

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.187 of 2017

[Arising out of order dated 22.03.2017 passed by National Company Law Tribunal, Ahmedabad Bench in T.P. Nos. 61-C, D, M, E, N, B, J, F, H of 2016 with TP No. 61/397-398/NCLT/AHM/2016 (New) CA Nos. 55, 108, 115, 141, 142, 181, 12, 68, 151 of 2015, MA-1 of 2015 with CP No.16/397-398/CLB/MB/2014 (Old)]

IN THE MATTER OF:

1. Dr. Rakesh Shivhare
D-37, Apollo D.B. City,
Nipania Road, Indore ...Appellant No.1
 2. Dr. Sandip Saxena
460, Goyal Nagar,
Indore ...Appellant No.2
 3. Shri Suresh Choukse
13/5, Paredeshipura,
Indore ...Appellant No.3
- (Original Petitioners 2 to 4)

- Versus -

1. Sobhagya Hospital & Research Centre Pvt. Ltd.
Dispensary Part 2, Scheme No.74-C,
Sector -B, Vijay Nagar, Indore – 452010
Madhya Pradesh ...Respondent No.1
2. Mr. Anil Jain
402, Sukhsagar Apartment, Block No.2,
Race Course Road, Indore ...Respondent No.2
3. Dr. Subodh Jain
149, Royal Bunglow City,
Sukhliya, Indore ...Respondent No.3
4. Dr. Nitin Modi
62, FH, Sch.54, Vijay Nagar
Indore ...Respondent No.4

5. Dr. Hariprasad Yadav
101, Raunak Vihar, 3/1 Ravindra Nagar
Palasia, Indore ...Respondent No.5
6. Dr. Sandeep Julka
138, Royal Bunglow City,
Sukhliya, Indore ...Respondent No.6
7. Dr. Ravi Nagar
B-40, Chandra Nagar, M.R.9.
Indore ...Respondent No.7
8. Dr. Pravar Passi
G-2, Utkarsh, 139, Indrapuri,
Indore ...Respondent No.8
9. Bank of India
Mid Corporate Branch, Airen Heights,
14-PU-3, Scheme No.54, Vijay Nagar,
Agra Bombay Road, Indore ...Respondent No.9
10. Registrar of Companies, Madhya Pradesh
Sanjay Complex, A-Wing, 3rd Floor,
Jayendra Ganj, Lashkar,
Gwalior – 474009 Madhya Pradesh ...Respondent No.10
11. Dr. Sobhagyamal Jain (Originally Petitioner No.1,
transposed vide CLB Order dated 07.11.2014)
48-B, Vijay Nagar Scheme No.54,
Opposite Mangal City,
Indore ...Respondent No.11
(Original Petitioner No.1 – Transposed as Respondent)

Present: Dr. U.K. Chaudhary, Senior Advocate with Shri Naveen Dahiya, Shri Mansumyer Singh, Shri Himanshu Vij and Shri Ashok Mehta, Advocates for the Appellants.

Shri Animesh Sinha, Advocate for Respondent No. 1.

Shri Narendra M. Sharma, Shri Abhishek Sharma and Shri Akshay Arya and Ms. Sakshi Maheley, Advocates for Respondent No. 2.

Shri Ritin Rai and Shri Manu Aggarwal, Advocates for Respondent No.3

Shri Manoj Munshi and Shri R.D. Makheeja, Advocates for Respondents Nos. 4 to 7

Shri V. Seshagiri and Shri Anchit Tripathi, Advocates for Respondent No. 9.

Shri M. Datta, Advocate for Respondent No. 11.

WITH

Company Appeal (AT) No. 215 of 2017

[Arising out of order dated 22.03.2017 passed by National Company Law Tribunal, Ahmedabad Bench in T.P. Nos. 61-C, D, M, E, N, B, J, F, H of 2016 with TP No. 61/397-398/NCLT/AHM/2016 (New) CA Nos. 55, 108, 115, 141, 142, 181, 12, 68, 151 of 2015, MA-1 of 2015 with CP No.16/397-398/CLB/MB/2014 (Old)]

IN THE MATTER OF :

Dr. Subodh Jain
149, Royal Bunglow City,
Sukhliya,
Indore – 452010

... Appellant

Versus

1. Dr. Sobhagyamal Jain
48-B, Vijay Nagar Scheme No.54,
Opposite Mangal City,
Indore – 452010
Madhya Pradesh ...Respondent No.1
2. Dr. Rakesh Shivhare
D-37, Apollo D.B. City,
Nipania Road, Indore - 452010
Madhya Pradesh ...Respondent No.2
3. Dr. Sandip Saxena
460, Goyal Nagar,
Indore – 452010
Madhya Pradesh ...Respondent No.3
4. Shri Suresh Choukse
13/5, Paredeshipura,
Indore - 452003
Madhya Pradesh ...Respondent No.4

