

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 53 of 2022

(Under Section 421 of the Companies Act, 2013)

(Arising out of the Impugned Order dated 01.06.2022 in

IA/14/CHE/2022 in CP/95/CHE/2021,

passed by the `National Company Law Tribunal`,

Division Bench-I, Chennai)

In the matter of:

M/s. Ambadi Investments Limited
Parry House, 5th Floor,
No. 43, Moore Street,
Chennai – 600001

.....Appellant/3rd Respondent/
1st Respondent

v.

1. Ms. Valli Arunachalam,
Wife of N. Arunachalam,
Having permanent address at
New No. 10, Old No.30,
Ranjith Road, Kotturpuram,
Chennai – 600085

Now currently at 8/1, Boat Club Road,
Raja Annamalaipuram, Chennai – 600028 1st Respondent /
1st Petitioner

2. Ms. Vellachi Murugappan
Wife of Natarajan Alagappan,
Having permanent address at
No. 449, 3rd Cross, 16th Main Koramangala
Bangalore – 560034

Now currently at 8/1, Boat Club Road,
Raja Annamalaipuram, Chennai – 600028 2nd Respondent /
2nd Petitioner

3. Mrs. M.V. Valli Murugappan (Deceased)
W/o. Late Mr. M.V. Murugappan
Residing at 8/1, Boat Club Road,
Raja Annamalaipuram, Chennai – 600028

4. M/s. M.V. Murugappan Hindu Undivided Family,
Rep. by Ms. Valli Arunachalam, Kartha Through
Power of Attorney Ms. M.V. Valli Murugappan
5. Mr. M.V. Subbiah
Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
6. Mr. Alagappan Arunchalam Murugappan
Director, Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
7. Mr. Vellayan Arunachalam
Director, Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
8. Mr. Murugappan Murugappan Muthiah
Director, Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
9. Mr. Murugappan Muthiah Venkatachalam
Director, Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
10. Mr. M A M Arunachalam
Director, Ambadi Investments Ltd.
Parry House, 5th Floor, 43, Moore Street,
Chennai – 600001
11. Mr. Vellayan Subbiah
Director, Ambadi Investments Ltd.
Parry House, 5th Floor,
43, Moore Street, Chennai – 600001
12. Mr. Padmanabhan Nagarajan
Director, Ambadi Investments Ltd.
Parry House, 5th Floor,
43, Moore Street, Chennai – 600001

13. Mr. Poondi Ramarathnam Ravi
Director, Ambadi Investments Ltd.
Parry House, 5th Floor,
43, Moore Street, Chennai – 600001
14. Tube Investments of India Limited
“Dare House”, 2 (Old No. 234),
N S C Bose Road, Chennai – 600001, India
15. Carborundum Universal Limited,
Parry House, 43, Moore Street,
Chennai – 600001
16. Coromandel International Limited
Coromandel House, Sardar Patel Road,
Secunderabad - 500003
Telangana, India
17. Cholamandalam Investment & Finance
Company Limited (CIFCL),
Dare House, 1st Floor,
2, NSC Bose Road, Chennai – 600001 Respondents/Respondents

Present :

- For Appellant : Mr. P.H. Arvindh Pandian, Senior Advocate
For Ms. Rohini Musa & Mr. Sandeep Kumar
Ambalavanan, Advocates
- For Respondent Nos.1 & 2: Ms. Pinky Anand, Senior Advocate
For Mr. S. Manuraj, Advocate
- For Respondent Nos.4 & 5 : Mr. R. Sankaranarayanan, Senior Advocate
For Mr. S. Manuraj, Advocate
- For Respondent Nos.6 to 13 : Mr. Cibi Vishnu & Mr. Jerin Asher Sojan,
Advocates

J U D G M E N T
(Physical Mode)

Justice M. Venugopal, Member (Judicial):

Company Appeal (AT) (CH) No. 53 of 2022:

Introduction:

The Appellant / 3rd Respondent / 1st Respondent, has filed the instant Comp. App (AT) (CH) No. 53 of 2022, before this 'Tribunal', as an 'Aggrieved Person', on being dissatisfied with the 'impugned order', dated 01.06.2022, in IA/14/CHE/2022 in CP/95/CHE/2021, passed by the 'National Company Law Tribunal', Division Bench-I, Chennai.

2. The 'National Company Law Tribunal', Division Bench - I, Chennai, while passing the 'impugned order', dated 01.06.2022 in IA/14/CHE/2022 in CP/95/CHE/2021 (Filed by the 'Respondent Nos. 1 & 2 / Applicants / Legal Heirs of 1st Petitioner), at paragraphs 18 to 21, had observed the following:

18. "In relation to IA14/CHE/2022 is concerned, it is seen that the after the demise of the original 1st Petitioner Mrs. M.V. Valli Murugappan, the 1,25,952 shares held by the 1st Petitioner were transmitted to the 1st and 2nd Applicant herein in the following manner;

(i) Ms. Valli Arunachalam – 63,101 Shares

(ii) Ms. Vellachi Murugappan – 62,851 Shares

19. Thereafter, it is seen that the 1st and 2nd Applicant, has transferred 62,581 shares each respectively on 04.03.2022 in favour of M.V. Murugappan (HUF), the Second Respondent herein who is the 2nd Petitioner in the main Company Petition. Thus, by effect of the said transfer, the shareholdings of 1st Applicant stands reduced to 250 shares and the shareholding of the 2nd Applicant stands

reduced to NIL. As such the 1st Applicant does not hold any shares in the 3rd Respondent Company.

20. However, in the present case, it is seen that a similar Application was filed by the Applicants before Hon'ble NCLAT seeking to implead the 1st and 2nd Applicant herein in the place of late Mrs. M V Valli Murugappan and the Hon'ble NCLAT vide its order dated 23.03.2022 has passed the following order:

''Heard both sides. It comes to be known that I.A.No.129 of 2022 in Comp App (AT) (CH) No. 54 of 2021 is filed by the Applicants / Legal Heirs of First Respondent Mrs. M.V. Valli Murugappan and its is averred in I.A.No. 129 of 2022 in Comp App (AT) (CH) No. 54 of 2021 that they are the Legal Heirs of the deceased Second Respondent and as such, they are entitled to inherit their 'Shares'; in the First Respondent / company. Therefore, it is the fervent plea of the Applicants they are entitled to be substituted in place of the deceased Second Respondent in main Comp App (AT) (CH) No.54 of 2021.

No Reply / Response is filed to the I.A. No.129 of 2022 by the Respondents. Considering the fact that the 'Applicants' are daughters of the deceased Second Respondent, this 'Tribunal', taking note of the fact that the deceased Second Respondent is only survived by the 'Applicants', at this stage, simpliciter is of the earnest opinion that I.A.No.129 of 2022 (seeking to substitute them in place of deceased Second Respondent) is to be allowed to secure the ends of justice. Viewed in this perspective, this 'Tribunal', allows the I.A.No.129 of 2022 in Comp App (AT) (CH) No.54 of 2021 and orders the names of the 'Applicants' to be substituted in place of the Second Respondent Mrs. M.V. Valli Murugappan. No costs.

The Appellant is to carry out necessary amendment in the Appeal Paper Book wherever it is necessary.

The 'Office of the Registry' is directed to List the matter on 20.04.2022.

21. In the present case, the transfer of shares by the 1st and 2nd Applicant was effected on 04.03.2022 and the orders were passed by Hon'ble NCLAT on 23.03.2022 and the IA/14(CHE)/2021 and IA/15(CHE)/2021 was reserved for orders by this Tribunal on 06.04.2022. It is seen that the Hon'ble NCLAT vide its order dated 22.03.2022 has allowed for substitution of the name of the Applicants in the place of late Mrs. M V Valli Murugappan. ''

and resultantly, allowed the 'Application', by directing the 'Applicants to cause necessary amendments in the 'Cause Title', wherever, it is necessary and file the amended 'Applications'.

Appellant's Submissions:

3. According to the Learned Counsel for the Appellant, the 'Tribunal', had passed the 'impugned order' dated 01.06.2022 in IA/14/CHE/2022 in CP/95/CHE/2021 (Filed under Rule 53 of the NCLT Rules, 2016, by the Petitioner / Legal heirs of the 1st Petitioner), to bring on record the 'Petitioners / Applicants', in substitution of the '1st Respondent' ('M/s. M.V. Valli Murugappan' - Deceased), in main 'Company Petition' and connected 'Applications'.

