IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH COURT-III

CP No. 1649 of 2019

Under Section 241-242 of the Companies Act, 2013

CP/1649/2019

Vijay Mohanlal Parmar

Shareholder and Director of M/s Dream City Construction Private Limited

Having registered office at:

Shop No. 5, Gr. Floor, 6, Khandke Building, R. K. Vaidya Road, Veer Kotwal Udyan, Dadar (West), Mumbai – 400028

... Petitioner

Vs.

1. **Dream City Construction Private Limited**

   Company incorporated under the Companies Act, 1956
   CIN No:

   Having registered office at:

   Shop No. 5, Gr. Floor, 6, Khandke Building, R. K. Vaidya Road, Veer Kotwal Udyan, Dadar (West), Mumbai – 400028

2. **Mr. Hiralal Champaklal Jain**

   Shareholder and Director of M/s Dream City Construction Private Limited

   Having address at:

   Satvision Network, 720, 1st Floor, Jagdish Bhawan, Near Hanuman Mandir, Katrak Road, Wadala (West) Mumbai – 400031

3. **Mr. Yashwant Sudhakar Deshpande**

   Shareholder and Director of M/s Dream City Construction Private Limited

Having address at:

H-1102, 11th Floor, Indravadan Society, Padmabai Thakkar Road, Near Kohinoor Square, Dadar (West), Mumbai – 400028

... Respondents

Order pronounced on: 23.06.2026

Coram:

Sh. Hariharan Neelakanta Iyer
Member *(Technical)*

Ms. Lakshmi Gurung
Member *(Judicial)*

Appearances:

For the Petitioners : Adv. Akshay Petkar a/w. Adv. Aniket Malu

For Respondents : Adv. Sneha Phene a/w Adv. Kamlesh Kharade i/b India Law Alliance

***Per:* Coram**

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1. The CP/1649/2019 is filed by Mr. Vijay Mohanlal Parmar, a shareholder and director of M/s Dream City Constructions Private Limited under sections 241-242 of the Companies Act, 2013.

Background of the case

2. Mr. Vijay Mohanlal Parmar (**Petitioner**), Mr. Hiralal Champaklal Jain (**Respondent No. 2/ R-2**) and Mr. Yashwant Sudhakar Deshpande (**Respondent No. 3/R-3**) incorporated the company, namely, M/s Dream City Constructions Private Limited (in short '**the Company**'**/Respondent 1**) on 01.09.2010 under the Companies Act, 1956 (in short, the '**Act of 1956**') to invest in a slum rehabilitation project /the Joint Development Project. The main objects of the Company as per its Memorandum of Association (in short '**MoA**') are:

> *"1. To carry on in India or abroad, the business to construct, build, alter, acquire, convert, improve, develop of all type of construction*

and development work in all its branches such as roads, ways, culverts, bridges, railways, waterways, water tanks, reservoirs, factories, buildings, commercial complexes, residential commercial complexes, technology complexes, sports complexes, recreation centers, flyovers, skyways, airports, runways, hotels, hospitals, malls, power stations and other similar work."

3. At the time of incorporation, the Petitioner was holding 34% of the shares of the Company and the Respondents No. 2 and 3 were holding 33% each of the shares of the Company. The Petitioner and Respondents No. 2 & 3 also became the directors of the Company.

4. On 20.06.2012, the Company executed a Joint Venture Agreement (in short '**JVA**') with one M/s Dignity Realty, a partnership firm, for the purpose of developing the slum rehabilitation project/Joint Development Project. After obtaining the requisite approvals on 25.11.2016 for the construction of flats in the said Project and the commencement certificate on 02.08.2017, the construction work commenced at the site of the Joint Development Project (in short '**the Project**').

5. The relevant clauses of the JVA executed between Dignity Realty as developer and the Company as Joint Venturer are reproduced below:

"4. The parties hereto hereby agree to contribute financial input to the project and the parties shall incur all expenses and pay all deposits including the premium for obtaining all sanctions and permission of Slum Rehabilitation Authority and other concerned authorities upto the stage of receiving the Commencement Certificate in equal proportion i.e. 50% by the developer and 50% by the Joint Venturer and thereafter all amounts required for development of the said Plot no. 323 and 324 including the cost of construction of the building thereupon shall be shared in the ratio of 75% by the developer and 25% by the Joint Venturer.

5. The parties hereto hereby agree that the initial expenses which is to be shared equally by the parties hereto include the cost or rental payable to the occupants to have transit camp accommodation viz; the same shall be incurred or contributed by the parties in the equal share and the professional fees of Architect's and RCC Consultant including of clavation architects.
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7. All deposits after Commencement Certificate is issue required to be borne or paid to the authorities after Certificate shall be shared 75% by the Developer and 25% by the Joint Venturer.

8. The parties hereby agree that in this joint venture project the developers shall be entitled to 75% of the flats and other premises available for free sale and the Joint Venturer shall be entitled to the remaining 25%. The parties shall divide the areas of 75% and 25% coming to their respective shares after the Slum Rehabilitation Authority have sanctioned the building plan and issued the commencement certificate but prior to commencing the work of redevelopment of the said Plot No. 323 and 324 each party thereafter shall be at liberty to sell or alienate the premises coming their respective share, receive the consideration therefor and appropriate the same to themselves without in any way accounting for the same to each other.

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13. In the event the Joint Venturer fail to contribute their share of 50% and/or of 25% as the case may be and/or commit any other breach the developers shall be entitled to terminated the Joint Venturer Agreement by giving 15 days prior notice to pay the defaulted/required amount and/or remedy the breach. Further in the event due to default or breach this Agreement has stood terminated then in that event the Joint Venturer shall have no right into or upon the 25% of the premises and in the event the Joint Venturer have sold the premises, the developers shall be entitled to receive all installments of payment from such purchasers. The Developer in the event shall refund all amount incurred by the Joint Venturer till such cancelation within 15 days of such termination & till such amount is refunded the Joint Venturer shall have charge on the said property upto 25%."

6. The Company made investments in the Project as per the JVA and for this purpose, the Company also started raising funds from other investors and as consideration, the Company issued allotment letters to the investors thereby allotting flats in the Project.

7. Meanwhile, disputes have allegedly arisen between the Petitioner and Respondent No. 2 regarding the demarcation of the premises of the Project. The Petitioner claims to have proposed to demarcate the Company's share in the Project from the remaining share of Dignity

Realty as per the JVA. However, the demarcation exercise was not carried out.

8. In January 2018, Dignity Realty filed an application for registration of the Project with the Maharashtra Real Estate Regulatory Authority (in short '**MahaRERA**') with Dignity Realty as the sole 'promoter'. This led to disagreement between the Petitioner and Dignity Realty since the Petitioner wanted to add the Company as 'co-promoter' of the Project.

9. Thereafter, in March 2018, Dignity Realty entered into agreements with third parties for sale of flats in the Project after obtaining No Objection Certificate (in short '**NOC**') from Respondent No. 2 on 12.03.2018, which caused further rift between the Petitioner on one side and the Respondent No. 2 and Dignity Realty on the other side.

10. In the meantime, a Share Purchase Agreement dated 27.03.2018 was executed whereby Respondent No. 3 transferred all his 33% shares in the Company in favour of the Petitioner and consequently, Respondent No. 3 also resigned from his directorship in the Company. Thus, in pursuance of the Share Purchase Agreement, the Petitioner held 67% of the shares in the Company whereas Respondent No. 2 continued to hold his 33% of shares and also, the Petitioner and Respondent No. 2 became the directors of the Company.

11. On 06.06.2018, Dignity Realty, through its Advocates, issued a letter (**Termination Letter**) alleging that the Company had failed to perform its part in terms of the JVA and called upon the Company to pay Rs. 3,50,05,703 towards its contribution under the JVA, within a period of 15 days, failing which the JVA was to stand terminated.

12. In response, the Petitioner issued letter dated 21.06.2018 on behalf of the Company, through its advocates, *inter alia* calling upon Dignity to cease-and-desist from considering the JVA as terminated.

13. Pursuant thereto, the Dignity Realty sent a letter dated 27.06.2018 to the Company *inter alia* stating that a discussion was held between Dignity

Realty and Respondent No. 2 and it was informed that no resolution was passed authorizing the Petitioner to reply to the Termination Letter.

14. Thereafter, on 25.07.2018, Dignity Realty sent another letter to the Company reiterating the contents of its earlier letter dated 27.06.2018 and further alleged that basis the discussions held with Respondent No. 2, the JVA stood terminated in terms of the Termination Letter. In response thereto, the Petitioner issued another letter dated 27.07.2018 on behalf of the Company, reiterating the contents of its earlier letter dated 21.06.2018 and also clarified that the letter dated 21.06.2018 was issued with proper authority.

15. On 30.07.2018, the Petitioner on behalf of the Company filed Complaint bearing No. CC006000000055539 of 2018 before the MahaRERA challenging the registration of the Joint Development Project (hereinafter referred to as '**RERA Complaint**'). The Respondents No. 2 and 3 appeared before MahaRERA and produced a letter dated 06.08.2018 showing that the registration of the Project took place with the consent of Respondents No. 2 and 3 and that the RERA Complaint was filed without any resolution or authorisation. On 24.09.2018, MahaRERA passed an interim order in the RERA Complaint directing the parties to maintain status quo till the final disposal of the RERA Complaint.

16. Meanwhile, on 28.08.2018, a Cancellation Deed was executed whereby the Share Purchase Agreement dated 27.03.2018 was cancelled and the Respondent No. 3 re-acquired his 33% shares from the Petitioner. Consequently, the R-3 was again inducted as the director of the Company.

17. While the RERA Complaint was pending, Respondent No. 2 sent a letter dated 25.03.2019 to the Petitioner, calling for an Extraordinary General Meeting (in short '**EOGM**') scheduled to be held on 04.04.2019 to *inter alia* consider and approve termination of the JVA. The Petitioner responded vide letter dated 02.04.2019 and demanded revocation of the notice for the proposed EOGM.

18. The EOGM was held as per the schedule on 04.04.2019, which was attended only by Respondents No. 2 and 3, and as proposed, the resolution for termination of the JVA between the Company and Dignity Realty was approved. Thereafter, Respondents No. 2 and 3 sent a letter dated 12.04.2019 denying the contents in the Petitioner's letter dated 02.04.2019 and further informed that the JVA has been terminated at the EOGM held on 04.04.2019.

