605(i)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **01.09.2026** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER	**:**
PETITION NUMBER	**:** CP(CA)/65(CHE)/2024
NAME OF THE PETITIONER(S)	**:** Era.Velusamy and 5 Others
NAME OF THE RESPONDENTS	**:** Palladam Hi Tech Weaving Park & 8 Others
UNDER SECTION	**:** Sec 241-244 of CA, 2013

ORDER

Present: Ld. Counsel Shri. Pranav V Shankar for the Petitioners.

None for the Respondents.

Vide separate order pronounced in Open Court, petition is dismissed.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

MG

Date: 01.09.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

C.P. No. 65 of 2024

(Filed under Sections 241 to 244 of the Companies Act, 2013)

In the matter of ***PALLADAM HI TECH WEAVING PARK***

1. **Era. Velusamy**
Residing at No.1/181, Salai Thottam,
K. Ayyampalayam, Ayyampalayam,
Tiruppur – 641662

2. P. Kumarasamy (deceased)
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

2a. K. Vasanthamani (legal heir of deceased P2) ***substituted vide an order dated 13.08.2025 in IA(CA)/153(CHE)/2025***
W/o Kumarasamy
1/131 Devarayan Palayam
Ichitpatti Post
Tiruppur 641668

2b. A. Yamuna (legal heir of deceased P2)
W/o Arun Kumar
21-IB Kunathurampalayam
Nagamaputhur Post
Annur- 641653

2c. Chitra (legal heir of deceased P2)
W/o Karthick
77 Pandarayankadu
Velayutham Palayam
Palla Palayam Post
Tiruppur 641663

2d. Gowthamraj (legal heir of deceased P2)
S/o Kumarasamy
1/131 Devarayan Palayam
Ichitpatti Post
Tiruppur 641668

3. **M. Chinnasamy**
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur - 641682

4. **G. Jaganathan**
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

5. **M. Vanitha**
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

6. **P.V. Mahalingam**
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

... Petitioners

Vs

1. **Palladam Hi Tech Weaving Park**
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

2. K.R. Rajmohan, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

3. A. Ibramshah, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

4. V. Rajkumar, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

5. M. Murugesan, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

6. P. Anand, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

7. V. Gopalakrishnan Vasa, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

8. R. Krishnamoorthy, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur – 641682

9. M. Balasubramanian, Director, Palladam Hi-Tech Weaving Park,
Having Office at S.F.No. 290/1,
Sukkampalayam Village, Palladam Taluk,
Tiruppur - 641682

… Respondents

Order Pronounced on 1st September, 2026

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Petitioner : *R.Vidhyashankar and Pranav V Shankar, Advocates*
Respondents : *P.H.Arvindh Pandian,Senior Counsel and* Ms.*Selvi George, Advocate*

O R D E R

(Hearing conducted through hybrid mode)

The petition **CP/65/2024** has been filed by the Petitioners under Sections 241 to 244 of the Companies Act, 2013 seeking the following reliefs:

(a) Declare that the Petitioners are entitled to fair market value of the shares in the event the Petitioners' shareholding is to be divested, and vested in any new member or any other member of the company and that there is no other procedure that is available for the Respondent Company for the divesting of the shares of the Petitioners in the Company.

(b) Direct a fair Market Valuation of the Shares of the Respondent Company to be done by an Independent Auditor to be appointed by this Tribunal.

(c) Permanent injunction restraining the respondent company from convening or holding any general meeting of the company for the purpose of introducing any new provision in the Articles of Association of the company to expand the scope for forfeiture of the shares of the company beyond what is presently permissible

(d) Declare that the act of the Respondents in forfeiting the shares of the Petitioners in 1st Respondent Company vide notice dated 25.06.2024 is illegal, void ab initio, contrary to binding agreements between the parties and an act of gross oppression.

e) Grant such further and other reliefs as this Tribunal may deem fit in the interest of justice

FACTS OF THE CASE:

1. The Petitioners are the shareholders of the 1st Respondent Company, Palladam Hi-Tech Weaving Park ("PHWP"), a public unlisted company incorporated on 23.10.2003 under the Companies Act, 1956 for establishing and promoting an industrial park to provide infrastructure and other facilities for the textile weaving industry in Tamil Nadu.
2. It is stated that the Petitioners 1 to 4 were the promoters and subscribers to the Memorandum of Association of PHWP. Petitioners 1 and 2 being among the first Directors of the Company had played a pivotal role in conceptualizing, establishing and developing the project. PHWP was incorporated under the Central Government's "Group Work Sheds Scheme". Out of the five weaving parks established under the Scheme in Tamil Nadu, it was the only park to successfully

commence operations and the first such industrial park in India to commence commercial operations.

