

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: MUMBAI BENCH
MUMBAI

CP No. 24/2014, CP No. 26/2014, CP No. 05 to 9/2013, 11 to 15/2013 & 17/2013, 25 to
69 & 93 to 111/2012, 20 to 29/2013, 54/2013, 55/2013, 73/2013, 74/2013

Coram: B.S.V. Prakash Kumar, Member Judicial & V. Nallasenapathy, Member
Technical

In the matter of Companies Act, 1956 under Sections 219 & 163.

and

Between:

Shri Anilkumar Poddar (the petitioner is common in all the CPS mentioned
below)

vs.

1. M/s. Prime Focus Ltd. (Respondent in CP No. 24/219/2014)
2. M/s. DhenuBuildcon Infra Ltd. (Respondent in CP No. 26/163/2014)
3. M/s. Darshan Securities Pvt. Ltd. (Respondent in CP No. 05/163/2013)
4. M/s. Reliance Export Pvt. Ltd. (Respondent in CP No. 07/163/2013)
5. M/s. K D A Enterprises Pvt. Ltd. (Respondent in CP No. 09/163/2013)
6. M/s. Vinmara Universal Traders Pvt. Ltd. (Respondent in CP
No.06/163/2013)
7. M/s. Dharti Investments & Holding Pvt. Ltd. (Respondent in CP No.
08/163/2013)
8. M/s. Futura Commercial Pvt. Ltd. (Respondent in CP No. 11/163/2013)
9. M/s. Pams Investments & Trading Co. Pvt. Ltd. (Respondent in CP No.
12/163/2013)
10. M/s. Relcom Venture Capital Pvt. Ltd. (Respondent in CP No.
13/163/2013)
11. M/s. Reliance Consolidated Enterprises Pvt. Ltd. (Respondent in CP No.
14/163/2013)
12. M/s. Saumya Finance & Leasing Co. Pvt. Ltd. (Respondent in CP No.
15/163/2013)
13. M/s. Synergy Synthetics Pvt. Ltd. (Respondent in CP No. 17/163/2013)
14. M/s. Reliance Corporate IT Park Ltd. (Respondent in CP No. 25/163/2012)
15. M/s. Reliance Food Processing Solutions Ltd. (Respondent in CP No.
26/163/2012)
16. M/s. Reliance Retail Ltd. (Respondent in CP No. 27/163/2012)
17. M/s. Reliance Home Products Limited (Respondent in CP No.
28/163/2012)
18. M/s. Reliance Retail Insurance Broking Ltd. (Respondent in CP No.
29/163/2012)

19. M/s. Reliance Petroinvestment Ltd. (Respondent in CP No. 30/163/2012)
20. M/s. Reliance Office Solutions Pvt. Ltd. (Respondent in CP No. 31/163/2012)
21. M/s. Reliance Energy Generation & Distribution Ltd. (Respondent in CP No. 32/163/2012)
22. M/s. Reliance Autozone Limited (Respondent in CP No. 33/163/2012)
23. M/s. Reliance Trade Services Centre Ltd. (Respondent in CP No. 34/163/2012)
24. M/s. Reliance Industrial Investment & Holding Ltd. (Respondent in CP No. 35/163/2012)
25. M/s. Reliance Loyalty and Analytics Ltd. (Respondent in CP No. 36/163/2012)
26. M/s. Reliance Convention and Exhibition Centre Ltd. (Respondent in CP No. 37/163/2012)
27. M/s. Reliance Agri Products Distribution Ltd. (Respondent in CP No. 38/163/2012)
28. M/s. Reliance Corporate Centre Ltd. (Respondent in CP No. 39/163/2012)
29. M/s. Indiawin Sports Pvt. Ltd. (Respondent in CP No. 40/163/2012)
30. M/s. Reliance People Serve Ltd. (Respondent in CP No. 41/163/2012)
31. M/s. Reliance Polyolefins Ltd. (Respondent in CP No. 42/163/2012)
32. M/s. Reliance Review Cinema Ltd. (Respondent in CP No. 43/163/2012)
33. M/s. Reliance Financial Distribution & Advisory Services Ltd. (Respondent in CP No. 44/163/2012)
34. M/s. Reliance Universal Ventures Ltd. (Respondent in CP No. 45/163/2012)
35. M/s. Reliance Industrial Infrastructure Ltd. (Respondent in CP No. 46/163/2012)
36. M/s. Reliance Industrial Infrastructure Ltd. (Respondent in CP No. 47/163/2012)
37. M/s. Reliance Gas Corporation Ltd. (Respondent in CP No. 48/163/2012)
38. M/s. Reliance Comtrade Ltd. (Respondent in CP No. 49/163/2012)
39. M/s. Reliance Aromatics & Petrochemicals Pvt. Ltd. (Respondent in CP No. 50/163/2012)
40. M/s. Reliance Retail Finance Ltd. (Respondent in CP No. 51/163/2012)
41. M/s. Gennext Innovation Ventures Pvt. Ltd. (Respondent in CP No. 52/163/2012)
42. M/s. Reliance Industries Investments & Holding Ltd. (Respondent in CP No. 53/163/2012)
43. M/s. Reliance Trends Ltd. (Respondent in CP No. 54/163/2012)
44. M/s. Reliance Universal Enterprises Ltd. (Respondent in CP No. 55/163/2012)
45. M/s. Reliance Hypermart Limited (Respondent in CP No. 56/163/2012)