19. Aggrieved by the actions of Respondents No. 2 & 3, the Petitioner has filed the present Petition No. 1649/2019 on 01.05.2019, seeking the following final reliefs:

A. Prevent them from executing and/or registering the deed of cancellation as called for in the letter dated 06.06.2018 issued by the advocates of M/s Dignity Realty;

B. Set aside all the resolution passed at the Extraordinary General meeting of the Company held on 4th April 2019 including the resolution approving the termination of the Joint Venture Agreement between the Company and M/s Dignity Realty;

C. Direct the Respondents No. 2 and 3 to address and complete delivery of a letter the Hon'ble Maharashtra Real Estate Regulatory Authority, Mumbai revoking their earlier letter dated 6th August 2018;

D. Pass suitable directions enabling the Petitioner to effectively pursue the legal proceedings already initiated/ to be initiated by it to protect the rights and interests of the Company;

E. Set aside the Notice of Extraordinary General Meeting dated 25th March 2019 as null and void to the extent the said notice proposes to seek shareholders' approval to terminate the Joint Venture Agreement between the Company and M/a Dignity Realty;

F. Direct the Respondent Nos. 2 and/or 3, as may be the case, to restore to the Company any undue benefit received by them as a consequence of their oppression of the Petitioner and mismanagement of the affairs of the Company;

G. Direct removal of the Respondent Nos. 2 and 3 from the Board of Directors of Respondent No. 1 and appoint an administrator to oversee the affairs of the Company till such time a new Board of Directors is not constituted in terms of the orders of this Tribunal;

H. Direct the Administrator appointed in terms of Prayer (G) or any other suitable person to conduct an investigation into mismanagement of affairs of Respondent No. 1 committed by the Respondent Nos. 2 and 3, pursuant to Section 213 of the Companies Act, 2013, including into the transactions and dealing of Respondent No. 1 with particular regard to transactions with M/s Dignity Realty, and submit a report to this Tribunal such that this Tribunal can pass such further orders as may be necessary so as to recover the loss that has been caused to the Company;

I. Set aside any fraudulent transfers, payments, or other acts relating to the Joint Development Project or the Joint Development Agreement made or done by or against the Respondent No. 1, and direct restitution of any amounts or property transferred fraudulently;

J. Direct the Respondent Nos. 2 and 3 to make good the loss caused to the Company, estimated in terms of the report prepared and submitted before this Tribunal in terms of Prayer (H) above;

K. Pass such ad interim and interim orders as are prayed for;

L. Direct the Respondent Nos. 2 and 3 to reimburse all legal and administrative costs that the Petitioner has been constrained to bear in pursuing the present Petition; and

M. Pass such other relief as the Tribunal may deem fit.

20. **Only Prayers 'B' and 'E' are pressed:**

Before we consider the submissions made by parties, it is noted that on 23.09.2025, Ld. Counsel for the Petitioner submitted that he is limiting his arguments only to prayers 'B' and 'E' and not pressing for other reliefs which was also recorded in the order dated 23.09.2025 as follows:

> *"During the course of hearing, Ld. Counsel for the petitioner submits that he is limiting his argument only to prayers 'b' and 'e' and is not pressing other reliefs."*

This Tribunal, therefore, deems it fit to consider prayers 'B' and 'E' only.

21. **Submissions of the Petitioner**

21.1. It is submitted that the Petitioner is a shareholder holding 34% of the equity shares of the Company and therefore, is entitled to file the present Company Petition.

21.2. It is submitted that it has been the understanding between the Petitioner and Respondents No. 2 and 3 that the sole objective for the formation of the Company was investment in the Project and that no other business and/or venture would be undertaken by the Company.

21.3. It is further submitted that as per the JVA, the Project is to be developed jointly by Dignity Realty and the Company as developer and co-developer respectively, and that the costs were agreed to be borne in equal proportion till the receipt of the commencement certificate and thereafter, in the ratio of 75:25 between Dignity Realty and the Company. Further, it is submitted that as consideration, Dignity Realty shall be entitled to 75% of the flats and other premises available for free sale and the Company shall be entitled to the remaining 25%.

21.4. It is submitted that demarcation exercise is compulsory under the JVA and it was only upon completion of such demarcation that the rights of the parties to the demarcated premises will get crystallised. However, when the Petitioner insisted for demarcation, the Respondent No. 2 avoided to carry out the same. Such refusal to demarcate the premises was devoid of any commercial or business rationale and to the benefit of Dignity Realty and Respondent No. 2 at the expense of the Company.

21.5. It is submitted that since demarcation was not carried out, the Company and Dignity Realty continued to have undivided interest,

share, right and title in the Project and therefore, no area therein can be sold by Dignity Realty without the consent of the Company. However, Dignity Realty entered into agreements with third parties for sale of flats in the Agreement without the consent of the Company. It is submitted that in the absence of the demarcation exercise, Dignity Realty does not have appropriate ownership rights over the premises and therefore, the Sale Agreements dated 15.03.2018 entered into by Dignity Realty is violation of the terms of the JVA.

21.6. It is submitted that the No Objection Certificate dated 12.03.2018 was allegedly issued by the Respondent No. 2 on a forged letter head of the Company. The address of the Company as mentioned in the NOC was "Jagdish Bhawan, 1st Floor, Near Hanuman Temple, Wadala (W), Mumbai – 400031", which is neither the registered address nor the correspondence address of the Company. Further, the said NOC was issued without the knowledge and permission of any of the shareholders of the Company without any requisite authority.

21.7. With respect to the termination letter dated 06.08.2018 issued by Dignity Realty demanding payment from the Company, it is submitted that there was no dispute between Dignity Realty and the Company in relation to the payments to be made in terms of the JVA nor there was any outstanding demand from Dignity Realty for payments to be made by the Company. Accordingly, the Company sent a reply on 21.06.2018 asking Dignity Realty to cease and desist the termination of JVA. However, thereafter Dignity sent a response dated 25.07.2018 stating that a discussion was allegedly held between Dignity Realty and Respondent No. 2 wherein the Respondent No. 2 denied any authority given to the Petitioner to send reply to the termination notice. It is submitted that such private discussion was held without any authority and with an intention of deriving unlawful gains for Respondent No. 2.

21.8. As regards the RERA Complaint filed by the Petitioner, it is submitted that the same was within the knowledge of the Respondents No. 2 and 3. Further, Respondent No. 2 signed and issued a cheque dated 30.07.2018 for Rs. 6000 towards professional services to the advocates of the Company who filed the RERA Complaint on behalf of the Company.

21.9. With respect to the letter dated 06.08.2018 presented by the Respondents No. 2 and 3 before the MahaRERA, it is submitted that the statements made in the said letter are false and misleading without any authority and was made to derail the RERA proceedings. It is further submitted that the Respondents No. 2 and 3 have acted in concert with Dignity Realty to undermine the rights and interest of the Company in the Joint Development Project.

21.10. It is also submitted that in the letter dated 06.08.2018, Respondents No. 2 and 3 have specifically stated that they jointly hold 67% of the equity shares in the Company which is a false statement since Respondent No. 3 had transferred his part of shares in favour of the Petitioner by executing the Share Purchase Agreement dated 27.03.2018. This Agreement subsisted till 28.08.2018. Thus, from 27.03.2018 till 28.08.2018, the Petitioner held 67% of shares in the Company. It was only thereafter that a Cancellation Deed was executed on 28.08.2018 whereby the Respondent No. 3 re-acquired his shares from the Petitioner.

21.11. Regarding the transfer of shares, it is submitted that on believing the representation of the Respondent No. 3 in settling the disputes between the Company and Dignity Realty, the Petitioner consented to Respondent No. 3's reinstatement as shareholder and director.

21.12. As regards the termination of JVA at the EOGM held on 04.04.2019, it is submitted that the JVA and the Project were the

sole undertaking of the Company and that the EOGM held on 04.04.2019 and the resolution passed for termination of the JVA is not only detrimental to the Company's financial interest but also an attempt by Respondents No. 2 and 3 to siphon off the funds out of the Company and would amount to abuse of their power and breach of their fiduciary duty to the Company. It is further contended that no rationale was provided to pass such a resolution to terminate the JVA especially when the *status quo* order passed by MahaRERA on 24.09.2018 in the RERA Complaint was in subsistence.

21.13. It is submitted that the act of Respondents No. 2 and 3 in giving away the Company's ownership rights over the Project to Dignity Realty amounts to mismanagement of the affairs of the Company.

22. **Common Reply of the Respondents**

The Respondent No. 1 is the Company and Respondents No. 2 and 3 are individuals who are the directors as well as the shareholders of the Company. Mr. Yeshwant Sudharkar Deshpande/Respondent No. 3 has filed Affidavit in Reply on behalf of the Respondents and submitted as follows:

22.1. It is submitted that the reliefs sought in the present Petition relating to termination of the JVA have become infructuous since the JVA has been terminated vide Deed of Cancellation dated 10.06.2019 and Dignity Realty has agreed to refund the contribution amount of Rs. 1,13,03,000 and has already issued cheque bearing no. 045574 dated 07.06.2019 for an amount of Rs. 13,03,000 and will give a post-dated cheque no. 045575 dated 31.12.2019 of Rs. 1,00,00,000.

22.2. It is submitted that Dignity Realty is at present in possession of the aforesaid property where the Project is being undertaken. However,

the Petitioner has not added Dignity Realty, which is a necessary party, as a Respondent to the Petition.

22.3. It is submitted that under the JVA, the Company was required to contribute 50% of the total expenses incurred along with the deposits and premiums to be paid for obtaining the required sanctions and permissions up to the stage of procuring the commencement certificate and the remaining 50% expenses were to be contributed by Dignity Realty. The Company had initially contributed approximately Rs. 1,13,00,000, however, thereafter, the Respondents and the Petitioner were unable to contribute towards the project. However, Dignity Realty went ahead with the Project without any contribution by the Company. The table showing the expenses incurred till date on the Project and the contributions made thereto is annexed as *'Exhibit E'.*

22.4. It is submitted that in order to become a co-promoter of the Project, the Company was required to be a premium of 5%, however, since the Company did not have adequate funds, the Project continued to be in the sole name of Dignity Realty.

22.5. As regards the demarcation exercise, it is submitted that the Company had failed to contribute its part as per the JVA because of which the demarcation exercise was not carried out. It is further submitted that the Petitioner was aware of the NOC issued to Dignity Realty for sale of flats. Also, even the Company has issued allotment letters to third parties despite the demarcation exercise not being carried out.

22.6. It is submitted that during a substantial period from the date of incorporation, the Petitioner was managing the affairs of the Company and the Respondents did not question or interfere with the decisions of the Petitioner and the Respondents had even signed documents and cheques at the request of the Petitioner. Further, all relevant documents of the Company remain in the

custody of the Petitioner. Since the Petitioner was incharge of the Company's management, Dignity Realty approached the Petitioner to comply with the formalities of RERA to get the Company register as the co-promoter of the Project. However, due to the Petitioner's sudden change in demand, the formalities could not be completed despite repeated requests from Dignity Realty.

22.7. It is further submitted that Dignity Realty also called upon all the directors of the Company which includes the Petitioner to comply with the terms of the JVA and requested them to provide financial assistance. However, due to financial constraints, neither the Petitioner nor the Respondents were in a position to pay the monies. In view thereof, the Petitioner and Respondents had already amongst themselves decided that they may not be in a position to continue with the Project and it was in the interest of the parties that the JVA was decided to be terminated. Dignity Realty was also informed about the same for which notice was also sent to Dignity Realty. It was only thereafter that they decided to hold the EOGM. However, to their shock and surprise, the Petitioner sent letter dated 02.04.2019 alleging that the EOGM was illegal and the termination of JVA was invalid. Nonetheless, the Respondents conducted the EOGM and the Petitioner was not present for the meeting purposely. The Respondents having the 2/3rd majority shareholding in the Company, passed the resolution to terminate the JVA. It is submitted that the EOGM was held as per section 100 of the Companies Act, 2013.

22.8. It is submitted that the claim of the Petitioner that he was unaware if the termination of the JVA is false since the Petitioner has been sending messages over WhatsApp during the period between March 2019 to April 2019, asking Respondent No. 3 to fix a date and time for executing the cancellation deed. Thus, the Petitioner has not approached the Tribunal with clean hands.

22.9. It is submitted that the RERA Complaint challenging the registration of the Project was filed by the Petitioner without any authority and without consulting the Respondents. Neither the Articles of Association of the Company nor its Memorandum of Association bestows any power upon any director to institute any proceedings without having any resolution to that effect.

22.10. As regards the transfer of shares by R-3 to the Petitioner, the shares were transferred for a consideration of Rs. 1,74,90,000 to be paid by the Petitioner within a period of one year. However, since the Petitioner failed to pay the consideration, the transfer of shares stood cancelled on 28.08.2019. Further, since no consideration was paid by the Petitioner, there is no question of transfer of shares.

22.11. It is submitted that the Respondents are aware of only two allotment letters issued by the Company to investor namely, Mr. Abhay Malap and Mr. Jawahar Mohanlal Doshi. However, it was later found out that the Petitioner has allotted a flat to one Ms. Geeta Chedha without the consent or knowledge of the Respondents and unilaterally appropriated the amount by transferring it to his proprietary concern "Velocity Furnishing" account.

