

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

**Company Appeal (AT) No. 372 of 2017**

(Arising out of the order dated 11.09.2017 passed by the Hon'ble NCLT, Chennai Bench at Chennai in TCP No. 127/2016 (No. 72 of 2013))

**IN THE MATTER OF:**

**R. Jeyapaal**

S/o Ramadas Venkadasamy  
No. 36, Ragavendra Garden Behind Andavar College,  
Thirvanaikoil PO, Trichy- 620005

**...Appellant**

**Vs**

**1. Arjuna Engineering Pvt. Ltd.**

1<sup>st</sup> Floor, Door No., 66B, River View Enclave  
IPS Colony, Manapakkam, Chennai-600125

**....Respondents**

**2. Shin Hyun Seong**

1<sup>st</sup> Floor, Door No., 66B, River View Enclave  
IPS Colony, Manapakkam, Chennai-600125

**3. Park Kyung Sun**

1<sup>st</sup> Floor, Door No., 66B, River View Enclave  
IPS Colony, Manapakkam, Chennai-600125

**Present:**

**For Appellants: Mr. K. Parmeshwaran, Mr. S Sathya Narayanan and  
Mr. P.P. Vikram, Advocates.**

**For Respondents: Mr. Robin R David, Mr. P. Arularasu, Mr. Febin M  
Varghese and Mr. Dhiraj Philip, Advocates.**

**JUDGEMENT**

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

The Appellant/Original Petitioner has filed this appeal against the orders passed by the National Company Law Tribunal, Division Bench, Chennai

(NCLT in brief), in TCP No. 127/16 (72/13). Company Petition was filed by the Appellant making grievance of Oppression and Mismanagement on the part of Respondent Nos. 2 and 3 in Company Respondent No. 1 (Hereafter, also referred as “Company”). By the Impugned Judgement/order the NCLT has found that between the Appellant and Respondent Nos. 2 and 3 (hereafter, also referred as “Respondents”) there is a deadlock and thus directed that Chartered Valuer should determine the value of the Company and Respondent No. 2 Majority Shareholder will have a first option to buy the shareholding of the Appellant and in case he fails to exercise the option the Appellant will have the option to purchase the shares of Respondent No. 2. If both are not willing to purchase the shares of each other the Company would require to be wound up.

2. We have heard counsel for both sides in this appeal and gone through the record. To avoid repetition, it would be appropriate to juxtapose the pleadings of the parties, mainly, as were put up before the NCLT as we feel that brief reference to the pleadings itself will narrow down the dispute and give bird’s eye view of the grievances of the Appellant regarding Oppression and Management.

3. Copy of the Company Petition is Annexure P2 (Page No. 76). The counter filed by Respondents in NCLT is at Annexure P3 (Page No. 86). The rejoinder filed by the Appellant in NCLT is at Annexure P4 (Page No. 98), and the sur-rejoinder filed by the Respondents is at Annexure P5 (Page No. 108).

4. The Appellant claimed in the petition that the Respondent No. 1 Company was incorporated on 22.07.2009 as Private Limited by shares. One of the objects shown is to carry on business of electrical/ mechanical/ civil engineering works. The Petition refers to the authorized share capital as well as issued subscribed and paid up share capital. Appellant claims that he is the Owner Director holding 20,000 equity shares which is 40 per cent of the paid up capital. The Respondent No. 2 holds the remaining 60 per cent of the shares and Respondent No. 2 is Managing Director. According to the Appellant the subscribers to the memorandum of association of the Company were the Appellant and his wife Kamla. Respondent No. 2 was subsequently appointed Managing Director on 09.08.2009. Mrs. Kamla resigned from the post of Director on 16.03.2010 and on same date present Respondent No. 3 came to be appointed as Director. The Appellant and 2<sup>nd</sup> Respondent are the only shareholders of the Company holding 40 per cent and 60 per cent share capital respectively.

Regarding above facts, looking to the pleadings of parties it does not appear that there is dispute.

5. Now reference needs to be made to the allegations of Oppression and Mismanagement made by the Appellant in the pleadings and the defences raised by Respondents in pleadings.

The grievances raised are-

A. Company Petition in Para 6.4 makes grievance that after the initial phase, Respondent Nos. 2 and 3 started inducting their close associates

as employees in Company without consulting the Appellant and that he was kept away from the proceedings of the Company and notices of the meetings were not sent to him.

