

The 9th Respondent was appointed as Joint Managing Director during July 2010.

- h) After the reconstitution of the Board, the Respondent group took complete control of the affairs of the Company. Although Petitioner is a part of Board of Director, her presence in the management has been restricted by the Respondent group to that of a mere participant and silent spectator. Other than being a Non Whole time Director, entitled for sitting fees, Petitioner does not hold any management position in the Company and she does not receive any kind of remuneration or commission from the Company.
- i) During the year 2010, the Respondent group floated one more company viz., M/s C. Krishniah Chetty & Sons Manufacturers Private Limited. (CKC Manufacturers). The family of Respondents group own 80% of the shareholding and that of the Petitioner own 20% in the said company.
- j) The 1st Respondent Company and the companies of the CKC Group in earlier years period themselves are having robust and participatory internal governance practices. Both major and minor decisions were taken by the Board of Directors and both branches of the family. Such practices ensured that the Companies ran smoothly and all decisions taken were agreed to by all concerned. However, as illustrated above ever since the demise of Mr. C.V.Narayan, It is the 3rd Respondent consolidated power and strengthened the financial position of his family members in the 1st Respondent Company and other Group Companies by taking decisions unilaterally. Although they hold only



50 percent of shareholding in the 1st Respondent Company, by sheer majority in numbers, 3rd Respondent and his family members have completely excluded Petitioner from the management of the Company and passed resolutions/taken decisions that are detrimental to the interests of the Company and its shareholders. The Respondent group is diverting the business of the 1st Respondent Company to other companies, where they hold a larger stake. It is alleged that such acts of Respondent 2 to 7 have been unfair, harsh and completely unjust to the interests of shareholders and constitute oppressions under Section 397 of the Companies Act, besides being prejudicial to the interest of the 1st Respondent Company and they constitute mismanagement.

- k) It is stated that, the Petitioner together with Respondent No.9 have earlier held 50% of the share capital in the 10th Respondent Company. During 2009-10, they were coerced to transfer 30% of their shareholding to the Respondent 2-7, thereby reducing them to a minority shareholding of 20% in that Company. As early as from the year 2004, the Respondent Nos.2&3 has been demanding that Petitioner part with her shares in the 10th Respondent Company on the pretext that there was a "generational imbalance" between the two family groups in family business. Thereafter, between May 2009 and December 2010, the Petitioner herein was suffering from third stage cancer and Respondent Nos.2-7 taking undue advantage of the fragile situation, through emotional blackmail and arm twisting tactics, coerced



the Petitioner under severe duress to transfer the 30% shares in the 10th Respondent Company as a gift to them instead of paying the true market value.

- 1) The most valuable assets of the Company, the trademark "C. Krishniah Chetty & Sons" was sought to be used by the 10th Respondent Company, where the Respondent group own 80% of the Company. The funds and resources of the 1st Respondent Company were being used for the benefit of the said two companies and the business of the 1st Respondent Company is also being diverted to the said two Companies, since the Respondent Nos.2 to 7 have a controlling share in the said two Companies. Respondent No. 2 to 7 have opened up new store in the name of the 10th Respondent Company using the funds and resources of the 1st Respondent Company. The Respondent 2, 6 and 7 who are drawing salaries from the 1st Respondent Company are working for the 10th Respondent Company, much to the detriment of the 1st Respondent Company so as to make the 1st Respondent Company a shell Company with no business at all. In fact, the Board of the 1st Respondent Company have decided to have two stores one at Chennai, Tamilnadu and, other one at Malleswaram, Bangalore. Loans were also sanctioned by Corporation Bank for both stores to the 1st Respondent Company. Though amounts were spent on the establishment of Chennai Store, the store could not be opened at Chennai and thus infrastructure had to be sold on "as is where basis is", when it was sold, though substantial part of the expenditure was borne



by the 1st Respondent Company, only 60% of the sale proceeds was given to the 1st Respondent Company. It is alleged that several fraudulent gift voucher were being raised and funds are being embezzled.

- m) It is alleged that the Rent for the "Touchstone" store and offices that are owned by C.V.Hayagriv HUF, are being paid by the 1st Respondent Company. The rent paid for the above premises are not in line with market norms and are therefore not on arms length basis. The Company ought to ensure compliance with the requirements of the Companies Act, 2013 in respect of the above.
- n) When the acts of oppression and mismanagement of Respondent Nos.2 to 7 were continuing, both the parties have discussed and executed a Family Settlement dated 09.01.2014, wherein it is inter alia agreed that assets and liabilities should be divided equally, and transfer the same to the 10th Respondent Company and another company viz., Deepali Company Private Limited through process of demerger. The Family Settlement was executed in two counterparts, one original each for both the parties and both the originals were handed over to the 8th Respondent for safe keeping and no copies were taken. The Family Settlement provides that the assets and liabilities of the 1st Respondent Company would be demerged into two Companies viz., CKC Jewellers Private Limited, the 10th Respondent Company and Deepali Company Private Limited (which was to be renamed as C.Krishniah Chetty & Co Pvt. Ltd.). Therefore, the Family Settlement only envisaged split but also tried to put an



end to the manner in which the affairs were being carried on by Respondent No.2 to 7 to the detriment of Company and its shareholders. The Family Settlement Agreement dated 09.01.2014, does not permit either of the parties to use the brand name "CKC" till the process of demerger is completed. However, the Respondents are using brand name "CKC" that is owned by the 1st Respondent Company for and on behalf of the 10th Respondent Company. Under the said Agreement, after the demerger, the mark "CKC" would belong to both the families and either of the families cannot use the brand of their own benefit.

- o) However, despite signing the Family Settlement, the Respondent Nos.2-7 refused to take the demerged process forward and refused to perform their part of the Family Settlement and committed numerous breach terms of the Family Settlement. The Respondent No. 2 to 7, in complete breach of terms of both the Family Settlement Agreement, have commenced new store located at Malleswaram. The 9th Respondent has filed an Application under Section 9E of the Arbitration and Conciliation Act, 1996 read with Order 39 Rule 1 and 2 read with Section 151 of CPC before the Honble High Court of Karnataka.
- p) The Respondent No. 6 and 7 are also partner of Turnip Consultants LLP, which is a real estate advisory Firm. And they are using the databases of the 1st Respondent Company and sending emails soliciting the clients and vendors of the 1st Respondent Company for its business. The Petitioner wrote letters to the Respondent Nos.2 to 7 on 16.05.2014, detailing some



of the other breaches of the Family Settlement and called upon them to honour the agreement and to specifically perform the same. The Respondents are also trying to appoint outside independent Director. It is alleged that all these series of acts over a period of time, which are clearly unfair, unjust and harsh towards the Petitioner and Respondent No.9, they constitute oppression. These decisions have been taken unilaterally and by excluding Petitioner and Respondent No.9 from the decision making process and hence clearly violates their proprietary rights as 50% shareholders. The series of acts are detrimental and prejudicial to the interests of the 1st Respondent Company and the Petitioner group and in case the acts are allowed to be continued the same would cause irreparable loss to the Petitioner group and also to the 1st Respondent Company.

q) They have relied on the following Judgments:-

1. *S. Shanmugam Pillai & Ors. v/s K. Shanmugam Pillai & Ors.*¹
2. *Kale & Ors v/s. Deputy Director of Consolidation & Ors.*²
3. *Hari Shankar Singhania & Ors. v/s Gaur Hari Singhania & Ors.*³
4. *Hansa Industries Pvt Ltd. & Ors. v/s. Kidarsons Industries Pvt. Ltd.* ⁴
5. *Rajni Singh v/s Western Indian State Motors Ltd. & Ors.*⁵
6. *Cosmosteels Pvt. Ltd. & Ors. V/s. jairam Das Gupta & Ors*⁶
7. *Needle Industries (India) Ltd. & Ors V/s. Needle Industries Newey India Holding Ltd & Ors.*⁷

¹ (AIR 1972 SC 2069)

² (AIR 1976 SC 807)

³ (AIR 2006 SC 2488)

⁴ (AIR 2007 SC 18)

⁵ [(2015) 16 SCC 631].

⁶ (Air 1978 SC 375)

⁷ (1981(3) SCC 333)

8. *M.S.D.C.Radharamanan v/s. M.S.D.Chandrasekara Raja & Ors.*⁸

9. *Debi Jhora Tea Co. Ltd. v/s. Barendra Krishan Bhowmick & Ors.*⁹

10. *Pramod Kumar Mittal v/s. Andhra Steel Corporation Ltd.*¹⁰

11. *G.Kasturi & Anr. V/s. N.Murali & Ors.*¹¹

12. *Delstar Commercial and Financial ltd. v/s. Sarvottam Vinijiya Ltd.*¹²

3. The Company Petition is opposed by the Respondent No. 2 to 7 by filing detailed reply dated 17.11.2014, by inter alia contending as follows:

- (1) The basis of filing this Petition is the alleged breach of the alleged Family Settlement Agreement and it was panacea and complete settlement to all acts of oppression and mismanagement.
- (2) The Respondent No. 5 has filed A.A.No. 25006 of 2014, U/s 9 of Arbitration and Conciliation Act, 1996, basing on the alleged Family Settlement Agreement dated 09.01.2014. And it was filed before the present Company Petition.
- (3) The Petitioner is acting as R 9's proxy, espousing his cause, protecting his conflict of interest and other misdemeanors, R 9 is the Jt. Managing Director in the forms of the R1 Company and he cannot allege mismanagement and or oppression. In R 1's Board Meeting held on 26.04.2011, it was decided that for better operations and as a best practice any two Director should sign Cheques. Accordingly, the operating instructions of the Bank Accounts were changed and R9 has been signing almost all cheques

⁸ (AIR 2008 SC 1738)

⁹ [1980] 50 CompCas 771 (Cal)

¹⁰ [(1985) 58 Comp Cas 772 (Cal)]

¹¹ (1992) 74 CompCas 661 (Mad)

¹² (2003) 113 CompCas 642 (CLB).

except when he was unavailable. For example, out of about 3750 cheques issued by R1 Company in the financial year ended 31.03.2013 less than 100 cheques were not signed by R9. So also, out of the about 2500 cheques issued by R1 Company between January 2014 to August 2014, R9 has signed all except 60 cheques. However, in view of his conduct in sanctioning payments and issuing Cheques for personal expenses as stated hereinafter, the conflict of interest on account of his involvement and investment in Bluestone, his false and untruthful denials of having no involvement or investment in Bluestone once again betraying the trust of the Board and shareholder and his not being re-elected Jt. Mg. Director at the AGM on 29.09.2014 (even without the use of any Casting Vote), disentitle him from even being a signatory leave alone being compulsory one of the signatories.

(4) R1 and R10 Companies and CKS Group entities are ably, professionally, prudently, ethically and well-managed Company for the last 35 years, since incorporation, and continue to follow good corporate governance and best business practices. Respondent Nos. 2 to 7 have grown the business as follows:-

- from one store in the year 1975 to multiple stores;
- from a modest turnover of approx. Rs. 75 Lakhs in the year 1975 to Rs. 1 Crore in 1978 (when it was incorporated) to Rs. 460 Crores in the financial year ended 2014;
- R3 took over the business in the year 1954-55 at age of 18 years when his father expired. R3

inducted R9's father to the benefits of the business even when he was only 14 years old;

- R2 & R3 and the father of R9 were the promoters of the R1 Company as evidenced by the Articles of Association;
- Even as recent as the year 2012, its capital was only a paltry Rs.48 Lakhs but its reserves and surpluses from internal accruals were Rs.55 Crores;
- To reward shareholders, the capital was unanimously increased to Rs. 4.86 Crores and the increased capital of Rs.4.38 Crores by converting approximately 8% of the reserves and surpluses as Bonus Shares to reward shareholders, which the R9 and Petitioner gleefully received; More importantly, in the last 2 years, the reserves and surpluses have increased by about Rs.36 Crores, and now stand at approximately Rs.90 Crores;
- For this very reasons, the Petitioner was not granted any relief on 22.09.2014 in respect of the AGM's Special Business Items Nos. 1&2 concerning raising the Authorized Capital to Rs.15 Crores. Further, both the Petitioner and R9 voted for the increase and accordingly not only the Resolution to increase the authorized capital but also the Resolution to appoint the R2 as Managing Director were passed unanimously. Unanimous Board Resolution dated 28.09.2009, 12.10.2009 and 14.10.2009, for even greater growth and to ensure that R9 has further incentives in the form



of a transparent and workable mechanism to meet his aspiration and express his individuality;

- Since 2012, R2 is a Director of the World Diamond Counsel, New York, founded to help the United Nations (UN) Kimberley Process Certification Scheme to eliminate conflict diamonds. He has successfully led the All India Gems and Jewellery Trade Federation as its Chairman from 2009-11 and in these 2 years built the organization from a negative financial position to a cash surplus of Rs.6 Crores for a nonprofit trade body. Since 2011, he is a Director of Gems & Jewellery Sector Skills Counsel constituted under the National Skill Development Corporation, Govt. of India. R6 is a Business Management Graduate from US, Diamond & Coloured Stones Graduate from the Gemological Institute of America. R7 is also a Business Management Graduate from US, and Graduate Gemologist, the highest qualification in the field, from the Gemological Institute of America.