5. Sobhagya Hospital & Research Centre Pvt. Ltd.
Dispensary Part 2, Scheme No.74-C,
Sector –B, Vijay Nagar, Indore – 452010
Madhya Pradesh ...Respondent No.5
6. Mr. Anil Jain
402, Sukhsagar Apartment, Block No.2,
Race Course Road, Indore – 452010
Madhya Pradesh ...Respondent No.6
7. Dr. Nitin Modi
62, FH, Sch.54, Vijay Nagar
Indore – 452010
Madhya Pradesh ...Respondent No.7
8. Dr. Hariprasad Yadav
101, Raunak Vihar,
3/1 Ravindra Nagar
Palasia, Indore – 452010
Madhya Pradesh ...Respondent No.8
9. Dr. Sandeep Julka
138, Royal Bunglow City,
Sukhliya, Indore – 452010
Madhya Pradesh ...Respondent No.9
10. Dr. Ravi Nagar
B-40, Chandra Nagar, M.R.9
Indore – 452010
Madhya Pradesh ...Respondent No.10
11. Dr. Pravar Passi
G-2, Utkarsh, 139, Indrapuri,
Indore – 452010
Madhya Pradesh ...Respondent No.11
12. Bank of India
Mid Corporate Branch, Airen Heights,
14-PU-3, Scheme No.54, Vijay Nagar,
Agra Bombay Road, Indore – 452010
Madhya Pradesh ...Respondent No.12
13. Registrar of Companies, Madhya Pradesh
Sanjay Complex, A-Wing, 3rd Floor,
Jayendra Ganj, Lashkar,
Gwalior – 474009 Madhya Pradesh ...Respondent No.13

Present: Shri Ritin Rai, Ms. Manu Aggarwal and Ms. Kritika Bhardwaj, Advocates for the Appellant.

Shri M. Dutta, Advocate for Respondent No. 1.

Dr. U.K. Chaudhary, Senior Advocate with Shri Naveen Dahiya, Shri Mansumyer Singh, Shri Himanshu Vij and Shri Ashok Mehta, Advocates for Respondent No. 2.

Shri Animesh Sinha, Advocate for Respondent No. 5.

Shri Narendra M. Sharma, Shri Abhishek Sharma and Shri Akshay Arya, Advocates for Respondent No. 6.

Shri Manoj Munshi, Advocates for Respondents Nos. 7 to 10.

J U D G E M E N T

A.I.S. Cheema, J. :

1. Both these appeals arise out of same impugned order dated 22nd March, 2017 passed by National Company Law Appellate Tribunal, Ahmedabad Bench, Ahmedabad. Company Appeal (AT) No.187 of 2017 is filed by the Appellants (original Petitioners 2 to 4). Company Appeal (AT) No.215 of 2017 has been filed by original Respondent No.3. We will refer to the parties as arrayed and referred in the impugned order which is reflected in CA 187/2017. It may be mentioned that original Petitioner No.1 was Dr. Sobhagyamal Jain who was transposed as Respondent No.11 in the Tribunal Appeal Memo and thus the Appellants of CA 187 of 2017 have been referred in the impugned order as Petitioners 2 to 4.

2. A few facts under reference:

Petitioners 2 to 4 and Respondent No.11 had filed CP 16 of 2014 (old), later on registered as TP 61/2016 in NCLT making allegations of acts of oppression and mismanagement against original Respondents 2 to 8. During the pendency of the company petition before Company Law Board certain mediators were appointed to resolve disputes between the parties and consent terms came to be recorded between the parties. The consent terms were recorded in two different documents referred as Annexure 'A' and Annexure 'B' by Company Law board (CLB). Both were dated 14th December, 2014 and came to be accepted by the Company Law Board by orders dated 15th December, 2014. Broadly speaking, the consent terms 'A' were for original Respondents 2 and 3 and one Dr. Sunil Rajan (who did not sign the said terms) to purchase shares of original Petitioner Nos. 2 to 4. Consent terms Annexure 'B' were for original Respondents 2 and 3 and Dr. Sunil Rajan to purchase the shares of original Respondents 4 to 7.

3. Annexure 'A' was executed between Petitioners 2 to 4 and 3 others and Respondents 2 and 3. Annexure 'B' was executed between Respondents 2 and 3 and Respondents 4 to 7. Both the Annexures drafted showed Dr. Sunil Rajan was to join, but he did not sign or join the same.

4. Before discussing the matter, it would be appropriate to reproduce the consent terms, though it would occupy space, but as the present disputes relate to compliance/non-compliance of these terms, to appreciate the impugned judgement and arguments, it would be easier. The consent terms Annexure 'A' (Less – The Annexures) read as under:

Annexure 'A'

- “1. The Petitioners and Dr. Seema Lodha shall cease to exercise powers as directors on the date of the present consent terms becoming effective by the Order of the Hon’ble Company Law Board and shall resign from the Board of Directors of the Respondent No.1 Company forthwith.
2. Immediately on submission of the present acceptance, the appointment of Dr. Sunil Rajan as Director of the Respondent No.1 Company shall be confirmed and ratified by the Hon’ble Board as prayed in Company Application No.248 of 2014.
3. The Respondent No.2 Mr. Anil Jain, 3 Dr. Subodh Jain along with Dr. Sunil Rajan (hereinafter referred to as the “Respondents”) shall purchase 1070 (One Thousand Seventy) equity shares of the Respondent No.1 Company (the “Sale Shares”) for aggregate consideration of Rs.8,56,00,000/- (Rupees Eighty Crores Fifty Six Lakhs Only) at the rate of Rs.80,000/- (Rupees Eighty Thousand only) per share from the shareholders of Respondent No.1 Company whose names are as under:

Sr.	Name of the Shareholder/Transferer	Director	No. of Sale Shares
1	Dr. Rakesh Shivhare	Yes	282
2	Mr. Suresh Chokse	Yes	282
3	Dr Seema Lodha	Yes	282
4	Dr Sandeep Saxena	Yes	141
5	Dr. Sunita Chouhan	No	35
6	Dr Sanjay Dhanuka	No	23

7	Dr Abhay Bhgwat	No	25
	Total		1070

Note: *The Petitioners and other shareholders at Sr. No.1 to 7 are collectively referred to as the “Petitioners & Others”.*

