**NATIONAL COMPANY LAW TRIBUNAL**
**GUWAHATI BENCH**
**GUWAHATI**

**ORDER SHEET OF THE HEARING ON 5th AUGUST 2026**

**IA (Comp. Act.)/12/GB/2023**
**CP/14/GB/2023**

**Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha**
**2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh**

| | |
|---|---|
| **In the Matter of** | Aaryan Chilled Infra Pvt. Ltd.<br>2. Jagdish Sharma<br>Vs<br>Onion Rings Hotel & Resorts Pvt. Ltd. & Nine (9) Others. |
| **Under Section** | U/s 241-244 of Companies Act, 2013 |

**Appearances (via video conferencing/physically)**

For Petitioner (s) : Mr. Biman Debnath, CS

For Respondent (s) : None

**ORDER**

Order pronounced in open court *vide* separate sheets.

**Sd/-**
**Yogendra Kumar Singh**
**Member (Technical)**

**Sd/-**
**Rammurti Kushawaha**
**Member (Judicial)**

*Zeba (PS)*

**NATIONAL COMPANY LAW TRIBUNAL**
**GUWAHATI BENCH**
**GUWAHATI**

**IA(Comp Act)/12/GB/2023**
**In**
**CP/14/GB/2023**

*An Application under Section 241, 242 and 244 of the Companies Act, 2013, read with sections 96, 99, 101, 117, 134, 143,152, 159, 166, 180, 213,447, 448 of the Companies Act, 2013 and Rule 11 of the NCLT Rules, 2016.*

***In the Matter of IA(Comp Act)/12/GB/2023:***

**MEGHMALLAR ESTATES AND SERVICES PRIVATE LIMITED (CIN: U45309AS1992PTC003644)** Survey, Beltola, Beltola Basistha Road, Guwahati, Assam-781028 Email Id: meghmallar92@gmail.com, Ph No.: 0361-234998

**... APPLICANT NO.1**

**MANJUREEMA SAIKIA,** H-No 39. Dr B N Saikia Road, Survey, Woodland Dhaba, Beltola, Dist- Kamrup Metro, Guwahati (Assam) India-781028 Email Id: meghmallar92@gmail.com, Mobile: 9859915880

**... APPLICANT NO.2**

**ANUP SAIKIA,** H No 39, Dr B N Saikia Road, Survey, Woodland Dhaba, Beltola, Dist.- Kamrup Metro, Guwahati (Assam) India-781028 Email- saikiaanup11@gmail.com Contact no. 9864062063

**... APPLICANT NO.3**

***-Versus-***

**AARYAN CHILLED INFRA PRIVATE LIMITE,** CIN: U63020AS2012PTC010916 B.R.P. Road, Near Railway Gate No 7, Kumarpara, Guwahati, Assam-781009 Email id: aaryanchilledinfra@gmail.com, Contact: 9435108912

**....RESPONDENT NO. 1**

**JAGDISH SHARMA**, S/0 Shyama Charan Sharma 6B Century Apartment, G.S. Road, Ganeshguri, Guwahati, Assam, Email id: cajshanna@gmail.com, Contact: 9864117521

**....RESPONDENT NO. 2**

*-And-*

***In the Matter of CP/14/GB/2023:***

**AARYAN CHILLED INFRA PRIVATE LIMITE,** CIN: U63020AS2012PTC010916 B.R.P. Road, Near Railway Gate No 7, Kumarpara, Guwahati, Assam-781009 Email id: aaryanchilledinfra@gmail.com, Contact: 9435108912

**....PETITIONER NO. 1**

**JAGDISH SHARMA**, S/0 Shyama Charan Sharma 6B Century Apartment, G.S. Road, Ganeshguri, Guwahati, Assam Email id: cajshanna@gmail.com

**....PETITIONER NO. 2**

*-Versus-*

**ONION RINGS HOTEL & RESORTS PRIVATE LIMITED,** CIN: U55101AS2010PTC011926, Registered Office: 39, Dr. B.N. Saikia Road, Survey, Beltola, Guwahati, Kamrup, Assam- 781028, Email: meghmellar92@gmail.com, Contact No. 09270113332

**... RESPONDENT NO.1**

**ANUP SAIKIA,** H No 39, Dr B N Saikia Road, Survey, Woodland Dhaba, Beltola, Dist.-Kamrup Metro, Guwahati (Assam) India-781028 Email- saikiaanup11@gmail.com, Contact no. 9864062063

**... RESPONDENT NO.2**

**MANJUREEMA SAIKIA,** H-No 39. Dr B N Saikia Road, Survey, Woodland Dhaba, Beltola, Dist- Kamrup Metro, Guwahati (Assam) India-781028 Email Id: meghmallar92@gmail.com, Mobile: 9859915880

**... RESPONDENT NO.3**

**SONA ROY,** 1/B, Madan Mohan Burman Stret, Kolkata, West Bengal- 700007, Email ID: sonaroy1942@gmail.com, Mobile: 9903195581