22.12. Thus, it is submitted that the Petitioner has violated the provisions under section 180(1)(d) of the Companies Act, 2013. It is further submitted that the Petitioner has failed to carry out his duties as a director of the Company by acting in contravention of section 166(4) of the Companies Act, 2013.

22.13. It is submitted that the Respondents deny that there has been continuing acts of oppression and mismanagement against the Petitioner, nor the Company has undertaken any other business or venture as alleged in the Petition.

Subsequent developments in the case

23. During the pendency of this Petition, a Deed of Cancellation dated 10.06.2019 was executed between Dignity Realty and the Company thereby terminating the JVA dated 20.06.2012.

24. During the hearing of the Petition on 09.12.2019, Ld. Counsel for the Respondent brought to the notice of this Tribunal that a cheque for an amount of Rs. 1 crore was received by the Company and submitted that the said cheque shall not be deposited before 31.01.2020 and in the event the cheque is deposited, the same will not be withdrawn before the next date of hearing. The same was recorded in the interim order dated 09.12.2019 as follows:

> *"The counsel for the respondent fairly submits that a cheque of Rs. 1 crore which has come to the respondent company for being deposited, will not be deposited before 31 January, 2020 and in case deposited shall not withdraw the amount before the next date of hearing.*
>
> *List this matter on 22.01.2020."*

25. On 22.01.2020, the Tribunal ordered that the interim order passed on 09.12.2019 shall continue until further orders.

26. Meanwhile, a company application bearing no. 200/2021 (**CA/200/2021**) was filed by one Mr. Jawahar Mohanlal Doshi seeking release of Rs. 87,00,000/- which was paid by Mr. Jawahar Doshi towards a residential project. Similarly, another company application no. 285/2021 (**CA/285/2021**) was filed by Abhay Suresh Malap and Ankita Suresh Malap seeking release of Rs. 35,00,000/- which was paid by them towards residential project. However, both these applications were dismissed vide order dated 15.12.2021 on the ground of non-prosecution.

27. Consequently, two restoration applications no. 2/2022 and 3/2022 were filed respectively by Jawahar Doshi and Abhay Suresh Malap for restoring CA/200/2021 and CA/285/2021, respectively. The restoration applications no. 2/2022 and 3/2022 were allowed vide order dated

16.04.2024 and accordingly, CA/200/2021 and CA/285/2021 were restored. On the same date of hearing, the Applicants of CA/200/2021 and CA/285/2021 sought withdrawal of both the applications which was allowed. The relevant extract of the order dated 16.04.2024 is reproduced below:

> *"**R.A. 2/2022 & R.A. 3/2022***
>
> *These applications have been filed by Jawahar Mohanlal Doshi for restoration of Company Applications No. 200 of 2021 and CA 285/2021 respectively which was dismissed for non-prosecution on 15.12.2021. Ld. counsel for the applicant submits that the applicant could not join virtually due to technical glitch faced by the advocate. Upon considering the submission made by the counsel, the R.A. 2/2022 and R.A. 3/2022 are **allowed** and Company Appeals Nos. 200 of 2021 and 285 of 2021 are **restored** to file.*
>
> ***C.A. 200/2021***
>
> *This application has been filed seeking refund of the amount invested in the company as flat buyers. Vide order dated 13.02.2024, Ld. Counsel had sought time to seek instructions whether to pursue the application before this Tribunal or to take appropriate remedy. Upon instructions, Ld. counsel seeks to withdraw the present application with liberty to pursue the remedy elsewhere. The Company Application CA 200/2021 is **dismissed as withdrawn** however with liberty to pursue appropriate remedy before competent forum.*
>
> ***C.A. 285/2021***
>
> *This application has been filed seeking refund of the amount invested in the company as flat buyers. Vide order dated 13.02.2024, Ld. Counsel had sought time to seek instructions whether to pursue the application before this Tribunal or to take appropriate remedy. Upon instructions, Ld. counsel seeks to withdraw the present application with liberty to pursue the remedy elsewhere. The Company Application CA 285/2021 is **dismissed as withdrawn** however with liberty to pursue appropriate remedy before competent forum."*

28. Further, on the same date of hearing i.e. 16.04.2024, an Intervention Petition No. 1/2022, which was also filed by some flat purchasers, was dismissed in following terms:

> ***"Intervention Petition 1/2022***

None appeared for the applicant. Order dated 13.02.2024 record as follows:

> *"Adv. K.M Savla for intervener submits that respondent company is expected to receive approx. Rs. one crore from M/s Dignity Reality and the proposed interveners are the flat buyers from the R-1 company and if such transfer is allowed their interest would be prejudiced as they have filed complaint before MahaRERA against the petitioner, respondent company and Dignity Reality. The present CP is under section 241 & 242 of Companies Act 2013 for oppression and mismanagement of the respondent company. Prima facie, the reliefs sought by the interveners appear to be misconceived and remedy to recover the amount paid for flats lies elsewhere. The Counsel seeks some time to argue the application."*

Despite seeking opportunity to make submission on the applicant, none appeared for the applicant. Be that as it may, it is recorded that in a petition under section 241 & 242 of the Companies Act 2013, which is relating to disputes interse the shareholders. The flat buyers' remedy against respondent company is elsewhere. Therefore present intervention petition 1/2022 is ***dismissed.****"*

29. Meanwhile, the Petitioner had filed IA/41/2022 seeking cancellation of some sale agreement executed subsequent to the filing of the Petition and also sought a stay on the creation of any third-party interest. Thus, the only application that was left besides the main Company Petition was IA/41/2022. However, during the hearing on 13.08.2024, it was brought to the Tribunal's notice that the agreements against which the said IA was filed, have been cancelled. Thus, the Bench decided to proceed to hear the Company Petition instead of IA/41/2022. The relevant order is reproduced below:

> ***"I.A./41/2022***
>
> *1. This application has been filed by the original petitioner Mr. Vijay Mohanlal Parmar seeking following prayer:*
> *xxx*
>
> *2. However, it has been fairly submitted that the agreement has been cancelled, and the deed of cancellation has also been executed and registered. Under such circumstances, we deem it appropriate to proceed with the hearing of the main Company Petition instead of the present application."*

30. ***Financial Statements of the Company***

i. During the hearing on 11.02.2025, it was noticed that the financial statements of the Company were not annexed to the Petition. Accordingly, liberty was given to file the Financial Statements of the Company from the incorporation date till 31.03.2019, after serving on the other side.

ii. Pursuant thereto, Respondent No. 2 filed the Affidavit dated 23.05.2025 and placed on record the copies of the audited Financial Statements for the Financial Years (in short '**F.Y.**') from 2010-11 till 2015-2016. The copy of the email dated 21.04.2025 whereby the said financial statements were served upon the Petitioners is also annexed to the Affidavit.

iii. Thereafter, the Petitioner filed Affidavit dated 03.07.2025 and placed on record the audited Financial Statement for F.Y. 2016-17.

Discussion & Findings

31. We have heard Ld. Counsel for the Parties and perused the record.

32. The Petitioner is a shareholder of the Company holding 34% of the shares as on the date of filing of the Petition, and therefore, satisfies the requirement under section 244 of the Companies Act, 2013 and is eligible to file the present Petition.

33. Recapitulating the factual matrix in the present case, the Petitioner along with Respondents 2 and 3 had jointly incorporated the Company on 01.09.2010 for the purpose of investing in a slum development real estate project. At the time of incorporation of the Company, the Petitioner held 34% of shares while the Respondents No. 2 & 3 respectively held 33% shares each in the Company. The Petitioner and Respondents 2 & 3 also became the directors of the Company.

34. The JVA which was executed on 20.06.2012 between the Company and M/s Dignity Realty for the purpose of investing in the Project is the genesis of all the disputes that has arisen between the Petitioner on one side and the Respondents No. 2 & 3 and Dignity Realty on the other side.

Arguments of the Parties

35. The arguments advanced by Mr. Akshay Petkar, Ld. Counsel for the Applicant, are summarized below:

i. It is submitted that despite the JVA providing for demarcation of the project premises, no commercial or business rationale was given by Respondent 2 for refusing to demarcate the premises. This refusal to demarcate the premises was against the interests of the Company and was for the benefit of Dignity Realty. Further, since demarcation has not been carried out, the Company and Dignity Realty together have an undivided interest, share, right and title in the Project and therefore, no area therein can be sold by Dignity Realty without the consent of the Company. However, Dignity Realty unilaterally entered into sale agreements with third parties without the consent of the Company but merely based on a NOC given by Respondent No. 2 which, according to the Petitioner, was issued on a forged letter head of the Company to facilitate the sale. Thus, it is submitted that Respondent No. 2 has breached his fiduciary duty towards the Company and its shareholders and is punishable under section 447 of the Act.

ii. The Termination Letter dated 06.06.2018 was issued by Dignity Realty in collusion with Respondent No. 2.

iii. Respondents No. 2 and 3 have conducted the EOGM on 04.04.2019 in contravention of the mandatory requirements of Section 102 of the Companies Act, 2013 which requires an explanatory statement for any resolution to be passed.

iv. The resolution to terminate the JVA passed in the EOGM was against the interest of the company. Further, the termination of JVA amounts to the disposal of the sole/substantial undertaking of the Company. However, the Respondents No. 2 and 3 failed to obtain a special resolution for the termination of the JVA as required under section 180(1)(a) of the Companies Act, 2013. Reference is made to ***Indiraben Wd/o. Shri Vinodrai Hirjibhai Kansagra vs. Galaxy Cinema Pvt. Ltd. & Ors. [CP/1/AHM/2023]*** and it is submitted that though the provisions of section 180 is not made applicable to private companies as per the notification dated 05.06.2015 issued by the Ministry of Corporate Affairs (**MCA**), however, the said notice also states that such exemptions must not compromise the protection of the interest of all shareholders. Reliance is also placed on ***Company Appeal (AT) No. 03/2018.***

v. It is submitted that the Respondents No. 2 and 3 have also defaulted in complying with sections 92 and 137 of the Companies Act, 2013 by failing to file the annual returns and financial statements after 31.03.2017. Therefore, the MCA Notification dated 05.06.2015 would not be applicable since the said Notification was amended vide Notification dated 13.06.2017 whereby a new Para 2A was inserted according to which the exemptions provided in the MCA Notification dated 05.06.2015 was made applicable only to those private companies that have not violated sections 92 and 137 of the Companies Act, 2013.