3. It is stated that after incorporation, the Company acquired land for the project and divided it into A, B, C and D category plots for allotment to shareholders. The Petitioners were allotted A-Type plots for construction of industrial sheds and commencement of manufacturing activities.

4. It is stated that the total cost of the project was approximately Rs.80 Crores, of which Rs.40.0 Crores was provided as subsidy by the Central and State Governments. The balance amount was raised through bank borrowings. Apart from contributing towards the share capital and acquisition of land, the Petitioners also permitted their share certificates to be used as collateral security for obtaining bank finance during the initial stages of the project.

5. It is stated that owing to an unprecedented downturn in the textile industry and financial constraints, the Petitioners could not establish industrial units in their allotted plots. Consequently, during 2006-2007, the Company re-allotted their plots to other entrepreneurs, who constructed work sheds and commenced industrial activities. Despite the re-allotment of the plots, the Petitioners continued to remain shareholders of the Company.

6. It is stated that each Petitioner invested Rs.60,000/- in the first tranche and Rs.1,40,000/- in the second tranche during 2003 and 2004 respectively, aggregating Rs.2,00,000/- each. Each Petitioner presently holds 6,300 equity shares, aggregating to 37,800 equity shares. The Petitioners' investment has continued as part of the Company's share capital, and the 1st Petitioner continued to serve as a Director till 2019.

7. It is stated that on 01.04.2022, the 1st Respondent Company issued a notice convening an Extraordinary General Meeting proposing an amendment to the Articles of Association by inserting Article 36(C), empowering the Board of Directors to forfeit the shares of members who had not established industrial activity in the Park for ten years or more and to reallocate such forfeited shares to other entrepreneurs.

8. The Petitioners contend that they are signatories to the Share Subscription Agreement dated 17.03.2006, which provides that where a subscriber fails to commence commercial production or commits any breach resulting in termination of the Leave and Licence Agreement, the Company is entitled to re-allot the plot and require the subscriber to transfer the shares to a third party identified by the Company, with payment of consideration after adjustment of dues. The Agreement does not contemplate forfeiture of shares.

9. It is stated that the Articles of Association, prior to the proposed amendment, permitted forfeiture only in respect of arrears of rent, lease amounts or other sums due from a member to the Company. According to the Petitioners, the proposed amendment fundamentally alters the existing contractual and constitutional framework by authorising forfeiture of shares without payment of consideration, whereas the existing arrangement envisages only transfer of shares for consideration.

10. The Petitioners state that they have remained shareholders of the Company for more than two decades notwithstanding the re-allotment of their plots. They contend that the Company's land, acquired with contributions made by the Petitioners and other shareholders, has appreciated substantially in value, and that even the Company's Annual Report for 2019 reflects a value of approximately Rs.800/- per share. According to the Petitioners, they are entitled to receive fair market value for their shares in the event of any transfer.

11. It is stated that the 1st Petitioner earlier instituted O.S. No.61 of 2022 before the District Munsif Court, Palladam seeking to restrain the Company from conducting the Extraordinary General Meeting. By judgment dated 19.10.2023, the Hon'ble High Court of Madras struck off the suit holding that the dispute falls within the exclusive jurisdiction of the National Company Law Tribunal under Section 430 of the Companies Act, 2013,

leaving the Petitioners to pursue their remedies before this Tribunal.

12. It is stated that the present Company Petition was filed on 03.07.2024 and notice thereof was served upon the Respondents. During the pendency of the proceedings, the Respondents proceeded with the forfeiture of the Petitioners' shares pursuant to a notice dated 25.06.2024. Petitioners 1 and 2 did not accept the notice, while Petitioners 3 to 6 received the same but challenged the proposed action before expiry of the stipulated fourteen-day period by filing the Company Petition. None of the Petitioners encashed the cheques issued towards the alleged consideration for the forfeiture.

13. The Petitioners contend that the alleged forfeiture of their shares during the pendency of the proceedings before this Tribunal is illegal, contrary to the Share Subscription Agreement and the Articles of Association, and forms part of the acts complained of in the present petition.

COUNTER FILED BY THE RESPONDENTS 1 TO 8

14. It is stated that the Petitioners have malafidely filed this petition alleging oppression and mismanagement, with the object of advancing their personal and financial interests to the detriment of the Respondents and the 1st Respondent Company. A reading of the averments in the petition would show that the Petitioners have not made out any case of oppression or mismanagement

under Sections 241 and 242 of the Companies Act, 2013 ("the Act"). The allegations are false, baseless and unsupported by any cogent documentary evidence.

