NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

CA-56/ND/2024, IA-48/ND/2021, CA-405/ND/2022, CA- 408/ND/2022, INVT. PETT. 4/ND/2022
IN
COMPANY PETITION NO. 120/(ND)/2009

IN THE MATTER OF CP. 120/(ND)/2012
(Under Section 397-398 of Companies Act, 1956)

1. **Shri Neelamber Agrawal,**
   S/o Dinesh Kumar Agrawal,
   R/o 24, Block I, Charmwood village,
   Faridabad, Haryana **... Petitioner No.1**

2. **Smt. Meenakshi Agrawal**
   W/o Dinesh Kumar Agrawal,
   R/o 24, Block I, Charmwood village,
   Faridabad, Haryana **... Petitioner No.2**

Versus

1. **M/s Neel Padam Builders Pvt. Ltd.**
   Having its registered office at
   9 Kailash Hills, New Delhi 110065 **... Respondent No.1**

2. **Shri Ashok Kumar Agrawal**
   S/o Late Shri Girraj Dharan Tayal
   R/o E-71 Kalkaji New Delhi-110019 **... Respondent No.2**

3. **Smt. Archana Agrawal**
   W/o Ashok Kumar Agrawal
   R/o E-71 Kalkaji New Delhi-110019 **... Respondent No.3**

4. **Shri Virendra Singh**
   S/o Shri Natthi Buddharam Singh
   R/o 182, Hanuman Nagar,
   Mathura – 281004 **... Respondent No.4**

5. **Shri Netra Pal Singh**
   S/o Shri Jagdish Prasad
   R/o 156, Anandvan CLVFR,
   Mathura-281001 **... Respondent No.5**

6. **Shri Shakir Khan**
   S/o Shri Anwer Khan
   R/o Vishnupuri, Navneet Nagar,
   Mathura-281001 **... Respondent No.6**

7. Shri Narendra Singh
S/o Shri Mohan Lal
R/o 141 A, Tatwa Dharshi,
Mathura – 281001 **... Respondent No.7**

8. Shri Rachit Kulshrestha
S/o Shri Devendra Kumar Kulshrestha
R/o 15/93, Kanhaiya kunj,
Jamuna Bagh Road,
Sadar Mathura 281001 **... Respondent No.8**

9. Shri Pooran Singh Sinsinwar
S/o Shri Bhim Singh Sinsinwar
R/o Tatva Darshi Sector-2, Navada,
Mathura-281001 **... Respondent No.9**

10. Shri Vivek Jain
S/o Shri Ashok Kumar Jain
R/o 121, Techman City, Karmyogi Nagar,
NH-2, Nera R.T.O. Office,
Mathura-281001 **... Respondent No.10**

11. Shri Anil Kumar Agrawal
S/o Late Shri Girraj Dharan Tayal
R/o 1/115, A-5 Gate, Baboo GulabRai Marg,
Delhi Gate, Agra **... Respondent No.11**

12. Smt. Anshu Agrawal
W/o Shri Anil Kumar Agrawal
R/o 1/115, A-5, Baboo GulabRai Marg,
Delhi Gate, Agra **... Respondent No.12**

13. Shri Naman Agrawal
S/o Shri Ashok Kumar Agrawal
R/o E-71, Kalkaji, New Delhi **... Respondent No.13**

14. Shri Alok Gupta
S/o Shri Ram Prakash Gupta
R/o S.S. Agency, G.T. Road,
P.O. Chibramau, Distt. Kannauj **... Respondent No.14**

15. Shri Animesh Agrawal
S/o Shri Anil Kumar Agrawal
R/o 1/115, A-5, Baboo Gulab Rai Marg,
Delhi Gate Agra **... Respondent No.15**

16. Shri Paras Kumar Jain
S/o Mahesh Chand Jain
R/o 11/39, 4-C/41, New Sita Nagar,
Nunhai Road, Agra, 282004, U.P **... Respondent No.16**