4. The entire consideration towards the purchase of Sale Shares shall be paid by the Respondents to the Petitioners & Others in four (4) equal instalments of Rs.2,14,00,000/- (Rupees Two Crore Fourteen Lakhs only) each payable at forty five (45) days interval, and out the above, the first of the instalment shall be paid in two trenches, consisting of 5% (Rs.42,80,000/- Rs. forty two lacs eighty thousand) payable at the time of execution of the present consent terms and the balance 20% (Rs.1,71,20,000/- Rs. one crore seventy one lacs twenty thousand) shall be payable within a period of thirty days from the execution of the present consent terms and the respondents shall deposit post dated cheques, the last one of which will be payable before the expiry of six (6) months from the date of the consent terms becoming effective through the Order of the Hon’ble Company Law Board.
5. Until realization of the consideration amount to the Petitioners & Others as provided in Clause 4 above, the Respondents shall not transfer, dispose off and or create third party rights in any manner whatsoever, except in the ordinary course of business including the Banks for financial facilities, in any of the assets, fixed and movable of the Respondent No.1 Company.
6. On passing of the Order by this Hon’ble Board to this effect, the Petitioners & Others shall execute transfer deeds in favour of the Respondents in such manner as suggested by the

Respondents and shall deposit the same with the Learned Bench Officer for safe custody.

7. On passing of the Order by this Hon'ble Board to this effect, the Respondents shall deposit all post dated cheques of due dates with the Learned Bench Officer for safe custody, with an option to the Respondents to make an early payment by depositing demand drafts to replace the cheques.
8. The outstanding professional fees and the amount of unsecured loan (Annexure – 1) shall be paid by the Company within a period of six (6) months from the date of passing of the Order by the Hon'ble Board.
9. On due date of payment or at an early date, if the Respondents choose to deposit demand drafts for early payment, the post dated cheques/demand drafts shall be released by the Learned Bench Officer to the Petitioners & Others through their advocate for handing over to the respective seller. It shall be the responsibility of the advocate for the Petitioners & Others to handover the cheque/demand draft to the respective seller and to deposit acknowledgement thereof with the Learned Bench Officer.
10. On realization of the consideration amount by the Petitioners & Others in respect of the Sale Shares sold herein, the duly executed transfer deeds shall be released by the Learned Bench Officer to the advocate of the Respondents for completing necessary formalities by the Company for giving effect to the transfer of Sale Shares in the books of accounts.

11. The Petitioners & Others shall have no option to deny acceptance or realization of the cheques/demand drafts and in case of intentional denial, it shall be presumed that the payment has been made to the respective seller and the Learned Bench Officer shall be free to release the transfer deeds to the advocate of the Respondents.
12. The Respondents shall have no option to back out from purchasing the Shares from the Petitioners & Others. The Respondents shall be responsible for the purchase of shares jointly and severally and in case of default, a notice shall be issued by the Learned Bench Officer to the Respondents pointing out the default and to rectify the same within a period of fifteen (15) days from the date of receipt of such notice, on expiry of which it shall be assumed that the Respondents are not willing to purchase such shares and in such an event terms mentioned in Clauses 17 to 19 herein will come into effect immediately. In such an event, the amount already paid by the Respondents herein shall be paid back by the Petitioners within a period of one month from the date of expiry of six months.
13. Before the release of deeds of transfer of shares to the Respondents, the Respondents shall make necessary application and arrangement shall be made by the Respondents for release of the Personal Guarantee of the Petitioners & Others given to Bank of India and shall endeavour to complete the process without any further delay.
14. The Petitioners unconditionally agree to withdraw the legal cases as per *Annexure – 2*.

15. The Petitioners agree on best endeavour basis to pursue the complainants and facilitate the process of closure of legal cases as per *Annexure – 3*.
16. The Respondents and the Petitioners & Others undertake that after completion of the transaction as contemplated herein they shall not indulge into any kind of litigation, directly or indirectly, by filing cases against each other on any ground whatsoever concerning the affairs of the Respondent Company.
17. In the event of the Respondents failing to pay the consideration amount stipulated in Clauses 3 and 4 above within a period of six (6) months, they shall forthwith resign as Directors of Respondent No.1 Company and handover the management of Respondent No.1 Company to Petitioners along with all assets, records and accounts.
18. Thereafter, Petitioners shall purchase the shares of the Respondents held prior to the date of rights issued at Rs.80,000/- (Rupees Eighty Thousand only) per share within a period of six (6) months from the date of default committed by Respondents on identical terms as earlier stated.
19. In the event of Petitioners and their nominees falling to purchase the shares from the Respondents, within a period of six (6) months from the date of failure of Respondents to complete their acquisition within six (6) months of the date of the Order of the Honorable Member, they shall forthwith resign as Directors of Respondent No.1 Company to be replaced by

an independent committee of management to be appointed by the Honorable Company Law Board.

20. The parties undertake not to apply for extension of time to perform any of the actions stipulated in the present terms which shall be self operative.
 21. For the supervisory services of the Learned Bench Officer the Hon'ble Member may decide cost payable to him, which shall be payable in advance, equally by the Petitioners & Others and the Respondents.
 22. Till the process is pending, the CP before the Hon'ble Company Law Board may be listed on monthly basis for reporting the status of settlement process and on transfer of all shares and completion of all conditions precedent, the Hon'ble Member may pass appropriate orders *inter – alia* holding issue of 1892 equity shares by the Respondents on 22nd May, 2014 as valid and in accordance with law and closure of the matter.”
5. Consent terms Annexure 'B' read as under:

Annexure 'B'

- “1. The Respondent No.4, 5, 6 and 7 shall cease to exercise powers as directors on the date of the present consent terms becoming effective by the Order of the Hon'ble Company Law Board and shall resign from the Board of Directors of the Respondent No.1 Company forthwith.
2. Immediately on submission of the present consent terms, the appointment of Dr. Sunil Rajan as Director of the Respondent

No.1 Company shall be confirmed and ratified by the Hon'ble Board as prayed in Company Application No.248 of 2014.