15. It is stated that the 1st Respondent Company is a "Not for Profit" Company incorporated under Section 25 of the Companies Act, 1956 on 23.10.2003 at Coimbatore, Tamil Nadu. The main object of the Company is to promote weaving industry in Coimbatore and Tirupur Districts by establishing an Industrial Park and providing infrastructure and administrative facilities for weaving, garmenting, knitting, embroidery, yarn stocking and allied textile units. The Company was established to provide small and medium-scale entrepreneurs with world-class infrastructure facilities and enable them to establish textile units with modern technology and compete internationally. About 49% of the cost of the factory buildings and common infrastructure was provided by way of subsidy by the Government of India and Government of Tamil Nadu, while the balance was contributed by the investors, including an initial contribution of 10%, with the remaining amount funded by banks as term loans. The investors were also entitled to avail themselves of TUFS benefits.

16. It is stated that the Company established an integrated textile park on a public-private partnership model managed by user entrepreneurs at Sukkampalayam Village, K.N. Puram Post,

Palladam, Tirupur District, Tamil Nadu, having good connectivity to ports and airports. The Park presently consists of about 95 sheds of various sizes with a total built-up area of approximately 7,00,000 sq.ft. Any textile-related industry, except spinning and processing, can establish a unit in the Park by subscribing to the share capital of the Company. There are about 50 members who have subscribed to the share capital and established units in the Park. The very object and scheme of the Company therefore require the shareholders to establish industrial activity in the Park and not merely retain shares without commencing operations.

17. It is stated that the Petitioners subscribed to 6,300 equity shares of Rs.10/- each in the share capital of the Company for the purpose of establishing worksheds in the Industrial Park and executed Share Subscription Agreements ("SSA") dated 17.03.2006, 18.03.2006 and 16.05.2006, as applicable. Six plots were allotted to the Petitioners for establishing worksheds. Clause 7.1(a) of the SSA entitled the subscriber to use the allotted plot/workshed and the infrastructure and administrative facilities pursuant to a Leave and Licence Agreement ("LLA"). Clause 7.1(b) specifically required the subscriber to commence commercial production within six months from allotment, or within such further period as permitted by the Company. In the event of failure to commence commercial production, the Company was entitled to cancel the allotment and allot/transfer

the shares to another party willing to comply with the SSA and LLA. It is stated that the 1st Petitioner, on behalf of Success Textiles, executed an LLA dated 30.10.2008 and the 2nd Petitioner executed an LLA dated 29.12.2008.

18. It is stated that the Petitioners admittedly failed to commence commercial production and consequently the plots allotted to them were cancelled and reallocated to other entrepreneurs. The cancellation letters were signed by the 1st and 2nd Petitioners themselves. The Petitioners, despite being fully aware of the SSA and LLA and despite the reallocation of their plots, continued to retain their shares for several years. The 1st and 2nd Petitioners were themselves the directors of the Company and were part of its management, attended Board meetings, participated in the affairs of the Company and signed financial statements. The 1st and 2nd Petitioners resigned as directors on 26.09.2020 and 28.08.2015 respectively and consequentially withdrew their personal security from the banks. Their position as directors and their involvement in the management clearly establish that they were fully aware of the Company's affairs, reallocation of plots and the requirement concerning transfer of shares.

19. It is stated that after changes in the Board from 2018 onwards, the new Board noticed that certain shareholders whose plots had already been reallocated continued to retain their shares for a long period without establishing industrial activity, thereby

defeating the main objects of the Company. The Board therefore resolved, subject to shareholders' approval, to alter the Articles of Association so as to empower the Company to deal with shares held by members who had not established industrial activity in the Park for ten years or more. Necessary steps were taken before the Registrar of Companies and an Extraordinary General Meeting was convened on 30.04.2022. The Petitioners approached the Munsiff Court, Palladam in O.S. No.61 of 2022 seeking to restrain the said EGM. The Company preferred CRP No.3019 of 2022 before the Hon'ble High Court of Madras. By order dated 11.05.2022, the Hon'ble High Court vacated the order of the Munsiff Court and permitted the EGM to be held, while directing that the resolution should not be implemented until further orders.

20. It is stated that thereafter, the Board convened an EGM on 29.03.2023 for considering the alteration of the Articles of Association. The shareholders approved the alteration by inserting provisions under Article 36, including a provision empowering the Board to forfeit shares held by members who had not established industrial activity in the Park as contemplated under the main objects of the Company for ten years or more after becoming shareholders and to reallocate such forfeited shares to deserving entrepreneurs in the best interests of the Company. The other provisions under Article 36 also place restrictions, without the prior consent of shareholders

by special resolution, upon disposal of the Company's immovable properties, undertaking activities outside the objects of the Company and borrowing beyond the prescribed limits and creating charge over the assets. Four out of the six Petitioners attended the EGM and, out of 33 members personally present, 31 voted in favour of the resolution and only two voted against it. The resolution was not implemented immediately because of the subsisting order of the Hon'ble High Court.