- 5) It is stated that the Hayagriv's have always outnumbered the Narayan's on the Board. Even when R1 Company was incorporated, the composition of the Board was Hayagrivs 2, Narayan 1. Thereafter also, the Narayans have had very well representation on the Board. In the year 2009, Chaitanya V. Cotha became an Executive Director and continues till date in that capacity. In the year 2011, Shreyas V Cotha became an Executive Director and continues till date in that



capacity and these issues has been inform dispute was inform issues any of the shareholders or Directors.

- 6) For the last 31 years, the Petitioner and R 9 have never had any grievance whatsoever with the manner in which the Respondent No.1 Company despite its inherent complexity on account of R2 to R7 on the one hand and the Petitioner and R 9 on the other hand, holding the entire equity. All frivolous disputes started in the year 2011, after R 9 secretly acquired an interest in Bluestone, which is business competitor in e-space. R9 was in-charge of and had undertaken the responsibility of starting the Company's e-retailing/ e-commerce business but instead, he used the Company's goodwill and to secretly acquire an interest in Bluestone and also used CKC's resources and killed the ckcsnons.com e-commerce venture.
- 7) It was unanimously decided in the 352nd Board Meeting held on 12.10.2009, that:
- Companies with differential shareholdings 80% one family and the remaining 20% the other family will be incorporated;
 - R1 Company shall provide the infrastructure or service required and appropriate to new ventures and such infrastructure or services shall be billed at periodical intervals and payable by the new companies on agreed terms to be decided.
 - All existing Board of Directors and future family Board of directors shall ideally be involved in each of the new ventures/business at least to the extent of 10% of the total shareholding. This is in order to keep all members of the family involved in



different business without hampering the as of now main business of the existing 2+ upcoming Jayanagar retail showrooms;

- All family members shall be remunerated through salaries, commission, dividends and any perks on an equitable basis from C.Krishniah Chetty & Sons Pvt. Ltd., and other companies in order to maintain fair remuneration;
- In the 353rd Board Meeting held on 14.10.2009 it was unanimously decided that R1 Company and other companies going forward shall issue corporate guarantees to companies/financial institutions wherever required, in order to grow all companies under the CKC Group. Corporate Guarantee by R1 Company can be provided to any of the group concerns to raise debt/capital from banks and financial institutions and subject to debt servicing capabilities and banking norms.
- R10 Company has been in existence and in operation since the year 1980-81 and there has never been any issue regarding it. The Petitioner herself admits that R10 Company was incorporated much before the death of her husband C.V. Narayan.
- Now after 33 years of its inception when both the Petitioner and her husband were on the Board of both R1 and R10 Companies (and 16 years after R 9 joined the business), neither the Petitioner nor R9 can now raise any dispute regarding R10 Company or its operations.



- R 9 and the Petitioner voluntarily transferred a combined 30% of the equity in R10 Company in the year 2009-10 to the Hayagrivs, in accordance with the unanimous Board Resolutions at the 352nd and the 353rd Board Meetings, as aforesaid. This is the admitted position and it is nobody's case that the said shares were not transferred to Respondent Nos.2 to 7. Now, after 4 years, admitting the transfer, the Petitioner baldly alleges that the transfer was done under coercion. In fact the entire 50% of the equity held by the Petitioner and R9 in R10 Company were to be transferred by way of gift by them to R2 to R7 against the transfer in the year 1998 by way of gift by R5 of her 50% equity in Deepali to the Petitioner and R9.
- R9 and the Petitioner are fully aware that the Lease by R3 C.V.Hayagriv (HUF) in respect of 'A' Block of Touchstone, Main Guard Cross Road, and the rent and terms therein are the same as that of the Lease of the adjoining premises of 'B' Block of Touchstone, Main Guard Cross Road, by R9-Ganesh Narayan (HUF) in favour of Adidas.
- Sale of Gift vouchers, travel for business, steps to expand business and to shut down business on grounds of business exigencies are all day to day matters which are normal, ethical, acceptable business practices with which neither the Petitioner nor R9 ever found any fault and in fact as Jt. Managing Director, R9 is directly responsible and part of the accounts/records of R1 Company.



- Various Benches of this Tribunal have held that it is the decision of the shareholders to appoint or remove a Director and the Tribunal cannot interfere with the democratic process of a Company where the shareholders take decisions in the interest of the company.
- 8) The instant Company Petition is an Act of Forum Shopping and abuse of the process of Law. The entire basis, foundation and core of the Company Petition is the alleged Binding Family Settlement Agreement (FSA) dated 14.01.2014. Signing an Agreement and placing it in escrow is not execution of an Agreement and it is a non-existent and it is only an Escrow.
- 9) CKCJ is a CKC Group Company and Deepali Company is not a CKC Group Company. The Tribunal cannot take over the Role of the expert, fill in the blanks by deciding material, critical and essential commercial terms in the inchoate alleged Family Settlement Agreement consciously kept in escrow with good reason. The alleged Family Settlement Agreement is not duly stamped nor registered and these cannot be looked into even for collateral purpose including for grant of even interim relief. A condition precedent, any the very first step in the proposed Family Settlement Agreement, was that independent of Demerger, the Petitioner and her son R 9 were to peremptorily and unconditionally transfer their combined share in shareholding in CKCJ and in CKCM to R2 to R7 latest by 24.01.2014. Therefore, no specific can be granted in the instant Company Petition. The alleged Family Settlement Agreement expressly, explicitly, categorically,



emphatically and automatically Rules out any demerger after 28th February 2015. The expert has not extended the time for the Scheme of Demerger to come into effect and the deadline was 31.12.2014. Therefore, the demerger is expressly automatically eliminated.

- 10) They have relied upon on the following judgments in support of their case:
- a. This Bench's Orders in C.P.No.65 of 2015 (Re: Asianet News v Kannda Prabha Publications) Order Dated:
 - 09.08.2016
 - 10.08.2018
 - 12.09.2018
 - b. NCLT Hyderabad in C.P.No.235 of 2017 (Re: Ind-Barath Power Infra vs. Ind-Bharat Thermotek & Ors)
 - Order dated 27.10.2017
 - Order dated 06.03.2018
- 2(a) Orders and R 9's Memo for withdrawal in his A.A.No.25006 of 2014.
3. CLB Principal Bench's Order, dated 01.02.2000 in C.P.No.77 of 1999 (Re: Sardar Iqbal Singh & Anr. Vs. Sardar Gurbaksh Singh & Ors).
 4. NCLT Hyderabad Bench's Orders in CA No.51 of 2016 in C.P. No. 19/241/HDB/2016 (Re: Gleneagles Development Pte. Ltd vs Thota Gurunath Reddy & Ors)
 5. 2000 (6) ALT 130 (Re: Global Trust Bank)
 6. 2000 (1) Bom CR 716 (Re: Hira Mistan)
 7. 2008 (5) Bom CR 211 (Re: Parasmal Lodha)
 8. (2018) 9 Scale 367 (Re: Shyam Sunder)
 9. (2014) 16 SCC 501 (Re: Jagmohan Bahl)

10. (2008)1 SCC 560 (Re: Udyami Evam Khad Gramudyog)
 11. (2010) 13 SCC 769 (Re: Jugtu)
 12. (2018) 5 Scale 122 (Re: Sita Ram Bhama)
 13. (2016) 386 ITR 580 Del. (Re: Salora International Ltd.)
 14. NCLAT Judgment, dated 23.08.2017 (Re: Dundoo Shirish)
 15. This Tribunal's Order, dated 12.07.2018 in C.A. No.12 of 2015 in this Co. Ptn.
4. The Respondent No.8 (Mr. Shyam Ramadhyani,) has filed written submission dated 18.12.2018, by inter alia contending as follows:
- (1) There are no allegations against the 8th Respondent in the Petition, and he is described as the Statutory Authority, and he is a partner of the Firm M/s. B.K.Ramadhyani and Co, Chartered Accountants, who are the Statutory Auditors of the Respondent Companies.
 - (2) It is stated that no terms and instructions that were formulated when the Original Agreements given to him for safe custody; no escrow agreement was ever executed and also no instructions to destroy the document were ever given, as falsely contended by the 1st & 10th Respondent Companies in their objections. He 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 petition under consideration. He is practicing Chartered Accountant, with over period of 38 years of experience.



- (3) 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, and thus they have executed the instant Family Settlement Agreement, in order to resolve the issues between them. He is not a signatory of the documents, however, he has extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement. After executing the documents, original of the agreements in two sets were handed over to him for safe keeping. He was not called upon to act as an Escrow or to perform any act as an Escrow as alleged.
- (4) In pursuance to the order dated 16.12.2015, passed by Tribunal in CA No. 1 of 2015, the original Family Settlement Agreement dated 09.01.2014 was submitted to the CLB in a sealed cover on 21.12.2015, and the same was also recorded by the Tribunal vide proceedings dated 07.01.2016. Since he has already submitted the Family Settlement Deed to the Tribunal, he is not necessary party for the instant Company Petition, and he is not Escrow too. Therefore, the original document is in the custody of the then CLB, Chennai.
- (5) Arbitration Application bearing AA No.25006 of 2014 was filed by 9th Respondent, and he has taken the same stand in this case too. It is stated that he was merely having possession of a family settlement agreement executed amongst the parties to this Petition and he was never in possession of any debts, sum of money or other property of two family groups.

Therefore, Section 88 read with Order XXXV of the Code of Civil Procedure are not attracted all in the instant case.

5. The Respondent No. 2 to 7 has filed further written arguments dated 16.01.2019, in furtherance to their earlier written arguments, in pursuant to the written arguments filed by the Respondent No. 8 on 18.12.2018, by inter alia contending as follows:

- a. Learned LXXII Addl. City Civil & Sessions Judge, Bangalore (CCH 73) dismissed A.A.No.25006 of 2014 filed by Respondent No. 9 even without permitting to withdraw it by reserving liberty to sue afresh by an order dated 5th January, 2019.
- b. The Petitioner's Ld. Sr. Counsel repeated R9's false submission that A.A.No.25006 of 2014 is only an Application, u/s.9 of the Arbitration & Conciliation Act, 1996 for a measure of interim protection and hence neither a suit nor a proceeding which amounts to this subsequent Company Petition being an act of Forum Shopping. Nor does it matter that A.A.No.25006 of 2014 and this Company Petition were pursued concurrently for 4 years.
- c. The binding case laws cited by R2 to R7 wherein it is held that even a signed Agreement kept in Escrow in only an Escrow Document and Not an Agreement in existence and cannot be binding or enforced. The clear, categorical, unambiguous admission of the Petitioner in Para 7 of this Company Petition that R9 has filed an Application u/s. 9 of the Arbitration & Conciliation Act, 1996 numbered as A.A.No.25006 of 2014, currently pending before the City Civil Court at Bangalore.



