NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

M.A.No.01/2016,
M.A.No.03/2016,
T.A.No.37/2016(C.A.No.867/2015)
&
T.A.No.34/2016(C.A.No.461 /2015)

In

T P No 07/397/398/GB/2016 (C P No.969/2012)

(Gomukhi Construction Pvt. Ltd. -vs- North East Shuttles Pvt. Ltd 8s Ors.)

M.A.No.01/2016

1. M/s North East Shuttles Private Limited

2. Shoba Kikakara Mani,
Managing Director, North East Shuttles …Applicants/Respondents

-Versus-

1. M/s Gomukhi Construction Private Limited …Non-applicants/Petitioner

2. Bhanumati Nath (Dead),
Surjya Road, Agartala, Tripura.

3. Phizo Nath,
Fortune City, Flat J-201, 2nd Floor,
Ganganagar, Kolkata-700132 …Non-applicants/Respondents 3 & 4

M.A.No.03/2016

1. M/s Gomukhi Construction Private Limited … Applicant/Petitioner

Versus –

1. North East Shuttles Private Limited

2. Shoba Kikakara Mani,
6-82 Pochamma Bagh, Saroor Nagar,
Hyderabad-500035, Andhra Pradesh.

3. Bhanumati Nath (Dead),
Surjya Road, Agartala, Tripura.

4. Phizo Nath,
Fortune City, Flat J-201, 2nd Floor,
Ganganagar, Kolkata-700132. …Non-applicants/Respondents

T.A.No.34/2016 (C.A.No.461/2015)

1. M/s Gomukhi Construction Private Limited … Applicant/Petitioner

- Versus –

1. North East Shuttles Private Limited

2. Shoba Kikakara Mani,
6-82 Pochamma Bagh, Saroor Nagar,
Hyderabad-500035, Andhra Pradesh.

3. Bhanumati Nath (Dead),
Surjya Road, Agartala, Tripura.

4. Phizo Nath,
Fortune City, Flat J-201, 2nd Floor,
Ganganagar, Kolkata-700132. …Non-applicants/Respondents

T.A.No.37/2016 (C.A.No.867/2015)

1. Bhanumati Nath (Dead),
Surjya Road, Agartala, Tripura.

2. Phizo Nath,
Fortune City, Flat J-201, 2nd Floor,
Ganganagar, Kolkata-700132. …Applicants/Respondents 3 & 4

- Versus –

1. M/s Gomukhi Construction Pvt. Ltd. …Non-applicant/Petitioner

2. North East Shuttles Pvt. Ltd. …Non-applicant/Respondent No.1

3. Shoba Kikakara Mani,
6-82 Pochamma Bagh, Saroor Nagar,
Hyderabad-500035, Andhra Pradesh. …Non-applicant/Respondent No.2

PRESENT

Hon'ble Mr. Justice P K Saikia, Member (J)

Mr S. Dutta, Advocate	For applicant/respondent Nos.18e2 in M.A.01/2016 For non-applicants/respondent Nos.l & 2 in M.A.03/2016 8^ T.A.No.34/2016 (C.A.No.461/2015) & T.A.No.37/2016 (C.A.No.867/2015)
Mr S.K. Gupta, Sr. PCS & N. Sharma, PCS	For non-applicant/petitioner in M.A. No.01/2016 8g T.A.No.37/2016 (C.A.867/ 2015) For applicant/petitioner in M.A.03/2016 8g T.A.34/2016 (C.A.461/2015)
Mr T. Tewari, Advocate & Mr H. Das, Advocate	For non-applicant/respondent No.4 in M.A. No.01/2016 86 M.A.No.03/2016 & T.A.No.34/2016 (C.A.461/2015) For applicant/respondent No.4 in T.A.No.37/2016 (C.A.No.867/2015)

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M.A.No.01/2016

O R D E R

Date: 25th April 2017

This proceeding has been initiated seeking following relief(s):

"a) To allow this application and pass an order thereby recalling/amending the order dated 14.11.2014 passed by the Hon'ble Company Law Board, Kolkata Bench in Company Petition No. 969/2012 thereby directing that transfer of the 33% equity shares from M/s. Gomukhi Construction (P) Ltd to M/s. North East Shuttles (P) Ltd be made after complying with the mandatory provisions to be followed during transfer of shares under Sections 6, 44, 67, 68 and other relevant provisions of the Companies Act, 2013, the provisions of Companies (Share Capital and Debentures) Rules, 2014 as well as the provisions of Article 3 of the Articles of Association of the applicant no.1 company to secure the ends of justice and equity.

b) To direct M/s. Gomukhi Construction (P) Ltd to arrange for and submit before this Hon'ble Tribunal a proper No Due Certificate from M/s. Parichiti Software (P) Ltd regarding full repayment of the loan of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs) only which was arranged by Gomukhi Construction; and

c) To pass such further order(s) as Your Honour may deem fit and proper.

1) The non-applicant, as the petitioner, had filed a petition under Section 397/398 of the Companies Act, 1956 (In short, Act of 1956) alleging that the affairs of North East Shuttles, which was arraigned as respondent No.1 therein, were conducted with profound illegalities and irregularities by respondent Nos.2, 3 & 4 which resulted in mismanagement as well as oppression having been perpetuated upon the petitioner. On the basis of said petition, C.P.No.969/2012 was registered.

2) In the proceeding aforesaid, the respondents had filed reply and in due course, petitioner submitted rejoinder to which the respondents had filed sur-rejoinder. On completion of exchange of pleadings, the matter was heard at length by CLB, Kolkata. However, judgment was deferred on occasions, more than one since the parties thereto reportedly tried to settle their dispute in such a proceeding amicably. Ultimately, the proceeding was disposed of by the CLB, Kolkata on the basis of a purported settlement arrived at between the parties vide order dated 14.11.2014 rendered in C.P.No.969/2012.

3) The applicants herein alleged that the order dated 14.11.2014 was rendered behind their back and without their consent and approval. Since the order was passed in a most fraudulent way, the order is not binding upon the respondents in CP No. 969/2012 including respondent No.2. The applicant/respondent No.2 have contended that on 14.11.2014, the respondent No.2 appeared before the learned CLB but after signing the attendance sheet, respondent No.2 therein (who is one of the applicants herein) had left the CLB.

4) The applicant/respondent No.2 so left the CLB on 14.11.2014 at about 10-30 AM, since on that day, there was hardly any possibility of any effective order having been passed in that proceeding. However, she came to know later that on 14.11.2014, said proceeding was disposed of on the basis of purported settlement, allegedly entered into by the parties thereto which is, however, nothing but a myth only.

5) In that connection, it has been alleged that on 14.11.2014, the respondent No. 2 appeared before the CLB in her capacity as MD of the company who did not have required power and authority to enter any settlement on behalf of the respondents with the petitioner company. The fact that on 14.11.2014, none of the counsel, engaged by the respondents therein, represented the respondents before the CLB, Kolkata makes such a conclusion inevitable.

6) However, on 18.02.2015, the applicant/respondent No.2 in C.P.No.969/2012, received a sealed envelope from CLB, Kolkata and on opening the same, she found a copy of the order dated 14.11.2014 and to her utter surprise, she found that the aforesaid case was disposed of

on the basis of a purported settlement entered into by the parties to the aforesaid proceeding on 14.11.2014. According to applicant, the order dated 14.11.2014 in CP No. 969/2012 was passed behind her back and as such, same cannot be binding on her as well as on the other respondents in CP 969/2012.

7) It has further been submitted that the order which was rendered on 14.11.2014 in CP No.969/2012 had suffered from several other serious legal infirmities and in that connection, it has been contended that order dated 14.11.2014 was rendered in profound disregard to various mandatory directions contained in the Companies Act/ Code of the Civil Procedure / the Legal Services Authority Act, 1987/Companies (Shares Capital and Debentures) Rules 2014 etc.

8) According to Mr. Dutta, since the learned CLB flouted various mandatory requirements of law with profound impunity in rendering the order dated 14.11.2014, therefore, there cannot be any escape from the conclusion that such an order was secured fraudulently which, in turn, requires this Tribunal to conclude that the order dated 14.11.2014 is unsustainable in law. However, for the sake of brevity and also for the sake of convenience, I propose to discuss such allegations at appropriate time and place.

9) Such contentions were assailed by Mr. Gupta, Sr. PCS appearing for the non-applicant/ petitioner, on counts more than one, contending that the entire arguments from the side of the applicants/respondents were structured not on facts but on surmise and conjecture. In other words, M.A.No.01/2016 was structured on absolutely false and incorrect statements. Consequently, on factual count alone, the proceeding in question is liable to be dismissed.

10) In support of such contention, it has been argued that on 14. 11. 2014, the applicant along with her counsel were present before the CLB, Kolkata when the later passed the order in question in open court. Quite importantly, learned CLB passed such order after being fully satisfied that the parties thereto genuinely wanted to have their dispute in such proceeding settled amicably. Therefore, the applicant became aware of the aforesaid order on the date on which it was rendered.

11) A careful perusal of the order under challenge, having regard to the facts and circumstances in which it was rendered, more particularly, the conduct of the respondents in CP No. 969/2012 during the period up to 14th November, 2014 and thereafter, would make it more than clear that the order dated 14.11.2014 was rendered , not only in presence of the applicant/ respondent No. 2 and their counsel but same was rendered after obtaining her consent and approval to the modalities of settlement which was duly recorded in the order under challenge.

12) In the teeth of such revelations, the order dated 14.11.2014 can never be said to be illegal on any count whatsoever and as such, such an order cannot be recalled unless the opposite party in such a proceeding consented to the recall of such an order. In support of such contention, Mr. Gupta relied on the decision of --- ***Learned*** *CLB, New Delhi in Mrs. Michelle Jawad-Al-Fahoum v. Indo Saudi (Travels) (P.) Ltd, reported in* ***(****1998) 30 CLA 42 (CLB) and*（***b)*** *CLB,New Delhi in Bertrand Faure Sitzteehnik GmbH & Co. Kg. v. IFB Automotive & Seating Systems Ltd. reported in (1999) 34 CLA 277 (CLB).*

13) But then, Mr. Gupta also attacked the proceeding in hand contending that the present proceeding is untenable in law since it was not initiated in accordance with the prescriptions of various laws which hold/held the fields in question at different points of time. Once again, for the convenience of discussion, I propose to discuss all those challenge aimed at dislodging the case of the applicant at proper place and time.

14) It is pertinent to mention here that the legal representatives of both the parties have also submitted written synopsis of the oral arguments for appreciation of the Tribunal in the light of materials on record as well as various decisions, relied on by them.

15) Above being the claims and counter claims, let us see whose claims stand to reason. One may note here that the applicant / respondent No.2 has quite arduously claimed (a) that she had never consented to the disposal of C P No. 969/2012 on terms and conditions which are incorporated in order dated 14.11.2014 and (b) that such an order was rendered behind her back since she was not even in the premises of CLB when such an order was rendered on 14.11.2014. But, as stated above, such contentions are hotly disputed by Mr Gupta.

16) Since such a dispute runs through the length and breadth of the proceeding in hand and since such a dispute has huge bearing on the outcome of the proceeding in hand and also on the connected proceedings, I find it necessary to consider such an allegation before taking into account other controversies in the present proceeding.

17) But then, in order to ascertain whether or not, the applicant/ the respondent No.2 had actually left CLB premises just after her signing the attendance sheet on 14.11.2014 and came to know of such an order after receipt of sealed envelope from the CLB only on or after 18.02.2015, one needs to examine yet another serious allegation, raised from the side of the non-applicant.

18) It needs to be stated here that the non-applicant/ petitioner all along maintains that on the date aforesaid, the applicant did not receive the copy of the order dated 14.11.2014 as claimed by her. Rather, on that date, she received a letter dated 18.02.2015 from the Bench Officer,

CLB, Kolkata informing her that the petitioner in CP No.960/2014 had already discharged its part of obligations under order dated 14.11,2014 but the respondents therein did nothing to discharge their part of the duty there- under and therefore, the respondents therein were directed to fulfil their part of obligations without any further delay.

19) In order to prove such a contention, my attention has been drawn to an envelope (which was admittedly used in sending the letter dated 18.02.2015 to the respondent No.2) as well as the inscription, written on such covering. The applicants / respondent Nos 1 & 2 in CP No. 969/2012 made such an envelope a part of MA No. 01/2016. On examination of the inscription on the envelope, aforesaid, it is found that inscription, written thereon, runs as "***No.clb/kb/2(66)/2012/458".***

20) The inscription on envelope, therefore, very firmly shows that such an envelope was used in sending the letter which was numbered and identified as ***No.clb/kb/2(66)/2012/458*** *and nothing else***.** The letter bearing ***No.clb/kb/2(66)/2012/458*** is also made a part of MA No. 01/2016 which was initiated by the applicants/ respondent Nos 1 & 2 in CP No. 969/2012**.**

21) Since the letter aforesaid assumes tremendous importance in the facts and circumstances of the case in hand as it may throw sufficient light in understanding and ascertaining the dispute in the present proceeding and also to know accurately whose claim----–whether applicants/ respondents or non-applicant /petitioner –----stands to reason, I find it necessary to reproduce below such a letter:

"GOVERNMENT OF INDIA
COMPANY LAW BOARD
KOLKATA BENCH
5, ESPLANADE ROW (WEST)
KOLKATA – 700001.

No.clb/kb/2(66)/2012/458 ***Dated 18th Feb, 2015***

To
M/S North East Shuttles Pr. Ltd. & Ors.
Suriya Road,
Agartala – 799001
Tripura.

Sub: CP no.969/2012
Gomukhi Construction Pr. Ltd.
-VS-
North East Shuttles Pr. Ltd. & Ors.

Reg : Compliance of CLB's order dated 14.11.2014

Sirs/Madam

I am to refer to this office letter of even No. dated 14.11.2014, whereby a copy of the order dated 14.11.2014 passed by Hon'ble Chairman of CLB (sitting at Kolkata) has been forwarded to you and also to the petitioner.

Pursuant to the said order 14.11.2014, the petitioner, through its authorized representative, has deposited with the undersigned on 06.02.2015, all the 83 original share certificates for 41,25,000 equity shares of Rs.10/- each in the name of the petitioner Company together with executed transfer deed in respect of the said shares.

In terms of the said order, the respondents were supposed to deposit the account payee demand draft of Rs.1.00 Crore with the Bench Officer, on or before 14.02.2015 as a first instalment. It is, however, observed that the respondents have not complied with the said direction contained in the order dated 14.11.2014 within the stipulated time.

You are therefore, requested to ensure strict compliance of the order dated 14.11.2014 within the stipulated time.

Sd/- Harihara Sahoo
Bench Officer"

22) A careful perusal of the letter bearing ***No.clb/kb/2(66)/2012/458*** *clearly* reveals that said letter was sent by Bench Officer, CLB, Kolkata and he did so intimating the respondent No.1 and others that the petitioner in C.P.No.969/2012 had already discharged its obligation under the order dated 14.11.2014 whereas the respondents therein did nothing to fulfil the obligations, so imposed on them , under the aforesaid order, and, therefore, respondents were directed to discharge such obligations without delay.

23) Such disclosures far too strongly demonstrate that the claim of the applicant that she came to know about the order dated 14.11.2014 only after the receipt of the letter dated 18.02.2014 with inscription "***No.clb/kb/2(66)/2012/458***" thereon falls flat on its face and with the fall of aforesaid claim, the contention of the applicant that she had left the court on 14.11.2014 just after signing the attendance sheet too suffers a serious setback.

24) However, the above decision of mine finds support when one views the matter from a different angle. According to the applicant/respondent No.2, she left the CLB just after signing the attendance sheet –since--- on that day, there was absolutely no possibility at all of rendering any effective order from the side of the CLB, reason being that on 14.11.2014, none of the parties to the aforesaid proceeding had submitted their specific case on the proposed settlement as required under the order dated 27.06.2014.

25) These apart, on 14.11.2014, she alone appeared before the CLB from the side of respondents in C.P. No 969/2012 and she did so, not as a representative of the company, but, in her

capacity as the Managing Director of the company, who did not have the requisite authority and power to enter into a settlement for and on behalf of the company. This is more so, when aforesaid date, the respondents including the respondent No.1 Company were not at all represented by any counsel, engaged by the respondents in such a proceeding.

26) The fact that on 14.11.2014, none of the counsel, appointed by the company, signed the attendance sheet decisively shows that on such a date, the respondents were not at all represented by any engaged counsel to defend them in CP No. 960/2012. All those disclosures in their combine effects vividly evince that on 14.11.2014, it was wholly impossible for the applicants herein to enter into any sort of settlement on behalf of all the respondents, much less her entering into a settlement legally enforceable against all the respondents in CP No.969/2012 ---- argues Mr. Dutta.