46. M/s. LPG Infrastructure (India) Limited (Respondent in CP No. 57/163/2012)
47. M/s. Reliance Integrated Agri Solutions Ltd. (Respondent in CP No. 58/163/2012)
48. M/s. Reliance Prolific Commercial Pvt. Ltd. (Respondent in CP No. 59/163/2012)
49. M/s. Reliance Retail Securities & Broking Com. Ltd. (Respondent in CP No. 60/163/2012)
50. M/s. Reliance Wellness Ltd. (Respondent in CP No. 61/163/2012)
51. M/s. Reliance Ambit Trade Pvt. Ltd. (Respondent in CP No. 62/163/2012)
52. M/s. Reliance Footprint Ltd. (Respondent in CP No. 63/163/2012)
53. M/s. Projects Services Pvt. Ltd. (Respondent in CP No. 64/163/2012)
54. M/s. InfotelTelecom Ltd. (Respondent in CP No. 65/163/2012)
55. M/s. Reliance Polymers (India) Ltd. (Respondent in CP No. 66/163/2012)
56. M/s. Reliance Gems & Jewels Ltd. (Respondent in CP No. 67/163/2012)
57. M/s. Reliance Chemicals Limited (Respondent in CP No. 68/163/2012)
58. M/s. Reliance F & B Services Ltd (Respondent in CP No. 69/163/2012)
59. M/s. Reliance Strategic Investments Ltd. (Respondent in CP No. 93/163/2012)
60. M/s. Reliance Digital Media Limited (Respondent in CP No. 94/163/2012)
61. M/s. Reliance Digital Retail Ltd. (Respondent in CP No. 95/163/2012)
62. M/s. Reliance Commercial Land & Infrastructure Ltd. (Respondent in CP No. 96/163/2012)
63. M/s. Reliance GrandopticalPvt. Ltd. (Respondent in CP No. 97/163/2012)
64. M/s. Rancore Technologies Pvt. Ltd. (Respondent in CP No. 98/163/2012)
65. M/s. Reliance One Enterprises Ltd. (Respondent in CP No. 99/163/2012)
66. M/s. Reliance Infrastructure Management Services Ltd. (Respondent in CP No. 100/163/2012)
67. M/s. Reliance Replay Gaming Ltd. (Respondent in CP No. 101/163/2012)
68. M/s. Reliance Personal Electronics Ltd. (Respondent in CP No. 102/163/2012)
69. M/s. Reliance Leisure Limited (Respondent in CP No. 103/163/2012)
70. M/s. Reliance Lifestyle Holding Ltd. (Respondent in CP No. 104/163/2012)
71. M/s. RESQ Limited (Respondent in CP No. 105/163/2012)
72. M/s. Reliance Dairy Foods Ltd (Respondent in CP No. 106/163/2012)
73. M/s. Reliance Fresh Limited (Respondent in CP No. 107/163/2012)
74. M/s. Reliance Brands Limited (Respondent in CP No. 108/163/2012)
75. M/s. Reliance Security Solutions Ltd. (Respondent in CP No. 109/163/2012)
76. M/s. Delight Proteins Limited (Respondent in CP No. 110/163/2012)