21. It is stated that the Hon'ble High Court, by order dated 19.10.2023, allowed the Civil Revision Petitions filed by the Respondents 2, 3, 4, 6 and 7, struck off the plaint in O.S. No.61 of 2022 and set aside the order passed in I.A. No.128 of 2022. Consequently, the alteration approved by the shareholders be given effect. The allegation of the Petitioners that the amendment was given retrospective effect is therefore false. The special resolution was passed on 29.03.2023 but its implementation was kept in abeyance pursuant to the order of the Hon'ble High Court and was acted upon only after the subsequent order of 19.10.2023. The alteration was made in accordance with Section 14 of the Act and was approved by the requisite majority. The Petitioners, having participated in the EGM and being fully aware of the resolution, cannot now contend that the alteration was clandestine, fraudulent or oppressive.

22. Pursuant to the amended Articles, the Board at its meeting held on 22.06.2024 resolved to forfeit the shares held by shareholders who had retained the same for more than ten years without establishing industrial activity. Though issuance of prior notice was not mandatory under the applicable Act, Rules or Articles, the Company nevertheless issued notices dated 25.06.2024 to the Petitioners, granting 14 days. On the same date, the amounts lying to the credit of the Petitioners towards their initial contributions were also returned to them under separate registered post covers. The notice made it clear that the shares are liable to forfeiture and would thereafter be reallocated to deserving entrepreneurs in furtherance of the main objects of the Company. The Petitioners' shares were accordingly forfeited pursuant to the amended Articles and the Board resolution. The 14-day period referred to in the notice related to the further process of reallocation and did not alter the basis of forfeiture.

23. It is stated that the Petitioners have themselves admitted that they could not commence industrial activity and that the plots allotted to them were reallocated to other entrepreneurs, who thereafter constructed worksheds and commenced operations. This admission disproves their allegation that the textile industry suffered such losses that industrial activity could not be commenced in the Park. Several other investors who could not commence operations exited the Company by transferring their shares to prospective entrepreneurs willing to establish units in

the Park. The Petitioners alone continued to retain their shares for more than 18 years despite the reallocation of their plots. Nothing prevented them from transferring their shares, particularly when the SSA itself provided for transfer to another eligible entrepreneur. Their continued retention of shares without commencing industrial activity was contrary to the very object of the Company and the terms under which the shares were subscribed.

24. It is stated that the allegation that the Company was established substantially with the contribution of the Petitioners is denied. There were more than 50 investors. The land and infrastructure of the Park were established from the pooled contributions of the investors under the cluster initiative. The total share capital contribution of the Petitioners was only Rs.3,78,000/- towards 6,300 shares each, whereas the paid-up share capital of the Company prior to forfeiture was approximately Rs.1,70,75,410/-. The other amounts paid by the Petitioners towards initial/infrastructure contributions were not share capital and were returned on 25.06.2024. The Petitioners, particularly the 1st and 2nd Petitioners who were directors, could have taken steps to convert any alleged additional contribution into capital if that was their intention. Their failure to do so establishes that the allegation of additional capital infusion is an afterthought.

25. The contention that the Company was bound only to transfer the shares and had no power to forfeit them is untenable. Clause 7.1 of the SSA provided a contractual right to the Company to allot/transfer shares where commercial production was not commenced within the stipulated period. Nothing in the SSA or LLA prohibited a subsequent alteration of the Articles of Association in accordance with the Act. There was no agreement that the Articles could never be altered or that transfer of shares was the exclusive remedy available to the Company. Article 5 of the Articles, providing for forfeiture in the circumstances contemplated therein, continues to remain in force, while the newly inserted Article 36B/36C operate in a different situation, namely where a shareholder has failed to establish industrial activity in the Park for ten years or more. The two provisions are therefore not inconsistent. The Petitioners themselves had opportunities for several years, including from 01.04.2022 until 22.06.2024, to transfer their shares but failed to do so.

26. The allegation that the forfeiture was intended to make unlawful gain or confer a windfall benefit upon other investors is denied. The alteration of the Articles was undertaken for the general benefit of the Company and to ensure that its shares are held by entrepreneurs who establish and operate industrial units in the Park. The Petitioners have produced no evidence of any offer made by them to sell their shares at Rs.800/- per share or at any other value. Their reliance on the value reflected in the Annual

Report for 2018-19 does not establish any concluded offer or entitlement to such value. Neither the SSA nor the LLA contemplated buyback of shares by the Company at fair market value. Any fresh issue or allotment of shares to new investors would be subject to the Act, Rules and applicable valuation requirements. Hence, the allegation that the Respondents or new investors would obtain an unlawful financial benefit is wholly speculative and unsupported.