4. The Learned Counsel for the Appellant, brings it to the notice of this 'Tribunal', Mrs. M.V. Valli Murugappan, died on 21.01.2022 and M.V. Murugappan, Hindu Undivided Family, sought to invoke the 'jurisdiction' of the 'National Company Law Tribunal' (under Section 241 and 242 of the Companies Act, 2013). Further, for want of requisite qualification to sustain a 'Company Petition' (u/s. 241 & 242 of the Act, 2013), they filed a 'Waiver Application' (1st Waiver Petition), vide CP/29/2020, under Section 244 of the Act, praying for 'Waiver' of the 'Requirements', specified under Section 244 (1)(a) of the Act.

5. The Learned Counsel for the Appellant, points out that when CP/29/2020, was pending before the 'Tribunal', another 'Waiver Application' vide CP/95/CHE/2021 (2nd Waiver Petition, u/s. 244 of the Act), was filed seeking the same relief, as prayed for in CP/29/2020. Later, after filing of the aforesaid 'Waiver Application', namely CP/95/CHE/2021, CP/29/2020 was sought to be withdrawn, and the same was permitted by the 'Tribunal', as per 'Order', dated 29.09.2021. Against the said 'Order' dated 29.09.2021, the 'Appellant', had filed Comp. App (AT) (CH) No. 54 of 2021, before this 'Tribunal'.

6. On behalf of the Appellant, it is brought to the fore that Mrs. M.V. Valli Murugappan, had died on 21.01.2022, and later the Respondent Nos. 1 and 2 / Petitioners, filed IA/14/CHE/2022 and IA/15/CHE/2022 in CP/95/CHE/2021, on 09.02.2022, before the 'Tribunal', seeking 'Relief' of 'Substituting' their names, as 'Petitioners', for 'change of Power of Attorney'. Besides this, the Respondent Nos. 1 and 2, had preferred IA/129/2022 and IA/130/2022 in Comp App (AT) (CH) No. 54 of 2021, praying for 'Substituting their Names', in place of 3rd Respondent in the Appeal, and also for 'Change of Power of Attorney'. In fact, IA Nos.129 & 130 of 2022, were filed in Comp. App (AT) (CH) No. 54 of 2021, which relates to the '1st Waiver Petition', which was 'allowed', on 23.03.2022.

7. The Learned Counsel for the Appellant points out that the Appellant, came to understand from the 'Beneficiary Position' ('Benpos'), uploaded by M/s. KFin Technologies Private Limited, Registrar and Share Transfer Agents of the Appellant, that out of the total 1,25,952 Shares, held by the 3rd Respondent, 63,101 and 62,851 Shares were 'transmitted', to and in favour of 1st and 2nd Respondents, respectively on 18.02.2022. Also that, the 'Appellant', came to know that the 2nd Respondent (Ms. Vellachi Murugappan), transferred all her 62,851 Shares on 04.03.2022, in favour of the 4th Respondent (M/s. M.V. Murugappan, Hindu Undivided Family) and she ceased to be a 'Member' of the 'Appellant Company', with effect from 04.03.2022.

8. The Learned Counsel for the Appellant, adverts to the copy of the 'Benpos' of the 2nd Respondent, as uploaded by the 'Registrar', and 'Share Transfer Agent' (vide Page 120 of Vol. I of Appeal Paper Book – Diary No. 562 dated 04.07.2022), and points out that in the said 'Document Table', the 'Holder's Name', is mentioned as 'VELLACHI MURUGAPPAN', and at Serial No. 21, it is mentioned as 18.02.2022 (Benpos Date), 62,851 (Shares) in 'Buying' Column, the same 62,851 Shares, were shown under 'Selling' Column, as on 04.03.2022. Thereafter, the 'Shares', held by the 2nd Respondent were shown as 'Zero', in the remaining columns and that 'Benpos', is an 'Undisputed

Document'. The numbers mentioned therein, are not 'denied', by the 1st and 2nd Respondents in their 'Counter'.

9. According to the Learned Counsel for the Appellant, the Respondent Nos.1 and 2, had suppressed the fact, before this 'Tribunal', on 23.03.2022, when the Comp. App (AT) (CH) No. 54 of 2021 ('Appeal', relating to '1st Waiver Petition'), was heard to the effect that the 2nd Respondent, had already transferred all her 'Shares', and ceased to be a 'Member' of the Appellant, on 04.03.2022.

10. The Learned Counsel for the Appellant, comes out with a plea that the 'Appellant', had filed its Counter in IA/14/CHE/2022 in CP/95/CHE/2021 ('Proceedings in 2nd Waiver Petition'), before the 'Tribunal', and placed all relevant facts and documents and submitted that the 'Name of the 2nd Respondent', cannot be 'substituted', as 'Petitioner', since, she had already transferred all her Shares, she ceased to be a 'Member' of the 'Appellant Company'. However, the 'Tribunal', had allowed the IA/14/CHE/2022 in CP/95/CHE/2021, ignoring the facts and material evidences, placed in the 'Counter', and that the 'Tribunal', had only placed reliance upon the 'Order' of this 'Appellate Tribunal', dated 23.03.2022, whereby and whereunder, the 'Application', filed by 1st and 2nd Respondents, substituting their Names (in place of their late Mother), in Comp. App (AT) (CH) No. 54 of 2021.

11. The grievance of the Appellant is that, the 'Tribunal', should have taken an independent view, while deciding IA/14/CHE/2022 in CP/95/CHE/2021 (2nd Waiver Petition). Also that, it is projected on the side of the Appellant that Section 241 of the Companies Act, 2013, begins with a sentence 'Any Member of the Company' and Section 244 of the Act, begins by 'The following Members of the Company shall have a 'right', to 'apply', under Section 241', and both these Sections, clearly point out that the 'legislative intent', is that, the 'right', under Section 241 of the Companies Act, 2013, can be exercised, only by a 'Member' of a 'Company', and by any other 'Person'.

12. According to the Appellant, the 2nd Respondent who had inherited 62,851 Shares, held by her 'demised mother', by way of 'Transmission of Shares', on 18.02.2022, had consciously 'Transferred all the 62,851 Shares', that were inherited on 04.03.2022 in the Appellant's Company, as reflected in the 'Benpos', maintained by the 'Registrar' and 'Share Transfer Agent'.

13. The Learned Counsel for the Appellant, adverts to Section 2(11) of the Civil Procedure Code and Section 50 of the Code of Civil Procedure, which clearly confirms that the 'Legal Representative' of a 'Deceased Person', may sue or be sued, with regard to the 'Estate of the Deceased', only if the said 'Legal Representative', by an 'Operation of Law',

becomes vested with the 'Estate of the Deceased', or by an 'Operation of Law', is enjoined, to represent the said 'Deceased Person'.

14. In effect, the plea of the Appellant is that, in the absence of holding 'any Shares', in the Applicant's company', the 2nd Respondent, cannot be a 'Party', to a 'Petition', under Section 241 to 244 of the Companies Act, 2013, as she is neither a 'Member' of the 'Appellant Company' nor she is so authorized to do so by the 'Deceased'.

15. The Learned Counsel for the Appellant, strenuously takes a plea that in the instant 'Appeal', the 'Legal Heirs' of the 'Deceased Mrs. Valli Murugappan', Viz. Mrs. Valli Arunachalam and Mrs. Vellachi Murugappan, had already inherited the 'Deceased Shares', and after such inheritance, one of the 'Legal Heirs' / 'Mrs. Vellachi Murugappan', had transferred all her 'Shares', and her 'Shareholding', became 'NIL'.

16. To put it differently, according to the Appellant, the 'Names of the Legal Heirs', were already entered in the 'Register of Member' ('Benpos'), and after such entry name of one of the 'Legal Heirs', was deleted from the 'Register of Members' ('Benpos), by virtue of her ceasing to be a 'Member' of a 'Company'. Hence, it is contended on behalf of the 'Appellant', that the 'Respondents', cannot 'rely', upon the decision in World Wide Agencies Pvt. Ltd. v. Mrs. Margarat T. Desor & Ors., reported in AIR 1990 SC Page 737, to lend 'Support', to their case,

because of the reason that facts of the case are wholly different from that of the facts of the present 'Appeal', before this 'Tribunal'.

17. The Learned Counsel for the Appellant, while concluding, prays before this 'Tribunal', for 'allowing', the instant Comp. App (AT) (CH) No. 53 of 2022, by setting aside the 'impugned order', dated 01.06.2022, in IA/14/CHE/2022 in CP/95/CHE/2021, passed by the 'National Company Law Tribunal', Division Bench-I, Chennai.

Appellant's Citations:

18. The Learned Counsel for the Appellant, cites the decision of this 'Tribunal' dated 21.09.2017, in Cyrus Investments P. Ltd. & Anr. v. Tata Sons Ltd. & Ors., reported in (2019), 212 Comp Cas 269, at Spl Pg: 319, NCLAT, wherein, at Paragraph 146, it is observed as under:

146. 'Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244 :

(i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241, etc.?"