**... RESPONDENT NO.4**

**SANJAY ROY CHOUDHARY,** 1/B, Madan Mohan Burman Street, Kolkata, West Bengal -700007, Email ID: sanjayroychoudhary@gmail.com, Mobile: 8282852178

**... RESPONDENT NO.5**

**SAPPHIRE SUPPLIERS PRIVATE LIMITED,** CIN: U51101AS2009PTC011927, 39, Dr. B.N. Saikia Road, Survey, Beltola, Guwahati, Assam -781028, Ph. No.: 9270113332, Email: workingoffice2018@gmail.com

**... RESPONDENT NO.6**

**MEGHMALLAR ESTATES AND SERVICES PRIVATE LIMITED (CIN: U45309AS1992PTC003644)** Survey, Beltola, Beltola Basistha Road, Guwahati, Assam-781028, Email Id: meghmallar92@gmail.com, Ph No.: 0361-234998

**... RESPONDENT NO.7**

**CA LALIT BAGARIA,** Partner in Bagaria Lalit &Co., Chartered Accountants, 4, Synagogue Street, 10th Floor, Room No. 1015, Kolkata, West Bengal-700001, Ph. No.: 033-22433803/22422996/22621342, Email: lbagaria@vsnl.net

**... RESPONDENT NO.8**

**CS SINU SUROLIA,** 7/1A, Grant Lane, 1st Floor, Room No. 9, Kolkata-700012, Ph. No.: 9681674958, Email: sinu.surolia@gmail.com

**... RESPONDENT NO.9**

**MANABENDRA BHATTACHARYYA & CO.,** A Chartered Accountant Firm, havinf office at "Raja Chambers", 4, Kiran Sanjar Roy Road, Ground Floor, Room No. 3, Kolkata-700001, Contact No.: 03322486637/25211813, Email: mbco_07@yahoo.co.in

**... RESPONDENT NO.10**

***Coram:***

| | | |
|---|---|---|
| Shri Rammurti Kushawaha | : | Member (Judicial) |
| Shri Yogendra Kumar Singh | : | Member (Technical) |

***Appearances (through physical appearance):***

| | | |
|---|---|---|
| For Applicants | : | CS Mr. Biman Debnath, on behalf of R-2, 3, and 7. |
| For Respondents | : | CS Mr. Amit Pareek |

**Order pronounced on: 05.08.2026**

**As Per Bench**

1. This Application has been filed by Meghmellar Estates and Services Pvt. Ltd. ("Applicant No. 1"), Manjureema Saikia ("Applicant No.2"), and Anup Saikia ("Applicant No. 3") [altogether mentioned hereinafter as "Applicants") under Sections 241, 242, and 244 of the Companies Act, 2013 ("Act") and rules made thereunder against Aaryan Chilled Infra Private Limited ("Respondent No. 1") and Jagdish Sharma ("Respondent No.2)[ altogether mentioned hereinafter as "Respondents"] for purportedly praying for various reliefs against the present Applicants in Company Petition No. 14/2023 ("CP") with respect to the affairs of the Applicant No.1 company. The Applicants pray for the following orders:
   a. *Maintainability of CP No. 14/GB/2023 be decided as a preliminary issue.*
   b. *CP No. 14/GB/2023 be dismissed with costs.*
   c. *Pending adjudication of this application, stay of all further proceedings of CP No. 14/GB/2023.*
   d. *Ad interim orders in terms of prayers above.*
   e. *Costs of and incidentals to this application be paid by the respondents in this application.*
   f. *Such further or other order or orders be passed and/or directions be given as to which this Hon'ble Court may deem fit and proper.*
2. Submissions of the Applicant *vide* the Interlocutory Application:
   2.1. The Respondent 1 and 2 (Petitioners in CP no 14/GB/2023) had instituted a petition being Company Petition No. 14/GB/2023 purportedly under sections 241, 242, and 244 of the Companies Act, 2013 along with other sections and provisions of the Companies Act, 2013 and rules made there under inter alia purportedly praying for various reliefs against the respondents No 2, 3, and 7 in respect of the affairs of the Respondent No. 7 Company. The Applicants herein deny all the allegations contained in the petition and submits they are false, fabricated, and motivated.
   2.2. The Applicants submit that the Company Petition suffers from gross suppression of material facts and contains allegations that are ex-facie false and fraudulent. It states that the Petition is not maintainable as it is fraudulent, frivolous, and an

abuse of the process of law. It was filed with the ulterior motive of harassing the applicant and disrupting its flow of work. The Applicants seek for the maintainability of the application to be adjudicated as a preliminary issue. It is otherwise not tenable in law and on fact. It prayed for the petition to be dismissed *in limine* with exemplary costs.