27) But such an argument too is found to be factually incorrect. A perusal of the attendance sheet, submitted on 14.11.2014, unmistakably demonstrates that like many other earlier dates, on 14.11.2014 too, **Shri Patit Paban Bishwal,** one of the Advocates for the respondents in CP No. 969/2012, put his signature in the attendance sheet. Such revelation completely demolishes the contention of the applicants that on 14.11. 2012, none of their engaged Advocates represented respondents in CP No. 969/2012.

28) More importantly, the disclosure, catalogued above, also becomes a tell-tale testimony to the fact that on 14.11.2014, **at least, Shri Patit Paban Bishwal, Advocate** represented all the respondents in the aforesaid proceeding before the CLB, Kolkata. Unfortunately, for the applicants in the present proceeding, such revelation not only administers a very lethal blow to the case of the applicants on this count alone but it throws their entire case to a huge haze of suspicion and doubt.

29) But the plea of the applicants that none of the engaged counsel from the side of respondents in CP No. 969/2012 represented the respondents in said proceeding on 14.11.2014 fumbles for other reasons as well. One may note here that one of the Advocates, engaged by respondents in the aforementioned proceeding, was **Mr. R. Banerji, Sr. Advocate**. It is an established practice that the designated Sr. Advocates are not to sign the vakalatnama/ attendance sheet etc and such practice is followed everywhere. In such a scenario, it is quite but natural for Mr. R. Banerji, Sr. Advocate, not to sign the attendance sheet.

30) Therefore, the non-signing of the attendance sheet by Mr. Banerji Sr. Advocate on 14.11.2014 cannot be a testimony to the fact that on 14.11.2014, Mr. Banerji did not appear before

the CLB in connection with the aforementioned proceeding. Nor can it be proof to the fact that Mr. Banerji did not represent the respondents in CP No. 969/2012 before the CLB, Kolkata on the date aforesaid. That being the situation, the non-signing of the attendance sheet by Mr. Banerji Sr. Advocate on 14.11.2014 hardly advances the claim of the applicants on this score.

31) In so far the case of Sri Kuldip Mallik is concerned, it is found that Mr. Mallik did not sign the attendance sheet on 14.11.2014, However, one must not attach too much importance to the non-signing of the attendance sheet by Shri Mallik on 14.11.2014. This is because of the fact that on many other earlier occasions too, he did not sign the attendance sheet although his name was found recorded in the attendance sheets as the counsel for the respondents in CP. No. 069/2012.

32) In this context, it may be noted here that attendance sheet, submitted before the CLB, is not ordinary piece of paper to be thrown to the dustbin soon after the filing of the same before the CLB. Rather, they are enormously important documents which are to be preserved for a certain statutorily prescribed period since such documents record therein very many important matters including presence of the parties as well as their counsel before the CLB on a particular day.

33) Therefore, when one considers the absence of signature of Mr. Kuldip Mallik, Advocate in various attendance sheets on different dates, filed before the CLB prior to 14.11.2014, having regard to nature and importance of the attendance sheet, he would obviously find that in all the dates prior to 14.11.2014, Mr. Kuldip Mallik remained present before the CLB representing the respondents in CP No. 969/2012. Such revelations are also testimonies to the fact that on 14.11.2014 too, Mr. Mallik did present before the CLB representing the respondents in CP. No.969/2012.

34) The fact that Mr. Kuldip Mallik never objected to his name being used in the attendance sheets despite such attendance sheet did not bear his signature as well as the fact that the respondents in CP. No.969/2012 too never took any objection in showing the name of Mr. Kuldip Mallik in attendance sheets as their advocates in the aforesaid case although he did not sign those attendance sheets make such a conclusion inevitable. Any other conclusion, in my considered opinion, would be totally incompatible with the materials available on record.

35) But then, one more failure of extremely serious in nature on the part of the applicants /respondent Nos. 1 and 2 in CP. No.969/2012 throws more and more weight behind the above conclusion of mine. One may state here that while the applicants herein arduously contended that on 14.11. 2014, none of the engaged advocates represented the respondents in CP No.

969/2012, the non-applicant /petitioner hotly disputed such claim contending that on the date aforesaid all the engaged Advocates were before the CLB representing those respondents.

36) Such a dispute, therefore, presents before the Tribunal a very pertinent question, same being, whether or not, on 14.11.2014, the respondents in CPNo.969/2012 were represented by their engaged Advocates. Such a question could have easily been answered by calling some of those Advocates, who reportedly represented the respondents before the CLB on the date aforesaid as the witness (witnesses).

37) In view of strong plea from the side of the non-applicant/ petitioner that on the date aforesaid, the respondents in CP No. 969/2012 were duly represented by their engaged counsel, it became an inescapable duty of applicants/respondent Nos.1 and 2 to address such a question by calling at least one of those advocates as witness to support their claim on this score. But that was not done. Such a failure, in the face of strong denial from the side of non-applicant/petitioner, only serves to show that on 14.11.2014, the respondents in CP No. 969/2012 were duly represented by their engaged Advocates.

38) It is worth noting here that the applicants herein contend that CP No. 969/2012 was disposed of all of a sudden on 14.11.2014 on the basis of a purported settlement. But the non-applicant /petitioner disputed such a claim contending that it is not true to say that CP No. 969/2012 was disposed of on 14.11.2014 and that too, quite suddenly. **Rather there are enough materials to show that a talk of compromise had always been there between the parties to CP 969/2012 over a long period of time which, however, took final shape on 14.11.2014 at the intervention of the learned CLB, Kolkata** which was presided over by **Mr. Justice DR Deshmukh**-.

39) In support of such contention from the side of non-applicant / petitioner, my attention has been drawn to several orders, rendered during the period between 17.09.2013 and 14.11.2014. In order to know which side of the story was true, I also find it necessary to look into some the orders, so referred to by Mr. Gupta appearing for the petitioner. For ready reference, some of those orders, I have gone through are also reproduced below: -

> ***"ORDER***
>
> ***27.06.2014***
>
> *As per meeting conducted on 20.06.2014 in the office of the undersigned, the director of the petitioner company in person and respondent No.2, Shri Phizo Nath appeared and expressed willingness to settle the matter amongst themselves. The respondents agreed to pay Rs.5.60 Crores (approximately) to the petitioner in totality for exit of the petitioner by transferring its shares held in the respondent Company in favour of the respondent group or any agents or associates nominated for this purpose by the respondent group. R-2 agreed to pay part consideration by way of draft to the petitioner on*

27.06.2014 and the petitioner agreed to handover the shares held by it in the respondent company on the said date.

Ld. Pr. C.S. of the petitioner appeared and produced the share certificates for being handed over on receipt of consideration to be paid by the respondent as per assurance given on 20.06.2014. Ld. Counsel of the respondent submitted that he is yet to receive any instruction from his clients i.e. the respondent No.2 and others in this regard. However, he has agreed to consult his clients in this regard and come back to the Bench with the offer, if any, on the returnable date.

After looking into the above submissions of the rival parties, the matter is fixed for discussion on 14.07.2014 with the specific offers and compliance thereof as agreed upon by the concerned parties to be present in person on that date.

Sd/- A. Bandopadhyay
Member

O R D E R

14.07.2014

Learned counsel of the respondents appeared along with R-2 and R-4 in person. It has been submitted by R-2 that the moneys receivable from the concerned party as per the agreement have not yet been received and as a result, it has not been possible to pay the consideration to the petitioner and therefore, it has been requested that a further time of one month may be allowed to discharge the obligation cast on the respondents to make necessary payment to the petitioner.

Counsel of the petitioner has submitted that as indicated in order dated 27th June, 2014, the respondents have agreed to pay Rs.5.60 Crores (approximately) to the petitioner in exchange of transfer of shares held by the petitioner in the Company to the respondents and R-4 has further agreed to make part payment of the obligation on 27th June, 2014, but no payment has been received so far. Therefore, it has been requested that a fortnight's time may be granted to the respondents to discharge their obligations either in full or in part failing which it should be construed that the settlement has failed and further necessary action in the matter may be taken by the Hon'ble Bench.

After due consideration of the aforesaid submissions of the rival parties, it is hereby directed that the respondents shall either make full or part payment within 15 days hereof by way of bank draft made available to the Bench Officer and further time not exceeding 30 days is hereby granted to discharge the balance consideration to be paid by way of bank draft by the respondents and the same may be made available to the Bench Officer and on receipt of such full consideration, the petitioner is directed to handover the original share certificates to the Bench Officer for carrying out further action in the matter. In absence of compliance of aforesaid direction, the settlement shall be considered as failed and the order will be passed in respect of the pending C.P. No.969 of 2012 in accordance with law.

Sd/- A. Bandopadhyay
Member"

40) A perusal of the orders, rendered by CLB, Kolkata, (presided over by **Mr. A. Bandopadhyay**,) during the period from 17.09.2013 to 14.11.2014, more particularly, the order dated 27.06.2014 and 14.07.2014 clearly reveal that there had been a very sincere and earnest effort between the parties to have the disputes in C.P.No.969/2012 settled amicably. Those orders

further reveal that the parties to the aforesaid proceeding had almost arrived at an amicable settlement of such a dispute on terms and conditions mutually acceptable to them.

41) The revelations, aforementioned, clearly demonstrate that a talk of compromise had been there between the parties since long before the date on which the proceeding was allegedly disposed of on a purportedly mutually acceptable settlement. The fact that the terms and conditions of the settlement, recorded in the order in question, nearly matched the terms and conditions of the settlement, recorded in many previous orders, more particularly the order dated 27.06.2014 and 14.07.2014 make such a conclusion inevitable**.**

42) Such revelation, therefore, evinces that the claim of the applicants that the company petition was disposed of on 14.11.2014 on all of a sudden on the basis of a purported settlement, is found to be without any element of truth. The apparent falsity of above claim, in turn, makes the claim of the applicants that on 14.11.2014, the respondent No. 2 in C.P.No.969/2012 left the CLB at about 10.30 am just after signing the attendance sheet even more doubtful.

43) More and more facts, however, have supported the above conclusion of mine. A careful perusal of the various order(s) rendered in CP No. 969/2012 reveals that during the period from 17.09.2013 to 14.11.2014, CP No. 969/2012 used to be posted mostly at the interval of one and a half month or so--- although----- on some occasions, such interval got extended to a period more than two months. But such regularity was not maintained if one believes the version of applicants/ respondent Nos. 1 and 2 made in the proceeding in hand.

44) This is because of the fact that according to the applicants/ respondent Nos. 1 and 2, the CP No. 969/2012 was last posted on 14.11.2014. But thereafter, the respondent No. 2 did not hear anything from CLB about further progress in the CP No. 969/2012 till she received a letter from the CLB on 18.02.2015 when she learnt that the said proceeding was disposed of on the basis of settlement arrived at between the parties thereto on 14.11.2014. Such claim of the applicants, however, sounds not credible for reasons more than one.

45) I have already found that a matter of great importance had been dealt with by CLB Kolkata in the form of CP No.969/2012 where both the parties locked in a fierce battle. Therefore, if the CLB adjourned the proceeding without rendering any order on 14.11.2014 and allowed the matter to be drifted away aimlessly, as claimed by the applicants herein, then they must have done everything possible from their side to ensure that the case was back on track as early as possible, more so, when both the parties had huge stake on the outcome of aforesaid proceeding.

46) However, the record reveals that instead of running from pillar to post to know about the fate of such proceeding at the earliest possible time, the applicants chose to sleep over such a vital matter (which have the potentiality of making or marring their lives) for a pretty long period of time and came to know about the alleged drastic and harsh end of such proceeding only when the respondent No. 2 received a letter dated 18.02.2015 from CLB, Kolkata.

47) Such a conduct on the part of the applicant/respondent No.2 is wholly incompatible---- not only with normal human behaviour--- but---- also with her own conduct which she demonstrated in between17.09.2013 and 14.11.2014 so far her attendance before the CLB is concerned. Such disclosures once again demonstrate that the claim of the respondent No.2 that she left the CLB on 14.11.2014 just after singing the attendance sheet and that she came to know about the order in question only after 18.02.2015 is enormously suspicious.

48) Mr S. Dutta, learned counsel for the respondent No.2/applicant has again submitted that on 14.11.2014, the applicant appeared before the Tribunal in her capacity as Managing Director of the company. As a Managing Director, she did not have the necessary authority and power to enter into a binding settlement on behalf of the respondent No. 1 company with the petitioner. In other words, on 14.11.2014, her position was no better than an ordinary director of the company.

49) In that connection, it was also submitted by Mr S. Dutta that on 14.11.2014, one Bhanu Mati (since deceased) was the Chairman of the respondent No.1 company and therefore, it was she who alone could have entered into a settlement in question with the petitioner binding the respondent No.1 company and other respondents under the terms and conditions of such settlement.

50) In support of such contention, Mr. Dutta argues that said Bhanu Mati, being the Chairman of the company, was invested with all the powers to represent the company and other respondents in any dealing for and on behalf of the company. Though respondent No.2 enjoyed such powers for some time, yet, such powers were withdrawn from her by the Board by its resolution adopted on **14.01.2014.**

51) In that regard, my attention has been drawn to Section 2(54) of the Companies Act, 2013 to contend that the Managing Directors of the companies in exercise of substantial powers, conferred upon them, cannot enter into a settlement on behalf of the company. Being so, under no circumstances, it was possible for the respondent No.2/applicant to enter into a settlement on behalf of the company with the petitioner on 14.11.2014. Such contention was, however, refuted by Mr. Gupta.

52) But then, the contention that the Managing Director of a company cannot validly enter into compromise on behalf of the company has lost all its relevance, now, since I have already found that on 14.11.2014, respondent No.2 appeared before the CLB being aided and guided by a battery of duly appointed Advocates who properly represented all the respondents in CP No. 969/2012 No.1 and therefore , she had necessary wherewithal **t**o enter into settlement in question to dispose of the CP No. 969/2012 on the basis of such settlement**.**

53) However, even if one assumes for the sake of argument for a moment that on the date in question, she appeared before the CLB only as a Managing Director of the company, and that too, without being aided and guided by any Advocate, engaged by the respondents, yet then, one would find that her, being the Managing Director of the Company, gave her enormous power to enter into a settlement representing all respondents including the respondent No.1 company with the petitioner.

54) In that connection, one can peruse profitably the decision of the Karnataka High Court in the case of *Wasava Tyres A Partnership Firm Vs The Printers (Mysore) Private Limited*, reported in (2008) 86 SCL 171 (Kar), wherein, it was held that a Managing Director of a company has power to institute a suit for and on behalf of the company. When it is found that the Managing Director of a company had the power to institute suit, it can necessarily be concluded that the Managing Director has the power to enter into a settlement for and on behalf of the company.

55) The relevant part of the judgment in **Wasava Tyres A Partnership Firm** (supra) is reproduced below:

> *"That apart, the provisions of Section 2 (26) of the Companies Act define the word Managing Director thus:*
>
> *(26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with (substantial powers of management) which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.*
>
> *(Provided that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.*
>
> (Emphasis supplied)
>
> *Provided further that a managing director of a company shall exercise the powers subject to the superintendence, control and direction of its Board Directors."*
>
> 42. The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore, except the excluded acts the managing director has power and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the emit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is

> necessary and incidental for managing the day-to-day affairs and business of the company. Therefore, by virtue of provisions of Section 26 the suit instituted by the Managing Director is deemed to be within his power and authority. The suit is obviously filed for the benefit of the company. In that view of the matter, the contention that the Managing Director had no authority to file a suit is untenable and the same is rejected.

56) However, my conclusion that the order in question was rendered in presence of applicant/respondent No.2 receives the final seal of approval from a rather unexpected quarter, same being respondent No.3 and 4 in CP No. 969/2012, more particularly, respondent No.4 therein. Such a position is found well evident from the averments made in an application by respondent No.3 and 4 in CP No. 969/2012 which gave rise to CA 861/2015 (corresponding to TA 37/2016).

57) In the application in TA 37/2016, the respondent Nos. 3 and 4 claim that respondent No.2 in CP No. 969/2012 was assigned the duty of conducting the aforesaid proceeding on behalf of other respondents therein. Over a long period of time, they did not hear anything about the status of aforesaid proceeding before the CLB for which they made an enquiry and came to know that said proceeding was disposed of on 14.11.2014 on the basis of settlement mutually agreed to by the parties thereto.

58) In such a situation, the respondent Nos. 3 and 4 contacted the respondent No.2 therein and enquired her as to how the aforesaid proceeding was disposed of on 14.11.2014 allegedly on the basis of mutually agreed settlement. In response to such enquiry, the respondent No. 2 informed them that she agreed to dispose of the aforesaid proceeding on the basis of mutually acceptable settlement since she believed same was for the benefit of the respondent No1 Company. For ready reference, relevant parts are reproduced below:

> *"Para- 12 on ascertaining the above, in or around IST June, 2015, the applicants confronted the respondent No.2**. The respondent No.2 informed the applicants that she had considered the settlement fit for the applicants.** The applicants humbly submit that they consider the settlement to be prejudicial to their interest. Such a settlement cannot be thrust upon the applicants*."