19. The Learned Counsel for the Appellant, relies on the Judgment of this 'Tribunal', dated 16.02.2023, in T.A. No.15 of 2021 in Comp. App (AT) No. 235 of 2020 (TR), between Thyagaraja v. The Church of South India Trust Association & 11 Ors., wherein at Paragraph 12, it is observed as under:

12. "In the instant case, apart from not being a 'party' to the main 'Petition', the 'Appellant' herein is, admittedly, only a 'Member' of the Church and he has not filed any documentary evidence to substantiate that any of the requirements under Section 2(55) of the Companies Act, 2013, is met. Admittedly, there is a four layered 'Election Process' to become a 'Member' of the 'Company'. The persons acting as 'Member' of CSITA are in fact first elected by various Parishes falling under more than 20 'Dioceses' and these Parishes 'Member' elect people to the 'Diocesan Council' and also to the 'Synod Council' who in turn elect the process of the 'Company'. In this four layered process, it is not in dispute that the 'Appellant' herein has not passed through the layers to become the 'Member'. This 'Tribunal' is of the earnest view that merely because a person is a 'Member' of Church, he does not have the 'locus standi' to file a 'Petition' under Sections 241 & 242 of the Companies Act, 2013, against a 'Section 8 Company' of which, he is admittedly, not a 'Member'. Section 244 of the Companies Act, 2013, reads as follows;

"244. (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 subsection, 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.”

20. The Learned Counsel for the Appellant, falls back upon the decision of the Hon'ble Madras High Court, in S. Varadarajan v. Venkateswara Solvent Extraction (P) Ltd. & Ors., reported in 1992 SCC OnLine Mad. 410, wherein at Paragraph 23, it is observed as under:

23. “Further I, may add that very strangely Mr. Dorairaj, whose appointment as managing director is one of the subject-matters of the agenda of the extraordinary general meeting, has not chosen to raise his little finger on the above plea. It is the individual and personal right of Mr. Dorairaj to continue as managing director and it is for him to come and approach this court and seek appropriate redressal if there is a treat to disturb his continuance as managing director of the company. The said Dorairaj is either in deep slumber or adopting an attitude of supine indifference. His cause, if any, cannot be espoused or projected by the applicant who is neither a director nor the managing director. However, I am unable to accept the argument of Mr. M. Subramaniam, learned counsel appearing for some of the respondents, that the present applicant cannot maintain the application because the main petition itself is not maintainable because the present applicant holds less than the required share strength as on the date even though on the date of filing of the main company petition there was satisfaction of the required strength by the present applicant and four others.

In view of my decision in L, RM. K. Narayanan v. Pudhuithottam Estates Ltd., [1992] 74 Comp Cas 30 (Mad), this contention of Mr. M. Subramaniam does not deserve acceptance. In my aforesaid judgment it has been held by me as follows (head-note) :

"Once a petition under sections 397 and 398 of the Companies Act, 1956, is validly presented, it is open to a shareholder to ask for substitution and prosecute the proceedings even though such a shareholder by himself could not have presented a petition under section 397 for want of the required share qualification. The court has, in such case, only to consider whether the petition was a valid petition at the time of its presentation. The requirement as to the share qualification is relevant and material only at the time of institution of proceedings and once there is a valid petition and a shareholder seeks to substitute himself in order to merely continue such a valid petition, such a shareholder need not hold 10 per cent. of the share capital.

It is not incumbent upon the court to dismiss a petition because a proceeding under section 397 or 398 of the Act is a representative proceeding. Even if the original petitioner does not want to continue the proceedings, the court cannot be compelled to dismiss the petition. Even then, it is open to the court to consider the merits of the case without dismissing the petition. Section 399(3) of the Act permits an individual member to make an application 'on behalf and for the benefit of all' members of a company entitled to move the court. He acts clearly in a representative capacity. Rule 9 of the Companies (Court) Rules, 1959, declaring inherent powers of the court gives the court authority to transpose the other party as applicant in the interest of justice."

21. The Learned Counsel for the Appellant, refers to the decision in Prafulla Kumar Rout v. Orient Engineering Works P. Ltd. & Ors., reported in (1986) 60 Comp Cas 65 (Orissa), wherein, at Paragraphs 4 and 13, it is observed as under:

4. "I need not make a mention of all the objections taken in the counter-affidavit as by order dated December 14, 1984, an inquiry was directed on the preliminary issue as to whether the petitioner has the locus standi to maintain this application. In the counter-affidavit, it has been alleged that the petitioner

has transferred all his shares in the company and has voluntarily resigned from the directorship of the company more than a year back and thus he was not a shareholder of the company on the date of presentation of this application on March 23, 1984. Both the parties were allowed to lead evidence, both oral and documentary, on this preliminary issue. Admittedly, the petitioner was a shareholder of the company at some point of time. The opposite parties have alleged that the petitioner has transferred all his shares in the company in favour of opposite party No. 2 which became effective from March 8, 1983, by necessary entry in the share register whereafter the petitioner ceased to be a shareholder of the company. The petitioner disputes the fact of transfer of shares as also of the validity thereof. In these circumstances, the burden of proof that the petitioner has transferred all his shares in the company in favour of opposite party No. 2 as alleged in the counter-affidavit lay on the opposite parties and, therefore, the opposite parties were directed to lead evidence first.

13. On a discussion of the evidence on record, I, therefore, come to the conclusion that the petitioner has duly transferred his shares in the company in favour of opposite party No. 2 which has taken effect in the relevant registers of the company. The petitioner was, therefore, not a person having any share in the company and the petition filed by him under Sections 397 and 398 of the Act is, therefore, not maintainable.’’

22. The Learned Counsel for the Appellant, refers to the ‘Order’, dated 04.04.2012 in K. Venkatachalam and Ors. v. Premier Roller Floor Mills Ltd. & Ors., (vide Company Petition No. 36 of 2018), reported in (2013) 6 CompLJ283 (CLB, Southern Region Bench, Chennai), wherein at Paragraphs 18 & 19, it is observed as under:

18. ‘‘Even if the petitioner’s case is accepted, the petitioners are not entitled to any reliefs under sections 397 and 398, because they have derived the benefits of the arrangement between the two parties, by receiving Rs. 8 crore, through various payments spanning over a period from 2004-08, after voluntarily relinquishing their interest in the company by signing the deed of compromise, which is binding between the parties K.S.P. Valli (supra) / Gunjan Cement (P.) ltd. (supra). The petitioners signed the deed of compromise fully aware of the legal implications.

19. *As rightly argued by the learned counsel for the respondents, the company petition does not make out a case of oppression or mismanagement. The subsequent sale of the property had the approval of the Board and the valuation appears to be reasonable. No relief under section 402(f) could be granted since the CP is filed three months after the date of sale. In view of the finding recorded above, I do not think it necessary to go into details regarding the genuineness of the sale deed, undervaluation, etc. Those issues are beyond the purview of this CP, since a consideration of oppression and mismanagement arises only if the petitioners are found to be shareholders of the company. That issue being held against them the other issues pleaded in the CP do not arise. The petitioners had been indulging in forum shopping with some ulterior motive probably to extract money from respondents-M S P Plantations (supra). I have no hesitation to hold that they have approached this Bench with unclean hands and they are not entitled to any equitable reliefs. The attempt of the petitioners to re-agitate the concluded issues is nothing but an abuse of the process of the court. The company petition is devoid of any merits. Accordingly issues (b) to (e) are found against the petitioners.’’*

23. The Learned Counsel for the Appellant, refers to the ‘Order’, dated 20.07.2004, in *Renuka A. Kattar v. Gees Marine Products Pvt. Ltd. & Ors.*, reported in (2005) 3 CompLJ189 (CLB), wherein at Paragraph 5, it is observed as under:

5. *‘‘I have considered the arguments of learned Counsel. The issue that arises for my consideration is whether the applicant shall be substituted in the place of the second petitioner for the purpose of prosecuting the company petition. The provisions of Section 397 and 398 clearly envisage the protection of the shareholders and the interest of the public. Sub-section (3) of Section 399 permits an individual shareholder to make an application under Section 397 or 398 "on behalf and for the benefit of all" shareholders of a company for appropriate reliefs, with a view to bring to an end the matters complained thereof. Thus, the proceeding under Section 397 or 398 is a representative proceeding. Even if the original petitioner does not want to continue the proceedings, it is open to the CLB to consider the merits of the case without dismissing the petition. There is, therefore, in my considered view, no need for any enabling provision for substitution of*

any other member for the original petitioner on the lines of Section 405, for further prosecuting the petition under Section 397/398, provided there is a valid petition before the CLB. In regard to the power of substitution in a Section 397 or 398 proceeding, beneficial reference is invited to the observations made by the Delhi High Court in V.K. Mathur v. K.C. Sharma - 1987 (vol.61) CC 143, which reads as under: -

7" ...there are ample powers in the court to permit other persons to join the petition as co-petitioners. In a proper case, the court can even permit such persons to take over the prosecution of the petition from the original petitioner and substitute themselves for him in case it is found that he desires to withdraw from the petition for oblique reasons but the court is satisfied that the allegations in the petition need to be gone into."