36. The counter-arguments put forth by Ld. Counsel for the Respondents are as follows:

i. The Company was required to invest a sum of Rs. 6,77,81,135 in the Joint Development Project as per the JVA, however, the Company was able to invest only Rs. 1,13,00,000. Consequently, Digital Realty sent letter dated 06.06.2018 and warned of initiating action against the Company. Thus, the termination of the JVA was not against the interest of the Company and its shareholders.

ii. It is further submitted that the JVA is already terminated vide Deed of Cancellation dated 10.06.2019 and Dignity Realty has refunded the entire amount of Rs. 1,13,00,000 contributed by the Company towards the Project, therefore, the present Petition has become infructuous. Furthermore, any relief sought against the termination of the JVA cannot be sought without impleading Dignity Realty as a Respondent.

iii. It is submitted that the Petitioner was aware of the termination of the JVA but now is attempting to show that the action was taken without his knowledge. Reference is made to ***Srikanta Datta Narasimharaja Wadiyar vs. Sri Venkateswara Real Estate Enterprises Pvt. Ltd. & Ors. [(1990) 68 Comp Cas (Kar)].***

iv. It is submitted that the Petitioner has already filed Commercial Suit (L) No. 19716 of 2022 before the Hon'ble Bombay High Court *inter alia* praying to set aside the deed of cancellation of the JVA. Therefore, the Petitioner is not entitled to claim the same relief from this Tribunal. Moreover, the only grievance of the Petitioner is termination of the JVA which cannot constitute an oppression/mismanagement. Reliance is placed on ***Lalita Rajya Lakshmi vs. Indian Motor Co. [AIR 1962 Cal 127].***

v. The Petitioner is himself guilty of wrongdoing in as much as he had taken Rs. 65,00,000 in the Company's account from one Ms. Geeta Chheda for allotment of flat in the Joint Development Project out of which Rs. 60,00,000 was immediately transferred by the Petitioner to his own proprietorship concern i.e. Velocity Furnishings. Further, the Petitioner had produced an unsigned copy of allotment letter to Ms. Geeta Chheda on the letterhead of the Company without any authority and knowledge of the Respondents. This would amount to violation of section 166(4) of the Companies Act, 2013.

vi. As far as the Petitioner's contention regarding violation of section 102 of the Companies Act, 2013, it is submitted that the notification dated 05.06.2015 issued by MCA, sections 101 to 107 and section 109 of the Companies Act, 2013 shall apply to private companies unless otherwise specified in the articles. In the present case, the Articles of Association of the Company clearly mentions that sections 171 to 186 of the Companies Act, 1956 would not apply. Section 173 of the Companies Act, 1956 corresponds to section 102 of the Companies Act, 2013. Thus, the explanatory statement under section 102 of the Companies Act, 2013 was not required to be annexed to the notice.

vii. As regards the contention that the notice was addressed to the 'Board of Directors' and the shareholders, it is submitted that there was a technical irregularity in addressing the notice to the 'Board of Directors', however, this itself cannot invalidate the notice since the Petitioner had received the same and even sent a reply dated 02.04.2019 to the said Notice.

viii. As regards the contention that the meeting was held at a place other than the registered office of the Company, it is submitted that as per explanation to Rule 18(3) of the Companies (Management and Administration) Rules, 2014, an extraordinary general meeting can be held at any place within India.

37. Before proceeding with the issues, we shall first deal with the preliminary objection raised by the Respondents that the Petitioner has raised various contentions against Dignity Realty which is a necessary and proper party to the present case, however, Dignity Realty has not been arrayed in the memo of parties.

38. It is noted that the JVA was executed between the Company and Dignity Realty which makes Dignity Realty a necessary party. However, as already noted above, during the final hearing, Ld. Counsel for the Petitioner submitted that he is pressing only for prayers 'B' and 'E' sought

in the present Petition. For ease of reference, we deem it appropriate to reproduce prayers 'B' & 'E':

> *B. Set aside all the resolution passed at the Extraordinary General meeting of the Company held on 4th April 2019 including the resolution approving the termination of the Joint Venture Agreement between the Company and M/s Dignity Realty.*
>
> *xxx*
>
> *E. Set aside the Notice of Extraordinary General Meeting dated 25th March 2019 as null and void to the extent the said notice proposes to seek shareholders' approval to terminate the Joint Venture Agreement between the Company and M/s Dignity Realty.*

39. Since the adjudication of the present Petition is limited to only prayers 'B and 'E' which are only relating to validity of the Notice of EOGM dated 25.03.2019 and the subsequent EOGM held on 04.04.2019, we are of the view that the present Petition can be disposed of based on the submissions and material on record.

40. ***Issue for consideration***

Having given our thoughtful consideration on the pleadings and the submissions of the parties, the issue that has arisen for the determination by this Tribunal is:

> *Whether the manner in which the Extra Ordinary General Meeting conducted on 04.04.2019 by the Respondents and the resolution passed for termination of JVA amounts to oppression and mismanagement?*

41. The relevant extract of the notice dated 25.03.2019 sent by the Respondents to the Petitioner for the proposed EOGM is reproduced below:

> *"Notice is hereby given that a Extraordinary General Meeting of the Board of Directors of the Company will be convened at Mr. Hiralal C. Jain, Office at 720, 1st floor Jagdish Bhawan, Near Hanuman Mandir, Katrak Road, Mumbai 400 031 on 4th April 2019 at Time 12 noon to transact the following business.*

1. *To approve the financials of the year 2017-2018 and 2018-2019.*
2. *To consider progress made by the Company.*
3. ***To consider and approve the Termination of Joint Venture with M/s Dignity Realty.***
4. *Any other business with the permission of Chair.*
5. *To give Vote of Thanks.*

42. The Petitioner, in his reply dated 02.04.2019 to the said intimation, opposed the holding of the EOGM for terminating the JVA. In his reply, the Petitioner alleged that the proposed termination was never discussed with the Petitioner and that the same is for the purpose of obtaining unlawful gains. The Petitioner also contended that the proposed EOGM is in violation of section 102 of the Companies Act, 2013 and further, the termination of JVA being the sole undertaking of the Company would have a crippling effect on the affairs of the Company. The Petitioner in his reply also stated that the termination of the EOGM has been proposed allegedly to:

i. *Surreptitiously cause benefit to Dignity by bringing an end to its obligations under the JVA. As stated above, the Company was entitled to receive 25% share in the benefits and advantages of the Joint Development Project, termination of the JVA will enable Dignity to wrongfully appropriate the entire benefits and advantages of the Joint Development Project;*

ii. *Surreptitiously misappropriate the funds of the Company and the Client invested in the Joint Development Project in terms of the JVA solely for the benefit of you the addressees No. 1 and 2;*

iii. *Jeopardize the ongoing litigation of the RERA Complaint against Dignity before the Hon'ble Maharashtra Real Estate Regulatory Authority, Mumbai challenging the incorrect registration of the Joint Development Project;*

iv. *Cheat and deceive the Client with an intent to cause wrongful loss to the Client, the Company and wrongful gains to Dignity, the addressees No 1 and 2.*

43. The Respondents went ahead with convening the EOGM on 04.04.2019 without paying heed to the contentions raised by the Petitioner.

44. Thereafter, the Respondents sent letter dated 12.04.2019 responding to the Petitioner's reply dated 02.04.2019 and made counter allegations against the Petitioner.

45. The arguments of the Petitioner against the EOGM held on 04.04.2019 are two-fold. Firstly, that the Respondents have not complied with the required provisions of law while conducting the EOGM on 04.04.2019 and secondly, that the resolution passed for termination of JVA at the EOGM is against the interest of the Company.

Compliance of provisions of Companies Act, 2013

46. We shall first deal with the contentions regarding allegations of procedural infirmities in the conduct of EOGM. It is the submission of Petitioner that the EOGM held on 04.04.2019 suffers from the following procedural defects:

i. Non-compliance of sections 102 and 180 of the Companies Act, 2013.

ii. EOGM not held in the registered office of the Companies Act, 2013.

iii. The Notice of EOGM was sent to the Directors and not the Shareholders.

47. **Section 102 of Companies Act, 2013**

47.1 Ld. Counsel for the Petitioner has alleged that the notice of the EOGM suffers from non-compliances of section 102 of the Act of 2013. Section 102 reads as follows:

> ***102. Statement to be annexed to notice.*** *– (1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely: -*

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of –

(i) every director and manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

47.2 It is the case of the Petitioner that while sending the notice for EOGM, the Respondents did not annex any explanatory statement/ material fact, which is a requirement under section 102 of the Act of 2013.

47.3 Per contra, Ld. Counsel for the Respondent has referred to the Notification No. GSR-464(E) dated 05.06.2015 issued by the Ministry of Corporate Affairs (in short '**MCA Notification**') which provides for certain exemptions to private companies under section 462 of the Act of 2013.

47.4 Perusal of the MCA Notification dated 05.06.2015 shows that the provisions of section 102 shall not apply to private companies if it is specified so either in the section itself or in the Articles of Association (**AoA**) of the Company. The relevant extract is reproduced below:

Serial number	*Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013*	*Exceptions/ Modifications/ Adaptions*
(1)	*(2)*	*(3)*
xxx	*Xxx*	*xxx*
7.	***Chapter VII, sections 101 to 107 and section 109***	***Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.***
xxx	*Xxx*	*xxx*

47.5 When we look at the provisions section 102 of the Act of 2013, it is clear that section 102 does not provide any such exemption to the private companies. Thus, the first stipulation is ruled out.

47.6 Therefore, we shall now examine the Articles of Association (AoA) of the Company. Clause 26 of the AoA of the Company reads as follows:

> ***"GENERAL MEETINGS***
>
> *26. Seven days notice, at the least of every General Meeting, Annual or Extra Ordinary and by whomsoever called specified the day, place and hour of the meeting and the general nature of the business to be transacted thereat shall be given in the manner herein provided, to such persons as are under these articles entitled to receive notice from the Company, Provided that in the case of an Annual General Meeting with the consent in writing of all the members entitled to vote thereat and in the case of any other meeting with the consent of members holding not less than 95 per cent of such part of the paid up share capital of the Company which gives a right to vote at the meeting may be convened by a shorter notice. The provisions of Section 171 to 186 of the Act shall not apply with respect to General Meeting (including any Annual General Meeting of the Company).*

47.7 It is observed that the Company was incorporated in the year 2010 and therefore, its Articles of Association has referred to the Act of 1956. Accordingly, clause 26 of the AoA states that sections 171 to 186 of the Act of 1956 would not apply. It is relevant to note here that Section 173 of the Act of 1956 corresponds to section 102 of the Act of 2013. For sake of clarity, we deem it fit to reproduce section 173 of the Act of 1956:

> ***173. EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE***
>
> *(1) For the purposes of this section –*
>
> *(a) in the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) the consideration of the accounts, balance sheet and the reports of the Board of directors and auditors, (ii) the declaration of a dividend, (iii) the*

appointment of directors in the place of those retiring, and (iv) the appointment of and the fixing of the remuneration of, the auditors ; and

(b) in the case of any other meeting, all business shall be deemed special.

(2) Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein, of every director, and the manager, if any:

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company.

(3) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

47.8 Thus, based on the MCA Notification dated 05.06.2015 read with Clause 26 of the AoA of the Company, it may seem that the provisions of section 102 of the Act of 2013 need not be applied to the Company.

47.9 However, there is another aspect that has to be looked into. Ld. Counsel for Petitioner has referred to a subsequent MCA Notification No. GSR 583 (E) dated 13.06.2017 which states:

"In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 462 and in pursuance of sub-section (2) of section 462 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act), the Central Government, in the interest of public, hereby amends the notification of the Government of India, in the Ministry of Corporate Affairs, vide number G.S.R. 464(E) dated the

5th June, 2015 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), dated the 5th June 2015 (hereinafter referred to as the principal notification), namely:-
xxx
7. In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

> *"2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."*

47.10 Based on the afore-cited amendment notification, it is clear that the exemptions provided vide the MCA Notification 05.06.2015 are not applicable to those private companies that have defaulted in complying with sections 92 and 137 of the Act of 2013 by not filing their annual returns and financial statements respectively.

47.11 In the present case, on perusal of the Master Data of the Company, it is seen that the date of the last Annual General Meeting was 29.09.2017 and the date of last Balance Sheet is 31.03.2017 and thereafter, the Company has defaulted in filing the annual returns and financial statements. Thus, there is a clear violation of sections 92 and 137 of the Companies Act, 2013.

47.12 In view thereof, the exemptions provided in the MCA Notification dated 05.06.2015 is not applicable to the Company and by not attaching an explanatory statement to the notice dated 25.03.2019, the Respondents have not complied with the statutory requirement under section 102 of the Act of 2013.