17. Shri Bhagwati Prasad Gautam
S/o Sh Brij Mohan Gautam
R/o Sainpur, Painthgaon Mursan,
Mahamaya Nagar Dist Hathras,

282004, U.P. **... Respondent No.17**

18. Shri Gaurav Agarwal
S/o Sh Brijesh Agrawal
33/12/2B, Lohiya Nagar,
Agra 282004, U.P **... Respondent No.18**

19. Shri Devendra Kumar
S/o Sh Rup Chand
R/o 17, Gadhi Jeevan Tedhi Bhagiya,
Agra-282006, U.P **... Respondent No.19**

20. M/s Marsh Nirman Pvt Ltd
Registered Office 11/115-A/2
Babu Gulab Rai Marg
Delhi Gate, Agra **... Respondent No.20**

21. Regional Director,
Ministry of Corporate Affairs,
Northern Region, PDIL Bhawan,
Sector-1 Noida **... Respondent No.21**

22. Registrar of Companies
NCT of Delhi and Haryana
5th Floor, IFCI Tower, Nehru Place,
New Delhi **... Respondent No.22**

23. Mr. Anil Kumar Garg
S/o Shri Ramji Das Garg
R/o Gopal Bhawan, M.S. Road,
Muraina, (M.P.) **... Respondent No.23**

24. Mrs. Neelam Garg
W/o Shri Shyam Babu Garg
R/o Gopal Bhawan, M.S. Road,
Muraina, (M.P.) **... Respondent No.24**

25. Mrs. Sharda Gupta
W/o Shri Gyan Prakash Gupta
R/o Bundhu Kucha, Peepal Wali Gali,
Chibramau, Kannoj **... Respondent No.25**

26. Mr. Rajeev Gupta
S/o Shri Suresh Babu Gupta
R/o 2/44/A-Ist, Ram Nagar Colony,
Civil Line, Agra **... Respondent No.26**

27. Mrs. Ragini Bansal
W/o Shri R.K. Bansal
R/09/195, Moti Katra, Agra **... Respondent No.27**

28. Mrs. Sharda Tayal
W/o Shri Girraj Dharan Tayal
R/o A-22/23, Motikunj, Mathura, UP **... Respondent No.28**

29.Mr. Harish Chand
S/o Shri Kadhera Singh R/o Gram Saunkh,
Tehseel – Mathura **... Respondent No.29**

30.Mrs. Mahadevi
W/o Shri Mohan Lal
R/o Gaon - Adhariya, Post-Udhar,
Distt-Mathura **... Respondent No.30**

31.Mr. Narendra Singh
S/o Shri Niwal Singh
R/o Gram - Nagla Loka,
Post Pachawar, Distt. Mathura **... Respondent No.31**

32.Mr. Manoj Kumar
S/o Shri Fakir Chand
R/o Gram Nawali, Post Sureer, Maant,
Distt. Mathura **... Respondent No.32**

33.Mr. Hariom Singh
S/o Shri Naikse R/o Nenukalan,
Post Sonkh, Mathura **... Respondent No.33**

34.Mr. Ramesh Singh
S/o Shri Sultan Singh
R/o Nagla Kenchula, Post Fodar,
Tehseel & Distt. Mathura **... Respondent No.34**

35.Mr. Harveer Singh
S/o Shri Mahipal Singh
R/o Hanuman Nagar, Mathura **... Respondent No.35**

36.Dev Shilpi Nirman Pvt. Ltd.
Through Dir. Mr. Anil Kumar
S/o Shri Ramji Das
R/o Baag Colony, Fatehabad, Agra **... Respondent No.36**

37.Mrs. Meena Devi
W/o Shri Rameshwar Nagal Ratia,
Bag Pachavar, Tehsil Mahavan,
Distt. Mathura **... Respondent No.37**

AND IN THE MATTER OF C.A 56 OF 2024:
(Under Rule 11 of NCLT Rules, 2016)

Shri Neelamber Agrawal
S/O Shri Dinesh Kumar Agrawal, R/O 24,
Block-I, Charmwood Village, Faridabad, Haryana **... Petitioner**

Versus

M/s Neel Padam Builders Private Limited
Having Its Registered Office At
9, Kailash Hillas, New Delhi-110065 **... Respondent**

AND IN THE MATTER OF I.A 48 OF 2021:
(Under Rule 11 of NCLT Rules, 2016)

Shri Ashok Kumar Agrawal
S/o Late Shri Girraj Dharan Tayal
R/o E-71 Kalkaji New Delhi-110019 **... Applicant**

AND IN THE MATTER OF C.A 405 OF 2022:
(Under Order I Rule 10 R/w Section 151 of CPC, 1908)

Smt. Munni Devi
W/o Ranvir Singh
R/o JC-16, Chandan Van, Mathura,
Uttar Pradesh - 281001 **... Applicant**