- d. The ex-parte ad interim Order, dated 22.09.2014, passed by the Hon'ble CLB at Chennai, recording that: This Company Petition is nothing but an act of Forum Shopping as this Company Petition was filed because R9 had filed A.A.No.25006 of 2014 which was pending and he had obtained no relief in A.A.No.25006 of 2014; The Family Settlement Agreement was placed in Escrow.
6. Heard Shri V. Srinivasa Raghavan, learned Sr. Counsel for the Petitioner, Shri Mukta Batra with Shri Navkesh Batra, learned Counsel for the Respondent No.2to7, Shri Dhyan Chinnappa, learned Sr. Counsel for the Respondent No.8, Shri L.Udayarkar for the Respondent No.1 & 10, Shri Vir Anthony Britto with Ms.B.L.Surabhi, learned Counsel for the Respondent No.9. We have carefully perused all pleadings of respective parties along with material papers and various decisions cited by the parties.
7. All learned Counsels have once again reiterated their respective pleadings already, and also filed written gist of arguments.
8. After perusing the various pleadings of the parties along with supported documents, the following un-disputed facts are disclosed:
- (1) Shri C. Krishniah Chetty & Sons Private Limited (Respondent No.1, Company) was incorporated on 24.12.1979 as a Private Limited Company. It was subsequently treated as a Deemed Public Company from 01.07.1994 till 29.12.2000, and thereafter converted into a private limited company. As per Memorandum of Association Shri C. V. Hayagriv, S/o. Late Shri C. Venkatachalapathy Chetty, Mr. C.V.Narayan and Shri C. Vinod Hayagriv, S/o. Mr. C. V. Hayagriv are


26

signatory to the Memorandum of Association. Its Authorized Share Capital is Rs. 50,000/- Equity Share of Rs. 1,000/- each with a power to increase or reduced the same divided consolidated share in the capital into several causes etc.

- (2) As per Article 19 Article of Association, shares can be transferable on conditions mentioned in the Articles of Association. As per Article 20, Board of Directors is having absolute power with regard to allotment of shares, transfer/refuse to transfer even without assigning any reason(s), if they are of opinion it is not in the interest of the Company. Article 32 empowers Board of Directors to deal with issues and distribution of shares subject to usual conditions like safeguarding the pre-emptive rights of the members.
- (3) As per memorandum, and Article 36 of Article of Associations of R 1 Company, the first signatories Directors of the Company are 1. Shri C. V. Hayagriv, S/o. Late Shri C. Venkatachalapathy Chetty, 2. Shri C.V.Narayan and 3. Shri C. Vinod Hayagriv, S/o. Shri C.V.Hayagriv and they are not liable to retire by rotation.
- (4) The Petitioner (Mrs. C.Valli Narayan) and Respondent No.9 are mother and son. The Petitioner is holding 9,760 Equity Shares of Rs. 1000/- each, out of a total issued Paid up Share Capital of Rs. 4,86,40,000/- consisting of 48,640/- Equity Shares of Rs. 1000/- each, thus, constituted 20% of the paid up capital. The Petitioner is also Director of the Company. The 9th Respondent (Shri C. Ganesh Narayan) was inducted as Director

during the year 1997, and subsequently appointed as Joint Managing Director in July 2010.

- (5) During the year 1991, both Brothers decided to float a new Company (Shri C. Krishniah Chetty & Sons Private Limited) (Respondent No.10) on 27.03.1991, which is part of the Krishniah Chetty group of Companies own following entities.

- C. Krishniah Chetty & Sons Manufacturers Private Limited;
- Deepali Company Private Limited;
- C.Krishniah Chetty & Sons Partnership Firm;
- C.Krishniah Chetty Charitable Trust; and
- C.Krishniah Chetty Foundation.

Both the Petitioner group and Respondent group own equal shareholding/profits in all entities by holding 50% in both the 1st Respondent Company and 10th Respondent Company. However, during 2009-10, 30% of shareholding in R 10 Company was transferred to the Respondent and thus reducing the shareholding to 20%.

- (6) In order to settle the issues between two parties, a Family Settlement Agreement dated 09.01.2014 stated have been executed by the parties. The Family Agreement consisting of various terms and conditions to resolve the dispute between two groups. The then Company Law Board, has made several efforts to resolve the disputes between the parties and also passed several orders on IA's, CA's filed by the parties but to no avail.
- (7) Shri C Ganesh Narayan (Respondent No.9), has also filed A.A.No.25006/14 before the LXXII Addl. City Civil & Sessions Judge at Mayo Hall, Bangalore, U/s 9 of the Arbitration and Conciliation Act, 1996, by inter alia

seeking implementation of Family settlement Agreement dated 07.01.2014, which was ultimately dismissed by an order dated 05.01.2019.

9. Admittedly, the petitioner, who is holding 20% shareholding in Respondent No. 1 Company, has filed the instant Company petition on various grounds of acts of oppression and mismanagement on the part of the Respondents. She is also a Director of the Company. The Petitioner by alleging various acts of oppression and mismanagement on the part of the Respondents has ultimately relied upon on Family Settlement Agreement in question in support of her case. The Respondent No. 9 is not a joint/co-petitioner to the instant Company Petition as he has independently filed Arbitration case before Civil Court as detailed supra by seeking relief mentioned therein. Therefore, the allegations made by the Respondent No. 9 by way of his reply will hardly relevant to the instant case. And the Arbitration case was ultimately dismissed by the Civil Court. The Petitioner's daughters namely Ms. Sanmathi and Ms. Sharmila, have also filed suits Viz., OS No. 1471 and 3272 of 2014, before Civil Court claiming their interest in the property of their father. The Petitioner by holding 20% shareholding is already a Director of the Company and thus Petitioner cannot demand further representation to her on the ground of propositional representation. Moreover, as detailed supra, since the beginning of incorporation of Company, only husband of Petitioner was Director and other two Directors belonging to Respondent Group. By virtue of signing of Family Settlement Agreement and seeking for implementation of terms and conditions of Family Settlement Agreement, the allegations of acts of oppression and mismanagement made by the Petitioner deemed to have waived or hardly have any bearing on the issue



- raised in the case. And the petitioner being a Director of R 1 Company cannot be maintaining petition against the Company.
10. Therefore, the main question arises for consideration in the case is whether the Family Settlement Agreement dated 09.01.2014 is properly executed so as to declare it to be binding on the parties and consequently direct to implement its terms and conditions.
11. Firstly, it is relevant to point out here that though execution of Family Settlement Agreement was broadly admitted by the Respondent but subsequently raised various issues with regard to its validity or otherwise as detailed supra. Admittedly, the original deed of Family Settlement Agreement is not in possession of both the parties and it was held by the Respondent No. 8, who is instrumental in settling and executing the Agreement. Since the parties supposed to hold original document in question to file an Arbitration case, the suit filed by the Respondent No. 9 was dismissed for his failure to file the Document.
12. Apart from the execution of document, it is relevant to advert to refer relevant terms and conditions of the Agreement Clause 1(L), which reads as under:
- a) **Clause 1 (L):** All parties shall take all steps required to forthwith implement this Family Settlement and file applications before the appropriate jurisdictional court for sanction of the scheme of Demerger by 31st March 2014 and pursue the same expeditiously to ensure sanction on or before 28th February, 2015. In the event that the Petition for filing of the Scheme of Demerger is not filed with the appropriate Court by 31st March 2014 or such other time as the Expert may determine, the parties agree that they shall implement the spirit of this Family



Settlement by implementing the Alternate Structure (defined below).

- b) **Clause 1 (m)**: Should the Scheme of Demerger not come into effect for any reason whatsoever by 31st December, 2014 or such extended periods as may be determined by the Expert which shall not be a date later than 28th February 2015, the parties shall implement the commercial and economic substance of this Family Steeling by transferring the two undertakings viz. Touchstone and Touchstone South, to CKC jewelers and CKC Deepali respectively by way of a slump sale at book values (as adjusted by the Adjustment amount) and provided that the sale consideration would be deferred and paid over at a mutually agreed time period such that the repayments by both CKC Jewellers and CKC Deepali would repay the amounts to CKC over the same period and at the same time (the "Alternate Structure"). It is agreed that the provisions of all steps to be taken pre and post the Demerger, including closure of HS, shall mutatis mutandis apply to the Alternate structure. The manner of implementing the alternate structure including the time period for payment of amounts of CKC shall be determined CHV and CGN, failing which by the Expert in Consultation with such consultant's as the Expert deems appropriate. The Implementation of the Alternate structure (other than the deferred payment to CKC) shall be completed or on before 31st March 2015.
- c) **Clause 1(n)** Notwithstanding that each of CKC Deepali and CKC Jewelers is entitled to equal ownership and interests in all intellectual Property Rights owned by CKC, neither the CVH Group nor the CGN Group shall be entitled to call



upon CKC to document any proceeds or item that has not already been documented.

13. Demerger has been defined in the Agreement. Demerger means the scheme of arrangement and demerger envisaging (a) demerger of Touchstone South to CKC Deepali; (b) demerger of Touchstones to CKC Jewellers; and (c) dissolution without winding up of CKC as on the Effective date. Effective date shall mean (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. Expert shall mean Mr..Shyam Ramadhyani, Partner of B.K.Ramadhyani & Co. ('BKR') having their office at 68, 4th Floor, 15th Cross, 8th Main, Chitrapur Bhavan, Malleshwaram, Bangalore, Karnataka 560055. It is clarified that the Expert shall mean the individual referenced above and not any other partner of BKR.
14. Clause 5 deals Board and operations till effective date:
- a) All cheques shall require the signature of CGN and any open of C.V.Hayagriv, CHV, Chaitanya, V.Cotha or Shreyas V. Cotha. It is clarified that this clause shall not apply to any payment to be made to customers or to vendors or any expenses approved by the Operational Committee. It is further clarified that should CGN not be available for signing any Cheque required to be issued to a third party for duration of over 2 working days, then Mr. Venkatesha Babu, GM Finance, CKC shall sign cheques on behalf of CGN.
 - b) There shall be operational committee ('Operational Committee') consisting of CHV and CGN and all decisions shall be taken unanimously in accordance with the spirit


32

of the Family Settlement. In case the Operational Committee is unable to take a decision on any matter outlined below unanimously, the same will be referred to the Expert whose decision on such a matter shall be final. The Operational Committee shall be empowered to take decisions on all of the following matters:

- i. Transfer of employees between store/offices and increments payable to employees other than directors.
 - ii. Inventory in the stores and transfer of inventory between stores.
 - iii. Declaration of dividend.
 - iv. Preparation of and variations in budgets and marketing plans.
 - v. Interior plans and execution of back office works on the 3rd Floor of Touchstone.
 - vi. Any change in facilities obtained from banks.
 - vii. Any transactions with related parties including between CKC and any of CVH Group or CGN Group.
 - viii. Any matter referred to the Operational Committee by CGN Group or CVH Group.
 - ix. Any decisions that affect this Family Settlement or relate to the implementation of this Family Settlement.
- The decision of the Operational committee shall be final and binding on the parties including CKC and CKC Jewellers and shall not be questioned under any circumstances.

15. Para 6 of the Agreement deals with appointment of Expert, which reads as under:

"All the parties to this Family Settlement agree to appoint the Expert herein as an independent expert to determine all practical and technical issues relating to the implementation of

this Family Settlement and settle difficulties to give full effect to this Family settlement. The Expert shall be paid such reasonable fees as may be agreed between him, CHV and CGN. The parties acknowledge that the Expert is fully aware of all the circumstances culminating to this family Settlement and repose full faith and confidence in his role as an expert. The parties waive any claim for any conflict of interest relating to his appointment and acting as an expert in this regard. All decision taken by the expert under this Family Settlement will be final binding on all parties. The parties agree that the Expert is acting as an expert and not as an arbitrator.”

16. As para 8 (i) of the Agreement deals with Specific performance and estoppel, which reads as under:

“The parties acknowledges that several claims and counter-claims have been made by the parties (some documented and some not). This Family settlement has been reached consequent upon a complete break-down of relationship between the constituents of the CVH Group and the Constituents of the CGN Group. Accordingly, the parties acknowledge that each party shall be entitled to seek specific performance including injunctive relief to enforce the terms of the family settlement”.

17. Para 8 (l) of the Agreement deals with Arbitration, which reads as under:

“Disputes, if any that pertain or related to the Family Settlement that cannot be resolved shall be referred to arbitration by a sole arbitration appointed by the parties. The seat of arbitration shall be Bangalore. The language of Arbitration shall be English. Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 (or any successor legislation) and the rules made thereunder”.



