

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) No. 65 of 2019

&

I.A. No. 1075-1076 of 2021 & 8807 of 2024

[Arising out of the Impugned Judgment and Order dated 24.01.2019, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench) in CP No. 54 of 2014/NCLT/Bengaluru]

IN THE MATTER OF:

Mrs. C. Valli Narayan

W/o Late Mr. C.V. Narayan

Aged about 74 years

No. 44 Osborne Road. Ulsoor

Bengaluru – 560042

...Appellant

Versus

1. **C. Krishniah Chetty & Sons Private Limited**

A company incorporated under the Companies Act, 1956 and having its registered office at:

No. 35, Commercial Street

Bangalore – 560001

...Respondent No.1

2. **Mr. C. Vinod Hayagriv**

S/o Mr. C.V. Hayagriv

Aged about 59 years

“Krishana Prasad”

1/34, Ulsoor Road,

W.H. Hanumanthappa Layout

Bengaluru - 560042

...Respondent No.2

3. **Mr. C.V. Hayagriv**

S/o Late Sri C.V. Chetty

Aged about 81 years

“Krishana Prasad”

1/34, Ulsoor Road,

W.H. Hanumanthappa Layout

Bengaluru - 560042

...Respondent No.3

4. **Mrs. Triveni Vinod**

W/o Mr. C. Vinod Hayagriv

Aged about 52 years

“Krishana Prasad”

1/34, Ulsoor Road,
W.H. Hanumanthappa Layout
Bengaluru - 560042

...Respondent No.4

5. **Mrs. C. Visala Hayagriv**
W/o Mr. C. V. Hayagriv
Aged about 77 years
"Krishana Prasad"
1/34, Ulsoor Road,
W.H. Hanumanthappa Layout
Bengaluru - 560042

...Respondent No.5

6. **Mr. Chaitanya V. Cotha**
S/o Mr. C. Vinod Hayagriv
Aged about 32 years
"Krishana Prasad"
1/34, Ulsoor Road,
W.H. Hanumanthappa Layout
Bengaluru - 560042

...Respondent No.6

7. **Mr. Shreyas V. Cotha**
S/o Mr. C. Vinod Hayagriv
Aged about 30 years
"Krishana Prasad"
1/34, Ulsoor Road,
W.H. Hanumanthappa Layout
Bengaluru - 560042

...Respondent No.7

8. **Mr. Shyam Ramadhyani**
S/o Late Mr. B.K. Ramadhyani
Aged about 64 years
Partner, M/s B.K. Ramadhyani & Co.
No. 4-B, Chitrapur Bhavan
No. 68, 8th Main, 15th Cross
Malleswaram, Bengaluru - 560055

...Respondent No.8

9. **Mr. C. Ganesh Narayan**
S/o Late Mr. C.V. Narayan
Aged about 40 years
r/a, No. 44, Osborne Road, Ulsoor,
Bengaluru - 560 042

...Respondent No.9

10. **C. Krishniah Chetty Jewellers Pvt. Ltd.**
A company incorporated under the
Companies Act, 1956 and having its
registered office at:
No. 36, Commercial Street
Bangalore - 560001

...Respondent No.1

Present:

For Appellant : Mr. Nikhil Nayyar, Sr. Adv. with Mr. Divyanshu Rai, Mr. Vishal Sharma, Ms. Taruna, Advocates.

For Respondent : Mr. Abhishek Anand, Mr. Mandeep Kalra, Ms. Anushna Satapathy, Ms. Radhika Jalan, Ms. Widaphi Lyngdoh, Mr. Yashas J, Mr. Vaibhav Yadav, Mr. Paras Mohan Sharma, Advocates for R-2 to 7. Mr. Ankur S. Kulkarni, Ms. Divyansha Gajallewar, Advocates for R-8. Mr. Balaji Subramanian, Akash Kundu, Advocates for R-9.

With

T.A. No. 1 of 2023 in CA (AT) (CH) No. 70 of 2023

&

IA No. 947, 948, 949, 4975, 5002 of 2023

[Arising out of the Impugned Order dated 24.08.20239, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench) in CA No. 62 of 2021 and I.A. Nos. 05, 06 and 07 in CP 04/BB/2020]

IN THE MATTER OF:

1. **Mr. C. Ganesh Narayan**
S/o Late Mr. C.V. Narayan
Aged about 40 years
R/o, No. 44, Osborne Road, Ulsoor,
Bengaluru – 560 042 **...Appellant No.1**
2. **Smt. C. Valli Narayan**
W/o Late Mr. C.V. Narayan
Aged about 76 years
No. 44 Osborne Road. Ulsoor
Bengaluru – 560042 **...Appellant No.2**
3. **C. Ganesh Narayan HUF**
R/o 44 Osborne Road. Ulsoor
Bengaluru – 560042
Through its Authorised Representative **...Appellant No.3**
4. **Deepali Co. Pvt. Ltd.**
Having its registered office at:
No. 35, Commercial Street
Bangalore – 560001
Through its Authorised Representative **...Appellant No.4**

Versus

1. **C. Krishniah Chetty & Sons Pvt. Ltd.**
Having its registered office at:
No. 35, Commercial Street
Bangalore – 560001, Karnataka **...Respondent No.1**

2. **C. Krishniah Chetty & Sons Manufacturers Pvt. Ltd.**
Having its registered office at:
The Touchstone, 3rd Floor,
No. 2 and 2/1 Main Guard Cross Road,
Bengaluru 560001,
Through its Authorised Representative **...Respondent No.2**

3. **C. Krishniah Chetty & Sons Firm**
Having its registered office at:
No. 36, Commercial Street
Bangalore – 560001,
Through its Authorised Representative **...Respondent No.3**

4. **C. Krishniah Chetty & Sons Charitable Trust**
Having its registered office at:
No. 35, Commercial Street
Bangalore – 560001,
Through its Authorised Representative **...Respondent No.4**

5. **C. Krishniah Chetty Foundation**
Having its registered office at:
The Touchstone, 4th Floor,
No. 2 and 2/1 Main Guard Cross Road,
Bengaluru 560001,
Through its Authorised Representative **...Respondent No.5**

6. **C. Krishniah Chetty Jewellers Pvt. Ltd.**
Having its registered office at:
No. 36, Commercial Street
Bangalore – 560001,
Through its Authorised Representative **...Respondent No.6**

7. **Mr. Shyam Ramadhyani**
S/o Late Mr. B.K. Ramadhyani
Aged about 63 years
Partner, M/s B.K. Ramadhyani & Co. LLP
Chartered Accountants, having its office at:
No. 4-B, Chitrapur Bhavan
No. 68, 8th Main, 15th Cross
Malleswaram, Bengaluru - 560055 **...Respondent No.7**

8. **C. Vinod Hayagriv**
S/o Mr. C.V. Hayagriv
Aged about 62 years **...Respondent No.8**
9. **Mr. C.V. Hayagriv**
S/o Late C. Venkatachalapathy Chetty
Aged about 84 years **...Respondent No.9**
10. **Mrs. Triveni Vinod**
W/o Mr. C. Vinod Hayagriv
Aged about 57 years **...Respondent No.10**
11. **Mrs. C. Visala Hayagriv**
W/o Mr. C. V. Hayagriv
Aged about 80 years **...Respondent No.11**
12. **Mr. Chaitanya V. Cotha**
S/o Mr. C. Vinod Hayagriv
Aged about 35 years **...Respondent No.12**
13. **Mr. Shreyas V. Cotha**
S/o Mr. C. Vinod Hayagriv
Aged about 33 years **...Respondent No.13**

Respondents Nos. 8 to 13 represented by their
Power of Attorney Holder,
Dr. C. Vinod Hayagriv, S/o Mr. C.V. Hayagriv
Aged about 62 years

Respondents No.8 to 13 all residing at
"Krishna Prasad
1/34, Ulsoor, Hanumanthappa Layout
Bangalore - 560042

Present:

For Appellant : Mr. Nikhil Nayyar, Sr. Adv. with Mr. Divyanshu Rai,
Mr. Vishal Sharma, Ms. Taruna, Advocates

For Respondent : Mr. Abhishek Anand, Mr. Mandeep Kalra, Ms.
Anushna Satapathy, Ms. Radhika Jalan, Ms.
Widaphi Lyngdoh, Mr. Yashas J, Mr. Vaibhav
Yadav, Mr. Paras Mohan Sharma, Advocates for R-
2 to 7.

Mr. Ankur S. Kulkarni, Ms. Divyansha Gajallewar,
Advocates for R-8. Mr. Balaji Subramanian, Akash
Kundu, Advocates for R-9.

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

[Per: Arun Baroka, Member (Technical)]

Introduction

CA(AT) No. 65 of 2019 (first Appeal) and Transfer Application TA No. 1 of 2023 in CA(AT)(CH) No. 70 of 2023 (second Appeal) relate to family members and their business entities, which belong to family members which are broadly pitched against each other in two groups viz. Narayan's and Hayagriv's. Narayan group is the main Appellant in both the Appeals. For better understanding they are listed as follows:

Narayan Group (CVN group)

- Mr. C. Valli Narayan (CVN) : Appellant in CA(AT) No. 65 of 2019 and Appellant in TA No. 1 of 2023.
- Mr. C. Ganesh Narayan (CGN) : Appellant in CA(AT) No. 65 of 2019 and Appellant in TA No. 1 of 2023.
- Mr. C. Ganesh Narayan HUF : Appellant in TA No. 1 of 2023.

Hayagriv Group (CVH group)

- Mr. C. Vinod Hayagriv : R2 in CA(AT) No. 65 of 2019
R2 in TA No. 1 of 2023
- Ms. Tiveni Vinod : R4 in 65 of 2019
R10 in TA No. 1 of 2023
- Mrs. C. Visala Hayagriv : R5 in 65 of 2019
R11 in TA No. 1 of 2023
- Mr. Chaitanya V. Colta : R6 in 65 of 2019
R12 in TA No. 1 of 2023
- Mr. Shreyas V. Colta : R7 in 65 of 2019
R13 in TA No. 1 of 2023

Business Entities

1. C. Krishniah Chetty & Sons Pvt. Ltd. (CKC & Sons) : R1 in CA(AT) No. 65 of 2019
R1 in TA No. 1 of 2023
2. C. Krishniah Chetty Jewellers Pvt. Ltd. : R10 in CA(AT) No. 65 of 2019
R6 in TA No. 1 of 2023
3. C. Krishniah Chetty & Sons Manufactures Pvt. Ltd. : R2 in 65 of 2019
TA No. 1 of 2023
4. C. Krishniah Chetty & Sons Firm : R3 in 65 of 2019
TA No. 1 of 2023
5. C. Krishniah Chetty & Sons Charitable Trust : R4 in 65 of 2019
TA No. 1 of 2023
6. C. Krishniah Chetty Foundation : R5 in 65 of 2019
TA No. 1 of 2023
7. Deepali Co. Pvt. Ltd. : R4 in 65 of 2019
TA No. 1 of 2023

Others

Mr. Shyam Ramadhyani : R8 in CA(AT) No. 65 of 2019
and R-1 in TA No. 1 of 2023
and Expert as FSA.

2. CP No. 54 of 2014 of NCLT Bengaluru was pending before NCLT which was the basis for transfer application T.P. No. 65 of 2016 filed by Mrs C Valli Narayan (petitioner) under Sections 397, 398, 402, 403, 406, 237 of Companies Act 1956 against M/s C Krishniah Chetty and Sons Pvt Ltd. We note that this Appellate Tribunal was seized of CA (AT) No. 65 of 2019 filed by Mr. C. Ganesh Narayan against the order dated 24.01.2019 passed in CP No. 54 of 2014 of NCLT Bengaluru dealing with various acts of oppression and mismanagement including exclusion from the affairs violation of Family Settlement Agreement, diversion of business etc. of CKC & Sons-R-1.

3. In the meantime, Respondent group under Hayagriv Group (R1-R6 and

R8-R13), on the basis of the orders/judgment in CP No. 54 of 2014, filed CP No. 04/BB/2020 before NCLT Bengaluru alleging oppression and mismanagement and violation of Section 166 of Companies Act, 2013 against the Appellant Group – Narayan’s group. It also filed IA Nos. 5, 6 and 7 of 2020. In these IAs, status quo orders were passed by NCLT on 12.07.2021. Aggrieved by ex-parte orders, Appellants group (Narayan’s) filed CA No. 62 of 2021 for the recall of the said order issued in IAs 5, 6, and 7 in CP No. 04/BB/2020. NCLT vide order dated 24.08.2023 dismissed CA No. 62 of 2021 filed by the Appellants (Naryan’s) for recall and also confirmed orders under IA Nos. 5, 6, and 7 of 2020. Aggrieved by these orders, an appeal was filed against this order, which was earlier before Chennai Bench as CA (AT) (CH) No. 70 of 2023 and which was transferred to the Principal Bench with TA No. 1 of 2023.

4. Appeal 65 of 2019 (first Appeal) presses for setting aside the impugned order dated 24th January 2019 passed by NCLT Bengaluru and also allow the Company Petition bearing number 54 of 2014 filed by the appellant before NCLT Bengaluru.

5. Appeal number TA 1 of 2023 (second Appeal), prayers are as follows:

- “a) Allow the instant Appeal;
- b) Set aside the Impugned Order dated 24.08.2023 in CA No. 62 of 2021 and I.A Nos. 05, 06 and 07 in CP 04/BB/2020 passed by Hon'ble National Company Law Tribunal, Bangalore Bench;
- c) Reject IA 5, 6, 7/2020 filed by the Respondents No. 8 - 13, in CP 04/BB/2020
- d) Pass such other order as this Hon'ble Appellate Tribunal may deem fit and proper.”

As the appellants and their opponents have submitted almost similar arguments for each side, to avoid repetition of the pleadings, we will classify the pleadings in two broad categories of Narayan's and Hayagriv's submissions.

Submissions of Narayan's Group

6. These submissions include the submissions of Mrs C Valli Narayan, who is the appellant, and Mr C Ganesh Narayan, who is R9 in CA AT 65 of 2019, and also a first appellant in TA 01 of 2023. This also includes the submissions of other appellants in both the appeals namely Deepali Company Pvt Ltd and C Ganesh Narayan HUF.

7. The Appellant A1 claims to be an 80-year-old oppressed member, shareholder and a non-whole-time Director of the R-1 Company (which has historically been a family run business. Since its inception, the R-1 Company has been managed like a quasi-partnership. R-1 acquired the assets and liabilities of a dissolved partnership firm in 1980 called C. Krishniah Chetty & Sons. The Appellant group (the Appellant and her son, R9) holds 50% shareholding of the R1 Company and the remaining 50% is held by R 2-7 group. Despite having equal shareholding as the R 2-7 group, the Appellant group has been illegally excluded from the affairs of R1 Company by the R2-7 group, such an exclusion is on the face of it oppressive and is detrimental to the rights of the Appellant group as the equal shareholders.

8. Appellant claims that in the impugned order dated 24.01.2019, not only did the NCLT fail to consider such an exclusion and oppression of the

Appellant group or adjudicate upon it, but also failed to give effect to the Family Settlement arrived at between the parties and resolve the admitted deadlock. First of all, there was disregard of the family settlement agreement and failure to resolve the apparent deadlock between the two groups of shareholders. The Appellant group had time and again raised their grievances regarding financial irregularities in R1 Company and transfer of business from R1 Company to R10 Company and other CKC companies. As the R2-7 group failed to address the grievances of the Appellant group, the parties had reached the situation of a deadlock. In order to bring an end to the mistrust, and part ways in an amicable manner, both the groups of the family had decided to divide the business of R1 Company and executed a Binding Family Settlement Agreement (“FSA”) dated 09.01.2014. Admittedly, the execution of the FSA is not denied by R-2 to R-7 and R1 & 10. The proposed split was also reported in media in the month of March 2014 where statements of R-9 and R-2 were reported. The same is also reflected in R-2’s own email dated 10.03.2014 to the employees.

9. In the FSA, it was decided by the two groups that the assets of the R1 Company will be equally divided between the Appellant group (through CKC Deepali) and the R-2 to R-7 group (through R10) *[clause 1(f) of the FSA]*. It was the essence of the FSA that going ahead, the Appellant group will continue to carry on their independent business in CKC Deepali (admittedly a part of CKC group) and the R2-7 group will continue to carry on their business through R10 company after purchasing the remaining 20% shares of the Appellant in R-10. The FSA stipulated that both the groups could freely continue their

businesses (*per Clauses 1(g) Distribution of Liabilities, 3(d) No Non-Compete, 3(e) New Stores etc.*). In order to give effect to the FSA, both the groups acted in furtherance to the terms of the FSA, which is clear from board resolutions and various emails addressed by R2 to employees. However, the process of implementation of the FSA came to a grinding halt when all of a sudden after six months of signing of the FSA, the R-2 to R-7 group decided to not act upon the FSA and they continued with the diversion of business from R-1 to R-10 company.

10. Company Law Board had taken cognizance of the brazen acts of R-2 to R-7 group and vide order dated 23.09.2014 granted interim relief to the Appellant group.

11. The records reflect that there is a situation of shareholder deadlock between the two equal shareholding groups of the family and hence it was incumbent upon the NCLT to exercise its powers and implement the Binding FSA. Appellant placed reliance on ***Needle Industries (India) Ltd & Ors. v. Needle Industries Newey (India) Holding Ltd. and Others AIR 1981 SC 1298 para 46-48.***

12. Subsequently, R2 to R7 themselves have filed a petition alleging oppression and mismanagement (CP 04/BB/2020) before the NCLT stating that:

“95. The Petitioners maintain that there is a Trust Deficit on account of unethical actions by Respondent No. 2 and Respondent No. 3. Be that as it may, it is an undisputed and admitted fact, recorded in this Hon'ble Tribunal's Final Judgement and Order,

dated 24.01.2019, that there is a complete breakdown of relationship between the Hayagrivs (Petitioners) and Narayans (Respondent No. 2 and Respondent No. 3) and they cannot work together [Para 16]. Both sides have repeatedly and categorically so maintained in the CLB and later before this Hon'ble Tribunal and the Petitioner has stated so even in her Appeal before the Hon'ble NCLAT.”

(emphasis supplied)

13. Thus, even the Respondents admit the irretrievable breakdown in trust and confidence between the two group of shareholders. Hence, it is a fit case for the exercise of powers under Section 241 of the Companies Act, 2013 ('Act') to break the deadlock and pass appropriate orders to bring an end to the matters complained of.

14. The NCLT has wide powers to grant an equitable relief to enforce the FSA to bring an end to the matters complained of, specifically when there is no meeting point between the parties. Appellant places reliance on ***Probir Kumar Misra v. Ramani Ramaswamy & Ors. 2010 154 CompCas 658 (Mad) para 154, 155, 156, 157, 172 and 180.*** During the 36th AGM, R9 was illegally ousted from the position of the JMD of R1 Company which clearly establishes the R2-7 group's oppressive intent. This also shows that there is a larger desire to oppress the Appellant and R9 and exclude them from the management of the family business of R1 in which they hold 50% shareholding.

15. The Impugned Order also fails to consider that principle of dissolution of partnership applies to companies either on the ground of complete deadlock or on the ground of being domestic or family companies. Appellant

places reliance on ***Hind Overseas vs. Ragunath Prasad Jhunjhunwala & Ors*** AIR 1976 SC565 para 33] and [***M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja*** AIR 2008 SC 1738 @ para 16, 17, 38, 39, 42,43 and ***Synchron Machine Tools P. Ltd. & Ors. vs. U.M. Suresh Rao*** [1994] 79 CompCas 868 (Kar) para 31, 180, 190].

16. This Hon'ble Tribunal in its recent judgment dated 14.08.2024, in the case of ***Venus Petrochemicals (Bombay Private Ltd.) & Ors. v. Sunil M. Thakkar (Comp. App. AT No. 65 of 2022)***, applied the principle of quasi-partnership to a family company where the two groups had equal shareholding. This Hon'ble Tribunal also applying the ratio of ***Tata Consultancy Services Pvt. Ltd. v. Cyrus Investments (P) Ltd. [(2021) 9 SCC 449]*** invoked the just and equitable standard while upholding the order of the NCLT granting equal representation on the board, removal of casting vote and directing joint operations of all the bank accounts. The facts of the said case are similar to the present case as even in this case there is a family history, equal shareholding in R1 company and also cross shareholding and directorship in other group private limited companies.

17. The Impugned Order fails to consider the additional acts of oppression and mismanagement as raised by the Appellant in CA 1/2015, CA 12/2015 and order dated 12.7.2018, Contempt Application 1 of 2016.

18. Reliance is placed upon further acts of oppression and mismanagement after the family settlement was rejected, communications issued by Appellant and R9 in this regard. The acts of oppression and mismanagement by R-2 to

7 continued during the pendency of the present appeal by continuing the diversion of business from R-1 to R-10 resulting in reduction of turnover etc.

19. Recently, in a blatant violation of their undertaking before this Hon'ble Tribunal and the orders dated 23.07.2019, 19.12.2019 and 04.11.2020 passed by this Hon'ble Tribunal and continued on subsequent dates, R8 to R13 have passed various resolutions by circulation (I.A. No. 8807 of 2024). This Tribunal has issued notice in the said application.

20. Appellant contends that the Impugned Order is riddled with legal and factual infirmities. Firstly, the original FSA was kept with R-8 for safekeeping. Under the FSA, R-8, who had been the family's chartered accountant for many years, was designated as an "expert". Moreover, the Appellant has shown specific instances to establish that the FSA has been acted upon and in fact, the executed originals of the FSA were filed by R-8 with the Ld. Company Law Board, Chennai and the same has remained in the records of the NCLT, Chennai. Despite the said undisputed facts, the NCLT has committed a grave error in holding that *"...It is not the case of the parties that they have taken any action in pursuant to the Family Settlement Agreement but both the parties have resorted to litigation..."* [para 23 of the order]. During the pendency of the present appeal, a certified copy of the FSA was obtained from NCLT, Chennai and placed before this Hon'ble Tribunal.

21. The Impugned Order also goes on to wrongly observe that *"Signing an Agreement and placing it in escrow is not an execution of an Agreement and it is a non-existent and it is only an Escrow"* [para 8 @ page 952] and that the

FSA has been kept with the R-8 as an expert/deemed escrow agent. The NCLT made this erroneous observation despite having recorded that the signed copies of the FSA were kept with the R-8 for safekeeping, who, admittedly, as per the FSA was designated as the expert and not an escrow as there is no escrow agreement ever executed. R-8 has clearly stated that:

“The shareholders of the 1st Respondent Company are members of the same family. There were certain differences between the shareholders in the 1st Respondent Company, at which point in time, they decided to execute a Family Settlement Agreement, which could resolve the issues between them. All parties and their respective counsels worked on the said Family Settlement Agreement for over several months and the terms of the Family Settlement Agreement were finalised and the Agreement was executed on 09/01/2014. It is submitted that the 8th Respondent is not a signatory of the said document. As a chartered accountant, the 8th Respondent had extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement. As the 8th Respondent enjoyed the confidence of all parties to the said agreement, after the Agreement was executed, the original of the Agreements in two sets were handed over to the 8th Respondent for safe keeping. It is pertinent to point out that the 8th Respondent is referred to as an 'Expert' in the Family Settlement Agreement and his role in the Family Settlement Agreement is also expressed in the said Agreement. At no point in time was the 8th Respondent called upon by any party of the said Agreement to act as an 'Escrow' or to perform any act as an Escrow. This role as an Expert and to perform as required under the said Agreement was dependant on whether the parties required any assistance. If assistance was sought, the 8th Respondent would have considered providing his expertise. If no assistance was sought the question of being an expert is of no consequence.”

22. The Impugned Order is also inherently contradictory as, on the one

hand, it records that, *“By virtue of signing the FSA and seeking implementation of terms and conditions of FSA, the allegations of oppression and mismanagement made by the petitioner deemed to have been waived or hardly have any bearing on the issue raised in the case,”* and, on the other hand, holds that *“neither the FSA has been executed, nor has it been acted upon the parties”*.

23. The Impugned Order has committed a grave error in holding that the Appellant cannot maintain a case of oppression and mismanagement being a Director of R1 Company. While reaching such a conclusion, the NCLT has failed to consider that since R-1 is a family run business, all Directors are in fact shareholders of the Company and, thus, the Appellant cannot be precluded from raising genuine concerns regarding the management of the R-1 Company in her capacity as a shareholder of R-1 Company.

24. The Impugned Order erroneously held that:

“If the Document itself is not properly executed, as contended by the Respondents, it is the Civil Court, which has to examine it after adducing evidence by the respective parties, and thereafter, if the Competent Civil Court declares that the family settlement have been properly executed in accordance with law, thereafter, the parties can take appropriate action including approaching this Tribunal....”

The said finding is contrary to Section 430 of the Act which ousts the jurisdiction of the Civil Courts with respect to any matter which the NCLT and NCLAT is empowered to determine under the Act. The NCLT could not have relegated the Appellant to the remedy of a civil suit. **[para 6 of Shashi**

Prakash Khemka v. NEPC Micon & Ors. (2019) 18 SCC 569 and Para Nos. 31 and 32 of MAIF Investment India Pte. V. Ind-Bharath Power Infra Limited & Ors. 2019 SCC Online NCLAT 203].