Similarly, the Madras High Court, while dealing with this proposition in L. RM. K. Narayanan v. Pudhuthotam Estates Ltd. (cited supra) held that "once a petition is validly presented, it is well open to a shareholder to ask for substitution and prosecute the proceedings even though such a shareholder by himself could not have presented a petition under Section 397 for want of required share qualification. The court has to only consider whether the petition was a valid petition at the time of his presentation. If a valid petition has been presented, any shareholder can ask for substituting himself as the petitioner."

Contentions of Respondent Nos. 1 & 2 :

24. The Learned Counsel for the Respondent Nos. 1 and 2 submits that on the 'death of a person', the 'Legal Representative' of the 'Deceased', represents the 'rights' and 'estate' of the 'Member', whose name, is on the 'Register of Members', and when the 'Member', dies, the 'rights' and 'estate' of the 'Deceased', is entrusted with the 'Legal Representative'.

25. According to the Learned Counsel for the Respondent Nos. 1 and 2, the 'Legal Representatives' of the 'Deceased / 3rd Respondent', are

entitled to come on record, for 'Protection' of the 'Rights and Cause' of the 'Deceased / 3rd Respondent', that their 'Family Group', are excluded from the 'decision making' and 'management' of the 'Appellant', which is in complete 'disregard', to the 'legitimate expectation'.

26. The Learned Counsel for the Respondent Nos. 1 and 2, comes out with a 'plea' that there is 'no mandate, under any Law', that the 'Legal Representatives' of the 'Deceased / 3rd Respondent', shall not become a 'Party', to a 'proceeding', under Section 241 and 242 of the Companies Act, 2013, unless, the 'Legal Representative', becomes a 'Member' of the 'Company'.

27. The Learned Counsel for the Respondent Nos. 1 and 2, refers to 'Rule 53 of the National Company Law Tribunal Rules, 2016', under the caption 'Substitution of Legal Representatives', which enjoins, as under:

''Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.''

and projects an argument that the 'Rule', specifically mentions that in the event of 'Death of a Party', during the 'pendency of the proceedings', before the 'Tribunal', the 'Legal Representative' of the 'Deceased Party', may 'apply', for being 'Brought on Record'.

28. The Learned Counsel for the Respondent Nos. 1 and 2, takes a 'plea' that, even in respect of 'proceedings' concerning 'Oppression and Mismanagement', the 'Impleadment' of 'Legal Heirs', are 'Allowed', and the fact that the 'Legal Representative', is not a 'Member' of the 'Company', has no 'bearing' in the 'Impleadment Petition / Application', and to support this contention, a reliance is placed on the decision of the Hon'ble Supreme Court of India in World Wide Agencies Pvt. Ltd. v. Margarat T. Desor & Ors., reported in MANU/SC/0137/1990 : AIR 1990 SC Page 737, wherein, at Paragraph 23, it is held as under:

23. `` It appears to us that to hold that the legal representatives of a deceased shareholder could not be given the same right of a member under Sections 397 and 398 of the Act would be taking a hyper-technical view which does not advance the cause of equity or justice. The High Court in its judgment under appeal proceeded on the basis that legal representatives of a deceased member represent the estate of that member whose name is on the register of members. When the member dies, his estate is entrusted in the legal representatives. When, therefore, these vestings are illegally or wrongfully affected, the estate through the legal representatives must be enabled to petition in respect of oppression and mismanagement and it is as if the estate stands in the shoes of the deceased member. We are of the opinion that this view is a correct view. It may be mentioned in this connection that succession is not kept in abeyance and the property of the deceased member vests in the legal representatives on the death of the deceased and they should be permitted to act for the deceased member for the purpose of transfer of shares under Section 109 of the Act. ``

29. The Learned Counsel for the Respondent Nos. 1 and 2, contends that the 'impugned order', dated 01.06.2022, was passed by the 'Tribunal' in IA/14/CHE/2022 in CP/95/CHE /2021, after providing 'Full Hearing',

to 'all the Parties', and 'proper analysis' of the 'Facts and Law', and the same was a 'Reasoned' one.

30. The Learned Counsel for the Respondent Nos. 1 and 2, forcefully submits that the 'Appellant', through its 'conduct', is prevented from taking such plea of 'non-substitution', of the 'Legal Heir', and further, in a proceeding, in Comp. App (AT) (CH) No. 54 of 2021, before this 'Appellate Tribunal', the Respondent Nos. 1 and 2, had filed similar 'Application', for 'Substitution of the name of the Deceased / 3rd Respondent', by means of an IA No. 129 of 2022 and that, the 'objections', sought to be raised in the instant 'Appeal', were capable of also being raised in Comp. App (AT) (CH) No. 54 of 2021. Moreover, the Appellant had not objected to the 'reliefs', that were prayed for in IA No. 129 of 2022, when they might and ought to have, but, in fact, consented to the same, being granted by this 'Tribunal'.

31. The Learned Counsel for the Respondent Nos. 1 and 2, points out that this 'Tribunal', had 'allowed' the IA No. 129 of 2022, and finding of this 'Tribunal', through its 'Order', dated 23.03.2022, in regard to the 'Impleadment', had attained 'finality', since the same was not 'assailed', by the 'Appellant'.

32. Added further, it is pointed on behalf of the Respondent Nos. 1 and 2 that after the 'Order' dated 23.03.2022, passed in IA No.129 of 2022,

the 'Appellant', had filed a 'Memo', in Comp. App (AT) (CH) No.54 of 2021, on 19.04.2022, 'bringing on record', before this 'Tribunal', that the 2nd Respondent, had 'transferred her 'Shareholding' in the 'Appellant', to the '4th Respondent'. Indeed, the 'aspect of Impleadment' of '2nd Respondent', was not 'agitated', before this 'Appellate Tribunal'.

33. It is represented on behalf of the Respondent Nos. 1 and 2 that the 'Appellant', had not agitated and / or has chosen to 'Waive', the point contained in their 'Memo', dated 19.04.2022 and further that once an 'Order', is passed on the basis of 'Consent of Parties', the same is not open to 'Re-agitation', 'Review' or any other 'Form of Interference'. As such, on the basis of Appellant's conduct, it can reasonably be concluded that the 'Appellant', has 'Waived', its 'Right', to 'raise such objections'.

34. The Learned Counsel for the Respondent Nos. 1 and 2 contends that the '3rd Respondent', was a 'Member' of the 'Appellant / Company', at the time of filing of the 'Company Petition', and that the 'Appellant', cannot 'assail', the 'impleadment' of '2nd Respondent', on the footing that it is not a 'Member'.

35. The Learned Counsel for the Respondent Nos.1 and 2, refers to the decision of the Hon'ble Supreme Court of India in Rajahmundry Electric Supply Corporation Limited v. A. Nageswara Rao & Ors., AIR 1956 SC 213, wherein, at Paragraph 5, it is observed as under:

5. `` But it is argued that as 13 of the members who had consented to the filing of the application had, subsequent to its presentation, withdrawn their consent, it thereafter ceased to satisfy the requirements of the statute, and was no longer maintainable. We have no hesitation in rejecting this contention. The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits. ''

36. According to the Respondent Nos. 1 and 2, although the 'Transferred Shares', held in the name of the '4th Respondent' ('Hindu Undivided Family'), the 'real / actual Beneficiaries' of the 'Hindu Undivided Family', are the 'Respondent Nos.1 and 2'.

37. Continuing further, it is projected on the side of the Respondent Nos.1 and 2 that on the 'Register of Members', the name of the 'Hindu Undivided Family', would be recorded with the name of the 'Karthi', being appended, next to the name of the 'HUF', and that the proposition is no different from when an 'Unregistered Partnership Firm', seeks to invoke its 'Right', as a 'Shareholder'. Also that, as regards the 'Unregistered Partnership Firms', the name of the 'Firm', would not be 'recorded' on the 'Register of Members', but, the name of the 'Partner', so designated, shall be 'recorded', in the 'Register of Members'.