27. It is stated that Hon'ble High Court, while allowing the Civil Revision Petitions by order dated 19.10.2023, observed that if the Petitioners had any grievance regarding the proposed amendment of the Articles, the appropriate remedy was to approach the Tribunal under Section 241 of the Act and further referred to the bar under Section 430 against proceedings before the Civil Court. The said observation only identified the appropriate forum and did not hold that the Petitioners had established oppression or mismanagement or that they were entitled to any relief. The Petitioners have nevertheless failed to establish any act of oppression, mismanagement, fraud, lack of probity, diversion of assets, unlawful personal benefit or any other conduct warranting relief under Sections 241 and 242. The Tribunal, by order dated 31.07.2024, also noticed that the shares had already been forfeited and that the interim relief sought has become infructuous.

28. It is stated that the Petitioners have approached this Tribunal after retaining the shares for more than 18 years despite their failure to commence industrial activity and despite the reallocation of the plots. They were aware of the contractual terms, represented in the management of the Company and had sufficient opportunity to transfer their shares. The forfeiture was undertaken pursuant to the amended Articles, the shareholders' special resolution and the Board resolution and in furtherance of the main objects of the Company. The Petitioners have therefore failed to establish any prima facie case of oppression or mismanagement or any continuing cause of action under Sections 241 to 244 of the Act. No irreparable injury would be caused to the Petitioners by dismissal of the petition, whereas granting any relief would seriously prejudice the Company and defeat the object for which the Industrial Park was established.

29. It is stated that the Company Petition is not maintainable and the Petitioners have approached this Tribunal with unclean hands and without any reliable documentary evidence in support of their allegations.

REJOINDER FILED BY THE PETITIONERS:

30. It is stated that the Counter filed by the Respondents does not answer the material facts and circumstances forming the basis of the Company Petition. It is undisputed that Petitioners Nos.1 to 4 were the original Promoters of the Project; Petitioners Nos.1

and 2 were the first Directors of the 1st Respondent Company; the 1st Petitioner continued on the Board till 2020 and the 2nd Petitioner till 2015.

31. It is stated that the contribution of Rs.2.0 lakhs by each Promoter in the years 2003 and 2004, utilisation of such contribution towards the Promoters' contribution for the Project, efforts undertaken by the Petitioners in establishing the Park and Petitioners' offering their shares as security for the Company's borrowings are also not disputed. The Petitioners thus made a genuine investment in the Company and continued to support it over the years.

32. It is not disputed that the land forming part of the Project, acquired at approximately Rs.1.58 lakhs per acre, has substantially appreciated and is now to be worth more than Rs.3.0 crores per acre. The Annual Report of the Company for 2019 also discloses a value which, according to the Petitioners, translates to approximately Rs.50.40 lakhs in respect of each Petitioner's shareholding. The Respondents have not effectively answered these aspects.

33. It is stated that under the unamended Articles of Association, lien over shares was referable to non-payment of dues to the Company. There is no allegation that the Petitioners owed any amount to the Company or that their shares were unpaid or

partly paid. The forfeiture is therefore not founded upon any monetary default.

34. It is stated that more importantly, Clause 8.1 of the original Share Subscription Agreement contemplated an exit where a shareholder was unable to set up a unit in the Park and provided for fair sale consideration. The Respondents have not explained how the subsequent amendment to the Articles could be used to defeat this contractual arrangement and deprive the Petitioners of fair value.

35. It is stated that the Petitioners do not dispute that they were unable to commence commercial production in their allotted plots. This was for commercial reasons, and the Petitioners cooperated in surrendering the plots so that the same could be allotted to new entrants. There is no allegation that the Petitioners acted against the interests of the Company or the Park, or that they committed any wrongdoing while functioning as Directors.

36. The allegation that the Petitioners refused to transfer their shares is denied. The communications relied upon by the Respondents merely calling upon the Petitioners for discussions and did not contain any offer of fair value. The Petitioners were willing to transfer their shares, provided fair value was paid. No document has been produced to show that a genuine offer of fair value was made and rejected.

37. The Petitioners' grievance is not against an exit or re-allotment of their shares. Their grievance is against extinguishing their shareholding by forfeiture without payment of the value attributable to their investment. The distinction sought to be made by the Respondents between lien, forfeiture and buy-back does not alter the substance of the matter.

38. It is stated that the capital contributed by the Petitioners has remained with and benefited the Company. An investment of Rs.2.0 lakhs made in 2003 or 2004 cannot, having regard to the passage of more than twenty years and the substantial appreciation in the value of the Company's assets, be treated as having the same economic value today. The Petitioners seek only the proportionate fair value of their own shareholding and not the value attributable to the other shareholders.