59) Those revelations, therefore, become tell-tale testimonies to the fact that the order in question was rendered on 14.11.2014 and such order was passed with the approval and consent of parties present before the CLB which included applicant/respondent No.2 as well. In the teeth of above disclosures, I do not find any difficulty in rejecting all the claims of the applicants that order dated 14.11.2014 was rendered behind their back and without their consent.

60) This brings me to yet another important chapter of the proceeding where it is to be seen if the order dated 14.11.2014 is liable to be declared illegal for being rendered in huge violation of various Laws and Rules, made there-under as alleged by the applicants. In that connection, it has

also been contended that the Companies Act, 2013 has provided a mechanism for compromise, arrangement and amalgamation of companies and such provision can be found in Chapter XV thereof.

61) According to Mr S. Dutta, learned Advocate for the respondent No.2/applicant, the Tribunal needs to follow such procedure in letter and spirit before disposing of a case on compromise. But such mandatory directions were honoured, not in observance, but in breach instead. Such contentions were, however, disputed by Mr S.K. Gupta, Sr. PCS contending that under the Companies Act 1956 or for that matter, the Act of 2013 have been categorized into several parts with separate headings for each of such divisions.

62) The heading of each chapter gives a clear indication as to the matters, covered by such a chapter----- as well as -----as to how the matters therein are to be dealt with. Mr Gupta conceded to the facts that under the Act of 1956, matters related to arbitration, compromise and reconstruction were arranged in Chapter- V thereof whereas under the Act of 2013 compromise, arrangement and amalgamation were clubbed in Chapter- XV. But then, under the Act of 1956, the power to deal with matters, such as, compromise/ arrangement etc. was vested in the Hon'ble High Court.

63) As such, under the Act of 1956, CLB had no jurisdiction whatsoever to deal with matters, such as, compromise/ arrangement etc. Similarly, the contention that CLB ought to have followed the prescription in Section 230 of the Act of 2013 before disposing of the proceeding on the basis of a purported settlement is equally unfounded since on the date on which the order in question was rendered, same being order dated 14.11.2014, section 230 of the Act of 2013 was not made effective.

64) That apart, section 230 of the Act of 2013 confers the powers, mentioned therein, *not on the CLB* but *on the Tribunal* instead which means National Company Law Tribunal (NCLT) as is evident from Section 408 of the Act of 2013 which was, however, not even in existence on the date on which the order in question was rendered. Such revelation again confirms that the argument so structured on this count, is without any basis------ contends Mr. Gupta.

65) I have considered the rival submissions and found reason to conclude that procedures prescribed in Section 391 of the Act of 1956 could not be invoked by CLB in disposing a proceeding on the basis of the compromise etc. as contemplated in section 391 since *the High Court, and the High Court alone*, had the power to dispose of a proceeding on the basis of compromise, arrangement and reconstruction. Being so, the allegation that the order in question is bad for not

being rendered in accordance with the prescription of Section 391 of the Act of 1956 is also found to be baseless.

66) In regard to the contention that the order in question is bad for not following the prescription under Section 230 of the Act of 2013, I have found that such contention is also without any substance -------- inasmuch as------- the said provisions came into effect long after the order dated 14.11.2014 was rendered. Further, the prescription therein is meant, *not for CLB*, but, *for the Tribunal to be constituted under the Act of 2013* which was evidently not in existence on the date aforesaid.

67) Referring to section 442 of the companies Act 2013, Mr S. Dutta further submitted that the Act of 2013 requires the CLB to refer the parties before it, who desire to settle their dispute amicably, to the Mediation and Reconciliation Panel before disposal of the proceeding on the basis of the alleged settlement. This is more so, since section 442 came into force w.e.f. 01.04.2014.

68) Since such a prescription of law was not at all followed in rendering the order dated 14. 11. 2014, according to Mr S. Dutta, the order in question becomes untenable on this count as well. Once again, Mr S.K. Gupta, Sr. PCS, submitted that the said provision is applicable only to the proceedings pending before (a) *the Central Government*, (b) *Tribunal* or (c) *Appellate Tribunal*, to be constituted under the Act of 2013.

69) However, on the date of the order in question, the *Tribunal* or *Appellate Tribunal* were not constituted and as such, the question of CLB's referring the dispute, aforesaid, on exercising power under section 442 does not arise at all, more so, when power under section 442 could be exercised by the authorities referred to in the preceding paragraph. On considering the submissions in the light of materials on record as well as the law holding the field, I have found very valid reason to concur with the arguments, so advanced by Mr. Gupta on this count.

70) Mr. Dutta also assailed the order in question contending that in ordering the transfer of shares of the petitioner to the respondents in CP No.969/2012, the learned CLB did not keep in mind the various provisions of Companies Act dealing with transfer of shares etc. as well as the Companies (shares Capital and Debentures) Rules, 2014 and so also the provisions of Article 3 of the Article of Association and therefore, such transfer of shares cannot have any legal validity, whatsoever. On this count too, the order dated 14.11.2014 is required to be declared illegal

71) Likewise, Rule 4 of Order XXIII of the CPC too prescribes a detailed procedure which all concerned is required to follow before disposing of a suit on the basis of a compromise. Said provisions, amongst others things, mandate that before disposing a suit on compromise, the terms

and conditions of compromise are required to be reduced to writing. More importantly, such settlement, which needs to be reduced to writing, must invariably be signed by the parties to such compromise.

72) The State Legal Services Authorities Act, 1987 also provides very similar provisions vis-à-vis settlement of the disputes between the parties to the proceeding by way of compromise/ settlement etc. Though the Tribunal or for that matter, the CLB are not required to follow the Civil Procedure / the Legal Services Authority Act, 1987 etc. strictly, yet then, those authorities in deciding the disputes before them, are to follow the spirit of those Acts since such a practise ensures fair play and justice to the parties before them.

73) But while disposing of the company petition No. 969/2012, on the purported settlement, all those requirements of laws were thrown to the wind by the CLB Kolkata which, therefore, becomes prolific testimony of order in question, being profoundly illegal. Equally importantly, in the fact and circumstances of the proceeding in hand, they become another proof of order in question being secured in a most fraudulent way which, in turn, also requires this Tribunal to recall the order as prayed for by the applicants herein.

74) In support of his contention, Mr. Dutta has relied on the following decisions, rendered by Hon'ble Apex Court of the country :-

(1) *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead), reported in1990 (1) SCC 193,* ***(2)*** *Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, reported in 1994 (1) SCC 1,* ***(3)*** *Chandra Kishore Jha Vs. Mahavir Prasad & Ors. reported in 1999 (8) SCC 266, (****4)*** *United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors. reported in 2000 (3) SCC 581, (****5)*** *Vithalbhai Pvt. Ltd. Vs. Union Bank of IndiaPremature suit, reported in 2005 (4) SCC 315, (****6)*** *Smt. Claude-Lila Parulekar Vs. :Sakal Papers Pvt. Ltd. and Ors. reported in2005 (11) SCC 73, (****7)*** *Chatterjee Petrochem (I) Pvt. Ltd. Vs. Haldia , Petrochemicals Ltd. and Ors. reported in 2011 (10) SCC 466 and (****8)*** *Bimal Kumar and Anr. Vs. Shakuntala Debi and Ors reported in 2012 (3) SCC 548*.

75) Such contention was refuted by Mr. Gupta contending that in a catena of decisions, it has repeatedly been held that the jurisdiction of CLB to grant appropriate relief under section 402 of the 1956 Act is of wide amplitude. While exercising its discretion, CLB is not bound by the terms contained in section 402 of the 1956 Act. In a particular fact or situation, such further relief or reliefs, as CLB may deem fit and proper, may also be granted. Off course, reliefs must be granted, however, having regard to the exigencies of the situation.

76) Mr. Gupta further submits that in large number of cases, the CLB disposed of proceeding under section 397/398 of the Companies Act, 1956 on the basis of settlement arrived at by the parties to the proceeding before the CLB. In some of those cases, the CLB even directed one group of shareholders to purchase the shares of other group thereby paving the way for later group to exit from the company.

77) All these clearly show that in granting relief(s) CLB enjoys enormous power and many a times, in exercise of such power, the CLB may even travel well beyond the limits of law. It has also been contended that an order which was secured on the basis of settlement, arrived at between the parties cannot be recalled unless both the parties agreed to recall the same. In support of such contention, Mr. Gupta relies on the following decisions rendered by: -

(a) Learned *CLB, New Delhi in Mrs. Michelle Jawad-Al-Fahoum v. Indo Saudi (Travels) (P.) Ltd, reported in* ***(****1998) 30 CLA 42 (CLB),（****b)*** *CLB,New Delhi in Bertrand Faure Sitzteehnik GmbH & Co. Kg. v. IFB Automotive & Seating Systems Ltd. reported in (1999) 34 CLA 277 (CLB),* ***(c)*** *CLB, Chennai in M. S. D. Chandrasekhar Raja v. Shree Bhaarathi Cotton Mills (P.) Ltd. reported in (2004) 63 CLA 130 (CLB****) (d)*** *Amrik Singh Hayer Vs Hayer Estates (P) Ltd. And others, reported in (2008) 82 CLA 358 (CLB).* ***(e)*** *Kaikhosrouk Framji Vs Consulting Engineering Services (India) Ltd. And others, reported in (2002) 48 CLA 1 (CLB) and (****f)****Gul Kriplani Vs Regency Hotles (P) Ltd. And others, reported in (2010) 96 CLA 55 (CLB).*

78) In the context of power of CLB in granting relief(s), one may look into the decision of the Apex Court in Cosmos Steels v. Jairamdas Gupta (1978) 48 Comp Cas 312 (SC), wherein it was held that Company Court (now NCLT) has wide powers under sections 397, 398 and 402 of the 1956 Act and it can make any order for regulation of the conduct of company's affairs as may be just and equitable in the circumstances of the case.

79) It was also held there that in granting relief, the CLB can also order reduction of capital, and that too, even without following provisions of sections 100 to 104 of the 1956 Act. However, in doing so, CLB needs to keep interest of creditors in mind. In D Ramakishore v. Vijayawada Share Brokers Ltd. (2009) 89 SCL 279 (AP), it was also held that technicalities cannot defeat exercise of equitable jurisdiction under section 402 of the Act of 1956.

80) **In IFCI Ltd. v. TFCI Ltd. (2011) 107 SCL 512/11, it was held by CLB, Delhi** that Court (now NCLT) has extremely wide powers under section 402 of the 2013 Act to mould relief and also to examine subsequent events. Again in Bennet Coleman & Co. v. UOI (1977) 47 Comp Cas 92 (Bom) also, it was held that High Court has ample jurisdiction and very wide powers, without any limitation or restriction, to pass such orders and give such directions to achieve the object.

81) What, therefore, emerge from the decisions aforementioned, and that too quite noticeably, is that the order under challenge, if found equitable and just and if such order meets the ends of justice, mere non-compliance of various provisions of law would not make such order illegal or unsustainable since as is held in catena of decisions, CLB, in appropriate case, may grant relief which may even run counter to provisions of various laws or to the Articles of Association.

82) I have already found that the order dated 14.11.2014 was rendered by the learned CLB on being satisfied that the parties to CP No.969/2012 had decided to dispose of said proceeding on the basis of mutually acceptable settlement and therefore, on recording such settlement in the order, learned CLB disposed of such a proceeding on the basis of such said settlement.

83) Being so, in my very considered opinion, all the allegations, hurled at the order under challenge from the side of applicants, are held to be without any basis and therefore, decision relied on by Mr. Dutta are found inapplicable to the dispute in the present proceeding.

84) One may note here that Mr S.K. Gupta also questions the maintainability of the present proceeding on counts more than one. In that connection, it has been argued that in the present proceeding (M.A.01/2016), the applicant questioned the propriety / legality/ correctness of the order dated 14.11.2014 under which the CP No. 969/2012 stood disposed of allegedly on the basis of amicable settlement arrived at by the parties thereto.

85) In that back ground, it has been stated that under the Act of 1956, the legislature makes the order, rendered by CLB appealable one. But in spite of applicant's questioning the order, rendered on 14.11.2014, on various legal grounds and despite such an order being an appealable one, the applicant did not prefer any appeal against such order before the Hon'ble High Court in time in accordance with the prescription, laid down in Section 10(F) of the Companies Act, 1956 although the CLB remained functional till 31st May, 2016.

86) What is equally important to note here is that the Act of 1956 was repealed by the Act of 2013 and CLB was replaced by NCLT. But the new Act too, more particularly section 434 (b) (which is paramateria to section 10 (F) of the Act of 1956) allows a party, aggrieved by the order of the CLB, to prefer an appeal on law point(s) before the High Court within the time limit fixed. But in spite of the Act of 2013 providing an opportunity to question the order dated 14.11.2014 by preferring an appeal before the High Court, the applicant did not prefer any appeal against such an order within the time limit fixed by law.

87) Since the applicants did not avail of its right to question the order dated 14.11.2014 under the Act of 1956 in time and since they also did not avail themselves of such opportunity, provided under the Act of 2013 , now, it is not permissible under the law to prefer an application

before the NCLT seeking relief in the form of recalling the order dated 14.11.2014 alleging that such an order was passed without their knowledge and consent although such an order was supposedly rendered on the basis of settlement mutually agreed to by the parties thereto.

88) One may note here that the applicant claims that she came to know about such an order only after 18.02.2015. But even if one assumes for the sake of argument for a moment that the applicant came to know about such an order only after 18.02.2015, as claimed by the applicant, yet then, the applicant could have preferred such appeal before the High Court within two months from the date of knowledge of such order since the CLB remained functional **till 31st May, 2016**. Therefore, under no circumstances, the applicant can, now, come to this Tribunal to question the order rendered by CLB on 14.11.2014 in CP No. 969/2012------ argues Mr S.K. Gupta.

89) It is also the case of the non/applicant/ petitioner that the applicant did not mention in the application the provision of law under which it approached the NCLT. But then, a perusal of the application clearly reveals that the applicant, in fact, wants the review of the order, rendered by CLB on 14.11.2014. One may note here that under the Act of 1956, the legislature did not invest the CLB with power to review its own order.

90) Since the matter whether or not, a court or tribunal would be bestowed with the power of review of its order/ judgment lies completely in the realm of legislature and since the legislature in their wisdom found it fit not to bestow the CLB with the power to review its order, therefore, NCLT too, can never have the power to review the order, rendered by CLB, Kolkata in CP No969/2012 on 14.11.2014 ----argues Mr. Gupta.

91) Mr. Gupta again contends that the Act of 1956 conferred on the Tribunal, constituted there-under (which, however, never took of), the power to review of its own order, vide section 10(FN) of the Act of 1956. But the Act of 2013 does confer on NCLT such power and such a disclosure further demonstrates that the NCLT has no power to either review its order or the order rendered by CLB under the old regime.

92) In regard to power of the NCLT to rectify its errors, Mr. Gupta, submits that section 420(2) of the Act of 2013 has given the NCLT the power to rectify the mistake which is apparent on record. For ready reference, section 420 (2) of the Act of 2013 is reproduced below: -

> "Sec. 420(2). *The Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall makes such amendment, if the mistake is brought to its notice by the parties;*
>
> *Provided no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act".*

93) However, Mr. Gupta, appearing for the petitioner, contends that the power, conferred on the NCLT under section 420 (2) of the Act of 2013 can be under exercise to rectify the certain errors in the order which are rendered by NCLT alone, and by no other authority. The fact that under the Act of 1956, no such power was conferred on the CLB makes such a conclusion inevitable.

94) However, admitting that all the Courts/ Tribunals always enjoy the inherent power to correct its mistake causing huge injustice to the parties to any suit/petition/proceeding etc., it has again been argued that since there was absolutely no infirmity in the order dated 14.11.2014, therefore, in the facts and circumstances of the present case, it is not possible for the NCLT to invoke its such extra-ordinary power to recall the order dated 14.11. 2014.

95) Mr S. Dutta, learned counsel appearing for the applicants/respondent No I and .2, however, contends that the arguments, advanced from the side of the non-applicant/petitioner, questioning the maintainability of the proceeding in hand have hardly any basis since under Section 10 (F) of Act of 1956 and also under Section 434 (2) of the Act of 2013, an appeal can be preferred only on law point and not otherwise.

96) However, in the case in hand, the order dated 14.11.2014 was questioned not only on law points but it was questioned on factual fronts as well. Since the order dated 14.11.2014 was not questioned on law points alone but also on factual infirmities too, the applicant cannot validly prefer an appeal under the aforesaid provisions of law.

97) Therefore, the only way out for the applicants/respondent No I and .2 is to prefer the proceeding in hand urging this Tribunal to recall the aforesaid order on invoking its inherent jurisdiction since the order dated 14.11.2014 had been obtained quite fraudulently which in turn has enormous injustice to the applicants herein and in fact other respondents in C.P.No.969/2012.