18. As stated supra, Respondent No. 8 has admitted that as a Chartered Accountant, he has extended his expertise in mediating and reaching a consensus amongst the parties to reach a settlement. He has enjoyed the confidence of all parties to the said agreement, and thus the agreement after execution in two seats were handed over to him for safe keeping. Therefore, it has to be considered whether the 8th Respondent is an Escrow or not has to be examined. An Escrow is defined to be a document deposited with the third person to be delivered to the person purporting to be benefited by it upon the performance of some condition that fulfillment of which is only to bring the contract into existence. Escrow has also be defined to mean that where an instrument is delivered to take effect on the happening of a specified event or upon condition that it is not to be operative until some condition is performed then pending the happening of that event or the performance of the condition the instrument is called an escrow.
19. As stated supra, except filing a case before Civil Court under Arbitration Act and the instant Company petition, the parties neither taken steps necessary to implement the Agreement nor have initiated appropriate legal course of action in accordance with terms and conditions of the Agreement. As stated supra, the Respondent No. 9 has filed Arbitration Case without following due process of law and it ultimately leads to dismiss the case. First of all the parties have to be obtain copies of original deed of family settlement from the Respondent No. 9 and thereafter, they can initiate appropriate legal action. If Document itself is not properly executed, as contended by the Respondents, it is 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, if the terms and conditions of Agreement are not implemented or violated. As stated supra, the Agreement itself provides a remedy of Specific performance and arbitration. However, the parties failed to do so. The facts and circumstances and the statement made by the 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.

20. When an instrument is delivered as an escrow, it is not to become the deed of the parties to it until conditions prescribed have been performed. The escrow agent normally a person of mutual confidence, in whom the parties to the documents/transaction reposed confidence inter alia to the effect that he will not disclose, circulate or hand over possession of the documents unless and until the conditions on which the documents were delivered to him as an escrow are satisfied. In Halsbury's Laws of England (vol.12 Fourth edition, paragraph 1332) it is stated:

'Like delivery as a deed, delivery as an escrow may be made in words or by conduct although it need not be made in any special form or accompanied with any particular words, the essential thing in the case of delivery as an escrow being that the party should expressly or impliedly declare his intention to be bound by the provisions inscribed, not immediately, but only in the case of and upon performance of some condition then stated or ascertained'.

21. As per sections 397-398 of the Companies Act, 1956 or analogous sections 241/242 of Companies Act, 2013 empowers



Tribunal to invoke its powers and to pass appropriate orders, in case, if Tribunal is of opinion that the affairs of a Company are being conducted in a manner prejudicial to public interest or are in a manner oppressive to any member or members; and that wind up of that Company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of winding up order on the ground that it was just and equitable that the Company should be wound up, on an application filed by any member(s) of the Company etc.

22. In the instant, case as mentioned supra, the petitioner is inter alia seeking to implementation of the family settlement in question till the process of demerger or slump sale status quo etc. Therefore, the Petitioner failed to make out a case so as to firstly justify winding up of R-1 Company, and that wind up unfairly prejudice the interest of the Petitioner of Company. We have already considered the legality and other connected issues of Family Settlement in question, in the preceding paras, and also the various allegation made by the Petitioner. Therefore, the Tribunal cannot exercise powers conferred on it U/ss 402 / 242 of Companies Act, 1956/2013 to pass any orders as contained by the Learned Counsel for the Petitioner.
23. The contention of Shri V. Srinivasa Raghavan learned Senior Counsel for Petitioner, that it is duty of the Court to uphold and give full effect to the family settlement in letter and spirit in order to sink their difference and disputes and resolve their conflicting claims is not substantiated with evidence. In order to up hold the family arrangement, such a family arrangement / agreement has in the first instance, it has to be executed in accordance with law. It is not the case of the parties that they have any taken in action in pursuant to the family Settlement Agreement but both the parties have resorted



to litigation only before the Tribunal and Civil Court. Any Civil Court/ Tribunal cannot give direction to the parties to implement an agreement, unless it is properly executed by the parties in accordance with law and it is binding on the parties.

24. As stated supra, even the original Family Settlement agreement is available with the parties to maintain any litigation and it is kept with Respondent No.8 either as an expert/ deemed Escrow agent. Moreover, the Tribunal cannot adjudicate/declare that Family Settlement is executed in accordance with law in the light of rival contentions. As detailed supra, the Competent Civil Court has already dismissed arbitration case (AA No. 25006 of 2019) vide order dated 5th January, 2019, filed by the Respondent No. 9 inter alia lacking for filing a copy of Original Family Settlement.
25. It is not in dispute that Petitioner is holding 20% shareholding of R10 Company and she is also a Director of the Company. And her Son Respondent 9 is also a Director/Joint Managing Director at the relevant point of time. There they are holding fiduciary position as Director. The various allegations act of Oppression and Mismanagement made by the Petitioner are prima facie not substantiated except mere allegations. Since the beginning, only the husband of the Petitioner is Director whereas 2nd and 3rd Respondents are Directors of the Company maintaining 2:1 ratios between the Petitioner and Respondent groups. The Shareholding of the Petitioner and that of Respondent was reduced 20% during 2009-10 in the R 10 Company and is well before filing of the Instant Company Petition, and the circumstances under, which shares have been transferred to the Respondent Group cannot be examined in the instant Company Petition.



26. As detailed supra, the Respondent No.9 (the son of Petitioner) has filed an Arbitration case before Civil Court under Section 9 of Arbitration and Conciliation Act, 1996 and the Petitioner herein has filed the instant Petition, that too mainly relying upon the Family Settlement Agreement in question. And the Daughters of Petitioner have also filed Civil Suit as detailed supra. Therefore, the Petitioner has not come to the Tribunal with clean hands to seek equitable relief under the provisions of Companies Act. We have carefully gone through various judgments cited by the Learned Senior Counsel for the Petitioner and found that ratio as decided in those case, are not applicable to the facts and circumstance^P of instant case.
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 R 1 Company as sought for. Therefore, it is liable to be dismissed.
28. In the result, C.P.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.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

**IN THE COURT OF THE LXXXV ADDL. CITY CIVIL AND
SESSIONS JUDGE (CCH-86), BENGALURU.**

DATED THIS THE 17TH DAY OF FEBRUARY 2022

Present: Smt. Lathakumari M.
M.A., LL.M.,
LXXXV Addl. City Civil & Sessions Judge,
Bengaluru.

COM. O.S. No. 306/2020

PLAINTIFF: **C. Krishnaiah Chetty & Sons Private Limited,**
An Indian Company Incorporated
under the Companies Act, 1956
CIN: U27205KA1979PTC003692
35 Commercial Street,
Bengaluru – 560 001
Represented herein by its Chief Financial Officer
Sri. S.A. Suresh,
S/o. Sri. A.S. Arunachalam

(By Sri. Sivaraman Vaidyanathan, Advocate)

-Vs-

DEFENDANTS: 1. **Deepali Co., Private Limited**
An Indian Company Incorporated under
the companies Act, 1956 CIN:
70691KA1982PTC004687
35 Commercial Street,
Bengaluru – 560 001
represented herein by its Director
Sri.C. Ganesh Narayan,
S/o Late Sri. C.V. Narayan

2. Sri. C. Ganesh Narayan
S/o Late Sri. C.V. Narayan
Indian, Hindu, aged about 42 years,
Residing at 2A, Nitesh Mayfair,
Kasturba Cross Road,
Bengaluru - 560001
3. Smt. C. Valli Narayan
W/o Late Sri. C.V. Narayan
Indian, Hindu,
Aged about 77 years
Residing at 44 Osborne Road,
Ulsoor,
Bengaluru – 560 042
4. Smt. Vidya Nataraj
W/o Sri. C. Ganesh Narayan
Indian, Hindu,
Aged about 42 years,
Residing at 2A, Nitesh Mayfair,
Kasturba Cross Road,
Bengaluru – 560001
5. Bluestone Jewellery & Lifestyle Private
Limited An Indian Company Incorporated
under the Companies Act, 1956
CIN: U72900KA2011PTC059678
Site No.89/2, Lava Kusha Arcade,
Munnekolal village, Outer Ring Road,
Marathalli, Bengaluru – 560 037
represented herein by its Chief Executive
Officer Sri. Gaurav Singh Kushwaha

(By Sri. Kruthika Raghavan, Advocate for D1 to D4)

ORDER ON I.A., FILED BY THE DEFENDANTS 1 TO 3
UNDER ORDER VII RULE 11 (d) READ WITH
COMMERCIAL COURTS ACT, 2015

This is an application filed by defendants 1 to 3 seeking to reject the plaint as barred by law in terms of Sec. 430 of the Companies Act, 2013, Sec. 8 of the Arbitration and Conciliation Act, 1986 and has been filed without any valid authorization in the interest of justice and equity.

2. In support of this application, the 2nd defendant sworn an affidavit on behalf of himself and also on behalf of defendants 1 and 3 contending that present suit has been filed by the plaintiff through one Mr. S.A. Suresh for judgment and decree for perpetual injunction restraining the defendants and persons claiming through them from using the trade marks C. Krishniah Chetty Corp, C. Krishniah Chetty & Co., Chetty & Co., Chetty, C. Krishniah Chetty & Co 1869, Chetty & Co., 1869 at any location in connection with the jewellery business in any manner including sales, promotion and marketing etc. It is further mentioned that I.A.No.1 and 2 filed by plaintiff under Order 39 Rule 1 and 2 r/w Sec. 151 CPC came to be dismissed by order dated 20.02.2021. In the said order, this court observed that in view of the undertaking by the plaintiff

before the NCLAT dated 19.12.2019, this suit is not maintainable without resolution of Board of Directors of the company delegating authority to file suit and also observed that in view of Sec. 430 r/w Sec. 241 of the Companies Act also no injunction can be granted in respect of the matter pending before NCLAT and thereby rejected the application filed by the plaintiff. Thus, the defendants further mentioned in their affidavit that suit is also barred by lack of authorization to institute this suit. Though defendants 2 and 3 are Directors in the plaintiff company and 50% share holders, the appointment of Mr. S.A. Suresh alleged CFO has been made without their knowledge, involvement and proceedings and consent. 3rd defendant had preferred an application before the NCLAT for an order of interim direction to restrain C. Vinod Hayagriv and others from conducting board meeting and its implementation. On 23.07.2019 before NCLAT said C. Vinod Hayagriv and others have undertaken that board meeting will be deferred till the next date of hearing of the appeal. In pursuance of said undertaking application came to be disposed of before NCLAT that no board meetings will be held until further orders from the Tribunal. In view of said order of NCLAT there was no scope for any board resolution or no

authorization could have been given to Mr. S.A. Suresh. Even a Director cannot sue on behalf of a company without the authorization of the board. Hence, there is no locus standi for the plaintiff to maintain the suit without any such authorization. Further, Hon'ble High Court of Karnataka while dismissing the appeal in Com.A.P. 61/2021 filed by the plaintiff against the order of this court observed that in the absence of board resolution the suit or appeal instituted by the Chief Financial Officer of the company is definitely defective and also observed that in view of the undertaking by the plaintiff before NCLAT dated 19.12.2019 the suit itself is not maintainable without resolution of the board. No board resolution has been passed by the plaintiff authorizing any Director or Officer to represent it in the present proceedings nor has any Director or Officer was authorized to appoint lawyer to defend the plaintiff in the present proceedings. That apart, the subject matter of the suit already dealt by the NCLAT . This court observed that the matter in dispute before the NCLAT in the present suit are almost similar. The present suit and proceedings are nothing but a perverse manifestation of the proceedings already pending before the NCLT, Bangalore in C.P. No.4/2020. Further asserted that I.A.No.6 in the said

proceedings seeking to restrain the defendants 2 and 3 from directly or indirectly engaging in any business at any location etc., and I.A.No.7 in the said petition was filed seeking to restrain defendants 2 and 3 in this regard. The NCLT also passed order of status quo in the said petition on these applications by its order dated 12.07.2021. Such parallel proceedings cannot be continued at the behest of the plaintiff and that apart the dispute involved in this suit is covered by arbitration and hence as per Sec.8 of the Arbitration and Conciliation Act, this court has no jurisdiction to entertain the matter. Hence, pray for rejecting this plaint.

3. In pursuance of above application filed by defendants, the learned counsel for the plaintiff filed objections and also memo on 13.12.2021 stating that NCLAT passed orders on 25.11.2021 in I.A.No.1075/2021 in Company Appeal 65/2019 and prayed for to consider the same while considering the rejection of the plaint application. The plaintiff in its objection statement contended that while considering application under Order VII Rule 11, the averments in the plaint have to be considered. In the application filed by the defendants there is no averment that the plaint averments establishes that

the plaint itself is barred by law. The observation with regard to maintainability of the suit is made only for the purpose of deciding the application filed by the plaintiff for an order of temporary injunction during the pendency of this suit. There is no finding that the present suit is barred u/s 430 r/w sec. 241 of the Companies Act, 2013. The plaintiff has already filed appropriate application before the Tribunal to permit the plaintiff to conduct their board meetings for the purpose of issuing a board resolution in his favour. If in the NCLAT proceedings the said application is allowed and in the meantime if the plaint is rejected for want of board resolution or authorization the very purpose of filing this suit become infructuous. The plaintiff does not need any leave or consent of defendants 1 and 3 to institute legal proceedings to ensure that no one including plaintiff sole Director or shareholders misused plaintiff's well known trademarks, present proceedings and the proceedings before the NCLT cannot be considered to be as parallel ,as alleged or at all particularly when there is mutual exclusion of jurisdiction over the respective subject matters and hence pray for dismiss the application filed by the defendants, in the interest of justice and equity.