AND IN THE MATTER OF C.A 408 OF 2022:
(Under Order I Rule 10 R/w Section 151 of CPC, 1908)
Smt. Kamlesh Singh
W/o Arjun Singh
R/o JC-17, Chandan Van, Mathura **... Applicant**

AND IN THE MATTER OF INVT. PETT. 4/2022:
(Under Section 424(3) of the Co. Act 2013 r/w Rule 11 of the NCLT Rules, 2016 r/w Sec. 420 of Co Act, 2013 and Sec.151 of CPC, 1908)

1. Smt. Rajkumari Sharma
W/o Shri Prabhat Kumar Sharma
R/o B 36, Moti Kunj,
Mathura 281001, U.P. **... Applicant No.1**

2. Smt. Rajkumari Singh
W/o Shri S K Singh
R/o 21, Punjabi Paich,
Dampier Nagar,
Mathura, 281001, U.P. **... Applicant No.2**

3. Smt. Vindhwasani Mishra
W/o Shri Suresh Chand Mishra
R/o B-36, Moti Kunj,
Mathura- 281001, U.P. **... Applicant No.3**

Order Delivered on: 18.12.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Abhishek Anand, Adv. Pawan Sharma, Adv. Anuja Shah

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

C.P No.120 (ND) of 2009:-

As has been narrated in the synopsis filed along with the petition, preferred under Section 397, 398, 402 & 408 of the Companies Act, 1956, Respondent No.1 viz. M/ s Neel Padam Builders Private Limited is a company incorporated in terms of the provisions of the Company Act, 1956. The identification No. assigned to the company is U45201DL1998PTC097006. It has its registered office at 9 Kailash Hills, New Delhi 110065. The main objects for which the company (Respondent No.1) was incorporated is to carry the business of colonizing, building and developmental activities. It is a real estate Company engaged mainly in development and sale of residential houses/ flats/ colonies.

2. The Petitioners have alleged the mismanagement qua the affairs of Respondent No.1 The relief sought in the captioned petition reads thus:-

> *(a) "To declare void any resolutions of the purported Board Meeting/ General Body Meeting of the respondent Company as mentioned in the Form-2, in respect of the allotment of 4,85,000 equity shares of the Company in favor of*

Respondent No.2 on 21/11/2009 and to cancel the said allotment.

(b) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-2, in respect of the allotment of 5,00,000 equity shares of the Company in favor of Respondent No.2 and Respondent No. 4 to 15 on 09/12/2009 and to cancel the allotment.

(c) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting for increasing the Authorised Share Capital of the Company from Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) to Rs. 2,00,00,000/- (Rupees Two Crore Only) dated 21/11/2009 and to cancel the said increase in Authorised Share Capital of the Company.

(d) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-18, in respect of the shifting of the registered office of the Company dated 09/10/2009 and to cancel the said shifting and removal.

(e) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-32, in respect of the appointment of Mr. Narendra Singh, Mr. Vivek Jain and Mr. Shakir Khan as director w.e.f. 05/04/2007 and to cancel the said appointment.

(f) To declare null and void any resolutions of the purported Board Meeting/ General Body Meeting of the respondent Company as mentioned in the Form-32, in respect of the appointment of Mr. Ashok Agrawal as the director of the Company w.e.f. 18/09/2009 and to cancel his appointment.

(g) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-32, in respect of the appointment of Mr. Virender Singh, Mr. Rachit Kulshreshta and Mr. Netrapal Singh as the director of the Company w.e.f. 08/10/2009 and to cancel their appointment.

(h) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-32, in respect of the appointment of Mr. Bhagwati Prasad Gautam and Mr. Paras Kumar Jain as the director of the Company w.e.f. 02/11/2009 and for removal of Mr. Umesh Verma, Mr. Diwan Singh and Mr. Manoj Kumar from the directorship of the Company w.e.f. 03/11/2009 and to cancel the said appointment and removal.

(i) To declare null and void any resolutions of the purported Board Meeting/General Body Meeting of the respondent Company as mentioned in the Form-32, in respect of the appointment of Mr. Devendra Kumar, Mr. Gaurav Agrawal, Mr. Pooran Sinsinwar Singh as the director of the Company w.e.f. 10/11/2009 and for removal of Smt. Meenakshi Agrawal and Neelamber Agrawal from the directorship of the Company w.e.f. 11/11/2009 and to cancel the said appointment and removal.