98) However, the question whether or not the present proceeding is maintainable slips into complete irrelevance since I have already found that the present proceeding has no legs to stand on, the primary reason being that the allegation that the order 14.11.2014 was secured by practising fraud was found to be far from being established and as such, there is absolutely no scope whatsoever to recall the order dated 14.11.2014 as prayed for by the applicant herein.

99) But then, it needs to be stated that I have still considered the submissions, advanced on the point of maintainability of the present proceeding and found that here, the application under consideration did raise several questions on law. Therefore, in my considered opinion, the applicants

herein or for that matter any other person or persons, aggrieved by such an order, was to have preferred an appeal before the High Court within the time limit, fixed.

100) Since it was not done, in my very considered opinion, the applicant cannot successfully prefer the present application to question the legality, propriety and validity of such an order. Being so, there cannot be any escape from the conclusion that present proceeding is not at all maintainable in view of embargo imposed by law.

101) in view of what I have discussed herein before and what have emerged there-from, I am of the clear opinion that the present proceeding lacks merit and as such, same is deserved to be dismissed.

101A) The Registry shall send a certified copy of the final order to all concerned free of cost.

102) Resultantly, this proceeding is dismissed.

M.A.No.03/2016

ORDER

Date: 25th April 2017

This proceeding has been initiated seeking following reliefs:

"In view of the facts mentioned above, the petitioner/applicant prays for the following relief(s):

a) *The respondents shall maintain status quo on the assets of the company, as on 12.12.2012 and be restrained to dispose off the same or any of it, in terms of the aforesaid Order of the Hon'ble Company Law Board dated 14.11.2014.*

b) The authorities mentioned in sub-paragraph (g) of paragraph iv hereinabove be made parties to the proceeding, as performa Respondents, only for the limited purpose of protecting assets of the company.

c) An Order directing the aforesaid authorities mentioned in sub paragraph (g) of paragraph iv hereinabove to ensure maintenance of status quo on the two aircrafts of the Company lying with them.

d) Pass any such further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. In order to appreciate the dispute in the present proceeding, the facts and circumstances leading to this proceeding needs to be noted in brief:

3) The applicant, as petitioner, had filed a petition under Section 397/398 of the Companies Act, 1956 (In short, Act of 1956) alleging that the affairs of North East Shuttles, which was arraigned as respondent No.1 therein, were conducted with profound illegalities and irregularities by respondent Nos.2, 3 & 4 which resulted in mismanagement as well as oppression having been perpetuated upon the petitioner.

4) In the proceeding aforesaid, the respondents had filed reply and in due course, petitioner submitted rejoinder to which the respondents therein had submitted sur -rejoinder. On completion of exchange of pleadings, the matter was heard at length by CLB, Kolkata. However, judgment was deferred on occasions, more than one since, the parties thereto reportedly tried to settle their dispute in such a proceeding amicably. But ultimately, the proceeding was disposed of by the CLB, Kolkata vide order dated 14.11.2014 rendered in C.P.No.969/2012 on the basis of settlement arrived at between the parties.

5) It has been contended by the applicant/petitioner that under the aforesaid order, both the parties were to perform certain obligations within a time frame, specified therein. According to the applicant, while the applicant had met the terms and conditions specified therein, respondents/non-applicants did not honour the directions, rendered in the order under which they were to discharge certain obligations within the period stipulated in the order.

6) . In such a situation, the petitioner approached CLB, Kolkata with an application under Section 634 A of the Companies Act of 1956 seeking enforcement of the order alleging that though the petitioner had performed its part of the obligations under the order aforesaid, the respondents refused to fulfil their obligations there-under.

7) Said proceeding was registered as CA 461/2015 (corresponding to TA 34/2016). Notice of such a proceeding was served upon the respondents/non-applicants. They had entered appearance but only respondent No.3 & 4 had contested the proceeding having filed reply while other non-applicants (who are respondent Nos. 1 and 2 in CP No. 969/2012 allowed such a proceeding to run ex parte against them. Said proceeding now awaits disposal.

8) On the other hand, the respondent Nos.3 and 4 filed an application before the CLB Kolkata seeking the recalling of the order dated 14.11.2014 alleging that said order was obtained in a most illegal way and as such, the order dated 14.11.2014 is not binding on the respondents, more particularly, on respondent Nos. 3 & 4 in C.P.No.969/2012 since such an order was obtained by the petitioner therein in collusion with the respondents NO. 2. Such proceeding was registered as CA 861/2015 (corresponding to TA 37/2016). The allegations in the TA 37/2016 were hotly disputed by the non-applicant/ petitioner. TA No. 37 /2016 too now awaits disposal.

9) Similarly, the respondent Nos. 1 and 2 in C.P.No.969/2012 also filed an application before this Bench alleging that the order dated 14.11.2014 was rendered behind their back and without their consent and approval. Since the order was passed in a most fraudulent way, the order is not binding upon the respondents in CP No. 969/2012. Said application was registered as MA No.01/2016. The allegations in the MA 01/2016 were also fiercely disputed by the non-applicant/ petitioner. MA No.01/2016 is pending for disposal.

10) During the pendency of the aforesaid proceedings, the petitioner in C.P.No.969/2012 filed another application which gave rise to the proceeding in hand seeking the reliefs which I have already quoted hereinabove and on the basis of such application, M.A.No.03/2016 was registered. In this application, petitioner/applicant claims that by its order dated 14.11.2014, learned CLB, Kolkata had directed the parties to C.P.No.969/2012 to maintain status quo in respect of the assets of the company which included the aircrafts of the company and such status quo was to remain in force till the fulfilment of all the directions, rendered under such order.

11) Now, the petitioner/applicant contends that the respondents/non-applicants had not only refused to comply with the directions, rendered under the aforesaid order but also were hell bent in violating the such an order since they have been trying to dispose of the most valuable assets of the company, same being one of the aircrafts of the company.

12) It is also contended that in the event of aircraft aforesaid being disposed of, the petitioner/applicant would suffer irreparable loss inasmuch as in such a situation, it would not be able to recover huge dues which the respondent No. 1 company evidently owed to the applicant/petitioner. The relevant part of the application is reproduced below:-

"*Facts of the case are given below:*

a) The Petitioner moved Company Petition No.969/2012 before the Company Law Board, Kolkata Bench (hereinafter referred to as 'the Hon'ble Bench) on

12.12.2012 (Twelfth Day of December, Two Thousand and Twelve (and the matter was heard from time to time.

b) *The erstwhile Hon'ble Kolkata Bench of the Company Law Board was pleased to pass an order on 14.11.2014 inter alia recording the settlement amongst the parties and directing – "the Respondents shall maintain status quo as on today on the assets of the company till completion of the settlement terms."*

c) *The Petitioner has complied with the terms of settlement, as per the aforesaid Order however, the Respondents did not. Accordingly, the Petitioner had filed an Application being T.A.No.34/2015 corresponding to C.A.No.461/2015 for enforcement of the aforesaid Order. The Respondents No.3 and 4 after a long time, chose to file an Application being T.A.No.37/2016 corresponding to C.A.No.867/2015 for recalling of the aforesaid Order. Now the Respondent No.1 and 2 has filed an Application being M.A.No.01/2016 before this Hon'ble Tribunal.*

d) *It would be evident from the aforesaid Applications of the Respondents that they are not willing to abide by the aforesaid Order of the Hon'ble Company Law Board dated 14.11.2014 which is in any case binding and enforceable. It is submitted that the Respondents, if at all were aggrieved by the said Order, should have made an appeal before the Hon'ble High Court, in pursuance of section 10 F of the Companies Act, 1956. It would also be evident that they are trying to sale the assets of the Company, in violation of the aforesaid Order. Your Applicant crave leave to refer to the said applications, during the course of the hearing.*

e) *The Respondents are not interested in running the business of the company, not willing to pay to the Petitioner, in terms of the aforesaid Order, and are desperately trying to dispose of the valuable assets of the Company, being aircrafts, in flagrant violation of the aforesaid Order. In this regard they have indulged into several communications, copies of some of the E – Mails are annexed herewith and collectively marked "A".*

f) *It is therefore imperative that an Order may be passed by this Hon'ble Tribunal to protect the assets of the Company, which is possible only n directing the appropriate authorities not to release the assets of the Company to the Respondents.*

g) *Names and address of such authorities are given below for protection of Aircrafts they be made a performa Respondents:*

1. *Deputy Airport Director/Regional Executive Director of Airport Authority of India/AAI (Eastern Region)*
   NSCBI Airport,
   P.S.-NSCBI Airport, Kolkata – 700052.

2. *Deputy Director General of Civil Aviation*
   Directorate of Air worthiness
   Director General of Civil Aviation/DGCA (Eastern Region)
   NSCBI Airport,
   P.S.- NSCBI Airport, Kolkata-700052.

3. *Regional Deputy Commissioner of Security, Civil Aviation*
   Bureau of Civil Aviation Security/BCAS (Eastern Region)

NSCBI Airport,
P.AS-BSCBI Airport, Kolkata – 700 052.

h) Besides the aforesaid, the Company is also having certain properties. It is apprehended that the Respondents have already sold few of them and/or are in the process of selling the same, in utter violation of the aforesaid Order.

13) Such contentions were opposed to by the respondents/non-applicants stating that the allegation that the respondents/non-applicants had been trying to dispose of the assets of the company, particularly one of the aircrafts of the company, is without any substance. In fact, the aircraft has always been there where it was parked when the order dated 14.11.2014 was rendered.

14) But then, since the aircraft is required to be in airworthiness condition at all the times to prevent the same from reducing into scrap, the non-applicants/respondents had approached this Tribunal to grant necessary permission to the later so that the non-applicants/respondents could approach the competent authority , same being Director General of Civil Aviation , New Delhi, urging such authority to allow the non-applicants / respondents to carry out necessary maintenance work in respect of said aircraft leading to issuance of airworthiness certificate by the competent authority.

15) It is also the case of non-applicants/respondents that this Tribunal was pleased to grant necessary permission to conduct maintenance work and accordingly, the aircraft was subjected to necessary maintenance work on the basis of which in due course, the authority concerned had granted airworthiness certificate which would remain valid upto 21.05.2017.

16) Therefore, the allegation that the non-applicants/respondents have been trying to dispose of the air craft in violating the order dated 14.11.2014 is nothing but a downright falsehood and as such, the application in hand is required to be dismissed in limine. ------- argues Mr. Dutta, learned counsel for the respondents/non-applicants.

17) Since both the parties, advanced contradictory claims, vis-a-vis compliance of directions, rendered in the order dated 14.11.2014; I find it necessary to peruse the order dated 14.11.2014. For ready reference, same is reproduced below:

O R D E R

1) Parties present today as shown above with their counsel and authorized representatives acting on instructions made a positive effort again with my assistance and reached a full and final settlement as per terms agreed below:

a) The petitioner company shall exit from North East Shuttles Pvt. Ltd. on receiving a consideration of Rs.5 crores as per payment chart given below:

i) The respondents undertake to pay the sum of Rs.5 crores to the petitioner company by depositing account payee demand drafts with the Bench Officer, as under:

a) Rs. 1 crore on or before 14/02/2015

b) Rs. 2 crores thereafter on or before 14/05/2015

c) Rs. 1 crore thereafter on or before 14/08/2015

d) Rs. 1 crore thereafter on or before 14/11/2015

a) The respondents undertake to pay interest @ 18% p.a. on the unpaid amount of any instalment from the date it fall due upto the date of payment.

b) The petitioner shall on or before 14/02/2015 deposit the share certificates along with duly executed transfer deeds in favour of the respondents with the Bench Officer who shall keep such share certificates along with duly executed transfer deeds in safe custody in a sealed cover.

c) The share certificates and transfer deeds so deposited by the petitioner, shall be released by the Bench Officer in favour of the respondents only after the deposit of all the instalments mentioned above in sub-para (i)(a) to (d).

d) Unless the petitioner deposits the share certificates along with duly executed transfer deeds with the Bench Officer on or before 14/02/2015 the respondents shall be under no obligation to deposit the amount of instalments with the Bench Officer.

e) After verification that the respondent company has paid off the loan arranged by the petitioner company, the petitioner company shall issue a no due certificate in favour of the respondent company.

f) The petitioner company shall not indulge in any correspondence or activity detrimental to the interest of the respondent company and render its fullest co-operation in enforcement of the settlement.

g) The respondents shall maintain status quo as on today on the assets of the company till completion of the settlement terms.

h) The Bench Officer shall after the deposit of the share certificates along with duly executed transfer deeds by the petitioner, release the periodical deposit of instalments made by the respondents in favour of the petitioner.

i) The Company Petition No.969/2012 is disposed of in terms of the settlement which is final and binding on the parties and shall be enforceable at the instance of either party under Section 634A of the Companies Act, 1956.

2) Counsel, Authorized Representatives for the parties and the Managing Director of R-1 company, after reading the above terms, prayed that the Company Petition No.969/2012 be disposed of on the above terms.

3) I, accordingly, dispose of Company Petition No.969/2012 in terms of the above settlement which shall be binding on the parties and shall be enforceable at their instance under Section 634A of the Companies Act, 1956.

4) Interim order passed on 12/12/2012 stands vacated. All pending Company Applications stand closed.

No order as to costs.

18) A careful perusal of the order dated 14.11.2014, particularly para 1 (g) thereof reveals that CLB, Kolkata directed the respondents in CP No.969/2012 to maintain status quo in respect of the assets of the company. It is well evident and admitted too that till date, said order has

not been rescind / recalled / modified and therefore, it is obligatory to the parties to the aforesaid proceeding to follow all the directions rendered there under in letter and spirit.

19) Now, let us see how far such directions are honoured by the respondents in CP No.969/2012. It is worth noting here that the order aforesaid required both the parties to do certain deeds. That apart, said order also required the respondents to maintain status quo in respect of assets of the company. Being so, all the respondents are to follow the directions rendered in the order dated 14.11.2014 in all respects.

20) The applicant herein contends that the air craft of the respondent No. 1 company included in the assets, referred to in the order dated 14.11.2014. But there are enormous materials to show that there was a full-bodied effort on the part of the respondents to part with such most valuable assets of the company. It may be stated that the applicant herein originally relies on a series of e-mail communications involving some of the respondents in CP No. 969/2012.

21) But during the course of arguments in the case the non-applicant / respondent No.2 also submitted Air Purchase Agreement dated 13.12.2015 as well as the letter dated 24 th January, 2017 from RUAG Aerospace Services GmbH, Germany terminating the agreement dated 13.12.2015. Since the Agreement dated 13.12.2015 as well as the letter dated 24 th January, 2017 from RUAG Aerospace Services GmbH, Germany have huge bearing on the outcome of the present proceeding, I find it necessary to consider them having regard to the other materials on record.

22) In order to appreciate the implications of those two documents on the matter under inquiry well, I also find it necessary to reproduce some prominent part of those two documents having bearing on the outcome of the present proceedings Some of the important parts of the agreement above are as follows:

Northeast Shuttles Pvt. Ltd.

Surjya Road, Agartala- 799001

Tripura, India.

And

RUAG AEROSPACE SERVICES gMBh.

Claude Dornier-Str.

82234 Wessling

Germany.

Recitals.

Whereas, the Seller is owner of one Dornier 228-212 aircraft with Serial Number 8191 and desires to sell the Aircraft (as further specified in Article 1 below) to Purchaser, and

Whereas Purchaser desires to buy the Aircraft and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the parties hereto agree as follows:

Subject Matter of Sale.

2. Subject to the provisions of this Agreement, the Seller agrees to sell to the purchaser and the purchaser agrees to buy from the seller all of the seller's right, title and interest in and to that certain Aircraft and Aircraft Documents.

The Aircraft shall be sold on a 'as is where is' basis, meaning that the Aircraft shall be in compliance with the Aircraft inspection Report set forth and defined in Exhibit I, being the Aircraft's condition as inspected by purchaser from 27th to 30th October, 2015 but will at the time of delivery be in airworthy flyable and fully operational condition and having undergone the agred additional maintenance tasks on the Aircraft as set forth in Exhibit II (Additional Maintenance") prior its delivery to the Location of Delivery.

3. The Aircraft Documents referred to in its Definition i). and ii) shall be delivered by separate shipment by mail (nor within the ferry flight.) The Aircraft Documents referred to in Definiation iii) to v.) shall be delivered after successful inspection of the condition of the Aircraft and Aircraft Documents i.) and ii) at the Location of Delivery in accordance with Article 4.1.

6. Purchase Price and Terms of Payment

6.1 The totasl purchase price for the Aircraft amounts to 995,000.00 USD (nine hundred ninety five thousand United States Dollar) ("Purchase Price).

6.2. Payment of the Purchase Price shall be made in several instalments:

6.2.1. Purchaser shall pay a reservation deposit of 150,000.00 USD (one hundred fifty thousand United States Dollar) upon signature of the Agreement to Sellers below specified bank account. The reservation deposit shall be accounted to the Purchase Price.

6.2.2. The remaining payment of 845,000.00 USD (eight hundred forty-five thousand United States Dollars) shall be made immediately upon receipt of the Bill of Sale of the Aircraft by Purchaser.