2.3. The Applicants contest the maintainability of the Petition by submitting that the Petitioners do not have the requisite qualification as prescribed under Section 244 of the Act to maintain the Petition under Section 241 of the Act. As per Section 244, in case of a Company having share capital, not less than one hundred members of the Company or not less than 1/10th of the total numbers, whichever is less or any members or members holding not less than 1/10th of the issued share capital of the Company, have the right to apply under Section 241 of the Act, subject to the condition that the applicant has paid all calls and other sums due on his shares. In case of a Company not having share capital, not less than 1/5 the of the total number of members have the right to apply under Section 241 of the Act.

2.4. The Respondents herein (Petitioners In CP no 14/GB/2023) do not hold any shares in the Applicant No.1 Company i.e, Meghmellar Estates and Services Pvt. Ltd. making its proceedings not maintainable.

A copy of the list of shareholders of Applicant No.1 Company is annexed as "*Annexure A*" to the Application.

2.5. The Applicants submit the application under reply is fraught with falsehood, active concealment of the true facts being matters of record and documentary evidence.

2.6. The Applicants contest the Petition's maintainability on the ground of its eligibility test as the respondent herein also does not hold any shares in the Applicant No. 1 Company and they never filed an application for waiver of eligibility. They are also not recorded members in the Registrar of Members maintained by the Applicant No.1 Company, making this application liable to be rejected outright. A mere perusal of the List of Shareholders show the respondent does not hold any shares in the Applicant No.1 Company.

2.7. The Applicant has filed an application before this Hon'ble Tribunal under Section 252(1) of the Act *vide* CP No. 18/2022 for revival of M/s Sapphire Suppliers Private Limited (Respondent No. 6 in CP No. 14/2023) which remains pending before this bench. The Company was struck off by the Registrar of Companies, Guwahati. However, it was not disposed off and the status of the Company as on the date of filing this Company is reflected as 'struck off' in the portal of the Ministry of Corporate Affairs ("MCA"). The matter is still under adjudication as the rights of the 'struck off' company has not been settled yet. The Applicants would also like to rely upon the Supreme Court judgment in **Aruna Oswal v. Pankaj Oswal & Ors.**, Civil Appeal No. 9840 of 2019 where it was held that proceedings before the NCLT filed under Section 241 and 242 of the Act should not be entertained because of the pending civil disputes. A copy of the master data downloaded from the MCA portal and a copy of the aforesaid judgement is annexed as "*Annexure B*" and "*Annexure C*" respectively to the Application.

2.8. The Applicant further states that the Respondents have not bought any ground of oppression or mismanagement under the provisions of the Act for relief from this court against Applicant No. 1 Company.

2.9. The shareholding of Sapphire Suppliers Pvt. Ltd. was transferred by the board of Sapphire Suppliers Private Limited (Respondent No. 6) before the strike-off of the company and the application of oppression and mismanagement can only be filed by a shareholder while holding his shareholder rights. The Respondents should settle the same among management and shareholders of M/s Sapphire Suppliers Private Limited as it is an internal issue of the Respondent No. 6 of the main Petition and has nothing to do with the functioning of the Applicants. No clear case of oppression and mismanagement is made against the Applicant.

2.10. The Applicants submit that this court has been misrepresented as the last order of the main Petition was obtained by suppressing vital and relevant information. The Respondents misrepresented that they hold rights/eligibility under Section 244 of the Act and obtained an order of cancellation of right to reply against a struck off company from this bench *vide* order dated 21.09.2023. However, the Company cannot file its reply unless that company is made active.

2.11. The Respondents have concealed the fact that they filed separate application before several authorities including money suit before the Civil and Sessions Judge No.2, Kamrup Metro *vide* Money Suit/21/2023 and 20/2023, and under the RERA *vide* case RERA/ ASSAM/COM/2023/18 and various other forum. The Company Sapphire Suppliers Private Limited is still struck off in the Registrar of Companies, which means it does not pass any rights or benefits.

2.12. The Respondents are using this platform to put undue pressure on the Applicants to satisfy their illegal and illegitimate demands and as a means to extract money from them for which they have also approached separate forums where the matter remains pending.

2.13. The Applicant submits it would be just and equitable if all further proceedings of the main CP No. 14/2023 be stayed until this instant application is adjudicated upon by this Hon'ble Tribunal.

2.14. The Applicants submit unless orders are made as prayed for, they will be suffering irreparable loss, prejudice, and injury. The Application is bona fide and made for the ends of justice and the balance of convenience overwhelmingly lies in favour of orders being prayed for by the Applicants.

3. The Respondents submitted their response to the Interlocutory Application *vide* its Written Objections with the following submissions:

3.1. The Respondents state as a specific denial that barring all admitted claims and all that is a matter of record, it denies and disputes all averments and claims made by the Applicant.

