal. This document is part of the additional

documents slipped in the record of this Appeal by tagging the application with rejoinder and not disclosing on the face cover of the file that the application with additional documents was being filed. With regard to such rejoinder relying on such additional document, which was not part of NCLT record and which have been squeezed in along with the rejoinder, we had passed the following order on 10th August, 2018:-

"O R D E R

10.08.2018 - Heard counsel for both sides. It appears that at Diary No.6282 Rejoinder has been filed by Appellant referring to and relying on additional documents which were not before NCLT and for which a separate application at Page 31 has been filed vide Diary No.6282. It was improper for the appellant not to have first applied and sought orders for admitting and relying on additional documents and to directly refer and rely on additional documents in the Rejoinder.

The learned counsel for appellant now states that they wanted to file additional documents with application but Registrar did not accept stating that the order of the Court would be necessary and so with the rejoinder the same have been filed. We find this to be still more inappropriate method of putting on record documents without permission of the Court.

For the above reasons, at the moment we will treat the Rejoinder as not on record as well as the application and documents tendered with it. At the time of final hearing in the course of arguments if it appears to us necessary in the interest of justice, we will consider the Rejoinder and application to file additional documents. Otherwise, the Rejoinder and application and documents filed with Diary No.6282, shall remain as not on record.

List the appeal for hearing on 27th August, 2018."

The learned Counsel for the original Petitioner has questioned these documents which were not filed in NCLT and now tendered in the Appeal righty submitting that no reasons have been given as to why the documents could not earlier be filed in NCLT. The learned Counsel for Respondent No.1 – original Petitioner has argued that the additional documents tendered also have documents which according to the original Petitioner are fabricated and doctored documents. We will deal with the application for additional documents and rejoinder separately but here we may observe that even if the document at Annexure – C filed with the Rejoinder (at Page – 65) was to be looked into, there is nothing to show that the Petitioner agreed to the writing of such letter by the Company to the Bank for one-time settlement. While making offer to the Bank, the Company may show 10 various sources as to how it would raise money in order to lure the Bank to settle the dispute but that does not mean that the Petitioner agreed to writing such letter or that he agreed that the money he will pay may be converted into equity/shares.

15. In the Appeal, para 7 – xxiv. reads as under:-

> "xxiv. That in line with agreed intent among the promoters on 05.12.2013 and in line with commitment made in the OTS proposal to the Bank on 06.02.2014 to infuse sale proceed in the appellant company by the promoters, the board of the appellant company and the shareholders in its meeting held on 18.12.2014 respectively approved increase of the authorized share capital of the appellant company from Rs.5.00 Cr to Rs.15 Cr and authorized Board of the appellant company to offer, issue and allot necessary share capital to

> the promoters against the already infused funds as equity in the company and likely to be infused by them in order to meet OTS payment to the lending bank."

Thus what this paragraph of the Appeal is trying to say now is that there was also shareholders meeting held on 18.12.2014. The counter in NCLT of which paragraphs – 12 to 14 we have reproduced above, did not claim that there was any shareholders meeting which would be either AGM or EOGM on 18.12.2014. Whatever may be, the fact remains that neither the Board Meeting Resolution dated 18.12.2014 has been filed nor any material has been brought to show holding of EOGM on 18.12.2014. Counsel for the original Petitioner (Respondent No.1) has submitted that if there was EOGM, the original Petitioner did not have any Notice of any such meeting. The Company and original Respondents have not proved any such holding of EOGM or that due procedures were followed or that Notice was served on Petitioner.

16. With regard to the letter of offer made on 18.12.2014 (Appeal Annexure A-9 - Page - 151), there is no material to show that any such letter of offer was issued to all the shareholders of the Company. As required by Sub-Section (2) of Section 62 of the Act, there is no material to show that such letter of offer was sent to the original Petitioner by registered post or speed post or through electronic mode. There is no document to show that the original Petitioner consented to such letter of offer. As per Section 62(1)(a)(iii) of the Act, where such offer is made, after

the expiry of time specified in the Notice or on receipt of earlier intimation of declining to accept the shares offered, the Board of Directors may dispose of the shares in such manner which is not disadvantageous to the shareholders and the company. In the present matter, there is nothing to show that the Petitioner accepted the offer. If he had not accepted the offer, after the expiry of the time specified in the letter dated 18.12.2014 where closing date was specified as 17.01.2015, there is nothing to show that the Company acted in terms of the above Clause (iii). Rather what appears and what is the case of the Appellant Company is that on 31.03.2015, as per Board Meeting Resolution (Annexure -12 – Page 165), the Company simply went on to allot further shares to the Petitioner.

17. Learned Counsel for the original Petitioner argued that according to the Appellant Company, on 18.12.2014, the original Petitioner was offered 1,39,541 shares which would be of the value of Rs.13,95,410/-. The learned Counsel stated that if (Annexure A-10 Page – 158) the ledger maintained by the Appellant Company was to be considered, till 14.01.2015, what the original Petitioner had deposited was Rs.67,50,000/- and it is surprising to see that till 24.01.2015, the Appellant Company claimed to have allotted shares worth Rs.13,95,410/- to the original Petitioner. It is rightly argued by the learned Counsel that there is no match between the amounts deposited by the original Petitioner with the shares alleged to have been allotted.

18. It has been argued on behalf of the Appellant Company that the original Petitioner had knowledge about the offer letter dated 18.12.2014. According to the Appellant, the original Petitioner was actively involved in the affairs of the Appellant Company as well as holding Company – M/s. Vestal Schools Private Limited. It is claimed that Vestal Schools Private Limited had applied for equity shares for aggregate investment of Rs.3.93 Crores in the Appellant Company. For this purpose, the other Respondents rely on the alleged letter dated 02.01.2015 sent by Vestal Schools Private Limited filed as Annexure – 1 with the Reply of Respondent No.2 - Ms. KVVL Kumari. The Appellant Company or the other Respondents have not shown that such document was filed in NCLT. Apart from that, such documents are brought forth after the counter filed by the original Petitioner in this Appeal as Respondent No.1 vide Diary No.3916 filed on 19th March, 2018 where the original Petitioner has stated (para 4 - D Page 3) that he had chosen to resign from the Board of Directors of the Appellant Company w.e.f. 25.10.2011 and not only did he resign from the Appellant Company but also simultaneously, resigned from the affairs of the entire Vestal group (including Vestal Schools Private Limited) and how subsequently his shareholding in these Companies got diluted. The Resolution of Board of Directors of Vestal Schools Private Limited dated 26th December, 2014, copy of which is at Page – 24 with the Reply of Respondent No.2 (Diary No.5703) shows the present Respondent No.2 KVVL Kumari signing the certified copy as a Director and nothing is shown that to any such Resolution the Appellant was party or had knowledge. We

would not give weightage to such Resolution of Vestal Schools Private Limited to attribute knowledge to the original Petitioner. This is apart from the fact that the Company would still require to show that the original Petitioner consented to any such conversion.

19. The same Resolution dated 26th December, 2014 has been made part of the documents tendered by the Appellant with the Rejoinder. As regards the application filed with the Rejoinder for filing additional documents, we find that there are no reasons given as to why these documents were not filed in NCLT. Alternatively, we find that even if we look into such documents like the Board Resolution dated 26th December, 2014 of Vestal Schools Private Limited and that letter like alleged Board Resolution dated 6th December, 2014 sent with letter dated 6th December, 2013 to the said Bank (Page – 55 of rejoinder), we are unable to convince ourselves that the Petitioner was present or party to taking of any such Resolution or agreed to the money he deposited (to rid himself of the mortgaged liability and personal guarantees) to be converted into shares. In the absence of any good reasons for the Appellant Company not to have filed, such documents in NCLT and in the circumstances of the matter, which creates doubts regarding genuineness of such documents, the application for permission to file additional documents is rejected. Alternatively, even if such documents are considered, they do not help the Appellant to persuade us to take any other view of the matter as has been taken by NCLT.

20. The counter filed by the Appellant Company in NCLT (para – 14) which we have already reproduced itself shows that the Appellant Company conveniently brushed aside requirements to be followed of Section 62 of the Act with spacious and vague pleading that existing shareholders had agreed to issuance of additional share capital for the amount brought in by respective shareholders and thus the requirement to follow procedure for issuance of additional share capital did not arise.

21. We find that the Impugned Judgement and Order passed by NCLT, Hyderabad is correct in the facts of the matter and there is no substance in this Appeal. We proceed to dismiss the Appeal.

22. There is typing error in Operative Order (Para – 17) in direction – 3 which is apparent on the face of record. Although we are proceeding to dismiss the Appeal and also propose to saddle the Appellant with costs, we are also correcting direction – 3 of the operative Order regarding the typing error in operative order of para – 17 of the Impugned Order under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 to meet the ends of Justice.

23. We pass the following order:-

A) In the Impugned Order para – 17(3) at both places where it is mentioned "Rs.1,50,00,000/-" read "Rs.1,54,00,000/-". The Impugned Order is approved with this correction of typing error.

B) The Appeal is dismissed with costs. The Appellant will pay Rs.1,50,000/- as costs to Respondent No.1 – LVN Muralidhar. Other Respondents to bear their own costs.

Disposed accordingly.

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

[Balvinder Singh]
Member (Technical)

/rs/nn