6.3. The Purchase Price is to be paid by bank wire transfer in favour of Northeast Shuttle Pvt. Ltd to a bank in India or Nepal as dedicated by Seller in writing within fourteen (14) calendar days from signature of this Agreement. Any costs or charges levied by the Purchaser's bank in effecting this transfer will be for the account of the Purchaser.

6.4 All payments by the Purchaser under this Agreement shall be made in full in the currency specified.

9.1.3 Seller has exclusive, marketable, legal and equitable title to the Aircraft and all equipment and components and is authorised to convey title to the Aircraft, and

9.1.4 that the Aircraft is free and clear of any lien, encumbrances and other rights of third parties, especially but not limited to Security Interests. (This shall, for the

avoidance of doubt, apply accordingly to the Aircraft and the engines if these of any other lien or collective lien are registered at other national or international authorities and/or registries, including but not limited at the International Aircraft Registry Dublin).

12.3 Entire agreement

Purchaser and Seller agree that the terms and conditions of this Agreement, including all exhibits hereto, constitute the entire agreement between the parties.

12.7 Time is of the Essence

Unless specifically stated to the contrary herein, time shall be of the essence for all events contemplated hereunder.

12.8 Survival

The representations, warranties, covenants and agreements of Purchaser and Seller shall survice the Closing in perpetuity.

10. Similarly the letter dated 24 th January, 2017 are as follows: -

Northeast Shuttles Pvt Ltd

Mr. Sunil Bista

Surjya Road, Agartala 799001

Tripura

"Dear Sunil Bista,

The above indicated Aircraft Purchase Agreement has been concluded between RUAG and Northeast Shuttles Pvt. Ltd dated November, 2013, 2015. According to this agreement the latest date for delivery of the Aircraft SN 8191 was January 15, 2016, being extended to September 30th 2016 by letter submitted in August, 2016.

RUAG was waiting patiently and allowing you to eliminate or settle hurdles with the Aviation Authority etc. Howerver, twelve months have passed now since the originally stipulated aircraft delivery date without the aircraft having arrived in Oberpfaffenhofen. We sent you several notices including a notice of delay in delivery and asked for prompt delivery. The granted extension to September 30th, 2016 at the latest, was still not complied with by Northeast Shuttles Pvt. Ltd.

Due to the fact that the aircraft is not delivered until today, we hereby terminate above said purchase agreement with immediate effect and claim full reimbursement of the reservation deposit. Please transfer the full amount of 150,000 USD to the following account of RUAG Aerospace Services GmbH until February, 10th 2017".

Commerzbank AG Munchen

IBAN: DE 44 700400410213069800

SWIFT/BIC : COBADEFF XXX 07 March 2017

Sincerely

RUAG Aerospace Services GmbH".

23) The agreement dated 13.12.2015 reveals that a process for the sale of one of the aircrafts of the respondent No 1 company to one GOD.RUAG had been initiated as early as 2015 which, however, took definite shape on 13.12.2015 since on such a date respondent No.1 company entered into written agreement finalising the terms and conditions of the proposed sale of the air craft in favour of GOD.RUAG.

24) The agreement aforesaid further reveals that the non-applicants/respondents were to make necessary arrangements, not only for keeping the aircraft in airworthiness condition but also to arrange delivery of aircraft at a place in the State of Germany, and that too, on or before -15 th January ,2016 which was subsequently extended to 30 th September 2016.. The letter dated 24th January, 2017 lends more and more credence to propositions.

25) It is also in the agreement aforesaid that in the event of failure of any part thereto, the defaulting party would be liable to compensate the aggrieved party in accordance with the mechanism, put in place in such an agreement. More importantly, the agreement dated 13.12.2015 as well as letter terminating the aforesaid agreement by GOD.RUAG further reveal that the respondents/non-applicants had almost finalised the agreement to sell the aircraft and a part of consideration money had also been realized from the buyer, same being GOD RUAG.

26) In that connection, I also find it necessary to go through the e-mails, produced from the side of applicants which were made part of the records and were collectively marked as Annexure-A. Such communications, particularly, emails dated ***10 Sep 2016***, ***Sep 12, 2016*** and **19 Sep. 2016** clearly show the deep involvement of the respondents, respondent No. 4 in particular, in the aforesaid dealing. For ready reference, said emails are reproduced below: -

> "J. KUMAR
> ADVOCATE
> HYDERABAD
> PH.9440054431.
>
> ``**On Sat 10 Sep 2016 at 10.30 am Phizo Nath**
>
> Dear Jayakumarji,
>
> > The draft is a little different than what was discussed. This draft is O' Kay if Gomukhi is willing to pay the maintenance, labour, AAI and DGCA cost to bring the aircraft to airworthy status. The amount to be paid in actual by Gomukhi as and when the maintenance progresses.
> >
> > I am limiting my offer only to making the aircraft VT-NER airworthy and pay Rs.4 crores to Gomukhi and 1 crore so Shoba K Mani, provided everything goes in order. I want this to be a joint proposal.
> >
> > Please confirm, so that we can place the proposal in NCLT on 14th. If that date is missed then everything in NES will be a scrap. Please understand, this is the last and the only opportunity to get anything out of NES.
> >
> > Sanjay Khaitan will not be able to give you even Rs.1 crore by selling two aircrafts of NES. I want you to come forward and work with me to make this happen.

Please confirm, so that we can draft the joint proposal to present on 14th.

Capt. Phizo."

From Phizo Nepali
Date: Mon, Sep 12, 2016 at 4.48 PM

Subject: Re Contents of draft petition to be filed by NES before NCLT

To: Kumar: Jagadeesan.

Dear Jayakumarji,

Thank you for your concern. You are a good man, and I respect you.
*Dornier compa*ny has informed my company in Nepal that they are interested to purchase one of the aircraft that is with NES provided we can provide maintenance support from Nepal and make the aircraft airworthy. I have provided the maintenance support to make the aircraft airworthy. I wanted both parties to work together to make the aircraft and get benefit of it.
I leave it to both parties, how they want to proceed with this proposal. I have given my proposal if it suits Gomukhi, then I can ask the management of NES to come for settlement. I will wash off my hands as I have nothing to gain.

Capt. Phizo.

"On Mon, 19 Sep. 2016 at 8.25 am. Phizo Nath

Dear Mr Chandramouli,

As we have come to last stages of termination of the offer by the manufacturer, I am making my last appeal for a settlement.
All my appeals have the concurrence of the company NES.
The settlement with my association is limited to making the aircraft VT-NER airworthy and bringing the proceeds of the sale to the account of the company thereafter, may be shared between the two remaining shareholders as I indicated in the last two meetings. I have the solution for Gomukhi to get the money.

Phizo Nepali

Reply- To Phizo Nepali

To Mouli Chandra, Kumar Jagadeesan, Shoba Mani, Gomukhi Construction, SANJAY KUMAR GUPTA

Dear Sir,

For the last two and half months, I have met all of you and desperately tried to find a solution for all. The intent was there to solve, but the methods differed. The differences could have been ironed out by one or two informal meetings but insistence on having lawyers or board for a meeting wasted a whole lot of time. A technical person or any engineer would have been a better person to understand the situation. Because even if court passes an Order to sell the aircraft, the management of making the aircraft airworthy is four times more difficult and there is a cost to maintain also.
Informal meetings are necessary prior to going to the court for settlement. I am available for such meeting and I prefer to meet a person who understand the technical side of the issue.
I am in Nepal. I came here because I did not get the due respect and the parties wanted to fight in court.

Whether you settle through court or by formal meetings shareholders are going to miss a great chance to recover their monies, if you do not conclude your negotiations within few days. Or, you will continue to fight for the scrap.

Please take notice that the Opportunities will be lost after 30th September 2016.

Capt. Phizo Nath.

27) A perusal of aforesaid e-mails further demonstrates that the respondents, more particularly respondent No. 4, took very some serious measures towards the disposal of the air craft of the company in favour GOD RUAG. This is because of the fact that those e-mail communications very firmly demonstrate that the respondent No.4 wanted the deal, incorporated in agreement dated 13.12.2015, to conclude at the earliest possible opportunity. Such revelations are more and more proof of direction in the order dated 14.11.2012 being defied by the respondents in CP No. 969/2012.

28) However, referring to the e- mail communications which were collectively marked as "A series communication", the non-applicant/respondent No. 2 claims that no importance, whatsoever, should be attached to those communications since only the respondent No 4, who had no say, whatsoever, over the affairs of the company, basically made those communications from the side of the respondents in CP No 960/2012. In that connection, it was stated that respondent No. 4 was neither a shareholder of the company nor any important office bearer of such a company.

29) In support of such contention, it was argued that at all the material times, the respondent No. 4, he himself being a pilot, was mere an operational director of the company whereas the most important posts were held by respondent No. 2 and 3, they being the Managing Director of the company and the Chairman of the Board of Directors respectively. Therefore, the communications, made by the respondent No. 4 with various authorities and persons cannot be more than mere communications, made in his personal capacity and as such, commitments, if any, made in such communications, cannot bind the company or for that matter other respondents in CP No.969/2012.

30) Mr. Dutta further contended that though some of those communications were marked to respondent No 2, yet, only for marking some of those communications to respondent No. 2, it cannot be construed that respondent No. 2 or for that matter the other respondents were parties to the process of sale of one of the aircrafts of the respondent No. 1 company. The fact that there was absolutely nothing on record to show that any one of those communications was authored by the respondent No. 2 or respondent No. 3 makes such a conclusion inevitable.

31) The submissions, so advanced from the side of respondent No.2, however, sound pretty unconvincing for reasons more than one. A careful perusal of the order dated 14.11.2014

clearly demonstrates that such an order was unambiguous, clear and emphatic and therefore, all the respondents in C.P.No.969/2012 were to follow the prescriptions rendered therein so long such an order holds the field. Therefore, violation of the order by any one of respondents in CP No. 969/2012 amounts to violation of such order by the other respondents as well.

32) But then, it is not the respondent No.4 alone who violated the direction in the order dated 14.11.2014. Rather, all other respondents joined hands in flouting the directions in the order aforementioned and therefore, all the respondents equally responsible for defying the very specific but emphatic direction rendered in the order dated 14.11.2014. This is because of the fact that agreement dated 13.12.2015 was between the respondent No.1 company on one side and GOD RUAG Germany on the other side.

33) There is indisputable evidence on record to show that the respondent Nos. 2 and 3 are not only the shareholders of the respondent No. 1 company but they are the only two directors of the company as well. Therefore, one would be hard pressed to comprehend as to how the respondent No. 1 company could enter into the agreement dated 13.12.2015 with GOD RUAG, Germany, chock-a-block with technical and legal complexities, without the approval of the respondent no. 2 and respondent No.3.

34) All these speak loud and clear that not only did the respondent No.4 take up the communications aforesaid with various persons and authorities with the full approval of the other respondents in CP No.969/2012 but all of them intentionally violated the very specific directions, rendered in order dated 14.11.2014. Some of those communications, particularly e-mail dated 19.09.2016 from respondent No. 4 to one R.C. Mouli, makes such conclusion inescapable since such a communication unmistakably demonstrates that respondent No. 4 made such communication with the full approval of respondent No 2.

35) We have already found that the respondent No. 2 also tried to take shelter under the plea that at the relevant time, nay, at any point of time, the respondent No. 4 never occupied any important position in the respondent No. 1 company. Nor was he a shareholder of the company. Being so, he does not possess any authority or power to make any correspondence for or on behalf of the company to bind the company or other respondents by the commitments made in such correspondences.

36) However, our foregoing discussion on this score very firmly demonstrates that such a plea has lost all its relevance or significance in view of our clear finding that all the respondents in CP No. 969/2012 were privy to the process which resulted in violation of direction in the order dated 14.11.2014. That being so, such plea merits no further discussion here.

37) One factor that needs discussion here that during the course of hearing in connected proceeding, the applicant/respondent No.2 had urged this Bench to give her permission to make a search for a prospective buyer for one of the aircrafts of the company. This court, on hearing the parties, had granted such permission, of course, with certain conditions. In due course, the applicant informed the Bench that it had found a buyer who agreed to purchase aforesaid aircraft on certain terms and conditions.

38) But the applicant subsequently informed the Tribunal that said agreement for sale of aircraft fell through since the prospective buyer refused to purchase the aircraft in question inasmuch as, the applicant could not fulfil the terms and conditions incorporated in the agreement. In support of such contention, a copy of agreement as well as the termination letter issued by prospective buyer had also been submitted therewith.

39) Unfortunately, such efforts, on the part of the non-applicant/respondent No.2, are found to be a clever design, aimed at hiding some serious infirmities as far as observance of the directions made in CP 969/2012 is concerned. More importantly, such state of affairs is also an inopportune tale of applicant herein trying to play tricks with the Tribunal, a conduct that needs to be denounced in the strongest possible terms.

40) This is because of the fact that when the applicant had approached this Bench of NCLT and applied for permission to make a search for a prospective buyer, interested in purchasing the aforesaid aircraft and also in settling the terms and conditions of such sale, by that time, the respondents in CP No.969/2012 had actually, not only found a prospective buyer but also almost finalised the deal for the sale of the air craft in question.

41) All these revelations, in my considered opinion, clearly demonstrate that all the respondents in C.P.No.969/2012 miserably fail to comply with the directions rendered by CLB, Kolkata on 14.11.2014 in C.P.No.969/2012. What is worse, they all intentionally flouted the directions requiring them to maintain status quo in respect of the properties of the company.

42) In view of the above, the prayers, made in (i) (a) & (c) of the application are allowed. The DGCA is, therefore, directed not to allow the respondents/non-applicants to fly the aircraft in question out of the country until further orders.

43) However, the interested party(s) are allowed to carry on necessary maintenance works of the aircrafts so that their airworthiness certificate remain valid, off course, after obtaining prior permission of this Tribunal.

44) Resultantly, M.A. No.03/2016 is allowed and disposed of accordingly.

44A) The Registry shall send a certified copy of the final order to all concerned free of cost.

T.A.No.37/2016 (C.A.No.867/2015)

O R D E R

Date: 25th April 2017

This proceeding has been initiated by the applicants herein (who were respondent Nos.3 & 4 in CP NO. 969/2012) seeking the recall of the final order dated 14.11.2014 in CP NO. 969/2012 alleging that such an order was secured by the petitioner most illegally in collusion with the respondent No.2 therein keeping the applicants/ respondent Nos.3 & 4 in complete dark about the disposal of the aforesaid proceeding on 14.11.2014 purportedly on the basis of mutually acceptable settlement.

2. The facts necessary for disposal of the present proceeding, in short, are that the non-applicant herein as the petitioner had initiated a proceeding under Section 397/398 of the Companies Act, 1956 alleging that respondents therein had conducted the affairs of the respondent No. 1 company in huge violation of law as well as arrangements made in Article of Association (in short AOA).

3. More importantly, such alleged illegalities in running the affairs of the company by the respondents resulted in mismanagement of the company besides causing enormous oppressions to the petitioner therein. Said proceeding was registered as C.P.No.969/2012. Notice of the proceeding was served on the respondents.

4. The respondents having entered appearance therein submitted reply to which the petitioner had submitted rejoinder against which sur-rejoinder was also submitted by the respondents. In due course, the matter was heard at length but judgment was reserved. However, in view of subsequent developments, the parties were given opportunities to have their dispute in CP No.969/2012 settled amicably.

5. It has been alleged that said proceeding was disposed of on 14.11.2014 on the basis of settlement which was reportedly arrived at by the parties. It has been stated in the order dated 14.11.2014 that both the parties were to comply with certain directions stated in the order dated 14.11.2014, and that too, within the time frame specified therein.

6. But, according to Mr T. Tewari and Mr H. Das, learned Advocates appearing for the applicants herein, the order dated 14.11.2014 was nonest in law since it was obtained fraudulently as the applicants herein had never/ever consented to the disposal of such proceeding on the basis of mutually arrived at settlement. In that connection, it has been submitted that there is catena of decisions, rendered by various courts including the Hon'ble Apex Court of the country holding that judgments/ orders obtained by Fraud is anathema to justice and as such, such judgments and orders cannot be allowed to exist for a moment once such fraud in obtaining the verdicts of the Court/Tribunal is discovered.