39. It is stated that the effect of the forfeiture is that the Petitioners are deprived of the economic value of their shares, while the corresponding benefit accrues to the continuing shareholders. The fact that the forfeiture is effected pursuant to an amendment of the Articles cannot, by itself, justify such deprivation. The substance and effect of the transaction have to be considered.

40. It is stated that filing or acceptance of the amended Articles by the Registrar of Companies does not amount to an adjudication that the amendment could be used to defeat the contractual rights of the Petitioners or that its exercise would be fair and

equitable. The amendment, followed by forfeiture, is specifically impugned as an exercise of majority power to extinguish the Petitioners' shareholding without fair consideration.

41. It is stated that the passing of the resolution at the EGM held on 29.03.2023 also cannot, by itself, defeat the Petitioners' claim. Petitioners Nos.1 and 2 attended the EGM and voted against the resolution. The very grievance before this Tribunal is that the majority has been used to bring about an act prejudicial to the Petitioners. Majority approval cannot, by itself, immunise such an act from scrutiny.

42. It is stated that the purported forfeiture on 22.06.2024 is independently liable to be set aside. The resolution dated 22.06.2024 contemplated issuance of 14 days' notice, and notice dated 25.06.2024 was issued pursuant thereto. The Company Petition was filed on 03.07.2024, before expiry of the said period. The Respondents were thus aware of the proceedings before the notice period expired. The forfeiture could not validly have been effected before expiry of the stipulated notice period.

43. The contention that the Petitioners had ceased to be members as on the date of filing of the Company Petition is untenable. Apart from the fact that the notice period had not expired, the forfeiture itself is the act under challenge and its validity cannot be assumed for the purpose of defeating the Petitioners' challenge.

44. It is stated that the proceedings earlier instituted before the Civil Court were bona fide. The Hon'ble High Court of Madras did not reject the Petitioners' claim on merits but held that the Civil Court lacked jurisdiction and relegated the Petitioners to this Tribunal. The Petitioners have accordingly approached the appropriate forum and there is no delay or lack of bona fides.

45. The allegations that the Petitioners have approached this Tribunal with unclean hands, suppressed facts or documents, or filed a frivolous, vexatious or dressed-up Petition are denied. No specific suppression or material document withheld by the Petitioners has been established by the Respondents.

46. The contention that the Petitioners retained their shares for more than twenty years and thereby justified the forfeiture is equally without merit. There is no pleaded case that such retention prejudiced the Company or that the Petitioners refused any genuine offer of fair value. The Petitioners have consistently maintained that they are willing to exit upon payment of fair value.

47. It is stated that the Petitioners are not opposed to the induction of deserving entrepreneurs or to the re-allotment of plots or shares in accordance with law. Their only grievance is that such re-allotment cannot be achieved by extinguishing their investment without payment of fair value. The Counter

Statement does not disclose any lawful or equitable justification for such deprivation.

48. It is stated that the amendment of the Articles and the consequential forfeiture, particularly in the absence of any monetary default or wrongdoing by the Petitioners and in the face of the contractual provision contemplating a fair-value exit, constitute an oppressive and inequitable exercise of majority power. The Company Petition therefore deserves to be allowed.

FINDINGS OF THIS TRIBUNAL:

49. Heard the submissions of the Ld. Counsels of both sides and perused the pleadings and notes on submissions placed on record.

50. The Petitioners form 1/10th of the total number of shareholders in the 1st Respondent Company. The total number of shareholders in the Company is 60 as per the annual return for the FY 2022-2023 and the annual report of the Company. The Petitioners are six out of sixty shareholders and are therefore entitled to maintain the petition in view of the provisions contained under Section 244 of the Companies Act, 2013. This petition is of the oppression and mismanagement in relation to the affairs of the Respondent No. 1 Company. The Petitioners were the subscribers to the Memorandum of Association.

51. The following are the issues that arose for consideration before this Tribunal are as follows:

1. Whether the Petitioners are entitled to a declaration that they are entitled to fair market value of their shares in the event of divestment and that transfer of shares for consideration is the only procedure available to the Respondent Company?

2. Whether the Petitioners are entitled to a direction for fair market valuation of their shares by an Independent Auditor appointed by this Tribunal?

3. Whether the Petitioners are entitled to a permanent injunction restraining the Respondent Company from convening or holding any general meeting for the purpose of introducing any provision in the Articles of Association enlarging the scope of forfeiture of shares?

4. Whether the forfeiture of the Petitioners' shares pursuant to the notice dated 25.06.2024 is illegal, void ab initio, contrary to the agreements between the parties and amounts to oppression?

Issue No. 1

1. ***Whether the Petitioners are entitled to a declaration that they are entitled to fair market value of their shares in the event of divestment and that transfer of shares for***

consideration is the only procedure available to the Respondent Company?