3. Shri Anil Jain, Dr. Subodh Jain and Dr. Sunil Rajan (hereinafter referred to as the "Purchasers of the shares") agreed to purchase 1900 (One thousand nine hundred) equity shares of the Respondent No.4, 5, 6 & 7. The entire consideration towards the purchase of shares shall be calculated in the following manner:

Sr.	Name	Existing shares	New Shares	Amount Existing Shares	Amount New Shares	Total Rs.
1	Dr. Sandeep Julka	282	172	22560000	3071404	25631404
2	Dr. Nitin Modi	282	200	22560000	3571400	26131400
3	Dr. Ravi Nagar	282	200	22560000	3571400	26131400
4	Dr. H.P. Yadav	282	200	22560000	3571400	26131400
	Total	1128	772	90240000	13785604	104025604

Note: The Shareholders at Sr.No.1 to 4 are collectively referred to as the "Selling Respondents".

4. The entire consideration towards the purchase of shares shall be paid by the Purchasers of Shares to the Selling Respondents in four (4) equal instalments starting from 4th month and ending before expiry of nine (9) months from the execution of the present consent terms. The cheques for the first trench of 5% shall be handed over at the time of execution of the present consent terms and the balance 95% shall be payable starting

from 4th month and ending before expiry nine (9) months from the execution of the present consent terms and the respondents shall deposit all post dated cheques with the Learned Bench Officer, the last one of which will be payable before the expiry of nine (9) months from the date of the consent terms becoming effective through the Order of the Hon'ble Company Law Board.

5. Until realization of the consideration amount to the Selling Respondents as provided in Clause 4 above, the Respondents shall not transfer, dispose off and or create third party rights in any manner whatsoever, except in the ordinary course of business including the Banks for financial facilities, in any of the assets, fixed and movable of the Respondent No.1 Company.
6. On passing of the Order by this Hon'ble Board to this effect, the selling Respondents shall execute transfer deeds in favour of the Purchasers of Shares in such manner as suggested by the Purchasers of Shares and shall deposit the same with the Learned Bench Officer for safe custody.
7. On passing of the Order by this Hon'ble Board to this effect, the purchasers of shares shall deposit all post dated cheques of due dates with the Learned Bench Officer for safe custody, with an option to the Purchasers of Shares to make an early payment by depositing demand drafts to replace the cheques.
8. The outstanding professional fees on actual basis and the amount of unsecured loan as per books shall be paid by the Company within a period of six (6) months from the date of passing of the Order by this Hon'ble Board.

9. On due date of payment or at an early date, if the Purchasers of Shares choose to deposit demand drafts for early payment, the post dated cheques/demand drafts shall be released by the Learned Bench Officer to the Selling Respondents through their advocate for handing over to the respective seller. It shall be the responsibility of the advocate for the Selling Respondents to handover the cheque/demand draft to the respective seller and to deposit acknowledgement thereof with the Learned Bench Officer.
10. On realization of the consideration amount by the Selling Respondents in respect of the Sale Shares sold herein, the duly executed transfer deeds shall be released by the Learned Bench Officer to the advocate of the Purchasers of Shares for completing necessary formalities by the Company for giving effect to the transfer of Sale Shares in the books of accounts.
11. The Selling Respondents shall have no option to deny acceptance or realization of the cheques/demand drafts and in case of intentional denial, it shall be presumed that the payment has been made to the respective seller and the Learned Bench Officer shall be free to release the transfer deeds to the advocate of the Purchasers of Shares.
12. Before the release of deeds of transfer of shares to the Purchasers of Shares, the Purchasers of Shares shall make necessary application and arrangement shall be made by the Purchasers of Shares for release of the Personal Guarantee of the Selling Respondents given to Bank of India and shall endeavour to complete the process without any further delay till the personal guarantee of the Selling Respondents is not released the Purchasers of Shares shall stand guarantor to the Selling Respondents.

13. The parties undertake that after completion of the transaction as contemplated herein they shall not indulge into any kind of litigation, directly or indirectly, by filing cases against each other on any ground whatsoever concerning the affairs of the Respondent Company.
14. The purchasers of the shares shall have no option to back out from purchasing the agreed shares. The purchasers shall be responsible for the purchase of shares jointly and severally and in case of default a notice shall be issued by the Learned Bench Officer to the purchasers pointing out the default and to rectify the same within a period of fifteen days, on expiry of which it shall be assumed that the purchasers of shares are not willing to purchase such shares and in such an event the learned Bench Officer shall have liberty to issue notice of defaults to the purchasers and on expiry of seven (7) days of issue of such notice, the amount already paid in respect of the shares shall stand forfeited and the respective rights of the parties, as in vogue prior to signing of the consent terms shall become effective.
15. The parties undertake not to apply for extension of time to perform any of the actions stipulated in the present terms which shall be self operative.
16. For the supervisory services of the Learned Bench Officer the Hon'ble Member may decide cost payable to him, which shall be payable in advance, equally by the Selling Respondents and the Purchasers of Shares.
17. Till the process is pending, the CP before the Hon'ble Company Law Board may be listed on monthly basis for reporting the status of the settlement process and on transfer of all shares and completion of all conditions precedent, the Hon'ble

Member may pass appropriate orders inter-alia holding issue of 1892 equity shares by the Respondents on 22nd May, 2014 as valid and in accordance with law and closure of the matter.”