25. In any event, the FSA was validly executed in accordance with applicable laws and requisite stamp duty was paid. However, even if its assumed that there was any deficiency, it is settled law that it would act as an estoppel against the parties and bind them, more so when the subsequent conduct supports the settlement [***Kale & Ors. vs. Deputy Director of Consolidation & Ors. (1976) 3 SCC 119, Para 42, Thulasidhara & Anr vs. Narayanappa & Ors. (2019) 6 SCC 409 Para 9.3-9.5 and Subraya MN vs. Vittanala MN & Ors (2016) 8 SCC 705, Paras 15, 16 and 19***].

26. The Impugned Order also incorrectly records that the R5's transfer of her 50% equity in Deepali Company in 1998 was by way of gift. It is a matter of record that the shares of CKC Deepali were purchased from the family of R2-7 for a consideration at fair market value. There has been a total non-application of mind on the part of the NCLT. The NCLT has not dealt with any of the contentions raised by the Appellant. On the contrary, conclusion is reached without assigning any reason sustainable in law. Therefore, the order of NCLT is liable to be set aside.

27. In view of the above submissions, it is abundantly clear that that this is a fit case to where the Appellant demonstrated a clear oppression and mismanagement by R-2 to R-7. Admittedly, there is a deadlock and irretrievable breakdown of trust between the two groups. Therefore, it is

prayed that this Hon'ble Tribunal may exercise its powers under Section 421(4) read with Section 242(4) of the Act to pass an order that will bring to end the matters complained of and grant, inter alia, the following reliefs:

- (i) Direct the Respondents Nos 2-7 to co-operate with the Appellant & Respondent No 9 and complete the process of Demerger of Respondent No 1 Company and other terms as agreed to in the Family Settlement Agreement;
- (ii) Appoint a Court Commissioner to oversee the execution and completion of the process of Demerger of Respondent No. 1 Company;
- (iii) Direct the Ld. NCLT, Chennai to handover the two originals of the Family Settlement Agreement to the Appellant Group (Narayans) and Respondent Group (Hayagrivs) respectively
- (iv) Pending the demerger process in terms of clause a:
 - a. Grant equal/proportional representation to the Appellant Group (Narayans) and Respondent Group (Hayagrivs) on the Board of Directors of the Respondent No. 1 Company.
 - b. Declare that no casting vote be available to either side and all decisions on the board and general meetings will be taken unanimously.
 - c. All Bank accounts of Respondent No. 1 Company to be operated/managed jointly by the Appellant & Respondent No.9 (Appellant Group) and Respondents 2- 7 (Respondent Group).

List of Dates

28. The chronology of events as claimed by the Appellant, will help to appreciate the case and is reproduced as follows:

Date	Event Description
1955-56	Respondent No. 1 was registered under the Companies Act, 1956.
1982	CKC Deepali was incorporated by Respondent No. 2, Respondent No. 5 and the Appellant.
27.03.1991	Incorporation of Respondent No. 10 Company to cater to corporate gifting in silverware.
1998	Appellant's husband passed away; Appellant volunteered to become Whole-Time Director but was excluded.
12.10.2009 & 14.10.2009 27.07.2010	Board Resolutions allowing ventures to include family directors with 10% holding—violating 50-50 parity. Respondent No. 9 appointed as Joint Managing Director of Respondent No. 1.
2010	Appellant coerced into gifting 30% shares of Respondent No. 10 while battling cancer.
2013	Discovery of misuse of Respondent No. 1's resources by Respondents 2-7 for benefit of Respondent No. 10.
02.12.2013	Appellant requested fair conduct of business from Respondents.
09.01.2014	Family Settlement Agreement signed between Appellant/Respondent 9 and Respondents 2-7.
13.01.2014	Email to employees about proposed restructuring of CKC Group within 3 to 6 months.
25.02.2014	Board resolution issued NoC to Deepali Company Pvt. Ltd. to use the brand name.
10.03.2014	Internal communication confirming group split and family settlement aspects.
2014	Respondents failed to honour Family Settlement and continued acts of oppression and mismanagement.
16.05.2014	Appellant was denied access to company information; formal grievance raised.
05.09.2014	Respondent No. 2 appointed Vice-Chairman despite protest; Respondent No. 3 appointed Chairman.
16.09.2014	Appellant filed Company Petition No. 54 of 2014.
23.09.2014	Hon'ble CLB passed interim directions to prevent diversion of business.
29.09.2014	AGM illegally used to remove Respondent No. 9 as Joint MD.
09.10.2014	Appellant filed C.A. No. 1/2014 challenging AGM; CLB directed Respondent No. 9 to continue as Joint MD.
18.11.2014	Interim orders extended till further directions.
2015	C.A. 12 of 2015 filed to incorporate further acts of mismanagement.

2016	Contempt Application No. 1 of 2016 filed due to continued violations.
12.07.2018	C.A. 12 of 2015 disposed of; liberty granted to argue points at final stage.
24.01.2019	NCLT passed the Impugned Order.

The case of the Appellant has been captured in detail in their submissions as noted by us herein.

29. R-8 to R-13 (Hayagriv group) filed C.P. No. 4 of 2020 before the NCLT alleging oppression and mismanagement in the affairs of R-1 Company, under Section 241 of the Companies Act, 2013, against A-1 (C. Ganesh Narayan) and A-2 (C. Valli Narayan). R-8 to R-13 have themselves stated in the said petition that:

“3. Thus, although the shareholding in Respondent No. 1 Company is equal at 50% each, the Respondent No. 1 Company benefitted from the fact the management of the Respondent No. 1 Company lies with the Hayagriv group...”

In the said petition, R-8 to R-13 filed three interlocutory applications I.A. Nos. 5, 6 & 7 of 2020 seeking various interim reliefs against the Appellants and NCLT BB issued orders dated 24th Aug 2023 in this CP. Aggrieved by these orders, C. Ganesh Narayan, who is the main appellant has filed Transfer Appeal No. 01 of 2023 in CA (AT) (CH) No. 70 of 2023.

30. It is worth noting that this Appellate Tribunal, in the connected appeal-[C.A. (AT) No. 65 of 2019], which was filed by A-2 (C. Valli Narayan), against the order dated 24.01.2019 passed in C.P. No 54 of 2014/NCLT/Bengaluru is also dealing with various acts of oppression and mismanagement including exclusion from the affairs of R-1 Company, violation of Family Settlement

Agreement dated 09.01.2014 ('FSA'), diversion of business, etc. A-2-C. Valli Narayan has also raised a plea of deadlock in affairs of R-1 Company. Also, in CP No. 4/BB/2020 R8 to R13 (Hayagriv group) themselves state that:

“95. The Petitioners maintain that there is a Trust Deficit on account of unethical actions by Respondent No. 2 and Respondent No. 3. Be that as it may, it is an undisputed and admitted fact, recorded in this Hon'ble Tribunal's Final Judgement and Order, dated 24.01.2019, that there is a complete breakdown of relationship between the Hayagrivs (Petitioners) and Narayans (Respondent No. 2 and Respondent No. 3) and they cannot work together [Para 16]. Both sides have repeatedly and categorically so maintained in the CLB and later before this Hon'ble Tribunal and the Petitioner has stated so even in her Appeal before the Hon'ble NCLAT.” (emphasis supplied)

31. It is claimed that even R-8 to R-13 admit the irretrievable breakdown in trust and confidence between the two group of shareholders. It is therefore prayed that this Hon'ble Tribunal, may exercise its powers under Section 421(4) read with Section 241 of the Companies Act, 2013 ('Act') to break the deadlock and pass appropriate orders to bring an end to the matters complained of.

32. It is contended that the NCLT while hearing IA 05, 06 and 07 of 2020 passed an *ex-parte* order dated 12.07.2021 directing status quo in the absence of the counsel for the Appellants, who had no notice of the said date of hearing, despite being represented by counsel on all the earlier dates. Earlier, these applications were heard on 06.01.2020 and 07.01.2020. NCLT had already reserved the orders in I.A. No. 5,6 and 7 of 2020 on 07.01.2020. The last proceeding before the NCLT before the *ex-parte* order dated 12.7.2021

was on 21.09.2020. The date of 12.07.2021 was not notified in any order or record of proceeding. On becoming aware of the matter listed on 12.07.2021, the counsel for the Appellants attempted to log into the virtual hearing via the link mentioned in the cause list, but could not join due to connectivity issues. The same was communicated by an email to the registry. The *ex-parte* order does not provide any reasons for urgency in passing the *ex-parte* interim order. In such circumstances, the Appellants filed CA 62/2021 for the recall of the said order as the counsel for the Appellants could not join the hearing on 12.7.2021 due to internet connectivity issues.

33. NCLT passed the common Impugned Order erroneously dismissing the CA 62/2021(recall application) and allowing IA Nos. 5, 6 and 7. NCLT has not even discussed how a prima facie case of oppression and mismanagement is made out against the Appellants. The Impugned Order fails to consider that the interlocutory applications were filed in a petition filed under Section 241 of the Act. The Impugned Order records that the entire management of the R-1 Company lies with R-8 to R-13. There is not even a mention of the phrase “oppression and mismanagement” in the reasoning and findings of the Impugned Order. A bare comparison of the final prayers sought in CP No. 04/BB/2020 and the interim prayers reflect that NCLT has granted the final relief at the interim stage, which is wholly impermissible.

34. It is claimed that recall application CA No. 62 of 2021 was filed as there was no notice of the hearing on 12.07.2021. The said date of hearing was not fixed by any order of the NCLT or any prior notice of listing was published by

the NCLT. The said plea was categorically made by the Appellants in their recall application. There was no specific denial of this fact in the reply filed by the R8-R13 to this application. Hence, the present recall application was maintainable.

35. Appellant relies on the judgment of Hon'ble Supreme Court in **Greater Noida Industrial Development Authority V. Prabhjit Singh Soni and Anr. (2024) 6 SCC 767** where it was held that an application for recall is maintainable if the party aggrieved is not served with the notice of proceedings in which the order under recall has been passed. The Court further held that a recall application is maintainable notwithstanding that an appeal lies before NCLAT. Similarly, the Hon'ble Supreme Court in **Surinder Kumar Gupta v. J.M. Housing (2021) 12 SCC 672** has held that the appropriate course of action against an ex-parte order of NCLT is to approach Ld. NCLT itself.

36. It is contended that the Respondents gave up the contention regarding the maintainability of application for recall before the Hon'ble High Court of Karnataka in W.P. No. 19265 of 2021 on 24.11.2021. Thus, there was no occasion for the NCLT to even examine this issue.

37. It is also submitted by the Appellant that the Impugned Order holds that the Order dated 12.07.2021 was confirmed after hearing on 01.06.2023 and 06.06.2023 and the said orders have not been challenged. Thus, order was passed on merits after giving reasonable opportunity. It is submitted that if the order dated 12.7.2021 is recalled all consequential orders will also perish.

38. It is claimed that it has been the Appellant's consistent case that the A-4 (Deepali Co. Pvt. Ltd.) has been doing the business even before the execution of the FSA. Thus, the Appellants have the right to carry on the business notwithstanding the FSA. However, the NCLT failed to examine the contention regarding Appellants' existing business and right to continue the same even without the FSA.

39. The finding that the FSA was not acted upon is erroneous. In order to give effect to the FSA, both the groups acted in furtherance to the terms of the FSA. However, the process of implementation of the FSA came to a grinding halt when all of a sudden after 6 months of signing of the FSA, the R8-13 i.e. CVH group decided not to act upon the FSA, and continued with the diversion of business from R1 (C. Krishna Chetty & Sons Pvt. Ltd.) to R6-C. Krishna Chetty Jewelers & Sons Pvt. Ltd. company.

40. The original FSA was kept with R-7 (Shyam Ramadhayani) for safekeeping the executed originals of the FSA. Later, they were filed before the Company Law Board, Chennai, which was misplaced and not transferred to NCLT, Bengaluru. The same has remained in the records of the NCLT, Chennai, till date. During the pendency of the connected appeal C.A.(AT) 65 of 2019, a certified copy of the FSA was obtained from NCLT, Chennai and placed before this Hon'ble Tribunal in the records of the connected appeal. A notarised copy of the certified copy of FSA was also filed before NCLT, Bengaluru, in September 2020. Thus, the FSA was validly executed in accordance with applicable laws and requisite stamp duty was paid. However,

even if it's assumed that there was any deficiency, it is settled law that it would act as an estoppel against the parties and bind them. More so when the subsequent conduct supports the settlement.

41. It is contended that it is an erroneous finding as the subject matter of the Suit No. OS 1265 of 2023 was completely different. The suit was in fact not filed by the Appellants but was filed by the R8-R13 seeking injunction against the Appellants from interfering with the possession and enjoyment of certain common areas adjoining the showrooms (A & B Blocks) in the building called The Touchstone. The said order relied upon by the NCLT was not an order dismissing of the suit but was an order passed in an interlocutory application. The said suit has in any event been decreed subsequently by order dated 23.04.2024 in which there is no reference whatsoever to the validity or binding nature of the FSA. Both sides have preferred appeals against the said orders and appeals are pending. Thus, the finding is wholly erroneous and without basis.

42. It is contended that an erroneous conclusion has been drawn that FSA was not declared valid by any forum, as a validly executed document does not need declaration of validity from a forum. In any event, the Addl. City Civil & Sessions Judge in COM. O.S. No. 306 of 2020 filed by R-1 (CKC& Sons Pvt. Ltd) against A-4 (Deepali Co. Pvt. Ltd.) seeking injunctions with respect to its trademarks in its order dated 20.02.2021 relied on the FSA to find a *prima facie* case in the matter in favour of the Appellants herein. The appeal against the said order was dismissed by the Hon'ble High Court on 27.05.2021. The

special leave petition filed in Hon'ble Supreme Court against the order dated 27.05.2021 got dismissed as infructuous on 17.01.2025.

43. It is claimed that NCLT wrongly concludes that the running of the business abutting R-1 company amounts to violation of Section 166 of the Act. NCLT failed to appreciate that other Respondents are directors and run identical and similar businesses from a nearby address or same address as R-1 Company. A tabular chart showing various business being run by R8-R13 is reproduced at of the appeal as follows:

Entity	Date of incorporation	Registered office	Current Place of Business
C. Krishniah Chetty and Sons Pvt. Ltd.	1979	1 st Floor, 35 Commercial Street	'A' Block, Touchstone Building, Main Guard Cross. Road, Bangalore 560 001
C. Krishniah Chetty and Sons Manufacturers Pvt ltd	2010	3rd Floor, Touchstone Building, Main Guard Cross Road, Bangalore-560 001	3rd Floor, Touchstone Building, Main Guard Cross Road, Bangalore 560 001
C. Krishniah Chetty Jewellers Pvt Ltd.	1991	36, Commercial Street, Bangalore-560 001	
C. Krishniah Chetty & Sons – Partnership firm	1998	36, Commercial Street, Bangalore-560001	
C. Krishniah Chetty & Co Pvt Ltd (formerly known as Deepali Co Pvt Ltd)	1982	35, Commercial Street, Bangalore	No.2, 2/1 & 2/4 The Touchstone, Main Guard Cross Road, Bangalore
Sigma Gold LLP (Formerly	2011	'A' Block Touchstone	'A' Block The Touchstone, Main

Sigma Gold Private Limited, incorporated in the year 1993)		Building, No. 3 / 4, Main Guard Cross Road, Bangalore	Guard Cross Road, Bangalore
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44. This includes Sigma Gold LLP (formerly Sigma Gold Pvt. Ltd.) since 1993, that is wholly owned by the R8-13 where Appellants have no share. The NCLT rejected this contention of the Appellants on the ground that other companies of the said Respondents are related parties to R-1 Company. However, the NCLT failed to apply the same yardstick to the Appellants as they are also related parties to R1 on a plain reading of Section 2(76) of the Act.

45. Furthermore, the NCLT recorded the contention of the Appellants with regard to the statutory auditor's opinion at the time when the Appellant group purchased the shares of A-4 (Deepali Co. Pvt. Ltd.) stating that the Appellant group will be free to run the company in the manner they think fit. However, the NCLT failed to deal with the said contention in the findings.

46. It is claimed that the conclusion of NCLT that A-4 is not a related party, is contrary to the definition of related party under Section 2(76) of the Act. Section 2(76) of the Act provides that any two entities having common directors and/or shareholders are related parties. Even otherwise, the fact that A-4/Deepali is a part of the CKC Group is not disputed and is borne out by the following:

- The order passed by Ld. NCLT dated 24.01.2019 records that A-4/Deepali is a CKC group company.
- Admission in the statement of objections by R-1 in CP 54/2014 also shows A-4 is a part of CKC Group.
- Financials of R-1 for 2014-15 also show that A-4 is a related

party.

- Thus, the finding returned is contrary to the record and the provisions of the Act and therefore wholly erroneous.

47. It is contended that there is no factual basis or analysis in the Impugned Order to reach the conclusion that actions of A-2 and A-3 have caused great harm to the goodwill and reputation of the R-1 Company.

48. On the basis of the abovementioned erroneous conclusions, the NCLT holds that there was a breach of legal rights on the part of the Appellants without mentioning as to what legal right had been breached. There is no finding to demonstrate oppression and mismanagement to get a relief under Sections 241-242 of the Act. There is no discussion as to how R-8 to R-13 made out a prima facie case of oppression and mismanagement to get a relief under Section 242. There is no analysis or discussion to see how the balance of convenience lies in favour of R-8 to R-13. Even the Impugned Order records that entire management of R-1 is with R-8 to R-13 (Hayagriv Group) and, thus, question of any irreparable loss or injury does not arise.

49. It is claimed that the modified prayers sought by the R8-R13 were rejected by the NCLT and it shows that the R8-R13 were aware that A-4 is an existing business. The modification sought was to revise the prayers from “starting a competing jewellery store/business” to “running a competing jewellery store/business,” which was rejected.

50. It is claimed that although there is no discussion about the existence or history of business of A-4 (Deepali Co. Pvt. Ltd.) Company in the impugned

Order, the Respondents, during the course of arguments before this Appellate Tribunal, have sought to portray that A-4 is a new business. Thus, it is important to look at the 43-year old history of A-4 Company. The C. Krishniah Chetty (“CKC”) Group Companies, including A-4, is managed by family members. A-4 (Deepali Co. Pvt. Ltd.) was incorporated in 1982 by Mrs. Visala Hayagriv (*Respondent No.11*), Mrs. Valli Narayan (*Appellant No.2*) and C. Vinod Hayagriv (*Respondent No.8*). The same is apparent from:

- Certificate of Incorporation dated 20.03.1982;
- Board Resolutions of A-4 dated 07.09.1995, 28.06.1996, 26.12.1984, 19.12.1998 and 18.06.2004;
- Balance sheet of Appellant No. 4 dated 31.03.1990;
- Articles of Association dated 15.03.1982.

51. A-2 was a founding promoter/shareholder & Director of A-4 and was appointed as a Director in R-1 in 1994 and Director in R-2 in 2010. A-1 was appointed as Director of R-1 in 1997, Director of R-6 in 1999, Director of R-2 in 2010 and Director of A-4, in 1998. R-11 was given the appointment in A-4, despite being aware that he will be a Director of competing companies. R-1 was also a shareholder of A-4 till 1998.

52. Subsequently R8 to R13 sold their shareholding in Deepali (A-4) to A1 and A2 after obtaining an opinion from the statutory auditor R-7 [Mr. Shyam Ramadhyani] on 25.09.1998 for the sale of shares in A4. The said opinion clearly states that:

“4. If Mr. Ganesh Narayan is interested in continuing the business of Deepali Company Private Limited, the shares held by your family can be sold to him, again at a mutually determined price, say the cost price.”

“5. Steps to be followed are as under:

..... e. Mr. Ganesh Narayan and his family would hold the entire share capital of Deepali Company Private Limited thereafter. They will be free to run the company in the manner they think fit.”

53. It is also contended that the Appellants were restrained by the order of the CLB dated 22.09.2014 till 24.01.2019 from diverting the business of R-1 (Gems and Jewellery only) to any other company. The NCLT passed an order dated 27.04.2018 restraining A-1 and A-2 from starting a competing jewellery business which competes with the CKC Group or any other entities. However, A-4 herein does not compete with CKC Group, in fact it is a part of the CKC Group since 1982 and has been in existence prior to *status quo* order dated 12.07.2021. In any event, the NCLT by order dated 24.01.2019 while disposing of C.P. 54 of 2014 observed that Appellant No. 4 is a group company of CKC Group. The earlier interim orders restraining the A-1 and A-2 from doing the business lapsed with the passing of the order dated 24.1.2019 dismissing CP 54/2014. Appellant claims that Hon’ble Supreme Court in ***Messer Holdings Limited v. Shyam Madanmohan Ruia Others (2016) 11 SCC 484***, has held that any order passed during the pendency of the suit by any court, in any proceedings arising out of the suit automatically lapses with the withdrawal of the suit. Any act or omission of any party to the suit, either in pursuance of or in obedience to such interlocutory orders, would be without any legal efficacy. Hence, after the disposal of CP 54 of 2014, the Appellants resumed the gems, bullion and jewellery business of A-4.

54. It is also contended by the Appellant that A-4 (Deepali & Co. Pvt. Ltd.)

has been running its business prior to the *status quo* order dated 12.07.2021 is also evidenced from the following:

- Invoices that show business of gems and jewellery for A-4 and photographs of the showroom before the status quo order was passed.
- Past Balance Sheets over the years.
- Photographs dated 20.03.2021
- VAT Registration.
- Shops and Establishment License.

55. Furthermore, the R 8-13 & R1-10 also carried out advertisements in July 2019 and October 2022, disparaging the Appellants, which clearly show knowledge of the continuation of the pre-existing business of A-4.

56. It is claimed by the Appellant that the extent or volume of business is wholly irrelevant in determining whether the Appellants were engaged in the jewellery business prior to the impugned restraint order. The effect of the impugned order granting the prayers in IA Nos. 5, 6 and 7 are so wide that they virtually prevent the Appellants from ever conducting jewellery business in any form or manner, in any location. This is all the more significant considering the family history and the tradition of engaging in this very business.

57. It is claimed that this shows business of A-4 was running prior to order dated 12.07.2021 and such status quo order cannot impede the business of Appellant No. 4. Further, NCLT by order dated 12.07.2021 failed to explain or indicate the nature of *status quo* or state unequivocal terms to what status quo would mean which resulted in ambiguity. It is settled law that a status quo order ought not to be passed without indicating what the status quo means, and reliance is placed by Appellant on ***Kishore Kumar Khaitan and***

Anr, v. Praveen Kumar Singh (2006) 3 SCC 312).

58. Appellant contends that the Hon'ble Supreme Court in catena of judgments starting from **State of Orissa v. Madan Gopal Rungta 1951 SCC 1024**, and reiterated in **State of U.P. And Ors. V. Ram Sukhi Devi (2005) 9 SCC 733**, has held that the final relief cannot be granted at the interim stage. A bare perusal of the final and interim prayers shows that the NCLT has granted the final reliefs at the interim stage.

59. Furthermore, the Respondents have failed to make out prima facie case of oppression and mismanagement, which is necessary to warrant an interim relief under Section 242 of the Act. The relief must be with respect to the "affairs of the company". When admittedly Respondent Nos. 8-13 claim to be in complete control and management of R1 company, the reliefs granted are wholly unwarranted and go much beyond the scope of Section 242 (4) and for this argument. Appellant relies on **Smruti Sreyans Shah v. Lok Prakashan Ltd. & Ors. (2019) SCC OnLine NCLAT 469, Para 260 and BSE Ltd. v. M/s. Ricoh Company Ltd. & Ors. [(2017) SCC OnLine NCLAT 12, Para 41].**

60. It is also contended that the NCLT failed to apply well-settled "triple test" which is a prerequisite before a party can be mandatorily enjoined to do or to refrain from doing a particular thing.

61. It is also contended that during the course of arguments, the Respondents have relied on the judgment of **Rajiv Saumitra v. Neetu Singh & Ors (2016 SCC Online Del 512)**. Thus, the reliance on the said case is

completely misconceived.

62. It is also contended that during the course of hearing, initially a feeble attempt was made by the counsel of the Respondents to argue that the one common appeal is not maintainable against a common order passed in multiple applications. However, the same was not pressed later. In any event, it is submitted that the Hon'ble High Court of Karnataka in ***Mr H.J. Siwani and Anr. v. Dr R.P. Shankar and Ors. (ILR 2016 Kar 1571)*** has held a common appeal under Order XLIII Rule 1(r) of CPC against orders in several interlocutory applications is maintainable as there is no prohibition to present such a common appeal. Similarly, there is no prohibition under the Act or NCLAT Rules, 2016, to present such a common appeal.

63. It is prayed to allow the appeal and set aside the Impugned Order.

Common submissions of Respondents

Respondent claims dispute is personal

64. The matter at hand involves a dispute which is fundamentally “personal” in nature and the Appellant has, by means of false and frivolous submissions, attempted to impart to it the colour of a company-related dispute. Furthermore, the Appellant and Respondent No. 9 are still the directors/shareholders of Respondent No. 1 and, therefore, are acting in contravention of Section 166 of the Companies Act, 2013, by way of opening of the competing showroom. In this regard, it is further submitted that a shareholder derivative suit is a lawsuit brought by a shareholder (or group of shareholders) on behalf of the corporation against the corporation's directors,

officers, or other third parties who breach their duties. The claim of the suit is not personal but belongs to the corporation.