**Preliminary Submissions**

3.2. Respondent no.1 and Respondent No.2 are shareholders of Onion Rings Hotel & Resorts Private Limited ("ORHRPL") (CIN: U55101AS2010PTC011926) holding 5,600 equity shares and 4,800 equity shares respectively out of total 30,400 paid up shares of the company representing 18.42% and 15.79% respectively.

Thereby, in aggregate, they both represent 34.21% of paid-up share capital in ORHRPL.

A copy of master data of ORHRPL and list of its shareholders are annexed as "*Annexure A*" to the Written Objections.

3.3. The Respondents have been holding 34.21% paid up equity shares in ORHRPL since the Financial Year ("FY") 2013-14 till date. Furthermore, ORHRPL holds 97.89% shareholding in Sapphire Suppliers Private Limited ("SSPL") which means the Respondents have direct interest by way of 33.49% (34.21% of 97.89%) stake in shareholding of SSPL, which is also the subsidiary of ORHRPL. Additionally, SSPL holds 65.19% equity shareholding (on account of 1,34,100 equity shares of Rs. 100 each) and 100% preference shareholding (on account of 90,000 of 10% redeemable preference share rights) in Meghmellar Estate and Services Private Limited ("MESPL"), hence by virtue of such shareholding, it is also a subsidiary of SSPL. Hence, the Respondents have direct interest of 21.83% (33.49% of 65.19%) in equity shareholding of MESP, and 33.49% interest on preference shareholding of MESPL by virtue of shareholding in ORHRPL. The Respondents have been aggrieved by acts of oppression, mismanagement, and violation and non-compliance of various provisions of the Act carried out by the Applicants with the collusions of other parties of the main CP, specifically by Applicant No. 2 and 3, having common directorship and shareholding in all three companies,i.e., ORHRPL, SSPL, MESPL, except that their directorship ceased on 11.02.2019 in SSPL in collusion with the statutory auditor of ORHRPL, i.e., CA Lalit Bagaria, with instances explained in detail in main CP which are allegedly prejudicial and oppressive to them. The Main CP/14/GB/2023 is filed under Section of 241, 242, 244 of the Act read with Sections 96, 99, 101, 117, 134, 152, 159, 166, 180, 213, 447. 448 of the Act and Rule 11 of NCLT Rules, 2016.

A copy of chart of shareholding of all the companies with the subsidiary companies in annexed as "*Annexure B*" to the Written Objections. A copy of master data along with signatory details and shareholder list of SSPL and MESPL are annexed as "*Annexure C*" and "*Annexure D*" respectively to the Written Objections.

3.4. The Respondents submit that Applicant No. 2 and 3 have been taking undue advantage of their positions as directors in ORHRPL. Being common directors in ORHRPL, SSPL and MESPL, they have indulged in various illegal activities and violation of law intentionally with a motive for wrongful gain. MESPL, being a construction company, has huge land back and third party agreements with Protech Housing. a partnership firm registered under the provisions of the Indian Partnership Act, 1932, having its registered office at 605, Protech Centre, 6th floor, Ganeshguri, Guwahati, Assam, PIN- 781006 (PAN AAYFP1604M) represented by one of its partners, Manoj Kumar Jalan, valuing crore of rupees. With ulterior motives and malicious intentions, the Applicants have tried to extinguish substantial interest of the Respondents in MESPL by eliminating the stake of ORHRPL in SSPL by falsely selling its investment of "ORHRPL" in SSPL to a third party without any consent and approval of the Respondents, who are members of ORHRPL and also by applying for strike-off of SSPL in contravention with Section 251 of the Act. They have also illegally transferred shares of MESPL held by SSPL in their own name without valid valuation and payment, contravening Section 447 of the Act, as mentioned in the main CP. By keeping the Respondents in dark and without their participation in such significant decision making process and that too not only in the affairs of Company but also in its subsidiaries, so that the Respondents being Shareholders of "ORHRPL", which is the Holding company of "SSPL", and "SSPL" which is also Holding company of "MESPL" is left with no right to claim their stake and interest in "SSPL" & "MESPL" Companies. Thus, these continuous series of oppressive and mismanagement activities committed by Applicants in "ORHRPL" as well as its subsidiaries has a significant relation to the chain of events committed by Applicant 2 & Applicant 3 of instant objection application in the affairs of "SSPL" & "MESPL", which ultimately prejudiced the interest of the Respondents in "ORHRPL" as well as its subsidiaries i.e., "SSPL" and "MESPL". The activities committed by Applicant 2 & Applicant 3 in collusion with Sona Roy, Sanjay Roy Chaudhary, CA. Lalit Bagaria, CS Sinu Surolia, Manabendra Bhattacharya & Co. lt is pertinent to mention here that the main C.P. was filed under multiple Sections of the Companies Act 2013 accordingly the Respondents has paid a sum of Rs 20,000 which is inclusive of fees of Rs. 10,000 for filing of Application under section 244 and Rs 10,000 for other provision of Companies Act, 2013. Hence the contention made by Applicant 1, Applicant 2 & Applicant 3 related to maintainability of the main CP/14/GB/2023 is illegal and invalid.