6. The Company Law Board by order dated 15.12.2014 accepted these consent terms and marked them as Annexure ‘A’ and ‘B’. One Shri S.P. Sawant, Bench Officer was appointed, as Escrow Agent under whose supervision the compliances were to be made.

7. After such consent terms were accepted although there were terms to keep the Company Petition pending for reporting status of settlement process and completion of conditions, the Company Law Board disposed of the Company Petition. Subsequently, it appears that some steps were taken by parties in pursuance of the consent terms for implementation of the same while regarding certain aspects, disputes arose between the parties and various applications came to be filed by these parties against each other. While some parties pressed for execution of the consent terms, other parties claimed breach and forfeiture, etc. The impugned order has disposed of those applications recording reasons.

8. In the impugned order, NCLT *inter alia* disposed of CA 141/2015 where Respondents 4 to 7 claimed that Respondents 2 and 3 violated consent terms and amounts paid by them should be forfeited. Purchasing Respondents filed CA 115/2015 seeking interpretation of the consent terms and sought relief as per the consent terms. *Inter alia*, Petitioners filed CA 108/2015 to acquire consequential rights. When these matters

came up before us, both the sides have argued at length and tried to convince us that the opposite party is responsible for violation of the consent terms. Original Respondents 2 and 3 are trying to show that they have taken appropriate steps as per the consent terms and the relief should have been granted to them as per the consent terms. They are questioning the final orders passed by NCLT calling upon the parties to enter into fresh settlement or face appointment of Committee of Management.

9. In this matter, the parties were asked to file charts specifying steps taken or not taken by the parties for compliance of various requirements under the consent terms. If steps were not taken, that also required to be mentioned. The contesting parties filed charts. Some selectively left out mentioning steps not taken by them.

10. We have also heard the counsel for the parties who have as mentioned tried to claim that their respective parties did what was necessary under the terms and the other side was at fault.

11. The learned counsel for Appellants – original Petitioners 2 to 4 with reference to Annexure ‘A’ claimed that the Petitioners resigned forthwith as per term 1; that Respondents Nos.2 and 3 violated term 3; that Respondents 2 and 3 failed to make payments within stipulated period of six months as per term 4; in violation of term 5 Respondents 2 and 3 created charge on the property of the company. Money was transferred from companies’ bank account and siphoned to other companies and thus

routing the same it was credited to the bank accounts of appellants – petitioners without prior intimation; Respondents 2 and 3 did not give instructions about the matter of transferring shares to the petitioners for compliance of term 6; Respondents 2 and 3 failed to deposit post-dated cheques as required by term 7; the professional fees required to be paid within 6 months as per term 8 was not paid within the period specified; post-dated cheques were not deposited as expected vide term 9; consent terms were not complied by Respondent Nos.2 and 3 and thus term 10 did not get activated. According to the Petitioners, Respondents 2 and 3 did not comply with time bound mandatory terms and the Bench Officer did not take cognizance of default of Respondents 2 and 3 as was required by term 12. The Appellants returned the amount received from Respondents 2 and 3 in the form of cheques. Term 12 was inserted to provide option to declare contravention during the time of 6 months and was to be enforced by the Bench Officer but became redundant on expiry of period of six months. The Petitioners further claimed that terms 14 and 15 were never invoked requiring them to withdraw legal cases as according to them Respondents 2 and 3 had defaulted in honouring consent terms. The petitioners claimed that term 17 deserves to be enforced and Respondents 2 and 3 should resign as Directors and handover management to the petitioners as per term 17 for which the appeal is filed. It is claimed that the petitioners – appellants should have been given the rights as required by term 18 to purchase shares of the Respondents 2 and 3. According to

the petitioners – appellants, the impugned order wrongly set in motion term 19.

12. Against this, Respondent No.2 has claimed and it has been argued that the petitioners failed to deposit and execute transfer deeds as required by term 6 although Petitioners received full and final payments by 3rd June 2015. This Respondent claims referring to term 11 that although payments were made, the petitioners chose to create controversy on flimsy ground of delay of just 15 days. Referring to term 12, it is claimed that no default notice was issued by the petitioners. According to this Respondent, Petitioners in violation of terms 14 – 15 failed to withdraw legal cases which had been filed and violating term 16, the appellants – petitioners filed writ petition and police complaint although they had received full and final payments. The writ petition was filed in the High Court of Madhya Pradesh at Indore and police complaint was filed at Police Station Vijay Nagar, Indore on 13.07.2015. This Respondent has claimed that the original petitioners failed to refund the amount received by them and also failed to show that they had the necessary funds in bank and thus terms 18 and 19 were violated. It is argued that although cheques were deposited, the petitioners did not have the necessary funds in bank.

This respondent No.2 has submitted with reference to Annexure 'B' that Respondents 4 to 7 could not claim forfeiture as the amounts required to be paid had been paid within the period of 9 months as contemplated in para – 4. It is claimed that Respondents 4 to 7 had received the

payments without delay and have not filed appeal against the impugned Judgement and Order. Respondent No.2 has claimed that the original Petitioners flouted the conditions of consent terms. They had failed to deposit blank share transfer deeds and refrained release of deeds of transfer shares although they received total consideration. They have filed frivolous police complaints violating term 16. The order passed by Madhya Pradesh High Court in WP 440/2015 has been stayed by Hon'ble Supreme Court on 01.04.2016 in SLP Criminal 2374/2016. The cheques submitted by the petitioners were given to the Bench Officer asking him to keep the same in deposit till disposal of Company Application filed by the petitioners. The cheques expired before the Company Application was decided. It is argued that if the contentions of the petitioners – appellants are accepted, it will lead to anomalous situation where the Petitioners – Appellants would be buying shares of these Respondents without returning the sale consideration received by the appellants towards sale of their shares.

13. Respondent No.3 has claimed and it has been argued for Respondent No.3 that the amount required to be paid towards consideration for purchase of shares was delayed only by 15 days over and above the period of six months but no default notice was issued which if it had been given, it would have given the Respondents the period of 15 days to comply. Thus it is argued that there was no default. Referring to term 6, this Respondent claims that the Petitioners in violation of term 6 failed to deposit share

transfer deeds and when they were filed after a delay of 210 days, the same were defective. As required post-dated cheques were not deposited as per term 7 of Annexure 'A' but it is claimed that the payments had been made as stated above. This Respondent also argues that the petitioners failed to withdraw legal cases as was required vide term 14 – 15. The Respondent claims to have complied with term 13 of Annexure 'A' with regard to release of bank guarantees. With regard to term 8, this Respondent claims that the outstanding professional fees was paid although there was a delay of 15 days beyond the given period of 6 months. Referring to term 10, this Respondent claims that the petitioners did not duly execute transfer deeds and also resisted release of the executed transfer deeds. As regards violation of term 5 of Annexure 'A', this Respondent claims that the only assets which were already mortgaged were transferred to another mortgagee and thus there was no breach. It is claimed that the petitioners violated term 16 by filing FIR against Respondent No.3. It is also claimed that contingencies as required by terms 17 to 19 did not arise.

With regard to Annexure 'B', this Respondent claims that the entire consideration was paid within time. With regard to violation of term 5, it is claimed that there was no breach as the assets which were already mortgaged were transferred to another mortgagee. As was required post-dated cheques were not deposited as per term 7 but it is claimed that payments were made within time. With regard to term 14 referring to forfeiture, it is claimed by this Respondent that these purchasing

Respondents did not back out and thus there was no breach. It is claimed that in violation of term 13, Respondents 4 to 7 had filed FIR against Respondent No.3.

This Respondent No.3 claimed that in Annexure 'A' term 4 was not a stand-alone term and was to be read with term 12 which requires notice to be given by Bench Officer requiring compliance within 15 days. No such notice was given and hence it is claimed that even if there was delay of 15 days, there was no violation of the terms requiring payments within 6 months. It is argued that the assets of the Company had been mortgaged to Bank of India as security for a loan of over Rs.11 crores in which Appellants and Respondents 4 to 7 had given personal guarantees and the mortgage and personal guarantee were released by repayment of loan to Bank of India from the funds obtained from Religare Finvest Limited. It is claimed that term 5 permitted mortgaging of assets for obtaining financial facilities from banks. It is further argued that even if it is assumed that there was breach of term 5, it is necessary to consider consequences of alleged breach whether any consequences are provided by consent terms or what was the purpose of the term for damages if any. It is argued that the consent terms do not provide any consequence from breach of term 5 and that the object of the term was that the inheriting party should not get company which is encumbered. It is argued that when the Petitioners and Respondents 4 to 7 had been paid the value of the shares, how the money was raised would be immaterial for them. The argument is that the

petitioners are not entitled to purchase shares of Respondents 2 and 3 as allowed by term 12 r/w linked terms, as several pre-conditions are required to be satisfied and those pre-conditions are not satisfied. This Respondent claims that when the Petitioners were walking out of the Company, the manner in which consideration was raised and paid was immaterial.

14. Respondents 4 to 7 claimed that before the Annexure 'A' and 'B' were accepted by the Company Law Board, the purchasing Respondents 2 and 3 had submitted affidavits dated 05.12.2014 and affirmed before the Company Law Board that they shall buy the shares from their own funds. This was pre-condition for purchase of shares. According to these Respondents, they were the largest group of shareholders which was holding 30% share capital whereas Respondent No.2 Anil Jain held 12.86% and Respondent No.3 Dr. Sobhagyamal Jain held 9.64% shares. According to these Respondents, had such affidavit and condition of use of personal funds for purchase of the shares not been there, these Respondents 4 to 7 would have certainly acquired proportionate shares to remain in control and management of Respondent No.1 Company. According to them, Respondents 2 and 3 have betrayed them and committed breach of term 5 as the payments were not made from the funds of Respondents 2 and 3 but were made by borrowing funds from Religare Finvest Limited by mortgaging the assets of the Respondent No.1 Company. The money of the Company was siphoned by diverting the same to four private limited

companies incorporated just 2 – 4 days before transfer of funds of Respondent No.1 Company in which close relatives are Directors and shareholders of Respondent Nos.2 and 3, with the object of paying purchase consideration to these Respondents. On this basis, these Respondents claimed that term 14 of Annexure 'B' was required to be enforced regarding forfeiture of the payments made to them. It is claimed that NCLT could not have directed them to return the money.

15. Respondent No.11 Dr. Sobhagyamal Jain claims that the Appellants – Petitioners are ready to purchase shares held by him and he is willing to transfer the shares and thus the appeal may be allowed.

16. Keeping in view the submissions made by the counsel for rival parties, we have considered the record and also the impugned order. When we look into the impugned order, we find that the learned Judge of the NCLT has painstakingly considered the rival cases of the parties which were argued before him and which are again being averred before us. A brief reference needs to be made to the reasons and findings recorded by the learned NCLT.