Respondents in their counter denied this claiming that Appellant had full knowledge about the appointments and the appointment of one Mr. Park Hyun Seong was suggested by Appellant himself which is clear from letter sent to Mr. Park due to which Mr. Park had got VISA. Respondents claim that the staff appointed was as per recommendations of the Appellant. According to Respondents the notice of every meeting was duly served on the Appellant.

B. The Appellant claimed in Para 6.5 of the Petition that Respondent Nos. 2 and 3 were plundering and siphoning the funds of the Company and transferred huge amount, approximately Rs. 88 lakhs to one M/s. Samana Engineering & Construction Pvt. Ltd.(in short Samana Engineering), without reasons from the Company's bank account in IDBI. The Petition gives a chart giving details of the amounts transferred from the Bank Account to Samana Engineering which shows transfers made between 18.10.2012 till 21.06.2013 totalling Rs. 88 lakhs.

In defence Respondents claimed in their counter Para 5 ( Page 88) that it was not true that they were plundering and siphoning the funds of the Company and had transferred huge amounts to Samana Engineering. It is stated that transferring to Samana Engineering was true but plundering or siphoning of funds is not true. According to them the transactions were done by crossed cheques and RTGS and it was simple lending/borrowing between

two companies for financial requirements and then the same amount was paid back later. Respondents accepted that the Appellant was removed from the signatory of banking transactions. They claim that this was because he was going against the interest of Company and the he also wanted to stay away from the affairs. They claim that Samana Engineering had executed Promissory Notes and all the amount had been returned back to the Respondent No. 1 Company through banking channels.

In reply in Appeal (Diary No. 3002) Para 9 Respondents state that Rs. 93,00,000/- “ was advanced as simple loan” by Respondent No. 1 Company to Samana Engineering and it has been returned by Samana Engineering.

C. In Para 6.6 of the Company Petition Appellant further claims that Samana Engineering was incorporated with similar objects like Respondent No.1 by close associates of the Respondents and this was clear from the memorandum and articles of association of the said Company. In Para 6.7 Appellant claims that Respondent No. 3 had been appointed as Director of Samana Engineering on 26.09.2012 but this was not disclosed to the Respondent No. 1 Company. In Para 6.8 Appellant claimed that the Respondents siphoned funds of Respondent No. 1 Company by incorporating and running the business of companies floated by them and customer database, etc. of Respondent No. 1 Company had been poached. He also claimed that Company facilities of the Respondent No. 1 Company had been used for the competing business, without authority.

In defence without specifically denying that Samana Engineering had similar objects as that of Respondent No.1, Respondents claimed in the counter that incorporation and functioning of Samana Engineering had nothing to do with the Respondents and that the Directors of the said Company were not related to Respondent No. 1 Company (Para 6 of counter/ page 88). Respondents claimed (in Para 7) that Respondent No. 3 was not Director of Samana Engineering and the Respondents are not connected with that Company. It was also claimed (in Para 8) that Respondents never utilized or siphoned the funds of Respondent No. 1 Company or used its database for the said Samana Engineering.

The Appellant in his rejoinder in NCLT claimed that the Managing Director of Samana Engineering is close relative of the 3<sup>rd</sup> Respondent, who is the wife of 2<sup>nd</sup> Respondent. He claimed that a Company can give loans and invest funds of the Company only by passing Resolution at the meeting of Board of Directors. He however had no notice of any such decision being taken. He claimed that the Respondents diverted the funds of the Company to Samana Engineering and it was clear misuse of the fiduciary position. The Appellant referred in his rejoinder the Annexure-4 of the counter filed by Respondents to claim that the bulk of the money diverted was returned only on 11.11.2013 and 03.12.2013. He claimed that Samana Engineering ought to have paid interest at the rate of 12 %. Appellant pleaded in the rejoinder (Page No. 104) that the passport copies which had been submitted in the counter and MCA database (which he annexed) show unmistakable similarity in the father's

name and permanent address of both the 3<sup>rd</sup> Respondent and the Managing Director of Samana Engineering. Thus he claimed that the Respondents could not claim that there was no connection between them and Samana Engineering.

Faced with such pleadings and documents pointed out by the Appellant, the Respondents in sur-rejoinder, Para 6 (B) accepted:-

*“b. The III Respondent and the Managing Director of the said M/s Samana Engineering and Construction P Limited are siblings but (added) they have their own independent right for their economic activities as individuals. They have their separate families and business.”*

D. According to the Appellant (CP-Para 6.9) although the Company was doing well Respondent No. 2 being Managing Director proposed shrinking of costs by reducing the salary/remuneration of the Directors and Employees. He claimed that his salary was substantially reduced. It was done in bad faith.