65. Appellant is a Director of R1 Company while her son, R9, was the Joint Managing Director of R1 Company. Though the Petition for oppression and mismanagement has been filed by the Appellant as a "minority shareholder", the Petition in effect sought appointment of a larger number of Directors from the Appellant's group on the Board of the R1 Company. The NCLT, Bengaluru, has in its impugned Judgment held that (i) the allegations of oppression and mismanagement were unsubstantiated and that (ii) Appellant already being a Director by virtue of holding 20% shares, could not seek a higher representation on the Board of R-1 Company.

66. It is also claimed that the matter at hand involves a dispute which is fundamentally "personal" in nature between the shareholders of R1 company, and the Appellant has attempted to give it the color of a company dispute. In fact, it is pertinent to note that there is a letter dated 09.01.2014 issued by the Appellant and R9 unconditionally, withdrawing all allegations of oppression and mismanagement as baseless. The original signed copy of the said letter has been kept with R8 who, despite repeated requests, refuses to place the same on record even though he has not denied existence of the same in the pleading filed before NCLT Bengaluru.

Respondent's deny relief of proportional representation

67. The averment of the Appellant that since she holds 50% shares of R1 along with her son R9, her group is entitled to have a higher number of Directors in R1 on the principle of "proportional representation" is also

completely misconceived in law as:

- There is no provision in the Articles of Association of R1 Company which stipulates any proportional representation of the two groups, even though each of the two groups has held 50:50 shareholding in the R1 Company ever since its incorporation in the year 1979.
- The objective of not having such a provision in the Articles is deep-rooted for a family business being conducted by the company and unanimity of all stakeholders not to involve any other person except the family members of the two groups in the running and management of the jewellery business of the R1 Company. Since as a matter of fact, the "Narayan Group" has had lesser family members as compared to the "Hayagriv Group" there have always been a lesser number of Directors from the Narayan Group right from the beginning. Any prayer for an equal and proportionate representation as per the shareholding pattern of 50% would result in the likelihood of appointment of outsiders for governing the Company which has maintained its lead as jewellers for the past 150 years only since it was being run and managed by a family.
- That without prejudice to the above, there is also no statutory provision in the Companies Act, 2013 or in the erstwhile Companies Act, 1956, which mandates proportional representation of the members on the Board of Directors in any Company based on the percentage of shares held by such members in a company. Even section 163 of the 2013 Act only stipulates an option to have 2/3rd directors on the Board of a Company on the principle of proportional representation if it is so agreed by all the members of a company.

68. That the Appellant and R9 have been taking active, deliberate steps to harm the interests of R1 company, including its business, by poaching clients, employees, vendors etc., and falsely representing themselves as the "real CKC" before the long-time customers of R1 Company. That the R1 company, over the course of decades, had built up its client database which is an extremely

confidential document germane to their functioning. However, despite being aware of the same, the Appellant and R9 have obtained the same and are misusing it to compel long-time customers and clients to "switch over" to their competing business which they claim to be lawful and the original CK. In furtherance of their agenda, the Appellant and R9 have also been sending messages and calling people whose names, addresses, and phone/WhatsApp numbers have been extracted from confidential databases of the R1 company for promotion of their competing business. Moreover, vide these messages, the Appellant and R9 are also attempting to pass off their fraudulently renamed business as the owner of the trademark "C. Krishniah Chetty" and the R1 company leading to mass confusion among customers of R1 company and complaints from them alleging loss of faith and confidence with respect to their private information. The situation has reached such a point that the Appellant and R9 have hired security guards to click pictures of the license plates of the cars visiting the R1 company showroom, along with pictures of the customers exiting these vehicles, which has made the customers of R1 company afraid of being stalked or followed to their homes. Such customers, a few short hours after their pictures are clicked, then start receiving promotional messages from the Appellant and R9's competing business. These actions of the Appellant and R9, Directors of the R1 company, have grievously harmed the reputation and business of the R1 company leading to a loss of faith in it by its customers, in clear and distinct violation of Section 166 of the Companies Act, 2013. In an effort to further cripple the R1 company, in addition to the harassment of its customers, complaints of

statutory non-compliances owing to the voluntary undertaking dt. 23.07.2019, and litigations filed thereby, the Appellant and R9 were also caught encashing personal legal bills through the company itself, in a manner grossly prejudicial to the Company, a fact highlighted in the Company Petition itself (C.P. No. 54/2014). It is noteworthy to state that no relief of proportional representation can be granted in the Company Petition that was filed before the CLB by the Appellant herein, as per the law laid down by this Hon'ble Tribunal and the Hon'ble Supreme Court.

69. It is important to note that there has been no change in the shareholding pattern between the two groups as R2 to 7 (Hayagrivs) as per first appeal and they continue to hold 50% shares since 1979 while Appellant and R9 (Narayans) as per first appeal continue to hold 50% shares since 1979 when the Company was first incorporated. However, historically, the Hayagrivs (R2 to 7) have always had more Directors on the Board for the last 46 years, and hence the Company Petition is barred by limitation as no grievance was raised till 2014. The composition of Board has historically been as follows:

IN THE YEAR 1979 i.e., 46 YEARS AGO:
HAYAGRIVS (Respondent Group) - 2 Directors
NARAYANS (Appellant Group)-1 Director

IN THE YEAR 1993 i.e., 32 YEARS AGO:
HAYAGRIVS (Respondent Group) - 4 Directors
NARAYANS (Appellant Group) - 2 Director

IN THE YEAR 1997 i.e., 28 YEARS AGO:
HAYAGRIVS (Respondent Group) - 4 Directors
NARAYANS (Appellant Group) - 3 Director
IN THE YEAR 1998 i.e., 27 YEARS AGO:
HAYAGRIVS (Respondent Group) - 4 Directors
NARAYANS (Appellant Group) -2 Director

IN THE YEAR 2005 i.e., 20 YEARS AGO:

HAYAGRIVS (Respondent Group) - 5 Directors
NARAYANS (Appellant Group) - 2 Director

IN THE YEAR 2007 i.e., 18 YEARS AGO:
HAYAGRIVS (Respondent Group) - 6 Directors
NARAYANS (Appellant Group) - 2 Director

Respondent's claims FSA to be invalid, escrow, non-binding

70. The 2014 FSA is an invalid, inchoate, non-binding, and stillborn document since the pre-conditions to make the same enforceable were never fulfilled and the document remains in escrow.

71. FSA was in good faith by both parties which is unenforceable as on date owing to the fact that the requisite pre conditions were never satisfied, and with the change in events and circumstances, mainly opening of the unauthorised competing showroom by the Appellant and Respondent No. 9, the same has been rendered infructuous and unenforceable.

72. FSA defines the effective date as “(i) the date on which the final order of the High Court of Karnataka / Company Law Tribunal is made and filed with the Registrar of Companies giving effect to the Demerger; or (ii) the date on which the transfer of undertakings pursuant to the Alternate Structure shall come into effect; as applicable”. It is admitted that neither the demerger nor transfer of undertakings took place, therefore the FSA is not enforceable as the effective date was never reached. All rights available to the Appellant and R9 under the said FSA are enforceable only after the effective date, which, as stated above, was never reached. For ease of reference, the following relevant portions of the FSA are reproduced hereunder:

Clause 1(h) - No gem and jewellery business shall be carried out by these entities under any of the Assigned Marks or their Variants (C. Krishniah Chetty & its variants) till the Effective Date”

Clause 3(e) - Neither CVH Group nor the CGN Group shall commence sale operations, advertising or marketing of or in relation to any gem and jewellery business till the Effective Date.

Clause 7(a) - none of the Parties and entities owned or controlled by any Party shall independently carry on any business or activity relating using the Marks or any variants (C. Krishniah Chetty & its variants) thereof till the Effective Date. However, rights under these clauses are already being wrongly exercised by the Appellant and R9, in gross conflict with judicial directions, despite the pre-conditions not being met in an unlawful and brazenly entitled manner.

73. It is claimed that the alleged Family Settlement dated 09.01.2014, now being propagated by the Appellant, is only a "draft" of certain terms of a proposed Family Settlement which were agreed upon by the parties to be recorded as a "Family Settlement" at a later date and on the happening of certain events. The said document was kept in "escrow" with the Chartered Accountant/Auditor of the R1. The draft of the Settlement was a stillborn document as it was not acted upon by either party and thus it does not have any further effect in law. FSA, being a time bound document, other being a draft agreement or an agreement to finally agree, cannot be looked into or validated on this ground alone as time-bound agreements lose essence, as per settled law, once such time/deadline passes. Keeping a document in escrow implies that parties intend for such document to remain in escrow until conditions precedent to the enforceability of the document are effected

(Jeweltouch (1) Private Limited v. Naheed Hafeez Quraishi And Ors. 2008 SCC OnLine Bom 82; Hira Mistan v. Rustom J. Noble, 2000 (1) Bom C.R. 716).

74. It is incorrect to state that the Family Settlement had been partially acted upon. A perusal of Clause (h) of the document would show that in order to effectuate the demerger of various companies which was proposed in the said document, the very first step was to be taken was by the by Appellant ie, Narayan group, which had to immediately transfer all its existing shareholdings in CKC Jewellers and CKC Manufacturers to Hayagriv group "within 15 days" of the date of the document and that such transfer was to happen "independent of the demerger of any company". Admittedly, such shares were never transferred by the Appellant or R9 and thus no occasion arose for the further implementation of the other terms of the said "family settlement".

75. It is incorrect to aver that the transfer of shares in R10 company by the Appellant was in accordance with the alleged Family Settlement and thus the said family settlement had been "partially acted upon". The transfer of shares by the Appellant and R9 in the R10 Company were made pursuant to two Board Resolutions, Nos. 351 and 352 of R1, dated 29.09.2009 and 12.10.2009 that had been passed by the R1 company. Splitting of shares of R10 had thereafter taken place vide Board Resolution Nos. 92 & 93 of R10 dated 29.06.2010 and 27.10.2010. Thereafter Appellant & R9 had executed registered Gift Deeds on 05.07.2010, gifting their shares. Appropriate

Application for such transfer of shares were made before ROC on 25.06.2010. Thus, such transfers had taken place in the year 2010 ie, 4 years before the alleged Family Settlement and were NOT under the FSA and it cannot be said that by such transfers, FSA had been acted upon by Appellant or R9.

76. The FSA has been dealt with extensively by the Hon'ble NCLT vide Impugned Order herein, wherein they categorically held that the FSA was not a valid document and thus, cannot be given effect to or relied upon. They further observed that:

- The main question for consideration in the Petition was whether the FSA was properly executed to be binding on the parties and consequently if implementation thereof could be possible in accordance with applicable laws including, the Income Tax Act, 1961, the Companies Act, 2013, General Anti-Avoidance Rules etc. an issue that was never addressed at the time of drafting of the same.
- The parties have not taken any steps for the implementation of the FSA and the same is an escrow document.
- Escrow documents cannot be enforced unless conditions prescribed have been fulfilled.

77. In 2014, the parties entered into an alleged stillborn inchoate Family Settlement Agreement ("FSA"), which was kept in escrow, the legality and enforceability of which was considered by NCLT Bengaluru in C.P. 54 of 2014, preferred by the Appellant. The same was ultimately dismissed on 24.01.2019, and is pending in the captioned appeal before this Tribunal

(without the Impugned Order being stayed). Despite the dismissal of C.P. 54 of 2014 by NCLT Bengaluru, the Appellant and Respondent No. 9 continued to exercise their alleged rights arising from an agreement that is invalid as per law and hence, their own conduct of opening a competing showroom adjacent to the Respondent No. 1's showroom is detrimental to the interest of the Respondent No. 1. In law, one is entitled to contractual rights if the contract from which they arise are valid and enforceable. In the present case, neither have the parties fulfilled any obligations for making the FSA valid, nor has the FSA ever come out from escrow.

78. Therefore, it submitted that the alleged FSA is a mere "agreement to agree" between the parties and NOT registered, rendering it unenforceable under the Indian Contract Act, 1872.

79. A perusal of the said document which is termed as "binding" Family Settlement by Appellant, would show that it creates/extinguishes rights of the parties in immoveable properties, shares and incorporated Companies etc., under the document itself. The said document would therefore require stamping and registration under Section 17 of the Registration Act, 1908. This has been so held by the Judgments of the Supreme Court reported in **(2018) 15 SCC 130 titled Sita Ram Bhama Vs. Ramavtar Bhama; and (1976) 3 SCC 119 titled Kale Vs. Director of Consolidation**. It has been further held by the Supreme Court that unstamped and unregistered Family Settlement Agreements are not only inadmissible in evidence, but cannot be looked into for collateral purposes either, unless stamped and registered. Thus, no court

or judicial forum including this Hon'ble Tribunal can act or implement or look into the said document even for collateral purposes.

80. Time was the essence of the contract (Family Settlement). A perusal of the document would also show that as per Clause 1 (1), the terms of this document were to be implemented by 31 March, 2014, and appropriate ratifications obtained from competent courts of law latest by 31 March, 2015. Since time was the essence of the contract (please see Recital 6), if the terms were not implemented within the time frame set out therein, the documents can only be said to be a stillborn document which cannot be now effectuated without the consent of all the parties.

81. It is submitted that the Family Settlement had not been partially acted upon. A perusal of Clause (h) of the document would show that in order to effectuate the demerger of various companies, which was proposed in the said document, the very first step was to be taken by the by Appellant ie, Narayan group, which had to immediately transfer all its existing shareholdings in CKC Jewelers and CKC Manufacturers to Hayagriv group "within 15 days" of the date of the document and that such transfer was to happen "independent of the demerger of any company". Admittedly, such shares were never transferred by the Appellant or R9, thus, no occasion arose for further implementation of other terms of the said "family settlement".

82. Respondent No. 2-7 also deny that the transfer of shares in R10 company by the Appellant was in accordance with the alleged Family Settlement, thus, the said family settlement had been "partially acted upon".

The transfer of shares by the Appellant and R9 in the R10 Company were made pursuant to two Board Resolution Nos. 351 and 352 of R1 dated 29.09.2009 and 12.10.2009 that had been passed by the R1 company. Splitting of shares of R10 had thereafter taken place vide Board Resolution Nos. 92 & 93 of R10 dated 29.06.2010 and 27.10.2010. Thereafter, Appellant & R9 had executed registered Gift Deeds on 05.07.2010 gifting their shares. Appropriate Application for such transfer of shares were made before ROC on 25.06.2010. Thus, such transfers had taken place in the year 2010 i.e. 4 years before the alleged Family Settlement and were NOT under the FSA and it cannot be said that by such transfers, FSA had been acted upon by Appellant or R9.

83. It is claimed that the Appellant and Respondent No. 9 could have only started the competing showroom adjacent to the Respondent No. 1 company, if this Hon'ble Tribunal decided to set aside the Impugned Order and hold the FSA as enforceable which is the subject matter of this appeal. Specifically, the Appellant had prayed in C.P. 54 of 2014, for directions to be issued to the Respondent No. 1 company for issuance of an NOC to change the name of their 100% owned company to "C. Krishniah Chetty & Co." which was not granted by the NCLT. Such NOC has never been given to the Appellant and Respondent No. 9 despite which, they have started a competing business in the said name.

84. The IPAB vide order dated 19.01.2021 (confirmed till Supreme Court) and Regional Director, MCA vide order dated 24.05.2022 have also observed

that the FSA has not been acted upon and has therefore not attained finality while staying the operation of the registrations obtained by the Appellant and Respondent No. 9's unauthorised company.

85. The Hon'ble City Civil Court, Bengaluru, in O.S. 1265 of 2023 has also observed in an interim order dated 28.03.2023 that no steps were taken by either party to implement the FSA which consequently remains unenforceable and restrained the Appellant and Respondent No. 9 from hindering the enjoyment of the subject property.

86. In light of the above, it is claimed by R2-7 that the said FSA is an inchoate, stillborn, escrow document, entered into in 2014, in good faith by both parties which is unenforceable as on date owing to the fact that the requisite pre conditions were never satisfied, and with the change in events and circumstances, mainly opening of the unauthorised competing showroom by the Appellant and Respondent No. 9, the same has been rendered infructuous and unenforceable. Despite the same, parts of the FSA have already been enforced in essence by the unlawful actions of the Appellant and Respondent No. 9 since the prayers sought by them in the Company Petition (grant of NOC for name change) have already been wrongfully effected in violation of the orders and directions of this Hon'ble Tribunal which did not stay the Impugned Order herein.

87. In any event and without prejudice to the foregoing, R9 who is a part of the Appellant's group had filed an Arbitration Petition for implementation of the said Family Settlement through arbitration as per Clause 8 (1). This

Arbitration Petition was dismissed by the City Civil Court, Bengaluru, and would operate as res-judicata against the Appellant group.

88. Similarly, Clause 8 (i) of the said "Family Settlement" stipulated its enforcement by way of specific performance through a court of law. No such relief of specific performance was filed either by Appellant or R9 within the period of limitation which has since expired long ago. Thus, the said alleged family settlement cannot be implemented at all.

89. The NCLT, Bengaluru, has also by its impugned Judgment held that besides the fact that the said "Family Settlement" was held in escrow by R10, the said Family Settlement cannot be implemented for the reasons set out above and in the impugned Order.

90. The Appellants have based their arguments regarding the tenability of the FSA on the shoulders of the interim order dated 28.03.2023 passed in O.S. No. 1265 of 2023 stating that the finding therein that the FSA is not valid cannot be relied upon since, consequent to the disposal of the suit, such findings no longer subsist. While it is a settled position of law that an interim order merges with the final order, it is submitted that the said order is not the only judicial order which has held the FSA unenforceable. It is pertinent to note herein that the said suit was finally disposed of much later to the passing of the Impugned Order herein and, on such date, the said interim order was in subsistence and, therefore, the reliance is not misplaced. Following forums have dealt with the question of the validity of the FSA and held the same to be unenforceable:

- a. Final order dated 24.01.2019 passed by the NCLT in C.P. 54 of 2014 (impugned in Comp. App. No. 65 of 2019 before this Hon'ble Tribunal without being stayed)
- b. Order dated 19.01.2021 passed by the IPAB (challenged before the KHC – dismissed)
- c. Order dated 24.05.2022 passed by the Regional Director, Ministry of Corporate Affairs (challenged before the Hon'ble KHC – stayed)
- d. Order dated 07.06.2023 passed by the Commercial Court, Bengaluru (suit filed by the Appellant group – dismissed on maintainability)

Respondent claims Appellant has the right to run a competing business from FSA only

91. It is contended that the right to run a competing business arises from the FSA and not otherwise. Furthermore, the Appellant No. 1, while filing the Company Petition numbered 54 of 2014, has specifically prayed for issuance of NOC to use the mark “C. Krishniah Chetty & Co.” in terms of the FSA, which, vide the final order, was rejected.

92. Consequently, it is an admitted position that such NOC was never issued by the Respondent Group and since as on date, the FSA is unenforceable (Order dated 24.01.2019 never stayed), the Appellant group was entirely aware of the fact that they were not allowed to use the said mark. When they applied for name change, the Respondent Group herein filed a rectification application which was allowed by the Regional Director after observing that the alleged NOC submitted by Appellant No. 1 suffers from many misrepresentations and, accordingly, directed that Appellant No. 4's name be changed back to Deepali. Despite the order, the same was never done and now the challenge to the same is pending before the Hon'ble High Court

of Karnataka. It is pertinent to note that when assessing similarity in trademarks, phrases such as “&” “Co.” “Pvt.” Etc. are to be ignored. The Appellants, knowing the fact that the name change being undertaken by them is unlawful, deliberately changed the name to “C. Krishniah Chetty & CO.” i.e. with a zero instead of the alphabet “o”. Contrary to what has been argued by the Appellants, the right to start a new showroom ‘exclusively owned’ by the Appellant No. 1 & 2 was for the first time envisaged in the alleged FSA only, hence they have no independent right to start a competing business. In fact, if they had such a right, why was the alleged FSA at all signed by them? Why did they at all agree in the FSA that they would be opening a new store next to R1 company post arriving at the effective date? Why did they not challenge the NCLT orders dated 22.09.2014 and 27.04.2018, that categorically barred them from doing any competing or conflicting business?

93. A restraint order (22.09.2014 and 27.04.2018) will usually not be challenged by a losing party, if they are not affected by the restraints passed. Going by the false submissions made by the Appellant before this Hon’ble Tribunal that appellants have always done competing jewellery business, any prudent director/company would appeal the restraint orders and not accept them for almost five years. The conduct of the Appellants should cast serious doubts about the correctness of the submissions being made by them before this Tribunal.

Respondents deny oppression and mismanagement u/s 241 and 242

94. The term 'oppression' involves a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every

shareholder who entrusts his money to a company is entitled to rely. Mismanagement implies that the affairs of the company are being conducted in a manner prejudicial to the interests of the company. Therefore, the Hon'ble Tribunal must have cogent reasons to overrule the findings and order of the Hon'ble NCLT.

95. The matter at hand involves a dispute which is fundamentally "personal" in nature and the Appellant has attempted to give it the color of a company dispute. In fact, it is pertinent to note that there is a letter dated 09.01.2014 issued by the Appellant and R9 unconditionally withdrawing all allegations of oppression and mismanagement as baseless. The original signed copy of the said letter has been kept with R8 who, despite repeated requests, refuses to place the same on record.

96. The remedy under Sections 241 and 242 of the Companies Act, 2013 allows any "member" of a company to file a petition before the NCLT if the company's affairs are being conducted in a manner that is prejudicial, oppressive or such that it amounts to mismanagement. In this vein, the Hon'ble High Court of **Calcutta in Ramashankar Prosad and Ors. vs. Sindri Iron Foundry (P) Ltd. and Ors. (28.09.1965 - CALHC): MANU/WB/0104/1966**, held that for a petition to succeed it must be shown that there has been oppression in a real sense of members qua shareholders and not merely a subordination of their wishes to the power of a voting majority. Furthermore, it is trite law that the test for interference is high and stray/lone acts, though wrongful, may not amount to oppression/

mismanagement nor will commercial misjudgement/unwise investment decisions, unless such decisions lack fairness/probity. The acts complained of must be recurring, burdensome, harsh and wrongful.

97. The Hon'ble Supreme Court of India in ***Needle Industries (India) Ltd. & Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors.*** [(1981) 3 SCC 333] clarified that an unwise inefficient or careless conduct of a director in the performance of his duties cannot give rise to a claim for relief under Sections 241 and 242 of the Companies Act, 2013. In ***Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad*** [Appeal (civil) 6359 of 2001], the Hon'ble Supreme Court of India observed that the remedy under Section 397 of the Companies Act is not an ordinary one. The acts of oppression must be harsh and wrongful. An isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of the majority shareholders is, thus, necessary to be proved. The acts complained of may either be designed to secure pecuniary advantage to the detriment of the oppressors or wrongful usurpation of authority.

98. Furthermore, mere lack of confidence between shareholders is not sufficient to avail the remedy under Sections 241 and 242 of the Companies Act unless it springs from oppression of the minority by the majority in the management of the company's affairs; the Hon'ble Supreme Court of India in ***S.P. Kalinga Tubes Ltd. (1965) 2 SCR 720*** further clarified that even then oppression must involve at least an element of lack of probity to a member in the matter of his proprietary rights as a shareholder.

99. Petitions under Sections 241 and 242 of the CA 2013 must be regarding oppression suffered by the Petitioner in its capacity as a member and not as a director, creditor, or otherwise (***S.P. Jain v Kalinga Tubes Ltd., AIR 1965 SC 1535; V.M. Rao v. Rajeswari Ramakrishnan 1985 SCC OnLine Mad 151***). Petitions based on allegations of inefficiency, carelessness of directors not maintainable (***Needle Industries (1) Ltd. v. Needle Industries Newey (1) Holding Ltd. (1981) 3 SCC 333, V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd. (2008) 3 SCC 363***).

100. The remedy under Sections 241 and 242 of the CA is available only to shareholders, that too, for raising grievances of violation of proprietary rights as a member and not in any other capacity, including as a director. Such right is not available to a shareholder, even a minority one, since they are willing and consenting parties to the Articles of Association of a company and cannot, now, turn around and challenge those Articles (***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449***). Hence, the present Appeal is not maintainable

101. The Appellant and R9 further seek proportional representation by alleging oppression and mismanagement in the Company Petition filed by them and the subsequent Appeal. Since the R1 company's inception, the board representation was same as on date. In fact, R2-7 even invited the wife of R9 and requested her to be made a director of the Board of R1 which was refused by R9 himself regardless, the relief of proportional representation on

the Board is not in the scope of oppression/mismanagement under the Companies Act, 2013.

102. Respondent No. 2-7 claims that as per Sections 241 and 242 of the CA, determination of the validity of private agreements between individuals and family members is ultra vires the scope of powers of the Hon'ble Tribunal. ***(Incable Net (Andhra) Limited & Ors. Vs. Ap Aksh Broadband Ltd. & Ors., (SLP No. 9110 of 2008); Sangramshinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) through LRS. And Ors., (2005) 11 SCC 314, Aruna Oswal vs Pankaj Oswal, (2020) 8 SCC 79; Chatterjee Petrochem (India) Pvt. Ltd. v Haldia Petrochemicals Ltd. & Ors., (2011) 10 SCC 466).***

Respondents claims violation of 166 of the Act by Appellants

103. The Appellant and Respondent No. 9 are still the directors/shareholders of Respondent No. 1 and, therefore, are acting in contravention of Section 166 of the Companies Act, 2013 (“CA, 2013”) by opening a competing showroom adjacent to R1’s showroom. Owing to the actions of Appellant and Respondent No. 9, profits and overall sales of R1's Flagship Showroom have gone down by 50% approx. In light thereof, protection of R1 & R10 company’s interests is of paramount importance.