38. The other contention, put forward on behalf of the Respondent Nos. 1 and 2, is that the instant Comp. App (AT) (CH) No. 53 of 2022, is

another endeavour, made by the 'Appellant', to 'delay the proceedings', before the 'National Company Law Tribunal', Chennai in CP/95/CHE/2021, and in fact, the instant 'Appeal', is 'academic', 'mala fide', and filed with an 'intent' to 'harass', the 'Respondent Nos. 1 and 2'. In short, according to the Respondent Nos. 1 and 2, the instant 'Appeal', filed by the 'Appellant', is an 'abuse of process of Law', and hence, the present 'Appeal', is to be 'dismissed with costs, in limine'.

1st and 2nd Respondents' Citations:

39. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, relies on the decision of the Hon'ble Supreme Court of India, in Dale & Carrington Invt. (P) Ltd. & Ors. v. P.L. Prathapan and Ors., reported in (2005) 1 SCC Page 212 at Spl. Page: 235 and 236, wherein, at Paragraph 33, it is observed as under:

33. "It is to be further noted that the entire scheme regarding purchase of shares in the name of mother of Prathapan was suggested by Ramanujam himself. He saw to it that the shares were transferred by the company in the name of Prathapan and his wife. The company has recorded the transfer and corrected its register of members in this behalf which, in fact, led Ramanujam to file a petition for rectification of the register of members as a counterblast to the petition filed by Prathapan under Sections 397/398 of the Companies Act. It is not open to Ramanujam now to raise the question of FERA Violation, more particularly in view of his having recorded the transfer of shares in the name of Prathapan and his wife Pushpa in the records of the Company. This also answers the objection regarding locus standi of Prathapan and his wife to file the Sections 397/398 petition before the Company Law Board. Since they were registered as shareholders of the company on the date of filing of the petition and they held the requisite number of shares in the company, they could maintain the petition."

40. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, cites the decision of the Hon'ble Supreme Court of India, in *S. Varadarajan v. Venkateswara Solvent Extraction (P) Ltd.* (1994) SCC OnLine Mad. 410, wherein, at Paragraph 23, it is observed as under

23. `` Further I, may add that very strangely Mr. Dorairaj, whose appointment as managing director is one of the subject-matters of the agenda of the extraordinary general meeting, has not chosen to raise his little finger on the above plea. It is the individual and personal right of Mr. Dorairaj to continue as managing director and it is for him to come and approach this court and seek appropriate redressal if there is a threat to disturb his continuance as managing director of the company. The said Dorairaj is either in deep slumber or adopting an attitude of supine indifference. His cause, if any, cannot be espoused or projected by the applicant who is neither a director nor the managing director. However, I am unable to accept the argument of Mr. M. Subramaniam, learned counsel appearing for some of the respondents, that the present applicant cannot maintain the application because the main petition itself is not maintainable because the present applicant holds less than the required share strength as on date even though on the date of filing of the main company petition there was satisfaction of the required strength by the present applicant and four others. In view of my decision in *L. RM. K. Narayanan v. Pudhuthottam Estates Ltd.* [1992] 74 Comp Cas 30 (Mad), this contention of Mr. M. Subramaniam does not deserve acceptance. In my aforesaid judgment it has been held by me as follows (head-note):

"Once a petition under sections 397 and 398 of the Companies Act, 1956, is validly presented, it is open to a shareholder to ask for substitution and prosecute the proceedings even through such a shareholder by himself could not have presented a petition under section 397 for want of the required share qualification. The court has, in such a case, only to consider whether the petition was a valid petition at the time of its presentation. The requirement as to the share qualification is relevant and material only at the time of institution of proceedings and once there is a valid petition and a shareholder seeks to substitute himself in order to merely continue such a valid petition, such a shareholder need not hold 10 per cent of the share capital. It is not incumbent upon the court to dismiss a petition because a proceeding under section 397 or 398 of the Act is a representative proceeding. Even if the original petitioner does not want to continue

the proceedings, the court cannot be compelled to dismiss the petition. Even then, it is open to the court to consider the merits of the case without dismissing the petition. Section 399(3) of the Act permits an individual member to make an application 'on behalf and for the benefit of all' members of a company entitled to move the court. He acts clearly in a representative capacity. Rule 9 of the Companies (Court) Rules, 1959, declaring inherent powers of the court gives the court authority to transpose the other party as applicant in the interest of justice.'"

41. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, adverts to the decision in *Desh Cam Technological Resources (P) Ltd. v. Rajendra Keshwani*, (2009) SCC OnLine CLB 14, wherein, at Paragraphs 12 and 13, it is observed as under:

12. "I have considered the pleadings and the annexures thereto as well as the arguments and the case law cited by the parties. I have considered the applicants/respondents' reliance upon the judgements wherein it is observed that :

"(a) Similar to transfer of shares without being registered in the company, it was held that he was holder of the shares . . . It is now a well-settled legal position that the articles of association of a private company is a contract between the parties . . . No transfer of any share in the capital of the company shall be made or registered without the previous sanction of the directors . . . We are unable to agree with learned counsel. The concept of previous sanction of the directors connotes that there should be a written resolution accepting the transfer from Mr. Malhan in favour of Bhagat and such previous sanction should be preceded by handing over of the shares. In this case, such an action was not done and, therefore, even the transfer of the shares held by Mr. Malhan in favour of the appellant is not valid in law.' (John Tinson and Co. P. Ltd. v. Mrs. Surjeet Malhan [1997] 88 Comp Cas 750, 753, 754 (SC); (MANU/SC/331/1997) refers)

'(b) Furthermore, counsel for the respondents argued that in any event the petitioners not being members of the company cannot refer to any alleged mismanagement which is not theirs even otherwise. There is no truth in the allegations. Petitioners Nos. 1 to 3 have acquiesced the

said resignation as directors as well as the factum of transfer of shares upon payment of the consideration amount in terms of the memorandum of understanding dated January 24, 2002 and have thereby by their conduct accepted the same and have waived their rights, if any, to challenge the said resignation and/or transfer of shares. The present application as such is bad in law by the principles of acquiescence and estoppel. Petitioners Nos. 1 to 6 having approved the said transactions cannot reprobate the same. The claim made in the application is barred by the principles of approbate and reprobate. The other petitioners being petitioners Nos. 7 to 11 all being brothers and sisters of respondents Nos. 2 and 3 have withdrawn from the present proceedings unconditionally and have no grievances whatsoever.

In order to maintain a petition under sections 397 and 398 as per the provisions of section 399, sub-section (1), the petitioners should hold either 10 per cent, or more shares of the subscribed capital or should constitute 10 per cent, or more of total members in the company. The present petition has been filed by 11 petitioners out of which petitioners Nos. 1 to 6 had transferred their entire shareholding and tendered resignation from the board of directors including the managing director of the company. However, to maintain the petition the consent of petitioners Nos. 7 to 11 was taken. The right to maintain a petition has to be on the date of filing of the petition. For this reliance was placed on the following cases :

Rajahmundry Electric Supply Corporation Ltd. v. A. Nageswara Rao (MANU/SC/8/1955); (1956) 26 Comp Cas 91 (SC) (page 95) :

"The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation."

S. Varadarajan v. Venkateswara Solvent Extraction P. Ltd. [1994] 80 Comp Cas 693 (Mad) ; [1995] 4 Comp LJ 287 (page 712):

"The requirement as to the share qualification is relevant and material only at the time of institution of the proceedings." ' (Ranjit Singh v. Madan Mohan Cold Storage P. Ltd.

(MANU/CL/61/2007): [2009] 147 Comp Cas 513, 528, 529, 530 (CLB) refers)

(c) 'Since the petitioners are not members, they have no rights and interest of members in these companies to be able to complain of lack of probity or unfair conduct of the respondents, if any, being prejudicial to the petitioners in their legal and proprietary rights as shareholders. The provisions of section 397/398 of the Act cannot be attracted in the present petitions'. (Suruchi Chand v. Mahalaxmi Glass Works P. Ltd. (MANU/CL/53/2007) : [2009] 148 Comp Cas 496, 531 (CLB), refers)

(d) 'In view of my foregoing conclusions, the petitioner's assertion of being a shareholder of the company must fail, having found that the acquisition of 23,200 shares by the petitioners is in gross violation of the articles of association of the company, the petitioners have no right to apply under sections 397 and 398 of the Act and, therefore, the company petition stands dismissed for want of any locus standi on the part of the petitioners. As a result, the application for impleadment of Smt. S. Swetha, wife of the second respondent (C.A. No. 41 of 2008) does not survive. In view of this the interim order dated December 24, 2007, is vacated.'" (M. Sreenivasulu v. Mantructions P. Ltd. [2008] 144 Comp Cas 634, 642 (CLB); (MANU/CL/14/2008) refers)

14. There is no quarrel with the legal principles laid down in the case law relied upon by the applicants/respondents regarding the maintainability of the company petition under sections 397 and 398, the requisite qualification under section 399 is mandatory. There is no dispute with the legal principle that this qualification/eligibility has to be calculated as on the date of filing of company petition."

42. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, falls back upon the decision of the Hon'ble Bombay High Court, in Harinarayan G. Bajaj v. Union of India & Ors., (2007) SCC OnLine Bom. 1041, wherein, at Paragraph 68, it is observed as under:

68. "To further support his contention that he continued to have the locus standi to maintain and prosecute the petition, the petitioner relied upon the

decision of the Hon'ble Supreme Court in the case of Rajahmundry Electric Supply Corporation Limited v. A. Nageswara Rao⁹, 1955 DGLS 115 : A.I.R. 1956 S.C. 213 wherein the Hon'ble Apex Court held that the validity of a petition for oppression and mismanagement filed under the Companies Act, 1913 must be judged on the facts as they were at the time of its presentation and the petition, which was valid when presented, cannot cease to be maintainable by reason of subsequent events. It is submitted that the aforesaid decision of the Hon'ble Supreme Court as well as the principle laid down therein has no application in the present case for at least two reasons. Firstly, that was a case under the Companies Act, Section 153C whereof, inter alia, provided that a member was entitled to apply for reliefs in connection with oppression and mismanagement only if he had obtained the consent in writing of not less than 100 members of the Company or not less than 1/10th the number of members whichever was less. At the time when the petition was filed, the aforesaid conditions had been satisfied. The Hon'ble Apex Court held that any subsequent reduction in the number would not affect the petition. Secondly, the case before the Hon'ble Supreme Court was not one in which the petitioners had ceased to be shareholders of the company, which is the position in the present case the sole petitioner has ceased to be the shareholder of SESA Goa.''

43. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, cites the decision of the Hon'ble Punjab and Haryana High Court, in Shri. Jagdish Chander Mehra & Ors. v. The New India, Embroidery Mills (1946) Pvt. Ltd. & Ors., reported in (1964) SCC OnLine Punj. 30., wherein, at Paragraphs 7 & 8, it is observed as under:

7. ``Mr. S.M. Sikri has taken up a preliminary objection that the main petition, that is, a Civil Original No. 95 of 1962, is no longer competent because after the withdrawal of petitioners 1 to 3, the only petitioner left on the record being S.C. Davessar, petitioner No.4, the qualifications as laid down in section 399 of the Act are no longer fulfilled. To this the reply given by Mr. K.L. Sachdev is that the maintainability of the petition is to be decided on the basis of the facts as they were at the time of its presentation and any events subsequent thereto cannot affect its validity. An authority cited on this proposition is Rajahmundry Electric Supply Corporation Ltd. v. A. Nageswara Rao¹. One of the arguments advanced before their Lordships of the Supreme Court by the appellant was that subsequent to the filing of the petition, 13 of the members

who had consented to the filing of the application had withdrawn their consent, and the petition, therefore, ceased to satisfy the requirements of the statute, and was no longer maintainable. This contention was summarily rejected and it was laid down that the validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation, and neither the right of the applicant to proceed with the application nor the jurisdiction of the Court to dispose it of on its own merits could be affected.

8. The same reasoning should fully apply to a case where some of the petitioners have been permitted to withdraw from the petition. Accordingly, the preliminary objection put forward by Mr. Sikri cannot be sustained.’’

44. The Learned Counsel for the Respondent Nos. 1 and 2 / Petitioners, adverts to the ‘Order’ dated 25.11.2021 of the ‘National Company Law Tribunal’, Kolkata Bench, in the matter of Prasanta Kumar Mitra & Ors. v. India Steam Laundry (P) Ltd. & Ors., in CA No. 77 / KB / 2021 in TP No. 445 / KB / 2019, wherein at Paragraphs 9 & 10, it is observed as under:

9. ‘‘The most relevant fact that is to be considered is that this has been a family company, and that each branch of the family was always represented in the company. The legal principles embodied in Order XXII CPC and its Rules have to be applied keeping this fact in view. When the time comes for pronouncement of final orders in the matter, it is better that each branch of the family is represented, so as to obviate any scope for arguments that the orders were passed without some party being given an opportunity to take part in these proceedings. The observations are provisional in so far as the status of the company as a ‘family company’’ are concerned.

10. At this present point of time, no prejudice shall be caused to anyone if the impleadment application is allowed. This need not hold up the hearing of the main T.P. 445/KB/2019. Hence, C.A. No.77/KB/2021 is allowed and the legal heirs of the Respondent No.4 are allowed to be impleaded in T.P. No.445/KB/2019 as Respondent No. 4A and Respondent No. 4B.’’

45. The Learned Counsel for the Respondent Nos. 1 and 2, refers to the 'Order', dated 03.05.2021 of the National Company Law Tribunal, Guwahati Bench, in IA No. 28 of 2020 in Cont. Appln. No. 1 of 2020 in TP No. 26/GB/2016 (CP No. 80 of 2000), between Pravir Kumar Roy v. Bogidhola Tea & Trading Co. Pvt. Ltd. & Ors., wherein at Paragraph 13 (vide Sub-Para 13 and 14), it is observed as under:

13. ``However, I am of the opinion that, to protect the interest of the heirs, legal representatives have to come on record immediately after the demise of deceased, or else the precious right of hearing will be lost. There is no mandate under any law saying that LR's shall not become a party to the proceedings unless he has become a member of the company. Since, the parties are at loggerheads for several years, it cannot be construed that company would consider his transmission application immediately after it has reached to the company.

14. Therefore, to protect the interest of the LR's and in the interest of justice, the applicant shall be substituted in the place of the deceased as soon as application has come before this Bench independent of his status as member of the company, hence, this application is hereby allowed.''

R4 & R5 Submissions:

46. The Learned Counsel for the Respondent Nos. 4 & 5, adopts the Arguments of the 'Respondent Nos. 1 & 2'.

R6 to R13 Contentions:

47. The Learned Counsel for the Respondent Nos. 6 to 13, adopts the Arguments of the 'Appellant', in toto.

Legal Representative:

48. The Companies Act, does not define the term 'Legal Representative'. Section 2(11) of the Civil Procedure Code, defines 'Legal Representative', meaning 'a person who in 'Law', represents the estate of a deceased person, and includes any person who intermediates with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Meaning of 'Legal Representative':

49. By means of Art. 23 in Table F, on the death of a 'Member' ('Shareholder'), where the 'Member', held the 'Shares', in his 'Name', and did not 'appoint' a 'Nominee', his 'Legal Representatives', shall be only 'Persons', recognised by the 'Company', as having any 'Title', to his / her interest in 'Shares'.

50. It is relevantly pointed out that by 'Regulation 25 – Table A' of 'Schedule-I' to the 'Companies Act, 1956', upon the death of a 'Shareholder', his 'Legal Representative', is the only 'Person', who may be recognised, as having 'any Title', to his interest in 'Shares'.

51. As such, the 'Representative' of a 'Deceased Member', is given the 'Alternative', either to be 'registered' himself / herself, as a 'Member' or to 'Transfer Shares', devolving upon him. Thus, when the 'Title' to the

'Shares' of a 'Deceased Member', passes to the 'Legal Representative', he / she may get himself / herself 'registered', as a 'Member', in the 'Register of Member of a Company'.

Gist of Decisions:

52. In the decision in State Bank of India v. Business Development Consultants (P) Ltd. (2005) 128 Comp Cas 557, it is held that a 'Right', would devolve on the 'Legal Representative', on the 'Death' of a 'Member', whose name, is still on the 'Register'. As such, the 'LRs' of the 'Deceased Member', whose name, is still on the 'Register', are entitled to file a 'Petition' for 'Oppression and Mismanagement'.

53. In this connection, this 'Tribunal', pertinently points out the decision of the Hon'ble Supreme Court of India in Chiranjilal Shrilal Goenka v. Jasjit Singh, reported in (1993) 2 SCC Page 507, where it is observed that the term 'Legal Representative', is wide and inclusive of not only the 'Heirs', but also intermeddlers of 'Estate' of the 'Deceased', as well as the persons who in 'Law', represent the 'Estate' of the 'Deceased'. Also that, the 'Executors', 'Administrators', 'Assignees' or 'Persons', acquiring interests by devolution under 'Or XXII Rule 10 of the 'C.P.C.' or 'Legatees', under a 'Will' are 'Legal Representatives'.