In defence Respondents in counter claimed (Para 9) that there was overall downturn of the economy and reduction in salary of Director was unavoidable as there was dullness in the income of the Company and so the Directors were asked to cut short their expenditures and reduce the salary. They claimed that salaries of the employees however were not reduced and there was no bad faith. They claimed that even their own salaries were cut alongwith the Appellant to reduce financial burden and Appellant was informed about this on 27.03.2013. In April, the salary of the Appellant was reduced

more compared to March, 2013 as he came to office for 5 days only. They claimed that if there is no difference among Directors, it is not fair for the Directors to serve the whole month.

In rejoinder the Appellant claimed referring to the Income Tax Returns he annexed at Annexure 5 of the rejoinder that the Income Tax Returns of 2009-10, 2010-11 and 2011-12 consistently showed profits as mentioned in the rejoinder and thus the Company was going to such strong position and there was in balance in the funds on March 27, 2013 as stated in the letter which was sent to him (in Appeal copy of the letter is at page No. 73/ diary No. 4876).

E. The Appellant claimed (CP Para 6.10) that as per the policy of the Company, the Company was to bear cost on residential accommodation of the Directors. According to him although the Company paid rent of the residential accommodation of the Respondents the rent of the residence occupied by the Appellant was not paid for 8 months and he was put to agonizing situation with the landlord giving warnings to vacate the house.

In defence the Respondents claimed (counter Para 10) that the house occupied by the Appellant was vacated as per his intention and instruction, even before notice of termination of Rental Agreement. They claimed that their action had concurrence of the Appellant to terminate the Rental Agreement. The contractual party to the Tenancy Agreement was the Company. Before expiry of the term the Appellant and the landlord agreed to extend the contract for two months and he paid the rent himself and vacated in mid August.

According to Respondents the Company did not receive full amount of security deposit due to physical damage caused to the house.

F. The Appellant (in Para 6.11 of the CP) claimed that the Respondent Company had number of vehicles purchased for business which are registered in the name of the Appellant in accordance with the policy of Financing Company. He filled details of those vehicles with the Petition. According to him one of the vehicles was confiscated by the Tamil Nadu Police for transporting contraband articles leading to FIR No. 334/13. According to him he was afraid of the prosecution as the vehicles were registered in his name and that there was an attempt to tarnish his image.

In defence Respondents claimed (counter Para 11) that some of the vehicles had been purchased by the Company in the name of the Appellant as he was having Indian citizenship, as per the policy of the Company. With reference to FIR No. 334/13 Respondents admitted that the alleged vehicle Toyota Innova is purchased by the Company which was the real owner but the vehicle was purchased in the name of the Appellant. According to them it would be the Company which would face criminal prosecution on behalf of the Appellant. The counter then refers to some details before the Judicial Magistrate relating to release of the vehicle. According to the Respondents Appellant need not fear about his reputation as he can simply transfer the ownership to the Company.

6. The parties went before the learned NCLT with such pleadings. The learned NCLT after hearing the parties did not find substance in the

contentions raised by the Appellant except making the observation that the Appellant and Respondents have traded allegations and only fact which was substantiated by the Appellant is that after the salary cut for the Directors, the salary of R-2 and R-3 were restored to previous level, where as the salary of the Appellant was not revised after the cut in salary. The NCLT then observed that keeping in view the various allegations there was acrimony and to protect the interest of the Company and stake holders it is necessary to resolve the deadlock. It went on to pass the orders as mentioned earlier.

7. Before us the learned counsel for the Appellant submitted that the pleadings make it clear that the Respondents lent huge amounts to Samana Engineering, which were unsecured loans. According to the counsel in the Company there are only 2 shareholders which is the Appellant and Respondent No. 2 and there are only 3 Directors which is the Appellant and Respondents 2 and 3. According to the counsel although in pleadings Respondents initially denied but later accepted that the Director of Samana Engineering was sibling of Respondent No. 3. He submitted there is nothing to show that any Resolution was passed for lending such huge amounts as unsecured loan that too without interest. The learned NCLT did not discuss any of these factors and without finding Oppression and Mismanagement directed determination of the value of the shares and sale of the same. It has been argued that the NCLT did not consider that although the salary of the Appellant as Director was cut on the basis that there was downturn of the economy but still the Company went on giving huge amounts as loan. It is argued that this was clearly siphoning of

funds to a Company in which Respondents 2 and 3 had interest. Respondents 2 and 3 are couple and the Director of Samana Engineering was brother of Respondent No. 3. Thus according to the counsel NCLT should have held that the Respondents were guilty of Oppression and Mismanagement. The counsel submitted that although there were only 2 shareholders, the Appellant was removed as Joint Signatory in the Bank Accounts to keep the Appellant away from the transactions of the Bank although he is 40 per cent shareholder.

