

NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P. 27/2016

Present: Hon'ble Member (J) Shri Vijai Pratap Singh

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 18<sup>th</sup> July, 2017, 10.30 A.M

Name of the Company		Sajan Kumar Bhagat HUF & Ors. -Versus- Lotus Homes .Ltd. & Ors.	
Under Section		241/242	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. CS SANJAY KUMAR GUPTA  
(FCS)

2. CS. ROHIT KUMAR KESHRI  
(PCS)

Respondents

*[Signature]*  
18.07.2017

Rohit Keshri  
18.07.17.

1. MR. RATNANKO BANERJI, SR. ADV.

2. MR. A. SINHA, ADV

3. MR. N. DASGUPTA, ADV

4. MR. S. MITRA, ADV

5. MS. P. BASU, ADV

Petitioners

*[Signature]*  
18/7/17

ORDER

Ld. Counsels for the petitioners and the Pr. CS for the respondents are present.

Ld. Pr. CS for the respondents made a request that demurrer application may be decided. In view of the law laid down by the NCLAT in **Company Appeal (AT) No. 17 of 2016 [Anup Kumar Agarwal & Anr. Vs. Crystal Thermotech Ltd. & Others]** Hon'ble NCLAT has given directions that where the petition was filed on the ground that the shareholding of the applicant(s) has been brought down below 1/10<sup>th</sup> of the total shareholding of a Company by oppression and mismanagement, Tribunal was required to decide the question of maintainability at the time of final hearing of the Petition. Both the merit and question of maintainability were required to be decided together. *"On hearing the parties, in case the Tribunal forms opinion that there was no oppression and mismanagement on the date of cause of action as alleged by the applicant then in such case it was open to the Tribunal to dismiss the petition as not maintainable in view of Section 399 of the Companies Act, 1956."*

In view of the law laid down by the NCLAT this demurrer application filed by the respondents needs to be decided along with main Company Petition.

Ld. Counsel for the petitioner has filed two receipts issued by the State Legal Service Authority, West Bengal regarding payment of cost on account of delay in filing rejoinder, which may be kept on record.

List the matter on 08/08/2017 for hearing of C.P. along with the demurrer application.

Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

*Sd.*  
(Vijai Pratap Singh)  
Member (J)