(j) To order the Respondents to restore all the financial effects illegally appropriated from the respondent Company to the respondent Company.

(k) To declare that the Respondent No. 2 in connivance with Respondent No. 2, 4, 5, 6, 7, 8, 9, 10, 16, 17,18 and 19 has committed various offences under the Companies Act, 1956, while carrying and handling affairs of the Company and refers his complaint to the Magistrate for initiating prosecution against him under the provisions of penal laws.

(l) To direct the cancellation of Form 2 filed for allotment of 4,85,000 equity shares of Rs. 10 each dated 21/11/2009 in favour of Mr. Ashok Kumar Agrawal and to cancel the said allotment.

(m) To direct the cancellation of Form 2 filed for allotment of 5,00,000 equity shares of Rs. 10 each dated 09/12/2009 in favour of Respondent No. 2 and 4 to 15 and to cancel the said allotment.

(n) To direct the cancellation of Form 5 filed for allotment of increase in Authorised share Capital of the Company from Rs. 1,50,00,000/- to Rs. 2,00,00,000/- dated 21/11/2009 and to cancel the said increase of Authorised Share Capital.

(0) To direct the cancellation of Form-18 filed for shifting of registered office of the Company w.e.f 09/10/2009, and to cancel the said shifting of registered office.

(p) To direct the cancellation of Form 32 filed by respondents for appointment of Mr. Narendra Singh, Mr. Vivek Jain and Mr. Shakir Khan as director w.e.f. 05/04/2007 and to cancel their appointment.

(q) To direct the cancellation of Form 32 filed by the respondents for appointment of Mr. Ashok Agrawal as the director of the Company w.e.f. 18/09/2009 and to cancel their appointment.

(r) To direct the cancellation of Form 32 filed by the respondents for appointment of Mr. Virender Singh, Mr. Rachit Kulshreshtra and Mr. Netrapal Singh as the director of the Company w.e.f. 08/10/2009 and to cancel their appointment.

(s) To direct the cancellation of Form 32 filed by the respondents for appointment of Mr. Bhagwati Prasad Gautam and Mr. Paras Kumar Jain as the director of the Company w.e.f. 02/11/2009 and for removal of Mr. Umesh

Verma, Mr. Diwan Singh and Mr. Manoj Kumar from the directorship of the Company w.e.f. 03/11/2009 and to cancel their appointment.

(t) To direct the cancellation of Form 32 filed by the respondents for appointment of Mr. Devendra Kumar, Mr. Gaurav Agrawal, Mr. Pooran Sinsinwar Singh as the director of the Company w.e.f. 10/11/2009 and for removal of Smt. Meenakshi Agrawal and Neelamber Agrawal from the directorship of the Company w.e.f. 11/11/2009 and to cancel their appointment.

(u) To declare that Respondent No. 2, 4, 5, 6, 7, 8, 9, 10, 16, 17,18 and 19 are not fit to become director of any Company including the Respondent Company No. 1.

(v) To pass an order:

I. To declare null and void and cancel the Sale Deeds of the properties that have illegally been transferred by the Respondent Nos. 2,4,9 and 23, the details of which are given in the Petition at paragraph No.6.19 and the annexures referred to therein.

II. To declare that the Respondent Company is the true and rightful owner of all the properties allegedly transferred by the Respondent No. 2, 4, 9 and 23, as mentioned in the Petition at paragraph no 6.19 and the annexures referred to therein.

III. To direct the Respondent Nos. 2, 4 and 9 to reimburse the amount, if any, received by them from the illegal transfer of the properties of the Respondent Company, to the Respondent Nos. 12, 20 and 23 to 37, to whom the properties are illegally transferred.

(w) To declare null and void and cancel any other conveyance deed related to the subject matter of the properties/lands of present dispute, which if again illegally transferred by the

present respondents in favour of third party (may be impleaded as new Respondents).

(x) Issue any other appropriate order or directions as this Hon'ble Board deems fit and just in the facts of the case.

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9. INTERIM ORDER PRAYED AS UNDER

The Petitioners have a good prima facie case. The Balance of convenience also lies in their favour. Irreparable loss and injury will be suffered by the Petitioners if the interim orders as prayed for therein are not granted. Pending the hearing and final disposal of this petition, it is absolutely just, necessary and proper that the following ex-parte ad interim orders be passed

(a) To pass an ad interim order for maintaining status quo anti with regard to the shareholding of the respondent Company as was on 20/11/2009.