8. Against this the learned counsel for the Respondents submitted that the reply filed by these Respondents in this appeal shows that the money had started coming back from the Company Samana Engineering between July, 2013 to December, 2013 and the Company Petition was filed in September, 2013 and so it is not that because Company Petition was filed the money was recovered back. The learned counsel supported the reasons recorded by the NCLT in the Impugned Order. It is argued that for strategic purposes of business connection with Samana Engineering the amount was given as loan to Samana Engineering. It is argued that because of downturn in economy the salary of Directors was required to be cut and in concerned month of March the Appellant had worked only 5 days and thus the acts of Respondents were justified.

9. We have heard counsel for both sides and perused the record. We will take up the grievances made by the Appellant one by one. As regards grievance made by the Appellant regarding inducting of close associates as employees,

referred in Para 5 A supra, we do not find that there is much substance. There are no specific particulars. The grievance relates to internal working of a Company and looking to the pleadings and reasons recorded by NCLT on this count, we do not feel that we need to interfere.

10. As regards the allegations made (Para 5 A) supra by the Appellant that he was not given notice of every meeting, the same is vague and without making specific references, the point cannot be deliberated upon.

11. The next grievance made by the Appellant is serious and the pleadings referred to by us in above Para 5 (B & C) makes it clear that in Samana Engineering the Director “Chang Kyu Park” was brother of the Respondent No.3. The Appellant has filed with Application I.A. 598/18 (Diary No. 4876) copies of documents which were part of NCLT record. He referred to copies of the MCA database relating to Respondent No.1 Company (Annexure A-56) and the database of Samana Engineering at Pages 146 and 147 with Diary No. 4876. Counsel for Respondents has not questioned the correctness of these documents. It is argued that these documents show the residential address of Respondent No. 3 and “Chang Kyu Park” the Director of Samana Engineering to be same. The Respondents in initial pleading tried to avoid accepting but in sur-rejoinder had to concede that the Director of Samana Engineering was sibling of Respondent No. 3.

12. Now, after the document of MCA database as filed by the Appellant at Annexure A-56 (Diary No. 4876) is perused, Chang Kyu Park became Director

of Samana Engineering and Construction Private Limited on 28.09.2012. Keeping this in view, if the chart filed by the Appellant in Company Petition Para 6.5 is seen, it can be appreciated that the Respondents started extending loans to Samana Engineering from 18.10.2012. This is not mere a coincidence. The fact that amounts were lent between 18.10.2012 right up to 21.06.2013 is not in dispute. Thus soon after sibling of Respondent no. 3 became Director of Samana Engineering Respondents started giving huge loans to that company. Reasons are obvious.

The counsel for Respondents argued that for business connections with Samana Engineering for strategic purpose the amount was lent. He tried to show that Arjuna Engineering (Respondent No. 1) is Electrical Company while Samana Engineering is Civil Contractor. He was however unable to answer a question we had asked at the time of arguments that- Did Samana Engineering given any business to Arjuna Engineering? The counsel said that he will have to check but he did not revert back. The learned counsel for the Appellant rightly submitted that such diversion of huge funds of the Respondent No.1 Company by the Respondents 2 and 3 suppressing the fact that Director of Samana Engineering was their relative amounts to failure of Fiduciary duty and should have been treated as Oppression of the Appellant minority shareholder and Mismanagement of the funds of the Company. The learned counsel for the Appellant referred to Section 292 of the Companies Act 1956 (old Act in brief) and submitted that under the said Section as per sub Section 1(e) the power to make loans can be exercised by the Directors only by means

of Resolutions passed at meetings of the Board. Sub Section 4 of Section 292 of the old Act reads as under:-

*“(4) Every Resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases. ”*

In the present matter the Respondents have not shown us any Resolution passed keeping Section 292 in view permitting making of loans of huge amounts to Samana Engineering. It is surprising that such big amounts to the extent of 88 lakhs (and more) were made without interest and without any security being taken.