104. In arguendo, even if the pleas and allegations of the Appellant and R9 are accepted, still equity cannot overrule the law and the law will prevail. Therefore, it is not possible to carve out an exception to Section 166.

105. A Director of a company cannot be allowed to compete the business of

their Company, in which they are already a Director, to exploit the mark in order to give the impression to the public at large that they have any association or affiliation of the Company in which they are still a Director ***(Rajeev Saumitra v. Neetu Singh, 2016 SCC OnLine Del 512)***.

106. Vide order dated 24.05.2022, the Regional Director (RD), South East Region MCA, in an application for rectification of C. Krishniah Chetty & Co's name filed by R1 company, observed that the mark "C. Krishniah Chetty" has been owned by R1 company since 1980 through valid trademark registrations and reputation, goodwill, and popularity gained over the years. The RD further observed that the Appellant and R9 had been attempting to start a competing business for a long time and their entire claim to running such a business lay in the terms of the FSA, which had not been acted upon and, thus, had not attained finality. He further noted that the alleged NOC submitted by the Respondent No. 9 was laden with misrepresentations and extracted from the minutes of a board meeting signed by Respondent No. 9 himself while the actual minutes placed a different picture. Thus, in light of the aforesaid and various other judicial orders presented before him, he directed that C. Krishniah Chetty & Co. Pvt. Ltd. change its name back to Deepali Co. Pvt. Ltd.

107. Despite the multitude of litigations pending between the parties and the desperate attempts of the Appellant and R9 to get relief from somewhere, which would allow them to commence their unlawful competing business, the said business could not be started. Consequently, the Appellant and R9, in

brazen violation of various restraint orders of this Hon'ble Tribunal and the Hon'ble NCLT, Bengaluru, proceeded to open their competing and unauthorised showroom adjacent to the R1 Company.

108. The Appellant and R9 seek to defend their unlawful actions by claiming that the Directors of R1 company, R2-R7 are also engaged in a competing jewellery business, viz. Sigma Gold LLP. However, if the sales and service statements of Sigma Gold are checked, it would show that even before 01.01.2005 till 31.03.23 and further till date, Sigma Gold LLP has never been involved in a competing or conflicting business to that of R1 Company or made any sales to individuals/organisations outside of or other than the R1 Company, which the Appellant and R9 are aware, of and are deliberately concealing in order to mislead this Hon'ble Tribunal. It is submitted that the highest standards of corporate governance have been maintained and are continuing to be maintained at all levels in the Respondent No. 1 Company.

109. Further ways in which the Appellant and R9 are deliberately acting contrary to the interests of the R1 Company are the various complaints filed by them against the R1 Company before the ROC, Kotak Bank etc for noncompliance viz not holding board meetings in the R1 Company despite knowing full well that the R1 Company has been handicapped by the undertaking given before this Hon'ble Tribunal on 23.07.2019 not to conduct board meetings.

110. The Appellant and Respondent No. 9 have further jeopardised the R1 Company by sending mischievous letters to ING Kotak Bank directing the

Bank not to encash/pass cheques of the R1 Company if they had not been signed by the R9 despite the valid and unanimous Board Resolutions to the contrary where any two of four directors may sign. Such actions have led to the Bank recalling loans amounting to INR 53 cr, which the R1 company had to repay within 45 days in order to avoid being labelled a wilful defaulter.

111. Moreover, the Appellant and R9 continue filing litigations against the R1 Company even though the Company cannot execute a board resolution to defend itself, leaving it ripe for the picking. Following is a non-exhaustive list of matters pending before judicial fora wherein the Appellant and R9 have taken the ground of “lack of authorisation” to force the R1 Company to litigate unrepresented:

112. In another instance, where the actions of the Appellant and R9 have hurt the R1 Company, the R1 Company had invested in a new showroom outside of Bengaluru in Chennai, which had to be shut down in light of their non-cooperation.

Respondents contend Deepali was held related party

113. It is further claimed that the erstwhile Deepali Co, i.e, Appellant No. 4 was considered a related party of the R1 Company solely because, at the time, members of both branches of the family were directors and shareholders of the R1 Company as well as the Appellant No. 4 Company. The subsequent share transfer in the Appellant No. 4 Company by Respondent Nos. 8 and 11 to the Appellant Nos. 1 and 2 in 1998 was undertaken with the understanding that the two groups were now separate

for the purpose of family investments and the same was never intended to be free reign to compete with the R1 Company. Further, it is submitted that the Appellants cannot hide under the umbrella of related party transactions when the violation is under Section 166 of the Companies Act, ie, the Appellant Nos. 1-2 while continuing to be directors in the R1 Company, also have direct interest in a competing business. The Appellant No. 4 Company is neither a subsidiary of the R1 Company, nor a sister company, but a competing business. Further, related parties are those that have inter-company transactions on an arms-length basis which is further disclosed in audited financials and not as conflict of interest which is impermissible.

R1 Company is a private limited company-cannot be treated as a quasi-partnership

114. The R1 Company is a private limited company and cannot be deemed otherwise simply because it is run by members of a family. Whether a family-run company can be treated as a quasi-partnership will vary on a case to-case basis (*Chatterjee Petrochem (India) Pvt. Ltd. v Haldia Petrochemicals Ltd. & Ors. (2011) 10 SCC 466*). A private limited company incorporated under the Companies Act cannot be treated as a quasi-partnership merely because it's owned and run by family members. From its inception, the Respondent No. 1 Company has had a Board of Directors who take decisions in accordance with the provisions of the Companies Act, 1956/2013.

115. One can, on the just and equitable ground, consider the domestic nature of a small company, but one cannot apply the law of partnership just

on that basis. This would be an unwarranted gloss on the Companies Act. A company, however small, however domestic, is a company, not a partnership or a quasi-partnership, and it is through the just and equitable clause that obligations, common to partnership relations, may come in (***Ebrahimi v. Westbourne Galleries Ltd., 1973 AC 360 and Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad [Civil Appeal 6359 of 2001]***).

116. The IPAB and Regional Director, MCA, have also observed that the FSA has not been acted upon and has, therefore, not attained finality while staying the operation of the registrations obtained by the Appellant and Respondent No. 9's unauthorised company.

Respondent claims Appellants pursued alternative route of arbitration

117. Arbitration Application No. 25006 of 2014 was also filed by Appellant No. 1. While the Appellant No. 2 filed a Company Petition, Appellant No. 1 also chose to pursue an alternative route to achieve favourable orders and enforce the FSA. In furtherance of their acts of oppression and mismanagement, Appellant No. 1 filed AA No. 25006 of 2014 without making the Appellant No. 2 herein a party. The said application failed to give them any relief and was dismissed on 05.01.2019 (same was never challenged) as not maintainable on the ground that:

- Neither a signed nor certified copy of the FSA was placed on record and dispensation for production of the same was filed “sneakily”;
- The FSA was a scheme of demerger or in the alternative, slump sale, subject to preliminary steps that were to be taken by the parties, the failure of which may lead to some alternative, however, the same had not been decided. Thus, the same was an agreement to execute

an agreement and not a concluded contract;

- Appellant No. 1 was seeking specific performance of the FSA vide the said application;
- The said application was infructuous and frivolous in light of the Company Petition having already been filed.

118. Thus, it is a clear-cut case of the same Appellant group filing multiple litigations against the same factual matrix and for the same relief, i.e. enforcement of the FSA while not approaching such fora as an Appellant group, but rather individuals. One might even argue that in light of the fact that the Appellant No. 1 did not further challenge the non-enforcement of the FSA would imply, by conduct, that he has waived specific performance of the same and, thus, cannot be allowed to seek its enforcement vide the instant Appeal and the Appeal in Comp. App. (AT) No. 65 of 2019.

Respondents contend fraudulent name change of Deepali

119. Deepali Co. Pvt. Ltd. is wholly owned by the Appellant and Respondent No. 9, and commenced operations as a jewellery business in 2023 under the name of "C. Krishniah Chetty" a mark already associated with the Respondent No. 1 Company, in prior use by it, and of which the Respondent No. 1 Company is the undisputed owner of. Despite such clear and unambiguous right of the Respondent No. 1 Company over the said mark, Deepali has fraudulently had its name changed to "C. Krishniah Chetty & Co. Pvt. Ltd." - a deceptively similar name to that of the Respondent No. 1 Company. It is submitted that the aforesaid name change is a deliberate attempt by the Appellant and Respondent No. 9 to divert business from the Respondent No. 1 Company by passing their own 100% owned entity as the Respondent No.

1 Company to the public. Such deceptively similar names cause confusion in the minds of the public (as held by the RD in his order dated 24.05.2022, whereby Deepali was directed to change its name back) and have led to dilution of the Respondent No. 1 Company's image, reputation, and goodwill. It is further pertinent to note herein that as stated above, the Respondent No. 1 Company never issued an NOC to Deepali for use of the registered mark "C. Krishniah Chetty" and one of the prayers in CP 54 of 2014 is seeking issuance of the same. In light thereof, the question arises, how did Deepali manage to have the change of name registered as per ROC records? The answer, shockingly, belies the underhanded and premeditated nature of the Appellant and Respondent No. 9's actions. It is submitted that in order to harm the Respondent No. 1 Company by damaging its name, reputation, and goodwill, the Appellant and Respondent No. 9 changed the name of Deepali Co Pvt Ltd to "C Krishniah Chetty & Co Pvt Ltd" with the numeric zero in the word "Co" instead of using the alphabet "o". It is submitted that the Appellant and Respondent No. 9 are aware that they have no right to use the name and it is a deliberate attempt on their part to evade legal limits and mislead authorities into allowing what is otherwise not allowed by law. The Appellant Group has been notorious in conducting anti-company activities behind the backs of the Respondent Shareholders, first by involving themselves and holding no less than 40% shares in the competing jewellery entity "Bluestone" in 2011-2013 and, further, holding shares indirectly therein till date, without prior disclosure to the Board of R1 Company (thereby starting the rift), and now by opening a competing entity and brazenly calling it by the same name ie "C.

Krishniah Chetty" without having any rights whatsoever or an authorisation or an NOC. It is humbly submitted that the Appellants have come before this Hon'ble Tribunal with unclean hands with an intent to try and destroy the R1 Company for pecuniary personal gains which ought not be allowed.

Respondents contend Deepali-A4 not pre-existing showroom

120. Appellant No. 4 is not a pre-existing showroom/full-fledged business, and mere company being in existence doesn't ipso facto mean it was doing business of jewellery. Appellant No. 4 commenced business on 15.03.2023, before which no jewellery business was being conducted from B Block of The Touchstone, ie, the space adjacent to R1 Company.

121. Basis various photographs placed before this Appellate Tribunal; it is claimed that the Appellant No. 4 Company was not operating its competing business from the B Block of the Touchstone prior to March 2023 despite their false claims that the business was pre-existing. It is pertinent to note that the prior existence of the Appellant No. 4 Company is an admitted fact, however, it is clarified that the same was never conducting any business, much less the business of gems and jewellery. It is submitted that it is the business which is new and unlawful, not the company itself and it is this business that the Appellants have been restrained from continuing.

122. It is claimed by the Respondents that the Appellants have, on multiple occasions, taken the stand that the competing business is pre-existing, however, they have previously admitted on oath that no such business was in existence or conducted prior to 2023, thereby, admitting that the stand

taken by them is false, misleading, and a blatant misrepresentation to hoodwink this Hon'ble Tribunal into accepting their perjury as the truth.

123. R1 and R10 have produced various photographs over a period of time. These photos have not been disputed by the Appellants, nor have any photos to the contrary been produced by them to date.

124. Further, the financials of Appellant No. 4, that have been placed on record before this Tribunal vide the IA No. 4975 of 2023, clearly show inter alia that there are no jewellery business/sales of the Appellant No. 4, and the assertions of the Appellants in this regard are false.

125. Upon checking the financials and statements of the Company, it is evident that the same had been dormant in line with the understanding within both groups and only became active as recently as 2019, which is when the Appellant No. 4 Company began applying for registration of trademarks they claim to own which are rightfully owned by R1 Company. Moreover, it is only post 2019 that the said Appellant No. 4 had any GST filings, implying that the Company was dormant till then and its name was also changed afterwards only.

Respondents contend recall under CA 62 of 2021 is not maintainable

126. The Appellants filed CA No. 62 of 2021 for recall of the status quo order dated 12.07.2021 on the ground that they were allegedly not given notice of the listing and were not given sufficient opportunity to be heard since they were unable to log into the virtual court owing to some technical error/glitch. It is contended that the Appellants were aware of the Company Petition having

been filed, and the listing of the Petition on such date was updated vide the cause list published the previous day and, thus, the Appellants were, without a doubt, aware of the Petition being listed on 12.07.2021. However, despite being present in the same city and being able to appear physically upon facing technical errors, the Appellants chose not to do so and are now, on the pretext of being denied an opportunity of being heard, trying to frustrate orders already passed.

127. It is claimed by the Respondents that specific prior notice of listing of a matter is not a maintainable ground and publication of the cause list containing the requisite details is deemed to be sufficient notice (***Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission (2010) 5 SCC 23; Shaheed Bhagat Singh Co-op., H.B. Society Ltd. vs. Improvement Trust, Ludhiana (2000) 9 SCC 361; Central Electricity Regulatory Commission Vs. Techno Electric and Engineering Company Ltd. and Ors. 2023 SCC OnLine SC 1953***). It is further submitted that the alleged “technical glitch” faced by the Appellants is not a ground on which relief may be granted (***MHADA v. Shapoorji Pallonji & Co. (P) Ltd., (2018) 3 SCC 13; Mythri Infrastructure & Mining India Pvt. Ltd. & Anr. v. State of Odisha & Ors. 2021 SCC OnLine Ori 2436; Mythri Infrastructure & Mining India Pvt. Ltd. & Anr. v. State of Odisha & Ors. 2023 SCC OnLine SC 1028; JFC Finance (India) Ltd. v. Anil Kohli, 2023 SCC OnLine NCLAT 1065***).

128. Moreover, in arguendo, even if one agrees that the Appellants were not given sufficient opportunity of being heard on 12.07.2021, the Appellants were

present and properly heard on all the next dates of hearing whereby the said order dated 12.07.2021 was confirmed again, and again extended till the next date of hearing.

Respondents contend unconditional withdrawal of allegations by Appellants

129. It is further pertinent to note that all allegations of oppression and mismanagement levied by the Appellant Nos. 1-2 were categorically and unconditionally withdrawn vide letter dated 09.01.2014 signed by the Appellant Nos. 1-2 and the signed copy of the same is held by Respondent No. 7 till date which has not been submitted before this Hon'ble Tribunal. Thus, it is evident that all actions undertaken by the Appellants are anti-company actions which only seek to promote their own Appellant No. 4 Company at the cost of the R1 Company.

Respondents contend contemptuous actions by Deepali – A4

130. The Appellant group, as established above, categorically, does not have the right to continue business operations of the Appellant No. 4, especially under the name "C. Krishniah Chetty" in light of the Impugned Order (which has not been stayed and thus remains in operation), Judgement dated 24.01.2019 in Comp. App. (AT) No. 65 of 2019 (which has been challenged but not stayed and thus remains in operation), the RD's order dated 24.05.2022, the Status Quo order dated 12.07.2021, and Status Quo Ante order dated 29.03.2023, passed by the Hon'ble NCLT, Bengaluru, Section 166 of the CA, and Clauses of the FSA vesting the right to do only after the effective date. Despite such overwhelming judicial direction to restrain the Appellant Nos. 1 and 2 from commencing and continuing business operations of the Appellant No. 4, the same continues to

operate as on date which in itself constitutes gross wilful contempt. In addition, thereto, the Appellants are now undertaking regular GST filings despite the Impugned Order herein. Furthermore, the Appellants are also promoting their unlawful business via continued promotions/advertisements in newspapers of the Appellant No. 4.

131. It is further claimed that the Appellants are continuing to conduct business through online means using the name “C. Krishniah Chetty”, which is a mark owned by the R1 Company, and which, neither they, nor any other members, are entitled to use and further making Google Maps divert the public to their wholly owned entity next door instead of the R1 Company when one searches the location for CKC. The injunction on the Appellants from undertaking such promotion of Appellant No. 4 was further confirmed by the City Civil Court, Bengaluru, in OS No. 8181 of 2023, wherein an interim order dated 20.12.2023 was passed granting an injunction against several media platforms (print and digital) till the next date of hearing ie 23.02.2024, and the same is subsisting as on date. Furthermore, the said injunction was granted in respect of publication/promotion of business concerning Appellant No. 4 Company. The said interim order dated 20.12.2023 was challenged before the Hon'ble High Court of Karnataka in MFA No. 02 of 2024 whereby the Appellants prayed for setting aside of the same. The Hon'ble High Court of Karnataka, in our understanding, was pleased to reject the aforementioned prayer and further clarified that the said interim order dated 20.12.2023 passed against the media platforms (print and digital) would mandatorily apply to all the parties arrayed as Defendants in OS No. 8181 of 2023. The City Civil Court,

Bengaluru, categorically observed that the parties arrayed as Defendants in the above-referenced suit were acting in “connivance” with the Directors of Appellant No. 4 Company, ie, with Appellant Nos. 1-2, thereby, acting contrary to the above-referenced Final Order dated 24.08.2023 passed in IA Nos. 5, 6, and 7 of 2020 in CP No. 04/BB/2020, whereby any such advertising/promotion of Appellant No. 4 Company is “prohibited”. Furthermore, the City Civil Court, Bengaluru, was pleased to hold, in our understanding, that the parties arrayed as Defendants in the above-referenced suit are restrained from publishing such “illegal advertisements”. Therefore, in view of the order dated 04.01.2024, passed by the Hon'ble High Court of Karnataka in MFA No. 2 of 2024, and other above-referenced proceedings, the Appellants, including the Appellant No. 4 Company, is **mandatorily injuncted** from conducting business, inter alia, through a competing jewellery store or through any online portal or through the domain name www.ckcgroupofjewellers.com or any other domain which is similar to that of R1 Company.

Respondents contend deliberate attempts by Appellant to harm R1 Company

132. It is claimed that the Appellants have been taking active deliberate steps to harm the interests of R1 Company, including its business, by poaching clients, employees, vendors etc. and falsely representing themselves as the “real CKC” before the long-time customers of R1 Company and starting price wars each day next door.

133. It is also claimed that the R1 Company, over the course of decades, had built up its client database which is an extremely confidential document

germane to their functioning. However, despite being aware of the same, the Appellants have obtained the same and are misusing it to compel long-time customers and clients to “switch over” to their competing business which they claim to be lawful and part of the original CKC while still being 50% shareholders and directors in the R1 Company. In furtherance of their agenda, the Appellants have also been sending messages and calling people whose names, addresses, and phone/WhatsApp numbers have been extracted from confidential databases of the R1 Company for promotion of their competing business. Moreover, vide these messages, the Appellants are also attempting to pass off their fraudulently renamed business as the owner of the trademark “C. Krishniah Chetty” and the R1 Company leading to mass confusion amongst the customers of R1 company and complaints from them alleging loss of faith and confidence with respect to invasion of their privacy. The situation has reached such a point that the Appellants have hired security guards to click pictures of the license plates of the cars visiting the R1 company showroom and pictures of the customers exiting these vehicles as well which has made the customers of R1 company afraid of being stalked or followed to their homes. Such customers, a few hours after their pictures are clicked, start receiving promotional messages from the Appellants’ competing business. These actions of the Appellants, who continue to hold positions as Directors of the R1 Company, have grievously harmed the reputation and business of the R1 Company by continuous diversion of business, leading to a loss of faith in it by its customers in clear and distinct violation of Section 166 of the Companies Act. In an effort to further cripple the R1 Company, in addition to

the harassment of its customers, complaints of statutory non-compliances owing to the voluntary undertaking not to hold board meetings dated 23.07.2019, and litigations filed thereby, the Appellants are also encashing personal legal bills pertaining to valuation of Bluestone/others through the Company itself in a manner grossly prejudicial to the Company. The Appellant Nos. 1-2 further tried to damage the R1 Company by writing mischievous letters to ING Kotak Bank in 2015 asking them to withdraw loans or dishonour cheques issued by the R1 Company if the same had not been signed by the Appellant No. 1 – the same being against valid unanimous board resolutions in existence for decades – prompting ING Kotak Bank to recall loans amounting to INR 53 cr, which the R1 Company was compelled to pay back within 45 days in order to avoid being labelled as a wilful defaulter. Despite the above, the R1 Company continues to run profitably along with substantial increase in net worth for all shareholders till date (despite diversion of business impacting profits), thanks to the full time working of the Respondent Nos. 8-13, and in spite of the hindrances caused by the Appellant Nos. 1-2, does not deserve to be dissolved as demanded by the Appellants.

Miscellaneous grounds taken by Respondents

134. It is noteworthy to state that the instant Appeal was filed in March 2019, when there was no competing and conflicting store. The matter was finally heard and reserved for judgment on 28.02.2023. Shockingly, on the same day, the Appellant revealed the outer facade of the next-door showroom and finally started operations only on 15.03.2023, by which time the instant Appeal was reopened as then judgment had been reserved without hearing

Respondents herein. What the Appellant would have achieved if the instant Appeal would have been allowed, has been achieved by her in opening a new store on 15.03.2023, by completely ignoring the sanctity of the fact that matters are sub-judice before this Hon'ble Tribunal till date.

135. It is contended that the R1 Company has been in sound financial health and that the earnings per share have registered a growth of 12,223% over just three decades from Rs 31/- per share in 1988-89 to a dividend of Rs 3761/- in 2017-18, and it cannot be said to have been run in any manner which is detrimental to the interests of the Company or its shareholders. Since the R1 Company is giving high dividends, it cannot be said to give rise to any cause to any shareholder to aver mismanagement thereof or to have resulted in any oppression and mismanagement of any section of the shareholders. Appellant and R9 who hold 50% shares are thus getting the dividends for such 50% shares. It is contended that the NCLT has thus rightly held that the Appellants have not been able to make any case of oppression or mismanagement and in the garb of such a Petition only sought to seek more Directors on the Board of the R1 Company which cannot be done in law. Further, since the change in the constitution of the Board of Directors had last taken place in the year 2007, when the Appellant's husband was alive, a challenge being made in 2014 by filing a Petition in NCLT was an afterthought and a belated attempt even in doing so.

136. The Appellant and R9 have previously managed to thwart the interests of the R1 Company by their involvement in Bluestone through R9's wife who

was a co-founding member of the Company. They have been promoting the same, which is a rival jewellery business, since its inception and have misrepresented in the Company Petition that they have no interest therein. It is pertinent to note herein that the very genesis of the instant conflict was the non-disclosure of interest in Bluestone (an online jewellery competitor) by the Respondent No. 9 herein. R9 further misappropriated the funds of R1 Company by paying bills raised against valuation services which were subsequently repaid by a leading law firm based on stiff letters requesting proof of work done for the R1 Company, thus demonstrating fraudulent passing of bills in the R1 Company by R9. The actions of the Appellant and R9 have impacted the R1 Company and led to gross injustice being committed against it and its directors, ie, R2-R7 by the various mischievous and contemptuous acts of the Appellant and R9. In a similar vein, the wife of R9 has been involved in multiple businesses including Bluestone, a rival jeweller business. However, she continues to misrepresent herself as CEO of the R1 Company despite having no connection, whatsoever, to the name. In fact, R2-7 even invited the wife of R9 and requested her to be made a Director on the Board of the R1 Company as well, which was refused by R9 himself.

Respondents contend Impugned Order doesn't deserve interference

137. It is contended that the Impugned Order herein is a detailed, well-reasoned Order which considers and examines all contentions made by the parties and renders a decision on the basis of pleadings in the matter and in line with well-settled principles of law and after providing both parties opportunities to present their case in depth. The said Impugned Order is not

arbitrary, nor does it suffer from any legal infirmities, thus making it deserving of not being interfered with.

138. The Impugned Order considers the question of enforceability of the FSA in light of the fact that the Appellants derive their right to run a competing business abutting the R1 Company from it. The Order further makes a note of the fact that the original copy of the FSA remains with R7 and the Appellants have not taken any steps to obtain the same, nor furnished any explanation as to why they have decided not to take steps in that regard. Consequently, it, along with various other judicial forums, also held that the same has not been acted upon, hence, the Appellants cannot claim a right to run a business such as Appellant No. 4. The Impugned Order further notes that the act of opening the Appellant No. 4's showroom adjacent to R1 Company's is in itself a violation of Section 166 of the CA, along with the confusion being created by it by passing itself off as part of the CKC group of companies (R1-R6).

139. It is also contended by the Respondents that the Appellants have categorically stated in the email dated 12.07.2021, IA for recall and WP 19256 of 2021 that 'on becoming aware' they couldn't connect only 'when the matter was reaching'. These two admissions would cast serious doubts on the arguments made by the Appellants before this Tribunal, as if they were never aware about the matter being listed on 12.07.2021, hence, they did not join. The documents and admissions on record speak to the contrary. Even till the Rejoinder Submissions, the Appellants could not answer how they became aware. Once they were aware about the hearing dated 12.07.2021, and were

connected online, the ground of there being no notice to them for the said hearing stands waived off/defeated.

In conclusion

140. In conclusion, it is claimed that the instant Appeal has been given the colour of a Petition against oppression and mismanagement, when in truth, the said Appeal only seeks implementation/execution of the FSA, which is a private agreement between family members. In light thereof, it is humbly submitted that there is no evidence of oppression or mismanagement by the Respondent Nos. 2-7 herein against any members of the Respondent No. 1 Company, and the present Appeal is a private personal dispute between individuals and, therefore, ought to be dismissed.

141. The matter at hand involves a dispute which is fundamentally “personal” in nature and the Appellant has, by means of false and frivolous submissions, attempted to impart to it the colour of a company-related dispute. Furthermore, the Appellant and Respondent No. 9 are still the directors/shareholders of Respondent No. 1 and therefore, are acting in contravention of Section 166 of the Companies Act, by way of opening the competing showroom. In this regard, it is further submitted that a shareholder derivative suit is a lawsuit brought by a shareholder (or group of shareholders) on behalf of the corporation against the corporation's directors, officers, or other third parties who breach their duties. The claim of the suit is not personal but belongs to the corporation.

142. A close perusal of Sections 241 and 242 of the CA, 2013 clearly establishes that determination of the validity of private agreements between

individuals and family members is ultra vires the scope of powers of the Hon'ble Tribunal. ***(Incable Net (Andhra) Limited & Ors. Vs. Ap Aksh Broadband Ltd. & Ors., (SLP No. 9110 of 2008); Sangramshinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) through LRS. And Ors., (2005) 11 SCC 314)***. Therefore, there is no iota of evidence to determine the alleged oppression and management against the Contesting Respondents. On the other hand, Appellant and R9 have not spared any chance to make wrongful gains from the goodwill/property/confidential information etc. of the R1 Company.

143. It is contended that the Impugned Order herein in a detailed, well-reasoned Order which considers and examines all contentions made by the parties and renders a decision on the basis of pleadings in the matter, in line with well-settled principles of law, after providing both parties opportunities to present their case in depth. The said Impugned Order is not arbitrary, nor does it suffer from any legal infirmities, making it deserving of not being interfered with. In fact, the Impugned Order records that the Petitioner (Appellant herein) had approached the Tribunal with unclean hands and therefore does not deserve any relief. The Impugned Order, on the basis of facts and circumstances, and evidence adduced, held that the allegations of oppression and mismanagement levied by the Appellant herein are merely allegations. The Appellant has not been able to substantiate the same and mere conduct of Directors (which has been authorised by way of Board Resolutions), including passing of unanimous resolutions by them, which they are authorised to do, is not ground for relief under Sections 241 and 242

of the Companies Act. The Impugned Order rightly holds that the Appellant has sought relief in her capacity as a Director and not a member of the Company and allegations of oppression raised by her are actually allegations of prejudice suffered as a Director and not a member. The Impugned Order notes that the FSA is an escrow document, by definition not binding or enforceable, and rightly refuses to interfere therein.

144. The Appellant group in the hearing dated 10.01.2025 in TA No. 01 of 2023 stressed on their right to run a jewellery business using the C. Krishniah Chetty name by virtue of them belonging to the same family, and the fact that Respondent Nos. 8-13 and Appellant Nos. 1-2 share a common ancestor who started the R1 jewellery business. However, it is pertinent to note that belonging to a family is a sentimental ground and not a legal one, thus not sustainable. It is submitted that the R1 Company is the only one entitled to run a jewellery business under such name not because Respondent Nos. 8-13 belong to the Krishniah Chetty family, but because the rights with respect to the business were unanimously vested with the R1 Company by virtue of the Dissolution Deed of 1980. Thus, the Appellants' arguments are an expression of sentimentality and not legally sustainable.

Way forward suggested by Respondents

145. Furthermore, there are several ways for the Appellants to solve the inter-se disputes between the parties, one of which is by adhering to unanimous Board Resolutions of the 351st, 352nd, and 353rd Board meetings passed in 2009 to run multiple entities with differential shareholdings viz 80:20 and 20:80 by both groups so as to ensure growth in a non-competing manner for all and

without harming each other or such others in exports, in online business, in manufacturing, in wholesale and other possible verticals that are synergistic yet growing and gaining value to the 155-year-old brand. There is no need to destroy the R1 Company in order to enable all parties to grow in healthy and non-competing ways. It is further pertinent to note herein that Respondent Nos. 8-13 have expressed willingness to buyout the shares of Appellant Nos. 1-2 in R1 Company if they so desire to exit/sell out as per terms laid in the Articles of the Company.

Orders in CP 54 of 2014 NCLT BB

146. It is also claimed that the following Orders were issued in the Petitions of the Appellant in CP No. 54 of 2014 filed by Mrs. Valli Narayan:

Date of Order Passed	Directions/Finding
22.09.2014	Appellants as well as Respondents restrained from diverting business of the R1 Company.
27.04.2018 in I.A. 54 of 2018	Appellants restrained from starting a “ <i>competing jewellery store/business in B Block Touchstone</i> ” or any other business competing with CKC Group.
24.01.2019 (Final order)	Held: 1. FSA is an escrow document which is not implementable; 2. Allegations of oppression/mismanagement not substantiated – merely allegations; and 3. Petitioner did not come with clean hands.

Orders in CP 4 of 2020 NCLT BB

147. It is to be noted that while the proceeding was pending before this Appellate Tribunal in CA (AT) (CH) No. 65 of 2019 the Respondent group (Hayagriv’s group) filed in CP No. 04/BB/2020 filed by Dr C Vinod Hayagriv

and Ors for oppression and mismanagement, various orders issued are as listed below:

S. No.	Date of Order Passed	Directions/Finding
1.	21.09.2020	Appellants' oral undertaking dated 07.01.2020 recorded that they would not precipitate matters further.
2.	12.07.2021	Appellants directed to maintain status quo on account of directors being vested with the responsibility to not act against the interests of the Company.
3.	07.08.2021	Order dated 12.07.2021 extended until further orders.
4.	27.08.2021	Order dated 12.07.2021 extended until further orders.
5.	08.02.2023	Notice issued against the Appellants in the Contempt Petition.
6.	29.03.2023	Appellants directed to maintain status quo ante.
7.	26.04.2023	Orders dated 12.07.2021 and 29.03.2023 extended until further orders.
8.	22.05.2023	Orders dated 12.07.2021 and 29.03.2023 extended until further orders.
9.	01.06.2023	Orders dated 12.07.2021 and 29.03.2023 extended until further orders.
10.	24.08.2023 (Impugned Order)	Held: 1. Appellant No. 4 and Respondent No. 1 companies are not related parties; 2. Actions of the Appellant No. 1 and 2 are violative of S.166 of the Companies Act, 2013; 3. I.A. No. 5, 6, and 7 of 2020 consequently allowed.

Orders by other judicial forums

148. Respondent Nos. 1 to 6 have also brought on record the Orders passed by other judicial forums as follows:

S. No.	Date of Order Passed	Directions/Finding
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1.	05.03.2020 by the Registrar of Trademarks	Registration of the mark “C. Krishniah Chetty & Co.” in the name of Appellant No. 4 refused owing to its deceptive similarity with pre-existing marks likely to cause confusion.
2.	19.01.2021 by the IPAB	It was noted that the conduct of the Directors in changing the name of Appellant No. 4 when the FSA was not binding was not proper and accordingly stayed the registration of the Appellants’ trademarks. (Challenged before KHC – dismissed for lack of jurisdiction.)
3.	24.05.2022 by the Regional Director, MCA	Held: 1. Exercise for change of name undertaken by the Appellants was laden with misrepresentations including the alleged NOC; 2. The purported FSA has not reached finality; and 3. Appellant No. 4 directed to change its name.
4.	28.03.2023 in O.S. 1265 of 2023	Observed that no steps were taken by either party to implement the FSA which consequently remains unenforceable and restrained the Appellants from hindering the enjoyment of the subject property. (Challenged before KHC – order modified to restrain both parties from hindering enjoyment of subject property.)
5.	07.06.2023 in Com. O.S. 547 of 2023	Held: FSA is an escrow document and the Appellants have suppressed facts such as the status quo orders passed by NCLT and the fact that they had no right to change their name, etc. (Challenged before KHC- dismissed for lack of jurisdiction and directed to reclassify as Commercial Appeal.)

Submissions of the R8, Mr Shyam Ramadhyani, Expert

149. The 8th Respondent is a practicing chartered accountant, with over 40 years of experience. He is a partner at M/S B K Ramadhyani and Co LLP, Chartered Accountants, Bangalore. The said M/S B K Ramadhyani and Co LLP, have been the statutory auditors of the 1st Respondent Company and the 10th Respondent Company since their inception.

150. The shareholders of the 1st Respondent Company are members of the same family. There were certain differences between the shareholders in the 1st Respondent Company, at which point in time, they decided to execute a Family Settlement Agreement, which could resolve the issues between them. All parties and their respective counsels worked on the said Family Settlement Agreement for over several months and the terms of the Family Settlement Agreement were finalised and the Agreement was executed on 09.01.2014. The 8th Respondent is not a signatory of the said document. As a chartered accountant, the 8th Respondent had extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement. As the 8th Respondent enjoyed the confidence of all parties to the said agreement, after the Agreement was executed, the original of the Agreements in two sets were handed over to the 8th Respondent for safe keeping. The 8th Respondent is referred to as an 'Expert' in the Family Settlement Agreement and his role in the Family Settlement Agreement is also expressed in the said Agreement. At no point in time was the 8th Respondent called upon by any party of the said Agreement to act as an 'Escrow' or to perform any act as an Escrow. This role as an Expert and to perform as required under the said Agreement was dependant on whether the parties required any assistance. If assistance was sought, the 8th Respondent would have considered providing his expertise. If no assistance was sought the question of being an expert is of no consequence.

151. The Appellant filed CA No. 1 of 2015 before the NCLT, sought for several reliefs including a relief to direct the 8th Respondent to produce the original

Family Settlement Agreement dated 09.01.2014. The 8th Respondent filed his objections to the said application and had stated that he would comply by the order of the Tribunal (CLB then) and will submit the said Agreement if so directed. Then Hon'ble CLB, by its Order dated 16.12.2015, ordered the 8th Respondent to submit the Family Settlement Agreement in a sealed cover, as follows:

“The advocate for the 8th Respondent submitted that he is willing to place on record the original family settlement deed. Therefore, two weeks' time is granted to furnish the same in sealed cover to the bench officer.”

152. Accordingly, the Original Family Settlement Deeds dated 09.01.2014 in a sealed cover were submitted to the Bench officer of the CLB on 21.12.2015. Since then, the Original Family Settlement Deed are in the custody of the Tribunal (CLB Chennai). The fact that the Original Family Settlement was deposited in court is recorded in the order sheet dated 07.01.2016. It is the case of the 8th Respondent that he was in possession of the Family Settlement Deed and for that lone reason he was made a party to the proceedings before NCLT. As the Original Family Settlement Deed were submitted to the custody of the Tribunal (CLB Chennai) in compliance of Order dated 16.12.2015, his continuance in the proceedings would not assist the Tribunal in any way in adjudicating these proceedings. The 8th Respondent even filed an application in CA No. 4 of 2016, seeking to delete the name of the 8th Respondent from the array of parties, the said application was kept pending and was dismissed since the main Appeal itself was disposed of. Even in the Arbitration Application in AA No. 25006 of 2014 filed by the 9th Respondent, the 8th

Respondent was also made a party, the 8th Respondent has appeared and taken a position that he did not want to take sides and he will abide by the Order of the court and submit the Family Settlement, if directed by the court.

153. Aggrieved by the Impugned Order dated 24.01.2019, the Appellant has preferred the Appeal under consideration seeking to set aside the Impugned Order and allow the Petition filed before the NCLT seeking to regulate the affairs of the 1st Respondent Company and other reliefs. It is pertinent to point out that no allegations have been made either in the Petition or Appeal against the 8th Respondent and no relief has been sought against the 8th Respondent. Both in the Company Petition and the Appeal, the Respondent No. 8 is described as the Statutory Auditor. Further, it is stated that both the originals of Family Settlement Agreement were handed over to the 8th Respondent "FOR SAFE KEEPING"/as a custodian.

154. The Respondents 2 to 7, in their objections to the main Petition before the NCLT, have not made any allegation against the 8th Respondent, not even a single reference was made to the 8th Respondent in the entire objections of the Respondent Nos 2 to 7. However, in the objections to the Appeal, for the first time, Respondent Nos 2 to 7 have made certain baseless allegation that the expert-cum-escrow was empowered to extend time for demerger but he did not do so and therefore time for demerger has lapsed. Further it is alleged that the expert was not confident about the arrangement structured by him. It is submitted that these allegations are frivolous, the 8th Respondent has put in his best efforts to amicably resolve the dispute between the parties'

misunderstandings. Ultimately, it is for the parties to arrive at a settlement.

155. Respondent Nos 1 and 10, for the first time, used the word 'escrow' in their objections before the NCLT, at para (f) as follows:

'It is stated that the Agreement executed in two sets were along with the letter of Mr. Ganesh (withdrawing certain allegations) were kept in escrow with Mr. Shyam Ramadhyani, well-wisher and advisor'.

156. It is submitted that there were no terms and/or instructions that were formulated when the Original Agreements were given to him for safe custody; no escrow agreement was ever executed and also no instructions to destroy the document were ever given, as is wrongly contended by the 1st and 10th Respondent Companies in their objections before the NCLT. The 8th Respondent was not a party/signatory to the Family Settlement Agreement or to any other agreement(s) executed either with him or amongst the parties to the proceedings under consideration. In fact, there is no counter claim made by the Respondents, no relief that the Respondents have sought against the 8th Respondent. The Company Petition filed by them in CP No. 610 of 2018 also came to be dismissed as withdrawn. However, in the objections to the Appeal before this Tribunal, the Respondents 1 and 10 have wrongly alleged that the 8th Respondent withdrew and stopped acting as an expert due to the failure of the proposed structure. It is submitted that the Agreement provides for a scheme as to when the expert would perform a certain act. There is no question of the 8th Respondent voluntarily taking action. It is submitted that the 8th Respondent has acted in the best interest of the Respondent No. 1 Company and its shareholders and tried his best to resolve the deadlock

between the family members/shareholders.

157. The NCLT in the Impugned Order has given the following finding:

"The facts and circumstances and the statement made by Respondent No. 8 prima facie show that he is an escrow. Admittedly, Respondent No. 8 not only in custody of original document but he is appointed as an expert to execute the modus Operandi of execution of the terms and conditions of the family settlement Agreement."

158. It is claimed that the NCLT has erred in understanding the submission of the 8th Respondent. The NCLT failed to note that, as a chartered accountant, the 8th Respondent had extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement, as the 8th Respondent enjoyed the confidence of all parties to the said agreement. The NCLT failed to note that the 8th Respondent is referred to as an 'expert' in the Family Settlement Agreement, not an escrow, and the role of the expert had been expressly provided in the Agreement. The NCLT failed to note that at no point in time was the 8th Respondent called upon to act as an 'escrow' or to perform any act as an escrow. Further, the role as an expert, as envisaged under the Agreement, was dependant on whether the parties want any assistance from him. Just because he is named an expert and the Original Agreements were handed over to him, he does not assume the character of an escrow.

159. Even assuming, for the sake of argument, that his role is that of an escrow, there are no instructions or directions as to how he must act. Therefore, the only obligation that he has is to submit the document to the

Tribunal and to act in terms of the directions of the Tribunal. It is submitted that in the absence of any instructions or agreement as to the manner in which an escrow agent must act, the question of the escrow agent taking upon himself any obligation does not arise. The 8th Respondent had abided by the directions that was issued by the Hon'ble Tribunal (CLB Chennai).

160. It is the case of the Appellant that the Original Family Settlement was handed over to the 8th Respondent for safe keeping. It is the case of the 1st and 10th Respondent Companies that the 8th Respondent was an escrow. Even though the 2nd to 7th Respondents did not refer to the 8th Respondent as an escrow in their objection before the NCLT, in the course of the proceedings, they have contended that the 8th Respondent is an escrow. It is submitted that when the Original Family Settlement Deed was handed over to the 8th Respondent there were no terms of an escrow agreed between the parties, no escrow deed or letter or any other agreement was executed with him, it was handed over only for safe custody. However, without prejudice, whether the 8th Respondent is a custodian or an escrow, he has performed his duties without taking any stands. He has submitted the document to the CLB Chennai, which was determining the disputes between the parties at the relevant time at its specific direction in writing. It was for the Hon'ble Tribunal to decide if the said document was to be handed over to the parties as is contended by the Appellant or destroy the document as was contended by the 1st and 10th Respondent and the 2nd to 7th Respondents, before the NCLT.

Appraisal

161. We have heard the Counsels of both sides and also perused voluminous

materials placed on record by both sides in both the Appeals, ie, TA 01 of 2023 and CA AT 65 of 2019.

Issues

162. Since both the Appeals are interrelated, submissions of both groups have been noted in two separate categories of CVH and CVN groups. Appraisal of both the Appeals is also being taken up together. The issues before us are as follows:

1. Whether a case for oppression and mismanagement is made under Sections 241 and 242 of the Companies Act, 2013, against any of the parties
2. Whether Tribunal was correct in dismissing Recall Application by Appellants in CP 62 of 2021 and allowing IAs 5, 6 and 7 of 2020 of Respondents in CP 4 of 2020 of oppression and mismanagement filed by Respondents
3. And if any case is made for oppression and mismanagement, what orders can we pass under Sections 241 and 242 of the Companies Act to redress the grievance of both parties and also to ensure that the affairs of Respondent No. 1 Company are carried out smoothly.

While appraising the materials placed on record, including the judicial precedents cited by both sides, we answer several related questions, which will help us to finally decide on the above issues. These questions have been taken up seriatim in subsequent paragraphs to finally decide on the issues.

Judgments relied by Appellants

163. ***Needle Industries (India) Ltd & Ors. v. Needle Industries Newey***

(India) Holding Ltd. and Others AIR 1981 SC 1298 paras 46-48: Just and equitable to wind up the Company (Ebrahimi Case). Just because company is prosperous and makes profits is no obstacle to it being wound up.

164. **Probir Kumar Misra v. Ramani Ramaswamy & Ors.** 2010 154 CompCas 658 (Mad) para 154, 155, 156, 157, 172 and 180: Wider power with the CLB under 402 to investigate into the affairs of the Company. Absence of any specific prayer to investigate will not refrain the Court from doing so. Thus the NCLT has wide powers to grant an equitable relief to enforce the FSA to bring an end to the matters complained of, specifically when there is no meeting point between the parties.

165. **Hind Overseas vs. Ragunath Prasad Jhunjunwala & Ors** [AIR 1976 SC565 para 33] and **Synchron Machine Tools P. Ltd. & Ors. vs. U.M. Suresh Rao [1994] 79 CompCas 868 (Kar) para 31, 180, 190]**: Principles applicable in cases of dissolution of partnership can be invoked for a company that is being operated in the style of a partnership. Principle of dissolution of partnership applies to companies either on the ground of complete deadlock or on the ground of being domestic or family companies.

166. **M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja** AIR 2008 SC 1738 @ para 16, 17, 38, 39, 42,43: Situation of deadlock has arisen in view of the facts and bitterness has crept in the personal relationships of the two shareholders and two directors.

167. **Venus Petrochemicals (Bombay Private Ltd.) & Ors. v. Sunil M.**

Thakkar (Comp. App. AT No. 65 of 2022): NCLAT applied the principle of quasi-partnership to a family company where the two groups had equal shareholding.

168. **Tata Consultancy Services Pvt. Ltd. v. Cyrus Investments (P) Ltd.** [(2021) 9 SCC 449]: NCLAT applying the ratio invoked the just and equitable standard while upholding the order of the NCLT granting equal representation on the board, removal of casting vote and directing joint operations of all the bank accounts. The facts of the said case are similar to the present case as even in this case there is a family history, equal shareholding in R1 Company and also cross shareholding and directorship in other group private limited companies.

169. **Shashi Prakash Khemka v. NEPC Micon & Ors.** (2019) 18 SCC 569 Para 6 and **MAIF Investment India Pte. V. Ind- Bharath Power Infra Limited & Ors.** 2019 SCC Online NCLAT 203 para nos 31 and 32: Relegating the parties to civil suit would not be appropriate remedy, especially considering that Section 430 of the Companies Act, 2013 is widely worded. Section 430 of the Act which ousts the jurisdiction of the Civil Courts with respect to any matter which the NCLT and NCLAT is empowered to determine under the Act. The NCLT could not have relegated the Appellant to the remedy of a civil suit. The finding relating to FSA is contrary to these judgments.

170. **Kale & Ors. vs. Deputy Director of Consolidation & Ors.** (1976) 3 SCC 119, para 42: Family settlement though not registered, would operate as a complete estoppel against the parties to such a settlement. In any event,

herein the FSA was validly executed in accordance with applicable laws and requisite stamp duty was paid. However, even if its assumed that there was any deficiency, it is settled law that it would act as an estoppel against the parties and bind them, more so when the subsequent conduct supports the settlement.

171. ***Thulasidhara & Anr vs. Narayanappa & Ors.*** (2019) 6 SCC 409 paras 9.3-9.5 Relies on Kale & Ors. Family settlement though not registered, would operate as a complete estoppel against the parties to such a settlement.

172. ***Subraya MN vs. Vittanala MN & Ors*** (2016) 8 SCC 705, Paras 15, 16 and 19]: Family settlement although not registered can be used as corroborative evidence. Although the family settlement was not registered, it was acted upon supported by the subsequent conduct of the parties.

173. ***Greater Noida Industrial Development Authority V. Prabhjit Singh Soni and Anr*** (2024) 6 SCC 767: An application for recall is maintainable if the party aggrieved is not served with the notice of proceedings in which the order under recall has been passed. Further held that a recall application is maintainable notwithstanding that an appeal lies before NCLAT.

174. ***Surinder Kumar Gupta v. J.M. Housing (2021) 12 SCC 672***: held that the appropriate course of action against an ex-parte order of NCLT is to approach NCLT itself.

175. ***Kishore Kumar Khaitan and Anr, v. Praveen Kumar Singh*** (2006) 3 SCC 312): A status quo order ought not to be passed without indicating

what the status quo means and reliance is placed by Appellant.

176. **State of Orissa v. Madan Gopal Rungta** 1951 SCC 1024 and reiterated in **State of U.P. And Ors. V. Ram Sukhi Devi** (2005) 9 SCC 733: Final relief cannot be granted at the interim stage. A bare perusal of the final prayers and interim prayers shows that the NCLT has granted the final reliefs at the interim stage.

177. **Smruti Sreyans Shah v. Lok Prakashan Ltd. & Ors.** (2019) SCC OnLine NCLAT 469, Para 260 and **BSE Ltd. v. M/s. Ricoh Company Ltd. & Ors.** (2017) SCC OnLine NCLAT 12, Para 41): The relief must be with respect to the “affairs of the company”. When admittedly Respondent Nos. 8-13 claim to be in complete control and management of R1 Company, the reliefs granted are wholly unwarranted and go much beyond the scope of Section 242 (4) and for this argument. The Respondents have failed to make out *prima facie* case of oppression and mismanagement which is necessary to warrant an interim relief under Section 242 of the Act.

178. **Sangramsinh Gaekwad v. Shantadevi Gaekwad** AIR 2005 SC 809: Jurisdiction of the court to grant reliefs under 397 is of the widest amplitude.

179. **Bhaskar Stoneware Pipes Pvt. Ltd. V. Raj inder Nath Bhaskar & Others** 1988] 63 CompCas 184 (Del): Funds of company diverted to other concerns shows systematic oppression.

180. **Dale and Carrington Investment (P) Ltd. & Anr. vs. P.K. Prathapan & Ors.**, (2005) 1 SCC 212: Duty of the Directors. The company is a juristic

person and its directors are understood to be its agents, trustees or representatives and that any decision made must be done in utmost good faith and with the exercise of reasonable care and due diligence with the best interest of the company in mind.

Judgements relied by Respondents

181. Written Family Settlement Agreement Compulsorily Requires Registration: **Krishnappa & Ors. Vs. Smt. Aswathamma R.S.A.** No. 87/2010, Hon'ble High Court of Karnataka: Appeal liable to be dismissed in limine; as appellant failed to establish, at the time when the appeal was presented, that the affairs of the company were being conducted in a manner oppressive: **Sangramsinh P. Gaekwad and Ors. Vs. Shantadhvi P. Gaekwad (Dead)** Thr. Lrs. And Ors. Manu/Sc/0052/2005; Incable Net (Andhra) Limited and Ors. Vs. Ap Aksh Broadband Ltd. And Ors. 'Manu/Sc/0357/2010

182. **Jeweltouch (1) Private Limited v. Naheed Hafeez Quraishi and Ors.** 2008 SCC OnLine Bom 82; **Hira Mistan v. Rustom J. Noble**, 2000 (1) Bom C.R. 716): When a sealed writing is delivered as an escrow it cannot take Effect as a deed pending the performance of the condition subject to which it was so delivered, and if that condition is not performed the writing remains entirely inoperative. Keeping a document in escrow implies that parties intend for such document to remain in escrow until conditions precedent to the enforceability of the document are affected.

183. **Sita Ram Bhama Vs. Ramavtar Bhama** (2018) 15 SCC 130 and **Kale Vs. Director of Consolidation** (1976) 3 SCC 119: FSA would therefore

require stamping and registration under Section 17 of the Registration Act, 1908. Unstamped and unregistered Family Settlement is not only not admissible in evidence; it can also not be looked into for collateral purposes unless stamped and registered. No court or judicial forum including this Appellate Tribunal can act or implement or look into the said document even for collateral purposes.

184. ***Ramashankar Prosad and Ors. vs. Sindri Iron Foundry (P) Ltd. and Ors.*** MANU/WB/0104/1966: For a petition to succeed it must be shown that there has been oppression in a real sense of members qua shareholders and not merely a subordination of their wishes to the power of a voting majority. The remedy under Sections 241 and 242 of the Companies Act, 2013 allows any “member” of a company to file a petition before the National Company Law Tribunal (NCLT) if the company’s affairs are being conducted in a manner that is prejudicial, oppressive or such that it amounts to mismanagement. Furthermore, it is trite law that the test for interference is high and stray/lone acts though wrongful may not amount to oppression/ mismanagement nor will commercial misjudgement/ unwise investment decisions, unless such decision lacks fairness/ probity. The acts complained of must be recurring, burdensome, harsh and wrongful.

185. ***Needle Industries (India) Ltd. & Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors.*** [(1981) 3 SCC 333]: The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes

prejudice to him in the exercise of his legal and proprietary rights as shareholder. An unwise inefficient or careless conduct of a director in the performance of his duties cannot give rise to a claim for relief under Sections 241 and 242 of the Companies Act, 2013.

186. **Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad** [Appeal (civil) 6359 of 2001]: Hon'ble Supreme Court of India observed that the remedy under Section 397 of the Companies Act is not an ordinary one. The acts of oppression must be harsh and wrongful. An isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of the majority shareholders is, thus, necessary to be proved. The acts complained of may either be designed to secure pecuniary advantage to the detriment of the oppressors or wrongful usurpation of authority.

187. **S.P. Kalinga Tubes Ltd.** (1965) 2 SCR 720: Mere lack of confidence between shareholders is not sufficient to avail the remedy under Sections 241 and 242 of the Companies Act, 2013, unless it springs from oppression of the minority by the majority in the management of the company's affairs; further clarified that even then oppression must involve at least an element of lack of probity to a member in the matter of his proprietary rights as a shareholder.

188. **S.P. Jain v Kalinga Tubes Ltd.**, AIR 1965 SC 1535; **V.M. Rao v. Rajeswari Ramakrishnan** 1985 SCC OnLine Mad 151): Petitions under Sections 241 and 242 of the CA 2013 must be regarding oppression suffered by the Petitioner in its capacity as a member and not as a director, creditor, or otherwise.

189. ***Needle Industries (1) Ltd. v. Needle Industries Newey (1) Holding Ltd.*** (1981) 3 SCC 333, ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.*** (2008) 3 SCC 363): Petitions based on allegations of inefficiency, carelessness of Directors not maintainable

190. ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.*** (2021) 9 SCC 449): The remedy under Sections 241 and 242 of the CA, 2013 is available only to shareholders, that too, for raising grievances of violation of proprietary rights as a member and not in any other capacity, including as a director. Such right is not available to a shareholder, even a minority one, since they are willing and consenting parties to the Articles of Association of a company and cannot, now, turn around and challenge those Articles.

191. ***Incable Net (Andhra) Limited & Ors. Vs. Ap Aksh Broadband Ltd. & Ors.***, (SLP No. 9110 of 2008); ***Sangramshinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) through LRS and Ors.***, (2005) 11 SCC 314), ***Aruna Oswal vs Pankaj Oswal***, (2020) 8 SCC 79; ***Chatterjee Petrochem (India) Pvt. Ltd. v Haldia Petrochemicals Ltd. & Ors.***, (2011) 10 SCC 466): As per Sections 241 and 242 of the CA, 2013, determination of the validity of private agreements between individuals and family members is ultra vires the scope of powers of the Hon'ble Tribunal.

192. ***Rajeev Saumitra v. Neetu Singh***, 2016 SCC OnLine Del 512): A Director of a company cannot be allowed to compete the business of their Company, in which they are already a Director, to exploit the mark in order to give the impression to the public at large that they have any association or

affiliation of the Company in which they are still a Director.

193. **Chatterjee Petrochem (India) Pvt. Ltd. v Haldia Petrochemicals Ltd. & Ors.** (2011) 10 SCC 466: The language of section 397 suggests that the oppressive manner in which the company's affairs were being conducted could not be confined to one isolated incident, but that such acts would have to be continuous as to be part of a concerted action to cause prejudice to the minority shareholders. Whether a family-run company can be treated as a quasi-partnership will vary on a case to-case basis. A private limited company incorporated under the Companies Act cannot be treated as a quasi-partnership merely because it's owned and run by family members.

194. **Ebrahimi v. Westbourne Galleries Ltd.**, 1973 AC 360 and **Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad** [Civil Appeal 6359 of 2001]: One can, on the just and equitable ground, consider the domestic nature of a small company, but one cannot apply the law of partnership just on that basis. This would be an unwarranted gloss on the Companies Act. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in.

195. Specific prior notice of listing of a matter is not a maintainable ground and publication of the cause list containing the requisite details is deemed to be sufficient notice (**Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission** (2010) 5 SCC 23; **Shaheed Bhagat Singh Co-op.,**

H.B. Society Ltd. vs. Improvement Trust, Ludhiana (2000) 9 SCC 361;
Central Electricity Regulatory Commission Vs. Techno Electric and Engineering Company Ltd. and Ors. 2023 SCC OnLine SC 1953).

196. Technical glitch is not a ground on which relief may be granted (**MHADA v. Shapoorji Pallonji & Co. (P) Ltd.**, (2018) 3 SCC 13; **Mythri Infrastructure & Mining India Pvt. Ltd. & Anr. v. State of Odisha & Ors.** 2021 SCC OnLine Ori 2436; **Mythri Infrastructure & Mining India Pvt. Ltd. & Anr. v. State of Odisha & Ors.** 2023 SCC OnLine SC 1028; **JFC Finance (India) Ltd. v. Anil Kohli**, 2023 SCC OnLine NCLAT 1065).

197. Sections 241 and 242 of the CA, 2013 clearly establishes that determination of the validity of private agreements between individuals and family members is ultra vires the scope of powers of the Appellate Tribunal. (**Incable Net (Andhra) Limited & Ors. Vs. Ap Aksh Broadband Ltd. & Ors.**, (SLP No. 9110 of 2008); **Sangramshinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) through LRS. And Ors.**, (2005) 11 SCC 314).

198. Breach of the terms of settlement cannot be construed as an issue which would fall within the ambit of the definition of “oppression and mismanagement”: **Pramerica Aspf - Ii Cyprus Holding Limited Vs. Metro Corp Infrastructure Ltd. And Ors.** Manu/Nl/0577/2023; **ARUNA OSWAL VS. PANKAJ OSWAL AND ORS.** (2020) 8 SCC 79

Is the dispute “personal” or not?

199. Respondent claims the dispute is fundamentally “personal” in nature

and the Appellant has, by means of false and frivolous submissions, attempted to impart to it the colour of a company-related dispute. We have gone through the materials placed on record and also the submissions. We note that since its inception, the R-1 Company has been managed like a quasi-partnership. R-1 acquired the assets and liabilities of a dissolved partnership firm in 1980 called C. Krishniah Chetty & Sons. The Appellant group (the Appellant and her son, R9) holds 50% shareholding of the R1 Company and the remaining 50% is held by R 2-7 group. Some serious issues have been brought in the open by the Appellant group. Some of which were noted in previous paragraph. These are not personal but very much related to the business and cannot be brushed aside as personal. We note that despite having equal shareholding as the R 2-7 group, the Appellant group has been excluded from the affairs of R1 Company by the R2-7 group. Appellant group has brought out clearly that such an exclusion is on the face of it oppressive and is detrimental to the rights of the Appellant group as the equal shareholders.

Is FSA valid, enforceable, binding, acted upon, escrow or not?

200. Respondents have very strongly advocated that the family settlement agreement is stillborn, invalid, inchoate and non-binding document styled as the FSA, is untenable when the same was not given effect to, by either party. The FSA was merely an ‘agreement to agree’; it was never finalised between the parties and remained in escrow.

201. On the other hand, Appellants group contend that they had time and again raised their grievances regarding financial irregularities in R1 Company

and transfer of business from R1 Company to R10 Company and other CKC companies. As the R 2-7 group had failed to address the grievances of the Appellant group, the parties had reached the situation of a deadlock. In order to bring an end to the mistrust and part ways in an amicable manner, both the groups of the family had decided to divide the business of R1 Company and executed a 'Binding' Family Settlement Agreement ("FSA") dated 09.01.2014. Admittedly, the execution of the FSA is not denied by R-2 to R-7 and R1 and R10.

202. We have also gone through the statement of the expert who had prepared the FSA, which is extracted as below:

"The shareholders of the 1st Respondent Company are members of the same family. There were certain differences between the shareholders in the 1st Respondent Company, at which point in time, they decided to execute a Family Settlement Agreement, which could resolve the issues between them. All parties and their respective counsels worked on the said Family Settlement Agreement for over several months and the terms of the Family Settlement Agreement were finalised and the Agreement was executed on 09/01/2014. It is submitted that the 8th Respondent is not a signatory of the said document. As a chartered accountant, the 8th Respondent had extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement. As the 8th Respondent enjoyed the confidence of all parties to the said agreement, after the Agreement was executed, the original of the Agreements in two sets were handed over to the 8th Respondent for safe keeping. It is pertinent to point out that the 8th Respondent is referred to as an 'Expert' in the Family Settlement Agreement and his role in the Family Settlement Agreement is also expressed in the said Agreement. At no point in time was the 8th Respondent called upon by any party of the said Agreement to act as an 'Escrow' or to perform

any act as an Escrow. This role as an Expert and to perform as required under the said Agreement was dependant on whether the parties required any assistance. If assistance was sought, the 8th Respondent would have considered providing his expertise. If no assistance was sought the question of being an expert is of no consequence.”

203. Appellant has relied upon ***Kale & Ors. vs. Deputy Director of Consolidation & Ors.*** (1976) 3 SCC 119, which holds that family settlement though not registered, would operate as a complete estoppel against the parties to such a settlement. In any event, herein the FSA was validly executed in accordance with applicable laws and requisite stamp duty was paid. However, even if it's assumed that there was any deficiency, it would act as an estoppel against the parties and bind them, more so when the subsequent conduct supports the settlement. It is to be noted that without relying upon FSA also, conclusions of oppression and mismanagement can be inferred in this case.

204. Furthermore, in ***Thulasidhara & Anr vs. Narayanappa & Ors.*** (2019) 6 SCC 409 which relies on ***Kale & Ors. (supra)***, it was held that family settlement though not registered, would operate as a complete estoppel against the parties to such a settlement. And in ***Subraya MN vs. Vittanala MN & Ors*** (2016) 8 SCC 705, it was held that family settlement although not registered can be used as corroborative evidence.

205. Respondent relies on ***Jeweltouch (India) Private Limited v. Naheed Hafeez Quraishi and Ors.*** 2008 SCC OnLine Bom 82; wherein it was held that when a sealed writing is delivered as an escrow it cannot take effect as a

deed pending the performance of the condition subject to which it was so delivered, and if that condition is not performed the writing remains entirely inoperative. Keeping a document in escrow implies that parties intend for such document to remain in escrow until conditions precedent to the enforceability of the document are affected.

206. As per the FSA, it was decided by the two groups that the assets of the R1 Company will be equally divided between the Appellant group (through CKC Deepali) and the R-2 to R-7 group (through R10) *[clause 1(f) of the FSA]*. It was the essence of the FSA that going ahead, the Appellant group will continue to carry on their independent business in CKC Deepali (admittedly a part of CKC group) and the R 2-7 group will continue to carry on their business through R10 Company after purchasing the remaining 20% shares of the Appellant in R-10. The FSA stipulated that both the groups could freely continue their businesses *(Per Clauses 1(g) Distribution of Liabilities, 3(d) Non-Compete, 3(e) New Stores etc.)*. In order to give effect to the FSA, both the groups acted in furtherance to the terms of the FSA, which is clear from board resolutions and various emails addressed by R2 to employees. We also note that immediately after signing of FSA on 9th January, 2014, the Respondents group circulated an email to the employees about proposed restructuring of CKC group within the next three to six months. Another internal communication was issued by the Respondents on 10th March, 2014, confirming split group split and family settlement aspects later on Respondents.

207. The Respondents initially acted upon it but later did not pursue the FSA. In the facts and circumstances of the case and after going through the material placed on record we find no force in the argument of the Respondents that FSA is an escrow and it was not acted upon by any of the parties. We find FSA to be a binding family settlement agreement duly registered and signed by all the parties. We may or may not be acting upon it but it is a comprehensive agreement to deal with the family dispute.

Violations of Section 166 of the Act and by whom?

208. Both parties have argued that the other party has violated Section 166 of the Act and doing business through related parties and transferring business from R1 Company to other business entities. Before delving into the issues raised by the opposing groups, it will be beneficial to reproduce the provisions of section 166 of the Act which provides the duties of a director in a company, which are claimed to have been violated by Appellants, and which is reproduced as follows:

“Section 166. Duties of directors.

- (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6)

(7)”

209. It will also be beneficial to note the definition of the related party as per the Act in Section 2 (76) which is reproduced herein as follows:

“(76) “related party”, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director or and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of a company;

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed”

210. The NCLT has also come to a conclusion that the running of the business abutting R-1 Company amounts to violation of Section 166 of the Act. Respondents claims that the Appellant Nos 1-2 are in violation of Section 166 of the Companies Act, which provides that a director of a company cannot have an interest, direct or indirect, which is prejudicial to the interests of such company. It is submitted that, in arguendo, even if one accepts that the Appellant No. 4 Company is related to R1 Company and not competing, the Appellant Nos 1-2 would still be in violation of the said Section since their actions in running the Appellant No. 4 are clearly prejudicial to the interests of the R1 Company. It is argued by the Respondents that the Appellants are misusing the reputation and legacy of the R1 Company to not only further their own business interests in the Appellant No. 4, but also to damage the business activities of the R1 Company as seen by the active poaching of employees, vendors, and clients by the Appellant group. Thus, even in arguendo, the finding of Section 166 being so violated is sustained in light of the facts placed before this Hon’ble Tribunal regarding the prejudicial actions of the Appellant vis-à-vis the R1 Company, since there is no common shareholding and it is claimed that a related party is not a group company unless there is common

shareholding. It is further claimed by the Respondents group that, owing to the damaging tactics of the Appellant Nos 1-2, the clients and customers of the R1 Company have started raising doubts and questions with respect to their personal details which, till March 2023, has neither existed nor were warranted. However, post the commencement of their competing business, there has been a marked loss of faith and confusion regarding whether the two businesses are the same since the newly commenced Appellant No. 4 Company has started operations in the same name, look, style, and feel as the R1 Company thus injuring its erstwhile impeccable reputation. It is also claimed that the revenue of the R1 Company, an aspect which directly affects the Appellant Nos 1-2 has also suffered due to such actions of the Appellant group of diverting business and clients to the Appellant No. 4 under the false impression that the Appellant No. 4 is the same as R1 Company. The revenue of the Appellant No. 4 Company from sales has increased from zero prior to 2023 to over INR 135 cr. – a boost attributable to the diversion of business from R1 Company, thus prejudicial to the interests of the R1 Company, and consequently, a violation of Section 166.

211. The Respondents R1 and R10 also contend that SIGMA GOLD LLP, an entity owned exclusively by the majority directors, is not a competing/conflicting business. The Appellants seek to defend their unlawful actions by claiming that the Directors of R1 Company, R8-R13 are also engaged in a competing jewellery business, viz Sigma Gold LLP. However, if the sales and service statements of Sigma Gold are checked, it would show that from 01.01.2005 till 31.03.2023, Sigma Gold LLP has

never been involved in a competing or conflicting business to that of R1 Company or made any sales to individuals/organisations outside of or other than the R1 Company as evidenced by the audited financials and statement of sales of Sigma Gold LLP placed on record before the Hon'ble NCLT, Bengaluru, which the Appellants are aware of and are deliberately concealing in order to mislead this Tribunal. After dissolution of the partnership deed, the entirety of the business and assets of the CKC & Sons firm were vested with the R1 Company, including the right to use the mark "C. Krishniah Chetty" and its variants by a unanimous resolution thus indicating that since its inception, the R1 Company was meant to be run by the Hayagriv branch of the family. Since 1980's, the R1 Company has been run by the Appellant Nos 1-2 and Respondent Nos 8-13's family and none of the Companies have ever competed against each other. No disputes had surfaced for the past 40 years showing the high standards of governance and ethics observed by the companies and the strict adherence to applicable provisions of the Companies Act, 1956, and 2013.

212. Vehemently opposing the arguments, Appellants group contend that that Respondents are also directors and run identical and similar businesses from a nearby address or same address as R-1 Company (page 1113-1114 APB). This also includes Sigma Gold LLP (formerly Sigma Gold Pvt. Ltd.) since 1993, which is wholly owned by the R8-13, where Appellants have no share. NCLT rejected this contention on the ground that other companies of the said Respondents are related parties to R-1 Company. Yet NCLT did not apply the same yardstick to the

Appellants as they are also related parties to R1 on a plain reading of Section 2(76) of the Act. Appellants contend that A-4 is not a related party, is contrary to the definition of related party as Section 2 (76) of the Act provides that any two entities having common directors and/or shareholders are related parties. Even otherwise, the fact that A-4/Deepali is a part of the CKC Group is not disputed and is borne out by the following:

- The order passed by NCLT dated 24.01.2019 records that A-4/Deepali is a CKC group company
- Admission in the statement of objections by R-1 in CP 54/2014 also shows A-4 is a part of CKC Group
- Financials of R-1 for 2014-15 also show that A-4 is a related party

213. From the rival contentions we find that R1 Company is the legacy company. The family members of two groups – CVN and CVH have floated their own Companies. We cannot ignore the fact that a related party in the context of a company means any two entities having common directors and/or shareholders. Appellants are held to be related party and therefore found to be violating Section 166 of the Act. The materials placed on record also suggest that Sigma and other Respondent Companies are also very much related parties as they/their relatives are common directors and/or shareholders. Both groups have been complaining that the other group is eating away the business of R1 Company and they are promoting their own group company. The Original Petition CP 54 of 2019 was filed by the by the Appellant on these grounds only, ie, various acts of oppression and mismanagement including exclusion from the affairs violation of Family Settlement Agreement, diversion of business etc of R1-CKC & Sons. Respondents have also complained on similar

lines. We're not going into individual complaints but suffice it to say that it has led to a deadlock in the conduct of the affairs of R1 Company. Further, from the materials placed on record it is noticed that R1 Company is being managed by the majority directors which belong to the CVH group and not CVN group. Appellants have Deepali as one of the related companies and same way Respondents also control many related companies and Sigma is one of the companies. We find that they may or may not be competing with the R1 Company. This is a matter of further investigation and cannot be independently and impartially investigated under the present set up in the R1 company. In the facts and circumstances of the case and basis the materials placed on record and also the submissions made by both parties, we find that both the parties have violated Section 166 of the Act and there are definitive indications of transferring business from R1 company, particularly by Respondents group.

Was Deepali-A4 a pre-existing show room?

214. It is clear from the materials on record that A-4 Company has 43-year-old history. The C. Krishniah Chetty ("CKC") Group Companies, including A-4 is managed by family members. A-4 was incorporated in 1982 by Mrs. Visala Hayagriv (*Respondent No.11*), Mrs. Valli Narayan (*Appellant No.2*) and C. Vinod Hayagriv (*Respondent No.8*). The same is apparent from:

- Certificate of Incorporation dated 20.03.1982;
- Board Resolutions of A-4 dated 07.09.1995, 28.06.1996, 26.12.1984, 19.12.1998 and 18.06.2004
- Balance sheet of Appellant No. 4 dated 31.03.1990
- Articles of Association dated 15.03.1982

215. A-2 was a founding promoter/shareholder and Director of A-4 and was

appointed as a Director in R-1 in 1994 and Director in R-2 in 2010. A-1 was appointed as Director of R-1 in 1997, Director of R-6 in 1999, Director of R-2 in 2010 and Director of A-4, in 1998. R-11 made the appointment in A-4, despite being aware that he will be a Director of competing companies. R-1 was also a shareholder of A-4 till 1998. Subsequently, after obtaining an opinion from the statutory auditor R-7 on 25.09.1998 for the sale of shares in A-4, R8 to R13 sold their shareholding in Deepali (A-4) to A-1 and A-2. The said opinion clearly states that:

“4. If Mr. Ganesh Narayan is interested in continuing the business of Deepali Company Private Limited, the shares held by your family can be sold to him, again at a mutually determined price, say the cost price.”

“5. Steps to be followed are as under:

..... e. Mr. Ganesh Narayan and his family would hold the entire share capital of Deepali Company Private Limited thereafter. They will be free to run the company in the manner they think fit.” (Para 6(d), Impugned Order)

216. Further, from records we note that R8-13 sought the modification to revise the prayers from “starting a competing jewellery store/business” to “running a competing jewellery store/business” which was rejected, which shows that the R8-R13 were aware that A-4 is an existing business.

217. During the course of arguments, the Respondents have relied on the judgment of ***Rajiv Saumitra v. Neetu Singh & Ors. (2016 SCC Online Del 512)***. The said judgment is distinguishable as in the said case one of the parties incorporated a new competing company after matrimonial disputes arose between the parties. Moreover, the said order was passed in a suit for ***CA (AT) No. 65 of 2019 and TA No. 01 of 2023***

injunction, not in an oppression and mismanagement Petition under the Act. In the present case, the A-4 is part of the CKC Group and has existed since 1982. Thus, the reliance on the said case is not helpful to the Respondents group.

218. Respondent group claims that the Appellant group, does not have the right to continue business operations of the Appellant No. 4, especially under the name “C. Krishniah Chetty” in light of the Impugned Orders, the Regional Director’s Order dated 24.05.2022, the Status Quo Order dated 12.07.2021 and Status Quo Ante Order dated 29.03.2023 passed by the Hon’ble NCLT, Bengaluru, Section 166 of the CA and Clauses of the FSA vesting the right to do only after the effective date. Despite such overwhelming judicial direction to restrain the Appellant Nos. 1 and 2 from commencing and continuing business operations of the Appellant No. 4, the same continues to operate as on date which in itself constitutes gross wilful contempt. In addition, the Appellants are now undertaking regular GST filings despite the Impugned Order herein. Furthermore, the Appellants are also promoting their unlawful business via continued promotions/advertisements in newspapers of the Appellant No. 4.

In the facts and circumstances of the case and on the basis of materials placed on record and also basis of submissions of opposing parties, we find that Deepali was a preexisting company. It is also apparent that it was not doing much jewelry business even though legally it was in jewelry business.

Appeal TA 01 of 2023: IAs No. 5, 6, 7 and recall in CA No. 62 of 2021 in CP 4/2020 BB

219. The Majority Directors of Respondents No. R1-R6 in order to safeguard the interests of R1 company, and on the ground that Appellants are making hectic preparations to open the competing showroom despite the final order and judgement dated 24.01.2019, filed C.P. 04/BB/2020 before the Hon'ble NCLT, Bengaluru alleging oppression and mismanagement as well as violation of Section 166 of the Companies Act, 2013. The Respondent group further filed I.A. Nos. 5, 6, and 7 of 2020 for reliefs which were only interim in nature and did not ask for a permanent restrain. Hence, the arguments raised by the Appellants that final reliefs have been granted at the interim stage, will not stand as the above reliefs were sought and have been granted only during the pendency of the Company Petition before NCLT. Vide the Impugned Order herein, the NCLT allowed the said I.A.s holding that *"the R-2 & R-3 (Appellant Nos. 1-2) has no right to run a competing business abutting R-1 Company. Hence, from the action of R-2 and R-3 it reveals that the actions of R-2 and R-3 caused great harm to the goodwill and reputation of the R-1 Company"* and rejected C.A. 62 of 2021 thus once more confirming the order dated 12.07.2021.

220. On 07.01.2020, all three IAs were heard and orders were reserved, wherein the Appellants gave an oral undertaking, not to precipitate until orders are pronounced. The oral undertaking is recorded in the subsequent order dated 21.09.2020. Subsequently, on 12.07.2021, the Hon'ble NCLT passed an order in the said I.A.s directing the Appellants to maintain status

quo. The same was challenged by the Appellants on the ground that due to some technical issue they could not connect to the virtual court and have thus been denied the opportunity to be heard. However, on the next date of hearing, the Hon'ble Bench, after giving sufficient opportunity to the Appellants herein of being heard, confirmed the order of status quo. The said order was further confirmed by the Hon'ble bench on 01.06.2023 and 06.06.2023 as well. Aggrieved thereby, the Appellants filed C.A. No. 62 of 2021 praying for recall of the order dated 12.07.2021. Thereafter the Appellants were heard in detail on 26.04.2023, 22.05.2023, 01.06.2023 & 06.06.2023 and only then the Impugned Order has been passed. Therefore, the main grievance of the Appellants, that they were not heard was sufficiently satisfied. Vide the Impugned Order herein, the NCLT allowed the said I.A.s holding that "the R-2 & R-3 (Appellant Nos. 1-2) has no right to run a competing business abutting R-1 Company. Hence, from the action of R-2 and R-3 it reveals that the actions of R-2 and R-3 caused great harm to the goodwill and reputation of the R-1 Company" and rejected C.A. 62 of 2021 thus once more confirming the order dated 12.07.2021.