7. Even if one assumes for a moment for the sake of argument that the fraud in securing the order in question was not proved, still then, the said order cannot escape being found unsustainable in law since such an order was rendered in profound violations of different provisions of laws. On such count also, the order under challenge is required to be held illegal. The case of applicants in that regard, has been narrated in great detail in para No. 3 to 13 of the application in M.A.No.01/2016. For ready reference, said part of the application is reproduced below:

> *Para – 3 It was immediately thereafter that the company petition was served upon the applicants. The applicants had an amicable relationship with the respondent No.2. The respondent No.2 is based in Hyderabad and she represented that she would look after the present litigation. This suited the applicants since the respondent No.3/applicant No.1 is extremely aged and the applicant No.2/respondent No.4 is a pilot, who ordinary lives in Nepal.*
>
> *Para-4 In those circumstances and at the suggestion of the respondent No.2, a Power of Attorney was executed by the applicants in favour of the respondent No.2. It has since transpired that using this Power of Attorney, the respondent No.2 has engaged Mr Patit Paban Biswal, Advocate and has also filed affidavits on behalf of the applicants.*
>
> *Para-5 The applicants' at all material times shared an excellent relationship with the respondent No.2. However, in the recent past, the applicants decided to find out what was happening to the litigation, since there was no information forthcoming.*
>
> *Para-6 In those circumstances, the applicants contacted the respondent No.2 who represented that the matter was allegedly disposed of by an order of 14th November, 2014. The applicants were surprised because they knew nothing of the above.*

Para -7 The applicants thereafter requested the respondent No.2 to provide particulars of the Advocate who had been engaged. On the respondent No.2 providing information, the applicants contacted Mr Patit Paban Biswal, Advocate from whom the applicants came to learn that:-

(a) *Hearing of C.P.No. 969/2012 had stood concluded before Mr. A. Bandopadhyay, the Leard Member (Technical) of this Hon'ble Board,*
(b) *Before Mr. A.Bandopadhyay delivered judgment, he had already demitted the office,*
(c) *The mater was placed befsore Mr. Justice D.R.Desmukh (Retired), Hon'ble Chairman of the Company Law Board before whom a settlement was allegedly recorded on 14th November, 2014, on the basis of which the C.P. No. 969 of 2012 was disposed of.*

Para-8 On request, Mr. P.P.Biswal, Advocate, provided a copy of the order dated 14th November, 2014, a copy whereof is annexed hereto and marked with the letter "A".

Para-9 The applicants were unaware of the settlement. The matter could, therefore, not have been settled at all, particularly when there are obligations upon the applicants under the settlement.

Para 10 The order dated 14th November, 2014 appears to be a consent order and is bereft of reasons. No consent having being given by the applicants, the order is without jurisdiction and is required to be withdrawn.

Para-11 A consent order is required to be signed by all the parties and Advocates appearing for them. There is no settlement or compromise signed by the applicants and nor does the compromise signed by the applicants and nor does the compromise record the same. The compromise therefore could not have been recorded and it is contrary to law. It is also contrary to public policy that compromise in the instant matter is recorded in the aforesaid manner.

Para-12 On ascertaining the above, in or around Ist June, 2015, the applicants confronted the respondent No.2. The respondent No.2 informed the applicants that she had considered the settlement fit for the applicants. The applicants humbly submit that they consider the settlement to be prejudicial to their interest. Such a settlement cannot be thrust upon the applicants.

Para -13 It appears that the petitioner has acted in collusion and connivance with the respondent No.2 and has fraudulently had a settlement recorded. It is for this reason that the applicants were kept in the dark while the settlement was recorded".

8. It may be stated here that the applicants herein had prayed for the withdrawal the application stating that they are no longer interested in prosecuting the allegations made in the proceeding in hand. However, such a submission was doggedly opposed to by the non-applicant/petitioner stating that such a prayer cannot be accepted since in such a proceeding, the applicants had alleged that an unholy nexus between the petitioner and the respondent No. 2 had led to illegal and unlawful disposal of in CP No. 969/2012 on 14.11.2014. Therefore, unless such allegation is brought to its logical conclusion, the non-applicant/petitioner would suffer serious injustice.

9. The petitioner/non-applicant also pointed out that on the request of the applicants in TA No.37/2016, (corresponding to CA 867/2015), the application in TA No.37/2016 was treated as a reply to the application in TA No.34/2016 (corresponding to CA 461/2015). Since the application in TA No. 37 /2016 became the part of the TA No.34/2016 and since both those proceedings, thus, got connected to each other quite closely, the petitioner/non-applicant opposed such prayer apprehending that such withdrawal would deprive the non-applicant /petitioner in showing the falsity of the aforesaid allegation. On considering the submissions, advanced by the parties through their learned Advocate/PCS, this Tribunal was pleased to reject such a prayer seeking withdrawal of proceeding in hand.

10. In the meantime, the petitioner in CP No. 969/2012 too approached the CLB, Kolkata with an application under Section 634A of the Companies Act, 1956, seeking enforcement of the order, rendered by CLB, Kolkata on 14.11.2014 alleging that the respondents in C.P.No.969/2012 refused to comply with the mandatory directions in the order aforesaid although in the meantime, non-applicant/ petitioner had already complied with all the directions rendered on him.

11 Such a proceeding was registered as C.A.No.461/2015 (corresponding to T.A.No.34/2016). The claims in TA No 34 of 2016 were contested by applicants/ respondents Nos. 3 and 4 whereas the non-applicants herein (respondents Nos. 1 and 2 in C.P.No.969/2012) allowed the said proceeding (CA No. 461/2015) to proceed ex-parte.

12. But then, respondent Nos. 1 & 2 in CP No. 969/2012 too filed an application before this Tribunal seeking recall of the order dated 14.11.2014 alleging that the order 14.11.2014 was

obtained by the petitioner in a most fraudulent way since on 14.11.2014, she left the CLB, Kolkata premises at about 10-30 AM just after signing the attendance sheet. Therefore, the claim that CP No. 969/2012 was disposed of on the basis of settlement, mutually arrived at by the parties thereto, on 14.11.2014 is nothing but a huge pack of lies only. The application, so filed gave rise to MA No.01/2016.

13 In MA No.01/2016, the respondent Nos. 1 & 2, as being applicants therein, further alleged that on 14.11.2014, respondent No.2 alone appeared before the CLB, Kolkata. Equally importantly, on that day, respondents were not at all represented by any of the Advocates, engaged by the respondents to defend them in C.P.No.969/2012 which also demonstrates that the contention that on 14.11.2014, C.P.No.969/2012 was disposed of on compromise was nothing but a downright falsehood. Such claims were, however, hotly contested by non-applicant/petitioner.

14. One may note here that a common thread runs through all those proceedings viz, TA No. 34/2016, TA No. 37/2016 (proceeding in hand), MA No. 01/2016 and MA No. O3/2016 and therefore, some common questions of law as well as facts have arisen in all those proceedings. In such a scenario, all those proceedings were heard simultaneously.

15. It is pertinent to mention here that the respondent No.3 in CP No. 969/2012, who was one of the applicants herein died during the pendency of the proceedings aforementioned.

16 I have heard Mr. T. Tewari and Mr. H. Das, learned Advocates for the applicants herein and also heard Mr. S.K.Gupta Sr. PCS and Mr. N.Sharma, PCS appearing for the non-applicant/petitioner at length . Both the sides have also submitted written synopsis of the arguments for consideration of this Tribunal.

17. Since this proceeding as well as the proceeding numbered as MA 01/ 2016 were initiated seeking recall of the final order rendered in CP No. 969/2012 , since in both the proceedings , the recall of order dated 14.11.2014 was sought for on very similar grounds and since all those controversies are considered and discussed in great detail in M.A.No.01/2016 before reaching decisions on those controversies , therefore, in my opinion, the decisions on the controversies in M.A.No.01/2016 would fairly cover almost all the disputes in this proceeding as well.

18 For ready reference relevant part of the final order in M.A 01/2016 is reproduced below:-

> "'3) *The applicants herein alleged that the order dated 14.11.2014 was rendered behind their back and without their consent and approval. Since the order was passed in a most fraudulent way, the order is not binding upon the respondents in CP No. 969/2012 including respondent No.2. The applicant/respondent No.2 have contended that on*

14.11.2014, the respondent No.2 appeared before the learned CLB but after signing the attendance sheet, respondent No.2 therein (who is one of the applicants herein) had left the CLB.

4) The applicant/respondent No.2 so left the CLB on 14.11.2014 at about 10-30 AM, since on that day, there was hardly any possibility of any effective order having been passed in that proceeding. However, she came to know later that on 14.11.2014, said proceeding was disposed of on the basis of purported settlement, allegedly entered into by the parties thereto which is, however, nothing but a myth only.

5) In that connection, it has been alleged that on 14.11.2014, the respondent No. 2 appeared before the CLB in her capacity as MD of the company who did not have required power and authority to enter any settlement on behalf of the respondents with the petitioner company. The fact that on 14.11.2014, none of the counsel, engaged by the respondents therein, represented the respondents before the CLB, Kolkata makes such a conclusion inevitable.

6) However, on 18.02.2015, the applicant/respondent No.2 in C.P.No.969/2012, received a sealed envelope from CLB, Kolkata and on opening the same, she found a copy of the order dated 14.11.2014 and to her utter surprise, she found that the aforesaid case was disposed of on the basis of a purported settlement entered into by the parties to the aforesaid proceeding on 14.11.2014. According to applicant, the order dated 14.11.2014 in CP No. 969/2012 was passed behind her back and as such, same cannot be binding on her as well as on the other respondents in CP 969/2012."

"38) It is worth noting here that the applicants herein contend that CP No. 969/2012 was disposed of all on a sudden on 14.11.2014 on the basis of a purported settlement. But the non-applicant /petitioner disputed such a claim contending that it is not true to say that CP No. 969/2012 was disposed of on 14.11.2014 and that too, quite suddenly. **Rather there are enough materials to show that a talk of compromise had always been there between the parties to CP 969/2012 over a long period of time which, however, took final shape on 14.11.2014 at the intervention of the learned CLB, Kolkata** which was presided over by **Mr. Justice D.R. Deshmukh**-.

39) In support of such contention from the side of non-applicant / petitioner, my attention has been drawn to several orders, rendered during the period between 17.09.2013 and 14.11.2014. In order to know which side of the story was true, I also find it necessary to look into some the orders, so referred to by Mr. Gupta appearing for the petitioner. For ready reference some those orders, I have gone through are also reproduced below: -

"O R D E R

27.06.2017

As per meeting conducted on 20.06.2014 in the office of the undersigned, the director of the petitioner company in person and respondent No.2, Shri Phizo Nath appeared and expressed willingness to settle the matter amongst themselves. The respondents agreed to pay Rs.5.60 Crores (approximately) to the petitioner in totality for exit of the petitioner by transferring its shares held in the respondent Company in favour of the respondent group or any agents or associates nominated for this purpose by the respondent group. R-2 agreed to pay part consideration by way of draft to the petitioner on 27.06.2014 and the petitioner agreed to handover the shares held by it in the respondent company on the said date.

Ld. Pr. C.S. of the petitioner appeared and produced the share certificates for being handed over on receipt of consideration to be paid by the respondent as per assurance given on 20.06.2014. Ld. Counsel of the respondent submitted that he is yet to receive any instruction from his clients i.e. the respondent No.2 and others in this regard. However, he has agreed to consult his clients in this regard and come back to the Bench with the offer, if any, on the returnable date.

After looking into the above submissions of the rival parties, the matter is fixed for discussion on 14.07.2014 with the specific offers and compliance thereof as agreed upon by the concerned parties to be present in person on that date.

Sd/- A. Bandopadhyay
Member

O R D E R

14.07.2017

Learned counsel of the respondents appeared along with R-2 and R-4 in person. It has been submitted by R-2 that the moneys receivable from the concerned party as per the agreement have not yet been received and as a result, it has not been possible to pay the consideration to the petitioner and therefore, it has been requested that a further time of one month may be allowed to discharge the obligation cast on the respondents to make necessary payment to the petitioner.

Counsel of the petitioner has submitted that as indicated in order dated 27th June, 2014, the respondents have agreed to pay Rs.5.60 Crores (approximately) to the petitioner in exchange of transfer of shares held by the petitioner in the Company to the respondents and R-4 has further agreed to make part payment of the obligation on 27th June, 2014, but no payment has been received so far. Therefore, it has been requested that a fortnight's time may be granted to the respondents to discharge their obligations either in full or in part failing which it should be construed that the settlement has failed and further necessary action in the matter may be taken by the Hon'ble Bench.

After due consideration of the aforesaid submissions of the rival parties, it is hereby directed that the respondents shall either make full or part payment within 15 days hereof by way of bank draft made available to the Bench Officer and further time not exceeding 30 days is hereby granted to discharge the balance consideration to be paid by way of bank draft by the respondents and the same may be made available to the Bench Officer and on receipt of such full consideration, the petitioner is directed to handover the original share certificates to the Bench Officer for carrying out further action in the matter. In absence of compliance of aforesaid direction, the settlement shall be considered as failed and the order will be passed in respect of the pending C.P. No.969 of 2012 in accordance with law.

Sd/- A. Bandopadhyay
Member"

40) A perusal of the orders, rendered by CLB, Kolkata, (presided over by **Mr. A. Bandopadhyay**,) during the period from 17.09.2013 to 14.11.2014, more particularly, the order dated 27.06.2014 and 14.07.2014 clearly reveal that there had been a very sincere and earnest effort between the parties to have the disputes in C.P.No.969/2012 settled amicably. Those orders further reveal that the parties to the aforesaid proceeding had almost arrived at an amicable settlement of such a dispute on terms and conditions mutually acceptable to them.

41) The revelations, aforementioned, clearly demonstrate that a talk of compromise had been there between the parties since long before the date on which the proceeding was allegedly disposed of on a purportedly mutually acceptable settlement. The

fact that the terms and conditions of the settlement, recorded in the order in question, nearly matched the terms and conditions of the settlement, recorded in many previous orders, more particularly the order dated 27.06.2014 and 14.07.2014 make such a conclusion inevitable**.**

42) Such revelation, therefore, evinces that the claim of the applicants that the company petition was disposed of on 14.11.2014 on all on a sudden on the basis of a purported settlement, is found to be without any element of truth. The apparent falsity of above claim, in turn, makes the claim of the applicants that on 14.11.2014, the respondent No. 2 in C.P.No.969/2012 left the CLB at about 10.30 am just after signing the attendance sheet even more doubtful.

43) More and more facts, however, have supported the above conclusion of mine. A careful perusal of the various order(s) rendered in CP No. 969/2012 reveals that during the period from 17.09.2013 to 14.11.2014, CP No. 969/2012 used to be posted mostly at the interval of one and a half month or so--- although----- on some occasions, such interval got extended to a period more than two months. But such regularity was not maintained if one believes the version of applicants/ respondent Nos. 1 and 2 made in the proceeding in hand.

44) This is because of the fact that according to the applicants/ respondent Nos. 1 and 2, the CP No. 969/2012 was last posted on 14.11.2014. But thereafter, the respondent No. 2 did not hear anything from CLB about further progress in the CP No. 969/2012 till she received a letter from the CLB on 18.02.2015 when she learnt that the said proceeding was disposed of on the basis of settlement arrived at between the parties thereto on 14.11.2014. Such claim of the applicants, however, sounds not credible for reasons more than one.

45) I have already found that a matter of great importance had been dealt with by CLB Kolkata in the form of CP No.969/2012 where both the parties locked in a fierce battle. Therefore, if the CLB adjourned the proceeding without rendering any order on 14.11.2014 and allowed the matter to be drifted away aimlessly, as claimed by the applicants herein, then they must have done everything possible from their side to ensure that the case was back on track as early as possible, more so, when both the parties had huge stake on the outcome of aforesaid proceeding.

46) However, the record reveals that instead of running from pillar to post to know about the fate of such proceeding at the earliest possible time, the applicants chose to sleep over such a vital matter (which have the potentiality of making or marring their lives) for a pretty long period of time and came to know about the alleged drastic and harsh end of such proceeding only when the respondent No. 2 received a letter from CLB on 18.02.2015.

47) Such a conduct on the part of the applicant/respondent No.2 is wholly incompatible---- not only with normal human behaviour--- but---- also with her own conduct which she demonstrated in between17.09.2013 and 14.11.2014 so far her attendance before the CLB is concerned. Such disclosures once again demonstrate that the claim of the respondent No.2 that she left the CLB on 14.11.2014 just after singing the attendance sheet and that she came to know about the order in question only on 18.02.2015 is enormously suspicious.

48) Mr S. Dutta, learned counsel for the respondent No.2/applicant has again submitted that on 14.11.2014, the applicant appeared before the Tribunal in her capacity as Managing Director of the company. As a Managing Director, she did not have the necessary authority and power to enter into a binding settlement on behalf of the respondent No. 1

company with the petitioner. In other words, on 14.11.2014, her position was no better than an ordinary director of the company.

49) In that connection, it was also submitted by Mr S. Dutta that on 14.11.2014, one Bhanu Mati (since deceased) was the Chairman of the respondent No.1 company and therefore, it was she who alone could have entered into a settlement in question with the petitioner binding the respondent No.1 company and other respondents under the terms and conditions of such settlement.

50) In support of such contention, Mr. Dutta argues that said Bhanu Mati, being the Chairman of the company, was invested with all the powers to represent the company and other respondents in any dealing for and on behalf of the company. Though respondent No.2 enjoyed such powers for some time, yet, such powers were withdrawn from her by the Board by its resolution adopted on **14.01.2014.**

51) In that regard, my attention has been drawn to Section 2(54) of the Companies Act, 2013 to contend that the Managing Directors of the companies in exercise of substantial powers, conferred upon them, cannot enter into a settlement on behalf of the company. Being so, under no circumstances, it was possible for the respondent No.2/applicant to enter into a settlement on behalf of the company with the petitioner on 14.11.2014. Such contention was, however, refuted by Mr. Gupta.