13. The Respondents with their reply (Diary No. 3002) filed Annexure R-5 letter dated 27.03.2013 informing the Appellant that the business had been quiet poor since last year due to overall downturn of the economy and because of very limited project incoming and outgoing of fund imbalance was severe for last several months. Giving such reasons the letter shows that the Respondent No. 2 informed the Appellant that he was considering pay cut of the Directors. There is no dispute that after issue of such letter, the pay of the Appellant was cut. Initially it appears pay of other Directors was also reduced. Reference is being made to this letter dated 27.03.2013 as the record itself shows that although the Respondent Nos. 2 and 3 took such stand, they continued to

transfer funds to Samana Engineering. The chart in Company Petition Para 6.5 shows that after above letter dated 27.03.2013, on 08.06.2013 Rs. 15 lakhs; on 15.06.2013 Re 10 lakhs and on 21.06.2013 Rs. 25 lakhs were transferred to Samana Engineering by what is called a simple loan. If the Company was not doing well; was not giving dividends; resorting to salary-cut, there was no justification on the part of Respondents for transferring such huge amounts to another Company which is having similar business and from which no commercial benefit is shown and in which Company one of the Directors is close relative to these Respondents 2 and 3. Only because subsequently the amounts have been returned by Samana Engineering does not make the illegal acts legal.

14. The Respondents have with reply filed in Appeal (Diary No. 3002) filed copy of minute (at Page 48) dated 15<sup>th</sup> June, 2013 to show that the Board of Directors had decided that in Banking transaction the Appellant needs to be replaced with Respondent No. 3. The Resolution shows that the Appellant had opposed but the Respondents (a couple) did not agree with the Appellant and the power of Appellant as Joint Signatory was taken away. The Appellant has filed at Annexure A-32 and 33 with Application Diary No. 4876 the communication which the Respondents sent to the Bank regarding change in authorized signatory. The copy of the Resolution (Annexure A-32/Page 90/Diary No. 4876) shows that Respondents 2 and 3 were authorized to sign cheques “severally”. This makes it clear as to how the Respondents were earlier able to transfer huge amounts to Samana Engineering from 18.10.2012

without letting Appellate know although his authority as a signatory in Banking transaction was taken away on 15<sup>th</sup> June, 2013. In any case it is not the defence of the Respondents that the Appellant was party to the transactions of transferring money to Samana Engineering.

15. Thus we hold that the Respondents are guilty of Oppression of the Appellant in removing the Appellant as signatory to the banking transactions and diverting huge amounts of Respondent No. 1 Company to a Company in which Respondents 2 and 3 were interested and the Respondents are guilty of Mismanagement of the funds of the Company. The Respondents are also responsible for the loss of interest on the amounts which were transferred to Samana Engineering. There is no dispute regarding the fact that the Company has not been paying dividends to the shareholders who are only two, that is, the Appellant and the Respondent No. 2.

16. Coming to the other grievance of the Appellant as seen in above Para 5 D regarding reduction in salary, we have already discussed the letter which was sent by the Respondent No. 2 that due to down turn in economy he was effecting pay cut for the Directors from the month of March. We have already discussed that although the Company was lending huge amounts, this excuse was given of down turn of economy to cut salary of the Directors. At the time of arguments there was no dispute regarding the fact that after some time the salary of the Respondents 2 and 3 was restored but the same was not done as regards the Appellant. Firstly we find that the excuse given in the letter dated

27.03.2013, on the basis of record is not true and secondly if the salary of other Directors were being restored, there was no justification of not restoring the same for the Appellant. There would have to be a Resolution to impose such pay cut or to give deferential treatment to different Directors. Nothing to this effect is brought to our attention. The learned NCLT although found that the salary of the Respondents 2 and 3 was restored to previous level but that of the Appellant was not revised, gave no relief to the Appellant. The Appellant has with Application Diary No. 4876 filed copies of Income Tax Returns of the Company for the years 2010-11, 2011-12 and 2012-13. It has also been pleaded by the Appellant that the Income Tax Returns showed that the Company was doing well. Looking to this and the reasons discussed earlier, it is appearing from record that the Respondents resorted to reasons which were false in order to impose the salary cut on the Appellant and which was not justified and which act amounted to Oppression of minority shareholder Director. It is necessary that the salary cut imposed by the Respondents on the Appellant on 27.03.2013 is set aside and due and drawn should be worked out and he should be paid all his dues as if there was no salary cut.