(b) To pass an ad interim order for maintaining status quo anti with regard to the Board of Directors as was existing before filing Form 32 with regard to appointment dated 18/09/2009, 08/10/2009, 02/11/2009, 10/11/2009 and with regard to removal; dated 03/11/2009 and 11/11/2009.

(c) To pass an ad interim order for maintaining status quo with regard to the fixed assets of the Respondent Company.

(d) Pass an ad interim permanent and mandatory injunction restraining the Respondents to do any act and thing which causes hindrance to the Petitioner to act as directors of the Company.

(e) To restrain Respondent No. 2, 4, 5, 6, 7, 8, 9, 10, 16, 17,18 and 19, to act on behalf of the Company and to represent himself as the director of the Company.

(f) To put stay on the illegally transferred land of the Respondent Company No. 1, the details of which are more specifically provided in the Civil suit No. 837 of 2009 filed before the Court of Civil Judge and attached with this petition.

(g) To restrain the Respondent No 2, 4, 5, 6, 7, 8, 9, 10, 16, 17,18 and 19 to convene the Board Meeting of the Respondent Company in the capacity of the Director of the Company.

(h) To restrain the Respondent No 2 to 15 to holding themselves as the shareholders of the Respondent No 1 Company.

(i) To restrain the Respondent No 2 to 15 to convene the meeting of the shareholders of the Respondent No 1 Company.

(j) direct the Respondent Nos. 2 to 20 and 23 to 37 to maintain status quo with regard to the properties of the Respondent No.1 as also with regard to the properties transferred from the Respondent No.1 the details of which are given in the Petition at paragraph No. 6.19 and the annexures referred to therein.

(k) Issue any other appropriate order or directions as this Hon'ble Board deems fit and just in the facts of the case."

3. The details of the Respondents as mentioned in the petition are as under:-

"3.1 Respondent No. 1 Company was incorporated in the year 1998, as a real estate company for the purpose of carrying of colonizing, building and development activities. The Respondent No. 1 Company had an initial authorized share capital of Rs. 10,00,000/ - (Rupees Ten Lacs Only) divided into 1,00,000 (One Lac) equity shares of Rs. 10/ - (Ten) each and its initial subscribers were Mr. Anoop Agrawal and Mr. Vinod Kumar Bhandana each holding 100 (Hundred) equity shares of Rs. 10/ - (Ten) each.

3.2 That the Respondent Company No. 1 after the year 2006, has become a renowned name in the real estate sector and has

successfully executed many major projects in the city of Mathura (Uttar Pradesh).

3.3 That the Respondent No. 2 is the nephew of the Consent Petitioner No. 3 and the Respondent No. 11 is younger brother of Respondent No. 2. Respondent No. 12 is the wife of Respondent No. 11. Respondent No. 2 who was doing nothing much after the previous Karmyogi Group came to stand still in the litigation process. The Respondent No 2 was helped by the Petitioners by introducing him for the expansion of the Petitioner Family business through the New Karmyogi Group. The Respondent No. 2 was introduced by the Petitioners in the said group companies of the Karmyogi Group as member and director but his introduction was merely a helping hand to him so that he can continue with his lively hood.

3.4 The Respondent No. 2 is legally holding 20,000 (Twenty Thousand) equity shares in the Respondent No 1 Company. That the Respondent No 2 and 11 both are the nephew's of the Consenting Petitioner No 3 and cousin brothers of Petitioner No. 1.

3.5 That the Respondent No 1 Company initially, for a period of three years, did not show any profits, but subsequently it started making huge profits and started getting some big projects in the city of Mathura. The details of the projects that were handled by the Respondent No 1 Company is annexed herewith and marked as Annexure "A/5".

3.6 That in the year 2006 when some mega projects were to be introduced in the Respondent No 1 Company, the Petitioners introduced themselves as the Shareholders and Directors in the respondent Company, since their direct control was important to carry out the new projects in the respondent Company. That from 2006 onwards the Petitioners alongwith the Consenting Petitioners were the majority Shareholders in the Respondent No 1 Company constituting 82.9% of the Shareholdings of the respondent Company.