52) But then, the contention that the Managing Director of a company cannot validly enter into compromise on behalf of the company has lost all its relevance, now, since I have already found that on 14.11.2014, respondent No.2 appeared before the CLB being aided and guided by a battery of duly appointed Advocates who properly represented all the respondents in CP No. 969/2012 No.1 and therefore , she had necessary **whewhetel t**o enter into settlement in question to dispose **the CP No. 969/2012 on the basis of such settlement.**

53) However, even if one assumes for the sake of argument for a moment that on the date in question, she appeared before the CLB only as a Managing Director of the company, and that too, without being aided and guided by any Advocate, engaged by the respondents, yet then, one would find that her, being the Managing Director of the Company, gave her enormous power to enter into a settlement representing all respondents including the respondent No.1 company with the petitioner.

54) In that connection, one can peruse profitably the decision of the Karnataka High Court in the case of *Wasava Tyres A Partnership Firm Vs The Printers (Mysore) Private Limited*, reported in (2008) 86 SCL 171 (Kar), wherein, it was held that a Managing Director of a company has power to institute a suit for and on behalf of the company. When it is found that the Managing Director of a company had the power to institute suit, it can necessarily be concluded that the Managing Director has the power to enter into a settlement for and on behalf of the company.

55) The relevant part of the judgment in **Wasava Tyres A Partnership Firm** (supra) is reproduced below:

"That apart, the provisions of Section 2 (26) of the Companies Act define the word Managing Director thus:

(26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with (substantial powers of management) which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

(Provided that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.

(Emphasis supplied)

Provided further that a managing director of a company shall exercise the powers subject to the superintendence, control and direction of its Board Directors."

42. The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore, except the excluded acts the managing director has power and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the emit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-to-day affairs and business of the company. Therefore, by virtue of provisions of Section 26 the suit instituted by the Managing Director is deemed to be within his power and authority. The suit is obviously filed for the benefit of the company. In that view of the matter, the contention that the Managing Director had no authority to file a suit is untenable and the same is rejected.

56) However, my conclusion that the order in question was rendered in presence of applicant/respondent No.2 receives the final seal of approval from a rather unexpected quarter, same being respondent No.3 and 4 in CP No. 969/2012, more particularly, respondent No.4 therein. Such a position is found well evident from the averments made in an application by respondent No.3 and 4 in CP No. 969/2012 which gave rise to CA 861/2015 (corresponding to TA 37/2016).

57) In the application in TA 37/2016, the respondent Nos. 3 and 4 claim that respondent No.2 in CP No. 969/2012 was assigned the duty of conducting the aforesaid proceeding on behalf of other respondents therein. Over a long period of time, they did not hear anything about the status of aforesaid proceeding before the CLB for which they made an enquiry and came to know that said proceeding was disposed of on 14.11.2014 on the basis of settlement mutually agreed to by the parties thereto.

58) In such a situation, the respondent Nos. 3 and 4 contacted the respondent No.2 therein and enquired her as to how the aforesaid proceeding was disposed of on 14.11.2014 allegedly on the basis of mutually agreed settlement. In response to such enquiry, the respondent No. 2 informed them that she agreed to dispose of the aforesaid proceeding on the basis of mutually acceptable settlement since she believed same was for the benefit of the respondent No1 Company. For ready reference, relevant parts are reproduced below:

*"Para- 12 on ascertaining the above, in or around IST June, 2015, the applicants confronted the respondent No.2**. The respondent No.2 informed the applicants that she had considered the settlement fit for the applicants.** The applicants humbly submit that they consider the settlement to be prejudicial to their interest. Such a settlement cannot be thrust upon the applicants*."

59) Those revelations, therefore, become tell-tale testimonies to the fact that the order in question was rendered on 14.11.2014 and such order was passed with the approval and consent of parties present before the CLB which included applicant/respondent No.2 as well. In the teeth of above disclosures, I do not find any difficulty in rejecting all the claims of the applicants that order dated 14.11.2014 was rendered behind their back and without their consent. "

"60) *This brings me to yet another important chapter of the proceeding where it is to be seen if the order dated 14.11.2014 is liable to be declared illegal for being rendered in huge violation of various Laws and Rules, made there-under as alleged by the applicants. In that connection, it has also been contended that the Companies Act, 2013 has provided a mechanism for compromise, arrangement and amalgamation of companies and such provision can be found in Chapter XV thereof.*

61) According to Mr S. Dutta, learned Advocate for the respondent No.2/applicant, the Tribunal needs to follow such procedure in letter and spirit before disposing of a case on compromise. But such mandatory directions were honoured, not in observance, but in breach instead. Such contentions were, however, disputed by Mr S.K. Gupta, Sr. PCS contending that under the Companies Act 1956 or for that matter, the Act of 2013 have been categorized into several parts with separate heading for each of such heads.

62) The heading of each chapter gives a clear indication as to the matters, covered by such a chapter----- as well as -----as to how the matters therein are to be dealt with. Mr Gupta conceded to the facts that that under the Act of 1956, matters related to arbitration, compromise and reconstruction were arranged in Chapter- V thereof whereas under the Act of 2013 compromise, arrangement and amalgamation were clubbed in Chapter- XV. But then, under the Act of 1956, the power to deal with matters, such as, compromise/ arrangement etc. was vested in the Hon'ble High Court.

63) As such, under the Act of 1956, CLB had no jurisdiction whatsoever to deal with matters, such as, compromise/ arrangement etc. Similarly, the contention that CLB ought to have followed the prescription in Section 230 of the Act of 2013 before disposing of the proceeding on the basis of a purported settlement is equally unfounded since on the date on which the order in question was rendered, same being order dated 14.11.2014, section 230 of the Act of 2013 was not made effective.

64) That apart, section 230 of the Act of 2013 confers the powers, mentioned therein, not on the CLB but on the Tribunal instead which means National Company Law Tribunal (NCLT) as is evident from Section 408 of the Act of 2013 which was, however, not even in existence on the date on which the order in question was rendered. Such revelation again confirms that the argument so structured on this count, is without any basis------ contends Mr. Gupta.

65) I have considered the rival submissions and found reason to conclude that procedures prescribed in Section 391 of the Act of 1956 could not be invoked by CLB in disposing a proceeding on the basis of the compromise etc. as contemplated in section 391 since the High Court, and the High Court alone, had the power to dispose of a proceeding on the basis of compromise, arrangement and reconstruction. Being so, the allegation that the order in question is bad for not being rendered in accordance with the prescription of Section 391 of the Act of 1956 is also found to be baseless.

66) In regard to the contention that the order in question is bad for not following the prescription under Section 230 of the Act of 2013, I have found that such contention is also without any substance -------- inasmuch as------- the said provisions came into effect long after the order dated 14.11.2014 was rendered. Further, the prescription therein is meant, not for CLB, but, for the Tribunal to be constituted under the Act of 2013 which was evidently not in existence on the date aforesaid.

67) Referring to section 442 of the companies Act 2013, Mr S. Dutta further submitted that the Act of 2013 requires the CLB to refer the parties before it, who desire to settle their dispute amicably, to the Mediation and Reconciliation Panel before disposal of

the proceeding on the basis of the alleged settlement. This is more so, since section 442 came into force w.e.f. 01.04.2014.

68) Since such a prescription of law was not at all followed in rendering the order dated 14. 11. 2014, according to Mr S. Dutta, the order in question becomes untenable on this count as well. Once again, Mr S.K. Gupta, Sr. PCS, submitted that the said provision is applicable only to the proceedings pending before (a) the Central Government, (b) Tribunal or (c) Appellate Tribunal, to be constituted under the Act of 2013.

69) However, on the date of the order in question, the Tribunal or Appellate Tribunal were not constituted and as such, the question of CLB's referring the dispute, aforesaid, on exercising power under section 442 does not arise at all, more so, when power under section 442 could be exercised by the authorities referred to in the preceding paragraph. On considering the submissions in the light of materials on record as well as the law holding the field, I have found very valid reason to concur with the arguments, so advanced by Mr. Gupta on this count.

70) Mr. Dutta also assailed the order in question contending that in ordering the transfer of shares of the petitioner to the respondents in CP No.969/2012, the learned CLB did not keep in mind the various provisions of Companies Act dealing with transfer shares etc. as well as the Companies (shares Capital and Debentures) Rules, 2014 and so also the provisions of Article 3 of the Article of Association and therefore, such transfer of shares cannot have any legal validity, whatsoever. On this count too, the order dated 14.11.2014 is required to be declared illegal

71) Likewise, Rule 4 of Order XXIII of the CPC too prescribes a detailed procedure which all concerned is required to follow before disposing of a suit on the basis of a compromise. Said provisions, amongst others things, mandate that before disposing a suit on compromise, the terms and conditions of compromise are required to be reduced to writing. More importantly, such settlement, which needs to be reduced to writing, must invariably be signed by the parties to such compromise.

72) The State Legal Services Authorities Act, 1987 also provides very similar provisions vis-à-vis settlement of the disputes between the parties to the proceeding by way of compromise/ settlement etc. Though the Tribunal or for that matter, the CLB are not required to follow the Civil Procedure / the Legal Services Authority Act, 1987 etc. strictly, yet then, those authorities in deciding the disputes before them, are to follow the spirit of those Acts since such a practise ensures fair play and justice to the parties before them.

73) But while disposing of the company petition No. 969/2012, on the purported settlement, all those requirements of laws were thrown to the wind by the CLB Kolkata which, therefore, becomes prolific testimony of order in question, being profoundly illegal. Equally importantly, in the fact and circumstances of the proceeding in hand, they become another proof of order in question being secured in a most fraudulent way which, in turn, also requires this Tribunal to recall the order as prayed for by the applicants herein.

74) In support of his contention, Mr. Dutta has relied on the following decisions, rendered by Hon'ble Apex Court of the country: -

*(**1**) Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead), reported in1990 (1) SCC 193, **(2)** Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, reported in 1994 (1) SCC 1, **(3)** Chandra Kishore Jha Vs. Mahavir Prasad & Ors. reported in 1999 (8) SCC 266, (**4**) United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors. reported in 2000 (3) SCC 581, (**5**) Vithalbhai Pvt. Ltd. Vs. Union Bank of IndiaPremature suit, reported in 2005 (4) SCC 315, (**6**) Smt. Claude-Lila Parulekar Vs. :Sakal Papers Pvt. Ltd. and Ors.*

*reported in2005 (11) SCC 73, (**7**) Chatterjee Petrochem (I) Pvt. Ltd. Vs. Haldia , Petrochemicals Ltd. and Ors. reported in 2011 (10) SCC 466 and (**8**) Bimal Kumar and Anr. Vs. Shakuntala Debi and Ors reported in 2012 (3) SCC 548.*

75) Such contention was refuted by Mr. Gupta contending that in a catena of decisions, it has repeatedly been held that the jurisdiction of CLB to grant appropriate relief under section 402 of the 1956 Act is of wide amplitude. While exercising its discretion, CLB is not bound by the terms contained in section 402 of the 1956 Act. In a particular fact or situation, such further relief or reliefs, as CLB may deem fit and proper, may also be granted. Off course, reliefs must be granted, however, having regard to the exigencies of the situation.

76) Mr. Gupta further submit that in large number of cases, the CLB disposed of proceeding under section 397/398 of the Companies Act, 1956 on the basis of settlement arrived at by the parties to the proceeding before the CLB. In some of those cases, the CLB even directed one group of shareholders to purchase the shares of other group thereby paving the way for later group to exit from the company.

77) All these clearly show that in granting relief(s) CLB enjoys enormous power and many a times, in exercise of such power, the CLB may even travel well beyond the limits of law. It has also been contended that an order which was secured on the basis of settlement, arrived at between the parties cannot be recalled unless both the parties agreed to recall the same.65. In support of such contention, Mr. Gupta relies on the following decisions rendered by learned CLBs: -

***(a)** CLB, New Delhi in Mrs. Michelle Jawad-Al-Fahoum v. Indo Saudi (Travels) (P.) Ltd, reported in **(**1998) 30 CLA 42 (CLB), (**b)** CLB, Kolkata in Bertrand Faure Sitzteehnik GmbH & Co. Kg. v. IFB Automotive & Seating Systems Ltd. reported in (1999) 34 CLA 277 (CLB), **(c)** CLB, Chennai in M. S. D. Chandrasekhar Raja v. Shree Bhaarathi Cotton Mills (P.) Ltd. reported in (2004) 63 CLA 130 (CLB**) (d)** Amrik Singh Hayer Vs Hayer Estates (P) Ltd. And others, reported in (2008) 82 CLA 358 (CLB). **(e)** Kaikhosrouk Framji Vs Consulting Engineering Services (India) Ltd. And others, reported in (2002) 48 CLA 1 (CLB) and (**f)** Gul Kriplani Vs Regency Hotles (P) Ltd. And others, reported in (2010) 96 CLA 55 (CLB).*

78) In the context of power of CLB in granting relief(s), one may look into the decision of the Apex Court in Cosmos Steels v. Jairamdas Gupta (1978) 48 Comp Cas 312 (SC), wherein it was held that Company Court (now NCLT) has wide powers under sections 397, 398 and 402 of the 1956 Act and it can make any order for regulation of the conduct of company's affairs as may be just and equitable in the circumstances of the case.

79) It was also held there that in granting relief, the CLB can also order reduction of capital, and that too, even without following provisions of sections 100 to 104 of the 1956 Act. However, in doing so, CLB needs to keep interest of creditors in mind. In D Ramakishore v. Vijayawada Share Brokers Ltd. (2009) 89 SCL 279 (AP), it was also held that technicalities cannot defeat exercise of equitable jurisdiction under section 402 of the Act of 1956.

*80) **In IFCI Ltd. v. TFCI Ltd. (2011) 107 SCL 512/11, it was held by CLB, Delhi** that Court (now NCLT) has extremely wide powers under section 402 of the 2013 Act to mould relief and also to examine subsequent events. Again in Bennet Coleman & Co. v. UOI (1977) 47 Comp Cas 92 (Bom) also, it was held that High Court has ample jurisdiction and very wide powers, without any limitation or restriction, to pass such orders and give such directions to achieve the object.*

81) What, therefore, emerge from the decisions aforementioned, and that too quite noticeably, is that the order under challenge, if found equitable and just and if such

order meets the ends of justice, mere non-compliance of various provisions of law would not make such order illegal or unsustainable since as is held in catena of decisions, CLB, in appropriate case, may grant relief which may even run counter to provisions of various laws or to the Articles of Association.

82) I have already found that the order dated 14.11.2014 was rendered by the learned CLB on being satisfied that the parties to CP No.969/2012 had decided to dispose of said proceeding on the basis of mutually acceptable settlement and therefore, on recording such settlement in the order, learned CLB disposed of such a proceeding on the basis of such said settlement.

83) Being so, in my very considered opinion, all the allegations, hurled at the order under challenge from the side of applicants, are held to be without any basis and therefore, decision relied on by Mr. Dutta are found inapplicable to the dispute in the present proceeding.

84) One may note here that Mr S.K. Gupta also questions the maintainability of the present proceeding on counts more than one. In that connection, it has been argued that in the present proceeding (M.A.01/2016), the applicant questioned the propriety / legality/ correctness of the order dated 14.11.2014 under which the CP No. 969/2012 stood disposed of allegedly on the basis of amicable settlement arrived at by the parties thereto.

85) In that back ground, it has been stated that under the Act of 1956, the legislature makes the order, rendered by CLB appealable one. But in spite of applicant's questioning the order, rendered on 14.11.2014, on various legal grounds and despite such an order being an appealable one, the applicant did not prefer any appeal against such order before the Hon'ble High Court in time in accordance with the prescription, laid down in Section 10(F) of the Companies Act, 1956 although the CLB remained functional till 31st May, 2016.

86) What is equally important to note here is that the Act of 1956 was repealed by the Act of 2013 and CLB was replaced by NCLT. But the new Act too, more particularly section 434 (b) (which is paramateria to section 10 (F) of the Act of 1956) allows a party, aggrieved by the order of the CLB, to prefer an appeal on law point(s) before the High Court within the time limit fixed. But in spite of the Act of 2013 providing an opportunity to question the order dated 14.11.2014 by preferring an appeal before the High Court, the applicant did not prefer any appeal against such an order within the time limit fixed by law.

87) Since the applicants did not avail of its right to question the order dated 14.11.2014 under the Act of 1956 in time and since they also did not avail themselves of such opportunity, provided under the Act of 2013 , now, it is not permissible under the law to prefer an application before the NCLT seeking relief in the form of recalling the order dated 14.11.2014 alleging that such an order was passed without their knowledge and consent although such an order was supposedly rendered on the basis of settlement mutually agreed to by the parties thereto.