52. The Petitioners contend that under the Share Subscription Agreement, in the event of failure to commence commercial production, the Company could require transfer of the shares to a third party for consideration and that the Agreement does not contemplate forfeiture of shares without payment of their value. The Respondents, on the other hand, contend that the Share Subscription Agreement did not contain any prohibition against subsequent alteration of the Articles of Association and that the shareholders, by special resolution dated 29.03.2023, approved the insertion of a provision enabling the Company to deal with the shares of members who had not established industrial activity in the Park for ten years or more.

53. It is not in dispute that the Petitioners failed to commence commercial production in the plots allotted to them and that the said plots were subsequently reallocated to other entrepreneurs. It is also not in dispute that the Petitioners continued to hold their shares even after such reallocation. The Petitioners have relied upon the provisions of the Share Subscription Agreement relating to transfer of shares, but they have not pointed out any specific provision therein which prohibits the Company from subsequently altering its Articles of Association in accordance with law. The Respondents have specifically pleaded that the

amended Article was approved by the shareholders through a special resolution dated 29.03.2023 and that the same was thereafter acted upon.

54. The mere fact that the original contractual arrangement contemplated transfer of shares for consideration does not, by itself, establish that such mode of transfer was the only mode available to the Company for all future circumstances. The Petitioners have also not established that the amended Article was invalid or that the Company was contractually precluded from introducing such provision. The contention regarding the value of the shares also does not create, by itself, an enforceable right to receive such value.

55. Accordingly, the issue no.1 is answered against the Petitioners.

Issue No. 2

2. Whether the Petitioners are entitled to a direction for fair market valuation of their shares by an Independent Auditor appointed by this Tribunal?

56. The Petitioners are seeking for an appointment of an Independent Auditor for determining the fair market value of their shares. Their claim for valuation is based principally upon the appreciation in the value of the Company's land and the value referred to in the Annual Report relied upon by them. The Respondents dispute the Petitioners' claim and contend that no

fair-value right is contemplated either under the Share Subscription Agreement or the Articles of Association.

57. In view of the finding on Issue No.1 that the Petitioners have not established any contractual or other enforceable right to receive the fair market value of their shares in the circumstances pleaded, the question of directing an independent valuation does not arise. The Petitioners have also not produced any concluded transaction or other material establishing the alleged value of Rs.800/- per share. The reference made in the Annual Report cannot, by itself, be treated as the market value of the shares. Therefore, the relief seeking appointment of an Independent Auditor for valuation of the Petitioners' shares cannot be granted.

58. Accordingly the issue no.2 is answered against the Petitioners.

Issue No.3

3. Whether the Petitioners are entitled to a permanent injunction restraining the Respondent Company from convening or holding any general meeting for the purpose of introducing any provision in the Articles of Association enlarging the scope of forfeiture of shares?

59. The Petitioners seek a permanent injunction restraining the Respondent Company from convening or holding any general meeting for the purpose of introducing any provision in the

Articles of Association enlarging the scope of forfeiture of shares. The Respondents contend that the Articles were already altered by the shareholders through the special resolution dated 29.03.2023 and that the alteration was made in accordance with the Companies Act.

60. The pleadings disclose that the proposed alteration was placed before the shareholders and the special resolution was passed on 29.03.2023. The Petitioners have not established that the said resolution was passed without the requisite majority or in violation of the statutory procedure. The Petitioners have also not established any present or imminent proposal warranting a permanent restraint against the Company from exercising its statutory power to convene a general meeting.

61. A blanket injunction restraining the Company from considering any future alteration of its Articles cannot be granted merely on the apprehension that such alteration may prejudice the Petitioners. The validity of any future amendment, if and when made, would depend upon the facts and circumstances attending such amendment. Hence, the Petitioners have failed to establish any ground for granting the permanent injunction sought under Relief (c).

62. Accordingly the issue no.3 is answered against the Petitioners.

Issue No. 4

4. Whether the forfeiture of the Petitioners' shares pursuant to the notice dated 25.06.2024 is illegal, void ab initio, contrary to the agreements between the parties and amounts to oppression?

63. The Petitioners challenge the forfeiture of their shares pursuant to the notice dated 25.06.2024 on the ground that the original Articles did not permit forfeiture in the circumstances of the present case, that there was no monetary default on their part, that the Share Subscription Agreement contemplated transfer for consideration and that the subsequent forfeiture amounts to an oppressive exercise of majority power. The Respondents contend that the Petitioners failed to establish industrial activity in the Park, that the plots allotted to them had already been reallocated, that the Articles were validly amended by special resolution dated 29.03.2023 and that the forfeiture was thereafter carried out pursuant to the amended Articles.