4. I have carefully scrutinized entire records before me. Heard arguments of respective counsel and also perused documents produced by plaintiffs i.e., order passed by National Company Law Appellate Tribunal in Company Appeal (AT) No.65/2019.

5. Now the points that arise for my consideration are;

(1) Whether the defendants have made out a ground to reject the plaint as barred by law and also for want of authorization from plaintiff company to institute this suit?

(2) What order?

6. My findings on above points are: -

Point No.1 – In the Affirmative

Point No.2 - As per final order

for the following:

REASONS

7. **Point No.1**: It is not in dispute that while considering rejection of plaint the court can look into only plaint averments of the plaintiffs. The plaintiff in para-4 of

the plaint mentioned that he is represented herein by its Chief Financial officer Mr. S.A. Suresh S/o A.S. Arunachalam also the Principal Officer of the plaintiff company within the meaning of Order 29 Rule 1 CPC. It is not in dispute plaintiff has not produced any authorization letter or board resolution issued by 1st plaintiff company authorizing him to institute this suit for perpetual injunction against defendants. It is the contention of defendants that suit is not maintainable in view of Sec. 430 of Companies Act, 2013 which reads as under: -

“No civil court shall have jurisdiction to entertain any suit or proceedings in respect of matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any any action taken or to be taken in pursuance of the power confirmed by or under this Act or any other law for the time being in force by Tribunal or the Appellate Tribunal.”

This provision establishes that any matters in respect of which power has been confirmed on the NCLT the jurisdiction of the civil court is completely barred. NCLT has specifically conferred powers to address grievance, relief to

the company which may be prejudicial or addressing to any member of the company or for issue of appointment of Directors, the management of the affairs of the company. The plaintiff in this suit sought for the relief of perpetual injunction restraining the defendants or anybody claiming through them jointly and severally, directly or indirectly at any location including online etc., from using in relation to any products or services connected with the jewellery business in clause 14, 16, 21, 35, 36, 37 and 42, the trademarks C Krishniah Chetty Corp, and others mentioned in the prayer column and for such other reliefs.

8. The learned counsel for plaintiff himself has produced copy of the order of the NCLAT dated 05.01.2022, 12.07.2022 passed in Company Appeal (AT) 65/2019 and CP NO.4/2020 respectively. The relief claimed in this suit and also before NCLT are almost similar. The plaintiff himself filed rejoinder contending that the challenge to the findings of the NCLT is pending before the NCLT amounts to res-judicata. Further, it is not in dispute that plaintiff has filed this suit without authorization issued by 1st plaintiff company. It is the contention of plaintiff that since there is a restriction for holding board meeting question of issuance

of resolution at this stage does not arise. However, same cannot be a ground. It is also not in dispute that there exists arbitral clause for resolution of the disputes before arbitral tribunal. The plaintiff in para-53 of his plaint has mentioned that one group of share holders had approached the NCLT by way of an application (54/2018) on the basis of which the NCLT was pleased to restrain the defendants 1 to 3 from competing with the plaintiff in any manner. At para-54 it is mentioned that interim order was extended from time to time until 24.01.2019. At para-55, it is stated that, 'however, notwithstanding the express statutory prohibition under Sec. 166(5) of the Companies Act which was already recognized and enforced by the NCLT, the defendants have continued their activity and made use of the infringing marks and also continued to make hectic preparation to open a competing business under the infringing marks. In para-56, it is mentioned that the plaintiff is also a party to CP/04/BB/2020 filed by one group of the shareholders against defendants 1 to 3 before NCLT, interim applications were also moved and heard and orders were reserved by the NCLT, Bengaluru to restrain the defendants 2 and 3 from indulging any conflicting and competing business. These averments in the plaint establishes that matter now sought

to be adjudicated by the plaintiff's CFO Sri. S.A. Suresh is already pending consideration before NCLT much before institution of this suit. Under such circumstances, in view of bar mentioned in Section 430 of the Companies Act, this court has no jurisdiction to entertain this suit and the jurisdiction of this court is completely barred. All these circumstances establishes that suit filed by the plaintiff is hit by the provisions of Sec. 430 of the Companies Act and thereby liable to be rejected under Order VII Rule 11(d) of CPC. Accordingly, I answer Point No.1 in the **Affirmative**.

9. **Point No.2**: In view of my finding on point No.1 in the Affirmative, I proceed to pass the following:

ORDER

Application filed by defendants 1 to 3 under Order VII Rule 11(d) R/w Commercial Courts Act, 1986 seeking to reject the plaint and thereby dismiss the suit filed by the plaintiff is allowed with costs.

Plaint is accordingly rejected on account of suit being barred by the provisions of Sec. 430 of the Companies Act 2013.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open court on this the **17th Day of February, 2022**)

(LATHAKUMARI M)
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Order pronounced in the open court
vide separate detailed order

ORDER

Application filed by defendants 1 to 3 under Order VII Rule 11(d) R/w Commercial Courts Act, 1986 seeking to reject the plaint and thereby dismiss the suit filed by the plaintiff is allowed with costs.

Plaint is accordingly rejected on account of suit being barred by the provisions of Sec. 430 of the Companies Act 2013.

(LATHAKUMARI M)
LXXXV ACC & SJ, BENGALURU.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY 2021

PRESENT

THE HON'BLE MR.JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

COMMERCIAL APPEAL No.61/2021

BETWEEN:

C.KRISHNIAH CHETTY & SONS PRIVATE LIMITED
AN INDIAN COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
CIN: U27205KA1979PTC003692
HAVING ITS REGISTERED OFFICE AT
35, COMMERCIAL STREET
BENGALURU-560 001.

AND CORPORATE OFFICE AT
THE TOUCHSTONE, A BLOCK
3-3/1 MAIN GUARD CROSS ROAD
BENGALURU-560 001.
REPRESENTED HEREIN BY ITS
CHIEF FINANCIAL OFFICER
SRI S.A.SURESH
S/O SRI A.S.ARUNACHALAM. ... APPELLANT

(BY SRI.AMIT SIBAL, SENIOR COUNSEL FOR
SRI SIVARAMAN VAIDYANATHAN, ADV.)

AND:

1. DEEPALI COMPANY PRIVATE LIMITED
AN INDIAN COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
CIN: U03691K1982PTCOO4687
35, COMMERCIAL STREET

BENGALURU-560 001
REPRESENTED HEREIN BY ITS DIRECTOR
SRI C.GANESH NARAYAN
S/O LATE SRI C.V.NARAYAN.

2. SRI C.GANESH NARAYAN
S/O LATE SRI C.V.NARAYAN
INDIAN, HINDU, AGED ABOUT 42 YEARS
RESIDING AT 2A, NITESH MAYFAIR
KASTURBA CROSS ROAD
BENGALURU-560 001.
3. SMT.C.VALLI NARAYAN
W/O LATE SRI C.V.NARAYAN
INDIAN, HINDU, AGED ABOUT 77 YEARS
RESIDING AT 44 OSBORNE ROAD
ULSOOR, BENGALURU-560 042.
4. SMT.VIDYA NATARAJ
W/O SRI C.GANESH NARAYAN
INDIAN, HINDU, AGED ABOUT 42 YEARS
RESIDING AT 2A, NITESH MAYFAIR
KASTURBA CROSS ROAD
BENGALURU-560 001.
5. BLUESTONE JEWELLERY &
LIFESTYLE PRIVATE LIMITED
AN INDIAN COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
CIN: U72900KA2011PTC059678
SITE NO.89/2, LAVA KUSHA ARCADE
MUNNEKOLAL VILLAGE
OUTER RING ROAD,
MARATHALLI
BENGALURU-560 037.
REPRESENTED HEREIN BY ITS
CHIEF EXECUTIVE OFFICER
SRI GAURAV SINGH KUSHWAHA.

.RESPONDENTS

(BY SRI UDAY HOLLA, SR.COUNSEL FOR
Ms.KRUTIKA RAGHAVAN, ADV. FOR C/R1 TO R3)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 R/W ORDER 43 RULE 1(r) OF THE CPC, PRAYING TO SET ASIDE THE IMPUGNED ORDER AT ANNEXURE-A DATED 20.02.2021 PASSED BY THE HON'BLE LXXXII ADDL. CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT-CCH 83 AT BENGALURU IN I.A.Nos.1,2 AND 3 IN COM.O.S.No.306/2020, ETC.,

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.04.2021 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **VISHWAJITH SHETTY J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The instant commercial appeal is filed by the appellant, who is the plaintiff before the trial court seeking to set aside the order dated 20th February 2021 passed by the LXXXII Addl.City Civil and Sessions Judge and Commercial Court, Bengaluru, on I.A.Nos.1 to 3 in Commercial O.S.No.306/2020 and the appellant has also filed the following I.As. in this appeal:

- a) I.A.No.1/2021 seeking stay of the impugned order;
- b) I.A.No.2/2021 for production of additional documents;
- c) I.A.No.3/2021 for an order of temporary injunction restraining the respondent No.1 to 3 from using the disputed registered trademarks until final disposal of the appeal;

- d) I.A.No.4/2021 for an order of temporary injunction restraining the respondent Nos.1 to 3 from using any products or services connected with the jewellery business, the disputed trademarks until final disposal of the appeal;
- e) I.A.No.5/2021 for staying the operation of the common order in I.A.Nos.1 to 3 dated 20.2.2021 and all further proceedings in Com.O.S.No.306/2020 and all further proceedings therein.

2. The appellant, a Private Limited Company had filed Commercial O.S.No.306/2020 before the trial court praying for a judgment and decree of perpetual injunction restraining the respondents and persons claiming through or under them from using the trademarks "*C.Krishniah Chetty Corp., C.Krishniah Chetty & Co., Chetty & Co. Chetty, C.Krishniah Chetty & Co.1869, Chetty & Co. 1869, Chetty 1869.*"

3. The appellant Company is engaged in the business of Gems and Jewellery. In the year 1869 Sri.C.Krishnaiah Chetty had commenced the jewellery business in the property bearing No.35, Commercial Street, Bangalore. After his death, the business was carried on by his son Sri.Adinarayana Chetty and

grandson Sri.Venkatachalapathy Chetty until their demise in the year 1955 and 1956 respectively. Subsequently C.V.Narayana, who is the father of respondent No.2 and late husband of respondent No.3 herein and C.V.Hayagriv carried on the said family business as a partnership firm with equal share in the profits.

4. On 01.04.1958, a partnership firm was constituted by Sri.C.V.Hayagriv and late Smt.C.V.Ashwathamma acting for herself and as a guardian of her minor son C.V.Narayana and the aforesaid first partners had admitted the minor C.V.Narayana to the benefits of the partnership and it was also recognized and agreed by the parties that the jewellery business was taken over as a family assets and divided into equal shares between C.V.Hayagriv and minor C.V.Narayana represented by his mother and guardian Smt.Ashwathamma. The Deed of Partnership dated 01.04.1958 was amended and re-constituted on 02.10.1978. The appellant Company was incorporated

on 24.12.1979 by Sri.C.V.Narayana and C.V.Hayagriv and subsequently the appellant Company was included as a partner of the partnership firm under a Deed dated 03.01.1980. In a Board Meeting dated 19.03.1980, a decision was taken to dissolve the partnership firm and the business and assets of the said firm was taken over by the appellant Company and by Deed of Dissolution dated 28.04.1980, the partnership firm was dissolved and the business of the said firm was taken over by the appellant Company along with all its assets and liabilities which included the trademark of the partnership firm.

5. The family of C.V.Narayana and C.V.Hayagriv held 50% equity shares each in the company. After the death of C.V.Hayagriv, his son C.Vinod Hayagriv, wife Vishala Hayagriv and daughter-in-law Triveni Vinod are holding 50% equity shares in the company while the remaining 50% shareholding of the company is held by respondent Nos.2 and 3, who are the son and widow of C.V.Narayana.