88) One may note here that the applicant claims that she came to know about such an order only on 18.02.2015. But even if one assumes for the sake of argument for a moment that the applicant came to know about such an order only on 18.02.2015, as claimed by the applicant, yet then, the applicant could have preferred such appeal before the High Court within two months from the date of knowledge of such order since the CLB remained functional ***till 31st May, 2016****. Therefore, under no circumstances, the applicant can, now, come to this Tribunal to question the order rendered by CLB on 14.11.2014 in CP No. 969/2012------ argues Mr S.K. Gupta.*

89) It is also the case of the non/applicant/ petitioner that the applicant did not mention in the application the provision of law under which it approached the NCLT. But then, a perusal of the application clearly reveals that the applicant, in fact, wants the review of the order, rendered by CLB on 14.11.2014. One may note here that under the Act of 1956, the legislature did not invest the CLB with power to review its own order.

90) Since the matter whether or not, a court or tribunal would be bestowed with the power of review of its order/ judgment lies completely in the realm of legislature and since the legislature in their wisdom found it fit not to bestow the CLB with the power to review its order, therefore, NCLT too, can never have the power to review the order, rendered by CLB, Kolkata in CP No969/2012 on 14.11.2014 ----argues Mr. Gupta.

91) Mr. Gupta again contends that the Act of 1956 conferred on the Tribunal, constituted there-under (which, however, never took of), the power to review of its own order, vide section 10(FN) of the Act of 1956. But the Act of 2013 does confer on NCLT such power and such a disclosure further demonstrates that the NCLT has no power to either review its order or the order rendered by CLB under the old regime.

92) In regard to power of the NCLT to rectify its errors, Mr. Gupta, submits that section 420(2) of the Act of 2013 has given the NCLT the power to rectify the mistake which is apparent on record. For ready reference, section 420 (2) of the Act of 2013 is reproduced below: -

> *"Sec. 420(2). The Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall makes such amendment, if the mistake is brought to its notice by the parties;*
>
> *Provided no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act".*

93) However, the counsel for the petitioner contends that the power, conferred on the NCLT under section 420 (2) of the Act of 2013 can be under exercise to rectify the certain errors in the order which are rendered by NCLT alone, and by no other authority. The fact that under the Act of 1956, no such power was conferred on the CLB makes such a conclusion inevitable ------contends Mr. Gupta.

94) However, admitting that all the Courts/ Tribunals always enjoy the inherent power to correct its mistake causing huge injustice to the parties to any suit/petition/proceeding etc., it has again been argued that since there was absolutely no infirmity in the order dated 14.11.2014, therefore, in the facts and circumstances of the present case, it is not possible for the NCLT to invoke its such extra-ordinary power to recall the order dated 14.11. 2014.

95) Mr S. Dutta, learned counsel appearing for the applicants/respondent No I and .2, however, contends that the arguments, advanced from the side of the non-applicant/petitioner, questioning the maintainability of the proceeding in hand have hardly any basis since under Section 10 (F) of Act of 1956 and also under Section 434 (2) of the Act of 2013, an appeal can be preferred only on law point and not otherwise.

96) However, in the case in hand, the order dated 14.11.2014 was questioned not only on law points but it was questioned on factual fronts as well. Since the order dated 14.11.2014 was not questioned on law points alone but also on factual infirmities too, the applicant cannot validly prefer an appeal under the aforesaid provisions of law.

97) Therefore, the only way out for the applicants/respondent No I and .2 is to prefer the proceeding in hand urging this Tribunal to recall the aforesaid on invoking its

inherent jurisdiction since the order dated 14.11.2014 had been obtained quite fraudulently which in turn has enormous injustice to the applicants herein and in fact other respondents in C.P.No.969/2012.

98) However, the question whether or not the present proceeding in maintainable slips into complete irrelevance since I have already found that the present proceeding has no legs to stand on, the primary reason being that the allegation that the order 14.11.2014 was secured by practising fraud was found to be far from being established and as such, there is absolutely no scope whatsoever to recall the order dated 14.11.2014 as prayed for by the applicant herein.

99) But then, it needs to be stated that I have still considered the submissions, advanced on the point of maintainability of the present proceeding and found that here, the application under consideration did raise several questions on law. Therefore, in my considered opinion, the applicants herein or for that matter any other person or persons, aggrieved by such an order, was to have preferred an appeal before the High Court within the time limit, fixed.

100) Since it was not done, in my very considered opinion, the applicant cannot successfully prefer the present application to question the legality, propriety and validity of such an order. Being so, there cannot be any escape from the conclusion that present proceeding is not at all maintainable in view of embargo imposed by law."

19. Now, the only allegation which is yet to be addressed is whether the non-applicant / petitioner secured the order in question in collusion with the respondent No. 2. Here, it may be stated that if one reads the allegations in application in between the lines, he would find that according to applicants herein the respondent No. 2 alone was entrusted to defend the allegations levelled against the respondents in CP No. 969/2012.

20. According to the story, narrated in the application, the respondents No. 2 was the best suited person for the purpose aforesaid since she was the Managing Director of the respondent No. 1 company at all material times and since respondent No. 4 ordinarily resides in Nepal and since the respondent No. 3 was an elderly person and therefore, respondent No.2 was given the responsibility of ensuring that the proceeding against them was conducted properly.

21. Situation being such, the applicants scarcely attended the court proceeding and as such, they were not at all aware of as to how such a proceeding was conducted by the respondent No. 2 before the CLB, Kolkata. However, on an enquiry being made, they came to know that the respondent No. 2 engaged one **Mr. Patit Paban Biswal, Advocate**, to conduct the case on behalf of the respondents in CP No. 969/2012.

22 However, when the respondent No. 4 could manage to establish contact with **Mr. Patit Paban Biswal, Advocate**, then and then only, they came to know that CP No. 969/2012 was disposed of on 14.11.2014 on the basis of a settlement supposedly acceptable to all the parties thereto which

the applicants herein claim to be totally without any element of truth. But then, the various materials on record, more particularly, the order dated 27.06.2014 and 14.07.2014 very vividly show that all those allegations are wholly untrue.

23. For ready reference, the order dated 27.06.2014 and 14.07.2014 are reproduced below: -

"O R D E R

27.06.2017

As per meeting conducted on 20.06.2014 in the office of the undersigned, the director of the petitioner company in person and respondent No.2, Shri Phizo Nath appeared and expressed willingness to settle the matter amongst themselves. The respondents agreed to pay Rs.5.60 Crores (approximately) to the petitioner in totality for exit of the petitioner by transferring its shares held in the respondent Company in favour of the respondent group or any agents or associates nominated for this purpose by the respondent group. R-2 agreed to pay part consideration by way of draft to the petitioner on 27.06.2014 and the petitioner agreed to handover the shares held by it in the respondent company on the said date.

Ld. Pr. C.S. of the petitioner appeared and produced the share certificates for being handed over on receipt of consideration to be paid by the respondent as per assurance given on 20.06.2014. Ld. Counsel of the respondent submitted that he is yet to receive any instruction from his clients i.e. the respondent No.2 and others in this regard. However, he has agreed to consult his clients in this regard and come back to the Bench with the offer, if any, on the returnable date.

After looking into the above submissions of the rival parties, the matter is fixed for discussion on 14.07.2014 with the specific offers and compliance thereof as agreed upon by the concerned parties to be present in person on that date.

Sd/- A. Bandopadhyay
Member

O R D E R

14.07.2017

Learned counsel of the respondents appeared along with R-2 and R-4 in person. It has been submitted by R-2 that the moneys receivable from the concerned party as per the agreement have not yet been received and as a result, it has not been possible to pay the consideration to the petitioner and therefore, it has been requested that a further time of one month may be allowed to discharge the obligation cast on the respondents to make necessary payment to the petitioner.

Counsel of the petitioner has submitted that as indicated in order dated 27th June, 2014, the respondents have agreed to pay Rs.5.60 Crores (approximately) to the petitioner in exchange of transfer of shares held by the petitioner in the Company to the respondents and R-4 has further agreed to make part payment of the obligation on 27th June, 2014, but no payment has been received so far. Therefore, it has been requested that a fortnight's time may be granted to the respondents to discharge their obligations either in full or in part failing which it should be construed that the settlement has failed and further necessary action in the matter may be taken by the Hon'ble Bench.

After due consideration of the aforesaid submissions of the rival parties, it is hereby directed that the respondents shall either make full or part payment within 15 days hereof by way of bank draft made available to the Bench Officer and further time not exceeding 30 days is hereby granted to discharge the balance consideration to be paid by way of bank draft by the respondents and the same may be made available to the Bench Officer and on receipt of such full consideration, the petitioner is

directed to handover the original share certificates to the Bench Officer for carrying out further action in the matter. In absence of compliance of aforesaid direction, the settlement shall be considered as failed and the order will be passed in respect of the pending C.P. No.969 of 2012 in accordance with law.

Sd/- A. Bandopadhyay

Member"

24 A bare perusal of those order(s) unmistakably demonstrates that the respondents Nos. 3 and 4 in CP No. 069/2012, more particularly, respondent No 4 had very actively participated in the said proceeding since he attended the proceeding before the CLB, Kolkata at a very crucial stage and had even involved in a process aimed at settling the dispute in CP No.969/2012 amicably, and that too, on a date as late as 14.07.2014.

25 The orders, rendered on 27.06.2014 and 14.07.2014 further show that the respondent No 4 was present before the CLB, Kolkata on all the days aforesaid. The attendance sheets as well as the order, rendered on 27.06.2014 and 14.07.2014, again demonstrate quite clearly that on all those occasions, respondent No 2 and respondent No. 4, being accompanied by their Advocates, appeared before the CLB and actively participated in the aforesaid proceeding.

26 The above revelations , therefore, speak loud and clear that the claims of the applicants herein **(i) that** they did not know anything about the Advocate who conducted the case for and on behalf of the respondents in CP No. 969/2012 till the early part of 2015**-(ii) that** they came to know about such advocate only from the respondent No. 2, and that too, long after the disposal of aforesaid company petition and **(iii) that** they came to know about such proceeding having been disposed of, on the basis of alleged amicable settlement after making a prolong enquiry are all nothing but myth only.

27 In view of aforesaid findings, I have no other option but to hold that the present proceeding lacks merit and same is, therefore, required to be dismissed.

27A) The Registry shall send a certified copy of the final order to all concerned free of cost.

28 Resultantly, the proceeding is dismissed.

T.A.No.34/2016 (C.A.No.461/2015)

O R D E R

Date: 25th April 2017

This proceeding has been initiated seeking following relief(s):

Para-16 *In the premises, it is humbly prayed that this Hon'ble Bench may be pleased to pass*

(a) Necessary directions for the enforcement of the order passed by this Hon'ble Bench on 14.11.2014 in Original Petition No. 969/2012 in terms of the aforesaid order.

(b) Such further and other order/orders as the Hon'ble Company Law Board, Kolkata Bench may deem fit and proper.

And your Applicant as in duty bound shall ever pray.

2. The facts necessary for disposal of present proceeding in short are that the applicant herein as the petitioner had initiated a proceeding under Section 397/398 of the Companies Act, 1956 alleging that respondents therein had conducted the affairs of the respondent No. 1 company in huge violation of law as well as arrangements made in Article of Association (in short AOA).

3. More importantly, such alleged illegalities in running the affairs of the company by the respondents resulted in mismanagement of the company besides causing enormous oppressions to the petitioner therein. Said proceeding was registered as C.P.No.969/2012. Notice of the proceeding was served on the respondents.

4. The respondents having entered appearance therein submitted reply to which the petitioner had submitted rejoinder against which sur-rejoinder was also submitted by the respondents. In due course, the matter was heard at length but judgment was reserved. However, in view of subsequent developments, the parties were given opportunities to have their dispute in CP No.969/2012 settled amicably.

5. It has been alleged that said proceeding was disposed of on 14.11.2014 on the basis of settlement which was reportedly arrived at by the parties. It has been stated in the order dated 14.11.2014 that both the parties were to comply with certain directions stated in the order dated 14.11.2014, and that too, within the time frame specified therein.

6. In the meantime, the applicant herein (the petitioner in CP No. 969/2012) too approached the CLB, Kolkata by way of an application under Section 634A of the Companies Act, 1956, seeking enforcement of the order rendered by CLB, Kolkata on 14.11.2014 alleging that the

respondents in C.P.No.969/2012 refused to comply with the directions in the order aforesaid although in the meantime non-applicant/ petitioner had complied with all the directions rendered on him.

7 Such a proceeding was registered as C.A.No.461/2015 (corresponding to T.A.No.34/2016). Such claims were contested by applicant/ respondents Nos. 3 and 4 whereas the non-applicant/ respondents Nos. 1 and 2 herein allowed the said proceeding (CA No. 461/2015) to proceed ex-parte.

8. In the meantime, respondent Nos. 3 and 4 in CP No. 969/2012 had approached the CLB with an application seeking recall of the order dated 14.11.2014 contending that such an order, under which CP No. 969/2012 stood disposed of allegedly on the basis of settlement arrived at between the parties thereto, was, in fact, secured by the petitioner in aforesaid Company Petition in colluding with respondent No.2 therein.

9. More importantly, such an order was obtained keeping the respondent Nos. 3 and 4 in complete darkness. On the basis of said application, CA No. 867/2015 (corresponding to TA No.37/2016) was registered. Said proceeding was contested by the petitioner having filed reply. Such a proceeding now awaits disposal. However, during the pendency of the proceeding, non-applicant / respondent No. 3 expired and proceeding proceeded against the surviving non-applicants

10. Meanwhile, the respondent Nos. 1 & 2 in CP No. 969/2012 had also filed an application before this Tribunal seeking recall of the order dated 14.11.2014 alleging that the order 14.11.2014 was obtained by the petitioner in a most fraudulent way since on 14.11.2014, she left the CLB, Kolkata premises at about 10-30 AM just after signing the attendance sheet.

11 Therefore, the claim that CP No. 969/2012 was disposed of on the basis of settlement, mutually arrived at by the parties thereto, on 14.11.2014 is nothing but a huge pack of lies only. The application, so filed, gave rise to MA No.01/2016. Said proceeding was also hotly contested by the petitioner having filed reply and same is also waiting disposal.

12. It needs to be stated here that the non-applicants herein (they being respondent Nos. 3 and 4 in CP No. 969/2012) had requested this Tribunal to treat the application in TA No. 37/2016 as their reply to the application which gave rise to TA No.34/2016 which was, however, accepted. I have heard Mr. SK Gupta Sr. PCS and Mr. N Sarma, PCS appearing for the applicant / petitioner. Also heard MR. S Dutta, learned counsel appearing for non-applicant /respondent Nos 1and 2 and Mr. T. Tiwari and Mr. H Das, learned counsel appearing for the non-applicant/ respondent No. 4.

13 I have already found that the respondent Nos. 3 and 4 in CP No. 969/2012 as applicants had initiated TA No. 37/2016 seeking recalling of the order, dated 14.11.2014 alleging that such order was obtained fraudulently. Similarly, respondent Nos. 1 and 2 also initiated MA No. 01/2016 also seeking recalling of the aforesaid order contending that such order was obtained in a most illegal way. As stated above, both those proceedings were strongly resisted by the non-applicant therein who is the applicant in the present proceeding (the petitioner in CP No. 969/2012).

14 On hearing both the sides in those proceedings, this Tribunal was pleased to dismiss such proceedings on holding that the allegations hurled at the order dated 14.11.2014 were wholly without any substance vide order dated 25.04.2017 in TA No. 37/2016 and the order dated 25.04.2017 in MA No. 01/2016.

15 Since the allegations, hurled in the order dated 14.11.2014 are found to be without any substance., It becomes more than clear that the order dated 14.11.2014 is an order, free from any infirmity whatsoever and as such, same is required to be enforced as prayed for in the present proceeding.

16. It may be stated here that since a detailed order was rendered before dismissing TA No. 37/2016 and MA No. 01/2016 on merit and since the decisions in TA No. 37/2016 and MA No. 01/2016 are fairly applicable the dispute in the present proceeding, I find it not necessary to indulge in detailed discussion on the allegations and counter allegations made in the present proceeding, more so , when the respondent Nos. 1 and 2 in CP No. 969/2012 chose not to file any reply to the allegations made in the present application of the present proceeding and when the respondent Nos. 3 and 4 urged this Tribunal to treat the application in TA No. 37/2016 as a reply to the application in the present proceeding.

17. In the result, this proceeding is allowed and disposed of accordingly. However, parties are left to bear their own costs.

18. The Registry shall send a certified copy of the final order to all concerned free of cost.

19. Parties are directed to appear before the Tribunal on 05.05.2017 to take further order(s) towards the implementation of order dated 14.11.2014 in CP No. 969/2012 in terms of the directions incorporated therein.

Member (Judicial)
National Company Law Tribunal
Guwahati Bench,
Guwahati.

nkm/samir