A copy of filing receipt of the main CP is annexed as "*Annexure E*" to the Written Objections.

3.5. The Applicants mismanaged the affairs of the companies as they were common directors in all the Companies namely "ORHRPL", "SSPL" (till 11/02/2019), & "MESPL". Some of these instances were detailed as under:

3.5.1. No intimation of Annual General Meeting ("AGM") with Notice of AGM, Audited Financial Statement by the ORHRPL to the Respondents which is in violation of Section 99 of the Act.

3.5.2. Illegal sale of undertaking of ORHRPL forming substantial investment by way of 2,20,000 equity shares of Rs. 10 each in its subsidiary company, i.e., SSPL to third party Jay Kumar Patwa without any notice and approval, without any proper valuation, and without any proof of sale to the Respondents which is in violation of Section 180 of the Act.

3.5.3. Applicant no. 2 and 3 being directors of ORHRPL deliberately failed to exercise their power conferred under Section 180 of the act in order to sell the undertaking forming substantial investment in ORHRPL. No notice was served to the Respondents which establishes the fact that there was mismanagement by these directors in the affairs of ORHRPL. The main CP alleged about oppression and mismanagement of the aforesaid company, as Respondents were members of it.

3.5.4. The Applicants illegally applied for the strike-off of SSPL in the FY 2019-20 without passing any valid special resolution and without the consent of the

Company and without proof of notice of Extraordinary General Meeting ("EGM"), attendance sheet, voting results, and consent of members, i.e., Respondents being 34.21% shareholders in aggregate of ORHRPL. Furthermore, the documents submitted for strike-off are false, illegal, and fabricated which is in violation of Section 101 of the Act.

3.5.5. The illegal sale of substantial investment of the Company in MESPL by way of book entries, as reflected in audited financial statement of SSPL for FY 2017-18 to Applicant No. 2 and 3, i.e., related parties, without showing proper accounting and reporting of the same in Director's report of the Company pertaining to that financial year and by showing humongous loss on account of such sale of investment, without any intimation of such sale to "ORHRPL" and without any proper valuation of assets of "SSPL".

3.5.6. Applicant No. 2 and 3 illegally transferred 1,34,100 equity shares of MESPL held by SSPL in their own name at Rs. 60,34,500/- which have a book value of Rs. 6,70,50,000/- as reported in the Audited Financial Statement of SSPL Company for FY 2017-18 being audited by CA Lalit Bagaria and being signed by Applicant No. 2 and 3, without any consent and approval of SSPL Company and its holding company, i.e., ORHRPL and without valuation of shares and making any payment to SSPL and also no special resolution as required under Section 115 of the Act. Further no details shown in regard to investments held by other companies as reflected in the Audited Financial Statement of SSPL for FY 2017-18 under head "Total Non-current Investments" without making any payment to SSPL instead showed the entire amount of Rs 1,43,34,500/- under the head "Trade Receivables" (Rs. 45,00,000 in regard to 9,000 shares of Desire Impex Private Limited plus Rs. 38,00,000 in regard to to 9,500 shares of Galaxy Hirise Private Limited & Rs.60,34,500 in regard to shares of Applicant No. 1 Company.

3.5.7. Furthermore, no disclosures were made regarding related party transactions, i.e., sale of investment of SSPL in MESPL to Applicant No. 2 and 3, as reflected in Audited Financial Statement of SSPL pertaining to FY 2017-18 (last FY of which return was filed prior to strike off of SSPL), in the notes of Audited Financial Statement of SSPL as well as Director's Report for the FY 2017-18 of SSPL Company which constitutes non-compliance of Section 134(3)(h) of the Act and Rule 8(2) of Companies (Accounts)Rules, 2014.

3.5.8. In FY 2019-20, the investments in MESPL of Rs. 2,20,000 was written off and transferred under the head "Trade Receivables" as unsecured debt receivables and no observation or opinion is made in this regard by the statutory auditor, CA Lalit Bagaria which manifests the act of collusion of statutory auditor with the directors of ORHRPL in manipulating and window dressing the accounts of ORHRPL.

3.6. Applicant No. 2 and 3 took undue advantage of their fiduciary position in MESPL by illegally transferring 1,34,100 equity shares of Rs. 100 each held by SSPL in their own name on 19.03.2018 and 21.04.2018, both being directors of SSPL till 11.20.2019. It is evident that by committing such fraudulent acts, Applicant No. 2 and 3 in collusion with CA Lalit Bagaria (Respondent No. 8 in the main CP) removed the stake of SSPL in MESPL on account of which the substantial interest of ORHRPL as well as its member, the Respondents specifically, were adversely affected. And such act was committed without any payment made to SSPL instead such an amount of sale of investment of SSPL in MESPL including investment in other companies was shown under the head "Trade Receivables".