6. Respondent No.1 is a Company engaged in the business of Gems and Jewellery and was incorporated in the year 1982 by Vinod Hayagriv, C.Vishala Hayagriv and C.V.Narayana. Initially both branches of family held shares in respondent No.1 Company. Subsequently the entire shareholding of respondent No.1 Company was transferred to the name of respondent No.2 herein at a fair market value.

7. Presently respondent Nos.2 and 3 are the Directors and shareholders of respondent No.1 Company. The appellant and respondent No.1 carried on their business in the same premises and the registered office of both the companies is also located in a common premises. Respondent no.4 is the wife of second respondent and respondent no.5 is a Company, which has been marketing the business of the first respondent Company online.

8. Sri.C.V.Hayagriv's family later on had incorporated Company known as "*C.Krishnaiah Chetty Jewellery Pvt.Ltd.*" and allegedly diverted the business

of the appellant Company to the newly incorporated Company. In view of various acts of oppression and mismanagement including diversion of business from the appellant Company, there was discord in the family and therefore, a family settlement agreement was entered into between the two branches of the family on 09.01.2014 for amicable division of the business of the appellant Company and the appellant, all C.K.C. entities, all shareholders of both the branches of the family, respondent No.1 and C.Krishnaiah Chetty Jewelleries Private Limited, which was a Company incorporated by the family of C.V.Hayagriv, were the signatories to the family settlement agreement.

9. After the execution of the family settlement agreement, alleging that C.V.Hayagriv and his family members had further indulged in oppression and mismanagement, respondent no.3 herein filed a Company Petition on 16.09.2014 before the Company Law Board, Chennai *inter alia* seeking proportional representation on the Board, maintenance of *status quo*

until the family settlement agreement is final and to restrain C.V.Hayagriv and his family members from diverting the business of appellant Company.

10. The said case was subsequently transferred to N.C.L.T., Bangalore and numbered as T.P.No.65/2016. During the pendency of the said petition, on 05.03.2018 C.V.Hayagriv and his family had filed I.A.No.54/2018 in the said case *inter alia* seeking to restrain respondent Nos.2 and 3 herein from carrying on competing business in the very same premises. The said application and the main petition were subsequently dismissed by N.C.L.T., Bangalore on 24.01.2019. Being aggrieved by the order dated 24.01.2019, C.V.Hayagriv and his family members had filed Company Appeal No.33/2019 while Company Appeal No.65/2019 was filed by the third respondent herein challenging the very same order before the N.C.L.A.T., New Delhi. Subsequently Company Appeal no.33/2019 was withdrawn before the N.C.L.A.T. while Company Appeal no.65/2019 is pending consideration.

On 19.12.2019, the appellant Company had undertaken before the N.C.L.A.T., New Delhi in Company Appeal No.65/2019 that no Board meeting will be held until further orders from the said Tribunal. The said order is still in force.

11. In the meanwhile, it appears that the first respondent Company had filed certain applications for registration of identical trademarks and objections were filed by the appellant Company for the same. The competent authority while allowing some of the applications had also rejected a few applications. Being aggrieved by the registration of certain trademarks in favour of the first respondent Company, the appellant had filed rectification proceedings before the Intellectual Property Appellate Board on 14.09.2020. During the pendency of the said proceedings, the present suit was filed on 02.11.2020. During the pendency of this suit, the Intellectual Property Appellate Board had granted an interim order staying

the operation of the first respondent's trademarks vide its order dated 19.01.2021.

12. The respondents after service of notice in the present suit had filed a detailed written statement. According to the respondents, C.Vinod Hayagriv and his family members, who have got 50% shareholdings in the appellant Company, had got this suit filed against the respondents for the alleged infringement of trademarks of the appellant by the respondent Nos.2 and 3 who are the holders of remaining 50% shares of the appellant Company. The respondents in their written statement in addition to traversing the plaint averments have also raised an objection with regard to the maintainability of the suit on the ground that the suit has not been instituted by a competent person and the person who has signed the pleadings and instituted the suit has not been authorised by the company by passing a Board resolution to the said effect.

13. In the suit, the appellant had also filed three applications. I.A.Nos.1 and 2 are filed by the appellant

under Order XXXIX Rule 1 and 2 read with Section 151 of CPC and I.A.No.3 is filed under Order XXXIX Rule 7 read with Section 151 of CPC. I.A.No.1 is filed seeking for grant of ad-interim order of temporary injunction restraining the opponents/defendants from using in relation to any products or services connected with the jewellery business in classes 14, 16, 21, 35, 36, 37 and 42 and the disputed trademarks. I.A.No.2 is filed seeking to grant an ad-interim order of temporary injunction restraining the opponents/defendants from using any other trademark in relation to any business amounting to passing off of the goodwill and reputation in and to the plaintiff's earlier well known house marks till disposal of the suit. I.A.No.3 is filed seeking for an order to direct the defendants to preserve any/all materials bearing the identical and deceptively similar trademarks mentioned in the application. The respondents had filed objections to the said applications.

14. The trial court after hearing the arguments of the learned counsel appearing on both sides had formulated the following points for consideration :

"1. Whether the applicant/plaintiff proves the prima facie case about alleged using of Trademarks by the defendants as contended in I.A.Nos.I and II?

2. Whether the balance of convenience lies in favour of the applicant/plaintiff:

3. Whether the applicant/plaintiff suffers any irreparable injury which cannot be compensated in terms of money if the temporary injunction is not granted?

4. Whether the defendants are directed to be ordered to preserve any/all materials bearing the identical and similar trademarks to that of the plaintiff as prayed in I.A.No.III?

5. What order?"

15. The trial court vide the order impugned having answered all the points for consideration in the

negative has also observed that the suit itself is not maintainable without resolution of Board of Directors of the Company delegating authority to file the suit and it has been made clear that such an observation about maintainability of the suit is made only for the purpose of deciding the applications.

16. In the present appeal, after service of notice, the defendants have filed a detailed statement of objections and have raised preliminary objection with regard to the maintainability of the appeal on the ground that no Board resolution or authorisation has been submitted by the signatory to the appeal who is the alleged Chief Financial Officer of the appellant Company to file the present appeal on behalf of the appellant. Having regard to this preliminary objection, this court on 20.04.2021 at the request of learned counsel for the appellant had granted time to argue the matter on the issue of maintainability and directed relisting of the matter on 23.04.2021. On 23.04.2021, learned Senior Counsel Sri. Amit Sibal appearing on

behalf of the appellant and learned Senior Counsel Sri.Uday Holla appearing on behalf of the respondents have made their submissions regarding maintainability of the present appeal.

17. Learned Senior Counsel for the appellant submitted that the present appeal is maintainable and is validly filed. He has relied upon the judgment of the High Court of Delhi in the case of **Glaxo Group Ltd. and Another -vs- Sunlife Sciences Pvt.Ltd.**¹ wherein in paragraphs-19 and 20, it is observed as under:

*"19. In case titled **Haryana Financial Corp. & Anr. v. Jagdamba Oil Mills & Anr., AIR 2002 SC 834**, the Supreme Court has very categorically laid down that while applying the law enunciated in the particular case, the Court should not act mathematically and the law which is laid down in the reported case should not be applied like theorems. The facts of the reported judgment in **Electric Construction Company** case (supra) must be seen in the light of these facts. The reasons for distinguishing the facts of that case have been given herein before, which was primarily the nature of the suit as well as the fact that the said suit was being*

¹ 2011(45) PTC 561 ((Del)

decided finally on merits while as in the instant case Court has to decide the application under Order XXXIX Rules 1 and 2 CPC only at this stage.

20. In addition to this, the Apex Court in **Sangram Singh v. Election Tribunal (AIR 195 SC 425)** observed that:

'A code of procedure is procedure, something designed to facilitate justice and further its ends : not a Penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.'

18. He has also relied upon Order XXIX Rule 1 of CPC and contended that the present appeal filed by the Company represented by its Chief Financial Officer is valid and in support of his contention, he has relied upon a judgment of the Bombay High Court in the case of **The Calico Printers' Association Ltd. -vs-**

A.A.Karim and Bros.,² wherein it has been held as follows:

"the proper construction to put upon the two rules taken together is this, that under Order VI, Rule 14, the pleading must be signed by the party, but where the party is a company and therefore unable to sign, it necessarily follows, having regard to the words " or for other good cause," that the last part of the section always applies in the case of a company, and that the company therefore can always authorise some person to sign on behalf of the company. If the company does not choose to do that, it can act under Order XXIX, Rule 1, i.e., it can rely on that order as in fact constituting an agent to sign without the necessity of giving any express authority. In that way Order XXIX is read as merely permissive and not mandatory, In point of form it is clearly permissive and not mandatory."

19. He has also relied upon the judgment of the High Court of Allahabad in **Bhanu Pratap Mehta -vs-**

² AIR 1930 BOM 566

Brij Leasing (P) Ltd. and Others³ wherein in paragraphs -13 and 14 it is held as follows:

13) In the case of Bharat Petroleum Corporation Limited v. M/s. Amar Autos, 2008(5) ADJ 584 (DB), a similar argument has been raised by the learned counsel for the respondent relying upon the decision of the Delhi High Court in the case of M/s. Nibro Limited v. National Insurance Company Ltd. (supra). This Court negated the submissions and held as follows :

"Upon considering the pros and cons of the matter we are of the view that the learned Judge of the Court below has proceeded in a wrong premises and with hot-haste. According to us, a power of attorney or an affidavit of such nature is only required to prima facie satisfy the Court that a company or corporation or a body corporate has presumably proceeded with the suit under its seal and signature, it has nothing to do with the registration of the document unless it is compulsorily remittable. Persuasive value of M/s Nibro Ltd. (supra) cannot pursue us. There is a thinner line in between authorization to sign and verify the pleadings, and to institute a suit on behalf of the corporation, company or a body corporate. Whenever a person is authorised to sign and verify the pleadings other than verification of plaint, written statement, memorandum of appeal, etc., it is doing so by filing affidavit in support of

³ 2011(4) ADJ 125

such contentions. Therefore, it stands on a better position than ordinary verification. But a person when verifies the plaint, written statement or memorandum of appeal, it is a verification simplicitor, meaning thereby that the verification part is also to be evidently proved unlike an affidavit, which itself is an evidence. Hence, authorization to institute a suit stands in the lower side than putting signature and verifying a pleading by way of an affidavit. On the other hand, signature and verification of the pleading of a plaint cannot be made for the sake of signature and verification alone but for the purpose of filing of the same before the Court either by him or by his learned Advocate. As soon as it is filed, the same will be treated to be institution of such proceeding by the person who has signed and verified. It is automatic. Institution of suit and right to institute the suit are distinct and different. The argument of Mr. Shashi Nandan restricted only to the first part of Order XXIX, Rule 1 of C.P.C. but not to the last part. If the suit is proceeded and the evidence is led and if any of the defendants want to challenge the verification of the plaint, he can call the deponent as witness for the purpose of examination. But Court cannot prevent any one from instituting a suit when his authority is apparently satisfactory. No body will be prevented from enforcing his legal right. It is a gross mistake on the part of the Court below to construe that the power of attorney should be registered and then only the suit can be instituted by a representative of the company or corporation. Moreover justification of filing the plaint by the authorised representative of the corporation or company will be

considered from the practical point of view. If the Court below is not happy, it could have called upon the company to file an affidavit of competency, which is desirable under such circumstances, but not outright rejection of the plaint. Therefore, from any angle the order/s impugned appear to be perverse in nature. Thus, in totality the orders impugned in both the appeal cannot be sustained. Hence, the orders dated 24th January, 2008 passed by the Court below in the above referred suits, impugned in the instant appeals, are set aside. Thus, both the appeals are allowed without imposing any cost.

(14) In my view the Division Bench decision of this Court referred hereinabove squarely covers the issue."