77. M/s. Strategic Manpower Solutions Ltd. (Respondent in CP No. 111/163/2012)
78. M/s. Nessville Trading Pvt. Ltd. (Respondent in CP No. 20/163/2013)
79. M/s. Nidhivan Investments & Trading Co. Pvt. Ltd. (Respondent in CP No. 21/163/2013)
80. M/s. Lochness Investments Pvt. Ltd. (Respondent in CP No. 22/163/2013)
81. M/s. Kalabakan Investments Company Ltd. (Respondent in CP No. 23/163/2013)
82. M/s. Sahara Investments Pvt. Ltd. (Respondent in CP No. 24/163/2013)
83. M/s. NowrosjeeWadia& Sons Ltd. (Respondent in CP No. 25/163/2013)
84. M/s. N W Exports Limited (Respondent in CP No. 26/163/2013)
85. M/s. Go Investment & Trading Pvt. Ltd. (Respondent in CP No. 27/163/2013)
86. M/s. Havenkores Real Estates Pvt. Ltd. (Respondent in CP No. 28/163/2013)
87. M/s. Heera Holdings & Leasing Pvt. Ltd. (Respondent in CP No. 29/163/2013)
88. M/s. Unno Industries Limited (Respondent in CP No. 54/163/2013)
89. M/s. Amit International Limited (Respondent in CP No. 55/163/2013)
90. M/s. Pro Fin Capital Services Ltd. (Respondent in CP No. 73/163/2013)
91. M/s. Fact Enterprises Limited (Respondent in CP No. 74/163/2013)

Present on behalf of the parties:

1. Mr. Anil Kumar Poddar, Petitioner-in-person in CPs.
2. Mr. FirdoshPooniwalla, Mr. Gaurav Thakur Advocates for the Respondents in CP Nos. 5 to 9/2013 and CP No. 11 to 15 & 17/2013.
3. None present for the Respondents in CP Nos. 54, 55, 73 & 74/2013.
4. Mr. AbhayJadeja, Mr. Pradeep Mane Advocates for Respondents in CP Nos. 25 to 29/2013.
5. Ms. KamanaKhetan, Mr. Dinesh Manik, Maneger in person for the Respondent in CP No. 24/2014.
6. Mr. Harsh Kesharia, Intern for the Respondent in CP No. 26/2014.
7. Mr. FirdoshPooniwalla, for the Respondent in CP Nos. 25 to 69 & 93 to 111/2012.

ORDER

(Heard and disposed of 26.09.2016)

The petitioner is common in all the CPs filed under section 163 & Section 219 of the Companies Act, 1956 (hereafter referred as the old Act), though the Respondents are different, the issue presently raised by this Petitioner in all

these Petitions being common and same, this Bench hereby passes this common order covering all the CPs today posted under section 163 & 219 of the old Act. In these case, except CP 24/2014 filed under section 219, all other cases, filed under section 163 of the old Act.

2. The Petitioner has today raised an issue stating that since NCLT has no subject matter jurisdiction to deal with the cases filed by him under Section 163 & 219 of the old Act on the ground that the jurisdiction conferred upon CLB under Section 163 & 219 of the old Act has now been omitted under the corresponding Sections 94 & 136 in the Companies Act, 2013 (hereafter referred as new Act), therefore sought for dismissal of Company Petitions bearing Nos. 24/2014, 26/2014, 05/2013, 07/2013, 09/2013, 06/2013, 08/2013, 11/2013, 12/2013, 13/2013, 14/2013, 15/2013, 17/2013, 25/2012, 26/2012, 27/2012, 28/2012, 29/2012, 30/2012, 31/2012, 32/2012, 33/2012, 34/2012, 35/2012, 36/2012, 37/2012, 38/2012, 39/2012, 40/2012, 41/2012, 42/2012, 43/2012, 44/2012, 45/2012, 46/2012, 47/2012, 48/2012, 49/2012, 50/2012, 51/2012, 52/2012, 53/2012, 54/2012, 55/2012, 56/2012, 57/2012, 58/2012, 59/2012, 60/2012, 61/2012, 62/2012, 63/2012, 64/2012, 65/2012, 66/2012, 67/2012, 68/2012, 69/2012, 93/2012, 94/2012, 95/2012, 96/2012, 97/2012, 98/2012, 99/2012, 100/2012, 101/2012, 102/2012, 103/2012, 104/2012, 105/2012, 106/2012, 107/2012, 108/2012, 109/2012, 110/2012, 111/2012, 20/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 27/2013, 28/2013, 29/2013, 54/2013, 55/2013, 73/2013, 74/2013 pending before this Bench holding that NCLT has no jurisdiction to adjudicate the matters under Section 163 & 219 of the old Act transferred from CLB to NCLT.

3. The argument, the Petitioner makes is that the jurisdiction conferred on CLB under Section 163 & 219 of the old Act has been omitted under the corresponding Sections, that is Sections 94 & 136 of the new Act, and for having Section 434 sub-Section 1 (a) envisages that whatever matters transferred from CLB to NCLT, they shall be decided in accordance with the provisions of the new Act. Therefore, since jurisdiction not being conferred on NCLT under the new Act to deal with the cases filed u/s 163 & 219 of the old Act before CLB, the petitioner says his cases shall be dismissed on the ground no jurisdiction to NCLT for trying the cases under sections 163 & 219.

4. Besides the above, the Petitioner relied upon the Gazette Notification dated 31.03.2015 to say that the Central Government delegated the powers and functions vested in it under Sub-Section 5 of 94 of the Companies Act, 2013 to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong, thereby the jurisdiction to deal with the Section 94 being already delegated to the respective Regional Directors, so now the jurisdiction is not only been divested from NCLT, but has also been conferred upon Regional Directors by the notification dated 31.03.2015, hence the Petitioner, relying upon this gazette notification, has sought for dismissal of this Company Petitions.

5. The petitioner says that since Section 434 of the new Act envisaging that the transferred matters shall be decided in accordance with the new Act, that there being no jurisdiction to decide the cases u/s 163 & 219 of the old Act transferred to NCLT under analogous Sections 94 & 136, therefore, in accordance with new Sections 94 & 136, his cases above shall be dismissed on the ground that NCLT has no jurisdiction.

6. He has also placed an order dated 08.09.2016 passed by the Hon'ble Bench of NCLT Ahmedabad holding that since Section 136 of the new Act has not given jurisdiction to NCLT, the coordinate Bench judgement shall be followed and dismiss his petitions for want of jurisdiction.

7. Basing on the above reasons, this Petitioner, who appears in person, has sought for dismissal of all these CPs for want of jurisdiction.

8. On the other hand, the Counsel appearing on behalf of some of the Respondents, have argued that NCLT has jurisdiction to deal with matters covered by the old Act by virtue of the savings incorporated in Section 465 of the new Act and also for having specifically mentioned that the matter covered under sub-Section (2) of Section 465 shall not be held to prejudice the general application of Section 6 of the General Clauses Act. Apart from this, they have also placed Gazette Notification dated 01.06.2015 to say that NCLT is conferred with jurisdiction to dispose of the transferred matters from CLB in accordance with the provisions of either Companies Act, 2013 or the Companies Act, 1956, as the case may be.

9. The Counsel appearing on behalf of the some of the Respondents wonders as to how the Petitioner himself would raise the point of maintainability of the CPs filed by himself. The counsel says that instead of seeking dismissal on the ground of maintainability, the Petitioner being dominus litus to the Petitions filed by him, he should have sought for dismissal of these CPs as withdrawn, at the most, with a liberty to proceed before the respective competent authority. Normally the author of a petition always seeks adjudication of his case on merits, as long as other side or the Bench has not raised maintainability point, here, this Petitioner would have argued these Petitions on merits. For, this Bench, in the past, had already dismissed other Company Petitions on merits under the same Sections of law filed by the petitioner, the Respondents Counsel submits, that this Petitioner might have adopted this tactics to scuttle disposal of these cases on merits.

10. On hearing the submissions from either side, this Bench has gone through the relevant provisions referred by the either side. They are as follows:

Section 163 old Act

163. Place of keeping, and inspection of, registers and returns:

(1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company: Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if-

(i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, and,

(iii) the Registrar has been given in advance a copy of the proposed special resolution.

(1A) Notwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation and for the disposal, whether by destruction or otherwise, of the registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1).

(2) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection—

(a) of any member or debenture holder, without fee; and

(b) of any other person, on payment of such sum as may be prescribed] each inspection.

(3) Any such member, debenture holder or other person may—

(a) make extracts from any register, index, or copy referred to in sub-section (1) without fee or additional fee, as the case may be; or

(b) require a copy of any such register, index or copy or of any part thereof, on payment of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied.

(4) The company shall cause any copy required by any person under clause (b) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company.

(5) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to fifty rupees for every day during which the refusal of default continues.

(6) The company Law Board] may also by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.

Section 94 of new Act

94. Place of keeping and inspection of registers, returns, etc:

(1) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

(2) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

(a) take extracts from any register, or index or return without payment of any fee; or

(b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

(4) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.

(5) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it."