A copy of E-form MGT-7 of MESPL for FY 2017-18 and 2018-19 is collectively annexed as "*Annexure F*" to the Written Objections.

3.7. An appeal has already been filed against the impugned order passed by this Hon'ble Tribunal in CP/18/GB/2022 of restoration of the SSPL before the Hon'ble NCLAT, New Delhi under Section 421(1) of the Act.

A copy of the NCLAT receipt of the appeal in annexed as "*Annexure G*" to the Written Objections.

3.8. It is pertinent to mention that the Income Tax Authority under Section 156 of the Income Tax Act,1961 has issued a demand notice to the SSPL demanding a sum of Rs. 9,09,29,390/- dated 28.12.2018. It is further submitted that the Applicants being the directors of SSPL at that time concealed the matter due to which it never came to light before this Hon'ble Bench while dismissing the revival application of SSPL.

A copy of income tax demand notice is annexed as "*Annexure H*" to the Written Objections.

3.9. That the Applicant 2 and Applicant 3 of instant I.A. being the directors of "ORHRPL" till date have illegally exercised their power only to fulfill their personal and illegal motives. As instances mentioned in the above paras and also in the main application which is not repeated here in for the sake of brevity.

**A. <u>Preliminary Objections</u>**

3.10. Section 180 of the Act *inter alia* mandates a special resolution to be passed for the Board of Directors to sell or dispose a substantial part of the undertaking of the company. The Respondents submitted that in sale of undertaking of ORHRPL, Applicant No. 2 and 3 being directors of the company deliberately failed to comply with the provisions of Section 180 of the Act by not calling Extraordinary General Meeting ("EOGM") and no intimation ever being received and was never served by the Applicants. It is settled legal proposition that all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a situation, the legal maxim "*sublato fundamento cadit opus*" meaning thereby that if the foundation is removed, the entire structure collapses, comes into play and applies on all scores in the present case. The Supreme Court has also reiterated it multiple times that if the basis of a proceeding is gone, all consequential acts, actions, and orders would fall to the ground automatically. This principle is applicable to judicial, quasi-judicial, and administrative proceedings equally.

3.11. Section 134 of the Act *inter alia* says that any particulars of contracts or arrangements with related parties referred to Section 188(1) of the Act should be included in the Board of Directors' report which is to be attached to statements laid before a company in general meetings. But it is pertinent to highlight the sale of investment of SSPL in FY 2017-18 in MESPL by way of 1,34,100 equity shares of 100 each shown as sale to related parties, i.e., Applicant No. 2 and 3 at Rs. 60,34,500 where the actual value of investment was Rs. 6,70,50,000 without any consent of ORHRPL which is holding company of SSPL and of whom the Respondents held 34.21% shares. Furthermore, there was no disclosure of related party transaction in audited financial statements of FY 2017-18 and also in director's report as per Section 134(3)(h) of the Act. It shows the ulterior motive of Applicant No. 2 and 3 to gain from the said sale at such a lower value and non-reporting of the same in Director's Report.

A copy of audited financial statement of SSPL for FY 2017-18 is annexed as "*Annexure I*" to the Written Objections.

3.12. Section 244 of the Act sets the eligibility threshold for members to file an application under Section 241, i.e., for oppression and mismanagement. For companies with share capital, it's 100 members or 1/10th of total members (whichever is less), or holders of 1/10th of issued share capital; for companies without share capital, it's 1/5th of total members, though the Tribunal can waive these requirements. And section 244(2) of the Act provides, where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

The mismanagement conducted by the Applicant2 and 3 in ORHRPL by abusing their position being directors of the company is prejudicial and oppressive to the Respondents. Considering the Respondents are shareholders in ORHRPL and subsequently in its subsidiaries, SSPL and MESPL, the main CP/14/GB/2016 describes the series of mismanagement by the Applicants in their capacity as common directors in all three companies in great detail. It was filed under Section 241, 242, and 244 of the Act along with Sections 96, 99, 101, 117, 134, 143, 152, 159, 166, 180, 213, 447, and 448 of the Act before this Hon'ble Tribunal.

**B. <u>Parawise Reply</u>**

3.13. In the instant application, it has been mentioned that the Applicant No.1 has duly authorised the directors of MESPL, Anup Saikia and Manjureema Saikia to make this application. But as per material on record, they have not furnished any legal and valid documents with the instant IA of such authorisation, hence it is liable to be dismissed or rejected on the face of it.

3.14. With response to para 1 of the facts of the case, it is submitted that the Applicants fail to bring any material on record to prove any fabrication or false documents by the Respondents. Applicant No. 2 and 3 are directors of ORHRPL and Applicant No. 1 is the subsidiary of SSPL hence all these 3 parties are necessary for the adjudication of the main CP.