20. He has further relied upon the judgment of the High court of Delhi in the case of **Seritec Electronics Pvt.Ltd. -vs- M/s.Computer Peripheral Solutions⁴** wherein it is observed as follows:

"A similar issue has been dealt with by me in the judgment reported as Mahanagar Telephone Nigam Ltd. Vs. Smt. Suman Sharma 2011 (I) AD Delhi 331 wherein I have relied upon the judgment of the Supreme Court in the case of United Bank of India Vs. Naresh Kumar & others

⁴ MANU/DE/0763/2014

(1996) 6 SCC 660 to hold that on technical grounds suits should not be dismissed if they are contested to the hilt i.e till last stage. I have also held in the judgment in the case of Smt. Suman Sharma (supra) that issue of authorization for filing of the suit is only relevant when there are disputes inter se shareholders i.e there are two groups of shareholders with respect to control of the company, and otherwise Order 29 Rule 1 CPC empowers any principal officer of a company to institute and continue the suit. The relevant paras of the judgment in the case of Smt. Suman Sharma (supra) read as under:-

"4. This aspect, with respect to the authority to sign and verify the suit by a principal officer has been dealt with by a Division Bench of this Court in the case of Kingston Computers (I) P. Ltd. Vs. State Bank of Travancore 153 (2008) DLT 239 (DB) and in which, it has been held that a principal officer is authorized by virtue of Order 29 Rule 1 CPC not only to sign and verify the pleadings, but also therefore to institute the suit."

21. Learned Senior Counsel has also argued that the defect in the present appeal is a curable defect and the same is not fatal. He has submitted that such defect can be cured subsequently by ratification. In

support of his argument, he has relied upon the judgment of the High Court of Bombay in **Alcon Electronics Pvt.Ltd. -vs- Celem S.A.**⁵. wherein it is held as follows:

"In my view the suit did not suffer from any jurisdictional infirmity and even if there was any such defect in not passing a specific resolution for filing a suit against the defendant, the same was curable and thus plaint could not have been rejected on the ground of non-compliance of passing of a specific resolution."

"The Supreme Court has held that disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11(d) of the Code of Civil Procedure. Such provision applies in cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. The averments in the plaint are the germane, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. Supreme Court has held that it should

⁵ 2015 (4) BomCR 107

appear from the averments in the plaint itself that the same is barred by any law. It is not the case of the respondent that the suit, from the averments in the plaint itself, can be said to be barred by law. Learned counsel appearing for the respondent does not dispute the statement of the appellant that the defect if any in not passing any specific resolution authorising a Director to file a suit on behalf of the company against the defendant is a curable defect."

22. Per contra, learned senior counsel Sri.Uday Holla appearing for the respondents has contended that in the written statement filed in the suit and also in the statement of objections filed in the present appeal, the respondents have categorically raised a preliminary objection with regard to the locus of the Chief Financial Officer to represent the Company in the suit and in the appeal, in the absence of a valid resolution to the said effect by the Board of Directors of the Company as required under Section 291 of the Companies Act, 1956. In support of his argument, he has relied upon

the judgment of the Delhi High Court in the case of ***M/s.Nibro Limited -vs- National Insurance Co.Ltd.***⁶ wherein at paragraphs-12, 13, 14 and 22 it is observed as follows:

"12. Order 3 Rule 1 of the Code of Civil Procedure reads thus :

"Any appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent or by a pleader appearing, applying or action, as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person."

Order 29 Rule 1 of the Code of Civil Procedure reads thus :

"In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or be any director or other principal officer of the corporation who is able to depose to the facts of the case."

13. Order 3, rule 1 provides that any appearance, application or act in or to any

⁶ AIR 1991 DELHI 25

court required or authorise by law can be made or done by the party in person or by his recognized agent or by a pleader appearing, applying or acting, as the case may be, on his behalf. Provided of course, such an appearance, application or act in or to any court is required or authorised by law to be done or done by a party in such court. Where, however, there is an express provision of law, then that provision will prevail. Thus, if an authority is given to a pleader or a recognised agent as provided by law, the recognised agent or pleader can file an appearance or file a suit in court if the party himself is not in a position to file it. In my view, if a party is a company or a corporation, the recognised agent or a pleader has to be authorise by law to file such a plaint. Such an authority can be given to a pleader or an agent in the case of a company by a person specifically authorised in this behalf. In other words, a pleader or an agent can be authorised to file a suit on behalf of a company only by an authorised representative of the company. If a director or a secretary is authorised by law, then he can certainly give the authority to another person as provided under Order 3, rule 1.

14. Order 29, rule 1 of the Code of Civil Procedure provides for subscription and verification of pleadings and states that in suits by or against the corporation, any pleadings may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

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22. On the analysis of the judgments, it is clear that Order 29, rule 1 of the Code of Civil Procedure does not authorise persons mentioned therein to institute suits on behalf of the corporation. It only authorises them to sign and verify the pleadings on behalf of the Corporation.. .

23. He submits that the said judgment in the case of **M/s.Nibro**(supra)has been confirmed by the Hon'ble Supreme Court in the case of **State Bank of Travancore -vs- Kingston Computers India Private Limited⁷ Bank** and he refers to paragraph-12 and 14 of the said judgment which reads as follows:

"12. The trial Court then referred to the judgments of the Delhi High Court in M/s. Nibro Limited v. National Insurance Company Limited AIR 1991 Delhi 25, Shubh Shanti Services Limited v. Manjula S.Agarwalla and others (2005) 5 SCC 30, Delhi High Court (original side) Rules, 1967 and proceeded to observe:

".....As already stated, it has not been averred in the plaint nor sought to be proved that any resolution had been passed by the Board of Directors of the plaintiff company authorising Shri A.K.

⁷ (2011) 11 SCC 524

Shukla to sign, verify and institute the suit. It has also not been averred that the memorandum/articles of the plaintiff company give any right to Shri A.K. Shukla to sign, verify and institute a suit on behalf of the plaintiff company. It, therefore, follows that the plaint has been instituted by Shri A.K. Shukla only on the authority of Sh. Raj K.Shukla, CEO of the plaintiff company. Such an authority is not recognized under law and, therefore, I held that the plaint has not been instituted by an authorised person. Issue No.1 is accordingly, decided against the plaintiff and in favour of the defendants."

13.

14. In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K.Shukla was appointed as a Director of the company and a resolution was passed by the Board of Directors of the company to file suit against the appellant and authorised Shri Ashok K.Shukla to do so. The letter of authority issued by Shri Raj K.Shukla, who described himself as the Chief Executive Officer of the company, was nothing but a scrap of paper because

no resolution was passed by the Board of Directors delegating its powers to Shri Raj K.Shukla to authorise another person to file suit on behalf of the Company."

24. He submits that when the suit is not properly instituted and when final relief cannot be granted in such a suit, there cannot be any interim orders or orders of injunction granted in such a suit. In support of his contention, he has relied upon the judgment of the Apex Court in the case of **Cotton Corporation of India Limited -vs- United Industrial Bank Limited and Others**⁸, by referring to para-10 of the said judgment, which reads as under:

"10. Mr Sen, learned counsel for the respondent Bank, contended that Section 41(b) is not at all attracted because it deals with perpetual injunction and the temporary or interim injunction is regulated by the Code of Civil Procedure specially so provided in Section 37 of the Act. Expression 'injunction' in Section 41(b) is not qualified by an adjective and therefore, it would comprehend both interim and perpetual injunction. It is, however,

⁸ (1983) 4 SCC 625

true that Section 37 specifically provides that temporary injunctions which have to continue until a specified time or until further order of the court are regulated by the Code of Civil Procedure. But if a dichotomy is introduced by confining Section 41 to perpetual injunction only and Section 37 read with Order 39 of the Code of Civil Procedure being confined to temporary injunction, an unnecessary grey area will develop. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12 : 1952 SCR 28 : 1951 SCJ 764] a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that 'an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding'. If this be the purpose to achieve which

power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted. To illustrate this point, let us take the relief which the Bank seeks in its suit. The prayer is that the Corporation be restrained by an injunction of the court from presenting a winding-up petition under the Companies Act, 1956 or under the Banking Regulation Act, 1949. In other words, the Bank seeks to restrain the Corporation by an injunction of the court from instituting a proceeding for winding up of the Bank. There is a clear bar in Section 41(b) against granting this relief. The court has no jurisdiction to grant a perpetual injunction restraining a person from instituting a proceeding in a court not subordinate to it, as a relief, ipso facto temporary relief cannot be granted in the same terms. The interim relief can obviously be not granted also because the object behind granting interim relief is to maintain status quo ante so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings."

25. We have carefully considered the arguments addressed by the learned Senior Counsels appearing for

the rival parties and also perused the entire material available on record.

26. The question that arises for consideration in this appeal is:

"Whether, in the absence of the Board Resolution, can a Chief Financial Officer or any other Principal Officer of a Private Limited Company institute a suit/appeal or any other legal proceedings on behalf of the Company against its shareholders on the strength of Order XXIX Rule 1 of the Code of Civil Procedure, 1908?"

27. Learned Senior Counsel Sri. Amit Sibal appearing on behalf of the appellant has strongly relied upon Order XXIX Rule 1 of CPC in support of his argument that the present appeal filed by the Chief Financial Officer of the appellant Company is maintainable and he has also contended that the defect, if any, in instituting the suit or filing the appeal

is a curable defect. Order XXIX Rule 1 CPC reads as follows:

"1. Subscription and verification of pleading.- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

28. On the reading of said provision of law, it is very clear that Order XXIX Rule 1 CPC only defines the person who is authorised to sign or verify the pleadings on behalf of the Company and it does not authorise any person mentioned therein to institute suits or appeals on behalf of the Company. The said provision of law comes into operation only after proceedings have been validly commenced and itself does not authorise a person to institute suits or any other legal proceedings. Defect in filing of a suit or appeal would go to the very root of the matter.

29. It is true that a suit cannot be thrown out at the inception or a party cannot be non-sued on the ground of technicalities but while considering an application for interim orders or interim injunctions, the court must *prima facie* satisfy itself that "*a triable case*" is *prima facie* made out by the party approaching the court. Each case has to be considered on the facts of the said case and merely for the reason that a suit cannot be thrown away at the inception level on the ground of technicalities, it does not give a right to a party to seek any interim orders or interim injunctions in such suits unless the party *prima facie* satisfies with regard to the maintainability of the suit. When the question of maintainability of a suit or any other legal proceedings is raised, which would go to the root of the matter, the same requires to be considered by the court for its *prima facie* satisfaction before proceeding further in the matter.

30. Section 291 of the Companies Act, 1956 reads as follows:

"291. GENERAL POWERS OF BOARD.-

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do :

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting :

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made."

31. A Company duly incorporated and registered is a distinct and independent legal person and its assets are separate from its members, it can sue and be sued in its own name. The Company being a juristic person needs somebody to act on its behalf and manage the affairs of the Company. A reading of Section 291 of the

Companies Act makes it clear that the Board of Directors have been given all the powers of the Company except those which are required to be exercised in the General Meeting of the Company.

32. The learned counsel for the appellant has relied upon the judgment of High Court of Delhi in ***Seritec Electronics Pvt.Ltd.'s*** case (supra) and in the said case, a reference has been made to the case of ***Mahanagar Telephone Nigam Limited –vs- Smt.Suman Sharma (2011(I) AD Delhi 331)*** which *interalia* refers to the decision of the Hon'ble Apex Court in the case of ***United Bank of India –vs- Naresh Kumar and others ((1996) 6 SCC 660)***, wherein it is held that on technical grounds, suit shall not be dismissed. In para-5 of ***Mahanagar Telephone Nigam Limited's*** case (supra), it is observed as follows:

"5. Reference may also be made usefully to the judgment of the Supreme Court in the United Bank of India –vs- Naresh Kumar and others (1996) 6 SCC 660, in which, in para 13, it is said that there is a presumption of valid institution of a suit once the same is prosecuted for a number of years. This test as laid down by the Supreme Court is also satisfied in the present case

inasmuch as the suit in fact has been prosecuted for about two years by the appellant corporation for seeking an appropriate decree against the respondent by adducing evidence.

I may note that the appellant is a public sector undertaking and not a private company where there would be disputes between two sets of shareholders claiming right to management and one set of shareholders are opposing another set of shareholders with respect to control and management of the company. This thus is an additional fact that there can be no dispute as to the authority of the person signing/verifying the pleadings and instituting the suit."

33. Therefore, it is very clear that in the case of ***Mahanagar Telephone Nigam (supra)***, a distinction has been made with regard to a public undertaking company and a private limited company. The court has observed that in a private company, there could be dispute between two sets of shareholders claiming right to management and one set of shareholders opposing another set of shareholders with respect to control and management of the Company and in such an event, there can be a dispute as to the authority of a person signing/verifying in instituting the same. In the present case, the dispute is admittedly *interse* between the two

branches of a family, who are equal shareholders of the Company and the respondent Nos.2 and 3 being 50% shareholders of appellant Company have questioned the authority of the Chief Financial Officer of the Company to file the appeal in the absence of a Board Resolution duly authorising him.