221. The Impugned Order considers the question of enforceability of the FSA in the light of the fact that the Appellants derive their right to run a competing business abutting the R1 company from it. The Order further makes a note of the fact that the original copy of the FSA remains with R7 and the Appellants have not taken any steps to obtain the same nor furnished any explanation as to why they have decided not to take steps in that regard. Consequently, it, along with various other judicial forums, also held that the same has not been

acted upon and hence the Appellants cannot claim a right to run a business such as Appellant No. 4. The Impugned Order further notes that the act of opening the Appellant No. 4's showroom adjacent to R1 company's is in itself a violation of Section 166 of the CA, 2013 along with the confusion being created by it by passing itself off as part of the CKC group of companies (R1-R6).

222. It is also contended that contempt notice was issued on 08.02.2023 in Cont. App. 1 of 2022, stay was refused by Karnataka HC on 14.03.2023 in W.P. 5326 of 2023, and then in gross violation of court orders and Section 166 of the Act jewellery showroom were opened on 15.03.2023.

The Appellant Nos. 1-2 are still the directors/shareholders of Respondent No. 1 company along with being directors in the Appellant No. 4 company and therefore, are acting in contravention of Section 166 of the Companies Act, 2013 by opening a competing showroom right adjacent to R1's showroom which has diverted the business of R1 company of over 50% since its illegal opening. Owing to the actions of Appellant Nos. 1-2, profits and overall sales of the flagship showroom of the Respondent No. 1 company have gone down by over 50% thereby not just causing goodwill lose, but also huge financial loss to the R1 company. Even if the pleas and allegations of the Appellants are accepted, still equity cannot overrule the law and the law will prevail. Therefore, it is not possible to carve out an exception to Section 166. A Director of a company cannot be allowed to compete the business of their Company, in which they are already a Director, to exploit the mark in order to give the impression to the public at large that they have any association or affiliation of the Company in which they are still a Director (***Rajeev Saumitra v. Neetu Singh, 2016 SCC***

OnLine Del 512).

223. Respondents also contend that despite the multitude of litigations pending between the parties and the desperate attempts of the Appellant Nos. 1-2 to get relief from somewhere which would allow them to commence their unlawful competing business, the said business could not be started. Consequently, the Appellant Nos. 1-2, in brazen violation of various restraint orders of this Hon'ble Tribunal and the Hon'ble NCLT, Bengaluru, proceeded to open their competing and unauthorized showroom adjacent to the R1 company.

224. Further ways in which the Appellant Nos. 1-2 are deliberately acting contrary to the interests of the R1 company are the various complaints filed by them against the R1 company before the ROC, Kotak Bank etc. for non-compliance, knowing that the R1 company has been handicapped by the undertaking given before this Hon'ble Tribunal on 23.07.2019 not to conduct board meetings.

225. We note from the facts and circumstances of the case that the NCLT BB, while hearing IA 05, 06 and 07 of 2020 passed an *ex-parte* interim order dated 12.07.2021 directing status quo when the counsel for the Appellants was not present. We note that prayers in these interim applications were quite comprehensive and they were filed under Section 241 of the Act in 4 of 2020 in NCLT BB. The prayers were as follows:

I.A. No. 5 of 2020:	“... pass the following ad-interim directions and interim orders restraining Respondent No. 2 Ganesh Narayan and Respondent No. 3 Mrs. Valli Narayan through themselves or through their agents, servants, company/s, or anybody acting through or under them from directly or indirectly starting a competing Jewelry Store/Business in ‘B’ Block, Touchstone, Main Guard Cross Road, Bengaluru – 560001, directly or indirectly, abutting C. Krishniah Chetty and Sons Private Ltd.’s (CKCPL) flagship Jewelry Store in the ‘A’ Block of the building.”
I.A. No. 6 of 2020:	“... pass the following ad-interim directions and interim orders restraining Respondent No. 2 Ganesh Narayan and Respondent No. 3 Mrs. Valli Narayan through themselves or through their agents, servants, company/s, or anybody acting through or under them from directly or indirectly engaging in any business at any location - including online portals/websites which competes with the business of the CKC Group and/or any of its entities.”
I.A. No. 7 of 2020:	“... pass the following ad-interim directions and interim orders restraining Respondent No. 2 Ganesh Narayan and Respondent No. 3 Mrs. Valli Narayan through themselves or through their agents, servants, company/s, or anybody acting through or under them from directly or indirectly using the domain name www.ckcgroupofjewellers.com or any other domain which is similar to that of the CKC Group or any of its entities and to direct Respondent No. 2 Ganesh Narayan to transfer to CKC Group the domain name www.ckcgroupofjewellers.com.”

226. It is noted that the majority Directors of Respondents filed C.P. 04/BB/2020 before the Hon’ble NCLT, Bengaluru alleging oppression and mismanagement as also violation of Section 166 of the Act. Earlier, these applications were heard on 06.01.2020 and 07.01.2020. NCLT had already reserved the orders in I.A. No. 5,6 and 7 of 2020 on 07.01.2020. Before the

ex-parte order dated 12.7.2021 the last proceeding before the NCLT was on 21.09.2020. After a long gap the date of 12.07.2021 was not notified in any order or record of proceeding except for the daily cause list. On becoming aware of the matter listed on 12.07.2021, it is claimed that the counsel for the Appellants attempted to log into the virtual hearing via the link mentioned in the cause list, but could not join due to connectivity issues. The same was communicated by the Appellant by an e-mail to the registry in the late evening. It is claimed that the *ex-parte* order does not provide any reasons for urgency in passing the *ex-parte* interim order. The relevant orders dated 12.07.2021 is extracted below:

“The IA’s have been taken up for hearing at the instance and on the insistence of the counsels of the petitioner who urged that the respondent directors 2 and 3 are proceeding to open a competitive to business exactly adjacent to the companies outlet. There was no representation for the side of the respondents. However, the pictures as shown to this bench are clear that the respondents are proceeding to open a competitive business in the form of a shop and exactly adjacent to the one owned by the company.

In view of the same, as there is no representation from the side of the respondent, though we are aware that the doctrine of ‘damnum sine injuria’, comes into effect. However, taking into consideration the responsibility of a director who is vested with the fiduciary obligation not to do any act that goes against the interest of the company, this bench consciously but carefully passed the order of status quo until the next date of hearing.”

227. From the perusal of the orders dated 12th July 2021, we notice that even though there was no representation from the side of the respondents, NCLT looked at some pictures brought before it, basis which it was claimed that respondents are proceeding to open a competitive business in the form

of a shop and exactly adjacent to the one owned by the company. Even though the bench noted that there was no representation from the side of the respondent, yet it passed the order of status quo until the next date of hearing which continued thereafter till the final orders were issued on 24th August 2023.

228. Appellant relies on the judgment of Hon'ble Supreme Court in **Greater Noida Industrial Development Authority V. Prabhjit Singh Soni and Anr. (2024) 6 SCC 767 (@ paras 50- 53)** where it was held that an application for recall is maintainable if the party aggrieved is not served with the notice of proceedings in which the order under recall has been passed. The Court further held that a recall application is maintainable notwithstanding that an appeal lies before NCLAT. Similarly, the Hon'ble Supreme Court in **Surinder Kumar Gupta v. J.M.Housing (2021) 12 SCC 672(@ para 3)** has held that the appropriate course of action against an ex parte order of NCLT is to approach NCLT itself.

229. Respondent group, on the other hand contend that, despite the final order and judgement dated 24.01.2019 in CP No. 54 of 2014 (TP No. 65 of 2016), they were under the apprehension that the Appellants were making hectic preparations to open the competing showroom, therefore they filed C.P. 04/BB/2020 before the NCLT, Bengaluru alleging oppression and mismanagement as well as violation of Section 166 of the Companies Act, 2013. The Respondent group further filed I.A. Nos. 5, 6, and 7 of 2020 in CP No. 4 of 2020 before Bengaluru Bench. On 07.01.2020, all three IAs were heard and

orders were reserved, wherein the Appellants gave an oral undertaking, not to precipitate until orders are pronounced. The oral undertaking is recorded in the subsequent order dated 21.09.2020. Subsequently, on 12.07.2021, the NCLT passed an order in the said I.A.s directing the Appellants to maintain status quo. The same was challenged by the Appellants on the ground that due to some technical issue they could not connect to the virtual court and have thus been denied the opportunity to be heard. However, on the next date of hearing, NCLT, after giving sufficient opportunity to the Appellants herein of being heard, confirmed the order of status quo. Aggrieved thereby, the Appellants filed C.A. No. 62 of 2021 praying for recall of the order dated 12.07.2021. Thereafter the appellants were heard in detail on 26.04.2023, 22.05.2023, 01.06.2023 & 06.06.2023 and only then the Impugned Order has been passed. Therefore, the main grievance of the Appellants, that they were not heard was sufficiently satisfied. Respondent group claims that the above reliefs in IA 5,6 and 7 of 2020, as can be seen from the language, are only interim in nature and do not ask for a permanent restrain. Hence, the arguments raised by the Appellants that final reliefs have been granted at the interim stage, will not stand as the above reliefs were sought and have been granted only during the pendency of the Company Petition before NCLT.

230. Firstly, we note these proceedings were going on virtually just after or around the Covid period, which had severely impacted the country. Also, that proceedings were being conducted virtually and the Respondent was not able to connect. It is also on the record that the respondent had sent an email on the same day in the evening that he was not able to connect. It is also to be

noted that an appeal by the Respondents CA(AT) No. 65 of 2019 was pending before the NCLAT. In such circumstances, the Appellants filed CA 62/2021 for the recall of the said order before the Adjudicating Authority.

231. We also find that the first appeal CA(AT) No. 65 of 2019 before this Tribunal dealing with oppression and mismanagement against the Respondent group was pending, and in an IA No. 2256 of 2019 dated 23.07.2019 which was filed by the Appellant, for ad-interim directions to restrain Respondent No.2 to 7 from conducting 425th board meeting and its implementation, the advocate representing Respondent No.2 to 7 had stated at the bar that the proposed 425th board meeting on 04.07.2019 shall be deferred till the next date of hearing of the appeal. This Tribunal had disposed of this IA with the directions that the proposed meeting shall stand deferred till 01.08.2019 i.e. the date of hearing fixed in the main appeal and the interim orders not to hold meetings had continued as this Tribunal was seized of the various issues including oppression and mismanagement.

232. We also note that against the interim Orders in IA 5,6 and 7 of 2020 and also CA No 62 of 2021, the appellant had approached the High Court of Karnataka in WP No. 5362 of 2023. Honourable High Court had given the direction to the Tribunal to dispose of CA No 62 of 2021 and accordingly the NCLT had taken up this matter. We are aware of the conspectus of the case in hand.

233. Adjudicating authority had given the following finding in the impugned order dated 24.08.2023 in this regard:

“(…) only after giving reasonable opportunity to both Parties, the Tribunal confirmed the order of status quo passed on 12.07.2021, on 01.06.2023 and 06.06.2023. Hence, this Tribunal comes to the conclusion that the order passed on 12.07.2021 was confirmed and extended after giving reasonable opportunity to both Parties. On the perusal of the ruling reported in **(1999) 4 SCC 396, Budhia Swain & Ors. Vs. Gopinath Deb & Ors.**, it is stated that when the order was passed on merits this Tribunal cannot review or recall the order. In this case, the order dated 12.07.2021 was passed on merits and in the above ruling it is categorically stated that when the order was passed on merits the Tribunal has no right to review its own order. Hence, the argument put forth by the Applicants/R2-R4 & R11 in CP No.04 of 2020 that before passing the order of status quo reasonable opportunity was not given to them is not acceptable.”

234. While disposing of CA No 62 of 2021, NCLT, apart from deciding on the issue of the recall of the interim orders NCLT went into the issues of merits of the case which related to oppression and mismanagement, which in fact were pending in appeal before this Appellate Tribunal. We also note that the interim orders were passed immediately after on 12.07.2021, immediately around or during Covid period, when the court proceedings were not happening at the normal pace. Furthermore, it is also noticed that the interim orders were issued on 12th July 2021 and the final orders were issued on 24th Aug 2023. NCLT was fully aware of the proceedings before this Tribunal relating to oppression and mismanagement filed by the Appellant in CA AT 65 of 2019.

235. Now we evaluate the impugned order dated 24th August 2023 as assailed by this Appellants. Firstly, we note that both the groups agree that there is a deadlock and some intervention is required to break the deadlock.

R-8 to R-13 have themselves stated in the petition CP No. 4 of 2020 before Bengaluru Bench:

“3. Thus, although the shareholding in Respondent No. 1 Company is equal at 50% each, the Respondent No. 1 Company benefitted from the fact the management of the Respondent No. 1 Company lies with the Hayagriv group...”

236. Furthermore, in the connected first appeal, C.A. (AT) No. 65 of 2019 filed by A-2, this Appellate Tribunal is dealing with various acts of oppression and mismanagement including exclusion from the affairs of R-1 Company, violation of Family Settlement Agreement, diversion of business, etc. A-2 has also raised a plea of deadlock in affairs of R-1 Company. Now, in CP No. 4/BB/2020 R8 to R13 themselves state that

“95. The Petitioners maintain that there is a Trust Deficit on account of unethical actions by Respondent No. 2 and Respondent No. 3. Be that as it may, it is an undisputed and admitted fact, recorded in this Hon'ble Tribunal's Final Judgement and Order, dated 24.01.2019, that there is a complete breakdown of relationship between the Hayagrivs (Petitioners) and Narayans (Respondent No. 2 and Respondent No. 3) and they cannot work together [Para 16]. Both sides have repeatedly and categorically so maintained in the CLB and later before this Hon'ble Tribunal and the Petitioner has stated so even in her Appeal before the Hon'ble NCLAT.”

(emphasis supplied)

237. Thus we can conclude that both the groups agree that there is a deadlock and some intervention is required to break the deadlock.

238. The impugned order notes that FSA was not acted upon. Respondent group contends that in 2014, the parties entered into an alleged still-born inchoate Family Settlement Agreement (“FSA”), which was kept in escrow, the

legality and enforceability of which was considered by NCLT Bengaluru in C.P. 54 of 2014, preferred by the Appellant. The same was ultimately dismissed on 24.01.2019, and is pending before this Tribunal in the related Appeal.

239. Respondent contends that despite the dismissal of C.P. 54 of 2014 by NCLT Bengaluru, the Appellant group continued to exercise their alleged rights arising from an agreement that is invalid as per law and hence, their own conduct of opening a competing showroom adjacent to the Respondent No. 1's showroom is detrimental to the interest of the Respondent No. 1. It is claimed that one is entitled to contractual rights if the contract from which they arise are valid and enforceable. In the present case, neither have the parties fulfilled any obligations for making the FSA valid, nor has the FSA ever come out from escrow. Therefore, the alleged FSA is a mere "agreement to agree" between the parties and NOT registered thereby rendering it unenforceable under the Indian Contract Act, 1872. Furthermore, the Appellant had prayed in C.P. 54 of 2014, for directions to be issued to the Respondent No. 1 company for issuance of an NOC to change the name of their 100% owned company to "C. Krishniah Chetty & Co." which was not granted by the NCLT. Such NOC has never been given to the Appellant and Respondent No. 9 despite which, they have started a competing business in the said name. Furthermore, it is claimed by the Respondent group that the 2014 FSA is an invalid, inchoate, non-binding, and stillborn document since the pre-conditions to make the same valid were never fulfilled and the document remained in escrow. The FSA has been dealt with extensively by the NCLT vide Impugned Order herein, wherein they categorically held that the FSA was not a valid document and thus, cannot be

given effect to or relied upon. They further observed that:

- The main question for consideration in the Petition was whether the FSA was properly executed to be binding on the parties and consequently if implementation thereof could be directed.
- The parties have not taken any steps for the implementation of the FSA and the same is an escrow document.
- Escrow documents cannot be enforced unless conditions prescribed have been fulfilled.

240. Respondents also claim that The IPAB has also made the following observations regarding the FSA, while staying the operation of the registrations obtained by the Appellant and Respondent No. 9's unauthorized company:

- The FSA is not implemented/fully acted upon between the parties.
- Each and every clause of the FSA needs to be acted upon by the parties to attain finality. In the instant case, the clauses of the FSA have not been acted upon.
- It is admitted position that the Appellant and Respondent No. 9 are still the Directors/Shareholders of Respondent No. 1 and are thus enjoying the goodwill/reputation of Respondent No. 1 Company's Trademarks.

241. It is also contended that the said order of the Hon'ble IPAB was challenged by the Appellants group before the Hon'ble High Court of Karnataka in W.P. No. 2646 of 2021, which was dismissed by the Hon'ble High Court vide order dated 20.04.2023 on the ground of *coram non-judice*.

242. We also note the claim of the Appellant group that A-4 has been running

its business prior to the *status quo* order dated 12.07.2021 is also evidenced from the following:

- Invoices that show business of gems and jewellery for A-4 and photographs of the showroom before the status quo order was passed.
- Past Balance Sheets over the years
- Photographs dated 20.03.2021
- VAT Registration
- Shops and Establishment License

243. Repelling above arguments with respect to pre-existing business, Respondents group contend that Appellant No. 4 commenced business on 15.03.2023, before which, no jewellery business was being conducted from “B” Block of the Touchstone, i.e. the space adjacent to R1 company and produced photographs to buttress their claim. Respondents also rely on the financials of the Appellant No. 4, placed on record before this Tribunal vide the I.A. No. 4975 of 2023, which show inter alia that there is no jewellery business/sales of the Appellant No. 4. Countering the arguments of the Respondent group, the Appellant group contends that the extent or volume of business is wholly irrelevant in determining whether the Appellants were engaged in the jewellery business prior to the impugned restraint order. The effect of the impugned order granting the prayers in IA Nos. 5, 6 and 7 was so wide that they virtually prevent the Appellants from ever conducting jewellery business in any form or manner, in any location. This is all the more significant considering the family history and the tradition of engaging in this very business. Looking at the materials placed on record we cannot deny the existence of business being run by Deepali as an existing business since 1982, though in low volume and it cannot be said to be a new business as

has been held by the NCLT. Further we also agree that very wide reliefs have been provided which will virtually prevent Appellants from ever conducting jewellery business in any form or manner in any location.

244. It is also concluded by NCLT that FSA was not declared valid by any forum. We have perused the pleadings of both parties and also perused the FSA and also the submissions of the expert Mr Ramadhyani and come to conclusion that this FSA was not required to be valid by any forum. It was partly acted upon in the initial stages by the Respondents, but later on for reasons known to respondents they did not move forward and the FSA could not be fully complied with.

245. It is also noted by the impugned order that original FSA was not filed. We have perused the material on record and basis that we find that :

- FSA was executed between the parties and initially acted upon. Later on, respondent did not act upon it even though Appellant wants to go ahead with it.
- we note that FSA was available initially with the R7 and later on with NCLT; the notarised copy is available with the Appellate Tribunal.
- We also find that the A4- Deepali was in business since 1982. We also note that business of A-4 was running prior to order dated 12.07.2021 and status quo order of that date cannot impede the existing business of Appellant No.4.
- NCLT by order dated 12.07.2021 failed to explain or indicate the nature of *status quo* or state in unequivocal terms to what status

quo would mean.

- Appellants, therefore, could not have been denied the right to carry on the business notwithstanding the FSA.

246. NCLT has also given finding that O.S. 1265 of 2023 filed by A-1 & A-2 seeking declaration of FSA as valid was dismissed. In fact, the suit was not filed by the Appellants but was filed by the R8-R13 seeking injunction against the Appellants from interfering with the possession and enjoyment of certain common areas adjoining the showrooms (A & B Blocks) in the building called The Touchstone. Respondents group claim it to be typographical error but it has led to erroneous conclusions in the impugned order. The said order relied upon by the NCLT was not an order dismissing the suit but was an order passed in an interlocutory application (Order dated 28.03.2023 @ 746-766 Vol IV). The said suit has in any event been decreed subsequently by order dated 23.04.2024, in which there is no reference to the validity or binding nature of the FSA. Both sides have preferred appeals against the said orders and appeals are pending. Thus, we find that this finding of NCLT is also wholly erroneous and without basis.

247. When we test these interim orders under IA 5, 6 and 7 of 2020 in the CP 4 of 2020 before NCLT BB, with respect to the triple test of Prima facie case, balance of convenience irreparable injury, we will find answers for deciding this appeal. We note that NCLT failed to apply well-settled “triple test” which is a prerequisite before a party can be mandatorily enjoined to do or to refrain from doing a particular thing. The Hon’ble Supreme Court

recently in ***State of Kerala v. Union of India, (2024) 7 SCC 183*** reiterated the said test observing that:

“... These three cardinal factors, that are deeply embedded in the Indian jurisprudence as well, are,

- A. A “prima facie case”, which necessitates that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case;
- B. “Balance of convenience”, such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience that the defendant may face if the relief is so granted; and
- C. “Irreparable injury”, which means that if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms.”
- D. Appellant relies on the judgment of Hon’ble Supreme Court in ***Greater Noida Industrial Development Authority V. Prabhjit Singh Soni and Anr. (2024) 6 SCC 767*** where it was held that an application for recall is maintainable if the party aggrieved is not served with the notice of proceedings in which the order under recall has been passed. The Court further held that a recall application is maintainable notwithstanding that an appeal lies before NCLAT. Similarly, the Hon’ble Supreme Court in ***Surinder Kumar Gupta v. J.M. Housing (2021) 12 SCC 672*** has held that the appropriate course of action against an ex parte order of NCLT is to approach Ld. NCLT itself. Looking at the judicial precedents as also the background noted by us in the previous paragraphs, we find that there are sufficient grounds raised by

the appellant that ex parte orders issued by the adjudicating authority on 12.07.2021 and later on confirmed on 24.08.2023 could be set aside

248. From the above analysis we find the following:

- a. Aggrieved by the dismissal of CP 54 of 2014 (TP 65/ 2016) before NCLT BB on 24th January 2019, the appellant had filed an appeal before this tribunal in CP AT 65 of 2019. Some relief was provided as an interim measure to the appellant
- b. In the meantime, the respondents filed CP 4 of 2020 before NCLT BB. The respondents also filed IA No. 5, 6 and 7 in the same CP before NCLT BB. It was Covid time and hearing had taken place on various dates. Earlier, these applications were heard on 06.01.2020 and 07.01.2020. NCLT had already reserved the orders in I.A. No. 5, 6 and 7 of 2020 on 07.01.2020. The last proceeding before the NCLT before the *ex-parte* order dated 12.7.2021 was on 21.09.2020. The date of 12.07.2021 was not notified in any order or record of proceeding except for in the cause list.
- c. NCLT while hearing IA 05, 06 and 07 of 2020 on 12.07.2021, passed an *ex-parte* order dated 12.07.2021 directing status quo in the absence of the counsel for the Appellants. Appellants were being represented by counsel on all the earlier dates.
- d. Status quo order is ambiguous particularly in the complex background of appeal of oppression and mismanagement

- e. The counsel for the Appellants attempted to log into the virtual hearing via the link mentioned in the cause list, but could not join due to connectivity issues. The same was communicated by an e-mail to the registry.
- f. The issues of Oppression and mismanagement was pending before this Appellate Tribunal in CA AT 65 of 2019 and specific issues which have been appraised by NCLT relating to FSA, violation of 166 of the Act, transferring of the business from R1 company etc. formed part of the appeal of oppression and mismanagement. While disposing of CA No 62 of 2021, NCLT, apart from deciding on the issue of the recall of the interim orders NCLT went into the issues of merits of the case which related to oppression and mismanagement, which in fact were pending in appeal before this Appellate Tribunal.
- g. The Impugned Order fails to consider that the interlocutory applications were filed in a petition filed under Section 241 of the Act. The Impugned Order records that the entire management of the R-1 Company lies with R-8 to R-13. There is not even a mention of the phrase “oppression and mismanagement” in the reasoning and findings of the Impugned Order.
- h. Triple test of Prima facie case, balance of convenience, irreparable injury was not met. The *ex-parte* order does not provide any reasons for urgency in passing the *ex-parte* interim order. NCLT has not even discussed how a prima facie case of oppression and

mismanagement is made out against the Appellants and in the background of Appeal before this Tribunal issue of irreparable damage was not clearly brought out.

- i. A bare comparison of the final prayers sought in CP No. 04/BB/2020 and the interim prayers reflect that NCLT has granted the final relief at the interim stage, which is wholly impermissible. The effect of the impugned order granting the prayers in IA Nos. 5, 6 and 7 are so wide that they virtually prevent the Appellants from ever conducting jewellery business in any form or manner, in any location. This is all the more significant considering the family history and the tradition of engaging in this very business. Extent or volume of business appears irrelevant in determining whether the Appellants were engaged in the jewellery business prior to the impugned restraint order.
- j. Appellants filed CA 62/2021 for the recall of the said order as the counsel for the Appellants could not join the hearing on 12.7.2021 due to internet connectivity issues.
- k. NCLT passed the common Impugned Order dismissing the CA 62/2021 (recall application) and allowing IA Nos. 5,6 and 7.
- l. The interim orders were passed immediately after on 12.07.2021, immediately around or during Covid period, when the court proceedings were not happening at the normal pace.
- m. The interim orders were issued on 12th July 2021 and the final

orders were issued on 24th Aug 2023. NCLT was fully aware of the proceedings before this Tribunal relating to oppression and mismanagement filed by the Appellant in CA AT 65 of 2019.