3.15. With response to para 2, it is submitted that the Applicant has suppressed material facts. The Applicants did not bring any material to establish the ulterior intention of the Respondent in the instant application. Despite sufficient opportunities given by the Hon'ble Bench, the Applicants have not furnished the reply of the main CP and preferred the instant application with the sole motive to delay the adjudication of the main CP.

3.16. With response to para 3, it is submitted that the application of oppression and mismanagement is filed against the ORHRPL (of which the Respondents are members holding 34.21% of its paid-up capital) and the Applicants are directors of the company. Further the other parties are impleaded in the main CP under various other sections of the Act as the series of fraud and non-compliances under the various provisions of the Act has been committed by all the other parties in collusion with each other against the Respondents in the instant application. Applicant No. 2 and 3, who are directors of MESPL, have been impleaded in the main CP for the proper adjudication of the matter. Hence, the main CP is very much maintainable.

3.17. With response to para 4, it is submitted that the Respondents do not directly hold any share in MESPL but by virtue of shareholding in ORHRPL, they have direct interest in its subsidiary SSPL and consequently, SSPL's subsidiary MESPL. The application is maintainable as the Respondents are members of ORHRPL. MESPL's presence is required for proper adjudication of the main CP.

3.18. With response to para 5, it is submitted that the Applicants alleged that there is falsehood, active concealment of true facts, but the Applicants did not bring any documentary evidence to prove that the Respondents have committed anything false or concealment of true facts.

3.19. With response to para 6, it is submitted that the eligibility test of being a member of the company to file an application under Section 244 of the Act is satisfied as the application is filed by the Respondent on ORHRPL of whom the Respondents are members. As stated here in above the main C.P. no. 14/GB/2023 has been filed in addition to Section 241,242 & 244 other various provisions of the Act 2013.

3.20. With response to para 7, it is submitted that the application for restoration of SSPL was filed under Section 252(1) of the Act by the Respondents *vide* CP No. 18 of 2022, which was dismissed by this Hon'ble Bench on 09.11.2023. The Respondents have already filed an appeal before the Hon'ble NCLAT, New Delhi bench. The Supreme Court judgment referred by the Applicant in the matter of **Aruna Oswal v. Pankaj Oswal & Ors.**, Civil Appeal no. 9840 of 2019, have no relevance in the instant matter since the judgment is related to the transmission of shares while a civil suit is pending. It is further submitted that the appeal related to the restoration of SSPL is pending before the Hon'ble NCLAT which does not have any bar for filing of the main CP. Further, Applicant No. 2 and 3 have already resigned from the post of directorship of SSPL on 11.02.2019 and the SSPL was struck off on 17.09.2020. By seeking the relief for SSPL, it clearly shows their malicious intention with respect to the struck off status of SSPL. Furthermore, since the Applicants had already resigned from the directorship of SSPL, hence they do not have any *locus standi* to claim any relief in favour of SSPL.

3.21. With response to para 8, it is submitted that the application for oppression and mismanagement was filed against ORHRPL, of whom the Respondents were members, and the Applicants being its directors had oppressed the right of the Respondents at various instances such as not giving them any intimation regarding the AGM of ORHRPL, illegal sale of undertaking of ORHRPL, and no notice being served regarding any EOGM. Applicant No. 2 and 3 illegally transferred

1,34,100 equity shares of MESPL held by SSPL in their own name. Further details regarding their oppressive activities have been submitted in the main CP. Since all parties in the main CP are closely related to each other and they carried out several acts of oppression, mismanagement and violation of laws, hence, there is a need for all the Respondents of the main CP to be parties for proper adjudication.

3.22. With response to para 9, it is submitted that the share transfer of SSPL in MESPL was done fraudulently and without any valuation and consideration in favour of Applicants No. 2 and 3. None of the Applicants had submitted any legal and valid documents including bank transaction, special resolution, valuation of shares, etc. related to the transfer of shares of SSPL. The Respondents had already filed an appeal for restoration of the SSPL before the Hon'ble NCLAT, New Delhi which is still pending. Since all the parties of the main CP are closely related to each other and the CP was filed in addition to the acts of oppression and mismanagement and the violation of various provisions and laws of the Act, therefore, all parties of the main CP are essential for its proper adjudication.

3.23. With response to para 10, it is submitted that there was no misrepresentation by the Respondents against the eligibility under Section 244 of the Act. It is Applicant No.1 who misinterpreted the main CP and questioned the maintainability of the main CP. Applicant No.1 does not even possess the right to question the maintainability of the main CP.

3.24. With response to para 11, it is submitted that the Respondents never concealed any relevant fact from the adjudicating authority, the allegation is baseless and devoid of merits. The Applicants have failed to submit any documentary evidence in support of their allegations which clearly shows their intention to mislead this Hon'ble Bench.

3.25. With response to para 12, it is submitted that the allegation by the Applicants are baseless and devoid of merits. The Applicants failed to mention that what kind of illegitimate demand had been made by the Respondents. The Respondents had filed the main CP to bring justice to themselves within the right of the Act as there was gross violation of various provisions of laws by the Applicants in collusion with other Respondents of the main CP.