11. In the old Act under Section 163 (6), CLB is conferred with powers to give directions to a defaulting company for providing inspection and supply of documents to the denied shareholder, but the same is not conferred upon NCLT, in fact, conferred upon Central Government having regard to the directions which previously given by CLB.

Section 219 of the old Act

219. Right of member to copies of balance sheet and auditors' report:

(1) A copy of every balance sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed[or attached,, as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty- one days, before the date of the meeting, be sent to every member of the company, to every trustee for the holders of any debentures issued by the company, whether such member or trustee is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled:

Provided that-

(a) in the case of a company not having a share capital, this sub- section shall not require the sending of a copy of the documents aforesaid to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him;

(b) this sub- section shall not require a copy of the documents aforesaid to be sent-

(i) to a member, or holder of debentures, of the company, who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him;

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to have such notices sent to them, to those who are not so entitled;

(iv) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at its registered office during working hours for a period of twenty- one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents aforesaid, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty- one days before the date of the meeting.

(c) if the copies of the documents aforesaid are sent less than twenty- one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to vote at the meeting.

(2) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of money by way of deposit shall, on demand, be entitled to be furnished free of cost, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.

(3) If default is made in complying with sub- section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub- section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, unless it is proved that that person had already made a demand for and been furnished with a copy of the document. **The Company Law Board may, also by order, direct that the copy demanded shall forthwith be furnished to the person concerned.**

(5) Sub- sections (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act; and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed."

Section 136 of the new Act

"Right of Member to Copies of Audited Financial Statement

(1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or

trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

Provided also that every company having a subsidiary or subsidiaries shall, --

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

12. Under Section 219 of the old Act, jurisdiction is conferred upon CLB, but under analogous Section 136 of the new Act, the jurisdiction earlier conferred upon CLB has not been passed on NCLT.

13. Here, in the given cases the Petitioner raised his grievances over non-giving inspections and supply of documents in the year 2013, by that time the

Companies Act 2013 had not come into force, thereby there is no occasion to the Petitioner to say that an act or omission happened before Companies Act 2013 had come into force, and when the old Act was not repealed, is hit by non maintainability point for want of jurisdiction under the new Act.

14. It is the case of the Petitioner that the omissions or defaults took place in the years 2012, 2013, and 2014 and the cases have been filed invoking the provisions of the old Act, in fact, this Bench, on verification of the attendance file, has noticed that this Petitioner never raised this maintainability point till today, last time also when the Petitioner's other cases came under the same provisions for hearing, he did not raise this objection in those Petitions, and they were decided on merits against the Petitioner. However, it is not relevant to take all these things to consideration for deciding maintainability point because no court should adjudicate any issue when it is shorn of jurisdiction.

15. Since this Bench on perusal of the records of these cases, it has noticed that the cause of action in all these cases arose prior to 01.04.2014 – notification date of Sections 94 & 136 of the new Act, therefore it is clear that the acts giving cause of action for filing the petitions and dates of filing petition are ante to 01.04.2014, when governed by Sections 163 & 219 of the old Act.

16. **Now the point to be decided is as to whether the acts covered under Sections 163 & 219 of the old Act are to be dealt with under the corresponding Sections 94 & 136 of the new Act.**

17. The Petitioner says that this Bench has no jurisdiction to hear and dispose of the above petitions basing on sections 163 and 219 of the old Act, for they have to be dealt with in accordance with new Act as stated u/s 434 of the new Act.

18. Per contra, the Respondents Counsel submit that these Petitions are to be decided by NCLT itself basing on Section 465 of the new Act, notification dated 01.06.2016 issued by the Central Government and Section 6 of General Clauses Act.

19. On comprehensive reading of all the Sections above given, no doubt it is true as stated by the Petitioner, that the conferment of power to CLB for giving a direction for inspection and supply of documents in respect of Sections 163 &

219 of the old Act has not been extended to National Company Law Tribunal in the corresponding sections 94 & 136 of the new Act. It is correct, as the petitioner says that a shareholder, denied of inspection and the respective documents, cannot invoke Sections 94 & 136 of the new Act or even Sections 163 & 219 of the old Act for a direction of inspection and supply of documents if denial of such right happened after notification of new Companies Act 2013.

20. For the sake of reference, the text of the sections, referred by the respondents and the petitioner, mentioned below: -

Section 434(1a) of New ACT

434. Transfer of certain pending proceedings:

(1) On such date as may be notified by the Central Government in this behalf, —
(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act.