3.7 The Respondent No. 2 in connivance with the Respondent No. 4, 7, 9, 11 and 12 hatched a great conspiracy to illegally acquire the control of the Respondent Company by unauthorized structuring of its board and Shareholding and subsequently committed various illegal and unauthorized act for selling its valuable lands without any company authorization and enriched himself along with Respondent No. 4, 7, 9, 11 and 12 consequently causing great loss to the Respondent Company. Not only that they have majorly diluted the equity of the petitioners, from majority to minority, in the respondent no 1 company and subsequently removed the petitioners from the directorship of the respondent Company. All of their said acts have been done with the unlawful mind, illegal methods and against the provisions of the law."

4. The particulars of the Petitioners, their locus to file the present petition and the percentage of shares held by them qua the Respondent No.1 are enumerated in the petition. The relevant paras reads thus:-

"2.1 That the Petitioner No. 1 and the Petitioner No. 2 are the Directors of the Respondent No. 1 Company, each having shareholding of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) divided into 2,00,000 (Two Lakhs) Equity Shares of Rs. 10/-(Ten) each.

2.2 That the Petitioner No. 1 is the son of Petitioner No. 2, thus, being the son and mother respectively. The Consent Petitioner No. 3 is the father of Petitioner No. 1 and the husband of Petitioner No 2.

2.3 That the Petitioners are primarily looking after the day to day affairs of the Respondent No 1 Company. All the policy decisions of the Respondent No. 1 Company are taken by the concurrence of the Petitioners in the Respondent No 1 Company. The Petitioners and the consent petitioners herein jointly and legally hold 8,42,000 (Eight Lacs and Forty Two Thousand Only) equity shares of Rs. 10 each comprising of 82.9% of the total equity share capital of the Respondent No. 1 Company, out of which the Petitioners collectively hold 39% of the total equity share capital of the Respondent No 1 Company and

the remaining are held by the other consenting petitioners, the list of which alongwith their respective consent letters are annexed herewith and marked as Annexure "A/3"

2.4 The creation of the Respondent Company was the part of the expansion of the business of the new Karmyogi Group developed by the Petitioners along with the consent petitioner no. 3 through its various group companies namely Tatvadarshi Bandhu Pvt Ltd, Karmyogi Homes (P) Ltd., Kailash Leasing and Finance (P) Ltd., Dab Developers (P) Ltd. and Sukh Chaon Builders (P) Ltd. In the said group companies the relatives / employees / friends and the family members of the Petitioners were inducted as the Directors and the Shareholders. The details of the said group companies and their shareholders are enclosed herewith and marked as "Annexure A/4"

2.5 That in the past, the Karmyogi Group was consisting of various family business entities which was reached at the stage of partition due to internal conflict between the family members, which went into arbitration proceedings and an arbitration award dated 19.8.2000 was passed for giving effect to the said partition which was challenged by the family members and friends before the various appellant courts of India and is presently pending adjudication before the Hon'ble the Supreme Court of India vide SLP No. (C) 2747/2008.

2.6 The new Karmyogi Group created and expanded as mentioned above has its foundation through the Petitioners and the Consenting Petitioner No 3 (Mr. Dinesh Kumar Agrawal) and is in no way connected to the entities and business of the past Karmyogi Group, which was subject matter of partition under the arbitration award. (The Petitioner No. 1 and 2 alongwith Consenting Petitioner No 3 shall hereinafter collectively referred to as "Petitioner Family")

2.7 That when the family business entities of the previous Karmyogi Group were at the verge of partition and was under going litigation disputes at that point of time, the working of the business of the past Karamyogi group had come to a stand still. It was at this difficult time that the Petitioners Family with their personal savings and assets,

again reinvent themselves and tried to start up the business activities in the real estate, colonizing, building development sector and created new business entities for that purposes from time to time.

2.8 That the newly formed Karmyogi Group consisting of Tatvarshi Bandhu Pvt Ltd, Karmyogi Homes (P) Ltd., Kailash Leasing and Finance (P) Ltd., Dab Developers (P) Ltd. Sukh Chaon (P) Ltd (hereinafter referred to as "New Karmyogi Group") was working in such a manner that the said group companies were supporting financial and otherwise each other for developing the business activities in the real estate sector, developing and colonizing.

2.9 That in the New Karmyogi Group, the Shareholding pattern of the members of the group and Board of Directors of the Respondent No 1 Company was never given much importance, infact the management of the Respondent No 1 Company was given more importance over all other things. In effect thereof, the petitioners and the consent petitioner no. 3 was in major control of the said New Karamyogi Group Companies and holding out their owners.