249. In the facts and circumstances of the case as noted above by us in previous paragraphs, we are inclined to set aside the orders of the adjudicating authority in the second appeal in CP No 4 of BB of 2020 in which IA No 5,6 and 7 of 2020 were allowed and CA 62 of 2021 was dismissed.

Appeal CA AT 65 of 2019: Oppression and mismanagement u/s 241 and 242 – and against whom?

250. It is pertinent to note that the term 'oppression' involves a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. Whereas mismanagement implies that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company. We delve into all the reasons to find them out and whether the orders of NCLT needs to be sustained or not.

251. Appellant Mrs C. Valli Narayan (CVN), is a 20% shareholder and Non-Whole-Time Director of Respondent No. 1 Company and claims to have been continuously subjected to acts of oppression, marginalisation, and exclusion from the management and decision-making of the Company and through this Appeal seeks intervention to protect the rights and interests of the Appellant and to prevent further degradation and mismanagement of the Respondent

No. 1 Company. The important issues raised by the Appellant are summarised as follows:

- CKC and Sons-R1 was incorporated in 1955-56. Appellant and her late husband were having involvement in management until 1998.
- Gradual exclusion of the Appellant post-1998 and systematic oppression by Narayan's-Respondent Nos. 2 to 7 through:
 - Transfer of business opportunities and resources from Respondent No. 1 to Respondent No. 10.
 - Claims that Appellant was coerced for transfer of 30% shareholding under duress while it was battling cancer.
 - Misuse of company funds, stock manipulation, diversion of gold jewellery, and unauthorized decisions.
 - Ignoring Board Resolutions requiring parity and equal stake holding in group ventures.
- A Family Settlement Agreement was signed on 09.01.2014 for equitable distribution, which was subsequently dishonoured.
- The Appellant was denied access to documents, removed from key management positions, and completely sidelined.
- A Company Petition C.P. No. 54 of 2014 was filed; interim orders were passed on 23.09.2014, 09.10.2014, and 18.11.2014 restraining various acts. Despite interim relief, the Respondents continued to violate court orders, necessitating filing of Contempt Application No. 1 of 2016.

- Subsequent events further exacerbated the situation, including melting of 120 Kg of gold without shareholder approval and misuse of sales proceeds.

252. Appellant had filed CP. No. 54 of 2014 (T.P. No. 65 of 2016) dated 16.09.2014, under Sections 397, 398, 402, 403, 406, 237 of Companies Act, 1956, against M/s C. Krishniah Chetty & Sons Pvt. Ltd (CKC). (Respondent), by inter alia seeking to regulate the conduct of the affairs of the first Respondent Company in future; Direct the Respondents to alter the Articles of Association of the Company so as to insert a new clause relating to the Principle of Proportional Representation and accordingly permitting the Petitioner to appoint not less than half of the number of directors in the board of first Respondent Company, adopting the Principles of proportional representation; Directing the Respondents to maintain Status Quo of the Shareholding Pattern of the 1st Respondent Company till the completion of process of demerger or slump sale as agreed to in the Family Settlement Agreement; Directing the Respondents not to divert the business of the 1st Respondent Company, directly or indirectly to 10th Respondent Company or any other Company till the completion of process of demerger or slump sale as agreed to in the Family Settlement Agreement; Directing the Respondent to maintain Status Quo of the Assets of the 1st Respondent Company till the completion of process of demerger or slump sale as agreed to in the Family Settlement Agreement.

253. During the proceedings before the Company Law Board (CLB), various orders were passed which are noted hereinafter as brought to our notice by

the Appellant. On 23.09.2014 CLB passed interim direction to prevent diversion of the business. As on 29.09.2014 AGM of the company removed Respondent No.9 Mr. C. Ganesh Narayan as Joint Managing Director, therefore, the Appellant filed CA No. 1 of 2014 on 09.10.2014 challenging the decision of the AGM. It is claimed that CLB directed Respondent No.9 to continue as Joint Managing Director. On 18.11.2014 interim orders were extended till further directions. In 2015 CA No. 12 of 2015 was filed to incorporate further acts of mismanagement and in 2016 a Contempt Application No. 1 of 2016 was filed due to continuous violations.

254. Later on, when the matter went to newly constituted NCLT, CA No. 12 of 2015 was disposed of on 12.07.2018 with the liberty to argue the points at final stages and the final orders were passed on 24.01.2019 which are being impugned in this case.

255. NCLT, Bangalore Bench, in its order dated 24.01.2019, concluded that:

“27. In view of the above facts and circumstances of the case and the law as discussed above, we are of the considered opinion that the Petitioner failed to make any case so as to interfere in the affairs of the R1 Company as sought for. Therefore, it is liable to be dismissed.

28. In the result, CP. No. 54 of 2014 (T.P. No. 65 of 2016) is hereby dismissed, and all pending IAs/CAs in the case, are stands disposed of accordingly. No order as to costs.”

256. Aggrieved by above orders, the Appellant filed appeal in CA (AT) No. 65 of 2019 against the above orders. During the pendency of this appeal, this Tribunal had issued the several directions over a period of time. On

20.05.2019, this Appellate Tribunal on the request of both parties ordered for exploring the possibility of resolution of the dispute through mediation and ordered the appointment of Hon'ble Mr. Justice A.V. Chandrashekhar, a retired judge of Karnataka High Court as mediator. This order was later on recalled on 30.05.2019 and the appeal was to be heard on merit as respondents were reluctant to go for mediation.

257. On 23.07.2019, IA No. 2256 of 2019 which was filed by the Appellant, was taken up for ad-interim directions to restrain Respondent No.2 to 7 from conducting 425th board meeting and its implementation. The relevant portion of the order is extracted as below, which shows that the advocate representing Respondent No.2 to 7 have stated at the bar that the proposed 425th board meeting on 04.07.2019 shall be deferred till the next date of hearing of the appeal. This Tribunal had disposed of this IA with the directions that the proposed meeting shall stand deferred till 01.08.2019 i.e. the date of hearing fixed in the main appeal.

258. A related IA No. 2340 of 2019 on this issue was also disposed of on 01.08.2019, as the respondents had deferred the proposed board meeting and further notice for the meeting.

259. It was also brought on record on 16.09.2019 that both the parties made a joint request for deferring the hearing for 8 weeks as the parties were making endeavours for amicable settlement and negotiations are at advanced stage. On 13.11.2019 once again both the parties submitted the mediation is going on and some issues are yet to be sorted out and sought further four weeks'

time. And also, respondent undertook not to hold Board meeting as per earlier order till the next date of hearing. The undertaking not to hold Board meeting was noted on 19.12.2019 and also on 18.02.2020, 05.03.2020, 31.08.2020, On 16.09.2020 the pleadings were competed and parties agreed to file convenience compilations as the pleadings were voluminous. The undertaking was once again noted on 12.10.2020. The matter was Part Heard on 04.11.2020.

260. On 08.02.2021 Respondent No. 1 and 10 filed IA No. 594 of 2021 seeking modification of the order dated 18.01.2021. On 03.06.2021 it was noted by this Tribunal that Appellant contends that in the absence of any interim order in favour of the Appellant, Respondent No. 2 to 7 continues to oppress the Appellant and mismanage the affairs of the Respondent No.1 Company on a daily basis.

261. A joint application filed by Respondent No.2 to 7 and Respondent No.1 and 10 bearing IA No. 1075-1076 of 2021 was taken on record on 08.07.2021. This joint application sought permission to hold board meetings in accordance with the Section 173 of the Companies Act, 2013, wherein no orders were issued.

262. On 28.02.2023, the hearing was concluded and the judgment was reserved and interim order were continued but on 02.03.2023 in IA No. 935 of 2023 was filed for reopening of the hearing. With the consent of the parties, this IA was allowed and the CA(AT) No. 65 of 2019 was reopened for hearing. On 09.05.2023 Respondent No. 1 and 10 made a submission before this

Tribunal that in the absence of the board meeting, the Respondent was not authorised to represent, so this is affecting the reputation of the company and he submitted that he may be permitted to withdraw the undertaking, which was given on 23.07.2019 and 30.07.2019. On 10.05.2023 orders were reserved in IA No. 1075-1076 of 2021, which later on went to another bench. The matter was heard by the present bench on 12.09.2023, 14.09.2023, 21.09.2023, 01.12.2023 and 04.12.2023.

263. It is to be noted that while the proceeding CA (AT) No. 65 of 2019 was pending before this appellate tribunal, the Respondent group (CVH group) filed C.P. No. 04 of 2020 for oppression and mismanagement against the Narayan's group. We note that even during the pendency of this appeal before this appellate tribunal in CA (AT) No. 65 of 2019, NCLT Bengaluru in its interim orders dated 12.07.2021, directed the Appellants (Narayan's group) to maintain status quo on account of directors being vested with the responsibility to not act against the interests of the company. Furthermore, NCLT BB, on 24.08.2023 passed final order in CP 04 of 2020 before NCLT BB, which is the Impugned Order, as per which it was held that the Appellant No. 4 and Respondent No. 1 companies are not related parties; Actions of the Appellant No. 1 and 2 are violative of S.166 of the Companies Act, 2013 and I.A. No. 5, 6, and 7 of 2020 was consequently allowed. It is to be noted that the appellant herein had filed CP No. 62 of 2021 in CP No. 4 of 2020 to recall the interim orders but this was also disposed of along with IAs No. 5, 6 & 7 of 2020.

264. Aggrieved by above orders another appeal was filed numbering CA(AT)(CH) NO. 70 of 2023, which was later transferred to Principal Bench and numbered as T.A. No. 1 of 2023. On 04.12.2023 this related Appeal was also tagged with earlier appeal. Thereafter, both the appeals were heard together on various dates and finally the hearing was concluded on 1.04.2025 in IA No. 8807 of 2024 was taken on record. Appellant contends that in violation of Respondents' undertaking before this Hon'ble Tribunal and the orders dated 23.07.2019, 19.12.2019 and 04.11.2020 and continued on subsequent dates, R8 to R13 have passed various resolutions by circulation (I.A. No. 8807 of 2024). This Tribunal has issued notice in the said application.

It is to be noted that this tribunal was seized off the issue but on same issue, NCLT took up another related company petition and passed interim orders and later on confirmed them.

265. We also note that both have unsuccessfully attempted to arrive at some sort amicable many times in the past starting before company law board some time in 2014 and still going on before this appellate tribunal.

266. From the facts and the circumstances of the case, we find that respondent group opposes the petition of the Appellants on the grounds that being directors of R1 company, the Appellant Group has no rights to file the petition for oppression and mismanagement. At the same time, they themselves have filed company petition No 4 of 2020 before Bengaluru bench on the same grounds of oppression and mismanagement and obtained a favorable order. Respondent claims that the R1 company in first appeal

(CA(AT) No. 65 of 2019) is a 156-year-old business named as C. Krishniah Chetty & Sons Pvt. Ltd(CKC). The Appellant and Respondent No. 9 are a mother-son duo who are directors and 50% shareholders in the R1 company, i.e., CKC. Appellant is a Director of R1 Company while her son - R9 was the Joint Managing Director of R1 Company. Respondent Nos. 2-7 are also directors and 50% shareholders in the Respondent No. 1 company. Though the Petition for oppression and mismanagement has been filed by the Appellant as a "minority shareholder", the Petition in effect sought appointment of a larger number of Directors from the Appellant's group on the Board of the R1 Company. The NCLT, Bengaluru, has in its impugned Judgment held that (i) the allegations of oppression and mismanagement were unsubstantiated and that (ii) Appellant already being a Director by virtue of holding 20% shares, could not seek a higher representation on the Board of R-1 Company.

267. Respondents group also claims that with respect to the 2014 Family Settlement Agreement (FSA), it is an invalid, inchoate, non-binding, and stillborn document since the pre-conditions to make the same enforceable were never fulfilled and the document remains in escrow. The FSA defines the effective date as “(i) the date on which the final order of the High Court of Karnataka / Company Law Tribunal is made and filed with the Registrar of Companies giving effect to the Demerger; or (ii) the date on which the transfer of undertakings pursuant to the Alternate Structure shall come into effect; as applicable”. It is an admitted fact observed in various judicial orders that neither the Demerger nor transfer of undertakings took place, therefore the

FSA is not enforceable as the effective date was never reached. All rights available to the Appellant Nos. 1-2 under the said FSA are enforceable only after the effective date, which, as stated above, was never reached.

268. However, rights under these clauses are already being exercised by the Appellant Nos. 1-2 despite the pre-conditions not being met in an unlawful and brazenly entitled manner. The Appellant Nos. 1-2 have not effected the very first obligation to make the FSA binding. i.e., transfer of 20% of their shareholding in CKCJ and CKCM, independent of the other terms of the FSA. The FSA has been dealt with extensively by the Hon'ble NCLT vide order dated 24.01.2019 whereby they have categorically held that the FSA was not a valid document and thus, cannot be given effect to or relied upon. The IPAB and Regional Director, MCA have also observed that the FSA has not been acted upon and has therefore not attained finality while staying the operation of the registrations obtained by the Appellant Nos. 1-2's unauthorized company. In light of the above, it is humbly submitted that the said FSA is an inchoate, still-born, escrow document, entered into in 2014, in good faith by both parties which is unenforceable as on date owing to the fact that the requisite pre-conditions were never satisfied, and with the change in events and circumstances, mainly opening of the unauthorized competing showroom by the Appellant Nos. 1-2, the same has been rendered infructuous and unenforceable.

269. Even otherwise, the FSA will not come to the rescue of the Appellants for justifying the action of starting a competing and conflicting showroom on

15.03.2023 as the FSA defines the effective date as “(i) the date on which the final order of the High Court of Karnataka / Company Law Tribunal is made and filed with the Registrar of Companies giving effect to the Demerger; or (ii) the date on which the transfer of undertakings pursuant to the Alternate Structure shall come into effect; as applicable”. It is admitted that neither the Demerger nor the transfer of undertakings, nor the transfer of shares took place, therefore the FSA is not enforceable as the effective date was never reached. Further, the said undertakings were not even available and were yet to be drafted, which, as later ascertained, was not possible then, nor is it possible now. Thus, establishing the failure of the FSA in ever reaching the effective date for the rights accrued therein to become enforceable. All rights available to the Appellant Nos. 1-2 under the said FSA are enforceable only after the effective date, which, as stated above, was never reached. However, rights under these clauses are already being exercised by the Appellant nos. 1-2 despite the pre-conditions not being met in an unlawful and brazenly entitled manner. Rather, as a arguendo the terms of the FSA impose a categorical bar on Appellant No. 4 starting a jewellery store (as they have started on 15.03.2023) till such time the effective date is reached along with a bar on any business being done by Appellant No. 4 till such time the effective date is reached. The FSA has been dealt with extensively by the NCLT vide order dated 24.01.2019 impugned in Comp. App. (AT) No. 65 of 2019, wherein they categorically held that the FSA was not a valid document and thus, cannot be given effect to or relied upon. The IPAB and Regional Director, MCA have also observed that the FSA has not been acted upon and has therefore

not attained finality while staying the operation of the registrations obtained by the unauthorized Appellant No. 4 company. The City Civil Court, Bengaluru has also observed in an interim order dated 28.03.2023 that no steps were taken by either party to implement the FSA which consequently remains unenforceable and restrained the Appellant Nos. 1-3 from hindering the enjoyment of the subject property. For these reasons, FSA is an inchoate, still-born, escrow document, entered into in 2014, in good faith by both parties which is unenforceable as on date owing to the fact that the requisite pre conditions were never satisfied, and with the change in events and circumstances, mainly opening of the unauthorized competing showroom by the Appellant Nos. 1-2, the same has been rendered infructuous and unenforceable. Despite the same, the FSA has already been enforced in essence by the unlawful actions of the Appellant Nos. 1-2 since the prayers sought by them in the Company Petition (grant of NOC for name change and enforcement of FSA for the purpose of commencing a competing business) have already been effected in violation of the orders and directions of this Hon'ble Tribunal which did not stay the Impugned Order herein. Further, Clause 3(e) of the FSA which provides for the opening of new stores, specifically refers to the 100% owned store now unlawfully opened by the Appellants and states that the right to operate the same will only be available after the effective date is reached, which, as previously submitted, was never reached.

270. Now we delve into a related issue whether the Petitioner can be allowed reliefs under Sections 241 and 242 of the Act if she is not only a shareholder

in the R1 company, but also a director.

271. It would be beneficial to first look into the relevant provisions of Section 241 of the Act which provides that

“(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.....”

272. Further Member as defined in the Act is :

“ “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;”

273. Section 242 of the Act also empowers the Tribunals to act in such situations. It will be beneficial to extract the relevant provisions as follows:

“Section 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,

fit. the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks

(2) Without prejudice to the generality of the powers under subsection (1), an order under that subsection 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.

- (3)
- (4) ...
- (5)
- (6)
- (7) ...
- (8) ...”

274. R1 Company is a private limited company. Both the appellants put together are 50% shareholders and as per the definition of member as noted above, we do not see any bar in their filing a petition under Section 241 and 242 for oppression and mismanagement. This is to be seen in the background that the R1 company is being controlled by the group of respondents and the appellant has been systematically sidelined from the functioning of R1 company and so many allegations have been brought before the NCLT. Specifically speaking, during the 36th AGM, R9 was ousted from the position of the JMD of R1 Company which clearly establishes the R2-7 group's oppressive intent. This also indicates a larger desire to oppress the Appellant and R9 and exclude them from the management of the family business of R1 in which they hold 50% shareholding.

275. Respondent claims that the remedy under Sections 241 and 242 of the Companies Act, 2013 is available only to shareholders, that too, for raising grievances of violation of proprietary rights as a member and not in any other capacity, including as a director. ***(Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449)***. The facts of this case are distinguishable and this judgement will be of no assistance to the Respondents.

276. We note that R-1 is a family run private limited company, all Directors are in fact shareholders of the Company and thus, the Appellant cannot be precluded from raising genuine concerns regarding the management of the R-1 Company in her capacity as a shareholder of R-1 Company. In the facts and

circumstances of the case, the Impugned Order errs in holding that the Appellant cannot maintain a case of oppression and mismanagement being a Director of R1 Company.

277. From the materials placed on record we find that there is irretrievable breakdown in trust and confidence between the two group of shareholders. Hence, it is fit case for the exercise of powers under Section 241 of the Companies Act, 2013 ('Act') to break the deadlock and pass appropriate orders to bring an end to the matters complained of. Appellant places its reliance on ***Needle Industries (India) Ltd & Ors. v. Needle Industries Newey (India) Holding Ltd. and Others*** AIR 1981 SC 1298 wherein it was held that it is just and equitable to wind up the Company (Ebrahimi Case). And just because company is prosperous and makes profits is no obstacle to it being wound up. Herein the records reflect that there is a situation of shareholder deadlock between the two equal shareholding groups of the family and hence it was incumbent upon the NCLT to exercise its powers and implement the Binding FSA.

278. Furthermore, ***Probir Kumar Misra v. Ramani Ramaswamy & Ors.*** 2010 154 CompCas 658 (Mad) para 154, 155, 156, 157, 172 and 180 holds that wider power are with the CLB under 402 (now NCLT/ NCLAT) to investigate into the affairs of the Company. Absence of any specific prayer to investigate will not refrain the Court from doing so. Thus the NCLT has wide powers to grant an equitable relief to enforce the FSA to bring an end to the matters complained of, specifically when there is no meeting point between

the parties. It is a different question whether we rely upon FSA or not, which is being dealt in separately.

279. It is claimed by the respondents that under Sections 241 and 242 of the Companies Act, 2013, determination of the validity of private agreements between individuals and family members is ultra vires the scope of powers of the Hon'ble Tribunal and places their reliance on ***Incable Net (Andhra) Limited & Ors. Vs. Ap Aksh Broadband Ltd. & Ors., (SLP No. 9110 of 2008); Sangramshinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) through LRS. And Ors., (2005) 11 SCC 314.***

280. Notwithstanding Family Settlement Agreement, after detailed examination of all other facts and materials on record, we can still arrive at our findings to determine the issue of oppression and mismanagement. We find that there is sufficient material on record to indicate that the affairs of the Company are being carried out “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.” Furthermore, there is an irretrievable deadlock amongst the members and therefore, in such a situation it is appropriate for anxiety to intervene.

281. Appellant places their reliance on ***Hind Overseas vs. Rangunath Prasad Jhunjhunwala & Ors*** [AIR 1976 SC565 para 33] and ***Synchron Machine Tools P. Ltd. & Ors. vs. U.M. Suresh Rao*** [1994] 79 CompCas 868 (Kar) para 31, 180, 190] which holds that principles applicable in cases of dissolution of partnership can be invoked for a company that is being

operated in the style of a partnership. Herein the principles could have been applied as this private limited company was earlier partnership but is still being run like a family concern. Principle of dissolution of partnership applies to companies either on the ground of complete deadlock or on the ground of being domestic or family companies. On the other hand, respondent group places their reliance on ***Ebrahimi v. Westbourne Galleries Ltd.***, 1973 AC 360 and ***Sangramsinh P. Gaekwad & Ors vs Shantadevi P. Gaekwad*** [Civil Appeal 6359 of 2001] wherein it was held that one can, on the just and equitable ground, consider the domestic nature of a small company, but one cannot apply the law of partnership just on that basis. This would be an unwarranted gloss on the Companies Act. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in. In this case we find that without applying the principles of partnership also we have sufficient grounds for a case of oppression and mismanagement, which are discussed herein, even though this is a fit case for application of principles of partnership in a private limited company.

282. From the materials placed on record and also above analysis we note A4 company was incorporated in 1982 wherein even respondents were also the Directors at the time of incorporation of this company. There was a dispute in the family and to resolve that sometime in 2014 a family settlement agreement was arrived at which has not been fully acted upon by both the parties. The dispute went initially to company law board and later on to NCLT

Bengaluru bench. Respondent claims that appellants have violated section 166 of the Act in starting a new Business in A4 company. Appellant's claim that the respondents through related party companies are violating Section 166 as business is being diverted at the cost of R 1 company. From the materials placed on record, we can come to a conclusion that there is an irretrievable breakdown between the two groups. Also, both parties are engaged in litigation against each other. Therefore, there is an irretrievable breakdown in trust and confidence between the two group of shareholders and we may have to exercise our powers under Section 421(4) read with Section 241 of the Companies Act, 2013 to break the deadlock and pass appropriate orders to bring an end to the matters complained of. Thus, we find that the finding returned in the impugned order is contrary to the record and the provisions of the Act and therefore erroneous.

Conclusions and Orders

283. In the facts and circumstances of the case we find that both parties are acting in a manner due to which the affairs of the R1 company are being conducted in a manner which is prejudicial to the interests of the R1 company. Under these conditions we are constrained to exercise the powers with the tribunal under section 242 of the Act.

284. We note that the respondents have suggested a way forward in their written submissions. They have stated that there are several ways for the Appellants to solve the inter-se disputes between the parties, one of which is by adhering to unanimous board resolutions of 351st, 352nd, and 353rd board meetings passed in 2009 to run multiple entities with differential

shareholdings viz. 80:20 and 20:80 by both groups so as to ensure growth in a non-competing manner for all and without harming each other or such others in exports, in on-line business, in manufacturing, in wholesale and other possible verticals that are synergistic yet growing and gaining value to the 155 year old brand. It is also suggested that the Respondent Nos. 8-13 are also willing to buyout the shares of the Appellant Nos. 1-2 in R1 company if they so desire to exit/sell out as per terms laid in the Articles of the Company.

285. It is also noted that there have been attempts of reconciliation during the pendency the first appeal that is CA AT 65 of 2019. This is particularly important in the backdrop that there is an irretrievable deadlock between the two groups.

286. In the facts and circumstances of the case, particularly since both groups have equal voting rights leading to irretrievable deadlock in the conduct of the affairs of the R1 company, we hereby order to regulate the affairs of the R1 company under Section 242 of the Act. All Directors will continue to remain the Director of the R1 company but one additional Director i.e. Mr Shyam Ramadhayani, CA, who is well versed with the affairs of the R1 company and is a professional, is nominated to act as the Chairman and Managing Director. In order to ensure the smooth functioning of R1 company, and with a view to ensuring that family dispute is settled, we direct that Mr Shyam Ramadhayani, CA, who is appointed as a Director and Chairman of the Board of Directors and will continue to function for one year to begin with. He will be paid Rs. 5 lakhs per month till a period of one year from the issue

of the orders. He will provide monthly reports to NCLT Bengaluru Bench. Detailed procedural orders, if required, be issued in this regard by NCLT BB. Necessary intimation be given to the Registrar of companies also.

287. Further on the grounds noted herein we are satisfied that there are sufficient grounds to recall the orders in CA No. 62 of 2021 in IA Nos. 5, 6 and 7 of 2020 in CP No. 04/BB/2020. Accordingly, we allow the Appeal TA No. 01 of 2023.

288. Further we allow CA (AT) No. 65 of 2019 to the extent as described above. All other IAs and Contempt Petitions are also disposed of. No orders as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
September 19, 2025.

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