47.13 At this juncture, we refer to the observations of Hon'ble Andhra High Court in the matter of ***Nagavarapu Krishna Prasad and Anr. Vs. Andhra Bank Ltd. [(1983) 53 COMP CAS 73 (AP)]***:

> *"55. It was also argued that there was a violation of s. 173 of the Companies Act which required that in the case of a special*

resolution, there shall be annexed to the notice of meeting a statement setting out all material facts concerning each such item of business including in particular the nature of the concern or interest if any therein of every director and the manager if any. It was submitted that no particulars at all were given as to the nature of the business that was proposed to be carried on by the new company to be formed. … Reference was made to Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. [1964] 34 Comp Cas 777 (Guj), in which it was observed that the object of enacting s. 173 is to secure that all facts which have a bearing on the question on which the shareholders have to form their judgment are brought to the notice of the shareholders so that the shareholders can exercise an intelligent judgment. It was also observed that s. 173 is mandatory and not directory and any disobedience to its requirement must lead to the nullification of the action taken. As we have already pointed out, in dealing with the question relating to oppression, it is not merely sufficient to point out that any resolution passed at a meeting was illegal because of the non-compliance with the provisions of the Companies Act. In such a case, there are adequate remedies available."

47.14 Keeping this factor in mind, it is relevant to see whether by not giving the explanatory statement, the Respondents have caused any unfair prejudice to the Petitioner.

47.15 The object of section 102 that provides for supplying an explanatory statement along with a notice of meeting is to enable the shareholders to get full and complete disclosures so that they are able to take informed decisions on the agenda items proposed to be considered in the meeting.

47.16 In the present case, the Petitioner and the Respondents 2 & 3 are the only shareholders and directors of the Company. As can be seen from the averments, the Petitioner herein is not merely a shareholder of the Company but is also its Promoter and director and as an uncontroverted fact, he was in charge of the day to day affairs of the Company and was in control of the management. All the financial statements of the Company from FY 2010-11 till

2016-17 bears the signature of the Petitioner. In fact, the Petitioner is also one of the signatories to the JVA and is also well aware of the JVA and the issues surrounding it.

47.17 This being the case, the Petitioner had sent letter dated 21.06.2018 to Dignity Realty requesting Dignity Realty to not terminate the JVA. Further, a complaint was filed before MahaRERA challenging the non-inclusion of the Company as co-promoter of the Project. Thus, the Petitioner was fighting tooth and nail for the protecting the Company's interest under the JVA. Under such a circumstance, the Respondents decided to call for an EOGM for *inter alia* terminating the JVA. When the Notice dated 25.03.2019 for the EOGM was sent to the Petitioner, the Petitioner vide his letter dated 02.04.2019 condemned the procedure of issuing notice without any explanatory statement annexed thereto and further sought the following:

> *"11. ...*
> *h. Disclose to the Client all material facts in relation to the Proposed Resolution, including the nature of concern or interest, financial or otherwise, in respect of every director, manager and key managerial personnel, and their relatives, any other information and facts that may enable the Client to understand the meaning, scope and implications of the Proposed Resolution."*

47.18 Despite receiving the above letter dated 02.04.2019, the Respondents went ahead with the EOGM as per the schedule on 04.04.2019 without responding to the contentions of the Petitioner.

47.19 In the matter of ***V. G. Balasundaram and Ors. vs. New Theatres Carnatic Talkies Pvt. Ltd. [(1993) 77 COMP CAS 324 (MAD)],*** the Hon'ble Madras High held that:

"36. Having regard to the whole purpose and scope of the provision enacted in section 173, I am of the opinion that it is mandatory and not directory and that any disobedience to its requirements must lead to the nullification of the action taken. In the instant case, there

is no article excluding section 170(2) of the Act. In the case of private companies, these provisions will apply. Therefore, in my opinion, under section 173 of the Act with regard to appointment of directors, there should have been an explanatory statement which is mandatory. In the instant case, no explanatory statement has been appended to the notice which is mandatory. Hence failure to append an explanatory statement is not only defective but also fatal and an incurable defect. Hence, on this point also I hold that the entire meeting held on January 5, 1981, and the resolution stated to have been adopted after the petitioners withdrew from the meeting are bad in law. This point has been specially raised by the petitioners in their pleadings. I have already held that section 173 is mandatory and not directory. Hence, respondents Nos. 2 and 3 cannot consider themselves as duly elected directors since, in my view, the notice is defective and once the notice is held to be defective, no business can be transacted. It was virtually an ex parte meeting. In this context, support can be derived from the decision in Seth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Ltd. [1964] 34 Comp Cas 777, of the Gujarat High Court. It was held that section 173 of the Act enacts a provision which is mandatory and not directory and that the object of enacting section 173 is to secure that all facts which have a bearing on the question on which the shareholders have to form their judgment are brought to the notice of the shareholders so that the shareholders can exercise an intelligent judgment."

47.20 In the present case, even though the Article 26 of the AoA of the Company exempted the application of section 102 of the Companies Act, 2013 (section 173 of the Companies Act, 1956), however, by virtue of non-compliance of sections 92 and 137 of the Companies Act, 2013 from 31.03.2017, the said exemption was no longer applicable to the Company.

47.21 Though the Petitioner by virtue of his position in the management of the Company and also being a signatory of the JVA may be aware of the terms of JVA and also the contributions made by the Company, however, as a shareholder, he is entitled to have facts related to a resolution being considered in an EOGM. Therefore, when the Petitioner through his letter dated 02.04.2019 had asked for the material information for the termination of the JVA, the

Respondents who had called for the EOGM were duty-bound to disclose the relevant facts for the proposed termination of JVA as sought by the Petitioner. However, the Respondents did not give any response to the Petitioner's queries raised in the letter dated 02.04.2019 and proceeded with the EOGM to terminate the JVA. This indicates unfair abuse of having a significant stake by the Respondents who together are majority shareholders of the Company.

47.22 Thus, we hold that the Notice dated 25.03.2019 for the EOGM dated is in violation of section 102 of the Companies Act, 2013 and therefore, the purported resolutions to terminate the JVA passed in the EOGM should be considered as illegal and void and against the interest of the Company, especially when the Petitioner is seeking to protect the JVA.

48. **Compliance of Section 180 of the Companies Act, 2013**

48.1 Ld. Counsel for the Petitioner has contended that the JVA being the sole/substantial undertaking of the Company was terminated without obtaining a special resolution as per section 180(1)(a) of the Companies Act, 2013.

48.2 Section 180(1)(a) is reproduced below:

> ***180. Restrictions on powers of Board.*** *– (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely: -*
>
> *(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.*
>
> *Explanation. – For the purposes of this clause, -*
>
> *(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per*

cent of the total income of the company during the previous financial year;
(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty percent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

48.3 For the applicability of section 180 of the Act of 2013, it is important to ascertain whether the JVA would qualify as an undertaking of the Company.

48.4 Perusal of the explanation of section 180(1)(a) of the act, 2013 shows that the meaning of undertaking for the purpose of section 180 is *"an undertaking in which the investment of the company exceeds 20% of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year".*

48.5 In ***Sree Yellamma Cotton, Woollen and Silk Mills Co. and Bank of Maharashtra Ltd., Poona vs. Official Liquidator, [(1968) 08 KAR CK 0011]*** the Hon'ble Karnataka High Court while dealing with the interpretation of the term "undertaking" under the Companies Act had observed as follows:

"The word "undertaking" is not defined in the Act. One has therefore necessarily to depend upon the dictionary meaning or such secondary meaning the term might have acquired by commercial usage or long practice governing the workings of the and borrowings by companies.

The ordinary dictionary meaning is what has already been referred to by me while summarizing Mr. Ullal's arguments. ***It is not in its real meaning anything which may be described as a tangible piece of property like land, machinery or the equipment; it is in actual effect an activity of man which in commercial or business parlance means an activity engaged in with a view to earn profit.*** *Property, moveable or immoveable, used in the course of or for the purpose of such business can more*

accurately be described as the tools of business or undertaking, i.e. things or articles which are necessarily to be used to keep the undertaking going or to assist the carrying on of the activities leading to the earning of profits."

48.6 Thus, an 'undertaking' of a company could be referred to as something that would be an integral part of a company used as a tool for business purpose, thereby, contributing to the Company's revenue and/or profits.

48.7 In the present case, there is no material to suggest that the Company has been engaged in any business other than contributing towards the construction of the Project under the JVA. Thus, the primary business activity of the Company was to invest in the Project under the JVA. Thus, the JVA can be considered as an undertaking as per section 180(1)(a) of the Companies Act, 2013.

48.8 However, the MCA Notification dated 05.06.2015 exempts private companies also from the applicability of section 180 of the Companies Act, 2013. Relevant extract is reproduced below:

Serial number	*Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013*	*Exceptions/ Modifications/ Adaptions*
(1)	*(2)*	*(3)*
Xxx	*xxx*	*xxx*
12.	***Chapter XII, section 180.***	***Shall not apply.***
Xxx	*xxx*	*xxx*

48.9 Ld. Counsel for the Petitioner submits that the MCA notification dated 05.06.2015 also states that while complying with the exemptions, the Company shall ensure protection of the shareholders. He has referred to the order dated 06.03.2023 passed in ***Indiraben Wd/o. Shri Vinodrai Hirjibhai Kansagra vs. Galaxy Cinema Pvt. Ltd. & Ors. [CP/1/AHM/2023]*** wherein Ld. NCLT, Ahmedabad Bench passed an interim direction to maintain status quo with following observations:

"12. In this case, admittedly the petitioner is having a substantial shareholding in R-1 company. Though as per the Gazette of India (Extraordinary) dated 05.06.2015, it has been clarified that provisions of section 180 of the Companies Act, 2013 are not applicable to private companies but there is a rider provided in the notification itself stating that "the private companies, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected." Hence, it is held that provisions of section 180 of the Companies Act, 2013 are not strictly applicable to private companies (i.e., requirement of passing the special resolution in order to sell assets etc.,) but at the same time it is obligatory on part of the directors of the private companies that they shall protect interests of all shareholders."

48.10 The Petitioner has relied on the judgment of Hon'ble NCLAT in ***Gangadhar Madupu vs. Katta Corp Private Limited [Company Appeal (AT) No. 3 of 2018]*** wherein the Hon'ble NCLAT had upheld the observations of Ld. NCLT, Hyderabad Bench that, *"it is the paramount of the responsibility of the Company to take into confidence of all the shareholders of Company, while taking/transacting major business like selling of the Company's land apart from following extant provisions of Companies Act, 2013. It is also not in dispute that the Company is a Private Limited Company and it is bound by all the Provisions of Companies Act, 1956/2013."*

48.11 Thus, even though certain sections of the Companies Act, 2013 are made inapplicable to private companies, however, the Notification also makes it clear that the same shall not compromise the protection of the interest of the shareholders of the Company.

48.12 However, in the present case, the Company having defaulted in complying with sections 92 and 137 of the Act of 2013, the exemption cannot be applied by virtue of amendment notification dated 13.07.2017.

48.13 As per section 180(1)(a) of the Companies Act, 2013, a Company shall sell or otherwise dispose of its undertaking only after obtaining consent of the Company by a special resolution. By not obtaining the special resolution for termination of JVA, the Company has not complied with the provisions of section 180 of the Act of 2013.

49. **Other alleged procedural defects**

49.1 The Petitioner had also alleged other technical discrepancies in the conduct of EOGM such as the EOGM being held in a place other than the registered office of the Company and Notice of EOGM being addressed to the Directors and not Shareholders.

49.2 With respect to EOGM held at a place other than the registered office of the Company, the Ld. Counsel for the Respondents have referred to the explanation to Rule 18(3) of the Companies (Management and Administration) Rules, 2014, which states that an extraordinary general meeting can be held at any place within India. However, it is observed that the said explanation was omitted vide Companies (Management and Administration) Second Amendment Rules, 2018 dated 13.06.2018. Therefore, the same is of no avail to the Respondents.

49.3 Be that as it may, the proviso to section 100 of the Act of 2013 which provides for calling of EOGM which states that an EOGM shall be held at a place within India. Thus, there is no statutory mandate that the EOGM has to be necessarily conducted at the registered office of the Company. Clause 26 of the AoA of the Company also merely states that the Notice for meeting shall specify the day, place and hour of the meeting and does not mandate that the meeting has to be conducted at the registered office of the Company.

49.4 However, while there is no non-compliance of any provisions of law for not holding the EOGM at the registered office of the Company,

however, it is also important to note that the place of meeting specified in the Notice is the address of Respondent No. 2 which is, "720, 1st Floor, Jagdish Bhawan, Near Hanuman Mandir, Katrak Road, at Wadala (W), Mumbai – 400031" whereas the registered office of the Company is "Shop No. 5, Floor 6, Khandke Building, R. K. Vaidya Road, Veer Kotwal Udyan, Dadar (W), Mumbai – 400028" which is again an undisputed fact.

49.5 Though permissible in law, however, considering that there already existed some disagreements between Petitioner and Respondent No. 2 with respect to the contribution of the Company towards the Project, the demarcation of Premises, the NOC given by R-2 to enable Dignity to sell flats and the representation given by R-2 and R-3 before MahaRERA against the RERA Complaint filed by the Petitioner, we are unable to appreciate the decision of the Respondents to hold the EOGM at the address of Respondent 2.

49.6 With respect to the allegation that the notice was sent to the Petitioner in the capacity as a director and not as shareholder, it is observed that the Notice was sent to the Board of Directors calling for an EOGM of the 'Board of Directors'. It is submitted on behalf of the Respondents that there has been a technical error, however, the same would not amount to oppression to the Petitioner.

50. At this juncture, we deem it appropriate to refer to the observations of Hon'ble Supreme Court in ***Needle Industries (India) Ltd. & ors. vs. Needle Industries Newey (India) Holding Ltd & Ors. [1981 (3) SCC 333]***:

> *"44. Coming to the law as to the concept of "oppression", Section 397 of our Companies Act follows closely the language of Section 210 of the English Companies Act of 1948. Since the decisions on Section 210 have been followed by our Court, the English decisions may be considered first. The leading case on "oppression" under Section 210 is the decision of the House of Lords in Scottish Co-op. Wholesale Society Ltd. v. Meyer. Taking the dictionary meaning of the word "oppressive", Viscount Simonds said at p. 342 that the appellant-*

Society could justly be described as having behaved towards the minority shareholders in an "oppressive" manner, that is to say, in a manner "burdensome, harsh and wrongful". The learned Law Lord adopted, as difficult of being bettered, the words of Lord President Cooper at the first hearing of the case to the effect that Section 210 "warrants the court in looking at the business realties of the situation and does not confine them to a narrow legislative view". xxx

...

49. A question sometimes arises as to whether an action in contravention of law is per se oppressive. It is said, as was done by one of us, Bhagwati, J., in a decision of the Gujarat High Court in Seth Mohanlal Ganpatram v. Sayaji Jubilee Cotton & Jute Mills Co. Ltd. that "a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company". On this question, Lord President Cooper observed in Elder v. Elder:

> *"The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the "just and equitable" jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. ..."*

...The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts upon another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whose those acts are directed."

51. Thus, an act may be in accordance with law but could still be oppressive if it is unfairly prejudicial to the shareholders or against the interest of the Company and conversely, any action taken by the majority shareholders which may not be in compliance with the law can be non-oppressive if the same is not unfairly prejudicial to the interest of the shareholders and the company. Based on the aforesaid, it is relevant to see whether the termination of JVA had unfairly prejudiced the interest of the company and the shareholders.

Whether Termination of JVA was in the interest of Company?

52. To examine whether the termination of JVA was in the interest of the Company, it is important to go back to the preceding events that had transpired before the EOGM.

53. Clauses 4, 5 & 7 of the JVA deals with the obligation of the Company under the JVA:

> *"4. The parties hereto hereby agree to contribute financial input to the project and the parties shall incur all expenses and pay all deposits including the premium for obtaining all sanctions and permission of Slum Rehabilitation Authority and other concerned authorities upto the stage of receiving the Commencement Certificate in equal proportion i.e. 50% by the developer and 50% by the Joint Venturer and thereafter all amounts required for development of the said Plot no. 323 and 324 including the cost of construction of the building thereupon shall be shared in the ratio of 75% by the developer and 25% by the Joint Venturer.*
>
> *5. The parties hereto hereby agree that the initial expenses which is to be shared equally by the parties hereto include the cost or rental payable to the occupants to have transit camp accommodation viz; the same shall be incurred or contributed by the parties in the equal share and the professional fees of Architect's and RCC Consultant including of clavation architects.*
> *xxx*
> *7. All deposits after Commencement Certificate is issue required to be borne or paid to the authorities after Certificate shall be shared 75% by the Developer and 25% by the Joint Venturer.*

54. Admittedly, the Company had made some contribution towards the Project. However, there is a dispute regarding the extent of the contribution made by the Company.

55. It is the case of the Petitioner that the Company has fulfilled its obligations under the JVA. On the other hand, the Respondents argue that the Company was required to invest approximately Rs. 6 crores but was able to pay only Rs. 1,13,03,000 and that the development of the project went ahead with the sole contribution by Dignity Realty.

56. It is alleged by the Respondents that due to this non-compliance on part of the Company in contributing towards the Project, Dignity Realty had issued the termination letter dated 06.06.2018 as per clause 13 of the JVA, giving the Company 15 days' time to pay the outstanding dues failing which the JVA would stand cancelled. Clause 13 of the JVA is reproduced below:

> *"13. In the event the Joint Venturer fail to contribute their share of 50% and/or of 25% as the case may be and/or commit any other breach the developers shall be entitled to terminated the Joint Venturer Agreement by giving 15 days prior notice to pay the defaulted/required amount and/or remedy the breach. Further in the event due to default or breach this Agreement has stood terminated then in that event the Joint Venturer shall have no right into or upon the 25% of the premises and in the event the Joint Venturer have sold the premises, the developers shall be entitled to receive all installments of payment from such purchasers. The Developer in the event shall refund all amount incurred by the Joint Venturer till such cancelation within 15 days of such termination & till such amount is refunded the Joint Venturer shall have charge on the said property upto 25%."*

57. In response to the termination letter, the Petitioner sent a letter dated 21.06.2018 on behalf of the Company disputing the amounts due and payable by the Company and the demand raised by Dignity Realty. In the reply, the Petitioner had also contended that the Company has contributed in excess of what was required under the JVA, though the Petitioner has not submitted any evidence to prove his contentions.

58. However, notwithstanding the contentions of the Petitioner raised in the reply dated 21.06.2018, Dignity Realty refused to consider the same on the pretext that the reply sent by the Petitioner on behalf of the Company was without any authority. It is relevant to note that in the subsequent letter dated 25.07.2018, wherein Dignity Realty claimed that the JVA stood terminated, it was specifically stated that discussion was held between Dignity Realty and Respondent 2 wherein Respondent 2 stated that the Petitioner was not authorized to reply on behalf of the Company.

59. It is the contention of the Petitioner that the termination letter dated 06.06.2018 was sent by Dignity Realty in collusion with the Respondents. The following acts have been alleged by the Petitioner to show collusion of Respondents with Dignity Realty against the interest of the Company:

i. Non-demarcation of project premises
ii. Issuance of NOC by Respondent No. 2 in favour of Dignity Realty for executing sale certificates
iii. Misrepresentation before RERA proceedings

60. **Non-demarcation of the Project Premises and issue of NOC by Respondent 2**

60.1 It is submitted on behalf of the Petitioner that the JVA provides for demarcation of the premises in the ratio of 75:25 towards the respective share of Dignity Realty and the Company, before the commencement of the construction work, however, the R-2 failed to carry out the exercise. It is further submitted that R-2 issued a forged No Objection Certificate (NOC) dated 12.03.2018 in favour of Dignity Realty to facilitate unilateral sale of flats by Dignity Realty despite there being no demarcation of the premises and the Company continues to hold undivided interest over the Project area.

60.2 Per contra, it is submitted by Ld. Counsel for the Respondents that since the Company failed to contribute its part towards the initial expenses under the JVA, the demarcation exercise could not be carried out. It is also contended on behalf of the Respondents that despite the demarcation exercise not being carried out, even the Company had issued allotment letters to third parties.

60.3 It is noted that Clause 8 of the JVA states that:

> *"8. The parties hereby agree that in this joint venture project the developers shall be entitled to 75% of the flats and other premises available for free sale and the Joint Venturer shall be*

entitled to the remaining 25%. The parties shall divide the areas of 75% and 25% coming to their respective shares after the Slum Rehabilitation Authority have sanctioned the building plan and issued the commencement certificate but prior to commencing the work of redevelopment of the said Plot No. 323 and 324 each party thereafter shall be at liberty to sell or alienate the premises coming their respective share, receive the consideration therefor and appropriate the same to themselves without in any way accounting for the same to each other."

60.4 Thus, as per the above, the demarcation exercise has to be carried out and only thereafter, each party is allowed to alienate or sell the flats from their respective shares.

60.5 However, without carrying out this demarcation exercise, Dignity Realty has executed sale agreements with the alleged NOC obtained from Respondent No. 2. The NOC was issued by the Respondent No. 2 on the letterhead of the Company on 12.03.2018, however, the address mentioned below is not the registered address of the Company but the address of Respondent No. 2. Thus, it cannot be considered that the Company has sent any NOC to Dignity Realty for selling of flats. Moreover, there is no board resolution or any other document in record to prove that the Company has taken any decision to issue NOC to Dignity Realty for sale of flats.

60.6 Further, we shall also note the relevant extract of the sale agreement dated 14.03.2018 issued by Dignity Realty enclosed as *Annexure F:*

"(i) The Promoter and Dream City Construction Private Limited (hereinafter referred to as the Company) have entered into a Joint Venture Agreement dated 20th June 2012 registered in the Office of Sub-Registrar of Assurance at Mumbai under Sr. No. BBE-2-4355 of 2012 for joint redevelopment of the said property.

(j) Under the said Joint Venture Agreement the Promoters are entitled to 75% of the Flats and premises available for free sale viz., 75% of the free sale component and the said Company has become entitled to 25% of the free sale component with a right to

both the parties for sale the premises coming to their respective share, receive the consideration therefor and appropriate the same to themselves without in any accounting for the same to each other. Though under the said Joint Venture Agreement the Company is liable to share all expenses with the Promoters including deposits and premium for obtaining all sanctions and permissions of Slum Rehabilitation Authority and other concerned authorities upto stage of receiving the commencement certificate equally and thereafter in the ratio of 75% Promoters and 25% the said Company and in consideration thereof the Company shall be entitled to receive 25% of sale component, the Company has already defaulted in sharing its 50% expenses and has also shown inability to contribute the amounts in agreed ratio. The parties being on good terms are negotiating to cancel the said Joint Venture Agreement or modify the terms by executing Supplemental Agreement. This factual position has been put to the knowledge of the Purchaser and the Purchaser hereby agree and covenant to accept the change situation without any demur or objection subject to the said qua not affect this Agreement."

60.7 In the sale agreement which is dated 14.03.2018, Dignity Realty has stated that the Company has expressed its inability to contribute towards the Project and that the parties are intending to cancel or modify the JVA. However, it is relevant to note here that the sale agreement is dated 14.03.2018 i.e. before the termination letter sent by Dignity Realty on 06.06.2018. The Petitioner in his reply letter dated 21.06.2018 to the termination had opposed the contents therein. Thus, it cannot be construed that there have been any amicable talks between Dignity Realty and Company. It seems more like an understanding between Dignity Realty and Respondent No. 2.

60.8 The question of whether or not sale agreement was in accordance with the terms of JVA may not be a subject for determination before this Tribunal under section 241 of the Companies Act, 2013. However, while deciding the present Petition, this Tribunal has to see whether the issuance of sale certificates by Dignity Realty with the purported NOC issued by the Respondent is against the interest of the Company, thereby, leading to mismanagement.

60.9 Based on the averments and documents and the own submissions of Respondent No. 2, it is discernable that the actions of Respondent No. 2 are not based on general consensus and were in difference with that of the Petitioner.

60.10 Thus, without going into the validity of the NOC dated 12.03.2018, we are of the view that purported NOC given by Respondent No. 2 in favour of Dignity Realty without consulting the other directors, would amount to usurping the powers and are therefore liable to be considered as mismanagement.

61. **The RERA Proceedings**

61.1 The Petitioner, claiming to represent on behalf of the Company, had filed Complaint No. CC006000000055539 before MahaRERA challenging the registration of the Project that it was done without including the name of the Company as 'co-promoter'.

61.2 The Respondents 2 & 3, who are also directors and shareholders of the Company, appeared before MahaRERA and submitted that the Petitioner was not authorized to file a complaint on behalf of the Company and that the registration of the Project was done with the knowledge and consent of Respondents 2 & 3. After hearing the parties, MahaRERA passed an order dated 24.09.2018 directing the parties to maintain status quo. The RERA Complaint was heard and reserved for orders on 25.01.2019.

61.3 Ld. Counsel for the Petitioner submits that the statements by Respondents 2 & 3 made before the MahaRERA that the registration was done with their consent is against the company's interest. It is further contended that Respondent 3 had misrepresented before the MahaRERA to be a director of the Company when in fact he was not.

61.4 As regards the misrepresentation of Respondent 3, we note that at the time of incorporation, the Petitioner held 34% of the shares in the Company while Respondents 2 and 3 held 33% shares each. The Petitioner, Respondents 2 and 3 were also the directors of the Company. It is observed that the shareholding as well as the directorship of the Company had undergone a change in March 2018 when a Share Purchase Agreement dated 27.03.2018 was executed whereby the R-3 transferred his entire 33% shares to the Petitioner which resulted in an increase in the shares held by the Petitioner in the Company from the initial 34% to 67%. Consequently, Respondent 3 had stepped down from his directorship and the Company had only 2 directors i.e. Petitioner and Respondent 2 from 27.03.2018 till 28.08.2019 when a Cancellation Deed was executed whereby transfer of shares of R-3 to the Petitioner stood cancelled and the R-3 was reinstated as shareholder and director of the Company.

61.5 We shall now refer to the representation given by Respondents 2 & 3 before MahaRERA, the relevant contents of which are reproduced below:

> *"Sir,*
> *We Mr. Hiralal Jain and Mr. Yashwant Deshpande are two of the directors and majority shareholders of the complainant above-named and we jointly held 67% (approximately) issued, subscribed and fully paid up equity shares in Complainant Company.*
> *xxx*
> *...We as majority shareholders of the Complainant Company are in direct touch with the Respondent to amicably settle all issues and in any event our joint venture agreement with Respondent contained clause of Arbitration."*

61.6 The Respondents sought to argue that the shares of Respondent No. 3 were transferred to the Petitioner for a consideration of Rs. 1,74,90,000, however, the Petitioner has failed to pay the said amount and therefore, there is no question of transfer.

61.7 In this regard, we deem it appropriate to look at some of the clauses of the Share Purchase Agreement dated 27.03.2018:

> *"**1. DEFINITIONS***
> *"Completion Date" means the date of this Agreement*
>
> ***2 AGREEMENT FOR SALE AND PURCHASE OF SHARE***
> *2.1 On the Completion Date, the Seller shall sell and the Purchaser shall purchase the Sale share at a consideration, upon the terms of this Agreement.*
>
> ***4. COMPLETION***
> *4.1 Completion of the sale and purchase of the Sale share will taken place on the Completion Date immediately following execution of this Agreement at such location as the parties may agree.*
>
> *4.2 On the Completion Date:*
> *4.2.1 The Seller shall deliver to the Purchaser all the relevant share certificate(s) in original;*
> *4.2.2 The Seller shall deliver to the Purchaser a duly executed and relevant share transfer deeds in respect of the Sale share in favour of the purchaser;*
> *4.2.3 The Purchaser shall make the payment to the Seller of the total consideration of **Rs. 1,74,90,000/- (Rupees One Crore Seventy Four Lacs Ninety Thousand only)** within a period of one calendar year which shall be calculated from the date of Execution of this agreement.*
> *4.2.4 It is agreed and binding upon the Purchaser to make the payment of the total consideration as mentioned in clause 4.2.3 within a period of one calendar year, and in case of default of the above total consideration then the seller shall have right to terminate this Agreement and the Purchaser shall be liable to transfer the Sale Share to the Seller and accordingly update the records of the Company."*

61.8 On perusal of the above, it seems that the transfer of shares was effected on the Completion Date which is the date of the Share Purchase Agreement (**SPA**) i.e. 27.03.2018 and a period of one year was given to the Petitioner for payment of the consideration.

61.9 The Cancellation Deed was executed on 28.08.2018 in following terms:

"It is agreed by and between the parties that the Agreement for Sale and Purchase of Shares dated March, 2018 now cancelled and the party of the Second Part now have no rights, title, interest in the said 3300 equity shares."

61.10 From the perusal of the above, it appears that between the date of SPA i.e. 27.03.2018 and the Cancellation Deed dated 28.08.2018, the right over the 3300 shares of Respondent No. 3 was with the Petitioner and only after the execution of the Cancellation Deed, the Petitioner, who was the party of the Second Part, had no rights over the said shares.

61.11 However, the Respondent No. 3 gave a representation before MahaRERA that he is a shareholder of the Company on the representation letter dated 06.08.2018 which is the period before the execution of the Cancellation Deed.

61.12 Thus, though there is no material before us to prove transfer of shares by the Respondent No. 3 to the Petitioner with effect from 27.03.2018 and re-transfer of shares from Petitioner to Respondent No. 3 with effect from 28.08.2018, however, based on a conjoint reading of the SPA dated 27.03.2018 and the Cancellation Deed dated 28.08.2018, it seems that the Respondent No. 3 has misrepresented before MahaRERA.

61.13 Further, the Respondent No. 3 had also resigned from his directorship on 27.03.2018. The resignation letter of Respondent No. 2 dated 27.03.2018 is annexed to the Petition as Annexure H-1. The Respondent No. 3 was reappointed as director of the Company on 01.03.2019. The resolution dated 01.03.2019 passed by the Company for appointment of the Respondent No. 3 is annexed as Annexure H-2. Thus, by stating that Respondent No. 3 was a director on in the letter dated 06.08.2018, when in fact he

was not a director, there has been clear misrepresentation by Respondents No. 2 & 3 before MahaRERA.

62. It is also pertinent to note that the only justification that the Respondents are stating for their acts is that the Company has failed to perform its obligations under the JVA in view of which the demarcation could not take place, the Company could not be added as co-promoter as well as the JVA was purportedly required to be terminated.

63. The Respondents have also annexed a table as *Exhibit E* to their reply, showing the expenses incurred towards the completion of the Project. For sake of clarity, we deem it appropriate to reproduce the same:

Sr No	**Year**	**Nature of the Expenses Incurred**	**Share to be paid**			**Actual amount paid by M/s Dignity Realty (In Rs.)**	**Actual amount paid by Dream City (In Rs.)**
			M/s Dignity Realty	**Dream City**	**Total expense incurred (In Rs.)**		
1.	2011-2012	i. Architect Fees ii. Legal Charges (Advocates fees)	50% 50%	50% 50%	2,00,000 1,00,000	3,00,000	Nil
		(i + ii)			**3,00,000**		
2.	2015-2016	Land Premium to MCGM	-	-	1,53,26,200	75,26,200	78,00,000
3.	2016-2017	i. Architect fees ii. Rent to tenants iii. Construction & other charges (i + ii + iii)			3,45,000 77,52,200 8,84,113 **89,81,313**	59,78,313	30,03,000
4.	2017-2018	i. Land Premium ii. Rent to tenants iii. Constructions and other charges			2,84,40,360 1,17,78,800 1,64,39,638	5,61,58,798	5,00,000
		(i + ii + iii)			**5,66,58,798**		
5.	2018-2019	i. Charges paid to SPA ii. Rent to tenants iii. Constructions & other charges			55,88,145 1,54,01,000 5,11,02,500	7,20,91,645	NIL
		(i + ii + iii)			**7,20,91,645**		
6.	2019 (April	i. SRA Premium ii. Rent to tenants			52,46,760 35,36,000	2,70,75,265	NIL

	to June)	iii. Construction and other charges			1,82,92505		
		(i + ii + iii)			2,70,75,265		
				TOTAL	**18,04,33,221**	**16,91,30,221**	**1,13,03,000**

ACTUAL DEFAULT INCURRED BY DREAMCITY CONSTRUCTIONS PRIVATE LIMITED

Particulars	**Amount**	**Share of Dream City Construction Private Limited**	**Amount (In Rs.)**
Total expenses incurred	18,04,33,221	-	
Expense incurred up to CC	9,06,91.322	50%	4,53,45,661
Expenses incurred after CC i.e. 2018 onwards	8,97,41,899	25%	2,24,35,474.75
		Total	**6,77,81,135.75**
		(-) Amount paid by Dream City Constructions Pvt Ltd	1,13,03,000
		Default amount to be paid by Dream City	**5,64,78,135.75**

64. This Tribunal had directed the parties to place on record the financial statements of the Company from the date of its incorporation till the date of filing of the present Petition. Since the Company had filed its annual returns only till 31.03.2017, the parties have placed on record the financial statements of the Company from Financial Year (FY) 2010-11 till 2016-17.

65. We have carefully examined the financial statements placed before us and the following facts emerge therefrom:

i. F. Y. 2013-14

- The Balance Sheet as at 31.03.2014 reflects an investment of Rs. 38,79,313 made in M/s Dignity Realty.
- The Director's Report show that the Company has no business activity and there is a loss of Rs. 23,939.

ii. F. Y. 2014-15

- No investment made in Dignity Realty during this FY.

- The Director's Report show that the Company has no operations and there is a loss of Rs. 39,167.25.

iii. F. Y. 2015-16

- The total investment made in Dignity Realty as on 31.03.2016 was Rs. 96,79,313.
- The Director's Report show that the Company has no operations, however, the Company earned a profit of Rs. 5,318.02.

iv. F. Y. 2016-17

- The total investment made in Dignity Realty as on 31.03.2017 was Rs. 1,13,32,313.
- The Profit & Loss Account of the Company shows that the Company incurred a loss of Rs. 63,039.93.

v. In all the Financial Statements, it is stated that the Company has no operations and the only business activity is Construction. It is also stated in all the Financial Statements that no directors' remuneration or dividend has been paid to any of the directors/shareholders of the Company since there was no profit in the Company in any of the financial years.

vi. In the Independent Auditor's Report to the financial statement of FY 2016-17, it is recorded that, *"the company has accumulated losses of Rs. 1206521 at the end of the financial year and it has incurred cash losses 57204.93 in the current immediately preceding financial year".*

66. Based on the financial statements of the Company, it is clear that the Company's only business was investment in the project developed by Dignity Realty. As per the financial statements, the amount paid towards the Project by the Company is revealed to be Rs. 1,11,82,313 as on 31.03.2017. Based on the submissions of the Respondents, it is

understood that the Company has contributed Rs. 1.13 crores as on the date of termination notice issued by Dignity Realty on 06.06.2018.

67. The Petitioner claims that the Company has paid in excess of Rs. 1.13 crores, however, no material backed with evidence has been placed on record by the Petitioner to show that the Company has contributed in excess to Rs. 1.13 crores. Thus, based on the material available on record it can be concluded that the Company paid only Rs. 1.13 crores towards the Project and that fact remains uncontroverted.

68. However, at the same time, perusal of the financial statements shows that the contributions from the Company was paid to Dignity Realty, however, there is no material to show the basis on which the Dignity Realty has been claiming the amounts as expenses incurred for the Project. In fact, the Petitioner, in his letter dated 21.06.2018 had alleged that the demands raised by Dignity Realty were baseless which allegation was not answered to by Dignity Realty in its subsequent letter dated 25.07.2018. The Respondents have not confronted the allegations of the Petitioner with any supporting documents except the Expense Table (Exhibit E) which is also not backed by any evidence.

69. Under said circumstances, we are unable to conclude whether the Company had fulfilled its obligations under the JVA or not. Further, we are also of the view that when there has arisen a disagreement as to the contribution of the Company towards the Project which has led to a chain of disputes between the parties, the Parties could have resorted to settlement/arbitration as per Clause 14 of the JVA. However, instead of going to the arbitration to resolve the disputes, the Respondents have decided to terminate the JVA without involving the Petitioner and accordingly, conducted the EOGM.

70. We have already discussed in detailed about the procedural irregularities in the conduct of the EOGM on 04.04.2019. However, another aspect to be noted is that the EOGM was held during the subsistence of status quo by MahaRERA.

71. **EOGM held during status quo**

71.1 At Ld. Counsel for the Petitioner contended that the EOGM for termination of JVA was held during the subsistence of status quo in the RERA Complaint.

71.2 In this regard, it is noted that after hearing the parties, the MahaRERA on 24.09.2018 had directed to maintain *status quo* till the disposal of the RERA Complaint. The relevant portion is reproduced below:

> *"After hearing the arguments, the MahaRERA directs the parties to maintain status quo as on today till final disposal."*

71.3 The said Complaint was closed for orders on 25.01.2019 and there was no mention about any lifting of the *status quo* which indicates that the *status quo* order was in existence. Thus, the notice dated 25.03.2019 was circulated and the EOGM on 04.04.2019 was held during the subsistence of status quo.

71.4 Upon verification of the status of the RERA Complaint from the available record at the MahaRERA website, it is noticed that during the pendency of this Petition, MahaRERA had dismissed the RERA Complaint vide order dated 14.08.2019, with the following observations:

> *"4. The aforesaid facts of this case show that, the present complainant was not authorized by the company to file the complaint. Although there was JVA registered in the year 2012 for the project, dispute arose due to non-payment by the company for the project and violations of the provisions of the agreement. The respondent registered the present project with MahaRERA taking necessary permissions from the competent authority in its name. The issue of termination of JVA has been taken before the NCLT. The MahaRERA, therefore cannot take any decision on this issue. The parties have themselves terminated the JVA leaving no doubts about the entitlement of the respondent to carry on the development of the project.*

In view of the above discussion, the MahaRERA cannot consider the prayer of the complainant to include the name of the Dream City Constructions Pvt. Ltd. as co-promoter.
Consequently, the complaint is dismissed."

71.5 The MahaRERA has taken note of the termination of the JVA and the entitlement of Dignity Realty to carry on the development work and in that view, the RERA Complaint stood dismissed. It is pertinent to note that the RERA Complaint was not dismissed on merits but the MahaRERA noted that the issue of termination of JVA is before this Tribunal.

72. At this juncture, we deem it appropriate to refer to section 241 of the Companies Act, 2013:

Section 241. Application to Tribunal for relief in cases of oppression, etc.— *(1) Any member of a company who complains that—*

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

73. Though the terms 'oppression' and 'mismanagement' are not explicitly defined in the Act, however, as explained in a catena of judgments, an act is considered to be oppressive if it is conducted in a manner prejudicial to and harsh or burdensome upon the shareholder

complaining thereof. Similarly, mismanagement would be when affairs of the company are in a manner prejudicial to public interest or the company or when a material change has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, which is likely that the affairs of the company.

74. In the matter of ***Shanti Prasad Jain vs. Kalinga Tubes Limited [AIR 1965 SC 1535]***, the Hon'ble Supreme Court observed:

"The essence of the matter seems to be that the conduct complained of should be at the lowest involved a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely. In Scottish Co-operative Wholesale Society v. Meyer [1959 AC 324], it was observed that the complaining shareholder must be under a burden which is unjust, harsh or tyrannical. It was further held in this case that, "It is not lack of confidence between the shareholders per se that brings the section into play...Oppression involves at least an element of lack of probity or fair dealing to member in the matter of his proprietary right as a shareholder. Persons concerned with the management of the company's affairs must in connection therewith be guilty of fraud, misfeasance or misconduct towards the members. It does not include mere domestic disputes between directors and members or lack of confidence between one section of members and another section in the matter of policy or administration. Much less it covers mere private animosity between members and directors."

75. We further refer to the observations of Hon'ble Orissa High Court in ***N.K. Mohapatra vs. State of Orissa and Ors. [(1999) 96 COMP CAS 49 (Orissa)]***:

"16. Coming to applicability of Section 397 of the Act, it is relevant to note what Apex Court observed in Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965) 35 Com Cas 351 : AIR 1965 SC 1535. As was observed in that case, it is not enough to show that there is just and equitable cause for winding up the company, though that must he shown as a preliminary to the application of Section 397. It must further be shown that the conduct of majority shareholders was oppressive to minority as members and this requires that events have to be considered not in isolation, but as part of a consecutive story. There must be continuous

acts on the part of majority shareholders, continuing up to the date of petition, showing that affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful, and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough, unless lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. Powers under this section confer discretion of a very very wide nature on the Court and should be exercised with care, otherwise any person disgruntled with the management of the company can put the whole business of the company into jeopardy by bringing proceedings under this section. The Court has to very carefully exercise power under Sections 397 and 398 and not so as to substitute management by Court for the existing management for every difference of opinion between the shareholders. It is necessary to show not merely that there has been some sort of oppression of any shareholders, but that the affairs of the company are being conducted in an oppressive manner. A mere general allegation that 'the affairs of the company are conducted in a manner oppressive to any part of its members including one or more of the applicants is not enough. Nor is it enough that an isolated act or incident is oppressive. The words 'are being conducted' suggest a course of oppressive conduct which must exist at the date of the petition. (See Re : Fildes Bros. Ltd. (1970) 1 All ER 923 (Ch. D.). The application must give particulars as regards the oppressive manner. ... In determining whether there is oppression or not. Court has to look at the substance of the matter. Oppression is any act exercised in a manner burdensome, harsh and wrongful. It is not lack of confidence between shareholders per se that brings Section 397 into play; but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as shareholders. Oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs, or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs; and when such conduct is unfair or, to use the expression adopted by Viscount Simonds in Scottish Co-operative Wholesale Society Ltd. v. Mayer (1958) 3 All ER 66 (HL) "burdensome, harsh and wrongful," to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs. Oppression must import that the

oppressed are being constrained to submit to something which is unfair to them as the result of some overbearing act or attitude on the part of oppressor. (See In re Jernyn Street Curkish Baths Ltd. (1971) 3 All ER 184). Section 398 deals with the case of mismanagement. Bona fide decisions consistent with the company's memorandum and articles are not to be equated with mismanagement, even if they turn out to be wrong in the circumstances or they cause temporary losses."

76. On an overall analysis of facts, submissions and material placed on record, the following series of acts of the Respondents warrants consideration:

i. The Respondent No. 2 has issued a No Objection certificate (NOC) dated 12.03.2018 in favour of Dignity Realty to enable to sell the flats despite there being no demarcation of the Premises as per the terms of the JVA. Further, the said NOC was issued on the Company's letterhead but bears the address of Respondent No. 2 and not the registered address of the Company.

ii. With respect to the termination letter dated 06.06.2018 issued by Dignity Realty, the Respondent No. 2 had purportedly held a discussion with Dignity Realty stating that the Petitioner was not authorized to reply on behalf of the Company. However, in a subsequent letter dated 25.07.2018, Dignity Realty stated that based on the discussion with Respondent No. 2, the JVA shall stand terminated. It is noted that at the relevant time, only the Petitioner and Respondent No. 2 were the shareholders and directors of the Company. Thus, when a resolution or authorization was required for the Petitioner to represent the Company, then it is incomprehensible how Respondent No. 2 could make such a representation and Dignity Realty accepted it without any authorization.

iii. The Respondents claiming to be majority shareholders have represented before MahaRERA and submitted that the Petitioner has not been authorized to file a complaint on behalf of the

Company. It was further submitted that the non-inclusion of the Company as co-promoter was done with the consent of the parties. However, as on the date of representation, the Respondent No. 3 was not a shareholder and director of the Company. Thus, there has been misrepresentation before MahaRERA.

iv. Clause 14 of the JVA states that in case of any dispute between parties, the same shall be referred to arbitration. Respondents also submitted that there has been settlement talks with Dignity Realty. However, there is nothing on record to show the purported settlement between the Respondents and Dignity Realty. Further, despite requests from Petitioner vide letter dated 02.04.2019, the Respondents did not disclose the information relating to settlement talks.

v. Thereafter, the Respondents circulated notice dated 25.03.2019 for conducting an EOGM *inter alia* to terminate the JVA.

vi. The Notice dated 25.03.2019 for the EOGM was not accompanied by any explanatory statement. Despite a specific demand from the Petitioner seeking an explanatory statement and to cease the EOGM, the Respondents did not provide any explanatory statement and went ahead with the EOGM and passed the resolution to terminate the JVA. Thus, there is a violation of section 102 of the Companies Act, 2013.

vii. The JVA which is the sole undertaking of the Company was terminated without obtaining a special resolution as required under section 180 of the Companies Act, 2013.

viii. The EOGM was held at the address of Respondent No. 2 who was already at loggerheads with the Petitioner.

ix. The EOGM was conducted during the subsistence of status quo passed by MahaRERA. As per the order dated 24.09.2018, the parties were required to maintain status quo as on the date of order.

Thus, by terminating the JVA on 04.04.2019 while the status quo order was subsisting, the Respondents have acted in deviance of the order dated 24.09.2018.

x. Besides the above, it is noted that the Respondents have not placed before us the Minutes of the EOGM conducted on 04.04.2019. The Respondents have placed a copy of the Deed of Cancellation dated 10.06.2019 as *Exhibit A* to their reply. In the Deed of Cancellation, a Board Resolution passed at the Board Meeting held on 04.04.2019 is attached. No other resolutions is placed with the deed of cancellation nor there is any mention about the EOGM.

xi. We further note that one of the proposed agenda at the EOGM was approval of financials of the FY 2017-18 and 2018-19. However, the discussions and resolution to that effect is not placed before us nor any financial statements have been filed by the Company for FY 2017-18 and 2018-19, as per records available.

77. On careful consideration of the material placed on record, the Tribunal is unable to confirm as to whether the Respondents had in fact conducted an EOGM on 04.04.2019 since no minutes accompanied by discussions on the agenda items as well as the resolutions passed therein are available. Even otherwise, the act of termination of JVA, being the only undertaking of the Company, is an act of oppression and mismanagement.

78. Thus, on an overall analysis of the facts and circumstances involved, we are of the view that the manner in which the notice dated 25.03.2019 was circulated and the purported EOGM was held on 04.04.2019 and the termination of JVA together with the preceding conduct of the Respondents amount to acts of oppression and mismanagement.

79. In view thereof, the Issue raised at Para 40 above is answered in affirmative and accordingly, prayers 'B' and 'E' are **allowed**. The purported EOGM held on 04.04.2019 being in violation of the Companies

Act, 2013 is declared to be invalid and oppressive for the reasons discussed in the preceding paragraphs and the resolution passed for terminating the JVA is set aside. Consequently, all actions in furtherance of the impugned resolution are also set aside, permitting the Petitioner to pursue the legal remedy pending before appropriate forum.

80. In the result, Company Petition No. 1649/2019 is partly **allowed**, accordingly.

81. No order as to costs.

Sd/-	Sd/-
Hariharan Neelakanta Iyer	**Lakshmi Gurung**
Member (Technical)	**Member (Judicial)**

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