2.10 That the Respondent Company, when incorporated in the year 1998, at that point of time the initial subscribers were the close family friends of the Petitioners and they were ultimately following the policy of the New Karmyogi Group under the instructions of the petitioners and the consent petitioner no. 3. There was some change in the Shareholding in the year 2003 and later some family members and friends were introduced in the year 2006 in the respondent Company.

2.11 This petition is being filed by the Petitioners, being the 82.9% equity shareholders of the Respondent Company, before the illegal elimination dilution of their shareholding by Respondents Nos 2 in connivance with Respondent No 4,7, 9, 11 and 12."

5. The factual position saliently espoused by the petitioners in the petition is as follows:-

i. The Respondent No. 1 Company i.e., Neelpadam Builders Pvt. Ltd & Ors. was promoted by the Petitioners through the vision and hard work of Mr. Dinesh Kumar Agrawal (Consent Petitioner No. 3). The Petitioners and the consenting petitioners collectively hold 8,42,000 equity shares of ₹10 each, constituting 82.9% of the total share capital of Respondent No. 1 Company. Out of this, the Petitioners collectively hold 39% of the total equity share capital, while the remaining shares are held by the consenting petitioners.

ii. Respondent No. 2, Mr. Ashok Kumar Agrawal, who is the nephew of Consent Petitioner No. 3, was introduced into the Respondent No. 1 Company by Consent Petitioner No. 3. Respondent No. 2 was inducted as a Director on 30.05.2004 and worked under the supervision and direction of Consent Petitioner No. 3. Initially, at the time of his induction as Director, no shares were allotted to him. Subsequently, on 21.08.2006, 20,000 shares were allotted to Respondent No. 2 and 1,45,000 shares were allotted to his wife i.e., Ms. Archana Agarwal, Respondent No. 3, constituting 1.97% and 14.3% of the total share capital respectively.

iii. The Petitioners alleged that Respondent No. 2, in connivance with Respondent No. 4 i.e., Mr. Virendra Singh, began to indulge in illegal activities against the interest of the company. Thereafter, Respondent No. 2 stopped attending Board Meetings. As he remained absent from three consecutive Board Meetings held on 21.06.2009, 28.07.2009, and 01.09.2009 without obtaining leave of absence, his office as Director stood vacated under Section 283(1)(g) of the Companies Act, 1956, with

effect from 07.09.2009. Form 32 recording his cessation was filed with the Registrar of Companies on 05.10.2009.

iv. It is further submitted that Respondent No. 2 had knowledge of his cessation from directorship on 08.09.2009, yet he neither objected to nor challenged his removal before any authority.

v. Respondent No. 4, Mr. Virendra Singh, also failed to attend three consecutive Board Meetings held on 01.09.2009, 07.09.2009, and 20.09.2009 without obtaining leave of absence, his office as Director also stood vacated under Section 283(1)(g) of the Companies Act, 1956, with effect from 07.10.2009. Form 32 recording his cessation was also filed with the Registrar of Companies. Consequently, his authority to execute any sale deeds or documents on behalf of Respondent No. 1 Company stood automatically revoked from the date of his cessation.

vi. Instead of challenging their respective cessations before any competent authority, Respondent No. 2, in collusion Respondent No. 7 i.e., Narendra Singh allegedly filed several fabricated statutory forms before the Registrar of Companies by exploiting technical loopholes in the RoC filing system. It is further alleged that Respondent No. 7, who was never appointed as a Director of Respondent No. 1 Company, illegally filed several forms including showing his own appointment on behalf of company (Respondent no. 1).

vii. The Petitioners contend that the various statutory forms purportedly filed before the Registrar of Companies (RoC) by the Respondents are fabricated, invalid, and devoid of any legal sanctity. It is asserted that Respondent No. 7, Mr. Narendra Singh, who filed these forms, was

never a Director of Respondent No. 1 Company, as is evident from the Annual Returns for the years 2007 and 2008 filed with the RoC. These returns also confirm that Respondents Nos. 6, 7, and 10 were not Directors of the Company.