(b), (c), (d), and (2).....

Section 465 of the new Act

Repeal of certain enactments and savings:

- (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:
- (2) Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:
- (3) Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law

Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:

(4) Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments, —

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act."

Section 6 in The General Clauses Act, 1897

"6 Effect of repeal.

1. Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

21. Section 434 of the new Act is constituted primarily for transfer of pending proceedings, from CLB and other forums to NCLT, the provision straight away dealing with repeal and savings of old Act is section 465 of the new Act, not section 434 of new Act. Therefore, it cannot be construed that Section 434 is the governing provision to hold as to which Act is applicable to which acts. The provision is only enacted for transfer of pending litigations and proceedings from various forums to NCLT. When a separate provision is enacted solely for dealing with repeals and savings, by seeing a clause in Section 434 saying that the Tribunal shall dispose of the transferred matters proceedings or cases in accordance with the provisions of the new Act, no inference could be drawn that Section 465 meant for repeals and savings has no force. In fact, the Act 1956 has been repealed under section 465, not under Section 434, therefore, it can't be assumed that by taking a clause in Section 434 to say that repealed enactment is not been saved to the extent mentioned in Section 465.

22. Under section 465 of new Act, Sub Section-1 deals with repeal of the Companies Act 1956 and the Registration of Companies (Sikkim) Act 1961 (please take note that it is a state Act), Sub Section-2 of the Act deals with savings given to the old Act in respect to the acts done and litigation pending

from the acts emanated from the old Act with a rider of subject to the provisions of the new Act, immediately thereafter, Sub-section 3 of the section says that the matters mentioned in sub-section (2) of 465 of the new Act shall not be held to prejudice the general application of Section-6 of the General Clauses Act, with regard to the effect of the repealed enactments.

23. Since Section-6 of the General Clauses says that the repeal of old Act shall not affect any legal proceeding pending immediately before passing new enactment, the acts or offences ante to the new Act will be governed by the repealed enactment. For it has been said whatever said in subsection 2 shall not be held to prejudice the general application of Section-6 of the General Clauses Act with regard to the effect of repeal of the repealed enactments, section 6 (1) (e) of the General Clauses Act will govern the situation, not other provisions.

24. The Respondents Counsel have filed Gazette Notification dated 01.06.2016 to say that the Central Government, by invoking Section 434(1)(a) of the new Act, has stated that *all matters of CLB shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.*

25. On perusal of this notification, it is evident that Central Government has made it clear that National Company Law Tribunal can dispose of the transferred matters in accordance with the new Act 2013 or the old Act, 1956, as the case may be.

26. This Petitioner files cases under these provisions all over India; he has one, two shares in most of the listed Companies in India, his season starts when time comes for holding AGMs. He first files applications asking inspections and documents, when for some or other reason, response is not immediate, and he will file Petitions. When the Company Law Board was in existence, he filed cases before all Benches, New Delhi, Kolkata, Chennai, Mumbai. These are all the Company Petitions filed before CLB spilled over to NCLT. In most of the listed Companies where he has shares, hard time starts to such Companies to defend the Company Petitions filed by this Petitioner. Then Member time starts, as I, having worked as Company Law Board Member at Kolkata and Mumbai

as well, heard and decided his cases, for hearing and disposal of cases. That way, I am also part of this perennial litigation the petitioner raises as adjudicator.

27. As to the order dated 08.09.2016 passed by the Hon'ble Bench of NCLT Ahmadabad, it is not an order on final hearing or final decision having regard as to whether NCLT has jurisdiction to decide matters covered under Section 219 of the old Act. Without going further in to the order of the respective Bench relied upon by the Petitioner, this Bench hereby distinguishes with the order aforementioned for the reasons that it is not a final order even in respect to jurisdictional issue, and moreover, the order of coordinating Bench will only have persuading effect, not binding on this Bench, therefore, the observations made by the respective Bench are hereby varied.

28. On combined reading of the Sections set out above and the reasons given by this Bench, we hereby hold that NCLT has jurisdiction to deal with the transferred matter filed under Sections 163 & 219 of the old Act, therefore, the point raised by the Petitioner saying NCLT has no jurisdiction to decide the cases filed under Sections 163 & 219 before CLB and transferred under Section 434 of the new Act has no merit, therefore this Bench has decided the issue of the maintainability in all these Petitions mentioned above against the Petitioner.

sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

sd/-

V. NALLASENAPATHY
Member (Technical)