3.26. With response of para 13, 14 and 15 of the application, it is submitted that the Applicant failed to produce any substantial record in the present application through which they reserve the right to deal with the matters in the main CP. The Applicants have neither filed their reply in the main Company Petition despite having been afforded sufficient opportunity, nor have they placed on record any valid or legal ground which can substantiate that during the pendency of the instant application, any further proceedings of the main CP should be stayed. The present application has been filed solely with the intention of delaying the adjudication of the main Company Petition.

3.27. With response to paras 16 to 20, it is submitted that CP/14/GB/2023 is very much maintainable under the various provisions of the Act. The Applicants had filed this instant application with the sole intent to delay the proceeding of the main CP. The Applicants were provided sufficient opportunity by the Adjudicating Authority to file reply of the main CP but instead of filing the reply of the main CP. The Applicant preferred this instant application to delay the adjudication process. And further submitted that instant Application filed by the Applicant is in gross violation of the provisions of The Act, 2013 and an abuse of Due Process of Law.

3.28. The Respondents pray that this Hon'ble Tribunal may dismiss the present frivolous application filed by the Applicant with cost, in view of the above contentions and submissions made.

**ANALYSIS AND FINDINGS**

1. Having heard the learned counsel appearing for the parties and upon perusal of the pleadings and documents placed on record, this Tribunal finds that the principal contention raised by the Applicants in the present Interlocutory Application is that Company Petition No. 14/GB/2023 is not maintainable insofar as it relates to Applicant No. 1 (Respondent No. 7 in the main Company Petition), namely Meghmellar Estates and Services Private Limited ("MESPL"), on the ground that

the Petitioners therein do not satisfy the eligibility requirements prescribed under Section 244 of the Companies Act, 2013 in respect of the said company.

2. While the aforesaid pleadings is largely confined to the alleged non-maintainability of the proceedings against Respondent No. 7 in the main CP , the Applicants have sought a sweeping relief praying for dismissal of the entire CP No. 14/GB/2023. This Tribunal is of the considered view that the relief sought is wholly disproportionate to the grounds pleaded in the application.
3. A plain reading of the application demonstrates that the Applicants have challenged the maintainability of the proceedings of the main CP only qua Respondent No. 7 on the premise that the Petitioners are not members of MESPL. No independent pleadings have been made questioning the maintainability of the Company Petition against the remaining respondents or the maintainability of the petition as a whole under the various provisions invoked therein. The prayer seeking dismissal of the entire Company Petition, therefore, travels far beyond the scope of the pleadings contained in the present application.
4. It is a settled principle of law that the relief granted by a judicial forum must flow from the pleadings and the issues raised by the parties. A party cannot seek a relief which is not founded upon the necessary factual pleadings. The Tribunal cannot be called upon to adjudicate the maintainability of the entire Company Petition in the absence of specific pleadings confined to the effect of challenging the maintainability of the proceedings against a particular respondent i.e,R-7 in main Company Petition.
5. Moreover, the main Company Petition has been instituted under Sections 241, 242 and 244 of the Companies Act, 2013 read with various other provisions alleging acts of oppression, mismanagement, fraud and statutory violations involving several respondents. Whether the Company Petition is maintainable against a particular respondent is a distinct issue from whether the Company Petition itself is liable to be dismissed in its entirety. The Applicants have failed to lay any factual or legal foundation to justify such an omnibus prayer.

**6.** Accordingly, this Tribunal is of the considered opinion that the prayer in the instant application i.e., IA(Comp. Act)/12/GB/2023 seeking dismissal of Company Petition No. 14/GB/2023 is not maintainable, inasmuch as the pleadings in the present Interlocutory Application are confined only to the alleged non-maintainability of the proceedings against Respondent No. 7 (Applicant No. 1 herein). The relief claimed is beyond the scope of the pleadings and, therefore, cannot be entertained. Consequently, the present application is liable to be dismissed on this ground alone, leaving all other issues to be adjudicated in the main Company Petition.

**ORDER**

1. Accordingly, in view of the foregoing analysis and findings the present Interlocutory application i.e. **IA(Comp Act)/12/GB/2023** in CP/14/GB/2023 filed by the applicant is **dismissed**.
2. Accordingly, the instant application i.e, **IA(Comp Act)/12/GB/2023** stands **disposed of**.
3. The Registry is directed to send e-mail copies of the order forthwith to all the concerned parties inclusive of the Counsel and the Interim Resolution Professional.
4. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
5. File be consigned to record.

**Sd/-**
**Yogendra Kumar Singh**
**Member (Technical)**

**Sd/-**
**Rammurti Kushawaha**
**Member (Judicial)**

*Signed this on 5th day of August, 2026*

*Niketa Choudhary (L.R.A.)*