54. In the decision, in K. Shankarappa v. K.G. Gangadharaiah, reported in AIR (2001), the Hon'ble High Court of Karnataka, had held that the

definition of 'Section 2(11) of the C.P.C.', includes 'intermeddlers' and prayer of 'Substitution', cannot be refused, simply because, they were 'Strangers'.

55. That apart, a 'Legatee', under a 'Will', who intturn 'represent' the 'Estate of Deceased Testator', being an 'Intermeddler', with the 'Estate of Deceased', will be a 'Legal Representative', as per decision of the Hon'ble Supreme Court of India in Jaladi Suguna (Deceased), Through LRs v. Satya Sai Central Trust & Ors., reported in AIR 2008 SC Page 2866.

56. To put it precisely, the decision as to 'who is the Legal Representative', for the purpose of Proceedings, is necessarily limited for the purpose of carrying on the Proceedings, and cannot have the effect of showering of any 'Right of Heirship', to the 'Estate' of the 'Deceased'.

57. At this juncture, this 'Tribunal', relevantly points out that a 'Legal Representative', can take up any plea, which may be 'appropriate', to his 'character' as 'LR'. As a matter of fact, the 'Legal Representatives' of a 'Defendant', cannot take a contrary stand to the one already taken by the 'Deceased', as opined by this 'Tribunal'.

58. It is to be remembered that in case of 'Substitution under Or 22 Rule 4 of the C.P.C.', 'Heirs', enter into the shoes of the 'Deceased', with

all 'Rights and Liabilities', and are precluded from presenting a case, inconsistent with the fact setup by the 'Deceased'.

59. In 'Law', the 'Legal Representatives', can take the pleas of 'Original Party / Parties', 'Rights and Liabilities', that are to considered and not those of 'Legal Representatives'. The crucial question that will crop up for one's rumination is that, whether the 'Right to Sue survives'.

60. The 'Legal Representative' of the 'Deceased Member', is the 'Legal Owner', of 'Shares', held by the 'Deceased'. At this juncture, this 'Tribunal', significantly points out that the 'Legal Representatives', are entitled to what the 'Deceased Shareholder', whose 'Name', is on 'register', would be entitled to except ofcourse, in regard to attending 'Meetings', and being co-opted to the subsequent benefits like 'Allotment of New Shares' or in the event of 'Reconstruction', the 'Statutory Right', to 'dissent' or the 'Locus', to prefer a 'Petition', to 'windup' a 'Company' or 'Institute Proceedings', under Section 241 of the Companies Act, 2013.

Transmission:

61. The term 'Transmission', is employed in 'contradistinction', to 'Transfer' and included 'Devolution', by 'Death', 'Bankruptcy', 'Marriage' and in 'any other way', than by 'Transfer' (vide Barton v. Condon and North Western Railway Company) (1889) 24 QBD 77 (CA).

Furthermore, 'Transmission' means 'Devolution of Title' to 'Shares', other than by 'Transfer'.

Holder of a 'Share':

62. The words 'Holder of a Share', are really equal to the word 'Shareholder' and the term 'Holder of a Share', connotes in so far as a 'Company', is concerned, only who as a 'Shareholder', has his 'Name', entered on the 'Register of Members'.

Representative in Character:

63. It is to be pointed out that the Proceedings, under Section 397 and 398 of the Companies Act, 1956 (Section 241 and 242 of the Companies Act, 2013, are 'Representative in Character', and as such, an 'Order', permitting a 'Third Party to Implead a Co-Petitioner', can be passed, as per decision in Malleswara Finance & Investments Co. Pvt. Ltd. v. Company Law Board & Ors, reported in (1994) 81 Comp. Cas 66 (Mad).

64. Also that, in L.Rm.K. Narayanan & Anr. v. Pudhuthotam Estates Limited (1992) 74 Comp. Cas 30 (Mad), it is among other things, held that once there is a valid Petition, before the 'Court', there are ample powers with the 'Court', to permit others to join in the 'Petition', as 'Co-Petitioner'.

Maintainability of Petition:

65. The 'Maintainability of a Petition', requires to be considered and decided by the 'Tribunal', based on facts, as on 'date of filing of Petition'. Also, it is for the 'Tribunal', to deal with the 'aspect of Locus', to prefer a 'Petition'.

Oppression:

66. It must be exhibited that the conduct of 'Majority Shareholders', was 'Oppressive' to 'Minority', as 'Members', and this requires that the events are to be considered as part and parcel of 'sequential narration'.

67. The Hon'ble Supreme Court of India, in the decision Shanti Prasad Jain v. Kalinga Tubes Limited & Ors., AIR 1965 SC at Page 1535, had held that the 'Law', has not defined 'Oppression' and it is left to the 'Court', to decide on facts of each case, whether there is such 'Oppression', requiring 'action'.

Succession Certificate:

68. A 'Succession Certificate', can be granted, not only in respect of the 'Debt', but also in regard to the 'Shares', in a 'Company'. Where a 'Succession Certificate', was granted in respect of 'Shares', in a 'Company', the 'Company', cannot insist upon 'production' of 'Probate' or 'Letters of Administration'. In fact, the 'Succession Certification',

provides 'full indemnity', to the 'Company', as per decision in Pl. Tl. Thenappa Chettiar By Agent v. The Indian Overseas Bank Ltd. (1943), 13 Comp Cas 202 (Mad.).

Evaluation:

69. Before the 'Tribunal' ('National Company Law Tribunal', Division Bench-I, Chennai), the Respondent Nos. 1 and 2 / Petitioners / Legal Heirs of 1st Petitioner, had filed IA/14/CHE/2022 in CP/95/CHE/2021 (under Rule 53 of the National Company Law Tribunal Rules, 2016), among other things stating that the main 'Company Petition', was filed by the '3rd Respondent / 1st Respondent / 1st Petitioner (Mrs. M.V. Valli Murugappan - Deceased)' and the '4th Respondent / 2nd Respondent / 2nd Petitioner', seeking 'Equitable Reliefs', under Section 241 of the Companies Act, 2013, on account of 'Oppression' of their 'Rights', as 'Shareholders', and a 'Systematic Exclusion', from knowing / participating in the 'Management and the Affairs' of the 'Appellant / 3rd Respondent / 1st Respondent Company'. Further, the 'Petition', arose, in respect of the 'Family' run Appellant / 3rd Respondent Company, in which, the 3rd and 4th Respondents / 1st and 2nd Respondents 'Family Wing', were specifically excluded from the 'Management', and 'Rights' of the 'Shareholders', were denied.

70. Moreover, the 3rd Respondent / 1st Respondent / 1st Petitioner M/s. M.V. Valli Murugappan, was passed away, due to 'natural causes', on 21.01.2022. The Respondent Nos. 1 and 2 / Petitioners / Legal Heirs of the 1st Petitioner, are the 'daughters' of the 'Deceased 3rd Respondent / 1st Respondent Mrs. Valli Murugappan (Deceased) and that the Husband of the 3rd Respondent / 1st Respondent, had predeceased her, during 2017.

71. According to the Respondent Nos.1 and 2 / Petitioners, the 3rd Respondent / 1st Respondent (Deceased), had executed a 'Will', dated 17.12.2015, as 'amended' by 'Codicil', dated 10.04.2018, in terms of which, the 'Shares' of the '3rd Respondent / Deceased 1st Respondent', in the 'Appellant / 3rd Respondent Company', devolves on the 'Petitioner' in IA/14/CHE/2022 in CP/95/CHE/2021. That apart, steps to 'Probate' the 'Will', are being undertaken, etc.

72. According to the Respondent Nos.1 and 2 / Petitioners, they are the 'Legal Heirs' of the 'Deceased 3rd Respondent M/s. M.V. Valli Murugappan', and hence, are entitled to 'inherit her Shares', in the 'Appellant / 3rd Respondent / Company'. Further, the Respondent Nos. 1 and 2 / Petitioners, are entitled to be 'Substituted', in place of the 'Deceased 3rd Respondent / M/s. M.V. Valli Murugappan / 1st Respondent', in the main 'Company Petition', and the connected 'Applications'. Hence, the Respondent Nos. 1 and 2 / Petitioners, had

prayed in IA/14/CHE/2022 in CP/95/CHE/2021, that they be 'Substituted', in place of the '3rd Respondent/ 1st Respondent' (Deceased) in main 'Company Petition' and the connected 'Applications'.