17. In the impugned order, NCLT reproduced para – 5 in the terms which has similar wordings regarding not creating charge etc. and observed that admittedly Respondents 2 and 3 had created charge over the assets of first respondent company to secure an amount of Rs.21 crores, and out of this amount borrowed from M/s. Religare Finvest Limited, some amount was utilized for repayment of loan to Bank of India while some was used to

purchase the shares of original Petitioners 2 to 4 and Respondents 4 to 7, routing the money through some of the companies where Respondents 2 and 3 were Directors. NCLT considered the affidavits of original Respondents 2 and 3 dated 5th December, 2014 which were filed “before” consent terms Annexures ‘A’ and ‘B’ were accepted in which Affidavits they had stated that these Respondents would purchase the offered shares out of their own funds. For such reasons, NCLT discarded the arguments which were being raised for Respondents 2 and 3 that when Petitioners 2 to 4 and Respondents 4 to 7 are walking out of the company and handing over the management of the company to them, it is immaterial for them as to the manner in which the consideration was raised and paid. We find that the detailed reasons recorded by NCLT for coming to a finding that Respondents 2 and 3 had violated consent term 5 in the Annexures ‘A’ and ‘B’ are well founded. A simple way of looking at the consent terms would be that had Petitioners 2 to 4 or Respondents 4 to 7 known that charge can be created on the property of the company to raise money to buy the shares of the opposite party, then they could also have claimed to buy the shares of the opposite party by resorting to such method. With this we find that NCLT has rightly concluded that Respondents 2 and 3 violated term 5 as stated in Annexure ‘A’ as well as Annexure ‘B’.

18. NCLT then considered the claim of original Petitioners 2 to 4 that Respondents 2 and 3 did not pay the sale considerations in the time schedule as agreed in para 4 of Annexure ‘A’. NCLT referred to the fact that

the consent order was passed on 15.12.2014 and referred to the arguments as to what were the due dates for the payments and the dates on which actually the payments were made. Counting from 15.12.2014, six months would be over by 15.06.2015. Admittedly the last instalment was paid on 30th June, 2015 and the time schedule had not been maintained. The argument that reading term 4 with 12 of the Annexure 'A', would extend period by 15 days needs to be discarded as admittedly Bench Officer had not given any notice as required by term 12. Respondents 2 and 3 claimed before NCLT that there was overall understanding to pay within six months and that the same had been "substantially complied" with only a delay of 15 days. NCLT kept in view para 20 of Annexure 'A' where the parties had undertaken not to apply for extension of time to perform actions stipulated. In the set of facts, NCLT concluded that consent term para 4 of Annexure 'A' had also been violated by Respondents 2 and 3. Reading the consent terms Annexure 'A' as a whole and specially terms 1, 4, 17, 18, 19 and 20, it does appear that when the parties entered into the consent terms they did intend to have time as essence of the agreement.

19. The NCLT has then referred to para 8 of the Annexure 'A' (supra) and found that the outstanding professional fees and the amount of unsecured loan which was required to be paid by Respondents 2 and 3 was also paid beyond period of 6 months, only by 30th June, 2015 and there was breach of term 8.

20. Respondents 4 to 7 claimed forfeiture of the amounts paid to them on the basis that there was violation of consent term 5. The learned NCLT considered term 4 of Annexure 'B' which required payments in particular schedule and found that Respondents 2 and 3 had paid the entire sale consideration of the shares before the expiry of 9 months' period specified and thus concluded that term 4 of the consent terms was not breached. NCLT discussed term 14 of the consent terms Annexure 'B' and observed that no notice was issued by Bench Officer in terms of para 14, if there was default. This was apart from the fact that it observed that in the present matter, there was no default in payment of sale consideration towards purchase of shares from Respondents 4 to 7 as it was done in period agreed and so there was no scope to invoke forfeiture clause. Going through the reasoning recorded by NCLT, we find that term 14 dealing with forfeiture basically related to "purchase" and Respondents 2 and 3 did make the payments within the period of 9 months fixed. Violation of term 5, which relates to not creating 3rd party rights etc. was rightly not invoked by NCLT for forfeiture in term 14 of Annexure 'B'. NCLT rightly discarded claims of Respondents 4 to 7 that the amounts they have already paid should be forfeited and they should be allowed to hold on to the shares they have. Against impugned order against claim of Respondents 4 to 7, they have not filed appeal.

21. NCLT has then found the Petitioners in default of term 6 of Annexure 'A' which required execution of transfer deeds in favour of respondents and

depositing the same with the Bench Officer for safe custody. NCLT has rightly discarded the averments made for petitioners that Respondents 2 and 3 did not suggest the manner in which transfer deeds were to be deposited by observing that petitioners could have deposited the same without filling the name of transferee. Considering that such difficulty did not arise with similar term 6 of Annexure 'B', the approach of NCLT on this count cannot be faulted with.

22. The NCLT further found the petitioners in default with regard to paras 14 and 15 of Annexure 'A' which required them to unconditionally withdraw the legal cases and endeavour to pursue the complainants and facilitate process of closure of legal cases which had been made in Annexure 3 of the documents.

23. NCLT found that Respondents 4 to 7 had in compliance of para 6 of Annexure 'B' deposited share certificates with duly executed transfer deeds with the Bench Officer and had also resigned as per term 1 of the consent terms. Although it was the finding that Respondents 4 to 7 cannot claim forfeiture clause but NCLT found that as Respondents 2 and 3 violated term 5 of the terms and thus Respondents 2 and 3 are not entitled for transfer of the shares deposited by Respondents 4 to 7. Considering the rival cases, we do not find that these findings can be found fault with.