64. The Petitioners do not dispute that they failed to commence commercial production and that the plots allotted to them were reallocated to other entrepreneurs. It is also the Respondents' case that the Petitioners continued to hold their shares for more than 18 years without establishing industrial activity in the Park. The amendment to the Articles was approved by the shareholders on 29.03.2023, and the Petitioners have not established that the said amendment was itself invalid or that it

was introduced by fraud or without following the requisite procedure.

65. The fact that the original Articles contained a provision relating to forfeiture only in cases of monetary default does not, in the absence of a prohibition against subsequent alteration of the Articles, by itself render the subsequently introduced provision invalid. The Petitioners have also not established that the Share Subscription Agreement contained an express prohibition against alteration of the Articles or that transfer of shares for consideration was the exclusive remedy available to the Company in all circumstances.

66. The Petitioners further contend that the forfeiture is oppressive because they were deprived of the value of their shares. However, except for their assertion regarding the appreciation in the value of the Company's assets and their claim for fair value, no material has been pleaded to show that the Respondents acted with mala fides, fraud, discrimination or with an intention to specifically oppress the Petitioners. The Respondents have pleaded that the amendment was made with the object of ensuring that the shares remain with entrepreneurs who establish industrial activity in the Park. On the pleadings before us, the said object cannot be said to be unrelated to the main objects of the Company.

67. As regards the contention that the notice dated 25.06.2024 granted 14 days, the Petitioners contend that the forfeiture could not have been completed before expiry of that period. Even assuming there was an irregularity in the implementation of the notice, the Petitioners have not established how such irregularity, in the facts pleaded, constitutes oppression or mismanagement warranting relief under Sections 241 and 242 of the Act.

68. We are of the considered opinion that the Petitioners have failed to establish that the forfeiture was illegal, *void ab initio*, contrary to the binding agreements between the parties or an act of oppression.

69. Accordingly the issue no.4 is answered against the Petitioners.

70. Before finally deciding these issues, we would like to refer to section 241(1) of the Companies Act, 2013 which reads as under:

> ***Section 241: Application to Tribunal for relief in cases of oppression, etc:*** *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.

71. It is trite law, that the petitioners alleging oppression and mismanagement must specifically plead the alleged acts of oppression and mismanagement providing the details of these acts and also shall establish the same. The burden to prove oppression and mismanagement is on the petitioner.

72. We would also like to refer to the judgments of the Hon'ble Supreme Court in ***S.P. Jain vs Kalinga Tubes Ltd 1965 AIR 1535, 1965 SCR (2) 720*** wherein it was held as follows:

> *"It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the 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 the 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."*

73. The Hon'ble Supreme Court in ***Needle Industries (India) Ltd., & Ors vs Needle Industries Newey (India) 1981 AIR 1298, 1981 SCR (3) 698*** held as follows:

> *"It is clear from these various decisions that on a true construction of section 397, an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give rise to a claim for relief under that section. The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder."*

74. A perusal of Section 241 and the judgements referred above, it can be said that to constitute oppression, the affairs of the Company must be conducted in a manner which is prejudicial to public interest or in a manner prejudicial or oppressive to the Petitioners or any other member or members or prejudicial to the interests of the company. The Petitioners however, have failed to establish how the affairs of the 1st Respondent

Company have been carried out in any of such manner so as to constitute oppression.

75. It is to be noted that the 1st Respondent Company is a "Not for Profit" Company incorporated under Section 25 of the Companies Act, 1956. The main object of the Company is to promote the weaving industry in Coimbatore and Tirupur Districts by establishing an Industrial Park and providing infrastructure and administrative facilities for weaving, garmenting, confection, knitting, embroidery, yarn stocking and allied textile units. The Company was established to provide small and medium-scale entrepreneurs with world-class infrastructure facilities and enable them to establish textile units with modern technology and compete internationally. About 49% of the cost of the factory buildings and common infrastructure was provided by way of subsidy by the Government of India and Government of Tamil Nadu, while the balance was contributed by the investors, including an initial contribution of 10%, with the remaining amount being funded by banks as term loans. The investors were also entitled to avail themselves of TUFS benefits. The Company has not been deriving any profit out of it. The revenue generated is being spent / used for the promotion of the weaving industries. So there is no question of unjust enrichment of the Company by selling the forfeited shares of the Petitioners at a higher price.

The said amount has to be used for the promotion and the welfare of the weaving industries and not to go to the pocket of the Respondent No. 1 Company.

76. In view of the facts and circumstances discussed above and the Judgements cited *supra,* and as the affairs of the 1st respondent company are not conducted in a manner prejudicial to the overall interests of the Company.

77. We are of the view that this petition is liable to be **dismissed**. We therefore dismiss the petition with no orders as to costs.

78. File be consigned to records.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)