73. Before the 'Tribunal', the Appellant / 3rd Respondent / Company, in its 'Counter', had inter alia, mentioned that the Respondents / Petitioners, after receipt of 'Shares', by way of 'Transmission of Shares', from the 'Name of their Late Mother', had consciously transferred the 62,851 Shares, in favour of M.V. Murugappan, HUF (4th Respondent in 'Appeal'). Further, the 2nd Respondent / 2nd Petitioner, had transferred all her 62,851 Shares, which were transmitted in her 'Name', and after 'Transferring the Shares', the 2nd Respondent / 2nd Petitioner, ceased to be a 'Member' of the 'Respondent', and hence, the Name of the 2nd Respondent / 2nd Petitioner, cannot be 'Substituted', in the 'Waiver Application', that was filed by her 'Demised Mother'.

74. The Appellant / 3rd Respondent / Company, had proceeded to observe in its 'Counter' in IA/14/CHE/2022 in CP/95/CHE/2021 that the 'Name of the 2nd Respondent / 2nd Petitioner', could not be 'Substituted', in the 'Waiver Application' (although a 'Legal Heir'), as she ceased to be a 'Member' of the 'Respondent', with effect from 04.03.2022, on which date, the 2nd Respondent / 2nd Petitioner, had 'transferred all her 62,851 Shares', in favour of the '4th Respondent / M.V. Murugappan (HUF)'.

75. The Appellant / 3rd Respondent, took a plea that the 2nd Respondent / 2nd Petitioner's name, could not be 'Substituted', in the 'Waiver' and the connected 'Application', as she does not 'satisfy' the 'rudimentary requirement' of being a 'Member', i.e. 'Mandatory', as per Section 244 of the Companies Act, 2013. Also that, the 'Right', to seek 'Waiver', under Section 244 of the Act, can be exercised, by a 'Member' of the 'Company' only, and not by others.

76. The Appellant / 3rd Respondent / Company, under the aforesaid circumstances, had prayed for 'dismissal' of the 'IA/14/CHE/2022 in CP/95/CHE/2021', on the File of the 'Tribunal'.

77. Be it noted, that all 'Legal Heirs', are ordinarily 'Legal Representatives', but, the contra is untrue. Also that, all 'Legal Representatives', are not necessarily 'Legal Heirs' at 'Will', as per decision in Kalu Ram v. Charan Singh AIR 1994 Rajasthan Page 31.

78. It comes to be known that the Deceased / 3rd Respondent and the 4th Respondent, had filed a 'Company Petition', on 09.08.2021, before the 'Tribunal', claiming 'Equitable Reliefs', in terms of Section 241 of the Companies Act, 2013 on account of 'Oppression' of the 'Rights', as 'Shareholders' and 'Systemic Exclusion', from knowing by 'participating', in the 'Management and Affairs' of the 'Appellant

Company’ and ‘Mismanagement’ of the ‘Appellant’ at the instance of Respondent Nos. 5 to 17.

79. Further, because of the required ‘Shareholding’, for maintaining the Company Petition, under Section 241 of the Companies Act, 2013, was not fulfilled, the 3rd and 4th Respondents, had also filed an ‘Application’, bearing CP/95/CHE/2021 (Waiver Application), praying for ‘Waiver of the 10% Shareholding requirement’, for maintaining the ‘Application’, under Section 241 of the Companies Act, 2013.

80. It is brought to the fore, that while the ‘Waiver Application’, is pending, the 3rd Respondent died on 21.01.2022. On 09.02.2022, IA/14/CHE/2022 and IA/15/CHE/2022 in CP/95/CHE/2021, were filed before the ‘Tribunal’, for ‘Impleadment’ of ‘First and Second Respondents’, as ‘Legal Heirs’ of the ‘Third Respondent’.

81. It transpires that the ‘Transmission of Shares’ of the ‘Deceased / 3rd Respondent’ to the ‘Respondent Nos. 1 and 2’, was made on 18.02.2022, and that, during the 3rd Week of February 2022, according to the Respondent Nos.1 and 2, the ‘Appellant’, was aware of the ‘Transmission of Shares’ of the ‘3rd Respondent’, and in fact, on 04.03.2022, the ‘2nd Respondent’, had transferred the entire ‘Shareholding’, in the ‘Appellant / Company’, to the ‘4th Respondent’.

82. It is the stand of the Respondent Nos. 1 and 2 that, RTA would upload the 'Benpos Statement' of the 'Shareholders', on a weekly basis, on its 'Official Website', and the 'Appellant', on exercising 'Diligence', would have knowledge of the 'Transfer of Shares', by the 'Respondent Nos. 1 and 2'. Therefore, by 11.03.2022, the 'Appellant / Company', by exercising 'Diligence', would have and should have known that the 'Appellant's Shares', were 'transferred', by the 'Respondent Nos.1 and 2', on 04.03.2022. In spite of the same, the 'Appellant', had not opposed the 'Reliefs', that were prayed for, in IA No.129 of 2022 and indeed, by means of an 'Order', dated 23.03.2022, this 'Tribunal', had allowed the IA No. 129 of 2022 and the 'Order', relating to 'Impleadment', had attained finality.

83. It is represented on behalf of the Respondent Nos. 1 and 2, that after the 'Order', that was passed on 23.03.2022, in IA No. 129 of 2022, the 'Appellant', filed a 'Memo' dated 19.04.2022 in Comp. App (AT) (CH) (INS.) No. 54 of 2021, bring on record, before this 'Tribunal', that the '2nd Respondent', had transferred her 'Shareholding' in the 'Appellant / Company', to the '4th Respondent'. In fact, when Comp. App (AT) (CH) (INS.) No. 54 of 2021, was heard on numerous occasions, the 'aspect of Impleadment of 2nd Respondent', was not agitated, before this 'Tribunal'.

84. It is not out of place for this 'Tribunal', to make a pertinent mention that there is no command, under any 'Law', which enjoins that the 'Legal Representatives' of the 'Deceased', shall not become a 'Party', to the 'Proceedings', under Section 241 and 242 of the Companies Act, 2013, unless, the 'Legal Representative', turns out to be the 'Member' of the 'Company'.

85. It cannot be forgotten that Rule 53 (2) of the NCLT Rules, 2016, specifically mentions that in case of 'Death of a Party', during the pendency of proceedings, before the 'Tribunal', the 'Legal Representative' of the 'Deceased Party', may 'apply', within 90 days of the date of such 'Debt', for being 'brought on record'.

86. It cannot be brushed aside that even in respect of 'Oppression and Mismanagement Proceedings', if an 'Application' / 'Petition', for 'Substitution of Legal Heirs', is permitted by the 'Court' / 'Tribunal', the fact that, the 'aspect of a Legal Representative', has 'no bearing, whatsoever', in the said 'Application', as opined by this 'Tribunal'.

87. As far as the present case is concerned, even though, on behalf of the 'Appellant', a plea is taken that the 2nd Respondent, who inherited 62,851 Shares, held by 'her Deceased Mother', through 'Transmission of Shares', on 18.02.2022, had 'transferred the 62,851 Shares, which were

inherited on 04.03.2022, in the 'Appellant / Company', and therefore, the 'Substitution of the name of the 2nd Respondent', who is not a 'Member', as a 'Petitioner' in CP/95/CHE/2021, being in 'violation' of Section 241 read with 244 of the Companies Act, 2013, yet this 'Tribunal', is of the earnest opinion, that when a 'Member' dies, His / Her 'Estate' vests in 'Legal Representatives', on the 'demise of the Deceased', and keeping in mind of a prime fact, that there is 'no Law', which specifically envisages that unless, the 'Legal Representatives', become 'Members' of a 'Company', the 'Legal Representatives', of the 'Deceased', shall not become a 'Party', to the 'Proceedings', under Section 241 and 242 of the Companies Act, 2013. Viewed in that perspective, the 'impugned order', dated 01.06.2022, in IA/14/CHE/2022 in CP/95/CHE/2021 (Filed by the 'Respondent Nos. 1 and 2 / Petitioners', seeking to 'bring them on record', in 'substitution' of the '1st Respondent' in main 'Company Petition' and connected 'Applications'), passed by the 'National Company Law Tribunal', Division Bench-I, Chennai, is free from 'Legal Infirmities'. Resultantly, the instant 'Appeal' fails.

Conclusion:

In fine, the Comp. App (AT) (CH) No. 53 of 2022, is Dismissed, for the reasons assigned by this 'Tribunal'. No costs. The IA No. 620 of

2022 ('For Stay') is Closed. Before parting with the case, this 'Tribunal', makes it clear that the dismissal of the instant Comp. App. (AT) (CH) No. 53 of 2022, will not preclude the respective 'Parties', to raise all factual and legal pleas, before the 'National Company Law Tribunal', Division Bench – I, Chennai, in pending CP/95/CHE/2021, ofcourse, in accordance with 'Law', if they so 'desire' / 'advised'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

01 / 08 / 2023

SR / NG