17. As regards the other grievance made by the Appellant that although the Company was to pay the rent of the residential accommodation of all the Directors but the rent of his accommodation was not paid and he was put in agonizing situation. The defence of the Respondents in pleadings does show that even on this count there is substance in what the Appellant is stating. The Application of the Appellant (Diary No. 4876) shows Annexure A-26 (Page 84)

where the Respondent Company itself appears to have informed the landlord of the Appellant that they were terminating the agreement of tenancy and that they would vacate the Premises by 30.06.2013. The counter of Respondents itself shows that the Appellant and landlord extended the contract by 2 months and he paid the rent himself and vacated in mid August. Such conduct of the Respondents, even if it was not to be calculated as Oppression by itself, it gains weight due to the other conduct of the Respondents in their treatment to the Appellant. Apart from this, there is other incident where FIR was registered relating to contraband liquor having transported in one of the Company vehicle which was admittedly registered in the name of Appellant. This can be seen from the pleadings as referred in Para 5 F supra. Respondents cannot take comfort by simply saying that the Appellant need not fear his reputation and he can transfer his ownership of the vehicle to the Company because the offence when it was registered, the vehicle stood on the name of the Appellant and naturally he is concerned.

18. The acts of lending huge amounts and act of salary cutting on the basis of false excuses, as discussed above independently constitute individual acts of Oppression and Mismanagement. Other acts complained which are having substance, (as discussed above) collectively with other acts also constitute acts of Oppression of Appellant.

19. From the above, we find that the Respondents 2 and 3 are guilty of Oppression of Appellant and Mismanagement of the Company. Winding up of

the Company would unfairly prejudice the Appellant as it appears that the Company is doing well. It appears that Respondents 2 and 3 who happen to be a couple (with Respondent 2 having 60 per cent shares) are joining together to Oppress the Appellant who is the only other shareholder holding 40 per cent shares in the Company. The Appellant although he is having minority shareholding, still he is holding 40 per cent shares and is also Director of the Company and when he is the only other shareholder, there is no reason why he should not have legitimate expectation that in the financial matters he should be kept involved. Respondents 2 and 3 only because of their 60 per cent shareholding cannot debar the other shareholder from financial matters when he is founder Director also. This is necessary also because the record shows misuse of funds by the Respondents.

20. We pass the following order:-

**Order**

- i. The appeal is allowed. The Impugned Order and Judgement of the NCLT Chennai is quashed and set aside. For reasons discussed above we hold the Respondents 2 and 3 guilty of Oppression of Appellant and Mismanagement of the Company. Respondents 2 and 3 are directed to desist from indulging in such conduct.
- ii. The NCLT is directed to appoint Chartered Accountant to audit the accounts of the Company since 2010-11 till date and

*interalia* report regarding the loss of interest to the Respondent No. 1 Company due to Respondents advancing huge amounts to Samana Engineering and Construction Private Limited. The Chartered Accountant will fix responsibility for the loss and NCLT may give further directions regarding the recovery of the loss from Director/s found responsible from their personal accounts. NCLT will also decide regarding fees of auditor which shall be paid from Accounts of Respondent No. 1 Company.

iii. The pay cut imposed by the Respondents on the Appellant vide letter dated 27.03.2013 is quashed and set aside. The Appellant is entitled to the salary as was being paid, without such cut. The difference shall be worked out by the Chartered Accountant and Appellant would be entitled to the amounts from Respondent No. 1 Company.

iv. NCLT is directed to nominate an independent Director to the Company on remuneration/salary similar to other Directors. Considering the Oppression and Mismanagement on the part of Respondents 2 and 3 it is directed that in the Bank Accounts of the Respondent No.1 Company, the Respondent No. 2 and Appellant shall be Joint Signatories and the accounts shall be liable to be operated jointly with immediate effect. In case of deadlock in any transaction if Respondent No.2 or Appellant do not

agree on a transaction, independent Director will have a casting vote and Joint Signatories shall be bound to act accordingly. The independent Director will ensure that company follows provisions of the Companies Act and Rules.

The above Appointment of independent Director will be initially for a period of 2 years and thereafter NCLT may consider need or otherwise of the continuation of the independent Director.

v. The appeal is disposed accordingly. Respondents 2 and 3 shall each pay costs of Rs. 50,000 from their personal accounts to the Appellant as costs of this appeal.

vi. Parties to appear before NCLT Chennai on 13<sup>th</sup> August, 2018. NCLT Chennai may pass any further and incidental directions/orders necessary in the matter.

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

(Balvinder Singh)  
Member (Technical)

New Delhi  
24<sup>th</sup> July, 2018

Sh/nn