34. In the case of ***Al-Amin Seatrans Ltd. –vs- Owners and Party interested in Vessel M.V.***⁹ it has been observed in paragraphs-23, 33, 50 and 53 as follows:

"23. It is well-settled, that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting in all other cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the Court will not unsuit a person on account of technicalities. However, the question of

⁹ AIR 1995 CALCUTTA 169

authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

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33. In the instant case it is quite clear that there were talks and consultations between the Managing Director and the Chairman which are reflected, inter alia, by the agreement between the Managing Director and the Chairman dated 12-9-91. The said agreement provided that money given as loan by the Managing Director of the plaintiff to any companies except Loyal Shipping Pvt. Ltd. would be recovered by Managing Director within 3 months time. So there was not only consultation between them, but there was an agreement that money due from Loyal Shipping Pvt. Ltd. would not be recovered. It has not also not been alleged anywhere that

there was any further or other consultation. The Managing Director knew sufficiently well that he could not get any resolution passed by the Board of Directors giving him power to institute a suit against the Loyal Shipping Pvt. Ltd. After all the Managing Director as also the Chairman of the two companies are common. It is also quite clear that no attempt was made by the Managing Director to get any specific authority to institute the suit by or in the name of the plaintiff company against Loyal Shipping Pvt. Ltd. or its vessel. The Managing Director also knew very well that he could not even get a resolution or authority in his favour even in a general meeting because he could not get any resolution passed due to the equal division in two groups and the casting vote which the Chairman could exercise. In my opinion, the right of management of the company's affairs was vested in the Board of Directors and the Managing Director could only act subject to the control and supervision of the Board of Directors. There was no specific authority granted to the Managing Director either to institute any suit or to appoint any Constituted Attorney of the plaintiff company. In my opinion, the Managing Director did not have

any power or authority in the facts and circumstances of this case to institute any suit on behalf of the plaintiff or to appoint any Constituted Attorney of the Company without prior approval of the Board of Directors.

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50. In my opinion, there are serious disputes and difference as between the Board of Directors of the plaintiff. All the four directors of plaintiff are directors or Loyal Shipping Pvt. Ltd. which has only one more director. The Chairman and the Managing Director of plaintiff and the Loyal Shipping Pvt. Ltd. which has only one more director. The Chairman and the Managing Director of plaintiff and the Loyal Shipping Pvt. Ltd. are same. There was an agreement between the Chairman and the Managing Director plaintiff in 1991 that the dues from Local Shipping Pvt. Ltd. were not to be realised. In any event, the disputes have been going on since 1991 and no subsequent accounts have been disclosed since after the accounting year 1991.

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53. I, therefore, hold that the suit has been instituted at the instance of the Managing Director alone without any specific power or authority in him to institute the suit and the Managing Director had no power either to institute the suit by himself or through his agent or to appoint any Constituted Attorney for the said purpose. The suit has been instituted without due and proper authority and the suit is, therefore, liable to be dismissed on that ground alone and all interim orders are liable to be vacated. I also hold that in any event the order dated 7th July, 1994 for arrest of the said vessel, namely Loyal Bird was obtained by suppression of material facts and/or by making false and incorrect allegations as to the material facts and the said order dated 7th July, 1994 is in any event liable to be vacated. The petitioner, in my opinion, is entitled to an order for release of the said vessel without security."

35. In the case of **M/s.Schmenger GMBH and Company Leder –vs- M/s.Saddler Shoes Pvt.Ltd.** in Civil Suit No.689/1999 decided on 29.10.2010, the

High Court of Judicature at Madras at paras-20 and 21,
it has been observed as follows:

"20. The abovesaid decision reported in 1996(60 SCC 660 = 1997(90) Comp. Cases 329 = AIR 1997 SC 3 (United Bank of India -vs- Naresh Kumar) (cited supra), has been referred to by the High Court of Himachal Pradesh in the decision reported in 2004 (118) Comp. Cases 328 (Apple Valley Resort Vs. H.P.State Elec.Board), in which it was observed by the High Court of Himachal Pradesh that Order 29, Rule 1 of CPC only authorises the persons mentioned therein to sign and verify the pleadings on behalf of a Corporation/Company and it does not authorise such persons to institute an action on behalf of a Corporation/Company; the question of authority to institute an action on behalf of a Company is not a technical matter; it has far-reaching effects and it often affects policy and finances of the Company; therefore, unless a power to institute an action is specifically conferred on a particular Director, he would have no authority to bring an action on behalf of the Company; the power to institute an action on behalf of the Company can be conferred on a Director or any other Officer of the Company only by the Board of Directors by way of a Resolution in that regard; in the absence of a specific provision of the Board of Directors authorising the Liaison Officer to institute the petition (suit) for and on behalf of the Company or power conferred on the Director by the Memorandum and Articles of Association, the petition (suit) cannot be said to have been laid by a duly authorised and competent person for and on behalf of the Company; the High Court of

Himachal Pradesh further held that the suit was bad and liable to be dismissed on that ground alone.

21. Since the plaintiff neither filed the Memorandum/Articles of Association, nor the Resolution of the Board of Directors of the Company, authorising the Liaison Officer namely the person to verify the plaint and institute the suit. Hence, as per the decisions cited above, I am of the view that the suit itself is not maintainable."

36. In the case of **Naresh Kumar (supra)** the Hon'ble Supreme Court in para-10 has observed as follows:

"10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29

can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a complaint is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

37. The Hon'ble Supreme Court in **Naresh Kumar's** case (supra) has therefore stated that a suit filed on the strength of Order XXIX Rule 1 of CPC needs ratification which could be either express or implied.

38. Even in the case of **Alcon Electronics Pvt.Ltd.** (supra), it has been held that the defect, if

any, in not passing any specific resolution authorizing the Director to file a suit on behalf of the Company against the defendant is a curable defect, which means such action needs to be ratified.

39. In the present case, the dispute is *interse* between the two branches of a family holding equal shareholdings in the Company. Though the defect in filing the suit or an appeal in the absence of a Board Resolution by a Company is a curable defect, which can be cured by a express or implied ratification by a Board Resolution, such an eventuality is completely ruled out in the present case having regard to the fact that the present case has been initiated by the Company by its Chief Financial Officer against 50% shareholders of the Company. Therefore, since the possibilities of a ratification being not there, the defect in instituting the suit or appeal for want of Board Resolution of the Company cannot be said to be a curable defect in the present case.

40. The judgments relied upon by the learned counsel for the appellants are either in the cases of a Public Sector Undertaking Company or in respect of a Private Company instituting a suit against a third party where the defect in instituting the suit/appeal for want of Board Resolution could be cured by ratification. But the said principle cannot be made applicable to the facts of the present case, as admittedly the dispute in the present case is *interse* between the two branches of a family, who hold equal shareholdings in the Company.

41. In none of the judgments relied upon by the appellant, it has been held that without there being a ratification by the Company, solely on the basis of Order XXIX Rule 1 of CPC, a suit can be instituted by a Director or any other principal officer of the Company. Legal proceedings initiated to protect the interest of the Company against third party and a proceedings initiated on behalf of the Company against its own shareholders stand on altogether different footings.

42. In the case of ***Nibro Limited (supra)***, the suit was instituted by a Director of the Company without the Board Resolution of the Company authorizing him to institute the suit. Even after the suit was instituted, no resolution was passed by the Company ratifying the action. Though a plea was taken that on the strength of Order XXIX Rule 1 of CPC, a suit could be maintained by the Director of the Company even in the absence of a Board Resolution, it was held that Order XXIX Rule 1 of CPC does not authorize persons mentioned therein to institute suit on behalf of the Corporation but only authorizes them to sign and verify the pleadings on behalf of the Corporation and unless a power to institute the suit is specifically conferred on a particular Director, by a resolution to the said effect, he has no authority to institute a suit on behalf of the Company. The judgment in ***Nibro Limited's case*** has been confirmed by the Hon'ble Apex Court in the case of ***State Bank of Travancore (supra)*** and therefore, it can be safely held that a suit or any other legal proceedings can be instituted by a

Director or Officer of the Company only on the strength of Board Resolution by the Company to the said effect and in the absence of such a Board Resolution, if a suit or legal proceedings is instituted, then necessarily there has to be a resolution by the Company ratifying the defect, failing which the suit or legal proceedings cannot be maintained. Therefore, the question framed for consideration in this appeal is answered negatively.

43. In the case of ***Kashi Math Samsthan –vs- Srimad Sudhindra Thirtha Samsthan***¹⁰, the Hon'ble Supreme Court in para-13 has observed as follows:

"13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned

¹⁰AIR 2010 SC 296

would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted."

44. In the present case, it is not in dispute that the Company has not authorized the Chief Financial Officer by passing a Board Resolution to institute the suit or appeal on behalf of the Company. In a suit or appeal, "a *prima facie* case" would depend upon the facts of the said case and in the present appeal having regard to the undisputed facts of the case, wherein equal shareholders of the Company have been fighting against each other, in the absence of a Board Resolution, the suit or appeal instituted by the Chief Financial Officer of the Company is definitely defective and therefore, there is no *prima facie* case made out for a trial in the suit and in the absence of the party making out a case for trial, the prayer made by the said

party for grant of interim orders/interim injunctions in such a suit cannot be favoured.

45. The trial court has considered all these aspects of the matter and has rightly rejected the applications I.A.Nos.1 to 3 filed in the suit and while disposing of the applications, the Trial Court has observed that the suit itself was defective and not maintainable. The said order does not suffer from any illegality or perversity, which calls for interference by this court.

46. The Hon'ble Supreme Court in the case of ***Skyline Education Institute (India) Pvt.Ltd. –vs- S.L.Vaswani and Another***¹¹ has held that, in the absence of an error apparent or perversity, the order passed by the court of first instance exercising its discretion to grant or refuse to grant relief of temporary injunction should not be interfered with.

¹¹2010 AIR SCW 628

47. Under the circumstances, we do not find any grounds to interfere with the order passed by the Trial Court.

Accordingly, the Commercial Appeal stands dismissed.

In view of the disposal of the appeal, the pending applications i.e., I.A.Nos.1/2021 to 5/2021 do not require consideration and accordingly, they stand disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KNM/-

ITEM NO.28

COURT NO.1

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No. 10605/2023

[Arising out of impugned final judgment and order dated 27-05-2021 in COMAP No. 61/2021 passed by the High Court of Karnataka at Bengaluru]

C. KRISHNIAH CHETTY AND SONS PRIVATE LIMITED

Petitioner(s)

VERSUS

DEEPALI CO. PRIVATE LIMITED. & ORS.

Respondent(s)

(IA No. 156590/2023 - CONDONATION OF DELAY IN FILING, IA No. 55987/2024 - CONDONATION OF DELAY IN FILING, IA No. 55980/2024 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS, IA No. 156592/2023 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS, IA No. 55982/2024 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 54922/2024 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 55988/2024 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 54921/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 147984/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 17-01-2025 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) :

Mr. S. Niranjan Reddy, Sr. Adv.
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Ms. Anushna Satapathy, Adv.
Ms. Radhika Jalan, Adv.
Mr. Yashas J., Adv.
Ms. Widaphi Lyngdoh, Adv.
Ms. Akhila Palem, Adv.

For Respondent(s) :

Mr. Nikhil Nayyar, Sr. Adv.
Mr. Divyanshu Rai, AOR
Mr. Vishal Sharma, Adv.
Ms. Taruna, Adv.
Ms. Krutika Raghavan, Adv.
Ms. Sameeksha, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

We are informed that the civil suit has been dismissed and an appeal has been preferred by the petitioner, C. Krishniah Chetty and Sons Private Limited, which is pending before the High Court.

In view of the aforesaid position, the present special leave petition has become infructuous and, therefore, we are not going into the question(s) of law.

It will be open to the parties to raise all pleas and contentions before the High Court in accordance with law.

In case of an adverse decision, it would be open to the petitioner, C. Krishniah Chetty and Sons Private Limited, and/or the respondents to raise the question(s), which is/are left open, before this Court.

The special leave petition is accordingly dismissed as infructuous.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR