NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT – IV

Item No.: **202**
CP/159(MB)2021
&
COMP.APPL/ 560(MB)2022

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING (HYBRID) HELD ON **23.10.2026**

NAME OF THE PARTIES: **MONIVEDA CONSULTANTS LLP & ANOTHER VS SHAJAS DEVELOPERS PRIVATE LIMITED**

For Applicant : Adv. Nausher kohli a/w Adv. Maithili Parekh, Adv. Anushka Bose, Adv. Manish G S Varma Adv. Surbhi Soni Adv. Zain Khan, Adv Kumar Anurag Singh, Adv Sanat Garg

For Respondent : Adv. Yash Momaya, Adv. Ryan D'Souza, Adv. Jash Shah, Adv. Prateek Kumar i/b DSK Legal for Respondent Nos. 6,7,12&13.
: Adv. Shanay Shah a/w Adv. Tejas Popat, Adv. Bindi Dave, Adv. Dhurvi Mehta, Adv. Janhavi Kapgate i/b Wadia Ghandy & Co. for R-10
: Adv. Neha Naik a/w Adv. Khushi Bagaria i/b Phoenix Legal for R-2.
: Adv. Feroze Patel i/b AMR Law for R-14

Sections 59, 241(1), 242(4), 244(1) of the Companies Act r/w Rule 11 of NCLT Rules, 2016.

O R D E R

CP/159(MB)2021

1. Order pronounced in open Court and **CP/159(MB)2021** is **partly allowed** and **disposed of**. Consequently, all pending Applications including **C.A. No. 560/2022 stands disposed of**. The detailed order is attached.

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2. Upon pronouncement of the order, Counsel for R-3 & R-14 have requested for staying the operation of the order for a period of 4 weeks.
3. Having heard the Counsel for R-3 & R-14, the request is declined.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

- Dileep Kr. Yadav -

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

COURT-IV

C.P. No. 159/(MB-IV)/2021

[Under Sections 241, 242, 244 read with Section 59 and other applicable provisions of the Companies Act, 2013]

In the matter of

1. Moniveda Consultants LLP

(LLPIN: AAP-0218)

2. Rajat Jhunjhunwala

…Petitioners

Versus

Shajas Developers Private Limited & Others

…Respondents

Pronounced: 23.10.2026

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER JUDICIAL)

APPEARANCE : Hybrid

For the Petitioners : Adv. Nausher Kohli, Adv. Maithili Parekh, Adv. Zain Khan, Adv. Anurag Singh, Adv. Anushka Bhosale., Adv. Manish G.S Verma, Adv. Sameer Davar, Adv. Vishwam Mishra and Adv. Surbhi Soni.

For the Respondents : Sr. Adv. Ashish Kamat a/w Adv. Karan Kadam, Adv. Rohit Lalwani i/b Adv. Aakansha Saxena and Kunal Mimani (for R1, R4 & R5).

Adv. Rohit Gupta a/w Adv. Madhvi Doshi & Adv. Shivani Varade i/b Phoenix Legal (for R2)

Adv Mohit Chordiya and Adv. Jayamala Ostwal, Adv. Shretha Lakshmi i/b JJ and Associates (for R3).

Sr. Adv. Chetan Kapadia a/w Adv. Ryan D'Souza a/w Adv. Jash Shah, Adv. Prateek Kumar and Adv. Yash Momaya, Adv. Astha Ojha i/b DSK Legal (for R6, R7, R12 & R13).

Adv. Shany Shah, Adv. Bindi Dave, Adv. Tejas Popat a/w Adv. Dhruvi Mehta and Adv. Janhavi Kapgate i/b Wadia Ghandy & Co. (for R10).

Sr. Adv. Gaurav Joshi a/w Adv. Feroze Patel i/b AMR Law (for R14)

For RoC Mumbai- : Ms. Garima Nagpal (AROC) (for R8).

ORDER

1. INTRODUCTION

This Company Petition (C.P) is filed under Sections 241,242, & 244 r/w Section 59 of the Companies Act, 2013 (Act), *inter alia,* against oppression and mismanagement of Shajas Developers Private Limited (R1) and JLS Realty

Pvt. Ltd. (R2), the affairs of which are allegedly conducted in a manner prejudicial and oppressive to their shareholders.

2. PARTICULARS OF PARTIES

2.1 Petitioner 1 (P1), Moniveda Consultants LLP, is a Limited Liability Partnership (LLP) having its registered office in Mumbai. It was previously known as Gauri Rajeshwari Consultants Private Ltd., incorporated on 09.02.2008; later converted into LLP, and named Gauri Rajeshwari Consultants LLP. It was subsequently, renamed as Moniveda Consultants LLP.

2.2 Petitioner 2 (P2) is Mr. Rajat Jhunjhunwala, P1's designated partner.

2.3 Respondent 1 (R1), 'Shajas Developers Pvt. Ltd'., is a company registered in Mumbai. Its authorised/subscribed paid-up share capital, is Rs.1,00,000/. R1's only business is controlling and operating its wholly owned subsidiary, Respondent 2 (R2), which is in real estate business. Thus, R2 is 100% subsidiary of R1. R1 has total of 10,000 issued/subscribed equity shares. Of these, P1 held 40% (4000) of R1's total shareholding. Hence, it is claimed that P1 has locus to file the C.P. under Section 244 of the Act.

2.4 R2 is registered in Mumbai for construction and real estate business. R2 is a wholly owned subsidiary of R1. R2 is presently undergoing liquidation pursuant to the failure of Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (Code/IBC).

2.5 Respondent 3 (R3), Mr. Suketu Shah, is R2's former director.

2.6 Respondent 4 (R4), Mr. Neelakantan Iyer, is R1's director.

2.7 Respondent 5 (R5), Mr. Mangesh Kadam, is R1's director.

2.8 Respondent 6 (R6), Ms. Mamta Singh, is R2's suspended director.

2.9 Respondent 7 (R7), Mr. Mohammed Shahid, is R2's suspended director.

2.10 Respondent 8 (R8) is the Registrar of Companies, Mumbai.

2.11 Respondent 9 (R9) is the Regional Director (Western Region), Mumbai.

2.12 Respondent 10 (R10), Spenta Sun City Pvt. Ltd., is a real estate company.

2.13 Respondent 11 (R11), Keemaya Realcon Pvt. Ltd., is a real estate company.

2.14 Respondent 12 (R12), Mr. Dhiren Shah, is R2's suspended director.

2.15 Respondent 13 (R13), Mr. Prashant Dhongadi, is R2's suspended director.

2.16 Respondent 14 (R14), IDBI Trusteeship Private Limited (IDBI Trustee), is a debenture trustee.

3. BACKGROUND

3.1 R2 had Mr. Uday Jasani (R3's cousin) with 9,999 shares, and Mr. Aaron Solomon with 1 share, as the original shareholders on 29.02.2008. 'Meshulam Levinstein Contracting and Engineering Ltd.' (Levinstein), entered R2 on 10.06.2009, as equity partner to undertake slum redevelopment project, by investing Rs.32.89 Crore (appx.).

3.2 Out of the issued share capital of R2, 64.08% paid-up share was acquired by Levinstein, with R1 holding 35.92% shares in it. Thus, R2's board of directors then comprised 6 members, i.e., 3 members from Levinstein and 3 from R1, including R3. R1's business was to hold 10,000 shares in R2. The only directors of R1, viz., R4 & R5 (employees of R3), held 5,000 shares each.

3.3 R2 acquired 100% land ownership of the Slum Rehabilitation Project, situated at Shankarwadi, Jogeshwari (East), Mumbai (Project), on 31.12.2013, admeasuring 20,000 sq. mts.(appx.), with subsequently acquired 1,700 sq. mts.(appx.), totalling 21,727 sq. mts.(appx.) land (Subject Land).

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4. SUBMISSIONS OF P1 & P2

4.1 R1 & R2 were a common corporation and single economic entity, as seen from their annual returns for FY 2017-2018. R1's total revenue was only Rs.10,000/- and that of R2 was Rs.16,46,713/- in FY 2017-2018. Before P2 joined the management of R2 on 06.05.2016, it faced the following acute financial constraints, without any capital/capacity to float real estate projects:

a. Aggregate liability of R2 as on 31.03.2016 was Rs.275,00,00,000/- (appx.);

b. Sahara India Commercial Corporation Limited (Sahara) initiated winding up against R2 in the Hon'ble Bombay High Court for Rs.82 Crore debt plus interest, with the Court directing R2 to refund the debt/hand over title document of Subject Land to Sahara;

c. R2 had to pay Rs.20 Crore, out of Rs.138 Crore, to IIFL Finance Ltd. (IIFL);

d. Levinstein, holding 50% of shares in the Subject Land, demanded immediate repayment of Rs.22,00,00,000/- loan from R2 expressing desire to exit from business; threatening R3 to liquidate R2, as R3 was exposed to R2's loan by his personal guarantee;

e. R2's operations were affected as the Letter of Intent (LOI) issued by Slum Rehabilitation Authority (SRA) continued to be in the erstwhile developer's name. Over 700 Property Cards remained in the original occupants' name and were not transferred to R2. LOI was issued only for 16,964 sq. mts., as against the total land area of 21,724 sq. mts. Occupation certificates for rehabilitation buildings for 400 tenements became difficult as construction was without approval. Monthly rentals of Rs.40,00,000/- necessitated for 200 rehabilitation tenements due to the delayed delivery of buildings by R2's former management. Out of

771 tenements, only 470 were eligible, leaving no action by erstwhile management to regularise 301 tenements;

f. No action was taken to obtain NOC to cut the Project site trees. About 20 cases were pending in courts for disputed titles. There was no construction on the rehabilitation buildings for over a year, with no sale/sale plan for the units.

4.2 In the backdrop, R3, who was the beneficial owner of R1, sought P2's advice, and with P2's entry in R1 & R2, the deadlock in R2 was resolved. Levinstein sold its 64.08% stake in R2 to R1 on 06.05.2016, for Rs.1.2 Crore, making R2 a wholly owned subsidiary of R1. The same day, R3 approached P1 & P2 to take over the business of R1 & R2 and turn around R2's business and salvage R3's guaranteed assets from being taken over by creditors.

4.3 **Securities Purchase Agreement Dated 06.05.2016 To Acquire R1 by P1**

4.3.1 On 06.05.2016, Securities Purchase Agreement (SPA) was executed by P1 with R1's directors, Mr. Neelakantan Iyer (R4) and Mr. Mangesh Kadam (R5). Under the SPA, P1 was to own R1's whole shareholding, held by R4 & R5, thereby acquiring 100% of the shares in R2. A Side Letter was also executed on 06.05.2016 among P1; R1; R3, R4 & R5 and R3's brother, Mr. Rajesh Shah, for treating certain private loans and ancillary arrangements.

4.3.2 As per Clause 5.1 of SPA, P1 would purchase R1's entire 10,000 shares from its directors, R4 & R5(Sellers), at Rs.10/- per share in two tranches, *firstly*, at *First Closing Date* i.e., within 5 days from the Execution Date (06.05.2016). That means, the Sellers would transfer 5000 equity shares to P1(Purchaser), and *secondly*, at *Second Closing date* i.e., within 5 days from the date of release of the personal guarantees provided by R3 (Mr. Suketu Shah) to IIFL; the post-dated cheques provided by R3's son Mr. Rishabh Vir to IDBI Trustee were either returned or cancelled; and

the Sellers would transfer the remaining 5000 equity shares to the Purchasers. Clause 5.3 required the Sellers to deposit the duly completed share transfer documents, simultaneously with the Purchaser's deposit of purchase price, with their Lawyer. As per Clause 5.4.1 of the SPA, the documents were to be released for transfer of the first tranche of 5000 shares, on the *First Closing Date*. Clause 5.4.2 read with Clause 5.4.3.1, provided for the resignation of R4 & R5 from R1's board on the *First Closing Date*, and the individuals nominated by P1 would be appointed as new directors. Further, under Clause 5.4.6 of the SPA, from the *First Closing Date*, P1 would gain absolute control over R1, including the day-to-day operation and management of R2.

4.4 **Post-SPA Events**

4.4.1 Basis the SPA, the Sellers (R4 & R5) handed over the original share certificates of 5,000 shares to the Petitioners along with duly executed transfer forms. Out of these, 1,000 shares (10%) were handed over to the Lawyer, Mr. Jai Dewani of 'Desai & Dewanji',(Lawyer) along with the executed SH-4 kept in escrow as security. The balance 5000 share certificates and executed transfer forms signed by the Sellers were also kept with the Lawyer, to be handed over to the Petitioners on the *Second Closing Date*. Thus, P1 & P2 acquired full control and management rights of R1 & R2.

4.4.2 On 23.05.2016, P2 was appointed as R2's additional director, and 4 out of 6 previous directors resigned on that day. After another director's resignation, R2's board comprised only P2 & R3 as directors. P2's appointment as R2's director was uploaded by R3 in Form DIR-12, as 'promoter'. R2's registered email was changed to P2's personal ID, as per Form DIR-12 on 21.05.2021. Thus, R2's board control vested on P2, requiring his participation and approval for all its decisions.

4.4.3 R2's resolution of 23.05.2016 changed its Bank of Baroda 'joint' account to 'individual' with P2 as R2's sole signatory, making R3 no longer

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authorised to operate R2's account. Further, R2's corporate office was shifted to P2's office, in January, 2017, as reflected in the email dated 06.10.2016, by the legal officer of R3's cousin. P2's key employees started working for R2. P2's appointment as R2's director was ratified in R2's AGM of 30.09.2016, and confirmed by fresh Form DIR-12, filed by R3 himself, legitimately appointing P2 as R2's director as 'promoter', vesting its board control/bank account/operational control with P1 & P2.

4.4.4 Further to P2's appointment as R2's director, R4 & R5 transferred their 4,000 equity shares in R1 to P1 and executed share transfer deeds. This transfer was reflected in R1's board report dated 05.09.2018, signed and verified by R4 & R5, who were the only directors/transferors. R1's independent auditor's report affirms that P1 is R1's rightful holder of 4,000 equity shares. Around 27.01.2021, R1's Company Secretary and R5 filed R1's MGT-7 for FY 2017-2018, showing that R4 & R5 transferred their 2,000 equity shares each in R1 to P1. When a new bank account of R2 was opened with ICICI Bank, R4 & R5 certified on 25.04.2019 that P1 held 4000 equity shares in R1. On the same day, R3, the beneficial owner of R1 and as the employer of R4 & R5, submitted RBI mandated disclosure, on R2's letterhead to the authorities, stating that P1 was the owner of R1's 40% share and the beneficial owner of R2. Further, R1's Chartered Accountant sent an email on 04.01.2019, seeking R2's financials for valuing the 40% shareholding. R3's WhatsApp message stated transfer of 40% shares from 'Neel Mangesh to R1. Email dated 14.06.2019 shared by CA Riddhi Daga to R4, R5 and P2, enclosed R1's balance sheet recording erstwhile P1(Gauri Rajeshwari Consultants Pvt. Ltd.) as its 40% shareholder. Again, Form MGT-7 filed by P1 for FY 2017-2018, with audit report, recorded 40% shareholding in R1, demonstrating P1's shareholding in R1, which remains unchallenged until today. Petitioners were treated as 40% shareholders of R1, continuously and consistently from 2017 to 2021. In terms of the SPA, R3, R4 & R5 routed every matter concerning R1 to P2, for permission/instruction in every communication during this period.

4.4.5 With the induction of P2 on R1's board, R1's & R2's financial position substantially improved with his expertise and continuous efforts during 2016-2021 by securing full occupation certificates for 4 rehab buildings; settling payment issues with Sahara in 2018; and paying R2's loan of Rs.138,00,00,000/- to IIFL, by FY 2017-2018. R10 invested Rs.240 Crore in R2's free sale area through Debenture Trust Deed (DTD-1) executed between R10, R14, and R2 from IIFL, by issuing Non-Convertible Debentures (NCDs), without R2 having any payment obligations, as R10 was the borrower. A Share Pledge Agreement (Pledge) was executed by R1 & R2 to pledge R2's 39,73,636 shares. But only 1,00,000 shares, i.e., less than 3% of equity, were physically handed over to IIFL, as seen from their annual report of FY 2017-2018, and the search report of the Economic Offence Wing, Mumbai (EOW). However, the Pledge was cancelled on 10.12.2019, by R2 agreeing to pay Rs.400 Crore to R10 by 01.04.2021. R2 also pre-paid Rs.52.6 Crore (appx.) to R10 by March 2020. After the exit of R10, P1 funded the Project, making R2 gain full control over the Project. From then, R10's further entitlement to the Subject Land and development rights were restricted to the settlement amount as regards R2 and its underlying assets.

4.4.6 Significant developments such as Slum Rehabilitation Authority (SRA) issuing amended 'Intimation of Approval cum full Occupation Certificate' (i) for rehab buildings Nos.7 & 9 (22.11.2016); (ii) for rehab 27 building Nos.1 & 8 (09.03.2017); and (iii) for rehab building No.2 (07.02.2019), thereby construction of the 5 rehab buildings/rehabilitation of about 420 slum dwellers occurred. SRA issued revised LOI on 07.03.2018 for redevelopment of total of 21,724.34 sq. mtr., with R2 as the developer, approving the sale plan on 07.03.2018. NOCs of Municipal Corporation, Tree Authority; Airport Authority; and Fire Brigade were obtained by R2 in 2019. R1 also received revised environmental clearance from the Central Government on 08.01.2020. The construction of rehab building Nos. 6 & 7 was to be completed in 8-9 months, for re-housing over 340 tenements, which was 760 (95%)(appx.) slum dwellers. The number of

eligible tenements increased from 470 to 645. Except 10-15 huts, all the saleable portion huts were vacated. Saleable area of the Project went up from 7,75,000 sq.ft. to 11,00,000(appx.) sq.ft., on new 'DCPR 2034' approved by State Government. All the above were achieved with P2's efforts. With the above developments, the sale value of the Project reached Rs.2200 Crore (appx.), with the potential profits of Rs.1000 Crore (appx.). Large entities like 'Godrej Properties' and 'Mahindra Lifespace' showed interest in partnering with the Project.

4.5 **Unlawful Ouster of P2 From R2's Directorship**

4.5.1 Watching the accelerated progress of R1 & R2, R3 became envious and planned to oust P1 & P2 from R1 & R2, in a surreptitious manner and to get back control of the Companies. P2 only became aware of the game plan when he received R8's email on 11.03.2021, in which R8 stated that certain DIR-12 had been filed. Upon verification, P2 learned that a new form DIR-12 was being filed on 11.03.2021 by R3, pursuant to a purported Extraordinary General Meeting (EGM) of R2 on 24.02.2021, to appoint two additional directors, R6 & R7, in R2. Upon realising R3's dubious intentions, P1's & P2's representatives initially tried to settle the matter with the Respondents, keeping in mind the interest of the Companies, but in vain. P2, representing R2, filed a serious complaint with R8 against R3, R6 & R7 on 13.03.2021. R2 had only two directors, viz., P2 and R3 until the wrongdoings by the Respondents. The documents filed with R8 were without P2's authorisation and against the law. R2's alleged EGM of 24.02.2021 was in contravention of Sections 100 & 101 of the Act. Being the only other director of R2, P2 was not informed of any EGM requisition. No board meeting was conducted to decide R2's EGM. No prior intimation for convening the EGM was served on P1 & P2. Hence, the same is ante-dated/fabricated and *prima facie* illegal. A single director cannot, on his own, call a general meeting as the power vests in the board, acting as a body, except the requisitionists

themselves invoke Sub-sections (4) and (5) of Section 100, if the board fails to call a general meeting.

4.5.2 On inspection of R2's records on 16.03.2021, P2 found that R5, on 01.03.2021, illegally filed revised MGT-7, on behalf of R2, for FY 2017-2018. This was part of R3's calculated attempts to illegally usurp the Companies. The purported clarification MGT-7, on behalf of R1's board dated 27.01.2021, incorrectly showed the transfer of 4,000 equity shares in P1's favour. The revised shareholders' list was attached with the revised MGT-7, showing R5 & R6 as R1's only shareholders, each holding 5,000 equity shares. Had R1 considered P1 not its legitimate shareholder, then R1 ought to have approached the Tribunal under section 59(1) of the Act, for rectification of its register of members maintained by R8. The purported revised MGT-7 of 01.03.2021, filed by R5, on behalf of R2, is illegal, and it cannot nullify R1's title to the 4,000 equity shares in R2.

4.5.3 Shockingly, on 16.03.2021, *Khaitan & Co.* issued a public notice on behalf of R14 & R10, in *Times of India*, about initiation of investigation into R2's affairs, also inviting claims, demands, objections in respect of the title/right/interest of the Subject Land. P2 sent an email to them, challenging the public notice on 24.03.2021; however, they never responded to, and hence, Petitioners issued a public notice on 25.03.2021, clarifying that P1 held 40% shares in R1, with 100% beneficial ownership and management control over R2. R2's Advocate replied, informing P2's alleged removal as R2's director on 13.03.2021, and the unlawful constitution of R2's board. Another public notice was issued on 30.03.2021, stating that R2 *suo motu* removed P2 from its board, on allegations of siphoning funds. P2 received a frivolous letter on 07.04.2021 from R2's Advocate, stating that he was removed as R2's director, to which P2's Advocate responded on 16.04.2021. Pursuant to the public notice dated 16.03.2021, R2's creditors filed IA No.7905/2021 in COMS No.226/2016, before the Hon'ble High Court on 31.03.2021,

restraining R2 and its directors from selling, assigning, transferring or otherwise disposing of the Subject Land.

4.5.4 On 08.04.2021, P2 received email from the R8, regarding his purported removal as R2's director by filing illegal DIR-12 on 22.03.2021, by R2. R2 was given time till 23.04.2021 to cure the defects in DIR-12. However, on their failure to resubmit the requisite documents, the purported DIR-12 became invalid, as informed by R8, by email dated 25.04.2021. Thus, P2 continues to be reflected as R2's director in R8's Master Data. Subsequent to P2's complaint on 13.03.2021 to R8 against R3, R6 & R7, another complaint was made by him on 08.04.2021, for not receiving notice of the purported EGM for his removal as R2's director. In any case, P2's removal as R2's director is against Section 169 of the Act, as no opportunity was provided to him before his purported removal. P2 also lodged a complaint with EOW against R3 and others. On 12.04.2021, P2, representing R2, informed R8, R9, the Secretary MCA, and the DG, MCA, regarding the illegal actions perpetrated by the Respondents in R2, including the illegal filings on behalf of R2. Thus, the purported board meeting to remove P2 from R2, and any subsequent appointment of R6 & R7 on its board are illegal/invalid. P2 was given no notice of any meeting and was given no opportunity to be heard.

4.5.5 Besides monetary investments, R1 & R2 represent P2's sweat of the brow, years of hard work and toil, and thus it is expected that the Respondents would abide by their obligations under law/SPA. It is essential for R1 & R2 to be managed/operated/run as a going concern to attain their full business potential. Looking at the chain of events, Respondents are not interested in R1's & R2's affairs, and are only trying to satisfy R2's erstwhile lenders, so that R3's personal guarantees could be discharged, and they could illegally amass wealth on R1's & R2's huge profit potential. Hence, serious illegal and mala fide oppressive acts to the shareholders and mismanagement of the affairs of R1 & R2, have been occasioned, causing huge losses to the Companies, preventing P1

& P2 from asserting their rights as shareholders or raising legitimate concerns in their management. R1's & R2's affairs are conducted in a manner prejudicial to the public interest, and thus, it would be just and equitable that R1 & 2 be wound up, but winding them up would unfairly prejudice P1 & P2, being members.

4.5.6 In addition to being R2's director, R3 is also director in 14 other companies as per R8's Master Data. He was disqualified as R2's director in 2018 itself, since he failed to file financial statements/annual returns of 'Akshay Developers (Sion) Private Limited', in which he was a director for 3 consecutive years since 2015, in violation of Section 164(2)(a) of the Act. Still, R3 has not resigned as R2's director, attracting punishment under Section 167(2) of the Act.

4.6 **Court Orders & Violations by Respondents**

4.6.1 Even during the pendency of the C.P., several events transpired constituting continuing acts of oppression and mismanagement. Pursuant to Hon'ble NCLAT's directions in Company Appeal (AT) No.104/2021 of 11.10.2022, Petitioners filed Company Application No.560/2022 to bring on record the subsequent developments, and Hon'ble NCLAT passed interim orders protecting the Subject Land. On 22.10.2021, parties were directed not to take any precipitative steps; on 22.07.2022, maintenance of status quo was ordered restraining transfer of R2's redevelopment rights; and on 11.10.2022, Hon'ble NCLAT remanded the matter to this Tribunal for fresh adjudication while continuing the interim protection. Notwithstanding the judicial protection or pendency of the proceedings, the Respondents continuously indulged in acts of oppression and mismanagement.

4.6.2 Despite the pendency of disputes relating to control/management of the Companies/judicial protection operating in P1's & P2's favour, Respondents transferred the Subject Land to R10 through the Conveyance Deed on 08.09.2021(Conveyance), when R10 had already

failed to perform its obligations under the earlier Joint Development Arrangement (JDA), as evident from the JDA Cancellation Letter dated 10.12.2019 between R2 & R10, showing that R10 was facing financial difficulties. JDA was already terminated by mutual consent. When JDA was terminated, there was no commercial justification for transferring ownership of the Subject Land to R10. The Conveyance failed to disclose the true consideration for the transaction. The value disclosed for stamp duty was less than Rs.123 Crore; the very same property came to be represented as being worth not less than Rs.787 Crore in documents executed immediately thereafter. This inconsistency demonstrates that the transaction was not undertaken in the ordinary course of business, as the Conveyance does not refer to JDA Cancellation, payments allegedly made thereunder and financial incapacity of R10. The Conveyance was executed without original title documents. The letter dated 03.12.2014 states that the Subject Land's original title deed was with Sahara. Respondents were fully aware of this, as evident from the Consent Terms of 16.02.2018, in the High Court proceedings involving Sahara. Further, immediately after the execution of the Conveyance, R10 entered into a Debenture Trust Deed on 09.09.2021 (DTD), and borrowed Rs.525 Crore(appx.), by issuing secured debentures, using the same Subject Land conveyed just the previous day, as security.

4.6.3 R2 was made to execute an Indenture of Mortgage (Mortgage), requiring it to furnish Corporate Guarantee for R10's obligations by way of a purported authorisation by board resolution dated 03.06.2021. However, no valid board meeting was held on that date; the resolution was fabricated/ante-dated. The board had no authority to dispose of R2's only property by way of a resolution, without approval of the shareholders, violating Section 180 of the Act.

4.6.4 Despite Hon'ble NCLAT's specific restraint, Respondents participated in SRA's general body meeting and, by email dated 17.08.2022, informed of the transfer of the redevelopment rights in R10's favour. The Letter of

Intent (LOI) dated 22.10.2022 from SRA to R10 was the direct consequence of actions undertaken by them in violation of NCLAT orders.

4.6.5 After acting against R1's & R2's interests, R6 & R7 resigned from R2's board, by transferring its sole asset, and causing it to furnish the Corporate Guarantee for the borrowings of a third party. Their resignations, and the appointment of R12 & R13 as R2's directors, were effected through purported board meetings of 11.03.2022, without notice to P2, and in violation of Hon'ble NCLAT's interim order of 22.10.2021, restraining them from taking any precipitative steps. As per DIR-12 forms filed with R8, R3 purportedly resigned on 14.08.2021, and the same was filed on 22.10.2021. R12 & R13 were purportedly appointed as directors pursuant to a board meeting held on 11.03.2022, and the corresponding DIR-12 was filed on 14.03.2022. Thereafter, R6 purportedly resigned on 30.03.2022, with the DIR-12 filed on 12.04.2022, and R7 purportedly resigned on 03.06.2022, with the DIR-12 filed on 09.06.2022. R2's registered office was changed by fabricated board resolutions and ante-dated lease documents. The change of registered office was only to exclude R2's affairs and deprive Petitioners of access to statutory records/information. R2's annual financial statements for FYs 2019-2020 and 2020-2021 contained material inaccuracies and were purportedly approved and adopted without notice to P2.

4.6.6 Petitioners thus filed Civil Appeal Nos. 9052-9053/2022 before the Hon'ble Supreme Court challenging that part of the NCLAT judgment dated 11.10.2022, which restricted the interim protection for a limited period. On 16.12.2022, the Hon'ble Supreme Court impleaded R14 as a party to the Civil Appeals and directed all parties to maintain status quo and restrained them from taking any precipitative steps in respect of the subject matter of the proceedings. This order substantially continued the protection earlier granted by Hon'ble NCLAT. Despite the Hon'ble Supreme Court order, R14 proceeded to create further encumbrances

over the Subject Land by issuing additional secured debentures even after 16.12.2022, thereby further burdening the Subject Land. Hence, Contempt Petition (Civil) Nos. 616-617/2023 was filed against R14 and other Respondents before the Hon'ble Supreme Court for violation of the interim order, resulting in the Hon'ble Court issuing notice in the Contempt Petition on 16.02.2024 against R14's Managing Director.

4.6.7 The Project was registered with MahaRERA on 16.05.2023 by name 'IIFL Centre' and construction activities commenced, with a calculated attempt to create third party rights, and defeat the reliefs sought in the present C.P., consequent to which R10, through its Interim Resolution Professional (IRP), was impleaded by the Hon'ble Supreme Court on 15.07.2024, and also restrained construction activity at the Subject Land. Although R10's CIRP had commenced by then, Hon'ble Supreme Court ensured preservation of the Subject Land pending adjudication of this C.P. Later, R10 filed I.A.No.191542/2024 for modification of the order dated 15.07.2024, and again, I.A.No.236474/2024 was filed seeking permission to continue construction on the ground that rehabilitation of slum dwellers required immediate execution of the Project. On 27.08.2024, the Hon'ble Supreme Court impleaded SRA, considering its role in the Project. Later, on 25.10.2024, the Hon'ble Supreme Court permitted limited stabilisation and protective work for safeguarding adjoining structures, while specifically clarifying that the permission would not amount to permission to carry out construction or create any equity in favour of R10 or any person claiming through it.

4.7 **DTD Assignment & Phoenix ARC's Entry Causing Oppression**

4.7.1 On 28.03.2024, the debt arising out of the DTD dated 09.09.2021 was assigned by IIFL to Phoenix ARC Private Limited (Phoenix ARC). Phoenix ARC, being an ARC dealing with stressed assets, could not claim ignorance of the pending litigation affecting the very transaction from which the assigned debt originated. The assignment of debt cannot be viewed in isolation but has to be appreciated in the backdrop of the

JDA between R2 & R10; its cancellation on 10.12.2019; Conveyance of the Subject Land; creation of Mortgage; execution of Corporate Guarantee; and raising of secured debentures. The assignment of DTD dated 09.09.2021 to Phoenix ARC constituted another step in the continuing chain of events by which the Respondents placed the Subject Land beyond the reach of effective judicial relief by introducing successive third-party interests.

4.7.2 The annual financial statements/annual returns of R2 were deliberately not filed for FYs 2021-2022; 2022-2023; 2023-2024; and 2024-2025. These 4 financial years precisely covered the period during which the impugned Conveyance; creation of Mortgage; execution of Corporate Guarantee; transfer of redevelopment rights; MahaRERA registration; commencement of construction and assignment of debt had taken place. The deliberate non-filing of statutory financial statements deprived shareholders, statutory authorities and this Tribunal of the true and complete picture of R2's affairs and constituted continuing act of oppression and mismanagement.

4.8 **CIRP of R2 and Oppression and Mismanagement**

4.8.1 R2's CIRP on 30.05.2025 was not an independent commercial event but the culmination of the series of oppression and mismanagement acts, including the unlawful transfer of its principal asset; creation of Mortgage; execution of Corporate Guarantee; and assumption of liabilities exclusively for R10's benefit. P1 & P2 attempted to intervene in R2's CIRP to ensure that the RP was apprised of the proceedings/orders passed by the Hon'ble NCLAT and the Hon'ble Supreme Court. During the CIRP, Phoenix ARC lodged its claim on the basis of the DTD dated 09.09.2021, and the subsequent assignment of debt. The RP admitted its claim of Rs.629.96 Crore (appx.), providing overwhelming voting share of about 99.6% to it in the Committee of Creditors (CoC). P1 & P2 consistently questioned the legality of DTD; Mortgage, Corporate Guarantee and assignment of debt. When the validity of these

foundational transactions is under challenge, any purported subsequent right flowing therefrom is subject to the outcome of the present proceedings. Further, the RP filed for liquidation of R2 as CIRP failed, only because R2's affairs had been irreversibly altered by the Respondents through their continued conduct. During the pendency of the present proceedings, additional facts also emerged when the EOW investigated R2's affairs by registering FIR, after recording independent statements of several persons connected with the transactions under challenge. EOW collected documentary evidence relating to the transfer of shares, board meetings, Conveyance, Mortgage, Corporate Guarantee and other records/statements of various individuals connected with R2's affairs. Their statements corroborate the allegations made by P1 & P2 regarding fabrication of corporate records and unlawful assumption of control over R2's affairs by the Respondents.

4.8.2 Based on the statements of R14's officials, the EOW investigation revealed that only 1,00,000 original share certificates were ever deposited with R14 and that no original certificates representing the entire shareholding were available with it. The investigation also indicates that the alleged Event of Default (EOD), the Notice of Sale and the subsequent correspondence relied upon by the Respondents were fabricated and ante-dated, and that the purported transferee itself has stated that it never received the original share certificates.

4.8.3 The assignment of debt in favour of Phoenix ARC, failure to file statutory financial statements of R2 for 4 consecutive FYs and subsequent initiation of CIRP against R2 & R10 are not isolated commercial events but constituted successive, coordinated and continuing oppression/mismanagement of R2's affairs. By transferring R2's sole asset; creating security interests over the Subject Land; and introducing successive third-party rights, the Respondents stage-managed the CIRP of the Companies with the intention to permanently entrench the consequences of the impugned transactions and place R2's affairs

beyond effective judicial scrutiny. The CIRP of R2, by the Financial Creditor (FC), Vijaypath Financial Management Private Limited, was initiated just for default of Rs.1 Crore, despite R2 owning the valuable redevelopment property over the Subject Land. R2 had no institutional borrowings prior to the impugned transactions, and the timing and manner in which CIRP was initiated indicate collusion by the Respondents forming part of their larger design to commit oppression/mismanagement of R2's affairs. Apprehending that the CIRP of R2 would prejudice their rights, P1 & P2 filed IA No.911/MB/2022, seeking intervention, and also expressing their willingness to discharge the entire debt claimed by the FC. The FC's refusal to accept the admitted dues in R2's CIRP, for the reason of no asset owned by R2, while R2 possessing the redevelopment right over the Subject Land, clearly demonstrates that CIRP was pursued for securing control over the Company, and no other reason. R2's admission into CIRP enabled Phoenix ARC to lodge a claim founded upon the Corporate Guarantee and Mortgage, both of which are under challenge in the present proceedings.

4.9 **CIRP of R10 & R2's Continuing Oppression and Mismanagement**

4.9.1 The CIRP initiated against R10 was equally significant. It was initiated for an alleged debt of about Rs. 6–7 Crore even though R10 had already incurred liabilities of approximately Rs.525 Crore under the DTD. Neither the principal lender nor the debenture trustee initiated the CIRP, and it was intended only to secure the protection available under the IBC and was subsequently withdrawn pursuant to settlement, thereby reinforcing the Petitioners' case that CIRP was invoked for collateral purposes.

4.9.2 R10 was admitted into CIRP after it had already acquired the Subject Land; created security interests thereon; and undertaken substantial activities in the Project. This itself demonstrates R10's precarious financial position, and lends credence to the Petitioners' consistent case that R10 lacked financial capacity when it executed the Conveyance.

Despite R10's insolvency, oppression/mismanagement continued in R2's affairs/shareholders, thereby causing continuing prejudice to P1 & P2 by divesting R2 of valuable assets and burdening it with substantial liabilities, ultimately causing its CIRP admission on 30.05.2025.

4.9.3 Despite the repeated judicial protection granted first by the Hon'ble NCLAT and the Hon'ble Supreme Court, the Respondents persisted in creating successive layers of third-party rights over the Subject Land, and each subsequent transaction was carefully structured with the object of placing the same beyond the reach of effective judicial intervention, to render the C.P., infructuous.

4.9.4 This Tribunal allowed I.A. No. 106/2026 to amend the present C.P., on 01.06.2026, pursuant to the Hon'ble Supreme Court disposing of the Civil Appeals on 11.03.2026, by directing the parties to maintain status quo and not to take any steps altering the nature of the Subject Land or create additional third-party rights. It was also clarified that Hon'ble NCLAT's order of 11.10.2022 shall continue to operate till the expeditious disposal of the C.P. by this Tribunal.

4.9.5 The subsequent developments, post filing the C.P., including R2's CIRP, admission of Phoenix ARC's claim and the material unearthed during the EOW investigation, corroborate the allegations of oppression/mismanagement consistently pleaded by P1 & P2 since the institution of the proceedings. Hence, the cumulative effect of the documentary record; judicial proceedings; and subsequent events warrants the exercise of the powers conferred upon this Tribunal under Sections 241-242 of the Act to grant appropriate declaratory, restorative, and consequential reliefs so as to end the acts of oppression/mismanagement complained of.

5. SUBMISSIONS OF R1, R4 & R5

5.1 R1, R4 & R5, in their preliminary reply on 26.06.2021, submitted that the Petitioners' entire case is founded upon the SPA of 06.05.2016, which

never came into effect since the Purchaser, P1, did not comply with the contractual obligations under the Side Letter of 06.05.2016. The Petitioners' attempt is to enforce the contractual rights under the SPA, under Sections 241-242 of the Act. Under Clause 5 of the SPA, the *First Closing* was required to take place within 5 business days from the execution of the SPA, during which R4 & R5 were each required to transfer 2,500 equity shares on receipt of the agreed purchase consideration. P1 failed to pay the initial consideration payable under the SPA, and consequently failed to fulfil the conditions precedent therein. Since the obligations under the Side Letter were never performed, the SPA never became effective, consequently stood terminated by efflux of time, in terms of Clause 9.12, which expressly made time the essence of the contract, and permitted extension only by written consent of all parties; however, no extension was granted. The Petitioners themselves have admitted that the SPA was never implemented, as evident from the proceedings initiated by them under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act). Petitioners sought declaration that the SPA continued to remain valid and subsisting, which demonstrates that disputes relating to the validity, enforceability and performance of the SPA also continue to subsist. Therefore, the disputes raised in the C.P are contractual in nature, requiring it to be adjudicated by a civil court/arbitral tribunal or under the Specific Relief Act, 1963, not under Sections 241-242 of the Act. Clause 5.4.2 of the SPA specifically required the Petitioners to call upon R4 & R5 to resign from the board and facilitate the appointment of nominee directors, but no such call was ever made. Clause 5.4.4 contemplated convening of the EGM for appointment of P1's nominee as directors, which never took place. Having failed to perform their obligations under the SPA, the Petitioners cannot now seek control over R1 & R2.

5.2 P1 & P2 are not members of R1, hence not eligible to maintain the C.P under Section 244 of the Act. Only after establishing that they are R1's 'members', oppression / mismanagement can be alleged. The rights under

Sections 58 and 59 of the Act arise only where there has been a valid transfer of shares in accordance with Section 56 of the Act. The burden is on P1 & P2 to establish their title to the shares and consequent status as R1's members. When R1's original register of members was produced before this Tribunal, P1's name was never entered as a member of R1. Even assuming that transfer of shares had been contemplated under the SPA, it could never have been completed without strict compliance of the Act and R1's Articles of Association (AoA). The Share Transfer Forms (SH-4) relied upon by P1 & P2 are unstamped/undated/never lodged with R1 within the period under Section 56 of the Act, and non-compliance with the mandatory/statutory procedure for transfer of shares renders the alleged transfer legally unenforceable. Articles 11 to 18 of R1's AoA prescribe mandatory procedure for transfer/transmission of shares, including approval of the board, but no approval was ever granted, and consequently, no valid transfer of shares ever happened. AoA is a contract between the shareholders and R1, and also between the individual shareholders. The directors can only exercise those powers conferred by AoA, and any action contrary thereto is illegal.

5.3 A company cannot register transfer of shares other than the statutory compliance of Section 56 of the Act, including the submission of duly stamped and executed instrument of transfer along with the relevant share certificate/letter of allotment. The words 'shall not register' in the provision are prohibitory and reflect the legislative intent that compliance with the prescribed procedure is imperative. When the statute employs negative language prohibiting the doing of an act, it is ordinarily mandatory save to the extent expressly provided by the statute.

5.4 Immediately upon discovering that the original share certificates were missing from the custody of their solicitors, R4 & R5 issued notice dated 07.04.2021 for inspection of the documents, but there was no response from the Petitioners. Respondents lodged complaints with the police regarding the missing share certificates, and a Certificate of Loss dated

06.04.2021 was thereafter issued by the Police. P1 & P2 failed to explain how they possessed the original share certificates without there being any provision in the SPA.

5.5 P1's & P2's stand was inconsistent in their acquisition/ownership/control of R1 in 2016. Despite alleging control over the affairs of R1 for several years, P1 & P2 neither ensured their entry in the R1's register of members nor took any steps for registration of transfer. A person who genuinely acquires shares would ensure immediate statutory compliance, and the failure for several years demonstrates no transfer ever took place.

5.6 The allegation that Form MGT-7 for FY2017-2018 was manipulated is misconceived, as the return originally filed on 27.01.2021 inadvertently reflected transfer of certain shares to P1 owing to clerical error while filing under pressing timelines. P2 had withheld financial information, and hence, the returns could not be filed within time. As a result, the form was signed and filed in haste, and the error occurred inadvertently. Upon verification of the statutory records and register of members, the error was immediately corrected by filing a revised Form MGT-7 on 01.03.2021 along with an explanatory letter by R5. It was R1's statutorily obligation to rectify erroneous filing and correctly reflecting the actual shareholding position. P1 & P2 have deliberately suppressed the annual return for FY2016-2017, which clearly records R4 & R5 as R1's sole shareholders. The returns for FYs 2018-2019 and 2019-2020 also consistently record R4 & R5 as R1's only shareholders. The statutory records over the successive FYs unequivocally establish that R1 never recognised any transfer of shares. MGT-7 is only a statutory return filed with RoC and cannot, by itself, create/extinguish title to shares, which flows only from a valid transfer effected under the Act/AoA, and not from the annual return entry.

5.7 Original share certificates accompanied by duly executed/stamped Form SH-4 were never lodged with R1 within the period prescribed under Section 56 of the Act. The mandatory statutory requirements governing

transfer of shares having admittedly not been complied with, no title could have passed in favour of P1 & P2, and they can neither invoke Sections 58-59 of the Act, nor can they seek rectification of the register based on an incomplete/unenforceable contractual arrangement. The SPA was executed on 06.05.2016 and the transfer ought to have been reflected in FY2016-2017. Since the C.P. was filed only in 2021, it is hopelessly barred by limitation. Petitioners have admitted the prevailing contractual disputes in the Section 9 Arbitration proceedings seeking protection of the SPA. Once they elected to pursue contractual remedies, the contention of continuing cause of action is an attempt to escape limitation. The C.P is founded on enforcement of contractual obligations and declaration of rights under the SPA; specific performance before civil court ought to have been initiated, as Article 54 for specific performance and Article 58 for declaratory relief under the Limitation Act would apply. P1 & P2 have not pleaded exclusion/extension of limitation required under Order VII Rule 6 of the Code of Civil Procedure, 1908.

5.8 It is untrue that R1 & R2 prospered under the management of P2, but R2's affairs substantially deteriorated when P2 was actively associated with R2 as its liabilities increased from Rs.140 Crore(appx.) to Rs.400 Crore(appx.), while the redevelopment project witnessed little progress. Slum dwellers' rehabilitation slow-paced as R2 failed to achieve any meaningful progress during the next several years. P2 abused his position in R2 and diverted/misappropriated its funds for his personal benefit. Several financial irregularities committed during P2's tenure came to light, leading to the public notice on 30.03.2021, informing stakeholders about his acts, cautioning the public against dealing with him on R2' behalf. Subsequent actions of R1, R4 & R5 were only to safeguard the interests of R2/stakeholders. Invocation of the pledge over R2's shares and its consequent cessation as R1's subsidiary were direct consequences of defaults committed by P2 in managing R2's affairs. P1 & P2 cannot challenge the consequences flowing from their own defaults/omissions, alleging oppression/mismanagement. Several developments relied upon

by P1 & P2 have subsequently become subject to proceedings under IBC, such as CIRP of R2 & R10. In any case, this C.P cannot interfere with or nullify the valid processes under IBC, since IBC prevails over the Act to the extent of inconsistency.

5.9 Reliance placed by P1 & P2 on the investigation by EOW/FIR in relation to the transactions is misconceived, and cannot constitute evidence in the C.P, as criminal investigations cannot determine civil rights/corporate disputes between the parties, especially when the allegations are yet to be adjudicated by the criminal court.

5.10 No valid transfer of shares/lawful acquisition of membership completed conferring any rights in R1's shares. The very foundation of the C.P. is unsustainable as P1 & P2 have no locus under the Act. The disputes raised are essentially time barred contractual disputes under the SPA to be adjudicated by civil/arbitral forum. Without valid shareholding or mandatory compliance with Section 56 of the Act or legally enforceable right under the SPA, they cannot invoke the Tribunal's jurisdiction under Sections 241-242 of the Act. Hence, the C.P is to be dismissed with exemplary costs.

6. SUBMISSIONS OF R2 THROUGH RP

6.1 R2's submissions are based on the preliminary joint reply of R2, R3, R6 & R7 dated 22.07.2021, filed through the RP in the C.P, and its limited affidavit of 09.03.2023 in C.A.No.560/2022. As directed by this Bench, RP also filed the list of documents available with R2's financial statements of FY2021-2022, as on 30.05.2025, its insolvency commencement date. P1 & P2 filed 9 proceedings in multiple fora seeking the same reliefs, without any favourable orders. Third-party rights and interests in the Subject Land were created before and after filing the C.P, and before Hon'ble NCLAT's order dated 22.10.2021. These rights were created through registered documents, by which the title to the Project/ownership of the Subject Land was passed to R10, for valuable consideration, creating valid/enforceable

mortgage in favour of R14. Hence, the actions are not in breach of any orders.

6.2 The RP clarified that he is not privy to any transaction and has no comments on whether P1 is a shareholder of R1, and if P1 fails to prove, other issues are irrelevant. Even if P1 succeeds, the same would not give P1 & P2 locus to challenge qua R2. Once R1's shareholding stood transferred to R14, R2 no longer remains a subsidiary of R1. The CIRP of R2, initiated on 30.05.2025, expired on 24.02.2026, and presently, I.A. (Liq.) No. 23/2026 is pending adjudication and is challenged by P1 & P2 in I.A. No. 2896/2026. Since R2's CIRP was initiated, no relief to reinstate P2 as director of R2 arises under Sections 241-242 of the Act. Consequently, I.A. No.911/2022 filed by P1 & P2 was dismissed, and the appeal challenging R2's CIRP admission is pending without granting any stay. This Tribunal has no power to reverse, suspend or nullify the CIRP order under Sections 241-242 of the Act.

6.3 Basis R2's records, the RP submitted that R2 attempted to acquire lands by borrowing funds from IIFL for developing the Project since 2013. R2's assets were mortgaged to IIFL. P2 entered R2 as director in 2016. By 2016 JDA, R10 agreed to repay R2's existing loans. P2 had signed loan/security documents as R2's director, including the DTD among R2; R10; & R14, in terms of which IIFL subscribed to debentures issued by R10. Under the DTD-1 dated 15.06.2017, Rs.240 Crore was advanced by IIFL to R10 for the Project. The condition of disbursement of the loan was the Pledge of 15.06.2017, by which R1's shares in R2 would be pledged by R1 in IIFL's favour. The Pledge of 15.06.2017 was signed by P2 on behalf of R2. Since P2 has disputed the pledge of only 100,000 shares to IIFL, it is for R1 & IIFL to prove this. Since the 100,000 shares had voting rights, it is immaterial as far as voting rights and taking over the affairs of R2 is concerned. P1 is not a shareholder in R2. P1 claims 40% shareholding in R1 (which once held 100% shares in R2). Hence, P1's alleged shareholding in R1 does not confer on it any right/interest in R2's

assets. Schedule III of the Pledge of 15.06.2017 provides the number of shares actually pledged; therefore, only 1,00,000 shares were pledged in R14's favour is patently false.

6.4 Upon default in payments, R14 issued an EOD Notice on 01.02.2021 to R10; R2; P2, R3 and R1, calling upon R10 to repay outstanding amounts under the DTD-1 within 7 days, failing which, R14 could take further action, including invocation of the security interest under Clause 20 of the DTD-1. By EOD Notice, Pledge of 15.06.2017 was also invoked. However, R14 addressed the invocation notice on 12.02.2021 to R1 & R2, informing them that they are constrained to sell the pledged shares as per the Pledge of 15.06.2017 and even cautioned them not to do anything affecting the invocation of the pledge/interests of R14, also stating that all rights in the pledged shares are fully exercisable by R14. R1 replied to the invocation notice on 25.02.2021, acknowledging R14's right to transfer the pledged shares/default under the DTD-1 and the SPA. R1 even agreed to execute documents required by R14 to finalise the transfer of pledged shares in R14's/nominees name.

6.5 R2 received letter dated 26.02.2021, under Sections 115 & 169 of the Act, informing that P2 was removed as R2's director. By another letter of 26.02.2021, consent was provided for convening R2's board meeting at shorter notice. Notice for the board meeting was sent to P2 on 06.03.2021, to convene EGM to remove P2. EGM was held on 13.03.2021, unanimously resolving to remove P2 as R2's director. P2 was the only director of R2 till 13.03.2021, and he ceased to be associated with R2. Neither P1 nor P2 was ever a shareholder of R2. P1 filed petition under Section 9 of the Arbitration Act before the Hon'ble High Court, to somehow remain as R2's director, but the petition was later withdrawn, after which only, this C.P was filed.

6.6 P1 & P2 falsely claimed possession of R2's 38,73,607 shares on the strength of the purported claim that 39,73,607 shares of R2 were held by R1, constituting R2's 99% of the paid-up equity capital, handed over to

them in May 2016. But at the time of execution of the Pledge of 15.06.2017, R2's share certificates for the pledged shares were handed over to R14. On 22.02.2021, upon the invocation of the Pledge of 15.06.2017 by the invocation notice, R14 handed over R2's physical share certificates to IIFL. Thereafter, R14 sold/transferred the pledged shares to R11(erstwhile 'Academia') by exercising its rights under the SPA, as recorded in R2's board resolution of 28.05.2021.

6.7 In the Project undertaken by R2 & R10 under the JDA, R2 was liable to pay Rs.333 Crore to R10 by 01.04.2021, but the Project was in excess of Rs.339 Crore. Hence, R10 & R2 entered into an arrangement for transferring the Project/Subject Land, by R2, with the benefits of approvals, permissions, liabilities and obligations, on a Slump Sale basis. Further to the Slump Sale, the Conveyance of 08.09.2021 was executed between R2 & R10, by R2 selling and conveying the Subject Land to R10, pursuant to which R2 executed a registered irrevocable Power of Attorney (PoA) on 08.09.2021, in R10's favour. Since R10 required funds to continue developing the Project, R10 executed the DTD

6.8 on 09.09.2021, with R14 as debenture trustee, and by R10 agreeing to issue debentures of a face value of Rs.525 Crore, and for securing the debenture payments, for exclusive first ranking charge, by mortgaging the right/title/interest in the Project held by R10 & R2, favouring R14. Consequently, a registered and stamped Mortgage of 09.09.2021 was executed between R14; R10 & R2. In consideration of the debenture holders subscribing to the debentures/securing the debenture payments, R10 & R2 mortgaged their right/title/interest in the Project/Subject Land in R14's favour.

6.9 The documents relating to BTA (01.09.2021); Conveyance (08.09.2021); DTD (09.09.2021); Mortgage (09.09.2021); Corporate Guarantee of (14.10.2021) were provided to the RP by the IRP. All the transactions are challenged on the ground of P2's appointment as R2's director. BTA shows Rs.301,21,01,639/- due from R2 to R10, as on 31.03.2021, and the

Slump Sale of Project/Subject Land, pursuant to which Conveyance was executed by R2 in R10's favour. Phoenix ARC's claim was supported by DTD (09.09.2021); registered Mortgage; and the Corporate Guarantee. However, Phoenix ARC's claim in R2's CIRP is challenged by P1 & P2 in I.A.4527/2025, but neither Phoenix ARC nor IIFL has been made party to this C.P. On a plain reading of the Mortgage, R2 is Mortgagor 2 since certain rights/regulatory approvals to the Project continued to be in its name pending completion of transfer before SRA. The revised LOI of 22.11.2022 also recorded R10 as the developer of the Project. Under the subsequent execution of Corporate Guarantee relating to NCD facility of Rs.525 Crore, availed by R10, R2 unconditionally guaranteed repayment payable by R10, and that the guarantee would continue as collateral security until discharge. Simply because R2 was not the principal borrower does not make the guarantee invalid/fraud. The Slump Sale; Conveyance; PoA; and Mortgage were executed in good faith pursuant to R2's board resolution of 03.06.2021, to revive the Project or save R2 from insolvency, by R10/other creditors. Since these transactions occurred pre-CIRP of R2, and beyond the look-back period, no challenge is possible under IBC.

6.10 Appointment of additional directors necessitated for managing R2, and hence, was not prejudicial to P1 & P2. Change of the registered address to the new place owned by R12, director of R2, was by proper lease deed duly notarised on 27.07.2021, pursuant to R2's board resolution of 29.07.2021, passed by R3, R6 & R7. Change of place was necessary for R2's smooth functioning and administrative convenience, as the earlier registered office address at 'Duru House', was a co-working space. Statutory requirement of INC-22 was also complied with on 16.12.2022.

6.11 **Actions of P2 Post CIRP of R2**

6.11.1 R2's CIRP was initiated by the FC on 16.12.2021, and moratorium was in force from 30.05.2025. P1 & P2 engaged in forum shopping by filing multiple proceedings demonstrating their attempts to stall CIRP/liquidation of R2, as under:

i. I.A. 911/2022 dated 05.04.2022 for intervention/dismissal of Section 7 IBC Application, which was rejected;

ii. Appeal No.863/2025 pending against CIRP order before Hon'ble NCLAT;

iii. I.A No.4527/2025 challenging admission of Phoenix ARC's claim/inclusion in the CoC of R2; and I.A.No.5483/2025 seeking impleadment of RP in I.A.4527/2025, was dismissed;

iv. Company Appeal No.220/2026 challenging dismissal of I.A. No.5483/2025, was dismissed by Hon'ble NCLAT;

v. I.A.No.2584/2026 for urgent hearing of I.A.4527/2025, was allowed on 23.06.2026;

vi. I.A.No.2896/2026 separately challenging I.A (Liq.) No.23/2023 of R2 and removal of RP, is pending;

6.11.2 RP rejected the 5 claims filed by P1 & P2 in R2's CIRP, but the same has not been challenged. P1's claim is under verification for want of relevant documents. RP sought additional information/documents on P2's claim of Rs.69 Lakh but no information was received until the 4th CoC meeting.

6.11.3 P2's claim that, post his joining as R2's director it became debt free, is incorrect as R2 took money from R10 to repay IIFL's loan, as seen from R2's financial statements for FY2017-2018, signed by P2 himself pursuant to R2's execution of 2016 JDA with R10. As on 31.03.2016, R2's total debt was Rs.275 Crore, which increased to over Rs.600 Crore. R2 had no revenue and the development of the Project was stalled, so much so that R2 could not even finance the transit rent payable to the rehabilitated slum dwellers, with the same having been financed solely by ad-hoc payments by a lender. Thus, R2's liability to repay the loan was transferred to R10, by making R2 the guarantor, by increasing its liability with additional loans taken on its behalf by R10. Rs.400 Crore is

reflected as payable by R2 to R10, in the letter dated 10.12.2019, terminating the 2016 JDA. R2's financial condition worsened when P2, his wife, his employees and associates siphoned off at least Rs.19,78,05,000/- from R2, as seen from R1's complaint to EOW dated 19.05.2021.

7. SUBMISSIONS OF R3, R6, R7, R12 & R13

7.1 R2, R3, R6, & R7 have filed reply to the C.P, dated 25.06.2021. R6 and R12 have filed replies, post-amendment, both dated 22.06.2026. Common written submissions are also filed by R6, R7, R12 & R13, on the basis of the preliminary reply dated 25.06.2021, and in the amended C.P., R3 adopted the submissions of R1, R4, R5, R6 & R7.

7.2 R6 & R7 were R2's directors from 24.02.2021 to 11.03.2022, and R12 & R13 were later appointed as directors from 11.03.2022, and continued as such until R2 went into CIRP. According to the Respondents, the following facts are suppressed in the C.P:

a. IIFL had advanced substantial sums for the Project initially undertaken by R2; thereafter it was jointly developed by it with R10 under the JDA. The amounts funded still remain due with interest. Some of the loan/security documents were even signed by P2;

b. The DTD-1 was executed among R2; R10; & R14, which was signed by P2, representing R2, under which IIFL subscribed to debentures issued by R10 and advanced Rs.240 Crore for the Project. Security for DTD-1 also included pledge of R1's shareholding in R2, which was formalised in the Pledge of 15.06.2017 executed among R14, R1 & R2.

c. R14, issued EOD Notice on 01.02.2021 to R10; R2; R3; R1 & P2, demanding repayment within 7 days, stating to invoke the security under Clause 20 of DTD-1 and the Pledge of 15.06.2017, for further default. Since no payments were made, an Invocation Notice of

12.02.2021 was issued to R1 & R2, informing them that all rights in the pledged shares were to be exercisable by R14 in its sole discretion. R1 on 25.02.2021 acknowledged the default in terms of the DTD-1, and agreed that R14 has the right to transfer the pledged shares in its own name/any other person, including execution, and waiving off claims thereof.

7.3 R2 received letter of 26.02.2021, under Section 115 r/w Section 169 of the Act, wherein it was noted that P2 faced enforcement action and was untraceable by the law enforcement agencies, and that his continued association was damaging R2's brand image/goodwill. Hence, P2 was removed as R2's director. On 24.02.2021, R6 & R7 were validly appointed as R2's directors, after obtaining their consent. On 26.02.2021, the consent was provided for convening of the meeting at shorter notice to R2 from IIFL. The notice for the board meeting was given to P2 on 06.03.2021, resolving to convene EGM to consider his removal. On 11.03.2021, R3 filed DIR-12 regarding the appointment of R6 & R7. The EGM was held on 13.03.2021, unanimously resolving to remove P2 as R2's director. Hence, R6 & R7 were fully authorised to participate and pass the board resolution and authorise execution of the documents for R2. Thus, P2 was R2's director only till 13.03.2021, and crucially, neither P1 & P2 were never R2's shareholders.

7.4 Petitioners are neither shareholders of R1/R2 nor ever been members of R1/R2 as there are no shares in their name in R1's/R2's records. There is no evidence of physical share certificates representing their shareholding in R1/R2, as no membership vests until the transferee's name is entered in the register of members. R1's purported share certificates are in R4's & R5's names, without any endorsement/entry in the transfer memorandum on the reverse page, showing no transfer in P1's favour. The above establishes that the Petitioners are not R1's shareholders. Even after producing the share certificates before the Hon'ble High Court in Section 9 of the Arbitration proceedings, they deliberately and dishonestly

suppressed this in this C.P. Petitioners have failed to produce R1's register of members to establish their status as shareholders. R1's entire shareholding in R2 had been pledged to R14, *inter alia,* to secure financial facilities availed from IIFL for the Project. Due to default, R14 invoked the Pledge, followed by sale of R2's shares held by R1 to Academia (now R11), making R1 no longer R2's holding company. Directorial disputes, and the title disputes/specific performance of P1's claim as shareholder of R1 are beyond the scope of Sections 241-242 of the Act. Hon'ble NCLAT has already raised doubt, in the order dated 11.10.2022, as to how the shareholder of holding company is interested in the activity of the subsidiary company directly.

7.5 By the Side Letter, Petitioners were required to repay certain amounts to R3 and procure the release of personal guarantees/post-dated cheques given by him to IIFL, as security for loan advanced to R14 for R2's Project/Subject Land. Sale of the shares was contingent on the Petitioners' performance of their bargain under the SPA/Side Letter, within the specified time, but they failed/neglected to perform their part of the bargain. Upon analysing R2's books, gross mismanagement/criminal misappropriation of funds is seen committed by P2, prompting R2 initiating proceedings against him, and is guilty of committing dishonest/fraudulent conduct, prejudicial to R2.

7.6 **Answer to Events & Prayers Post Amendment to C.P on 01.06.2026**

7.6.1 Post amendment to the C.P., certain prayers/contentions were added to set aside R2's concluded transactions, viz., invocation & transfer of Pledge/ Conveyance / DTD / Mortgage / Corporate Guarantee / third-party rights and assignment to Phoenix ARC. All these are beyond the three-month limitation under Section 242(2)(g) of the Act. The impugned transactions were concluded between February and September 2021, i.e., more than four years before the amendment application was filed on 26.03.2026. While allowing the amendments, this Tribunal left open the questions of jurisdiction and limitation, which is 3 years under Article 137

of the Limitation Act, from the date of the transactions. Petitioners had full knowledge of each impugned transaction by, at the latest: (a) when R3 filed affidavit disclosing the invocation of Pledge on 25.06.2021; during meetings, requisitions, transfer of pledged shares in February-March 2021; (b) when R2 filed affidavits before Hon'ble NCLAT disclosing the Conveyance (08.09.2021); and (c) execution of DTD on 09.09.2021. Three years have already expired, in June-October 2024, since all these events. The amendment IA filed in March 2026, is over 17-21 months delayed. Since the registration of the Conveyance is a constructive notice, from September 2021, the limitation ran under Section 137 of the Limitation Act. The new prayers (ii-a) and (viii) to (xxxii) are barred by Section 242(2)(g) of the Act/Article 137, and cannot be granted by this Tribunal.

7.6.2 The C.P. filed against removal of director/rectification has now been converted to a challenge to the affairs of R2. All the subsequent transactions are challenged, but Phoenix ARC is not a party to the C.P.

7.6.3 This Tribunal has no jurisdiction to cancel the registered Conveyance. Investigation under Section 213 of the Act cannot be smuggled in by amendment of this *sui generis* C.P., under Section 241-242 of the Act. The Hon'ble Supreme Court's order dated 16.12.2022 had not stayed the ongoing proceedings in this Tribunal. Hence, there was no procedural difficulty in moving detailed amendments in 2024 when the Petitioners chose to amend only the memo of parties. The comprehensive amendments were moved only after the Hon'ble Supreme Court's order dated 11.03.2026 in Civil Appeal Nos.9052-9053/2023. There is no fresh cause of action/fresh limitation on the transactions of 2021, which can be revived in 2026, on the strength of 2024 assignment; 2025 CIRP; 2025 EOW Status Report. All these were within the Petitioners' knowledge before the amendment.

7.6.4 No money was transferred under Clause 5 of the SPA. There is no proof for transferring back the shares to the Petitioners, and they are not

R1's/R2's beneficial owners; hence P1 is just an alleged shareholder of the companies. Hence, no prayer under Sections 58-59 of the Act is sustainable. The dispute is on the shareholding title, which is not *per se* between P1 & R2, but rather between P1 and the Sellers of the shares. Shareholding in R1(holding company) is, when suspicious, does not qualify for rectification under Sections 58-59 of the Act. Therefore, the C.P. is unmaintainable under Sections 241/242 qua the holding company or its subsidiary company. When there is no proof as to the share transfer, no remedy under Sections 58-59 r/w Section 430 of the Act can be sought. Further, directorial complaints cannot be brought under Section 241 of the Act. P2 has approached this Tribunal in his individual capacity, claiming to be R2's director. All the actions were lawfully undertaken by the Respondents in R2's interest. By the Pledge of 15.06.2017, R1's entire shareholding in R2 was unconditionally pledged/delivered/made enforceable in R14's favour. It is P2 who had executed the Pledge of 15.06.2017 on R2's behalf as the Obligor. Hence, he cannot argue that the Pledge of 15.06.2017/invocation/consequent transfer of the pledged shares was invalid. R2's original share certificates/transfer documents were delivered to R14. The matters relating to the criminal complaint by P2, FIR, and its transfer to the EOW/Status Report are all beyond the jurisdiction of this Tribunal and sub judice before the competent forum.

7.6.5 The invocation/transfer of pledged shares was a lawful exercise of contractual rights by the secured creditor, and not an act of R2 or its directors as an act of oppression. Upon invocation, the rights under the pledged shares became exercisable by the R14/nominee, and the pledged shares were thereafter transferred to third party, through R2's valid board resolution. Hence, R1 ceased to have any interest in R2 after the share transfer. R14/nominee had all the powers of R2's shareholder, including the power to requisition, convening meetings, appoint and remove directors, pass resolutions, approve corporate actions and

statutory filings. All the actions in relation to P2's removal as R2's director was lawful and valid by recording sufficient reasons.

7.6.6 It was R2's commercial decision to execute the Conveyance/Mortgage. These transactions are supported by board authority, due consideration, and *bona fide* purpose of securing the funds required to continue the Project. Since P2 was not even a member of R2, as on 13.03.2021, he cannot challenge these acts as being unlawful. The contention that there is contrast between stamp duty valuation and the figure of Rs. 787 Crore in the DTD is highly misconceived, as the former reflects the value of the land on an "as-is" basis for the limited purpose of revenue, i.e., stamp duty, while the latter reflects a projected development value taken as security cover. As regards the consideration to the Conveyance structured as Slump Sale, the substantial monies that R2 owed and was unable to pay, including the sum of apprx. Rs.400 Crore payable to R10, by 01.04.2021, were settled in full and final settlement under the Cancellation Letter. Thus, these transactions were not an act of ″stripping off″ but were based on R2's commercially justified resolution, and were in no manner prejudicial to it. The change of registered office was a lawful corporate act duly effected and filed. Even, R2's financial statements for FYs2019-2020 and 2020-2021 were prepared, audited and adopted in the ordinary course under law.

7.6.7 The purported share transfer forms relied upon by the Petitioners are blank, undated and unwitnessed, without R1's stamp and without any endorsement on the reverse of share certificates. The Memorandum of Transfers is blank, indicating no transfer in P1's favour. Thus, the purported transfer is *ex facie* incomplete and ineffective in law. Even the status of payment of the consideration claimed by them under the SPA is doubtful, as no material is available to show that P2 had ever made payment required under Clause 5.3 of the SPA. The Petitioners, who are not even members, have no right to seek any remedy against persons

who are not parties or whose consent is required under Section 242(2)(f) of the Act. Thus, the reliefs prayed for shall not be granted.

8. SUBMISSIONS OF R10

8.1 R10 submits that they are impleaded as Respondents in the C.P. on 07.06.2026. They adopt the submissions in the Affidavit in Reply to C.A. No.560/2022 and Reply to IA No.106/2026. R10 also depends on their Written Submissions, and R2's pleadings in the C.P., as regards the facts involving them.

8.2 R10 is stranger to the allegations against R1 & R2, purportedly caused by R3 to R7. When this Tribunal refused interim reliefs by order of 29.07.2021, Petitioners manufactured false narrative against R10 with mala fides of dragging them into the proceedings and converted the C.P. into a dispute centered around the alleged transfer of Subject Land to them from R2. The attempt is to seek adjudication of a title dispute in the guise of a shareholder dispute in the summary jurisdiction under Sections 241-242 & 59 of the Act. Only upon confirming the share entitlement, other consequential reliefs can be pleaded.

8.3 Petitioners have no locus to challenge concluded commercial transactions or drag R10, being independent third party into unnecessary controversy. The C.P is a directorial dispute dressed up as oppression/ mismanagement. Petitioners are not R2's shareholders. P2 is only R2's ex-director, and P1, is an alleged shareholder of R1, the holding company. They cannot allege oppression/mismanagement, regarding R2's affairs, the subsidiary company, in which they do not hold any shares. Petitioners need to prove that they are members of R1 & R2, and that R2 or R1 owed any asset, which eventually went to R2. Adjudicating disputes of corporate registries/financial statements, etc., would not come under the summary jurisdiction. Trying complex civil title disputes, allegations of fraud, collusion, fabrication, involves full trial requiring strict proof, triable only by a civil court. Being an independent third-party corporate entity, R10 is not R1's/R2's shareholder/director/promoter, and has no role in their internal

operations and management. Under the proviso to Section 242(2)(f) of the Act, no relief for termination/setting aside/modification of agreements with a third party, without R10's express consent, can be sought. R10 has only acted as bona fide purchaser for valuable consideration.

8.4 The BTA and Conveyance were bona fide commercial settlement to discharge and set off a massive, undisputed Rs.400 Crore debt owed by R2 to R10, and not fraudulent transactions. R10 joined the Project, as lawful corporate restructuring arrangement, deploying its own substantial capital by taking over R2's significant underlying liabilities.

8.5 Further, prayer seeking restoration of LOI issued to R2 by SRA, resulting in its cancellation in R10's favour, is legally misconceived and unmaintainable as the Tribunal has no power under Sections 241-242 of the Act to review/cancel/restore regulatory orders of statutory bodies. Petitioners have not exhausted the statutory remedy of challenging SRA's order that lies with the Apex Grievance Redressal Committee under Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Trying to seek such reliefs under Sections 241-242 of the Act is illegal. SRA is also not a party to the C.P, but the prayer indicates restoration of LOI by SRA, which is under the 1971 Act. Since R2 is now undergoing liquidation, such an order is impossible. Slum rehabilitation is a public project, and the slum dwellers are yet to receive their flats. The rents are paid by R10 under the SRA scheme, and hence, no such relief can be granted.

8.6 The Subject Land is divided into 5 land parcels. Between 1982-1993, 1st, 2nd & 3rd parcels of 18,086.32 sq. mtrs., 98.75 sq. mtrs., 1629.50 sq. mtrs., respectively, were notified as slum, while 4th & 5th land parcels of 1720.60 sq. mtrs., and 305 sq. mtrs., respectively, were privately held by the concerned owners. In 2007, the first three parcels were conveyed to Shubh Enterprises (Shubh) by 3 separate, registered deeds, and subsequently, on 31.12.2011, the 5th parcel was also conveyed to Shubh under registered deeds. Thereafter on 31.12.2013, Shubh and R2

executed sale deed under which the 1st, 2nd, 3rd & 5th parcels were sold to R2 on 'as is where is' basis. During that time, the slum dwellers and societies formed across the aforesaid land parcels, appointed Shubh as the developer to carry out redevelopment of the property under the SRA Scheme. The 4th land parcel was transferred to R2 by the then owner by Conveyance on 03.06.2014. The loan of Rs.138,45,87,500/- taken by R2 between 2013-2015 from IIFL for construction of the Project were secured by (i) Mortgage under which R2 mortgaged the Subject Land in favour of IIFL; (ii) Personal Guarantee executed by R3, & Mr. Uday Jasani in favour of IIFL; (iii) Pledge by R1 of its 50.01% shareholding in R2 in favour of IIFL; and Demand Promissory Notes issued by R2, R3 & Mr. Jasani.

8.7 Long before P2's joining R2, through SPA on 06.05.2016, the Subject Land was heavily encumbered to IIFL/R14, under the Mortgage of 30.09.2013 and registered Deed of Mortgage cum Debenture Trust of 24.03.2014. P2 entered R2, knowing fully well its heavy debt, and the JDA was also in place between R2 & R10, by which, R2, granted exclusive development rights of the Project and right to use all present, future, additional FSI in any form, and R10 was also entitled to deal with the free sale area. It also provided the following respective obligations:

(i) R10's obligations:

a. To fund the expenses in the Project and offer to R2 (i) 50% of gross profit on achieving minimum 7,76,000 sq. ft. saleable area, or (ii) 35% of the gross profit if the saleable area is less than 7,76,000 sq. ft.;

b. To repay R2's loans to IIFL within 15 days of signing of JDA;

c. To bring investment of maximum of Rs.75 Crore through own sources;

d. To deposit Rs.7 Crore on JDA signing, to clear R2's past statutory dues;

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e. To deposit Rs.5 Crore on JDA signing, to use as Project Running Capital/cost/charges incurred for the Project.

(ii) R2's obligations:

a. To assist R10 in obtaining full Occupation Certificate from SRA for the rehabilitation building after complying with the conditions;

b. To obtain permissions/sanctions and get its name added as joint developer in the LOI of SRA;

c. Amalgamation of 4th property with the 1st, 2nd ,3rd & 5th land parcels.

8.8 R10 disbursed more than Rs.375 Crore, which included Rs.138 Crore towards fulfillment of R2's debt to IIFL as obligated under the JDA, making them genuine commercial stakeholder in the Project. Debentures for Rs.240 Crore were issued to raise funds for the Project under the DTD-1, subscribed by IIFL, and R14 was appointed as the debenture trustee. The redemption of these debentures was secured, *inter alia,* by the Pledge of 15.06.2017 whereby R1, pledged its 100% shares in R2 to R14, and was signed by P2. Thereafter, SRA issued a letter dated 28.06.2017, recording the change in the developer for the Project from Shubh to R2. A revised LOI was issued by SRA in R2's favour on 07.03.2018, which also included the 4th land parcel with modified conditions.

8.9 R2 issued the Cancellation Letter on 10.12.2019, under which JDA was purportedly cancelled, and it was agreed that; (i) R2 would pay R10, Rs.400 Crore (inclusive of Rs.375 Crore paid by R10 to R2 under the JDA) by 01.04.2021; and (ii) until repayment of the said amount, R2 would keep a charge on 3,00,000 sq. ft. saleable area in the Project. R10 was not aware of the Cancellation Letter, and was only brought on record by P2 during the Civil Appeals filed before the Hon'ble Supreme Court in November, 2022. The Cancellation Letter is bad in law/null, as JDA could not be cancelled without prior express approval of IIFL, and also R14. However, R2 did not fulfil its obligations to R10 under the Cancellation

Letter. In any case, Petitioners cannot seek specific performance of the SPA in the Sections 241-242 Petition.

8.10 Petitioners claimed that their public notice of 24.03.2021 is a constructive notice, published in response to the notice dated 16.03.2021 by R2. However, a constructive notice cannot be based on misleading statement.

8.11 In C.S. No. 226/2016, seeking a declaration that the defendants therein are jointly and severally liable to the plaintiff for built up area of 5,000 sq. ft. in the Project, the Hon'ble High Court passed an order injuncting R2 from selling, assigning, transferring and creating any charge/lien mortgage or disposing of the 5,000 sq. ft. area of just 2% of the Project conveyed to R10. No copy of the suit was served on R10. R10 was not a party to this suit; thus, is not bound by any injunction passed in a third-party litigation. On 09.01.2023, the suit was withdrawn on settlement between the parties.

8.12 R2, under the directorship of P2, had failed to adhere to Project timelines, obtain approvals or repay the agreed amounts to R10 under the JDA, and had prevented R10 from developing the Project. The continuous defaults by R2 had a cascading effect on R10's financial condition, making it a defaulter under the DTD-1; consequently, R14 invoked the Pledge on 12.02.2021 and sold the Pledged Shares to R11 on 16.07.2021. This resulted in R11 becoming R2's 100% shareholder. During this time, on 04.05.2021, this C.P was filed, but the interim prayers were rejected on 29.07.2021, which was challenged in C.A. 104 of 2021.

8.13 Since R2 continued in default, R10 decided on corporate restructuring as it had substantial liability; thus, R10 & R2 executed BTA on 01.09.2021, whereby R2 transferred Project's construction and development rights on a slump sale basis to R10. Thereafter, R2 executed the Conveyance in R10's favour. R10 did not pay any consideration to R2 as the transaction was a set off against the monies R2 owed to R10. The amount of Rs. 123 Crore specified in the Conveyance was for the purpose of computing

stamp duty. R2 authorised R3, R6, R7 & the Authorised Signatories to execute BTA, Conveyance and PoA for corporate restructuring. The argument that shareholders' permission was not obtained before BTA, and was against Section 180 of the Act, is baseless, as R2, being a private limited company, is exempted under the MCA notification of 05.06.2015.

8.14 Under the DTD of 09.09.2021, R10 issued debentures for Rs.525 Crore, which were subscribed by IIFL, and R14 was appointed as the debenture trustee. The redemption of debentures is secured, *inter alia,* by the following security documents:

a. Deed of Hypothecation, under which R10 & R2 created first ranking exclusive charge over the Project-receivables and cash flows to R14;

b. Mortgage, under which R10 & R2 created first ranking exclusive charge on their right/title/interest in the Project & Subject Land to R14;

c. Pledge, under which R11 pledged its 100% shares in R2 to R14; and

d. Corporate Guarantee executed by R2 in favour of R14.

8.15 The Petitioners filed IA No.2226/2021 before NCLAT, seeking injunction on the transfer and creation of third party-rights in the Subject Land, fully knowing that there were pre-existing mortgages even prior to R2's entry. They were aware of the Conveyance/Mortgage placed on record by R2 in C.A. No.560/2022, filed before this Tribunal on 20.10.2022, alleging that the Subject Land was surreptitiously conveyed to R10 at an undervalued/fabricated/ante-dated transaction to strip off the assets during the pendency of the C.P., and make it infructuous, etc., without following proper procedure. These contentions are completely misconceived, as stamp duty was paid on the market value of the Subject Land and the security cover under the DTD represents only projected valuation for future development use, especially as loan collateral, as opposed to the current value. In the valuation of a slum project, the valuation metrics fundamentally differ from any other standard properties.

Once the competent authority has already adjudicated stamp duty based on the market value, the Tribunal has no jurisdiction to probe into the same. For 5 years of multi-forum litigation, Petitioners have made bald assertions/speculative numbers, and have miserably failed to prove that the Subject Land was worth more than the stamp duty adjudicated value. The burden of proving that the Conveyance was 'undervalued', is on them. Thus, the Conveyance cannot be set aside on the mere dissatisfaction of R1's alleged shareholder, without any proof. P1 is not a shareholder of R2, which owned the Subject Land. In any event, Petitioners have no locus to challenge R2's & R10's commercial wisdom.

8.16 As regards R10's defiance of Hon'ble NCLAT's order of 22.10.2021 in C.A. No.560/2022, directing the parties not to take any "precipitative steps" with respect to the Subject Land, R10 submitted that, at the time of execution of the Conveyance on 08.09.2021 and Mortgage on 09.09.2021, there were no legal/judicial restrictions, and R10 was not party to the proceedings. The general body of the society of slum dwellers, on 24.04.2022, appointed R10 as the new developer for the Project, replacing R2. Thereafter, based on the Conveyance and consent of the slum dwellers, the SRA issued a letter dated 21.09.2022 to R10 informing them that they removed R2 as developer and recognised R10 as the new developer. On 22.11.2022, the SRA issued a revised LOI to R10, retaining the conditions of the LOI dated 07.03.2018. Further, I.A 191542/2024 & I.A. 236474/2024 were filed seeking vacation of the orders dated 16.12.2022 & 15.07.2024, and I.A. 236474/2024 was partly allowed by the Hon'ble Supreme Court by order dated 25.10.2024.

8.17 R10 was admitted to CIRP on 10.07.2024, in a Section 7 application by Spenta Enclave Private Limited, for alleged financial debt of Rs.6,43,04,106/-. On 15.07.2024, the Hon'ble Supreme Court impleaded R10 in the Civil Appeals and directed it not to carry out construction on the Subject Land, considering its ongoing CIRP. On 08.05.2025, the Adjudicating Authority (AA) allowed I.A 5558/2024 under Section 12A of

IBC to withdraw the company petition, and R10 was out of CIRP. The allegation that Spenta Enclave Private Limited was the parent company or a promoter entity of R10 and was hand in glove with R10, is denied, as both the companies have distinct corporate identity, evident from the objections raised by Spenta Enclave Private Limited in I.A. No.5558/2024.

8.18 The Project is not only a commercial asset but a public project, as it is designed to provide permanent housing to 802 (appx.) slum-dwellers, but due to frivolous litigations; long standing stay on construction and pendency of proceedings since 2021, the public infrastructure project is in peril. R10 has invested Rs.700 Crore (appx.) as on 30.03.2026; hence the balance needs to be struck between the public interest and public harm. R10 is entitled to the doctrine of indoor management due to the validity of any actions of R1/R2, as it has no obligation to verify the procedural regularity of R2's board meetings/resolutions.

8.19 In any case, IBC has primacy over the Act, and the internal disputes of directors cannot be a valid defence for frustrating the rights of a creditor to maintain an application under the IBC.

9. SUBMISSIONS OF R14

9.1 R14, IDBI Trusteeship Limited, submits that neither they were party to the C.P, nor was any relief sought against them. On 28.10.2022, CA 560/2024 was filed seeking relief against them for the first time, without any amendment to the C.P. I.A No.106/2026 was filed for adding 22 new prayers and 57 pages of new averments. R14, being the debenture trustee of debentures issued by R10 and subscribed to by the debenture holders, has no relationship with P1 & P2, and is unconnected with the dispute. As an independent third-party debenture trustee, R14 is acting in discharge of its contractual obligations. Since R14 is not a necessary/proper party to the dispute, no relief sought against them can be granted. The disputes raised in the C.P. are essentially inter se R1's & R2's shareholders' disputes, not amenable to their vested rights acting bona fide for valuable

consideration. The reliefs sought against R14 are also ex facie barred by limitation. The DTD of 09.09.2021, Mortgage of 09.09.2021 and other connected transactions were completed several years prior to the amendment of the C.P., and P1 & P2 cannot be permitted to reopen concluded commercial transactions. As per the DTD, the subscribers, acting through R14 agreed to subscribe to 5,250 secured/unrated/redeemable/non-convertible debentures of R10 of face value of Rs.10 Lakh, with an aggregate value of Rs.525 Crore. It was to fund the Project being developed by R10 on R2's land acquired under the Conveyance of 08.09.2021, executed/registered between R10 & R2, on a Slump Sale basis. Thus, R14's role was limited to that of the debenture trustee under the DTD, including taking any actions for the recovery of amounts disbursed under the DTD and enforcement of the security interest to secure repayment of the amounts disbursed. Thus, R14 only acted as per the instructions of the debenture holders. The land was already mortgaged in R14's favour under the Mortgage dated 09.09.2021, which was duly registered/executed to secure R10's repayment obligations under the DTD. The debenture holders' rights and Mortgage were created for adequate consideration and not obtained illegally.

9.2 The Mortgage cannot be challenged in the present proceedings as the same has been created under valid authority and on the basis of authentic board resolutions passed by the board of the concerned companies. R14, being a third party, is protected by the doctrine of indoor management, which insulates an outsider or third party from internal disputes relating to the affairs of a company. R14 does not have the responsibility to go into the veracity of the resolutions authorising any person to act on behalf of the company. A bona fide creditor is entitled to presume that all formalities for the execution of such documents have been duly complied with. A creditor is not expected to know what happens behind closed doors of a company, which it has no access to. As long as such acts are not ultra vires the law or the company, the creditor would be entitled to assume the apparent or ostensible authority of a genuine/real agent. Therefore,

innocent third-party investors cannot be destabilised by internal/collateral disputes between the promoters. R14's rights are immune notwithstanding disputes between Petitioners & R1 & R2, and hence, no relief under prayer clause (xix) is allowable.

9.3 The proceedings under Sections 241-242 of the Act are in the nature of an alternative remedy to winding up of the company on just and equitable grounds. P1 & P2 need to first establish the facts justifying winding up before jurisdiction under Sections 241-242 of the Act can be invoked. The statutory pre-condition under Section 242(1)(b) of the Act is to be satisfied. Except for making bald averments of just and equitable grounds to wind up R1 & R2, Petitioners have not succeeded in proving the same. As regards the Corporate Guarantee given by R2 to R14, P2 is only R2's former director, removed on 06.03.2021, and he is not associated with R2 since then. Hence, no relief under prayers (xix), (xx) and (xxi) can be allowed. Admittedly, neither of the Petitioners is/has ever been R2's shareholder/member. The right to invoke Sections 241-242 of the Act is conferred only upon a member of the company complaining of oppression/mismanagement, and hence, Petitioners are not entitled to any relief against R2 or R14. Although R2 was formerly a subsidiary of R1, R2 is a separate/distinct juristic entity, and there is no pleading seeking lifting of the corporate veil, in the absence of which no relief can be granted against R2 in proceedings instituted by persons other than its members. A shareholder of a holding company cannot maintain proceedings alleging oppression in respect of a subsidiary company in which such person is not a member. Accordingly, the present C.P, insofar as it concerns R2, deserves to be dismissed in limine.

9.4 Under the DTD-1, the subscription of debentures for Rs. 240 Crore, issued by R10 is for the development of the Project. The Subject Land was at that time being jointly developed by R2 & R10 under the JDA. R14 was the debenture trustee under the documents executed in respect of those facilities. To secure the facility availed under the DTD-1, R1, who was then

100% shareholder of R2, created Pledge on 15.06.2017 over R2's 100% shareholding. R2 also executed Mortgage over the Subject Land as security for the repayment of the amounts availed under the earlier DTD-1. Owing to defaults committed under the earlier DTD-1, on the instructions of the debenture holder, R14 issued EOD notice on 01.02.2021, calling upon the issuing company to repay the entire amount payable by R2. As the issuing company failed to repay the amounts due under the earlier DTD-1, on the instructions of the debenture holder, R14 issued notice on 12.02.2021, invoking the pledge of shares furnished by R1 of its 100% shareholding in R2. Upon the invocation, the rights of the shares pledged became exercisable only by R14, being the debenture trustee under the Pledge of 15.06.2017. R1, by its letter dated 25.02.2021, agreed to transfer the shares to the debenture holder/any other party as they deem fit, to be held in trust till such time as the pledged shares are ultimately sold. Subsequently, the subscriber of debentures under the DTD-1 issued a letter on 26.02.2021 to R2's board, seeking removal of P2 from its board on the grounds of the negative impact of his association with R2's business, which was then jointly developing the Project. Another letter of the same date consenting to shorter notice for the EGM for P2's removal from R2's board was issued, and on 06.03.2021, P2 was removed from R2's board. In view of the above, the entire procedure followed for the invocation of Pledge, transfer of shares to the debenture holders and subsequent sale was done within the parameters prescribed under law. The actions were purely for the benefit of the debenture holders under the DTD-1. In the absence of any illegality in the process followed, there is no question of granting prayers (viii) to (xv). While a material change of management/control of the company could form the subject matter of a petition under Section 241 of the Act, any such material change brought about by or in the interests of any creditor is specifically excluded from the ambit of oppression/ mismanagement under Section 241(1)(b) of the Act. It explicitly excludes creditor actions from the definition of oppression/mismanagement. Hence, this Tribunal lacks the jurisdiction under Sections 241-244 of the Act to interdict/reverse or sit in judgment

over the legitimate enforcement of security interest by a financial intermediary. Actions by R14 under the DTD-1 and/or the Pledge of 15.06.2017, including invocation of pledge, requisitioning meetings and removal of P2 as R2's director, cannot be called into question, in view of the exception stated above. Petitioners have not established prima facie case, balance of convenience or irreparable injury against R14. Granting any relief against R14 would bring a third-party funded project of Rs. 525 Crore to a grinding halt, causing severe prejudice to debenture holders and slum dwellers. The entire grievance of the Petitioners arises from actions undertaken by R14 in its capacity as debenture trustee and in enforcement of contractual rights created in favour of the debenture holders. Such actions are expressly carved out from the scope of oppression/mismanagement under the Act. The residual power contained in Section 242(2)(m) of the Act cannot also be invoked to do indirectly what is expressly prohibited by Section 242(2)(f) of the Act.

9.5 The allegation of contempt of the order dated 16.12.2022, is only to be rejected, as apart from issuing notice, the Hon'ble Supreme Court has passed no orders against R14, which was also mentioned in the order dated 11.03.2026.

9.6 Since R2 was admitted into CIRP, its management stood vested in the RP; its board's powers are suspended, and would be exclusively dealt with by the provisions of IBC, and the erstwhile promoters/directors cannot regain R2's management except under the IBC. Hence, the reliefs sought against R2 have become incapable of implementation and become infructuous. The processes under the IBC enjoy primacy over proceedings alleging oppression/mismanagement. Petitioners had actively participated in R2's CIRP by opposing its admission but were rejected by the Tribunal. Having failed therein, they cannot re-agitate the same issues in the present proceedings.

9.7 As regards the deposit of R2's shares with R14, the physical shares delivered to the debenture holder quantified to 1 Lakh shares, and R1

explicitly executed a Pledge of 15.06.2017 over its entire shareholding totaling to 39,73,636 shares. Since the Pledge of 15.06.2017 was signed by P2 himself, he is under obligation to account for why the shares are not with R14. This is categorically observed by the Additional Sessions Judge, Mumbai, in the order dated 16.01.2026 in ABA No. 2113/2025. Hence, P2 cannot now challenge the Pledge of 15.06.2017, its validity, or the consequences of its invocation. In view of the aforesaid, prayer clause (xxviii) ought to be rejected.

9.8 The C.P is not maintainable on facts/in law as against R14. Permitting the reliefs sought would unsettle concluded commercial transactions undertaken for valuable consideration, and undermine the statutory framework governing secured transactions and insolvency resolution. The jurisdiction under Sections 241-242 of the Act is preventive in character and cannot be exercised to reopen concluded commercial transactions where the transactions have created vested rights in favour of bona fide third parties. In view of the aforesaid facts and circumstances, the C.P. deserves to be dismissed with exemplary costs for reliefs against R14.

10. Rejoinder by Petitioners to Reply of R1, R4 & R5

10.1.1 The Petitioners, in rejoinder to the submissions advanced by R1, R4 & R5, submitted that the denial of their shareholding and control over R1 & R2 is contrary to the contemporaneous records/admissions of the Respondents. R2 is a wholly owned subsidiary of R1, which has no independent business apart from holding and controlling its shareholding in R2, and that the intimate knowledge demonstrated by R1, R4 and R5 regarding the affairs of R2 establishes that the two Companies functioned as a single economic unit.

10.1.2 The R4 & R5 had handed over 2,000 equity shares each, aggregating R1's 4,000 equity shares, along with duly executed share transfer forms in P1's favour. The transfer was also reflected in the board report, Independent Auditor's Report and R1's Form MGT-7 for FY2017-2018.

Documents furnished to ICICI Bank in April 2019, certified by R4 & R5, acknowledged P1 as holding 4,000 equity shares and exercising ultimate ownership and control over R1 & R2. The Respondents, having repeatedly acknowledged the Petitioners' shareholding and control in their statutory records, cannot now dispute the same on the ground of alleged non-payment of consideration under the SPA.

10.1.3 The revised Form MGT-7 of 01.03.2021, deleting the earlier recorded shareholding of P1, was a unilateral act undertaken during the pendency of disputes without following the statutory procedure under Section 59 of the Act. The Respondents could not erase the P1s' shareholding by subsequently revising the annual return after having acknowledged the transfer in earlier statutory filings. Such conduct, contrary to the Respondents' own records and representations, constitutes oppression and mismanagement.

10.1.4 The allegations concerning missing share certificates were an afterthought intended to justify the subsequent alteration of the shareholding records. The Respondents had failed to explain when the alleged loss was discovered, why the Petitioners were not informed, and why no communication was issued by the escrow agent. The timing of the complaint regarding the missing certificates, coinciding with the deletion of P1's name from R1's shareholding records, and the induction of new directors on R2's board, was stated to raise serious doubts regarding the genuineness of the Respondents' version.

10.1.5 When P2 assumed control of the affairs of the Companies, R2 was already burdened with substantial liabilities, including dues payable to IIFL and Sahara. P2 had, through sustained efforts, discharged institutional debt, regularised long-standing project issues, secured critical approvals and revived the redevelopment project, thereby achieving substantial commercial progress and enhancing its value. The borrowings relied upon by the Respondents were availed by R10 through the issuance of debentures, and R2 was not the borrower. The amounts

received by R2 from R10 were stated to constitute consideration for the acquisition of free sale development rights and not financing of the project. The Respondents had sought to conflate the liabilities of R10 with the affairs of R2 to justify the impugned transactions.

10.1.6 The purported pledge and invocation of the entire shareholding of R2 were unsustainable, as the statutory records of R1 reflected that only 1,00,000 Class A equity shares of R2 had been pledged in favour of the debenture trustee, whereas the remaining share certificates had been handed over to P1 and remained in its possession. Even assuming the existence of a valid pledge, the debenture trustee could not have invoked 39,73,636 shares when only 1,00,000 shares had been pledged. The EOD and invocation notices were not served in accordance with the SPA, as they were neither addressed nor delivered at the prescribed addresses or through the stipulated modes. The notices were allegedly sent to premises connected with R3's family, thereby preventing the Petitioners from acquiring knowledge of and contesting the invocation proceedings. The cumulative conduct of the Respondents demonstrates a deliberate attempt to exclude them from the management of the Companies, nullify their shareholding rights, assume control over R2 and appropriate the benefits arising from the redevelopment project. The Respondents had selectively relied upon internal corporate records while disregarding their own earlier admissions and representations.

10.2 **Rejoinder by Applicant to Reply of R2**

10.2.1 The C.P. & C.A. No. 560/2022 concern a continuing course of oppression and mismanagement, including unlawful change and consolidation of control, alienation of valuable assets at grossly inadequate consideration, creation of third-party rights and abuse of corporate and statutory processes despite the pendency of the proceedings and subsisting protective orders. The subsequent and supervening events demonstrating the continuing nature of such conduct and aggravation of

prejudice are also required to be considered under Sections 241/242 of the Act.

10.2.2 No forum shopping is resorted to, and the proceedings had been initiated in response to fresh and continuing acts of prejudice and that no final adjudication on merits has been rendered. The proceedings under Section 9 of the Arbitration Act had been withdrawn without adjudication on merits and, therefore, did not create any bar or estoppel against the present proceedings, as contractual remedies and remedies for oppression and mismanagement operate in different fields. The dispute was not confined to contractual rights or title to shares but concerned the control, governance and assets of the Companies and, therefore, fell within the jurisdiction of this Tribunal under Sections 241/242 of the Act. The objection regarding the alleged lack of shareholding in R2 was misconceived, as the claim was founded upon their membership in R1, which held R2's entire shareholding, and the acts committed through the subsidiary had directly prejudiced R1 by depriving it of its principal valuable asset.

10.2.3 R2 had suppressed material facts concerning R6's & R7's appointment as directors, the timing and circumstances of the impugned asset transfers and creation of encumbrances, the role of the lender and its representatives in changing the management and governance of the Companies, and the alleged circumvention of subsisting judicial protections. The Reply sought to justify actions taken during the pendency of the proceedings through selective reliance on documents and post facto explanations.

10.3 **Rejoinder by Applicant to Reply by R3**

10.3.1 P1 was the beneficial holder of R1's 4,000 equity shares and P2 had been managing the affairs of R1 & R2. R3, R4 and R5 had acted only as nominee shareholders and directors without exercising independent control over the affairs of the Companies. Prior to May 2016, R2 was

burdened with substantial liabilities, including borrowings from IIFL, Sahara's claims, disputes relating to the Shankarwadi Project and regulatory deficiencies, while R3 was under financial stress on account of his personal guarantees and the Company faced the risk of liquidation.

10.3.2 R3 had approached P2 to revive R2 and P2 undertook to streamline its operations, negotiate with lenders and stakeholders, resolve disputes with Sahara, coordinate with Levinstein, engage prospective investors and developers, and address the statutory and operational deficiencies affecting the Project. Pursuant to the SPA, P2 agreed to acquire R1's entire shareholding and assume R2's responsibility and its Rs.275 Crore liabilities. Levinstein also exited its investment by transferring its shareholding to R1 at a substantial loss. R4 & R5 thereafter handed over the share certificates and executed transfer deeds in respect of their shareholding in R1, while share certificates representing almost the entire shareholding of R2 were delivered to P1. P2 was also inducted as R2's additional director, and the banking operations were restructured to vest effective financial control with him. After May 2016, significant decisions concerning R1 were taken with P2's approval. The email communications, financial records and bank statements demonstrate that R3, R4 & R5 sought his instructions and approval in relation to statutory compliances, financial statements, taxation and banking affairs, while P1 funded R1's expenses. Under P2's management, R2 underwent operational and financial turnaround, including obtaining statutory approvals, regularising the Project, securing occupation certificates and development permissions, progressing rehabilitation work, discharging financial liabilities, including dues of IIFL, and attracting fresh investments and reputed developers, including Godrej Properties and Mahindra Lifespaces.

10.3.3 R3 had ceased to participate in R2's affairs after May 2016, and neither contributed funds nor participated in Project meetings, dealings with statutory authorities, interactions with developers, or financial

management. After the successful revival of the business, R3, facing personal financial liabilities arising from invocation of his guarantees, attempted to regain control over R1 & R2 by fabricating documents and acting in collusion with R4 & R5. R3 unlawfully secured the appointment of R6 & R7 as directors, and excluded the Petitioners from the management of the Companies with the intention of usurping control over the revived business.

10.4 **Rejoinder by Applicant to Reply of R6 & R12**

10.4.1 The Replies of R6 & R12 disclosed a coordinated and pre-planned design among the contesting Respondents. Although R6 & R12 claimed to represent only R2 in their capacity as directors, they sought to defend the actions of R10, R11 & R14 and even Phoenix ARC, despite having no authority or relationship to represent them. R6 had taken a stand contrary to her affidavit filed before the Hon'ble NCLAT in CA (AT) No.104/2021, wherein the Conveyance, Mortgage and related transactions were stated to have been undertaken to protect R2 from insolvency, whereas their Reply is to justify them as commercially prudent decisions.

10.4.2 The locus of the Petitioners is founded upon their membership in R1, which held R2's entire shareholding, and that the unlawful displacement of control over R1 had enabled R2 to be deprived of its principal asset. The audited financial statements for FY2021-2022, filed by the RP, contained a 'Disclaimer of Opinion' as the auditor was denied access to crucial records, including board minutes, statutory registers, bank statements, litigation records and other corporate documents pertaining to the impugned transactions. The accounting treatment of BTA had been accepted merely on the basis of a ledger confirmation furnished by R10 without independent verification. R2 had failed to file its annual financial statements for four consecutive financial years during the management of R6 & R12, and the continued non-production of statutory records and

prolonged non-compliance constituted continuing mismanagement and concealed the true nature of the impugned transactions.

10.4.3 The liquidation process initiated against R2 immediately after the status quo order passed by the Hon'ble Supreme Court formed part of the continuing course of oppression. Phoenix ARC, having acquired overwhelming voting share in the CoC on the strength of the impugned Corporate Guarantee, sought liquidation of R2 to render the present proceedings infructuous. The liquidation process and the conduct of the RP had been separately challenged before the appropriate forum. R6 & R12 had failed to produce proof of service of the alleged default and invocation notices, board meeting notices, EOGM notices and other foundational corporate documents, or satisfactorily explain the alleged undervaluation of the subject property, execution of the conveyance without original title documents, absence of shareholder approval under Section 180 of the Act, execution of the Corporate Guarantee without consideration, violation of judicial orders, non-disclosure of competing development proposals and prolonged non-filing of statutory financial statements.

10.4.4 The amended reliefs are not barred under Section 242(2)(g) of the Act or under Article 137 of the Limitation Act. The impugned transactions formed part of a continuing and composite course of oppression and mismanagement. In CA No.560/2022, relief against the Conveyance and Mortgage has already been sought. The Respondents, having participated in the proceedings since 2022, cannot now make any challenge on limitation, waiver or estoppel. The Petitioners have locus; the C.P., is maintainable and is not defective on account of non-joinder of necessary parties. The Tribunal has wider jurisdiction under Sections 241/242 of the Act, especially when membership records are altered, constituting oppression. The Respondents rely on their own illegal acts to defeat the Petitioners' locus. The transactions undertaken without authority amount to oppression and mismanagement. The Petitioners

also denied that the R2's CIRP and the moratorium barred adjudication of the present proceedings, relying upon the independent nature of the remedies under Sections 241/242 of the Act, and also the protective orders passed by the Hon'ble Supreme Court concerning the subject property, despite the pendency of CIRP.

10.4.5 The Petitioners denied that the impugned transactions represented bona fide commercial decisions and submitted that the Conveyance of the Subject Land had been effected at gross undervaluation, prejudicial to R1 & R2, enabling R10 to raise substantial borrowings, while reducing R2 to an asset-less company. The Pledge invocation, removal of P2 as R2's director, and execution of the Conveyance, Mortgage and Corporate Guarantee are all undertaken pursuant to fabricated notices and resolutions, without valid authority and in violation of statutory provisions and judicial orders. No material facts have been suppressed, and no money is siphoned off from R2 by P2. All these allegations are unsupported by any evidence and are intended only to divert attention from the acts of oppression and mismanagement by the Respondents.

10.5 **Rejoinder to Reply of R10**

10.5.1 Subsequent judicial orders/investigative developments/events are clarified for demonstrating the alleged falsity/incompleteness/misleading nature of the assertions made by R10. The materials placed on record demonstrate that R10 was an active participant and direct beneficiary of a concerted course of conduct resulting in the unlawful diversion of the principal assets of R1/2 during the pendency of this CP. R2's development rights on the Subject Land was transferred to R10 at an undervalued amount, without public notice/independent valuation and in violation of the subsisting injunction by the High Court restraining creation of third-party rights. The transactions were undertaken clandestinely during the pendency of said proceedings, which was deliberately not informed to the Tribunal.

10.5.2 The defence by R10 on the alleged default in February 2021 is false, artificial, and ante-dated, as no such alleged default/enforcement proceedings were disclosed and it surfaced only through replies filed in this CP. The replies were sanitised version of events, suppressing that R10 was allegedly in default of borrowings connected with the Project, thus constituting a pre-planned asset takeover. Despite being an alleged defaulter, R10 acquired the Subject Land from R2 at an undisclosed consideration and without proper title documents; whereas the stamp duty valuation reflected was Rs.123 Crore. R10 immediately raised borrowings of Rs.525 Crore by valuing the same property at more than Rs.787 Crore through the same lender and debenture trustee. The subsequent encumbrance on the property demonstrates a premeditated scheme to strip R1 & R2 of their only valuable asset. R10 justifies these actions by relying upon the notices allegedly issued by R14 in February 2021, whereas no proof of service/delivery of the notices has been produced. The same were even relied upon to remove P2 from R2's board and divest R1 of its only asset, effecting unlawful change in R2's management and control.

10.5.3 The misuse of the CIRP, impleadment of R10 by the Hon'ble Supreme Court, orders restraining construction on the Subject Land, withdrawal of CIRP on settlement, and EOW investigation disclosures all establish the absence of bona fides by R10. R10 continued oppression and mismanagement by creating third party rights, despite judicial restraints for preserving the subject matter of this C.P. These developments, post reply by R10, undermine their defences.

10.5.4 Under the MCA Notification of 05.06.2016, private limited companies were exempted under Section 180 however, there was an amendment notification of 13.07.2016, whereby it provides that such exemptions are not applicable to private limited companies which have defaulted in filing financial statements under Section 137 or annual return under Section 92 with the ROC. R2 filed the annual returns of the FY2018-2019 in 2022,

hence, exemption under Section 180 is not applicable as claimed by the Respondents.

10.5.5 The proceedings under Sections 241/242 are not confined only to shareholders and directors, but extend to all persons who participate, facilitate and derive benefit from the oppressive and prejudicial conduct affecting the company/members, and R10 falls within this category. The subsequent discovery of the transactions during the pendency of the proceedings, suppression of material facts, justify the impleadment of R10 and the reliefs sought against it.

10.6 **Rejoinder to the Reply of R14**

10.6.1 R14's defences are inconsistent with R2's statutory records. While R14 acted as the debenture trustee, R2's annual returns for FY2020-2021 recorded R14 as its registered holder of 100% equity shares. However, R14 has failed to produce the share transfer instruments, Form SH-4, board resolutions approving the transfer, entries in the register of members, or fresh share certificates to prove that it is a shareholder. Further, the preliminary objection regarding maintainability under Section 241(1)(b) is raised for the first time now by R14, despite having participated in the earlier proceedings. R14 had admitted that 100,000 share certificates had been physically delivered to it. This is contrary to the consistent stand taken by them for 5 years that valid pledge was created and invoked for R2's entire shareholding comprising 39,73,636 shares, and it corroborates the fact that only 100,000 shares had been pledged. This was evident from the Panchanama by the EOW at R14's premises. Also, no explanation is furnished regarding their letter dated 22.02.2021, giving R2's 39,73,636 shares to IIFL, despite Petitioners alleging that the document was fabricated and ante-dated.

10.6.2 R14 failed to answer the question of acceptance of Mortgage over the Subject Land without production of the original title deeds, which were deposited with Sahara since December, 2014. R14 failed to produce

proof of service of the EOD Notice of 01.02.2021 and the invocation notice dated 12.02.2021, which are the basis of invocation of Pledge. No postal acknowledgements/courier receipts/email delivery records/affidavits of service/document establishing issuance of notices was produced. R14's silence on the aforesaid allegations ought to be treated as their failure to rebut the case.

10.6.3 It was orally submitted by Respondents that IIFL is R2's 95% shareholder, and with that authority, the meetings were called for removal of P2. However, R8/RoC's report shows that R14 is the shareholder, hence, the shareholding is under discrepancy between IIFL and R14. The SPA provides a Schedule to mention the number of shares pledged/intended to be pledged; however, it is seen blank. R14 also mentioned that, when they "traced" the delivery of shares, only 100,000 were found; thus, in the absence of the balance shares/proof of delivery of the goods pledged to R14, the Respondents cannot claim that the Pledge is legally created on all the shares. This proves that R14 has only 100,000 pledged shares in its possession and the rest are invalid shares.

10.6.4 A member of a company is not only recognised by its name in the share register to file a petition under Section 241/242, but if the company recognises and treats one as a shareholder, then also petition is maintainable. P2's name was given as 'Project Proponent' in the Environmental declaration of the Project along with other actions/events/communications, where R2 members treated P2 as a shareholder/member.

10.6.5 This C.P. was filed on 04.05.2021 and impugned MGT-7 for FY2017-2018 was filed on 01.03.2021. The documents/transactions sought to be challenged by the Respondents were executed on or after 03.06.2021, which was challenged by P1 & P2 in CA No.560/2022 on 20.10.2022. Hence, the challenge was raised within the period of limitation. Further, in the reply by the Respondents in CA No.560/2022, how the impugned documents/transactions were lawfully executed, which have consistently

remained the subject matter of the original/subsequent proceedings before the NCLT, Hon'ble NCLAT and Hon'ble Supreme Court, leaving no room for surprise to the Respondents or the Tribunal. Also, no new cause of action has been introduced after the expiry of the limitation period, rather, the subsequent transactions/actions were brought on record in the continuing proceedings for challenge.

10.6.6 R2 is under CIRP; hence upon succeeding the present CP, R2's sole asset would be restored back; thus, the present proceedings are not in derogation of Section 14 of the Code; rather, would avoid the depletion of CD's/R2's assets.

11 Sur-Rejoinder by R1, R4 &R5

11.1 Petitioners have pleaded new facts contrary to the C.P./Additional Affidavit; thus, such new facts/documents cannot be relied upon in the present proceedings, in the absence of an amendment. Also, no share certificates in P1's and P2's name is produced, or any valid transfer of the shares as per the SPA is shown. Further, no consideration as per the SPA is shown to be transferred by P1 to R4 & R5. It is a misconceived averment that R1, R4 & R5 have submitted to the jurisdiction of this Tribunal by filing reply to this C.P. as they have also filed an application under Section 8 of the Arbitration Act on 24.06.2021 before filing the reply. The reply filed by R1, R4 & R5 was without prejudice to the Arbitration proceedings and to challenge the maintainability of this C.P.

11.2 The averment of the Petitioners in rejoinder that R4 & R5 were working under P2's control and direction, supported with email communications of the parties in 2017, makes it incomprehensible as to why the Petitioners were unable to transfer R1's shares in the name of R4 & R5 despite claiming such rights under the SPA and transfer being recorded in the share certificates and register of members of R1, in 2017. The email communications are not disputed as P2 was a director of R2, and R1 was

100% equity shareholder of R2; thus, they were part of normal course of action in the company.

11.3 The email of 13.02.2021 states that the filing of the annual returns for R2 was purposely delayed by P2 due to non-finalisation, thus making R1 liable to additional payment towards filing of its returns. After a month, the aforesaid email was forwarded to shajasdevloper@gmail.com however, as per MCA records and R1, it is not R1's authorised email ID; hence it is concerning who is operating such unauthorised email ID.

11.4 The Rejoinder needs correction, such as (i) Project was acquired by R2 in 2013 for Rs. 87 Crore, (ii) Sahara agreed to purchase the saleable area of R2 for Rs. 614 Crore, but the transaction could not be completed (iii) P2, before being director, was a consultant to R3. Thus, R2's land was purchased before P2 became involved in R2's affairs.

11.5 The allegations that R4 & R5 being R3's *benamis* for their alleged ownership of R2 is baseless, as R3 in his own name owns Compulsory CCDs to the tune of Rs.11.5 Crore in R2. R3 was R1's additional director till 31.12.2017, and as per the financial statements of R1, R3 advanced loan of Rs. 18,45,80,000/- to R1, classified as loan from *"Director"*, therefore, why would R3 own CCD's and give loan, if R3 was a *benami*. Also, as the validity of the SPA and P2 signing the SPA on behalf of R2 are admitted; the allegation that 100,000 shares were pledged by R2 is contrary to the Schedule to the SPA, which states 39,73,636 shares.

12. Sur-Rejoinder by R3

12.1 The C.P., is non-maintainable for non-joinder of third parties holding R2's pledged shares, whose rights may be affected by the reliefs sought. The share certificates were handed over to R14 under the SPA in June 2017, acknowledged by P2, and subsequently delivered to IIFL upon invocation on 22.02.2021. The shares were dematerialised through CDSL and have had active ISINs since 17.06.2021.

12.2 R3 had furnished personal guarantees to the lender even after execution of the SPA, for the borrowings of said Project. The claim of P2 having infused funds into R2 is stated to be unsupported by documents. The DTD-1 pursuant to which the SPA was executed mentions 'Morvi House' address for the service of notices, and even R2 continued to accept communications at the said address after May 2016, without any change in address being informed. Thus, it is undisputed that R2 has acknowledged receipt of the notices.

12.3 The email of 20.07.2021 does not signify anything, as it is system generated from MCA, post filing of DIR-12 of 27.04.2021. P2 siphoned off Rs.19.78 Crore along with his wife, Mrs. Chandreyi Jhunjhunwala, his brother, Mr. Ajay Jhunjhunwala, and his employees; hence this CP is designed to malign R3's reputation.

12.4 To complete the transfer and registration of shares into P2's name, he should have delivered the share certificates and other documents under Section 56 of the Act. However, there is no proof of delivery of the same, making it unclear whether P2 was a member and his name was removed, or he is seeking to get his name in R2's register of members under Section 59. The prayer to rectify the register of members was added to the C.P. in 2026, and the inconsistency in the pleadings of the Petitioners in the Anticipatory Bail Application No. 2113/2025, filed before the Court of Session, shows the conduct of the Petitioners.

13. ANALYSIS

We have heard the Ld. Counsel for all the parties at length and have noted their contentions/rival contentions, and carefully perused the records. Ld. Counsel for the parties placed reliance on various judgements, which we shall refer to while considering each submission.

(A) Maintainability of C.P.

14. Considering that the Respondents have raised an objection regarding the maintainability of the C.P., we shall first examine the same before dealing with the substantive issues.

15. R2 was incorporated on 29.02.2008 for undertaking real estate activities. Subsequently, R1 was incorporated as a shell company whose sole business was holding R2's shares. R4 & R5 were R1's only directors/shareholders, each holding 5,000 of its 10,000 shares. Levinstein entered R2 as an equity partner, acquiring 64.08% and investing substantially between 2009 and 2013. Subsequently, R2 acquired the Subject Land of 21,727 sq. mtrs. (appx.), by registered conveyance deed on 31.12.2013. The petitioners' case is that, between 2014 and 2015, R2 faced various challenges*, inter alia,* encroachment of the Subject Land by slum dwellers, and was heavily debt-ridden. Due to R2's continuous default, Sahara filed C.P. No.738/2015 against it for winding up before the High Court. Given R2's position, Levinstein wanted to exit R2 and demanded immediate repayment of its loan. At that time, R3 approached P2 and sought his advice to resolve R2's financial crisis. With P2's engagement, Levinstein transferred its shareholding in R2 to R1 in May 2016, for Rs. 13 Crore(appx.), as against their investment of Rs.11 Crore (appx.), thereby making R2 a wholly owned subsidiary of R1.

16. Further, upon Levinstein's exit, R3 approached and requested the Petitioners to take over R1's & R2's business, and to help save them from collapse, also ensuring that R3's personal assets mortgaged as collateral for the loans taken by the Companies are not taken over by the creditors. Under the existing corporate structure in May 2016, R2 was R1's wholly owned subsidiary. R1's shareholding was held equally by R4 & R5, being 5,000 equity shares each. On 06.05.2016, P1, R4 & R5 entered into the SPA, wherein R1 was a confirming party. In addition to the SPA, the parties exchanged a Side Letter on the same day among P1, R1, R3, R4 & R5, and R3's brother, Mr. Rajesh Shah. By this Side Letter, the parties undertook certain additional obligations, primarily regarding the method/manner of clearing the Companies' debts. Under the

SPA, P1 was to acquire R1's entire 10,000 equity shares held by R4 & R5, in two tranches, the details of which would be discussed separately. While the parties admit execution of the SPA and Side Letter, dispute arose between them sometime in February-March 2016, leading to P1 filing Commercial Arbitration Petition No.887/2021 on 29.03.2021 against R1, R2, R4 & R5 before the High Court, invoking the arbitration clause in the SPA. During the pendency of the Arbitration Petition, this C.P. was filed, and post-filing the same, P1 withdrew the Arbitration Petition, *vide* order dated 11.06.2021, with liberty to file fresh. Since filing the C.P., R1 & R2 have been transformed to face more complex factual and legal issues, which will also be discussed separately.

17. Petitioners' case is that, as per the SPA, R4 & R5 handed over the original share certificates for 5,000 shares (50%) to P1, with duly executed share transfer forms. Of these, 1,000 shares (10%) were handed over to the Lawyers along with the executed share transfer form in escrow as per the arrangement. Petitioners rely on various records/documents to contend that P1 was recognised as R1's 40% shareholder. Pursuant to the SPA, R3, R4, & R5 routed R1's every routine matter through P2, for his permission/instruction. In May 2016, when P1 & P2 entered, R2 had around Rs.275 Crore debt, including outstanding to IIFL and over Rs.80 Crore to Sahara. Hence, Levenstein exited by selling their Rs.1.2 Crore(appx.) controlling equity, at an over 90% loss. The Petitioners contend that on taking over the business, they undertook extensive steps in 2016-2020 to turn around R1 & 2 and systematically address the financial, regulatory, title, and execution risks affecting the Project. R2's operations were shifted to P2's office, and his key employees worked exclusively for R2 while remaining on his payroll. Consequently, P2 stated to have incurred expenditure exceeding Rs.7 crore. He personally issued post-dated security cheques for R2's liabilities, including three cheques dated 28.09.2016 for about Rs.62 Crore to IIFL entities, replacing the cheques R3's son furnished earlier. Petitioners also procured/facilitated R2's substantial funding and the Project, including Rs.55 Crore routed through entities connected with the Petitioners to R2 and onward to R10/Project obligations.

Petitioners, thus, assumed R1's & R2's ownership/control as recorded in the SPA/Side Letter.

18. R1, R4 & R5 challenge the Petitioners' case of oppression and mismanagement under Sections 241/242/244 & 59 of the Act on the ground of not transferring the shares under Sections 56/58 and lodging share certificates/instrument of transfer duly stamped and dated. Hence, P1 cannot claim to be a member in R1, as R1 has not registered P1's name as its shareholder. Hence, P1's remedy was to prefer an appeal under Section 58(3), and the Tribunal could have exercised its powers under Section 58(5) of the Act to direct rectification of the register of members. Transfer of shares in R1 must comply with Articles 10 to 18 of the AoA. Article 11 specifies the prior sanction of the directors, and Article 12 requires the issue of a transfer notice along with a minimum sale price for the sale of its shares to members of a company, and the company has 60 days from service of the transfer notice to find a purchasing member and fix the best price for the shares. Transfer is possible only when R1 fails to find a purchasing member within 60 days; the transferor can then sell the shares to any person who is not a member of the company at a price not less than the best price fixed under Article 12, and only if none of the above steps have taken place. Without discharging the obligation to be a member, the Petitioners have alleged in the C.P., that GRCPL, the alleged predecessor in interest of P1, was shown as R1's shareholder, holding 4,000 shares in Form MGT-7 of 27.01.2021, for FY 2017-2018. R1 committed a clerical error by showing transfer of 4000 shares to P1 on account of the panic/urgency involved in filing MGT-7, which was rectified on 01.03.2021 by removing the name of GRCPL in the revised Form for FY 2017-2018.

19. According to the Respondents, the SPA neither stood completed as per its terms nor culminated in the acquisition of membership recognised under the Act. Hence, P1 never assumed any lawful rights in R1's shareholding/management. Consequently, every subsequent allegation of oppression and mismanagement rests on disputed contractual rights that are yet to be established. According to them, the Petitioners signed the SPA on

03.05.2016 with R4 & R5, for the proposed acquisition of R1's equity shareholding. R1 was a confirming party to the SPA, which contemplated a staged acquisition of the shares and expressly provided for a *First Closing* and *Second Closing*, each being subject to the fulfilment of specific contractual obligations/conditions precedent. Simultaneously, the parties also executed the Side Letter, which imposed further obligations*, inter alia,* clearing R2's liabilities, releasing R3's personal guarantees, and discharging other agreed contractual obligations. SPA and Side Letter formed an integrated contractual arrangement governing the proposed acquisition. Petitioners never fulfilled the obligations contemplated under the SPA/Side Letter as intended. R4 & R5 have denied receiving Rs.1 Lakh consideration or transferring their shares. R2's liabilities were never cleared; R3's personal guarantees and post-dated cheques were never released; consequently, the transaction never attained contractual completion.

20. As regards P2's claim of turning around R2, it is asserted that R2's debt in its books had almost tripled since P2's entry as R2's director. The slum dwellers' utter state of despair is solely attributable to P 2, as rehabilitation work has slowed down since 2016. R2 & R1 suffered huge losses due to the mismanagement/malfeasance by P2. Having left R2's business in financial doldrums, the Petitioners are seeking to wriggle their way into R1 & R 2 for ulterior motives. Section 244(1) (a) of the Act makes it clear that an application under Section 241 can be maintained only if the threshold specified under Section 244 r/w Section 241 is met, for which the Petitioners would have to first be a member of the company in which oppression/mismanagement is alleged. Since no membership is proven under Section 2(55) of the Act, this C.P. is unmaintainable.

21. Before examining the jurisdiction under Sections 241/242 of the Act, it is appropriate to examine the chronology of admitted events, from the SPA execution and Side Letter, admitted by the parties:

(i) On **06.05.2016**, P1 (formerly GRCPL) and P1 executed the SPA with R4 & R5. On the same day, the Side Letter was executed among R3, his

brother, R1, and the Petitioners. The SPA provides*, inter alia,* that P1 shall purchase R1's entire 10,000 shares for Rs.1,00,000/-, in two tranches, i.e., on the *First Closing Date* and *Second Closing Date*. The *First Closing Date* shall not be later than five business days from the Execution Date and the *Second Closing Date* shall take place not later than five business days from the date of release of the personal guarantees by R14. The modality specified for share transfer was that, on the Execution Date, P1/Purchaser shall deposit Rs.1,00,000/- towards the purchase price into the designated bank account of the Lawyer, Mr. Jay Dewani of Desai & Dewanji. Simultaneously with the deposit of the escrow amount with Mr. Dewani, the Sellers shall deposit duly completed transfer documents (signed share transfer forms, share certificates, board resolutions and other documents). It is also provided that on the *First Closing Date*, the Lawyer shall, upon joint instructions from the Sellers and the Purchaser, release the purchase consideration and share transfer forms to the concerned parties. There are many actions to be completed on the *First Closing Date*, which include procuring resignation letters from all the directors nominated by the Sellers and appointing individuals nominated by the Purchaser as additional directors. On and from the *First Closing Date*, the Purchaser shall have absolute control over R1, including day-to-day operational and management control of R2. The Purchaser will have the power to appoint all directors and run R2's business as they like. The Purchaser may directly or indirectly bring in funds/assets/rights of development into R2, and the Sellers confirmed that they will have no rights/economic interest in R2, directly or indirectly. On and from the *First Closing Date*, P2 shall have sole control over undertaking development of projects. The period set out in the SPA is extendable with written consent of the parties, failing which time shall be of the essence. The SPA provides for resolving disputes by arbitration. The parties shall take steps to approve and take on record the duly executed/stamped share transfer form in relation to first tranche securities.

The Side Letter provides, *inter alia,* for settlement of loans of Rs.3.4 Crores given by R3; loans given by Isarnan Steel and Mineral Private Limited and Shubh Enterprises to R2; loan/personal guarantees in R2; R3's personal guarantee; R1's operational control / management / operations.

(ii) On **23.05.2016**, R2 passed a resolution to appoint P2 as additional director. The extract of the board resolution is reproduced below:

1. APPOINTMENT OF MR. RAJAT JHUNJHUNWALA AS AN ADDITIONAL DIRECTOR

The Chairman informed the Board that pursuant to the Securities Purchase Agreement dated 6 May 2016 ("Agreement") entered into between the parties set out therein, new Director is required to be appointed. The Board discussed the same and passed the following resolutions unanimously:

"RESOLVED THAT Mr. Rajat Jhunjhunwala holding a valid Director identification Number 03218572 and who has confirmed his eligibility to act as director of the Company under the Companies s Act, 2013 and has granted his consent to act in that capacity be and is hereby appointed as an additional director on the Board of Directors of the Company till the ensuing annual general meeting.

2. NOTING RESIGNATION OF YARON YOSEF GELBHART, YOSEF CIMER AND YAEL LIVNI LOTAN AND UDAY JASANI AS THE DIRECTORS OF THE COMPANY.

The Chairman informed the Board that pursuant to the Securities Purchase Agreement dated 6 May 2016 ("Agreement") entered into between the parties set out therein, Yaron Yosef Gelbhart, Yosef Cimer and Yael Livni Lotan have resigned as the Directors of the Company. The Board took note of their resignations. In Addition, Uday Jasani has also resigned as Director.

The Board passed the following resolutions unanimously:

"RESOLVED THAT the resignations of Yaron Yosef Gelbhart, Yosef Cimer, Yael Livni Lotan and Uday Jasani as Directors of the Company be and are hereby noted.

(iii) On **23.05.2016**, R2 passed board resolution allowing P2 to operate Bank of Baroda account, individually.

(iv) On **30.09.2016**, R2's AGM ratified appointment of P2 as R2's director.

(v) **On 05.09.2018**, R1's board report for FY 2017-2018 reflected transfer of R1's 4000 equity shares to P1, signed by R4 & R5, and annexed Form MGT-9, pursuant to Section 92(3) of the Act & Rule 12(1) of the Companies (Management and Administration) Rules, 2014:

Sr. No.	**Particulars**	**Shareholding at the beginning of the year**		**Cumulative Shareholding during the year**	
		No of shares	**% of total shares of the company**	**No of shares**	**% of total shares of the company**
Neelakantan Krishnan Iyer					
	At the beginning of the year	5,000	50	5,000	50
	Date wise Increase / Decrease in Promoters Shareholding during the year specifying the reasons for increase /decrease (e.g. allotment / transfer / bonus /sweat equity etc.)	Transfer of shares on 16.01.2018 2,000	20	3,000	30
	At the End of the year	3,000	30	3,000	30

Mangesh Pandurang Kadam					
	At the beginning of the year	5,000	50	5,000	50
	Date wise Increase / Decrease in Promoters Shareholding during the year specifying the reasons for increase /decrease (e.g. allotment / transfer / bonus /sweat equity etc.)	Transfer of shares on 16.01.2018 2,000	20	3,000	30
	At the End of the year	3,000	30	3,000	30

(vi) On **05.09.2018**, the Independent Auditor certified R1's financial statement for the year ended 31.03.2018, confirming R4's & R5's reduction of shareholding/reflecting 4000 shares in P1's name.

(vii) On **31.12.2018**, P1 filed Form MGT-7 for FY 2017-2018 with RoC, recording its 40% shareholding in R1.

(viii) On **25.04.2019**, R2 (signed by R3), while opening R2's new bank account with ICICI Bank, stated that P1 holds 40% of R1.

(ix) On **27.01.2021**, R1, through its director R5, filed MGT-7 for FY 2017-2018. This form shows the transfer of R2's 4000 shares (2000 shares each by R4 and R5) to P1, with the date of registration of transfer as 16.01.2018.

(x) On **01.03.2021**, R1 through its director revised the MGT-7 filed on 27.01.2021, stating that it was incorrectly shown in the earlier form that 4000 equity shares were transferred to P1, saying that no transfer took place 'During the Financial Year 2017-2018'.

22. It is pertinent to observe that the SPA provides mainly R1's transfer of shares/debentures, while the simultaneous Side Letter provides the terms for settlement/discharge of certain liabilities, including the release of R3's personal guarantee that was furnished as security to IIFL for the financial assistance granted to R2, and R1's management/operations. As per the SPA, P1 shall acquire R1's entire 10,000 shares for a price of Rs.1,00,000/- in two tranches, i.e., on the *First Closing Date* and *Second Closing Date*. Without getting into the jurisdiction of this Tribunal to determine the performance of terms/conditions in the SPA/Side Letter, it is vital to notice that the *First Closing Date* was intended to occur no later than five business days from the Execution Date, independent of other compliances, apart from the payment of sale consideration of Rs.1,00,000/- to R4 & R5. Additionally, the SPA provided a modality for deposit of purchase price/release of shares. Under the SPA, P1/Purchaser shall deposit Rs.1,00,000/- towards the purchase price into the designated bank account of Adv. Dewani. Concurrently with the deposit of the escrow amount with him, the Sellers shall deposit the duly completed transfer documents. On the *First Closing Date*, Adv. Dewani, had to simultaneously release the applicable purchase consideration to R4 & R5, upon joint instructions from the Sellers and the Purchaser, by wire transfer/cheque through normal banking channels to R4's & R5's designated accounts. The duly completed transfer documents, i.e., signed share transfer forms (Form SH-4), share certificates, board resolutions and other documents, as may be required by the company for transfer of 50% of the Securities held by R4 & R5 (Sellers) were also to be given to P1. The Side Letter of 06.05.2016 stipulates that, out of the first tranche of 5000 shares, 1000 shares would remain with Adv. Dewani as security against certain obligations outlined in the Side Letter. During the hearing, the Petitioners showed the Bench the original share certificates for 4000 shares in their possession, along with blank share transfer forms. The construct was reciprocal. Neither release could occur without the other, and the Adv. Dewani's release of the share certificates would have been completed on *the First Closing*. Given that Adv. Dewani held the documents in escrow, released the share certificates and transfer forms to P1 without any allegation

of foul play, we feel that it is not open for the Respondents to now contest the same at this stage.

23. The Side Letter provides that on and from the *First Closing Date*, the Purchaser/P1 will gain absolute control of R1, including its day-to-day operational/management control, and the decisions made for its investments, including control of R2. The Purchaser/P1 would gain power to appoint directors/run R2's business, as it may think fit. Additionally, the Purchaser/P1 was to bring in directly or indirectly funds, assets, and development rights into R2. P2 was appointed as a director on 23.05.2016 pursuant to the terms of the SPA. The Petitioners assert, supported by bank statements, that they procured/facilitated substantial funding for R2/Project, routed through entities connected with the Petitioners to R2, and onward to R10 and Project obligations. The claims filed by P2 with R2/RP are either rejected or still under verification. Nevertheless, records sufficiently indicate that the Petitioners were actively involved in R2's business.

24. R1's register of members shown to the Bench reveals that P1's name has never been entered in it. The Ld. Sr. Counsel for the Respondents asserts that under the law, only persons who agree to become 'member' of a company, and whose name is entered in the register, can be 'member' of the company. Relying on the decision of the Hon'ble Supreme Court in *Balkrishana Gupta v. Swadeshi Polytex Ltd.,* [(195)2 SCC 167]*,* he argued that unless these twin requirements, i.e., (i) an agreement to become a 'member'; and (ii) entry in the register of 'members' are satisfied, a person cannot become 'member' as defined in Section 2(55) of the Act. Further, the definition in section 2(55) uses the term 'means' which is conclusive and 'hard and fast interpretation' as laid down by the Supreme Court in *P. Kasilingam v. P.S.G. College of Technology,* [1995 Supp (2) SCC 348]*; Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court,* [(1990) 3 SCC 682]. He further argued that even if it is assumed, without admitting, that a transfer of shares has in fact taken place, P1 would still be only a transferee and could not be recognised as R1's 'member' for exercising the rights of a shareholder, which include the right

to (i) elect directors and thus to participate in the management through them; (ii) vote on resolutions at meetings of the company; (iii) enjoy the profits of the company in the form of dividends; (iv) apply to the court for relief in the case of oppression; (v) apply to the court for relief in the event of mismanagement, etc. A transfer is considered complete, and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a shareholder, only when the transferee is registered in the company's register. Without the above, a transfer between the transferor and transferee is not effective as against the company. The Ld. Sr. Counsel also placed reliance on *Howrah Trading Co. Ltd. v. CIT,* [AIR 1959 SC 775], & *Vikram Jairath v. Middleton Hotels,* [2019 SCC OnLine Cal 663].

25. It is further contended that unless the statutory requirement of falling within the definition of member and establishing the threshold requirement specified in section 244 of the Act, the Petitioners are not entitled to maintain the C.P. under Sections 241/244 of the Act. In support of the above, the Ld. Sr. Counsel for the Respondents relied on *Sir J. P. Srivastava & Sons (Rampur) Pvt. Ltd. v. Gwalior Sugar Co. Ltd.,* [(2005) 1 SCC 172], *Apex Luminaires Pvt. Ltd. v. Shringeri Sheshagiri,* [2025 SCC OnLine NCLAT 2137], *Aruna Oswal v. Pankaj Oswal and Others,* [(2020) 8 SCC 79], *Management of the Express Newspapers (P) Ltd., Madras v. Workers and Others,* [1962 SCC OnLine SC 153].

26. Before we proceed further, it is appropriate to extract the relevant provisions of the Act.

"244. Right to apply under section 241. — *(1) The following members of a company shall have the right to apply under section 241, namely: —*

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation. — For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) 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."

Further, Section 2(55) defines the term 'member' as under:

'"member", in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;"

27. Before analysing the above provisions, it would be beneficial to note the concept in the English Company Law, especially since many doctrines of Indian Company Law are founded on the English Law. Section 210 of the English Companies Act, 1948, is comparable to Section 241 of the Act. In *Jermyn Street Turkish Baths Ltd.,* [In re (1970) 3 All ER 57 (Ch D)], the Court held that the petitioners, who were the administrators of the estate of a deceased member of a company, had locus as members of the company to present a petition under section 210 and held further that even though the petitioners were not registered as members of the company, the personal representatives of the deceased member must be regarded as members of the company. Thus, instead of curtailing the term 'member' in a provision similar to section 241, the English Court extended the term 'member' to cover the administrators of a 'deceased member' also. The decision was reversed in appeal but not on this point *(cf. Jermyn Street Turkish Baths Ltd.,* [In re (1971) 1 WLR 1042 (CA)]. The

subsequent enactment in 1980 expressly recognised the right of administrators in the new Section 75(9) of the Companies Act, 1980.

28. The literal rules of construction require that only a person who is on the register of the company is treated as a 'member' under Section 244 r/w Section 2(55). The Petitioners' stance is that the transfer of shares occurred, as evidenced by R1's board report dated 05.09.2018 and the MGT-7 filed by R1 on 27.01.2021. Even otherwise, it is pointed out that in many cases the definition of 'member' was interpreted in the context of the main provision, particularly when a 'registered member' hands over the original share certificates together with blank share transfer forms, it presupposes that a transfer of right has already taken place, though the legal right as a member continues with the transferor. The relationship between the transferor and transferee, till the name of the transferee is brought on the register of shareholders, is that of a constructive trustee. In *Killick Nixon Ltd. v. Bank of India,* [1985] 57 Comp Cas 831], the Hon'ble Bombay High Court recognised that the transferor is in the position of a constructive trustee who holds the shares which have been sold for the benefit of the transferee. It is, thus, a settled position that certain equities arise between the transferor and transferee upon execution and delivery of blank transfer forms.

29. In *Shri Balaji Textile Mills Pvt. Ltd. v. Ashok Kavle,* [(1989) 66 Comp Cas 654 (Kar)], the Division Bench of the Hon'ble Karnataka High Court upheld the view of the Company Judge that the word 'member' should be understood in the context in which it is used and did not interfere with the finding, permitting an application under Sections 397/398 of the 1956 Act to be filed by petitioners who had not made an application in writing for 'becoming a member'. In *Word Wide Agencies Private Limited & Anr v. Mrs. Margarat T. Denor* [(AIR 1990 SC 737], the Hon'ble Supreme Court granted the legal representatives of a deceased shareholder, the same right of a 'member' to maintain a petition under Sections 397/398 of the 1956 Act, avoiding a hyper-technical view to advance the cause of justice. The Hon'ble Madras High Court in *S.V.T Spinning Mills P. Ltd v. M. Palanisami* [(2009) 151 Comp. Cas. 233], reiterated that the

jurisdiction under Sections 397/398 is an equitable jurisdiction, intended to protect the 'minority members' of the company from any oppression/mismanagement at the hands of the majority and that a wider meaning of the term 'member' should be given.

30. *Umesh Kumar Baveja & Ors. v. Il&Fs Transportation Network Ltd. & Ors.* [(2014) 182 Comp. Cas.309], was a matter of investor entering into an agreement styled 'subscription -cum-shareholders agreement', in terms of which he was to make investment of Rs.30 Crore in the SPV and acquire 60% stake in it. He invested an amount of Rs.20 crore as required by the agreement, and the said amount was shown as 'share application money pending investment'. These shares were never allotted. Since shares were not allotted, problems arose between the two groups, which led to the investor filing an application under Sections 111A/397/398/402/403 of the 1956 Act. In the preliminary order, the Ld. Company Law Board viewed the investor as a member/shareholder of the SPV 'for all practical purposes' and held that he could maintain the application. In the appeal against the said order, the Hon'ble Delhi High Court held that the absence of formal allotment of shares or entry in the register of members is not, by itself, determinative of the 'status of membership' for the purposes of proceedings under Sections 397/398. The Court observed that, where substantial funds invested specifically towards acquisition of equity are accepted and reflected in the financial records of the company as share application money pending allotment and are utilised for the company's business purposes, such conduct constitutes strong evidence of recognition of the investor's proprietary stake. It has been held-

"19. It seems to me in light of the authorities cited above that the interpretation to be placed on section 41(2) vis-a-vis petitions filed seeking relief from oppression and mismanagement should be governed not strictly by the requirements of the sub-section, so long as in substance and effect the person complaining of acts of oppression and mismanagement has been recognised or treated as shareholder/member by the conduct of the company, and that in giving effect to the remedies against the grievance, considerations of equity and justice should be allowed to prevail."

31. The Hon'ble Supreme Court in *Dr. Bais Surgical and Medical Institute Pvt. Ltd. v. Dhananjay Pande,* [2026 SCC OnLine SC 794], observed that *'The equitable foundation of Sections 397 and 398 must be a guiding factor to not construe the expression "member" in an unduly restrictive or technical manner confined solely to formal entry in the register, thereby frustrating the remedial purpose underlying the legislative scheme.'*

32. In the present case, it is clear that, pursuant to the SPA executed among P1, R4 & R5, R1's entire shareholding along with the control and management of R2 was to be transferred to P1. Following the SPA, the original share certificates representing 4000 equity shares, together with the executed transfer instruments in Form SH-4 were physically delivered to P1. Furthermore, P2 was appointed as director on the R2's board, and was allowed to participate in its management. P2 was also made the sole authorised signatory to operate R2's bank account. The email ID of R2 was changed to that of P2's ID. The board report of R1 dated 05.09.2018 signed by R4 and R5 along with the Independent Auditors Report of 05.09.2018 recognised transfer of 4000 shares, which was consistent even during the filing of the first Form MGT-7 on 27.01.2021. Thus, it can only be assumed that the issues at hand extend beyond the beneficial ownership of 4000 shares by the Petitioners.

33. As regards the objections raised by the Respondents, asserting that if P1 had followed the necessary process, the register of members must be rectified through appropriate actions/proceedings before filing the C.P., under Sections 241/242. According to them, combining the prayer for rectification of the register of members, to include the name, and the prayer for relief against oppression/mismanagement is not permissible. In *Umesh Kumar Baveja & Ors.* (supra) the Court considered this and held that this is not always the case, and not in all circumstances, by relying on the judgement in *Charanjit Khanna and Ors. v. Khanna Paper Mills and Ors.* [(2011) 164 Comp. Cas 315], wherein it was observed:

"In my opinion, it cannot be said as a proposition of law that no composite petition under Sections 397, 398 and 111A of the Act is ever maintainable. In

fact, in a large number of petitions filed under Sections 397 and/or 398 of the Act, the primary allegation of oppression and mismanagement is that the faction that is in control of the company has either intentionally reduced the rival faction to less than 1/10th of the total number of members of the company or removed the rival faction from the register of members. In such cases where allegations of oppression and mismanagement are inexplicably intertwined with the issue of maintainability of the petition under Section 399 of the Act, a composite petition has to be held as maintainable. To ask a petitioner to file two separate petitions in such circumstances would not only be unfair but would also result in unnecessary delay."

34. In view of the above, even if there has been procedural imperfection in the registration of shares leading to formal 'membership', a strict mechanical application of the register-entry test cannot be applied in proceedings like this, where the Respondents are the transferors of shares and the sole directors, and where oppression/mismanagement are alleged. R4 & R5, being the only shareholders/transferors, cannot complain that the procedure prescribed in the AoA has not been followed. The factual circumstances affirm the recognition of P1 as R1's member from 05.09.2018 to 27.01.2021. This recognition is substantiated by independent declarations submitted in DIR -12 by R4 &R 5 in other companies, thereby establishing an indisputable and unchallengeable title to 'membership' of R1. Even otherwise, so far as Sections 241/242 are concerned, jurisprudence has enlarged the category of 'membership' and declared that even in the absence of a formal entry in the register of members, one could be regarded as 'member' of the company. The board report of 05.09.2018; Independent Auditor's Report of the same date; and Form MGT-7 initially filed by R1 on 27.01.2021 are all records indicating the transfer of 4000 equity shares to P1. The subsequent revision of MGT-7 cannot erase/nullify the significance/evidentiary value of the first available records. All these factors deserve due cumulative consideration while examining the objection regarding the locus of P1 to maintain the C.P. The equitable foundation of Sections 241/242 should, in our considered view, serve as a guiding framework that discourages a restrictive or overly technical interpretation of the expression 'member', thereby promoting the remedial objectives inherent in the legislative framework.

35. In view of the foregoing discussion, and taking into account the cumulative factual circumstances and conduct of Respondents, we are satisfied that the C.P. is maintainable.

B. Alleged Acts of Oppression and Mismanagement

36. Having found that the C.P. is maintainable, we shall proceed to examine Section 241(1)(a) r/w Section 242(a) & (b) regarding the relief for oppression/mismanagement. Such relief can be granted only if the Tribunal is of the opinion that the company's affairs ***have been or are being*** conducted in a manner (a) prejudicial to public interest, or (b) prejudicial or oppressive to any **member** or **members**, or (c) prejudicial to the interests of the company and that though the facts would justify the making of a winding up order on the basis of ***just and equitable clause***, such a winding up would **unfairly prejudice** such **member** or **members**. In applying the above provisions, the facts of the case need to be considered in light of settled principles.

37. Petitioners claim that after taking over the business in 2016, they implemented extensive measures until 2020 to turn around R1 & R2, successfully restructuring debts and increasing the Project's value to Rs.2200 (appx.) Crore with potential profits of around Rs.1000 Crore. It is alleged that R3 became envious of this achievement and orchestrated a scheme to unlawfully remove the Petitioners from their positions. This scheme reportedly began to unfold when P2 received an email from R8/RoC on 11.03.2021, communicating that new DIR-12 documents were being filed on an EoGM of 24.02.2021, during which two new directors were supposedly appointed in R2. They immediately lodged a Serious Complaint with R8 on 13.03.2021.

38. Thereafter, the Petitioners filed the C.P. on 04.05.2021, alleging various acts of oppression/mismanagement, briefly as under:

(i) Attempts to Illegally Oust P1 from R1

P1 was duly admitted as R1's 40% shareholder pursuant to the share transfer under the SPA, as also documented in the board report/statutory

filings in MGT-7 for FY2017-2018, filed on 01.03.2021. However, on 01.03.2021, a revised MGT-7 Form was filed citing 'clerical mistake' as the reason for reinstating R4 & R5, showing each holding 5000 shares. It is submitted that P1's removal from the stated position of 40% shareholder of R1 was done without adhering to Section 59 of the Act, which is the sole legal procedure for rectifying the entries in the register of members. The Petitioners claim that this constitutes an unlawful attempt to exclude P1 from R1.

(ii) Attempts to Illegally Oust P2 as R2's Director

As per the SPA, P2 was appointed as R2's additional director in the board meeting dated 23.05.2016; some of its previous directors resigned, leaving P2 & R3 as R2's only directors. P2's appointment as director was subsequently confirmed at the AGM held on 30.09.2016, with the statutory filing of DIR-12. Later, the Petitioners came to know of the public notice dated 30.03.2021, followed by Advocate's letter stating that R2 had purportedly removed P2 *suo motu* on 13.03.2021. In R2's purported board meeting of 06.03.2021, a resolution was allegedly passed to convene an EOGM on 13.03.2021, for considering P2's removal as its director. It is asserted that R2's board meeting was never held, or any board resolution passed authorising calling an EOGM as no requisition, notice or agenda was ever served on P2, who was R2's one of only two directors at that time. Moreover, it is submitted that R2's other director, R3, was disqualified from serving as such as per Section 164(2)(a) r/w Section 167(1) of the Act. The Petitioners claim that P2, as director, was never notified of R2's purported EOGM of 13.03.2021 to remove him. P2 also states that no opportunity was ever provided to him to be heard as required under Section 169 of the Act. Although the attempt to file DIR-12 for his removal was rejected by R8/RoC as incomplete, the Petitioners maintain that these acts constitute oppression.

(iii) Alleged Illegal Appointment of R6 & R7 as R2's Directors

R6 & R7 were appointed at the EOGM purportedly held on 24.02.2021. It is asserted that no resolution could have been passed without violating Section 100 of the Act and other applicable laws; consequently, R6's & R7's appointment must be deemed unlawful. P2 states that he became aware of it only on 11.03.2021, upon receiving an email from R8/RoC that a new Form DIR-12 was being filed, pursuant to which they lodged a Serious Complaint with R8 on 13.03.2021.

Apart from the aforesaid acts complained of in the C.P., the Petitioners, through amendment, as allowed by the Tribunal on 01.06.2026 in IA. No.106/2026, incorporated certain continuing acts of oppression/mismanagement, including the purported default and invocation of Pledge over R1's shares;, execution of unregistered BTA on 01.09.2021 between R2 as Transferor & R10, as Transferee; execution of Conveyance on 08.09.2021 in R10's favour; execution of Mortgage/Corporate Guarantee by R2 on 09.09.2021, as security for the debentures issued by R10; transfer of R2's development rights to R10; and other incidental actions.

39. Before dissecting the alleged acts of oppression, we consider it appropriate to examine the contention of the Respondents as to whether R2's affairs can be considered in the C.P., filed under Sections 241/242 of the Act.

C. Can R2's Affairs be Considered in the C.P.

40. The records indicate that R1 was incorporated in 2009 but did not engage in any independent business activity. At the time of the alleged oppression, its only asset was holding the entire shareholding in R2, which held substantial assets and was implementing the Project at the Subject Land. Admittedly, the SRA and Side Letter formed an integrated arrangement to acquire R1's entire shareholding, thereby taking over R2's absolute control, management, operations, and discharging R2's liabilities. As R2's assets are the substratum of the present proceedings, the Respondents contend that R1 & R2 are separate legal entities; hence, R2's affairs cannot be the subject matter of the C.P. filed in respect of R1 under Section 241/242. Thus, the question arising for consideration is whether it is permissible to consider the affairs of R1 & R2

together in this C.P. The Ld. Counsel appearing for the parties also relied on various judgements to support their respective contentions:

14.1 In *Herbertons Limited v. Kishore Rajaram Chhabria* [(1999) 97 Comp Cas 429 (CLB)], the applicant contended that he, being a shareholder of the petitioner company, has every right to be impleaded as a party in a proceeding against the subsidiary. The Ld. CLB held that "*the Legislature does not seem to have intended to bestow similar rights on the shareholders of a holding company to file a petition under section 397/398 against a subsidiary company. Such being the position, it emerges that the shareholders of a holding company cannot file a petition against the subsidiary company by virtue of their shareholding in the holding company*."

41. In *Jithendra Parlaplli v. Wirecard India Private Ltd*. [(2022) SCC OnLine NCLAT 14277], the applicant sought waiver of all requirements specified in clauses (a) and (b) of Section 244 of the Act, to permit him to prefer a petition under Sections 241 and 242. The Hon'ble NCLAT held that, as the applicant is not a member of the company, a 'Directorial Complaint' cannot be the basis for filing a petition under Sections 241 and 242.

42. In *Shankar Sundaram v. Amalgamations Ltd. and Ors.* [(2001) 104 Comp Cas 638], a 10% shareholder of a holding company filed a petition under Sections 397 and 398 of the 1956 Act before the Ld. CLB, wherein it was held that the petitioner cannot claim reliefs against subsidiaries and deleted the names of subsidiaries and their directors from the array of parties. On appeal, the Single Judge of the Hon'ble Madras High Court in *Shankar Sundaram v. Amalgamations Ltd.,* [2002 SCC OnLine Mad 326], set aside the part of the order directing deletion of the names of subsidiaries. On an appeal preferred against the order of the Single Judge, the Division Bench in *Amalgamations Ltd & Ors v. Shankar Sundaram and Ors.* [(2011) 168 Comp. Cas 68] held:

"51. In any view of the matter, as we have found that the respondent has not even made any allegations against the subsidiary company or claimed any

relief against most of the subsidiary companies in the main company petition and as per the decisions of the honourable Supreme Court mentioned supra, the subsidiary companies cannot be included in the company petition. Hence, the order passed by the learned single judge, setting aside the order of the Company Law Board deleting the subsidiary companies from the array of parties, is not correct. Inasmuch as the subsidiary company cannot be made a party to the company petition, we are inclined to allow L.P.A Nos.129 and 131 of 2002."

However, the Hon'ble Supreme Court in Civil Appeal Nos.4574-4575/2019 in *Shankar Sundaram v. Amalgamations Ltd. & Ors.*, held as under:

"Further, the subsidiary companies against whom the appellant has not made any allegations in the Petition and no relief has been sought for against need not be added as parties. However, Respondent Nos. 8, 9, 13, 14, 16, 17 and 18 and Respondent Nos. 4 and 7 should be added as parties and the appellant shall be at liberty to argue on the grounds of the said Petition and the prayer regarding the alleged mis-management of the companies in question in case the corporate veil is lifted. The Section 397/398 Petition is maintainable as the appellant holds 10% of the share capital in the holding company. The High Court is not correct in saying that the subsidiary companies above mentioned should be struck from the array of parties as, if the corporate veil is lifted, the holding and subsidiaries companies will be regarded as one and the same for the purpose of granting relief in the said Petition. The High Court Judgement is upheld insofar as it treats the Company Petition as being under Section 397/398 and not under Section 235 of the Companies Act, 1956."

43. In *Bajrang Prasad Jalan and others v. Mahabir Prasad Jalan and others* [1998 SCC OnLine Cal 326], the Hon'ble Calcutta High Court, while considering a matter of oppression, observed that the action by the majority shareholders of a holding company may also be applied in the case of the subsidiary companies, as the holding company holds majority shares in subsidiary companies, particularly when both the holding company and subsidiary companies are family companies, and for that limited purpose corporate veil can be lifted. The relevant parts of the order are extracted below:

"22. Furthermore, the fact as noticed hereinbefore, clearly shows that behind all the aforementioned companies individuals have their hand which allegedly were manoeuvring the affairs of the company in such a manner so as to oust others from the affairs of the company. The rights, expectations and obligations of the members of family, their nominees and relations have to be considered in the backdrop of events and it cannot be said that even if fact exists, the veil of the company cannot be lifted. Exercise of right under Sections 397 and 398 of the Companies Act comes within the purview of the equitable jurisdiction of

the company Court. There can hardly be any dispute that in view of the structure of share the respondent Nos. 2 to 5 in truth and substance and subsidiary companies of Akshay Nidhi Ltd. which is thus, a holding company and thus in such a situation, the Court cannot be a helpless spectator in looking beyond the corporate veil so as to disentitle itself from considering as to whether in fact there had been mismanagement of oppression by one group or the other. There is another aspect of the matter. Provisions of Section 397 and 398 are taken recourse to in a piquant situation where two groups running the company are at logger heads so that it is impossible for them to join hands together and run the affairs of the company. The Court in such a situation would exercise its equitable jurisdiction and may grant appropriate reliefs.

... In Life Insurance Corporation of India v. Escorts Ltd., reported in AIR 1986 SC 1370: (1986 Tax LR 1370) the Apex Court after taking into consideration various decisions and treatises held that for certain purposes corporate veil can be lifted. It was stated (at page 1418 (of AIR):-

"Generally and broadly speaking, we may say that the corporate veil may be lifted where a situation itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since, they must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

…

27. It is also a trite law that over the affairs of company in question its entire affairs including those of the subsidiary companies can also be looked into."

44. In support of the arguments canvassed before us that, for the purpose of Sections 241 and 242, the affairs of holding and subsidiary companies are to be treated as a unified group, rather than as separate personified institutions, the Petitioners also relied upon the judgement of the Hon'ble Allahabad High Court in *Life Insurance Corporation of India v. Hari Das Mundhra and Ors*. [1962 SCC OnLine All 252] where it is held:

"52. These are perhaps all the salient provisions shredding light on the meaning of section 398. They show that the Act treats the holding company and its subsidiary as a unified group rather than as separate personified institutions for purposes of ownership of capital, control of the subsidiary by the parent's directors and managing agents, their inter-corporate finance and accountancy and disclosure of the subsidiary's affairs to members of the holding company.

Further. At least for one purpose it looks upon the members of the holding company as members of the subsidiary.

66. Having regard to the history of the holding company, its inherent dangers, precedents, text- books and the enterprise unit context of section 398, I am led to think that the court may investigate on the application of the appellant the affairs of the company which, as already discussed, had become a mere department of the Corporation. The object of the section is to liquidate mismanagement in the "affairs" of a company. The "affairs" of the Corporation would include also the affairs of its departments or branches. If section 398 is construed as suggested on behalf of H.D Mundhra, then fraud, ultra vires actions and misfeasance of the board of directors of a holding company in the management of its wholly owned subsidiary would pass unexposed and uncensured, for enjoying sightless support of the majority shareholders of the holding company, they would hardly allow the holding company or the subsidiary to resort to court to hasten their doom. It is for this reason that several jurisdictions in the United States of America permit, even without a statute, shareholders of a holding company to maintain a "double derivative" suit to enforce a cause of action in favour of a subsidiary company, if the directors of both the companies have refused to institute an action in the name of either company (Ballantine, ibid., page 350)"

45. Furthermore, in *Sanjay Gupta & Anr. v. Mahendra Mohan Gupta* [(2023) IBC law.in NCLT], a coordinate Bench of NCLT, Ahmedabad considered the question whether the petitioner holding over 16% shareholding in the holding company would be entitled to maintain a petition as against the subsidiary company, though the petitioners do not directly have the requisite 10% shareholding in the subsidiary company, and held as under:

"*62. We are conscious of the position of law that the lifting of the corporate veil is not a mechanical process, but has to be seen in the context of individual facts and circumstances, where the affairs of the subsidiary company have to be seen from the point of view of its management and control by the holding company. In the aforesaid judgment it was also held that it is a trite law that over the affairs of the company in question its entire affairs including those of the subsidiary companies can also be looked into. In the judgment of LIC vs. Escorts (1986) 1SCC 264, it is held that lifting of veil is permissible where associated companies are inextricably connected as to be, in reality part of one concern keeping in view the effect on parties who may be affected… Therefore, there is a direct and pervasive control of Gupta Family in the affairs and management of Respondent No. 19. The only purpose of creation of the Respondent No. 18 was to control and manage the affairs of the Respondent No. 19 company …"*

"*63…Thus, there is a case made out, where not only there is a direct control of Respondent No. 18 over its subsidiary company, but the circumstances as*

discussed herein above would warrant lifting of the corporate veil, and therefore, the instant petition in the present format is maintainable."

46. When analysing the aforesaid decisions relied upon by the parties, two important factors emerge that significantly influenced the final outcome. First, whether the person filed such an application against the company where he possesses the requisite qualification, along with subsidiary/holding companies; and second, whether the affairs of the holding and subsidiary companies are to be treated as a unified group. In *Herbertsons* (supra), the applicant was a shareholder in Herbertsons but filed an application alleging acts of oppression and mismanagement only against the subsidiary company, BDA Limited. Hence, the facts of *Herbertsons* differ from the present case. Conversely, other cases, i.e., *Shankar Sundaram* (supra), *Bajrang Prasad Jalan* (supra), *Sanjay Gupta* (supra), are composite applications against the company where the applicant had the requisite qualification and the holding/subsidiary companies. In these composite applications, the question of lifting the corporate veil is considered when the affairs of the associated companies are inextricably connected, warranting such lifting.

47. In the present case, it is relevant to notice that R1 has, since its incorporation in 2009, never carried on any business of its own. Its only asset is its shareholding in R2, a wholly owned subsidiary company with admittedly substantial underlying assets. The control of R1 over R2 is evidenced by R2's AoA. Article 24(a) fixes the board strength at a maximum of six directors and gives R1 "*the right to appoint 4(four) Directors on the Board*." Article 43 provides that "*all decisions of the Company (including but not limited to decisions of the shareholders, the Board, any committee thereof, and of the management) shall require the consent of SHAJAS*" so long as it holds at least 26% of the Class A Equity Shares; Article 44 vests day to day decisions in the consent of its designated representative; and Article 45 requires the consent of a R1 representative for every decision of the company's bank accounts, including their opening, closure and any modification of signing authority. A perusal of the terms of the SPA, executed among P1 & R4 & R5, shows that the SPA and the Side Letter recognised the inextricable connection between

R1 & R2. As per Clause 3.3 of the SPA, the Petitioners had agreed to pay all past, current and potential liabilities and future expenses of both R1 & R2. Further, on and from the *First Closing Date*, the parties have agreed to give the Petitioners full control and management rights of R1 & R2. Thus, the object of the purchase transaction under the SPA and the Side Letter is evidently control of R2, as R1 never carried out any independent business. In the circumstances, we have no hesitation in holding that the two companies operated as a single economic unit. It is a settled position of law that when R2's affairs are inseparable, lifting of the corporate veil is permissible to examine the allegations of mismanagement of the companies.

D. Assessment of the Allegations

(i) Alteration of records

48. Petitioners' case is that, as per the SPA, R4 & R5 handed over R1's original share certificates for 5,000 shares (50%) to P1 along with duly executed transfer form AH-4. Of these, 1000 shares (10%) were handed over to the Lawyer along with the executed SH-4, in escrow as per the arrangement. As per the SPA, the balance 5000 (50%) share certificates, executed corresponding SH4, signed by the Sellers, were also kept with the Lawyer to be handed over to the Petitioners on the *Second Closing*. Petitioners were given full control and management rights of R1 & R2. In this regard, the following Clauses of the SPA and Side Letter deserve consideration:

Clause 5.4.6 of SPA

"On and from the First Closing Date, the Company and the Sellers agree that... the Purchaser will have absolute control over the Company including day to day operational and management control of JLS Realty Private Limited ('JLS')... The Purchaser will have power to appoint all directors and run the business of the JLS as it may think fit."

Clause D.1. of Side Letter

"a) The Purchaser will have power to appoint directors and run the business of the JLS as it may think fit. The Purchaser may directly or indirectly bring in funds or assets or rights of development into JILS and the Sellers confirm

that it will have no rights or economic interest in the same, whether directly or indirectly. The Sellers agree that there will be no change in Purchase Price for the transfer of Second Tranche Securities…. b) the Purchaser shall be entitled to exercise all the rights, voting or otherwise, over the Second Tranche Securities irrespective of whether the Second Tranche Securities are released by the Lawyer to the Purchasers or not and the Parties shall take all the necessary steps to give effect to this provision and to enable the Purchaser to exercise its rights over Second Tranche Securities."

49. It is submitted that pursuant to the aforesaid agreement, certificates of 13,77,499 shares originally held by R1 in R2, and, following R1's buyout of Levinstein shares, a further 25,46,108 shares, together constituting 39,23,607 shares, comprising almost 99% of R2's paid-up equity capital were handed over by R4 & R5. Further, P2 was appointed as additional director in the 'promoter category' by R2's board resolution of 23.05.2016. On the same day, 4 of 6 directors resigned, leaving P2 & R3 as R2's only two directors. By another resolution, R2's existing Bank of Baroda 'joint' account was changed to 'individual', designating P2 as the single signatory. This made R2's board decisions requiring P2's participation/approval, giving Petitioners control of its board. From May 2016, R2 began operating from P2's own office premises at Makhija Chambers, Turner Road, Bandra (West), the same address recorded as R2's address in DIR-12, filed pursuant to his appointment as director. P2's appointment was ratified at the AGM on 30.09.2016. R2, being R1's 100% subsidiary, the voting rights attaching to R1's shareholding in R2 became exercisable only through R1. The corresponding DIR-12 was uploaded with R8, confirming/reflecting P2's appointment in 'promoter' category. R1's own board report/Independent Auditor's Report for FY2017-2018, both dated 05.09.2018 and signed by none other than R4 & 5, recorded P1 as owner of R1's 40% paid up capital. P1 filed its own Form MGT-7 for FY ending 31.03.2018, along with the audited Annual Report for the same year on 31.12.2018 with R8/RoC, both of which record the 40% holding in R1. These filings, which are publicly available documents, have been on the RoC portal since 31.12.2018, without any party raising a dispute. P1's 40% shareholding position in R1 is reflected/communicated to statutory/regulated entities. The Petitioners were treated as R1's shareholders through an unbroken pattern of conduct from 2017 to 2021. As per the SPA, in letter and spirit, R4, R5 & R3 routed R1's every

action, however routine, through P2 for his permission/instruction. However, R1 filed a revised Form MGT-7 for FY2017-2018 with R8/RoC on 01.03.2021, attempting to remove P1's shareholding in R1 on the stated ground of "clerical mistake" and reinstating R4 & R5 as 5,000 shareholders each in it. It is submitted that the Respondents' failure to invoke Section 59 of the Act, the sole statutory route for rectifying an entry in the register of members, constitutes oppression and mismanagement.

50. Per contra, the contesting Respondents contend that the obligations under the SPA and Side Letter were never fulfilled as contemplated therein; thus, the transaction never attained contractual completion. R4 & R5 denied receiving any consideration or transferring their shares; R2's liabilities were never cleared; and the personal guarantees/post-dated cheques furnished by R3 were never released. According to them, P1 does not hold, and has never held, a completed transfer; duly stamped/executed instrument of transfer has not been produced; the share certificates remain in R4's & R5's names with the Memoranda of Transfer; the reverse of the certificates remains blank; and R4 & R5 deny having received any consideration or having transferred any share. P1's & P2's claim remains to be a claim to disputed title, not an assertion of existing 'membership'. The remedy of a claimant to a disputed title is a civil suit, and Sections 58/59 of the Act are unavailable to such a claimant. Section 58 provides an appeal against refusal to register transfer and presupposes a proper instrument of transfer duly lodged with the company; Section 59 provides a summary power of rectification confined to correcting the register, which cannot be used to adjudicate a seriously disputed question of title. The declaratory reliefs sought in the C.P. that the Petitioners are the rightful owners of R1's shares, for rectification founded upon disputed title, and consequential challenges to subsequent transactions, necessarily presuppose prior adjudication of Petitioners' contractual rights under the SPA. Unless such rights are first established before the competent forum, the consequential reliefs claimed in the C.P. cannot be granted.

51. As far as the filing of revised Form MGT-7 for FY2017-2018, R1, R4 & R5, in their Preliminary Reply stated that *"the Answering Respondents were apprehensive of facing statutory consequences for not filing the Annual Return… On account of the panic and urgency involved, Form MGT7 for FY 2017-2018 was signed in a hurried manner and by clerical error it was wrongly shown that certain shares of the Company were transferred to GRCPL on 16th January 2018. However, it is a matter of fact that no such transfer of shares took place on 16th January 2018 or otherwise."* (para 7.3(iv), pg. 33, Preliminary Reply).

52. In the circumstances, the issue arising for consideration is whether P1's removal is an unlawful attempt to exclude P1 from R1. While analysing the rival contentions, we notice that the primary challenge by the Respondents is that the obligations contemplated under the SPA and Side Letter were never fulfilled in the manner contemplated therein. Consequently, the transaction never attained contractual completion in accordance with the terms. The Ld. Counsel for the contesting Respondents also referred to various decisions, viz., *Howrah Trading Co. Ltd. v. CIT* (AIR 1959 SC 775); *LIC v. Escorts Ltd* [(1986) 1 SCC 264; *Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.* (1991 SCC OnLine Ker 453); *Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakar* [(1974) 2 SCC 323]; *E.D. Sassoon & Co. Ltd. v. K.A. Patch* [1922 SCC OnLine Bom 158]; *R. Mathalone v. Bombay Life Assurance Co. Ltd.* [(1953) 2 SCC 76]; and *Maneckji Pestonji Bharucha v. Wadilal Sarabhai & Co.* [1926 SCC OnLine PC 10], to argue that even if beneficial rights remain with P1, the legal rights are with R4 & R5. According to them, even assuming, arguendo, that the Petitioners possess any subsisting rights, such rights are purely contractual in nature. Any dispute relating to the existence, validity, performance, breach, specific performance, or enforcement of the SPA, is a contractual dispute, the adjudication of which necessarily requires determination of disputed questions of title and contractual obligations. We observe that the contractual performance of obligations under the SPA/Side Letter was under dispute between the parties, as evidenced by Petitioners previously invoking Arbitration proceedings arising out of the SPA. The observations of the Hon'ble Supreme

Court in *Ammonia Supplies Corporation Pvt. Ltd. v. Modern Plastic Containers Pvt. Ltd and Others* [(1998) 7 SCC 105], are of relevance and are extracted below:

"26…In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus, in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification…"

53. In *Standard Chartered Bank v. Andhra Bank Financial Services Ltd*. [(2006) 6 SCC 94], three judge Bench of the Hon'ble Supreme Court affirmed the view taken in *Ammonia Supplies* (supra) that the jurisdiction exercised by a Company Court under Section 155 of the 1956 Act (Section 111, thereafter) was somewhat summary in nature and that, if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed questions of title. Upon examination of the facts of the present case, we concur with the Ld. Sr. Counsel for the Respondents that the dispute over compliance with the terms of the SPA and Side Letter requires adjudication by an arbitral tribunal/court before deciding the issue of rectification agitated in the C.P. However, the issue that remains for our consideration is whether any party in control of R1 has the authority to alter its records without following the due process of law.

54. It is on record that R1's own board report/Independent Auditor's Report for FY2017-2018, both dated 05.09.2018, and signed by R4 & R5 themselves, recorded P1 as R1's 40% paid-up capital. Later, on 27.01.2021, R1, through its director, R5, filed MGT-7 showing transfer of 4000 shares (R4's & R5's 2000 shares each) to P1, with the date of registration of transfer as 16.01.2018. This Form MGT-7 was changed by filing a revised Form MGT-7 on 01.03.2021,

which is the centre of the dispute between the parties. The explanation provided by the Respondents is that, due to the panic and urgency involved, Form MGT-7 for FY2017-2018 was signed 'hurriedly' and, by 'clerical error', it wrongly showed that certain shares of R1 were transferred to P1 on 16.01.2018. It is extremely difficult to buy this explanation by R4 & R5, for several reasons; firstly, R1 and its third-party professionals, including its chartered accountants, maintained, from 2018 till February 2021, that P1 held 40% shareholding in R1; secondly, the Sellers, R4 & R5, and P1 in their respective filings, recognised the transfer; thirdly, many incidental correspondences corroborated the transfer; and fourthly, the sequence of events and the surrounding circumstances do not justify it a mere 'clerical error'. No cogent reason is given by R4 & R5 for signing MGT-7 'hurriedly'. The records show that R1 did not resort to any civil/arbitral remedies before changing its statutory records, although it pleads existence of a contractual dispute. To sum up, any unilateral change in R1's official records or statutory filings relating to the rights of persons as shareholders, without sufficient cause, without following a process or adjudication under law, and without intimating the affected party, amounts to an act of oppression.

(ii) Removal of P2 from R2's Board

55. The attempted removal of P2 as R2's director*, inter alia,* was alleged to be an act of oppression and mismanagement on the grounds that none of the requirements of Section 169 of the Act, which provides for the removal of directors, have been followed and that no EOGM was held on 13.03.2021. It is further asserted that the consequent filing of Form DIR-12 dated 11.03.2021 is illegal/wrongful.

56. On the contrary, the version of the contesting Respondents is that a pledge of R1's entire shareholding in R2 was created in favour of R14, as security for the First Debentures. On account of non-payment, R14 issued the EOD Notice on 01.02.2021, followed by invocation notice dated 12.02.2021. In response, R1, *vide* letter dated 25.02.2021, acknowledged the default and consented to the enforcement of the Pledge. The very next day, i.e., 26.02.2021, IIFL, issued a

letter to R2, stating that it's holding in R2 is more than 95% of the shares, and that P2 has a negative impact on R2's business, and has also damaged R2's brand image and goodwill. Hence, it was imperative that P2 be removed as R2's director. By a separate letter issued on the same day, 25.02.2021, consent was also provided for convening of the shareholders' meeting at shorter notice. Accordingly, P2 was notified of R2's board meeting on 06.03. 2021, wherein it was resolved to convene EOGM of R2's members to consider P2's removal as R2's director. Accordingly, R2's EoGM was held on 13.03.2021, where it was resolved to remove P2 as R2's director.

57. Thus, the dispute pertains to the convening and holding of R2's board meetings and EOGM for appointing R6 & R7, and P2's removal as R2's director. Section 100 of the Act provides that the board may, whenever it deems fit, call an EOGM of the company. Therefore, the power remains with the board to decide to call an EoGM of the company. However, the glaring absence of mention of the date of the board meeting in the pleadings and non-production of any copy of board resolutions substantiate the contention of the Petitioners that no such board meeting was ever convened to call the EOGM on 24.02.2021. Furthermore, given that there were only two directors for R2 at that time, it raises a valid concern regarding the legitimacy of a board meeting alleged to have been held in P2's absence. Notably, nobody has a case that P2 was present at that meeting. A solitary director cannot independently call EoGM of the company. Duty to call board meeting vests in the board acting as a body, only where the requisitionists themselves validly invoke Sub-sections (4) and (5) of Section 100, upon the board's proved default. No board meeting or R2's board resolution calling the EOGM of 24.02.2021 has been placed on record, nor has any of the three routes by which the meeting could have been validly called. Even in relation to the subsequent EOGM purportedly held on 13.03.2021, there are apparent inconsistencies. It is stated that R14 issued the EOD Notice on 01.02.2021, followed by invocation notice dated 12.02.2021, and a consent letter by R1 *vide* its letter dated 25.02.2021. The first EOGM was stated to be held on 24.02.2021, one day before the issuance of the consent letter dated 25.02.2021, and the transfer of shares pursuant to the Pledge invocation was

effected on 26.02.2021. In that case, on the date of the first EOGM, R1 was the sole shareholder of R2. No explanation has been provided by the Respondents regarding (i) the issuance of the letter of consent; (ii) who represented R1 in the first EOGM; and (iii) when and how R14 transferred the shares in IIFL's name to enable it to exercise its rights as a shareholder. It is also pertinent to observe from the Report filed by R8/RoC that R2's entire shareholding as on 31.03.2021 was held by R14. That being the case, the Respondents' contention that the disputed EOGMs were held on the requisition of IIFL as 95% shareholder cannot be believed and uproots the very foundation of their arguments. More importantly, the statutory provision in Section 169 of the Act, in so far as removal of director, is relevant:

"169. Removal of directors. — (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

xxx…"

58. Apparently, Section 169 incorporated certain cumulative and mandatory safeguards for a director sought to be removed, which include (i) a special notice; (ii) a copy of which has to be sent to the director; (iii) on receipt of notice of resolution to remove a director, the company shall forward a copy of such resolution to the director, and the director, whether or not he is a member, is entitled to be heard at the meeting; and (iv) even if a representation is not sent, the director may even be heard orally without prejudice to his rights. While none of the safeguards under Section 169 were stated to be afforded to P2. Interestingly, R3, who was R2's only other director at the relevant time of P2's removal, in his Sur-Rejoinder affirmed on 28.07.2021*, inter alia,* stated that:

"25. The infirmity harped upon by the Petitioners with regard to the meeting held on March 13, 2021 is thus hyper-technical and in any event academic in view of the fact that the 100% shareholder of Respondent No. 2 who was therefore in complete and total control of Respondent No. 2, and the composition of it's Board of Directors, validly requisitioned the said meeting. Therefore, it was within the complete prerogative of the shareholder to seek the removal of Petitioner No. 2 as a director of Respondent No. 2"

59. It is well settled that the requirements of Section 169 of the Act (corresponding to Section 284 of the 1956 Act) are mandatory and not directory.

(a) In *Ansar Khan v. Finecore Cables Private Limited,* [2006 SCC Online CLB 76], the Ld. Company Law Board held as under:

"By virtue of Section 284 any director, including a permanent director may be removed before expiry of his tenure of his office by passing an ordinary resolution at a general meeting. However, the director concerned and the shareholders should be given sufficient opportunity to consider the matter before the resolution is moved. For moving such resolution to remove a

director or to appoint somebody in the place of the removed director a special notice is especially given. The company on receipt of such a special notice from any of its members shall send a copy to the director concerned to enable him to make his representation in this behalf. The requirements of Section 284 are mandatory... it cannot either be said that the petitioners have been validly removed from the office of director." (Para 23).

(b) In *Kamal Kumar Dutta v. Ruby General Hospital Ltd.,* [(2006) 7 SCC 613], the Hon'ble Supreme Court considered a case where a director was ousted from office at a meeting convened in his absence, and held:

"*But when such an important decision was taken in the absence of the main promoter of the company to oust him from the Managing Directorship and to install Sajal Dutta in his place, it is the grossest act of oppression by the Board of Directors."* (Para 32)

(c) In *Dr. Mrs. Usha Chopta v. Chopra Hospital Pvt. Ltd*. [2005 SCC OnLine CLB 62], the Ld. Company Law Board struck down the appointment of two directors in the absence of relevant papers of board meeting and the notice of such board meeting. Accordingly, the subsequent appointments made by these directors were held not good.

60. Now, coming to R3's aforesaid contention in his Sur-Rejoinder, that the infirmity of the meeting held on 13.03.2021 is 'hyper-technical' and 'academic' in view of R2's 100% shareholder who was in its complete/total control and its board validly requisitioned the meeting, and it was within the 'complete prerogative' of the shareholder to seek P2's removal as R2's director, is far from satisfactory. The Hon'ble Supreme Court in *Mrs. Shailja Krishna v. Satori Global Limited,* [2026 2 SCC 706], applied the same principle directly to notice, holding that non-service of notice invalidates a meeting notwithstanding that the director denied notice held 98 per cent of the shareholding: It held thus: "*With reference to the Board Meetings dated 15.12.2010 and 17.12.2010, we are of the considered view that it suffers from fundamental illegality and cannot be sustained in law... the Appellant, who continued as a Director during the relevant period, was never served with notice of either of the meetings dated 15.12.2010 or 17.12.2010. Moreover, such notices and/or proof of service of such notices were never produced on record before the NCLT. Not only that,*

the minutes of the meetings were also not produced. Hence, the requirement of notice being mandatory, non-service thereof renders the meetings invalid." (Paras 47-48) In the present case also, P2, being a director continuing as such on R2's board, was attempted to be removed without serving the requisite notice mandated by law.

61. Even otherwise, no locus of IIFL has been made out to make a requisition as shareholder, as R14(IDBI Trusteeship) invoked the Pledge and no documents have been produced on record to show how and when those physical shares were transferred to IIFL. Even assuming the case at its highest that pledged shares were transferred to IIFL, it would not be sufficient to be treated as 'member' for making requisition. On one side, the Respondents contend that mere transfer of shares is not sufficient to be recognised as member, the other side, IIFL is treated as member without a board meeting and other legal procedures.

62. The procedure for removal of a director, as laid down in the Act, requires a resolution of removal, first at the board of directors' level, followed by approval at the EOGM or AGM, i.e., shareholder level. There is no notice or special notice, no explanatory statement, no specific agenda annexed, and no proof of dispatch and delivery of notice to P2 in the present matter. The absence of these is fatal to the validity of P2's removal. Furthermore, even R8/ROC has rejected DIR-12, filed by R2, for P2's removal, on two occasions, namely, on 25.04.2021 and 05.08.2021, due to incomplete documents. As per R8/ROC's Report, P2 remains as R2's director even at the time of its initiation of CIRP. Additionally, according to the contesting Respondents, R6 & R7 were appointed as R2's additional directors on 24.02.2021, at the instance of the secured lender IIFL, acting through R14 as debenture trustee, following the EOD Notice of 01.02.2021 and the invocation of Pledge on 12.02.2021. They held their positions until their resignation on 11.03.2022, when R12 & R13 were appointed upon the reconstitution of the board at the instance of the then shareholder, *Academia* (now R11/*Keemaya*), which acquired the shares pursuant to the enforcement of the Pledge. Despite the admitted control held by R6, R7, R12

& R13 during their relevant tenures, none have provided any explanation for not making available board minutes and statutory records, etc., pertaining to the relevant period.

63. The aforesaid circumstances only lead us to a logical conclusion that the appointment of R6 & R7, as well as P2's attempted removal, are marred by significant procedural irregularities and these actions appear to further a pattern of conduct that is both oppressive and prejudicial to the Petitioners. The series of actions, involving the holding of two EOGMs within a short period of 18 days; the alleged invocation of Pledge and change of shareholding with purported consent of pledgors; the absence of proof of notice, despatch or delivery, attendance or quorum minutes; and the lack of any record pertaining to the issuance or service of notices, are particularly concerning. Furthermore, there was no opportunity afforded to P2, written or oral, to be heard at either meeting; no mention of his presence or quorum in the board meeting, coupled with non-cooperation with the RP in R2's CIRP, as mandated under the provisions of the IBC, take us to the unavoidable conclusion that the appointment of R6 & R7 and P2's attempted removal without following the due process of law are not merely illegal and unlawful but constitute series of acts of oppression.

(iii) Other Acts

64. The Petitioners submit that the Subject Land constitutes the substratum of the present proceedings. Despite pending disputes on R2's control/management and the judicial protection operating in their favour, the Respondents transferred the Subject Land to R10 under the Conveyance dated 08.09.2021. Petitioners contend that the transaction lacked commercial justification, particularly since the earlier JDA between R2 & R10 had allegedly been terminated by mutual consent through the Cancellation Letter of 10.12.2019. R10 had allegedly failed to perform its obligations and was facing financial difficulties. There were inconsistencies in the valuation and consideration of the property. P1 & P2 allege that while value for stamp duty was disclosed as less than Rs.123 Crore, the same property was represented as being worth not less than Rs.787 Crore in documents executed thereafter. The Conveyance was executed despite the

original title deeds having been deposited with Sahara, which is in the Respondents' knowledge. According to them, immediately after the Conveyance, R10 entered into DTD on 09.09.2021, and raised borrowing of Rs.525 Crore(appx.) from IIFL by creating security over the very property conveyed to it. R2 was made to execute the Mortgage and furnish a Corporate Guarantee for R10's obligations on the basis of a fabricated/ante-dated board resolution of 03.06.2021. R2's board lacked authority to dispose of substantially the whole of R2's undertaking without shareholders' approval under Section 180 of the Act. Further, despite NCLAT's restraint, Respondents participated in SRA's proceedings and requested transfer of R2's redevelopment rights to R10 on 17.08.2022, the cumulative effect of which constituted acts of oppression and mismanagement. Furthermore, R6 & R7, after acting against R1's & R2's interests by transferring R2's sole asset and causing it to furnish a Corporate Guarantee for the borrowings of a third party, resigned from R2's board. Their resignations and the appointment of R12 & R13 as R2's directors were effected through unlawful board meetings without notice to P2, and in violation of Hon'ble NCLAT's interim order of 22.10.2021, restraining the parties from taking any precipitative steps. Further, R3 resigned on 14.08.2021; R12 & R13 were appointed pursuant to a purported board meeting of 11.03.2022; R6 resigned on 30.03.2022; and R7 resigned on 03.06.2022, as evident from DIR-12 of R2.

65. Respondents changed R2's registered office by the purported/fabricated board resolutions and lease documents which were ante-dated. This was done to exclude Petitioners from R2's affairs/management, and deprive them of access to R2's statutory records/information. Furthermore, a Section 7 IBC application came to be filed on 16.11.2021 against R2 by the FC, for a claim of 1 Crore(appx.), when R2 possessed land valued more than Rs.1,000 Crore, and had no institutional borrowings/mortgages over its assets prior to September 2021. R2 was pushed into CIRP for such a small claim in CP(IB)No.102/MB/2022 before the AA. Apprehending a collusive proceeding, Petitioners filed IA No.911/MB/2022, offering the FC, the entire default stated in CP(IB)No.102/MB/2022, to prevent admission of the application, but the FC refused to accept the same. During settlement discussions, R2's changed

management represented that it had no assets and offered only Rs.5 Lakh towards settlement, despite the Petitioners' contention that the Subject Property had been valued at Rs.787 Crore under the DTD. Further, Petitioners' intervention application was dismissed on maintainability grounds, following which R2 was admitted into CIRP on 30.05.2025.

66. The full significance of the Corporate Guarantee/Indenture of Mortgage executed by R2 for the borrowings of R10 came to light upon R2's CIRP admission. The IRP admitted the claim of Phoenix ARC (assignee of loans raised by R10), pursuant to the second debenture documents, at Rs.629.9 Crore out of total claims of Rs.926 (appx.) Crore. This claim is founded on the impugned transactions in this C.P., viz., Corporate Guarantee/Indenture of Mortgage executed by R 2 in R10's favour. No commercial rationale was offered for saddling R2 with such substantial liabilities, particularly when R2 had no institutional liabilities before September 2021. P2 knew about the admission of Phoenix ARC's claim when IRP sent him the letter on 13.07.2025 as R2's suspended director. This claim admission conferred Phoenix ARC 99.6%(appx.) voting share in R2's CoC, placing R2 effectively under the control of a single creditor whose claim arose from the very transaction being challenged herein. This demonstrated a pre-planned design to utilise R2's CIRP to legitimise the chain transactions that caused oppression/mismanagement and to place the consequences beyond judicial correction. R2 had been transformed from a company possessing Rs.1,000 Crore land with no institutional liabilities, into one with no land/development rights, and facing Rs.629.9 Crore admitted claim, being the direct consequence of the acts of oppression and mismanagement.

67. On the other hand, the contesting Respondents state that R2, which owned the Subject Land, entered into JDA with R10 for the Project development, pursuant to which, R10 raised Rs.240 Crore (First Debentures) from IIFL through the issue of debentures to IIFL. R2 was a confirming party to the DTD-1 of June 2017. As security for the finance availed by R10, the Share Pledge Agreement (Pledge Agreement) dated 15.06.2017 was executed by R1 pledging 100% of

R2's shares owned by R1 in R14's favour. On 01.02.2021, R14 issued EOD Notice alleging breach of DTD-1 and seeking repayment of Rs.280.71 Crore to be paid on or before 08.02.2021 for invoking the security interest created under Clause 20 of the DTD-1, Pledge Agreement, and personal guarantee, etc., followed by another letter dated 12.02.2021 to R1 & R2, for sale of shares pledged in view of the continuing defaults. In response to the aforesaid letters, R1, by letter dated 25.02.2021, acknowledged the liability under the Pledge Agreement, without any demur, and waived its rights of pre-emption. Meanwhile, IIFL, on whose behalf R14 was holding shares, issued letter dated 26.02.2021 to R2's board of directors stating that they hold more than 95% of R2's shareholding, and sought P2's removal from R2's board on the ground that his association with R2 would have a negative impact on its business. Another letter of the same date was issued consenting to shorter notice for EOGM for P2's removal from R2's board. P2 was removed as R2's director on 13.03.2021.

68. According to the Respondents, proper procedure for the invocation of the Pledge, the transfer of shares to the debenture holders and the subsequent sale has been followed within the parameters prescribed under law, and therefore cannot be faulted. The same was done to enforce its contractual rights under the Pledge Agreement and the DTD-1. Upon the invocation of the Pledge and the consequent transfer of the Pledged Shares to the debenture holders, the debenture trustee and its nominee had all the powers of R2's shareholder, including the power to requisition and convene meetings, to appoint and remove directors and to pass resolutions and approve corporate actions and statutory filings. Hence, in exercise of the shareholder's power, the appointment of R6 & R7 as R2's directors was lawful/valid, aimed at managing R2's affairs, and no prejudice is caused to the Petitioners. Subsequently, the EOGM was held on 13.03.2021, wherein it was unanimously resolved to remove P2 as R2's director. Thus, since the EGMs were conducted as a consequence of the lawful actions of the secured creditors, it is not an act of oppression by Respondent No. 2 or its directors.

69. The Respondents, however, admit that the following documents were executed;

(a) BTA of 01.09.2021 by R2 in R10's favour transferring/selling/assigning the business undertaking of the transferor/R2 as a going concern on a Slump Sale basis;

(b) Conveyance of 08.09.2021 by R2 to R10 transferring R2's properties pursuant to the BTA. No consideration was paid to R2 and no separate value was attributed to the property, as the transaction was a set-off against the monies owed by R2 to R10, but the market value of the property was determined as Rs.123.08 Crore as per the adjudication order for the stamp duty;

(c) DTD of 09.09.2021 executed by R10 in R14's favour for raising Rs.525 Crore by issue of redeemable non-convertible debentures;

(d) Mortgage of 09.09.2021 executed jointly by R1 & R2 in R14's favour on the Subject Land and the Project as security for Rs.525 Crore debentures;

(e) Corporate Guarantee executed by R2 in R14's favour and Pledge Agreement under which R11 pledged its 100% shareholding of R2 in favour of R14.

70. The Respondents state that the transactions under the aforesaid documents were legitimate arm's-length transactions and not fraudulent transfers. These documents were executed as part of bona fide commercial settlement to discharge/set off massive undisputed debt of approximately Rs.400 Crore owed by R2 to R10. R10 denied that the Conveyance of 08.09.2021 or the subsequent financing transactions were undertaken in defiance of any judicial order or constituted acts of oppression and mismanagement. The Conveyance was executed on 08.09.2021 and the DTD followed on 09.09.2021, nearly six weeks before NCLAT's first 'no precipitative steps' order of 22.10.2021. At that time, there was no judicial restraint on the conveyance of the Subject Land, and R10 was not a party to NCLAT proceedings. R10 is a separate legal entity and bona fide transferee for valuable consideration, and the Conveyance was the

culmination of arm's-length commercial negotiations undertaken to resolve the longstanding liabilities owed by R2 to R10. The comparison between Rs.123 Crore mentioned in the Conveyance and the valuation of Rs.787 Crore reflected in the 2021 DTD is misconceived, as the former represented the market value adopted for payment of stamp duty in a slump sale transaction, whereas the latter represented the projected value of the property for future development/security purposes. R10 also denied its financial difficulties/non-disclosure of the earlier JDA/invalidating the Conveyance invalid, contending that the Conveyance was not required to narrate every prior contractual arrangement between the parties. The execution of the 2021 DTD/Mortgage/Corporate Guarantee immediately following the Conveyance was to secure funding required for settlement of liabilities/completion of the Project and constituted matters of commercial wisdom of the respective boards. Hence, such transactions could not be characterised as oppression/ mismanagement merely because the Petitioners disagreed with the commercial decisions. As a bona fide third party dealing with R2, R10 was entitled to rely on the certified corporate resolutions furnished to it, and was protected by the doctrine of indoor management.

71. Similarly, R3 submits that R6 & R7 were lawfully inducted, and that they had not stripped R2 of its assets, or that the changes in its board were effected through fabricated meetings/in defiance of NCLAT's order of 22.10.2021. The appointments/resignations/subsequent inductions reflected in DIR-12 were lawful corporate acts, duly carried out and filed. No notice of the board meetings was required to be issued to P2, as he had ceased to be R2's director after his removal at the EoGM. R6 & R7 had been validly appointed as R2's nominee directors on 24.02.2021.

72. R2's registered office was not changed on fabricated/ante-dated documents or with any intention to exclude the Petitioners from its affairs. The change was lawful corporate act duly effected and statutorily filed. R2's financial statements for FY2019-2020/2020-2021 were adopted not without notice to P2. They did not contain any material misstatement intended to legitimise any fraudulent

action. The financial statements were prepared, audited and adopted in the ordinary course of business and in accordance with law.

73. The Hon'ble NCLAT, by order of 22.10.2021, directed the parties not to take any precipitative steps in the matter; by order of 22.07.2022, the parties were directed to maintain status quo; and by order dated 11.10.2022, the appeal was remanded for consideration by NCLT, continuing the protection granted. All the documents had already been executed, and the transactions contemplated therein were completed before the order of 22.10.2021 was passed. R2 was admitted into the CIRP *vide* order dated 30.05.2025, and an application for R2's liquidation is presently pending. Petitioners' I.A.No.911/2022 for intervention in the Section 7 IBC application raising collusion, fraud, and disputes relating to R2 was dismissed, and R2 was admitted into CIRP. Company Appeal (AT) (Insolvency) No.863/2025, challenging the admission order remains pending before the Hon'ble NCLAT without any stay being granted. Hence, the admission order subsists and is binding, and the present proceedings under Sections 241 and 242 of the Act cannot be utilised to reverse, suspend or render ineffective, the consequences flowing from the CIRP. In view of the subsisting CIRP and the CoC's subsequent resolution for R2's liquidation, the reliefs sought against R2, insofar as they seek restoration of its management/interfere with CIRP, cannot be granted. The competing assertion that challenges the changes in R2's board and ownership structure of the companies, in conjunction with transactions pertaining to the Subject Land, warrant examining the following actions:

(a) Enforcement of Pledge in respect of Debentures for Rs.240 Crore

74. R1 executed the Pledge Agreement of 15.06.2017 in R14's favour, as debenture trustee, over its shareholding in R2, for securing debentures for Rs.240 crore raised by R10 from IIFL. As per the Pledge Agreement, 39,73,636 shares comprising 100% of R2's capital were to be pledged. On 01.02.2021, R14 issued EOD Notice alleging breach of DTD-1 and seeking repayment of Rs.280.71 Crore to be paid on or before 08.02.2021, failing which security interest would be invoked or take such other actions under Clause 20 of the

DTD-1. R14, by another letter of 12.02.2021, informed: *"Please note that we are therefore constrained to sell the Pledged Shares in the event you fail to make the due payment of the Amounts Due in accordance with the provisions of Clause 6 of the Share Pledge Agreement."* Clause 6.1 of the Pledge Agreement provides that *"upon the occurrence of an EOD, the debenture trustee or its nominee may, without further authority and without prejudice to its other rights under Applicable Law but after giving to the Pledgors, 7 (seven) days' notice (which period of notice the Pledgors agree is reasonable notice) of the sale and the transfer of any Pledged Shares, at the cost of the Pledgors, sell or dispose off of all or any part of the collateral (whether by private treaty or otherwise) , and may apply the proceeds of any such sale/ or disposition."* Clause 14.1 further provides that *"all moneys received or recovered by the debenture trustee pursuant to the Pledge Agreement and/or the powers conferred therein shall be applied, appropriated, and distributed in payment of the secured obligations, in accordance with the debenture documents. Any surplus of such moneys held by the debenture trustee shall be paid over to the Pledgors or whosoever may be lawfully entitled to receive such surplus."*

75. On 22.02.2021, R14 stated to have issued letter to IIFL titled *"Release of original Share certificates of JLS Realty Pvt. Ltd"* to release/hand over R2's share certificates listed by folio numbers across Class A; Class B1 to B6; Class C1; and CCPS series 1 to 39, i.e., across every class of R2's share capital. Further, R4, a director of R1, is shown to have separately written to R14, by a letter dated 25.02.2021, stating that R1 *"shall not have any claims in respect of the Pledged Shares transferred to IDBI or its nominee"* and *"shall not raise any claim as regards the price or any consideration at which IDBI or its nominees transfers/sells the shares*" and *"shall not exercise any rights of subrogation against either JLS or Spenta Sun City Private Limited or any of their successors and claimants*." While the Petitioners deny receipt of these letters, the Respondents rely on them to state that proper procedure for the invocation of Pledge, the transfer of shares to the debenture holders and the subsequent sale has been followed within the parameters prescribed under law, and therefore, cannot be faulted. However, on close scrutiny, we observe that the

exact date of invocation of the Pledge/transfer of shares to the debenture holders is nowhere mentioned. These dates are crucial as the first EOGM was stated to be held on 24.02.2021, i.e., before the letter of 25.02.2021, issued by R1, wherein R6 & R7 were inducted as directors. Letter of 25.02.2021 indicates that transfer of shares had not taken place at the time of issuing the letter. The Respondents state that the meeting was convened at the request of shareholders, but do not mention who the shareholders were at the time of the first EoGM. Additionally, there is no mention of any moneys received/recovered by the debenture trustee pursuant to the enforcement of Pledge, which has been applied, appropriated, and distributed in payment of the secured obligations as per Clause 14 of the Pledge Agreement.

b) Execution of unregistered BTA and Conveyance in favour of R10

76. The Respondents state that the Project had stalled completely and R2 did not have funds or the ability to raise funds to complete it. In these circumstances, and particularly given that the Project was being undertaken by R2 & R10 under JDA between them, R 2 entered into arrangement with R10, for transfer by R2, of an undertaking comprised of the Project, underlying lands with the benefits of all approvals/permissions issued in respect thereof, along with all associated liabilities/obligations in respect thereof, on Slump Sale basis. Accordingly, on 01.09.2021, R2 executed the BTA with R10 to transfer its construction and development undertaking to R10 on a Slump Sale for a consideration of Rs.1,00,000/-. In furtherance of the Slump Sale arrangement, by duly registered and stamped Conveyance of 08.09.2021, R2 sold, conveyed and transferred the lands underlying the Project to R10. Pursuant to the Conveyance, R2 also executed and registered irrevocable PoA of 08.09.2021 in favour of R10.

77. According to Petitioners, this document discloses that the Conveyance was made for no consideration payable to R2, save for the assumption by R10 of Rs. 331 Crore liability, a figure below the book value of the Subject Land recorded in R2's financial statements for the preceding financial year. No special resolution under Section 180 of the Act was passed authorising the disposal of R2’s entire undertaking. R2's AGM for FY ended 31.03.2019 was

held only on 22.11.2021, and its Form AOC-4 for that year was filed only on 11.02.2022, digitally signed by R6, with the corresponding challan bearing the same date. Though P2 remained the only other director of R2 throughout this period in R8/RoC's records, he was not called to, or given notice of, any meeting at which the Conveyance was considered. Further, the Conveyance was executed in violation of the order of the Hon'ble Bombay High Court of 31.03.2021, restraining R2 from transferring or creating any charge on the Subject Land, already communicated to R10's & 14's counsel on 01.04.2021. It is noticed that a board resolution of 03.06.2021 appears to have been passed under Section 179 of the Act authorising directors to execute BTA Conveyance, PoA and all other agreements as may be required in connection with the aforesaid. However, no special resolution as required under Section 180 was passed to sell or dispose of the whole or substantially the whole of R2's undertaking. Admittedly, no notice of the said board meeting was served on P2, assuming that he had already been removed on 13.03.2021. We have already considered this aspect and held that the procedure for P2's removal, as laid down in the Act, was not followed and R8/RoC rejected the DIR-12 Form for insufficient documents. We also observe that the Hon'ble Bombay High Court, in Commercial Suit No.226/2016 (seeking declaration that R2/other defendants are jointly/severally liable to the plaintiff for 5000 sq.ft. built up area in the Project), restrained R2 on 31.03.2021, in respect of a portion of the property, and this restrain continued till 09.01.2023, when the parties settled the matter. The Conveyance appears to have been executed on 09.09.2021, during the continuance of the restrain order, and hence, appears to be in breach of the Bombay High Court order.

(c) Execution of Debenture Trust Deed and Indenture of Mortgage both dated 09.09.2021.

78. According to the Respondents, in order to continue the Project, R10 required funds. Hence, DTD of Rs.525 Crore was entered into between R10 & R14, on 09.09.2021, by which R10 agreed to issue debentures of Rs.525 Crore face value to IIFL. In order to secure the debenture payments, it was agreed that

exclusive first ranking charge by way of mortgage would be created by R10 & R2 in favour of R14, to create exclusive first ranking charge on R2's right, title and interest in the Project. Accordingly, R10 & R2 jointly executed Indenture of Mortgage on 09.09.2021, creating charge on the underlying lands and the Project. A Corporate Guarantee was also executed by R2 in favour of R14.

79. The Petitioners contend that the Subject Land conveyed by R2 on the previous day (08.09.2021) for an assessed stamp value of Rs.123 Crore was offered as security not less than 1.5 times the value of debentures, i.e., not less than Rs. 787 Crore, whereas Subject Land's development rights potential, in excess of Rs.2200 Crore, was also transferred by the above documents without attributing any value to R2. On the contrary, R2 in its affidavit in reply to I.A. No.2226/2021 stated that R2 has been joined as a party and mortgagor to the Indenture of Mortgage out of abundant caution only pending the transfer of the LOI by SRA in respect of the Project from R2 to R10. It is further clarified that R2 no longer has any right, title, interest or claim of any nature whatsoever in the Project, the underlying lands or the benefits of all approvals and permissions issued in respect thereof. It was, in fact, critical that the Slump Sale arrangement, Conveyance, PoA or Mortgage be executed in order to*, inter alia,* revive the Project and to save R2 from insolvency proceedings by Spenta or one of its other creditors. None of the promoters could take any steps despite defaults, invocation of Pledge and failure to regularise the loan/debt accounts. The Slump Sale arrangement, Conveyance, PoA and Mortgage were thus entered into bona fide, and in the Project's interest and the rights of all concerned, and for the exercise of R2's property rights in compliance with all applicable laws, including the provisions of the Act. To keep the company going and save the Project from being lost, it was imperative to enter into the aforesaid transactions in the interest of all stakeholders.

80. As regards the Petitioner's comparison between Rs.123 Crore mentioned in the Conveyance and the security cover mentioned in the DTD for Rs.525 Crore debentures, the Respondents submit that no separate value has been attributed to the Slump Sale, and the value mentioned in the DTD represents a

projected valuation of the Subject Land for future development used specifically as loan collateral as opposed to the current value of the encumbered Subject Land. Thus, the two are separate and distinct, and their valuation metrics fundamentally differ from any other standard property. The Respondents also submit that the execution of documents (BTA, Conveyance, etc.) took place six weeks before the NCLAT's order of 22.10.2021 directing the parties not to take any preceptive steps in the subject matter of the dispute. It is noticed that the board resolution of 03.06.2021, under Section 179 of the Act to execute BTA, Conveyance and PoA has been relied upon to execute the Indenture of Mortgage, though there is no specific mention of the Mortgage. The observations relating to the board resolution and the restraint order are equally applicable to the Mortgage. Further, the copy of the Corporate Guarantee stated to be furnished by R2 as security for the debentures has not been produced at any time.

81. The justification for undertaking a series of transactions is proved to be baseless on account of the subsequent initiation of R2's CIRP on 16.11.2021, just after two months by the FC for of a claim of Rs.1 Crore(appx.). According to the Petitioners, R2 possessed land valued at over Rs.1,000 Crore and had no institutional borrowings/mortgage over its assets prior to September 2021, yet was pushed into CIRP on the basis of the said claim. Apprehending that the CIRP was collusive, Petitioners attempted to prevent R2's CIRP admission but the intervention application was dismissed by NCLT. R2 challenged the admission order, which is presently pending before the Hon'ble NCLAT, without any stay being granted. During R2's CIRP, IRP admitted Phoenix ARC's claim, which is the assignee of the debt of Rs.525 Crore raised by R10, based on the Corporate Guarantee and Mortgage executed by R2, for Rs.629.9 Crore out of the total claims of Rs.926 Crore(appx.) admitted by him. The admission of Phoenix ARC's claim conferred upon it approximately 99.6% voting share in the CoC, thereby placing the CIRP of R2 effectively under the control of a single creditor whose claim arose from the very transactions challenged in the present C. P.

(d) Transfer of R2's Redevelopment Rights

82. It is submitted that R2 issued a No-objection Letter to the Slum Society on 11.11.2021 requesting transfer of the redevelopment rights over the Subject Land to R10. Thereafter, R2's representatives attended a General Body Meeting of the Slum Society on 24.04.2022 and consented to transfer of the redevelopment rights to R10. R 2, through its architect, also wrote to SRA on 17.08.2022, requesting substitution of the developer from R2 to R10. Accordingly, SRA issued letter of 21.09.2022 transferring the redevelopment rights to R10, and thereafter issued a LOI in the name of Respondent No. 10 on 22.11.2022.

83. It is pertinent to notice that the Petitioners filed I. A No. 2226/2021 on 08.10.2021 before the Hon'ble NCLAT on the information that the Respondents were taking steps which are prejudicial to R1's & R2's interests, and as such, if the actions were not stopped, they would be rendered shell companies. On 22.10. 2021, Hon'ble NCLAT directed the parties not to take any precipitative steps in the subject matter. We observe that R1 & R2 executed various documents, viz., BTA, Conveyance, Mortgage, Corporate Guarantee, and transfer of redevelopment rights, just four months after filing the C.P., and the preliminary replies by R1 to R7. We have no doubt that R1 & R2, being legal entities, are obligated to operate through their respective board of directors, and to continue their operations even amidst ongoing proceedings. However, the effect of those documents executed during the proceedings is such that the entire business undertaking of R2 has been transferred to R10 as a set off against the debts owed by R2 to R10. There appears to have been no effort made by the board of directors to ascertain the market value of the business concern, and the transactions were undertaken without any apparent rational commercial benefit to R2. Rather, R2 assumed an additional obligation under its Corporate Guarantee, thereby undertaking responsibility for the liabilities incurred by R10. It is concerning to note that, on one hand R2 was left with no asset, on the other it was made to bear the tax implications of the transaction and to execute the Guarantee to R10's borrowings. Moreover, the transactions

appear to have been done in defiance of the restraint orders that were in existence at the time of execution of the documents, and there is conspicuous absence of any evidence demonstrating proper conduct of meetings. Even in the CIRP of R2, the erstwhile directors arrayed as Respondents in the C.P., did not extend co-operation to the IRP or provide the necessary records, statutory registers, financial records, and other relevant information required to verify the transaction. Taking into account all relevant factors and the Respondents' conduct, it is concluded that the transactions carried out through these documents form part of a larger design to oppress or prejudice the interests of the Petitioners.

E. Effect of R2's CIRP on Company Petition

84. The records indicate that this Tribunal declined to pass any interim order in favour of the Petitioners in the C.P., on 29.07.2021, which was carried in appeal on 02.09.2021 before the Hon'ble NCLAT. During the pendency of the appeal, R2 executed BTA with R10 on 01.09.2021, for selling, transferring and assigning the business undertaking, as a going concern on Slump Sale basis, in accordance with Sections 50B & 2(42C) of the Income-Tax Act, 1961, for a consideration of Rs.1,00,000/-. R10 also agreed to assume the acquired liability of Rs.329,81,67,829/, which included Rs.291,21,01,639 payable by R2 to R10, and Rs.38,60,66,190/- owed by R2 to Primepushpak Real Estate Private Limited. As per the BTA, R2 was to execute Conveyance and PoA. The Conveyance was executed by R2 in respect of the Subject Land on 08.09.2021, in favour of R10. The Conveyance states that the Subject Land was part of the Slump Sale and that no separate value was assigned to it. However, stamp duty was paid on the market value of Rs.123,08,83,000/-. Immediately following the aforesaid transaction, R10 raised funds through the issuance of debentures for Rs.525 Crore under the DTD of 08.09.2021. The proceeds from this issuance were designated for repayment of prior outstanding dues and for financing additional development costs. IIFL subscribed to the debentures, and R14 was appointed as the debenture trustee. The repayment of the said debentures was secured through various documents. R2 & R10 executed Deed of

Hypothecation and created a first ranking charge over the Slum Project receivables, and other cash flows. R2 & R10 also executed the Mortgage on 09.09.2021 creating charge over their right, title and interest in the Slum Project and the Subject Land. Further, R11 pledged its entire shareholding in R2 through the Pledge Agreement, and R2 executed the Corporate Guarantee in favour of R14.

85. Petitioners assert that R2's CIRP is contingent upon the very Corporate Guarantee and Mortgage that are subject to challenge in this C. P. Phoenix ARC's claim/its consequent control of 99.6% in R2's CoC/subsequent liquidation application are all the consequence of the Mortgage/Corporate Guarantee created on 09.09.2021, the validity of which is challenged herein. A process born out of the very instrument under challenge cannot be used for excluding that instrument from the jurisdiction of this Tribunal.

86. The Respondents, however, assert that pursuant to R2's initiation of CIRP, which would culminate either in resolution plan/liquidation, the erstwhile directors/promoters would never regain its control/management, and every decision for R2 rests with the commercial wisdom of the CoC. Hence, so long as CIRP/liquidation continues, no reliefs sought against R2, insofar as they seek restoration of its management/interfere with the insolvency process, can be granted. Furthermore, proceedings initiated under Sections 241/242 of the Act cannot be used to reverse, suspend, or negate the effects of the CIRP.

87. Citing the order of NCLT Ahmedabad *in Pradyumankumar Dwarkadas Patel v. Bhupendrabhai Dwarkadas Patel & Ors.,* [CP 56/NCLT/AHM/2018], the Respondents submit that a pending petition under Sections 241/242 of the Act becomes infructuous upon the admission of the corporate debtor (CD) into CIRP, since the management of the CD vests in the RP and the powers of the erstwhile board stand suspended under Section 17 of the IBC. The judgements in *Entegra Ltd & Ors v Shree Maheshwar Hydel Power Corp Ltd & Ors.* [Company Appeal (AT) No 1287 & 1291 of 2022]; and the judgement in *Jagmohan Bajaj v. Shivam Fragrances (P) Ltd.* [(2018) 210 Comp Cas 84] are cited to argue that the IBC, being a special legislation having an overriding

effect under Section 238, the pendency of disputes between the directors or shareholders of a CD cannot be eclipsed by resorting to remedies under the Act. The judgement in *Urmila Bairagra v. Bairagra Builders (P) Ltd.* [2023 SCC OnLine NCLT 70023] is cited for the proposition that, upon the admission of a Company into CIRP, allegations of mismanagement and transactions prejudicial to the CD may be addressed through the mechanisms available under the IBC, including its avoidance provisions. The Tribunal held that, upon commencement of CIRP and the consequential moratorium under Section 14 of the IBC, it could not continue to proceed against the CD in a petition under Section 241 of the Act in respect of reliefs which were required to be dealt with under the insolvency framework. Reliance was also placed upon the judgments of the Hon'ble Supreme Court in *A. Navimnchandra Steels (P) Limited v. Srei Equipment Finance Ltd* [AIR 2021 SC 1180] and *Omkara Assets Reconstruction Pvt. Ltd. v. Amit Chaturvedi,* [2026 SCC OnLine SC 299] to contend that the IBC is a special statute enacted with the primary objective of ensuring revival and resolution of financially distressed companies. By virtue of Section 238 of the Code, its provisions override any inconsistent provisions contained in other laws. Proceedings under Section 7 of the Code are independent proceedings and cannot be automatically suspended merely because proceedings under the Act are pending.

88. Before considering the effect of the CIRP of Respondent No. 2 on the present proceedings, it is necessary to consider the object and scheme of the IBC. The long title summarises the objective of the law*, inter alia,* reorganisation and insolvency resolution of corporate persons, etc., in a time-bound manner, for maximisation of the value of assets of such persons and balance the interests of all the stakeholders. In *Swiss Ribbons Pvt. Ltd. v. Union of India,* [(2019) 4 SCC 17], the Hon'ble Supreme Court has held that the Code is, first and foremost, a legislation for reorganisation and insolvency resolution of the corporate debtor and that the primary focus is to ensure its revival and continuation as a going concern. The Court further observed that liquidation is contemplated only where resolution is not possible and that the Code is not a mere recovery mechanism for creditors. Therefore, it is primarily intended to

preserve the value of the corporate debtor and facilitate its resolution and, wherever possible, its revival as a going concern.

89. There is no doubt on the general proposition, as submitted by the Respondents, that by virtue of Section 238, the provisions of the IBC would prevail over any provision of other laws to the extent of inconsistency. However, Section 238 cannot be read to mean that the commencement of CIRP, by itself, renders every kind of proceeding either impermissible or infructuous. It is relevant to refer to the judgment of the Hon'ble Delhi High Court in *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.,* [2017, SCC Online Del 12189], wherein the Court was considering the question whether the proceedings under Section 34 of the Arbitration Act, need to be stayed, per Section 14(1)(a) of the Code. The relevant facts of the case are that if the proceedings are stayed, the company would be unable to execute the award given in its favour for an extended period till the moratorium exists, and would be unable to recover its dues, thereby further impeding its financial condition. The Court, after considering the object of the Code and the purpose behind the moratorium, held:

"10. In the light of above purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in as much these proceedings are not a debt recovery action" and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall be in sync with the purpose of moratorium which includes keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern."

90. Another aspect that warrants attention is that Section 238 of the Code confers an overriding effect to "the provisions of the Code" in their entirety rather than to any specific section, and is triggered when inconsistencies arise in relation to any other legislation. There appears to be no discernible conflict between the provisions of the Code and Section 241 of the Act, as the objectives of the enactments are entirely different and both the Code and the Act operate in their respective realms, addressing separate stakeholders. Moreover, even in the event of a perceived conflict, it is incumbent upon the Courts to apply the

doctrine of harmonious construction in order to reconcile two or more provisions of the law that might appear to be in conflict. We find no conflict that undermines the objective of IBC and the Act, or renders the adjudication of the present C.P. meaningless in light of R2's CIRP commencement. Further, R2's CIRP has commenced, overseen by a separate mechanism by another Court, the legality or otherwise of which is being determined by that Court. Additionally, attention must be drawn to Section 65 of the Code, which reads as under:

"65. Fraudulent or malicious initiation of proceedings. – (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) xxx.

(3) xxx."

91. Thus, Section 65 of the Code empowers the Adjudicating Authority (AA) under the Code to penalise and prevent the fraudulent or malicious initiation of insolvency proceedings for purposes other than genuine insolvency resolution. The primary objective of this provision is to deter the misuse of the process, thereby ensuring that the provisions of the Code are used strictly to revive distressed companies or for conducting fair liquidation, rather than to secure unfair legal advantages. When considering an application for initiation of the CIRP by financial creditors, the AA needs to be satisfied that a default has occurred and that procedural requirements have been fulfilled for this specific purpose. Notably, this does not preclude the AA from examining such issues even after the admission order/commencement of CIRP. Consequently, there are circumstances under which the erstwhile directors and promoters may regain control and management of the corporate debtor. It is pertinent to note that Section 65 does not specifically provide who may file an application under the said provision, indicating that any person who is prejudiced or affected by the process, or who possesses prima facie evidence of such malicious intent, may seek recourse. Therefore, the initiation of CIRP does not result in the automatic suspension or nullification of every proceeding under the law, the

determination of which is contingent upon the specific facts of each case. The scrutiny of circumstances surrounding the initiation of CIRP warrants continuation regardless of R2's admission into CIRP for the following reasons:

(i) Many documents affecting the entire undertaking and R2's assets were executed by parties with the full knowledge of R2's affairs are under scrutiny before this Tribunal. While these matters are still under the Tribunal's consideration, the Respondents proceeded to execute these documents without promptly notifying the Tribunal. Additionally, the Respondents have not offered any justification for engaging in a series of transactions within a brief timeframe, particularly in the absence of any evident urgency or commercial advantage to R2. In circumstances such as these, the Tribunal cannot be remiss in rendering justice to the affected party;

(ii) The sequence of transactions adversely affecting R2's interests warrants careful consideration. It is particularly significant that a company with substantial assets has been diminished to a state where it is incapable of settling a relatively modest debt of just one crore. Moreover, the Petitioners' endeavour to pay off the alleged debt, on the basis of which the CIRP has been initiated, was obstructed by the Respondents, who maintained control over R2/CD;

(iii) As per the report prepared by the RP and produced before us, the transactions under challenge in the C.P., could not be verified due to the incomplete records provided by the suspended directors. These records include*, inter alia,* statutory registers under the Act; minutes of meetings; share certificates; records of investments; details of related parties and related party transactions; litigation records; statement of borrowed funds; complete details of loans and advances; bank statements for the period leading up to R2's CIRP commencement date. As a result, the RP states that he is unable to independently verify the truthfulness, fairness, accuracy or completeness of the financial transactions or records pertaining to any period prior to R2's insolvency commencement date.

Therefore, the judgment in *Urmila Bairagra v. Bairagra Builders (P) Ltd*. (supra) is not applicable to the current circumstances;

(iv) The Hon'ble NCLAT is presently seized of the issues regarding admissibility of R2's CIRP and also fraudulent/malicious initiation of CIRP.

92. It is pertinent to note that 'malicious initiation' is not defined in the Code. However, the Hon'ble Supreme Court in *West Bengal State Electricity Board v. Dilip Kumar Ray,* [Civil Appeal 5188 of 2006] on 24.11.2006, defined the term '*malicious',* which is useful to interpret the *usage 'malicious initiation'*:

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin militia means badness, physical or moral – wickedness in disposition or in conduct – not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. when we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."

Given that the jurisdiction to assess this aspect falls squarely with the AA/NCLAT under the Code, we consider it inappropriate to express any opinion on this issue. Therefore, the primary consideration before us is whether the proceedings under Sections 241 and 242, insofar as they seek examination of transactions alleged to have been prejudicial to R2/CD and its interests, are necessarily inconsistent with the objectives of the IBC. In our view, the answer to this question cannot be determined solely by the existence of CIRP. The jurisdiction under Sections 241 and 242 of the Act is intended, *inter alia*, to examine any conduct concerning the affairs of a company which is prejudicial to the interests of the company and to provide appropriate reliefs where such conduct has occurred. When the exercise of such jurisdiction is directed towards protection or restoration of the assets and interests of the corporate debtor, such efforts should not be viewed as opposing the insolvency framework simply because the corporate debtor is currently undergoing CIRP.

Moreover, if the proceedings under Sections 241 and 242 are capable of resulting in restoration or preservation of assets or value belonging to the corporate debtor, their continuation cannot be characterised as inconsistent with the IBC merely because the corporate debtor is undergoing CIRP.

93. The question, from a different perspective, pertains to whether the continuation of the present proceedings would frustrate R2/CD's CIRP or, on the contrary, assist in determining and protecting the value/assets of the CD. This distinction is particularly significant in instances where the transactions which are the subject matter of the C.P. impact the financial position of the corporate debtor, and the associated liabilities subsequently cited in the CIRP. If, upon examination, the allegations raised in the present proceedings are found to have substance and the impugned transactions are found to have resulted in depletion, diversion or encumbrance of R2/CD's assets to its detriment, the remedies under Sections 241 and 242 may facilitate the restoration or protection of value of its assets. Such an exercise would advance the objective of value maximisation, which is itself a fundamental purpose of the Code.

94. It is felt that Section 238 of IBC should not be invoked to shield transactions affecting the CD from scrutiny simply because those transactions have subsequently become relevant for determining its liabilities in CIRP. The overriding provision gives primacy to the IBC where there is inconsistency; however, it does not retrospectively validate transactions that are otherwise subject to examination under another statutory framework. The Tribunal recognises that the subsequent decision of CoC to pursue liquidation is a matter arising within the insolvency framework. Nevertheless, such subsequent developments do not, by themselves, determine the legality or otherwise of transactions which preceded the CIRP, and which are independently under contest before this Tribunal. The implications of liquidation must not serve as a justification for circumventing the examination of transactions that may have contributed to the decline in R2/CD's asset value, provided that such allegations are otherwise established on the material presented to the Tribunal.

(F) Continuing Acts of Oppression & Mismanagement and Limitation

95. The Petitioners state that R1 is today a shell company, with its entire shareholding in R2 extinguished through a fabricated Invocation of Pledge. R2, which once owned land worth over Rs.1,000 Crore, is presently undergoing CIRP initiated for a claim of Rs.1 Crore, with a single creditor now holding 99.6% control of the CoC. In the circumstances, the Petitioners filed IA No.106/2026 to bring on record material subsequent developments which have arisen during the pendency of the proceedings before this Tribunal, the Hon'ble NCLAT, and the Hon'ble Supreme Court in the last about 5 years, and which are directly germane to the factum of oppression and mismanagement as pleaded in the C. P. The affairs of R1 & R2 continue to be conducted in a manner prejudicial to the Petitioners, and the impugned acts/omissions are continuing even as on date, forming part of a continuing course of oppression and mismanagement. The Petitioners further submitted that it is necessary to consider consequential prayers for declaratory and restorative reliefs for the complete and effective redressal of their grievances.

96. While the Respondents vehemently raised the question of limitation, this Tribunal, *vide* order dated 01.06.2026, allowed the amendments, leaving the question of limitation to be decided at the time of final hearing, considering it a mixed question of fact and law. We may, therefore, consider the facts of the case first.

97. The C.P. was filed on 04.05.2021 under Sections 241/242/244 r/w Section 59 and other applicable provisions of the Act originally against R1 to R9 alleging the attempt to illegally oust P1 from R1, and illegally appointing R6 & R7, also attempting to illegally oust P2 as R2's director. The reliefs claimed in the original C.P. included: *"Pass an order declaring that the appointment of the Respondent No. 6 and Respondent No. 7 as directors of the Respondent No. 2 as null and void."* (Prayer Clause (iii), and *"Pass an order declaring that any or all resolutions passed by the Respondents, without the approval of the Petitioners, including the resolutions passed at the Extraordinary General Meeting dated February 24, 2021, as null and void."* (Prayer Clause (vi). The Petitioners filed

C.A. No.147/2021 on 21.05.2021 for urgent listing, apprehending that the Respondents were making unlawful filings with RoC with the intent to nullify P1's shareholding in R2, and also making attempts to oust the Petitioners from R1& R2. It was also stated that the Petitioners have reasonable apprehension that the Respondents were attempting to alienate the assets of R1 & R2. While hearing the parties on 29.07.2021, this Tribunal declined to pass any interim order. Therefore, Company Appeal (AT) No.104/2021 was filed on 02.09.2021. During the pendency of the appeal before the Hon'ble NCLAT, R2 executed the Conveyance in respect of the Subject Land on 08.09.2021, in favour of R10; and executed the Indenture of Mortgage dated 09.09.2021. The Petitioners filed I.A.No.2226/2021 on 21.10.2021 in the Appeal, wherein R2 disclosed execution of the Conveyance/Mortgage. On 09.11.2021, R2 annexed the copy of DTD/Mortgage. In this background, the Petitioners filed C.A. No.560/2022 on 27.10.2022, seeking (a) leave to bring on record the subsequent events; (b) injunction against Respondents from taking precipitative steps in light of the NCLAT Order; (c) injunction against R10 R14 from creating any third-party rights on the Subject Property including issuance of no-objection certificate to allottees/prospective allottees till the disposal of the C.P.; (d) declaration that the Board Meeting of 03.06.2021 is null and void and all subsequent decisions taken, including purported Conveyance/Mortgage as null and void. C. A. No. 560/2022 is pending disposal. Meanwhile, Respondents filed C.A. No. 199/2021 under Section 8 of the Arbitration Act to refer the parties to Arbitration in accordance with the SPA, which was dismissed on 11.01.2024.

98. The Petitioners partly challenged the order of the Hon'ble NCLAT in Civil Appeal Nos. 9052-9053/2022 before the Hon'ble Supreme Court, which arose from the consideration of the nature and scope of interim protection necessary to preserve the subject matter of the dispute pending the adjudication of this C. P. These Appeals have been finally disposed of by the Hon'ble Supreme Court on 11.03.2026. By the said order, the Hon'ble Supreme Court has*, inter alia,* directed this Tribunal to proceed with the pending matters between the parties to the *lis*, making an endeavour to decide the same expeditiously. The Hon'ble

Apex Court has expressly stated that all contentions of the parties on merits are left open to be considered by this Tribunal.

99. In this background, the Petitioners stated that the amendments were necessitated to bring on record materials and subsequent developments which have arisen during the pendency of the proceedings before this Tribunal, the Hon'ble NCLAT and the Hon'ble Supreme Court in the last about 5 years, and which are directly germane to the factum of oppression and mismanagement as pleaded in the C. P. It is further stated that the affairs of R1 & R2 continue to be conducted in a manner prejudicial to the Petitioners, and that the impugned acts/omissions are continuing course of oppression and mismanagement. In the circumstances, the amendments incorporated certain declaratory prayers in respect of the impugned transactions/corporate actions complained of in the C.P., as well as consequential restorative reliefs. It is submitted that as these prayers flow directly and inevitably from the acts of oppression and mismanagement already pleaded, the amendment did not introduce a new cause of action.

100. Per contra, Respondents contend that the amendment to the C.P. was introduced after a period of three years from the date on which the right to apply accrues under Article 137 of the Limitation Act, 1963, and that the amendment introduced entirely new allegations seeking fresh/independent reliefs traveling beyond the scope of this C.P. While the C.P. seeks reliefs under Sections 241/242 of the Act, the amendments seek to introduce insolvency-related developments, which fall within the framework of IBC. The proposed amendments would expand the *lis* indefinitely and keep the C.P. perpetually evolving. Section 422 of the Act r/w Rules 153 and 155 of the National Company Law Tribunal Rules, 2016, requires any application for amendment to be moved expeditiously. The Petitioners' attempt is to fill the gaps in the C.P. and to introduce documents/averments which were already within their knowledge.

101. The only question left open at the time of allowing the amendment application was whether limitation applies in the applicable facts and circumstances of the case. It is pertinent to observe that, immediately after filing the C.P., on

04.05.2021, the Petitioners filed C.A. No. 147/2021 on 21.05.2021 for urgent listing, on the apprehension*, inter alia*, that the Respondents were attempting to alienate the assets of R1 & R2. As no interim protection was granted, the Petitioners pursued the remedy before the Hon'ble NCLAT, during the pendency of which the execution of BTA/Conveyance/Mortgage, etc., was completed. In the circumstances, the issue for our consideration is whether each subsequent act gives rise to a separate cause of action.

102. In *A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation,* [AIR 1967 SC 96, (1966) 1 SCR 796], the Hon'ble Supreme Court held:

"…*the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation."*

The Court further explained that a new cause of action means "a new claim made on a new basis constituted by new facts", while a new case means a "new set of ideas". The above principle was reiterated in *LIC of India v. Sanjeev Builders Private Limited & Anr.,* [Civil Appeal No. 5909 of 2022], decided on 01.09.2022, wherein the Hon'ble Supreme Court held that all amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defense taken. Similarly, in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil,* [AIR 1957 SC 363, 1957 SCR 595], the Court observed:

"*The amendments do not really introduce a new case, and the application filed by the appellant himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation*."

103. Another factor which needs consideration is whether the impugned acts form part of a continuing course of oppression and mismanagement. In *H.L. Taneja v. Jitendra Mohan Khungar,* [Misc. Appeal (Com.) No. 1 of 2006], the Hon'ble Madhya Pradesh High Court held that, even if the Limitation Act applies,

oppression or mismanagement may constitute a continuous act which can continue until the damage caused is rectified or made good. Likewise, in *Surinder Singh Bindra & Ors. v. Hindustan Fasteners (P) Ltd. & Ors.,* [AIR 1990 Delhi 32], the Hon'ble Delhi High Court held:

"*if the acts complained of form part of the same transaction constituting oppression or mismanagement these acts can also be looked into even if they occurred three years prior to the institution of the petition."*

104. Applying the aforesaid principles to the present case, we find that the amended reliefs are intrinsically connected with the foundational corporate acts already under challenge. The subsequent transactions are consequences of, or further exercises of, the very corporate authority whose validity has already been questioned in the original proceedings. Further, those subsequent transactions had already been specifically challenged through C.A No.560/2022. The amendment, therefore, does not constitute the first initiation of such challenge, but brings an existing challenge into the consolidated pleadings. Consequently, the date of amendment cannot be treated as the date on which the cause of action for the subsequent transactions arose for the first time. The amendment therefore does not create a new cause of action, but an additional approach necessary to the same facts complained of in the C.P. The C.P. already challenged the acts and corporate authority from which the subsequent acts complained of are stated to have arisen. The Respondents had already been put on notice of the challenge and had contested it. The mere fact that the subsequent events occurred during the pendency of the proceedings does not, by itself, make them a new and independent cause of action. Consequently, we are of the view that the amendment is not barred by limitation.

(G) Power of Tribunal under Sections 241/242 & Reliefs

105. The ambit of the power of the Tribunal under Sections 241/242 cannot be answered in the abstract, without examining the nature and substance of the transactions complained of, the manner in which they were undertaken and their effect on the affairs of R1 & R2. It is only upon examining these transactions that it can be determined whether the acts complained of are

matters falling within the ambit of Sections 241/242 of the Act. Therefore, an examination of the impugned transactions is integral to, and cannot be separated from, the determination of the jurisdictional objection raised by the Respondents.

106. The case of the Respondents is that, before the entry of the Petitioners, R2 availed a loan of Rs. 144 Crore from IIFL for financing the construction/development of the Slum Project on the security of mortgage of the Subject Land, R3's personal guarantee, and pledge of 50% shareholding of R1 in R2. However, due to R2's financial distress, it was unable to execute the Slum Project and was looking to bring in a partner to take over the development and its liabilities. Pursuant to discussions and negotiations, the JDA of 02.05.2016 was executed, under which R2 granted R10 exclusive development rights in respect of the Slum Project, including the right to use/utilise all present, future, additional or further FSI in any form and complete the Slum Project and deal with the free sale area, on the terms and conditions set out therein. R10's obligations under the JDA included funding the expenses in respect of the Slum Project and offer to R2, 50% of the gross profit (before tax) on achieving minimum 7,76,000 sq. ft. saleable area or 35% of the gross profit (before tax) if the saleable area is less than 7,76.000 sq. ft, repay IIFL the loans taken by R2 for the Slum Project within 15 days of the signing of the JDA, etc. R2 also agreed to assist R10 in obtaining full Occupation Certificate from the SRA in respect of the Rehabilitation Buildings to be built on the Slum Project by fulfilling all conditions of the Commencement Certificate, to obtain necessary permissions and sanctions and get its name added as a joint developer in the LOI issued by SRA, etc.

107. On 06.05.2016, i.e., three days after the execution of JDA, the Petitioners entered into SPA and Side Letter to acquire the entire shareholding of R1 and take over R2's control and management, including the development of the Slum Project; In the same month, in order to raise funds for the Slum Project, R10 issued debentures for Rs.240 Crore, which were subscribed by IIFL, and R14 was appointed as the debenture trustee. Respondent No.10 claims that it

disbursed about Rs.375 Crore and legitimately entered the Slum Project prior to the dispute regarding the Petitioners' entry into R1 and the directorship dispute arose.

108. On 10.12. 2019, R2 & R10, with IIFL's express consent/confirmation, arrived at a mutual understanding to cancel the JDA on the terms and conditions contained therein. The terms of cancellation of the JDA include*, inter alia,* payment of Rs.400 Crore, which includes the amount taken by R2 and its group companies on or before 01.04.2021. R10 asserts that this letter has become redundant on account of the default in repayment of the obligations before 01.04.2021. R10 states that, because R2 failed to fully discharge its obligations under the JDA, it was forced to incur additional expenses and consequently defaulted on its repayment obligations under the debenture for Rs.240 Crore. As a result, R14 invoked the Pledge, which led to a change in the shareholding and management of R1 & R2, constituting the alleged oppression and mismanagement.

109. In the above background, the acts attributed to R14 principally concern the enforcement of security, pursuant to the Earlier DTD-1 and Pledge Agreement, and the consequential transfer of pledged shares. R10 submits that it is a completely independent and distinct third party, and has no common director, shareholder, or promoter with either R1 or R2, and is contesting this C.P. to protect its independent commercial interests in these proceedings. The statute itself makes the legislative intent to protect commercial transactions with third parties like R10 explicit. These are acts undertaken in the course of enforcement or protection of creditor/debenture-holder rights and not acts constituting oppression or mismanagement of R2's affairs. Section 241(1)(b) expressly excludes a material change brought about by, or in the interests of, creditors, including debenture holders. The Petitioners therefore cannot rely on the consequences of creditor enforcement to manufacture a cause of action against R14 under Sections 241/242. It is further submitted that under the proviso to Section 242(2)(f) of the Act, this Tribunal is expressly precluded from

granting any relief of termination, setting aside, or modification of agreements with a third party viz., R10, without that party's express consent.

110. Respondents assert that Section 241(1)(b) excludes a change in management genuinely brought about by or in the interest of a creditor acting within its own rights from the scrutiny of oppression and mismanagement. The induction of R6 & R7 into R2's board, and the consequent change in its management, was a valid exercise of secured rights on default. The Respondents rely on *Suresh Chandra Marwaha v. Lauls (P) Ltd.,* [(1978) 48 Comp Cas 110] for the proposition that a change in company management brought about by, or in the interest of, the company's creditors does not afford a cause of action to a member under the predecessor provision to Section 241(1)(b), and that a removal of a director in accordance with the statute cannot found an oppression claim.

111. As the contentions relate to the breadth of powers of this Tribunal, we need to notice the provisions of Section 241 and 242 of the Act. Sections 241(1) and 242 (1) & (2), which deserve consideration:

"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.

242. Powers of Tribunal. — (1) If, on any application made under section 241, the Tribunal is of the opinion—

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

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(1) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made."

112. Section 241(1)(b) excludes a material change brought about by, or in the interests of, creditors, including debenture holders. However, this raises an important question: Does this exemption imply that the Tribunal cannot scrutinise changes proposed or made by creditors? In our assessment, the answer is in the negative. To maintain that such changes remain outside the scope of Section 241, it is incumbent upon the creditor to demonstrate that they arise from the legitimate exercise of powers conferred by financing and security documents and that they adhere to the provisions of law. In the absence of

sufficient evidence to support these criteria, the changes instigated by the creditor's actions would fail to qualify for the exclusion specified under Section 241(1)(b). In essence, where there is clear evidence of improper exercise of power, procedural irregularities, or a question as to the legality of the change, the exemption is not available. In *Suresh Chandra* (supra), the only instance stated as an act of mismanagement was the removal of the appellant from the company's directorship, and it was not shown that the resolution removing him from the directorship was illegal. A change in management brought about by, or in the interest of creditors, in our considered view, is excluded only if the change is done in accordance with law and its legality is not in question. If a management change is shown to be illegal, it cannot be excluded or protected on the sole ground that it was carried out by, or in the interest of, creditors. In the present case, it has been observed that there is a distinct lack of evidence regarding issuance of notices, circulation of the agenda, proper documentation of meetings, attendance records, and quorum requirements. Consequently, the principles established in *Suresh Chandra* (supra) are not applicable to this case.

113. The assertion that the Tribunal's only power to set aside a third-party transaction is Section 242(2)(g), which is confined to transactions made or done within three months before the date of application, requires a thorough understanding of the provision's overall context. Sub-section (2) begins with the expression *"without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for"*. Consequently, the illustrative powers enumerated therein are not intended to restrict the very wide nature of the power conferred on the Tribunal. This interpretation is further substantiated by Section 242(2)(m), which empowers the Tribunal to make provision for any other matter, in the opinion of the Tribunal, it is just and equitable that provision should be made. However, the argument posits that there exists an implied restriction concerning termination of third-party transactions as stipulated under Section 242(2)(f) and (g). It is argued that, as per Section 242(f), the termination of third-party transactions cannot be done except after due notice and after obtaining the consent of the party concerned,

while Section 242(2)(g) restricts consideration solely to transactions made or done within three months before the date of application. A literal interpretation of the provisions of Section 242(2)(f) indicates that termination of third-party transactions necessitates obtaining the consent from the party concerned, in contrast to the stipulation in Section 242(2)(g), which does not impose such a requirement for transactions conducted within the three-month period before the filing of the application. Given that clauses (f) & (g) of sub-section (2) of Section 242 operate independently, applying them concurrently presents inherent challenges that may lead to contradictory outcomes. A plausible interpretation of these diverse sub-clauses, along with the residual authority in Section 242(2)(m) to deal with any other matter, which, in the opinion of the Tribunal, it is just and equitable that provision should be made, is that they exemplify the nature of the reliefs that can be granted and do not intend to restrict the wide nature of the powers conferred on the Tribunal.

114. It is also contended that R10 is a bona fide purchaser for value of the subject land under a concluded, registered Conveyance dated 08.09.2021, that the Conveyance and the Mortgage dated 09.09.2021 remain valid and binding notwithstanding any internal irregularity said to attach to R2's board resolution dated 03.06.2021, and that, in any event, the Petitioners' challenge amounts in substance to a prayer for the termination, setting aside, or modification of an agreement between R2 and R10 within the meaning of Section 242(2)(f) of the Act, such that no order can be made without due notice to, and the consent of, R10. It is contended that this Tribunal's only power to set aside a third-party transaction is Section 242(2)(g), confined to an act *"made or done... within three months before the date of the application,"* and that beyond that window the power does not exist. The Respondents, relying on the judgment in *Incable Net (Andhra) v. Avaksh Broadband* (2008 SCC Online AP 832), contend that R10 is an independent corporate entity unrelated to R1 & R2. Under the proviso to Section 242(2)(f) of the Act, this Tribunal is expressly precluded from granting any relief of termination, setting aside or modification of agreements with a third party, viz., R10, without that party's express consent. Relying on the judgement of the Hon'ble Gujarat High Court in *Mohanlal Ganpatram & Ors. v. Shri Sayaji*

Jubilee Cotton and Jute Mills Co. Ltd (AIR 1965 Guj 96), the Respondents assert that a Petition under Section 241/242 of the Act, intended to interdict ongoing oppressive conduct, cannot be utilised to set aside completed transfers of property made by a company in favour of third parties beyond the three-month window stipulated by Section 242 (g) of the Act. The relief under Section 242 is preventive and does not extend to invalidate finalised sales or transfers to third parties. It is submitted that the Hon'ble Court has recognised that setting aside such completed transactions would create uncertainty for third parties dealing in good faith and discourage lawful business dealings, ultimately harming the company's interest.

115. The contentions of R10 regarding its independence in the actions need to be examined against the factual matrix of the case. The records show that R10 started developing the Slum Project by raising funds through the issue of debentures, which were subscribed by IIFL. In other words, R10 borrowed funds from IIFL to be utilised for the Slum Project. The borrowing of R10 was secured, *inter alia,* by pledge of shareholding in R2. The default of R10 in respect of the borrowing/debentures triggered invocation of the Pledge, which paved the way for induction of representatives of IIFL (R 6 & R7) as directors on R1's board and execution of transfer documents (BTA, Conveyance and transfer of redevelopment rights) in R10's favour. Thus, R10 benefited from its own default to acquire R2's Slum Project, through the route of enforcement of security, thereby wriggling out of the rigours of JDA and alleged cancellation. It is also pertinent to note that a public notice dated 16.03.2021 was issued on behalf of the Respondents in *Times of India* by Khaitan and Co., Advocates, for title search in respect of the Subject Land. In response to the public notice, P1's Advocate issued a counter public notice asserting its rights as a 40% owner with a contractual entitlement to 100% shares in R2. Additionally, in another matter, the Hon'ble Bombay High Court passed an order restraining R2 from selling/assigning/transferring any charge on the Subject Land, which was in force at the time of execution of transfer documents. Petitioners have also filed this C.P., and sought interim protection against the transfer of the Subject Land. Although R10 was not a party to the civil suit before the Hon'ble Bombay High

Court, and this Tribunal had not passed any restrictive order, R10 appears to have been fully aware of the public notice and the pending legal proceedings. Despite being fully aware of the circumstances, R10 went ahead with the transfer documents and cannot now plead that it is a third party and a bona fide purchaser for value of the Subject Land.

116. The role of IIFL (subscriber to the debentures) and R14 (debenture trustee) also needs to be examined. The records show that IIFL funded R2 even before the entry of Petitioners and also funded the Slum Project by subscribing to the debentures issued by R10. R14 acted as the debenture trustee for the debentures issued. Subsequently, R14 stated to have invoked the Pledge, but there is no proper explanation/production of documents as to how and when the physical shares were transferred to IIFL, as it stated to have exercised its rights as shareholder of R2 for induction of R6 & R7 and removal of P2 as R2's director. R6 & R7, who purportedly authorised the Conveyance and other documents, were stated to be employees of IIFL. Neither R14 provided any satisfactory explanation, nor did R6 & R7 answer this, as it stated that it had transferred its shares to *Academia* (now Keemaya, R11) on 28.05.2021. Despite the default and enforcement of security, IIFL opted to fund the same party (R10), the same Project, with higher exposure of Rs.525 Crore. Furthermore, there is no record to show that R14 enforced other securities, including the personal guarantee of R3. In the circumstances, we are not in agreement with the argument that R14 should be treated as independent or third party in the whole scheme of things. The contention of R10 & R14, that they are protected by the doctrine of indoor management against the challenge founded on internal irregularities in R2's board and AGM resolutions, cannot be accepted. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. Under this doctrine, persons dealing with the company may presume that the internal requirements prescribed in the memorandum and articles have been properly observed. Therefore, the doctrine of indoor management protects outsiders dealing or contracting with a company, whereas the doctrine of constructive notice protects the insiders of a company

or corporation against dealings with the outsiders. However, suspicion of irregularity has been widely recognised as an exception to the doctrine of indoor management. The doctrine does not protect where the circumstances surrounding the contract are suspicious and therefore invite inquiry. In *Progfin Private Limited vs. M/S. Ganesh Benzoplast Limited* [Company Appeal (AT) (Ins)No. 1565 of 2025], the Hon'ble NCLAT recognised that the shield of doctrine of indoor management can be exercised by third party only if the third party could not, from the information available in the public domain, ascertain what was happening inside the company. The facts of the present case prove otherwise. Defaults in filing under Sections 92 and 137 are matters of public record on the RoC' portal, not a hidden internal procedure. Further, R14 has been the debenture trustee in respect of the Subject Land since 2017, and was intimately connected with R2's affairs and in a position to know its filing status and other defects. Thus, we are of the view that the Respondents are not protected by the said doctrine.

117. The Hon'ble NCLAT in *Infrastructure Leasing & Financial Services Ltd. v. Union of India & Ors.,* [2026 SCC OnLine NCLAT 892] considered, *inter alia,* the question whether, for the exercise of jurisdiction under Sections 241/242 by the Tribunal to terminate an agreement, obtaining consent of the parties concerned is a condition precedent. After analysing the decisions of the Hon'ble Bombay High Court in *Bennet Colman & Co. v. Union of India,* [(1977) 47 Comp Cas,92] and in *Ravi Kiran Agarwal v. Moolchand Shah,* [(2009) 152 Comp Cas 637] and relying on the judgment of the Hon'ble Delhi High Court in *Pearson Education Inc. v. Prentice Hall India (P) Ltd.,* [(2007) 136 Comp Cas 294], which has been approved by the Hon'ble Supreme Court in *M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja,* [(2008) 6 SCC 750], the Hon'ble NCLAT held that powers under Section 242 are wide and the said powers can also be exercised by the Tribunal for terminating or modifying any contractual arrangement. Coming to Section 242(2)(f) proviso, the said provision is only an instance where termination, setting aside or modification of any agreement between the company and any person is to be made by the Tribunal in exercise of Section 242(2). When termination, setting aside or modification of any agreement is to

be undertaken under Section 242(2)(f), notice and consent of the party is required, but the above clause cannot control the generality of the power which is vested in the Tribunal in Section 241(1) to make such order as it thinks fit.

118. The Petitioners have also cited many judgements whereby the Hon'ble NCLAT and this Tribunal, in exercise of their powers under Sections 241/242, have cancelled, set aside or declared void registered transfer documents notwithstanding the third party rights are being affected due to such cancellations, viz., *M.A.S. Subramanian v. T.S. Sivakumar,* [Company Appeal (AT) No. 12 2018]; *Gangadhar Madupu v. Katta Corp Pvt. Ltd. & Ors.,* [Company Appeal (AT) No.3 of 2018], and affirmed by the Hon'ble NCLAT in *Ajay Kumar Agrawal & Ors. v. Rancy Construction Pvt. Ltd. & Ors.,* [Company Appeal (AT) No. 88 of 2022*]; Ajay Kumar Kedia & Ors. v. Anita Kedia & Ors.,* [2019 SCC Online NCLAT 477*]; Shri Neelamber Agrawal vs. Neel Padam Builders* [(Company Petition No. 120 (ND) of 2009)]*; and Kathirkutty Augusthy & Ors. v. Alexander Correya & Ors.,*[Company Appeal (AT) No.338 of 2018].

119. Another argument raised by the Respondents is that, even if the Tribunal is assumed to possess the powers under Section 242 to terminate sham, fraudulent or colourable devices, the Petitioners have not successfully demonstrated this assertion, relying instead on a mere allegation of fraud. This argument requires a careful examination of the pleadings regarding allegations of fraud, with the standard of proof being the balance of probabilities, particularly for the limited purpose of considering the corrective reliefs sought in the Company Petition. In *Shailja Krishna v. Satori Global Ltd.,* [2025 INSC 1065], the primary issue before the Hon'ble Supreme Court was whether the NCLT had the jurisdiction to decide on the validity of the gift deed, which was alleged to be fraudulent. The Hon'ble Supreme Court held that the NCLT has full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the Company, including but not limited to the AoA and the Memorandum of Association. It is pertinent to note that the Petitioners have consistently asserted allegations of fraud throughout the C.P., providing specific dates,

documents, and relevant circumstances under which the fraudulent actions were purportedly carried out. The Petitioners have delineated a sequence of events detailing the attempted erasure of P1's shareholding, leading to continuing acts of oppression and violations of protective orders. It is submitted that despite the repeated rejection of attempts to remove P2 as director, the Respondents continued to treat as if P2 had been removed. P2's Serious Complaint dated 13.03.2021 to R8/RoC alleged *"a sophisticated and complex financial and corporate fraud committed by the above-mentioned Respondents"*. It is also contended that the manner in which P2 was kept away from the decision-making processes, along with the timing/execution of transfer documents related to R 2, allegedly demonstrates a deliberate design to defraud and undermine the interests of R1 & R2. The amended C.P., pleads that R2's financial statement for FY2020-2021 was adopted without notice to P2 to *"legitimize fraudulent corporate actions"*. Additionally, it is alleged that the non-filing of accounts since FY2021-2022 constitutes *"concealment of fraudulent transactions and deliberate suppression of statutory disclosures"*, and that the corporate guarantee was *"executed by the fraudulently inducted directors"*. In summary, the allegations posit that objectives unattainable through lawful corporate process were achieved through a coordinated design of capturing R2's board, nullifying obstructive shareholding, unlawfully installing directors, removing the sole director poised to object, and transferring the entire R2's assets to a third party against the interests of both companies.

120. We have already observed procedural irregularities in the appointment of R6 & R7, as well as in the attempted removal of P2 as R2's director, resulting in violations of Sections 169 & 173 of the Act. No document has been produced to substantiate that meetings were duly convened, quorum was established, notices were issued, relevant documents were circulated, or minutes were accurately recorded. Furthermore, the resignation of R3, R6 & R7 along with induction of R12 & R13 as replacement of R2 was also effected through purported board meetings, which did not include notice to P2. Additionally, as per Section 180 of the Act, the board of directors of a company may only exercise the powers to sell, lease or otherwise dispose of the whole or

substantially the whole of the undertaking of the company only with the consent of the company by a special resolution. No such shareholders' approval is claimed to have been obtained for execution of the BTA and the Conveyance. However, it is contended that R2, being a private company, stands exempted from Section 180 by notification issued under Section 462 of the Act, and the board resolution of 03.06.2021 accordingly sufficed on its own. It is noted that the exemption on which the entire defence rests is not unconditional. Notification G.S.R. 464(E) dated 05.06.2015, as amended by G.S.R. 583(E) dated 13.06.2017, provides that the exemption from Section 180 *"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."* A private company in default of either filing loses the exemption and remains fully governed by Section 180. R2 failed this very condition on its own record, as its AGM for the year ended 31.03.2019, due by 30.09.2019 under Section 96(1), was held only on 22.11.2021, and its Form AOC-4, due under the last proviso to Section 137(1) by 30.10.2019, was filed only on 11.02.2022. Consequently, R2 was in continuous, unremedied default under Section 137 from 31.10.2019 to 11.02.2022, a period that fully spans the Conveyance of 08.09.2021. As a result, the exemption is inapplicable, and Section 180(1)(a), which governs the disposal of its sole undertaking, remains in full force.

121. Another aspect which invites our attention is the restraint orders at the time of transfer. It is evident that the Hon’ble Bombay High Court, by order dated 31.03.2021, restrained R2 from transferring or creating any charge on the Subject Land and the order was stated to have been communicated to the Counsel for R10 & R14 on 01.04.2021. Despite the aforesaid order, the Conveyance came to be executed on 08.09.2021 and, immediately thereafter, the Mortgage was executed on 09.09.2021. These transactions cannot be examined merely as independent commercial transactions, particularly when the very purpose of seeking ad-interim protection was to prevent the creation of third-party rights.

122. Subsequently, the Hon'ble NCLAT, by a further order dated 22.07.2022, specifically ordered that "*In the meanwhile, status quo prevailing as on today in the matter shall be maintained by the parties and the Respondents should not create any redevelopment rights in favour of third party, till next date of hearing*". In an apparent breach of the status quo order passed by the Hon'ble NCLAT, R2 appears to have issued a letter to the SRA on 17.08.2022, requesting substitution of the developer, pursuant to which the SRA, by letter dated 21.09.2022, transferred the redevelopment rights, and issued LOI in R10's name on 22.11.2022.

123. The effect of actions in defiance of the orders passed by the Code was examined by the Hon'ble Supreme Court in *Surjit Singh v. Harban Singh & Ors*. [(1994) 2 SCC 266], and held:

"4…In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only to be required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes…"

124. The decision in *Surjit Singh* (supra) was followed by the Hon'ble Delhi High Court decision in *RMG Builders and Developers Pvt. Ltd. v. USG Construction Pvt. Ltd.,* [MANU/DE/2692/2015, Cont. Cas (C) 86/2012] and also relied upon *Keshrimal Jivji Shah v. Bank of Maharashtra,* [MANU/MH/0344/2004: (2004) 122 Comp Cas 831 (Bom)], where the Hon'ble Bombay High Court held:

"It is time that we recognize the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld…"

The Hon'ble Delhi High Court held, at Para 8 of *RMG Builders* (supra):

"Keeping in view the aforesaid as well as the fact that the impugned sale deeds had been executed in violation of a stay order, this Court sets aside/annuls the four sale deeds dated 15th July, 2010, 26th February, 2010, 23rd June, 2010 and 21st April, 2011 executed by the respondents and the status quo ante as prevalent on 14th October, 2009 is restored."

125. It is also contended by the Respondents that the Petitioners had themselves recognised the contractual nature of their alleged rights by invoking proceedings under Section 9 of the Arbitration Act, arising out of the SPA. Although those proceedings were withdrawn by the Petitioners with liberty to institute fresh proceedings, no such proceedings were thereafter pursued. Thus, the Petitioners cannot now seek to convert the same contractual dispute into proceedings under Sections 241/242 of the Act, when they treated their grievance as one arising out of the SPA. In *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad,* [(2005) 11 SCC 314]*,* the Hon'ble Supreme Court held that Sections 241/242 are an exception to the general civil remedy, available only where majority shareholder illegality is pleaded and proved with clarity and precision. The Respondents further submit that proceedings under Sections 241/242 of the Act are in the nature of an alternative remedy to winding up of the company on just and equitable grounds. Thus, unless the applicants first establish that the facts justify the making of a winding-up order on just and equitable grounds, the jurisdiction under Sections 241/242 cannot be invoked. The Respondents have relied upon the judgment of the Hon'ble Supreme Court in *Shanti Prasad Jain v. Kalinga Tubes Ltd.,* [AIR 1965 SC 1535]*,* wherein it was held that an action under Section 397 of the 1956 Act, is an alternative to winding up and that establishing a case for just and equitable winding up is a preliminary requirement before relief against oppression can be granted. The Hon'ble Supreme Court further held that isolated acts are insufficient and there must be continuous acts of oppression, which are burdensome, harsh and wrongful. The aforesaid principle has consistently been reiterated by the Hon'ble Supreme Court in *Chatterjee Petrochem (India) Pvt. Ltd. v. Haldia Petrochemicals Ltd.* [2011 (10) SCC 466]; *M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja* [2008 (6) SCC 750]; *Kamal Kumar Dutta v. Ruby General Hospital Ltd.* [2006 (7) SCC 613]; *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* [2005 (11) SCC 314]; and *Needle Industries (India) Ltd. v. Needle*

Industries Newey (India) Holding Ltd. [1981 (3) SCC 333], wherein it has been consistently held that the Tribunal must first be satisfied that the facts justify winding up of the company on just and equitable grounds before exercising jurisdiction under Sections 241/242 of the Act.

126. In *Vipul SEZ Developers Pvt. Ltd. & Ors v. Solitaire Capital (India) Ltd. & Ors.,* [2022 SCC OnLine NCLAT 859], it was held that a pending Section 8 Arbitration Act petition that challenges the maintainability of a company petition, does not deprive the Tribunal of its power to protect company property in the meantime.

127. The Judgement in *RMG Builders* (supra) placed at the centre of its own reasoning the judgement of the Hon'ble Supreme Court in *Surjit Singh v. Harbans Singh, [MANU/SC/0032/1996:* (1995) 6 SCC 50]; the *Hon'ble* Allahabad High Court in *Savitri Devi v. Civil Judge, Gorakhpur, [MANU/UP/0163/2003: AIR 2003];* the Hon'ble Bombay High Court in *Keshrimal Jivji Shah v. Bank of Maharashtra,* [MANU/MH/0344/2004: (2004) 122 Comp Cas 831 (Bom)]; the Hon'ble Calcutta High Court in *Punjab National Bank v. Delite Properties Pvt. Ltd.,* [MANU/WB/0387/2003: AIR 2004 Calcutta 114]; and in *Madhur Poddar v. Ashok Poddar,* [MANU/WB/0500/2005 : (2006) 2 Calcutta Law Times 133 (HC)]. Considering the aforesaid judgments and the judgments relied upon by the Hon'ble Delhi High Court to reach the observation that extends the power of this Tribunal, both transactions have no right, title or interest on the transferees as they are nullified, non-est, and unenforceable; thus this Tribunal, in exercise of its powers, can direct that the Subject Land and the redevelopment rights be restored, regardless of any claim that the transferees are strangers to the proceedings in which the restraining orders were passed.

128. The transactions executed during the pendency of the present proceedings and during the subsistence of a judicial restraint cannot be treated as ordinary transactions entered into in the ordinary course of corporate action. Furthermore, given that the Petitioners have established continuous acts of oppression that are burdensome, harsh and wrongful, the actions of the Respondents following the filing of the C.P., assume greater significance from

the point of allegation of fraud. Even if these circumstances do not, on their own, render the transactions *void ab initio*, there exists substantive merit in the allegation of fraud. Consequently, when the transaction concerns the very property forming the subject matter of the C.P., and is executed with full knowledge of the dispute, the Tribunal possesses ample jurisdiction and wide powers to issue orders and directions deemed necessary to achieve the object, and there would be no limitation or restriction on such power.

(H) Conclusion

129. Upon examination of the case pleaded by the Petitioners, materials brought on record, and the conduct of other shareholders and directors during the period 2016 to 2021, treating P1 as holder of 4000 shares in R1, and both the companies having acted as a single corporation, it is our considered view that P1 should be regarded as a 'member' for the purpose of invoking the equitable foundation of Sections 241/242 of the Act, thereby advancing the remedial objectives delineated in the legislative framework. Furthermore, it is evident that R1 has reversed the position of P1 in R1, which had been recognised over a substantial duration, by filing a revised Form MGT-7 on 01.03.2021 without resorting to any civil or arbitral remedies, despite the existence of a contractual dispute. Any unilateral change in the company's official records or statutory filings relating to the rights of persons recognised as shareholders, without following a due process of adjudication in accordance with law, and without intimating the affected party, is impermissible. Additionally, we are of the view that the dispute between the parties is not really for rectification, but adjudication of obligations under the SPA and Side Letter, which falls outside the scope of rectification. Accordingly, P1's status as a 40% shareholder in R1 must be preserved until an arbitral tribunal or court makes a determination.

130. The acts of oppression complained of in the C.P., began with R2's EOGM, which is shown to have been held on 24.02.2021, at which R6 & R7, both employees of IIFL, were purportedly appointed as additional directors. The EOGM suffers from fundamental illegality mainly on two counts: firstly, no board meeting could be convened without the P2, who is the only other director, and

no board resolution is stated to have been passed for calling R2's EOGM; secondly, no requisition from shareholders, proof of service of notices, and minutes of the EOGM have been produced except the resolution stated to be passed for the appointment of R6 & R7 as directors. Consequently, the non-compliance with legal provisions and the irregularities noticed throughout the process vitiate the appointment of R6 & R7 as R2's directors. Once R6's & R7's appointment as R2's directors is found irregular/illegal/unlawful, all actions flowing therefrom cannot be permitted to continue. Moreover, the subsequent board meeting and EOGM of R2 shown to have been held on 06.03.2021 & 13.03.2021, respectively, to consider P2's removal as a director, are also flawed. The requisition for holding of EOGM was given by IIFL, the debenture holder, and not by R14, who was the shareholder as per records, and no opportunity was ever given to P2 to be heard in accordance with Section 169 of the Act. Despite the repeated rejections of statutory filings for removal of P2 by R8/RoC, the Respondents persistently excluded P2 from all managerial decisions pertaining to R2. The aforesaid defects are material and fundamentally invalidate the subsequent actions taken.

131. The Respondents' entire case for the Pledge and its invocation rests on the proposition that R2's all physical shares were pledged and physically delivered to IIFL/R14 to secure the debentures subscribed by IIFL. The delivery of the original physical share certificates is essential to create the Pledge, and execution of transfer forms, in accordance with the provisions of the Act, is necessary to enforce the Pledge. Given the dispute over the actual number of shares delivered, the Tribunal requested the Respondents, during the hearing, to present copies of the share certificates and transfer forms, but no such documents have ever been produced. By contrast, during the hearing, the Petitioners produced some share certificates of R2 to substantiate their claim in the C.P.

132. The events that followed the invocation of Pledge – induction of their own persons as directors to take exclusive control of R2's board of directors; attempted removal of P2 who could have objected; execution of entire

undertaking on a Slump Sale basis; transfer of the Subject Land and development rights, all with full knowledge of the public notice regarding dispute on ownership by Petitioners and ignoring the restrain order of the Court and pendency of the present C.P., before this Tribunal, and the timing of such actions is demonstrative of a deliberate design. It is also crucial to note that R10 produced a copy of the BTA for the first time during final arguments on 17.06.2026 (filed along with additional affidavit dated 03.08.2026), despite being a party to that instrument since execution, and did not explain its concealment. Regarding the board meeting of 03.06.2021, authorising the execution of BTA and Conveyance, there is also no proof that it was duly convened. Based on the series of actions narrated above, the Petitioners have established acts of oppression, which are burdensome, harsh and wrongful, which continued even after filing the present C.P. The oppression involves lack of probity and fair dealing as far as the Petitioners are concerned, and such oppressive actions continued, as is evident from the transaction concerning the very property forming the subject matter of the C.P. It is in these circumstances, we hold that the Tribunal is not powerless and has wide powers and jurisdiction under Sections 241/242 to pass such orders and give such directions as it thinks fit with a view to bringing to an end the matters complained of, and there would be no limitation or restriction on such power. In this background of the matter, we consider it appropriate to grant the following reliefs with a view to bringing to an end the matters complained of.

(I) Reliefs Granted

(a) All resolutions passed at the EOGM held on 24.02.2021, including the appointment of R6 & R7 as directors of R2, are hereby declared null and void, and of no legal effect. Consequently, all decisions, resolutions, acts, and transactions taken, passed, or executed pursuant to, in consequence of, or on the basis of the said EOGM are of no legal effect. As such, the actions authorised by R6 & R7, will remain subject to scrutiny and ratification by its duly constituted board.

(b) The board meeting and EOGM of R2 shown to have been held on 06.03.2021 and 13.03.2021, respectively, to consider P2's removal as director of R2 are declared illegal, invalid and non est in law. P2 will remain a director of R2 unless he is otherwise disqualified.

(c) The transfer of shares pertaining to R2, conducted pursuant to the Pledge invocation notice dated 12.02.2021 as well as subsequent transfers, is hereby declared null and void. It is ordered that R1's shareholding in R2 be restored to its prior position before the impugned Pledge invocation, and the register of members shall be rectified accordingly. The restoration of shareholding prior to the impugned invocation shall be without prejudice to R14's right to assert a claim in R2's CIRP as per the provisions of the Code.

(d) All transfers made subsequent to the filing of the C.P., more particularly, the transfer of undertaking of R2 under the BTA dated 01.09.2021 and the Conveyance dated 08.09.2021, are hereby declared void. Consequently, the Subject Land shall revert to the R2, retaining the same securities and obligations that were in place on the date of transfer. It is made clear that the security, charges and other obligations created subsequent to the transfer, particularly the Indenture of Mortgage dated 09.09.2021 and the Corporate Guarantee for Debentures of Rs.525 crore, are declared to be null and void, and of no legal effect.

(e) R2 is permitted to submit an application to the SRA for the restoration/transfer of the LOI/redevelopment right in respect of the redevelopment of the Project at the Subject Land, and we direct the SRA to consider the same in accordance with applicable laws.

(f) In light of the fact that R2 is currently undergoing CIRP under the Code, a copy of this order be submitted to the Learned Adjudicating Authority for passing suitable orders.

133. Accordingly, **Company Petition No. 159/2021** is **partly allowed** in the aforesaid terms. Consequently, all pending Company Applications stand disposed of. Considering the nature of the proceedings, no order as to costs.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**