24. At the time of arguments, we had asked the rival parties to address us with regard to the observations of NCLT in para 48 of its Judgement which are to the following effect:

“48. The object of Consent Terms:

“A combined reading of Consent Terms, Annexures “A” and “B” goes to show that the management of the affairs of the Company shall be placed either in the hands of Respondents No.2, 3 and Dr. Sunil Rajan or in the hands of the Petitioners No.2 to 4. Even before the Consent Terms were filed before the Court, Dr. Sunil Rajan withdrew from the settlement and choose not to sign the Consent Terms. In order to achieve the said object, it can only be said that the Consent Terms as mentioned in Annexures “A” and “B” would go together as part of the settlement. In case if it is held that Respondents No.2 and 3 failed to follow the consent Terms; and if it is further held that the Petitioners are entitled to purchase the shares of Respondents No.2 and 3; and further held that Respondents No.2 and 3 are entitled for the shares of Respondents No.4 to 7, then the situation would be that the Respondents No.2 and 3 would be selling their shares to Petitioners and, at the same time, purchasing the shares of Respondents No.4 to 7. This contingency has not been visualized in framing two sets of Consent Terms in the form of Annexures “A” and “B”. No doubt, this Tribunal cannot modify or interfere with the Consent Terms, but at the same time when this Tribunal is called upon to interpret the Consent Terms, it should be

interpreted in a harmonious way in order to further the object of settlement. It is not contemplated in Consent Terms, Annexures "A" and "B" as to what should happen in case of failure of observance of Consent Terms in Annexure "B" except stating that Respondents No.4 to 7 are entitled for their shares. In case of succeeding of Respondents No.4 to 7, Respondents No.2 and 3 will go out of the Company. In case if Respondents No.2 and 3 succeed as against the Petitioners and they fail as against Respondents No.4 to 7, Petitioners will go out of the Company, and it is Respondents No.2 and 3 and Respondents No.4 to 7 who will remain in the Company. During the pendency of these Applications, Dr. Sunil Rajan offered to sell his shares also, but it does not come within the purview of the Consent Terms. Therefore, this Tribunal refrain itself to act on such request. Further, the Consent Terms also cover the litigations filed by third parties. It is pertinent to mention that the 3rd parties who filed the cases are not parties to the settlement. Therefore, it is a case where Respondents No.2 and 3 in the first instance and Petitioners in the second instance failed to perform in accordance with the Consent Terms. Respondents No.4 to 7 had not made out a case to invoke the forfeiture clause. Here, it is pertinent to refer to Paragraph 19 of Consent Terms in Annexure "A", which reads as follows:

“19. In the event of Petitioners and their nominees failing to purchase the shares from the Respondents, within a period of six (6) months from the date of failure of Respondents to complete their acquisition within six (6) months of the date of the Order of the Honourable Member, they shall forthwith resign as Directors of Respondent No.1 Company to be replaced by an independent committee of management to be appointed by the Honorable Company Law Board.”

In order to implement this, there must be issuance of a default notice. The Petitioners shall pay back the entire amount received by them from Respondents No.2 and 3 towards sale consideration of shares, and Petitioners No.2 to 4 by following the Paragraphs 18 and 19 of the Consent Terms in Annexure “A” shall purchase the shares of the Respondents No.2 and 3. No doubt, the Petitioners filed TP No.61-C of 2016 (CA No. 108 of 2015 Old), but they have not deposited the entire amount received by them towards sales of shares. The statements of accounts filed by them do not even reveal that they are having funds in their Bank accounts equal to the amounts they have received from the Respondents No.2 and 3 towards sale consideration of the shares. Therefore, it is a case where the situation has not reached to the stage that the Petitioners No.2

to 4 can be called upon to purchase the shares of Respondents No.2 and 3. Even assuming that such a situation has arisen, from the material on record the Petitioners have not complied with the condition of Paragraph No.19. It is pertinent to mention here, that Dr. Sunil Rajan filed winding-up petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench, vide Com. P. No.24 of 2016. In that petition, Counsel for Respondents sought time on 27.2.2017 to file their reply. Therefore, it is clear that the winding-up petition filed by Dr. Sunil Rajan is pending before the Hon'ble High Court of Madhya Pradesh, Indore Bench. Therefore, a situation had arisen that an Independent Committee of Management has to be appointed as provided in Paragraph 19 of Consent Terms Annexure "A".

25. The learned counsel for both sides however, went on with their arguments relating to one party finding fault with the other and *vice versa* but did not satisfy us that Annexures 'A' and 'B' read together and defaults of parties, creates strange situations making execution of the terms unworkable and unpractical. Even if we accept that enforcing term 19 of Annexure 'A' would require certain compliances as is being argued, question is what is the way out? N.C.L.T. rightly appears to have searched way out in interest of Company and all stakeholders to have a fresh settlement or it would appoint Independent Committee of Management.

The directions are in interest of justice and cannot be faulted with. Under Section 424 of Companies Act 2013 NCLT can regulate procedure before it and while dealing with the matter, it could exercise inherent powers to do justice between the parties, the Company and public interest linked with the Company to give the directions it has given.

26. We do not find any substance in these appeals to interfere with the impugned Judgement and Order which needs to be maintained and implemented. Thus the appeals deserve to be dismissed.

27. Both the appeals are dismissed. In the circumstances, however, there shall be no order as to costs.

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

[Balvinder Singh]
Member (Technical)

New Delhi

15th February, 2018

/rs/nn