The Petitioners further point out that Respondent No. 7 obtained his Director Identification Number (DIN) only on 11.11.2009, whereas, under Rule 266A of the DIN Rules, he was required to obtain it within two months of introduction of the e-filing system if he were indeed appointed in 2007. The absence of his signature in the Board Resolution dated 07.04.2009, and the backdated nature of the purported Resolutions dated 18.09.2009 and 08.10.2009, further corroborate the fabrication.

viii. The Petitioners allege that the purported enhancement of the authorised share capital and the consequent allotment of shares by the Respondents are wholly illegal and void. By way of such unauthorized acts, effected through fabricated filings before the RoC, the Respondents allegedly reduced the Petitioner Group's shareholding in Respondent No. 1 Company from 82.9% to 42.5%. It is asserted that no notice of any Board Meeting was ever served upon the Petitioners prior to the alleged enhancement of the authorised share capital or the allotment of shares.

The Petitioners further rely upon the Bank Account Statements of the Company to establish that the second allotment of shares, amounting to ₹49,94,000/-, was a mere sham transaction. It is pointed out that on

26.11.2009 and 27.11.2009, Respondent No. 2 withdrew ₹45,00,000/- from the Company's account, and the same was re-deposited on 09.12.2009 to create a false appearance of payment for the shares. Such circular movement of funds, according to the Petitioners, conclusively demonstrates that the alleged allotment was fraudulent, mala fide, and devoid of any genuine consideration.

ix. The Petitioners assert that the alleged resignation letters attributed to them are fabricated and wholly unbelievable. They maintain that they continue to be the lawful Directors of Respondent No.1 Company and that there was neither any occasion nor reason for them to resign from a company in which they are the majority shareholders and which owns properties worth crores of rupees.

It is further submitted that the Respondents have failed to produce the original resignation letters and have instead advanced a false and self-contradictory explanation that the Petitioners had stolen the said documents from the Company's office. The Petitioners point out that, in the ordinary course of business, all original statutory documents are maintained at the Company's registered office in Delhi, while only copies, if any, are kept at the branch office in Mathura.

They also rely upon the statement made by Respondent No.2 before the police, wherein he allegedly admitted that the resignation letters were still in his custody and would be produced before the Company Law Board. The legal opinion of the Chief Prosecutor, Patiala House Courts, filed as Annexure P/28, is cited to substantiate this position. The

Petitioners further contend that the police complaints dated 17.02.2010 and 19.02.2010, filed by the Respondents alleging theft of resignation letters, are fabricated and were lodged only as an afterthought to lend credence to a non-existent event.

x. The Petitioners allege that the Respondents, who had no lawful authority or status as Directors of Respondent No.1 Company, have executed several Sale Deeds in collusion with one another with a view to misappropriate the valuable assets of the Company. It is asserted that, once it is established that the Petitioners never resigned and the Respondents' directorships were invalid, all such sale transactions are rendered illegal and void ab initio, warranting their cancellation.

It is further stated that Respondent No.2, in connivance with Respondents No.4 and 9, executed multiple Sale Deeds on 29.09.2009, 30.09.2009, 12.10.2009, and 24.12.2009, in favour of his relatives and close associates.

The Petitioners contend that the said transfers were carried out without any authorization of the Board of Respondent No.1 Company and based on fabricated filings with the Registrar of Companies to falsely constitute the Board. The sale consideration mentioned in the impugned Sale Deeds is alleged to be far below the notified circle rate and prevailing market value. Moreover, the proceeds of such sales were purportedly deposited in a bank account opened without authorization and subsequently misappropriated by Respondent No.2 and his associates for their personal use.

It is further urged that, under Section 297 of the Companies Act, 1956, a Director is mandatorily required to obtain prior approval of the Board before entering into any transaction involving the sale of company property to relatives. No such approval was ever sought in the present case. Consequently, all the impugned Sale Deeds, executed by Respondent No.2 without authority are in clear violation of law and liable to be declared null and void.

xi. The Petitioners allege that Respondent No.2, in furtherance of his illegal activities, opened an unauthorized bank account in the name of Respondent No.1 Company with Punjab National Bank, Agra (Raja Mandi Branch) on 24.11.2009, with an initial balance of ₹5,000/–, without any approval or authorization of the Board of Directors. It is contended that Respondent No.2 utilized this account to misappropriate the Company's funds arising out of the illegal sale of properties, the total sale consideration of which amounted to ₹3,08,25,300/-.

According to the Petitioners, the bank statement of the said unauthorized account reveals that the entries therein represent mere circulation and re-routing of the same amounts to create a false appearance of legitimate transactions. Instances include deposits of ₹48,50,000/– and ₹49,94,000/– corresponding to purported share allotments, which were actually redeposits of earlier withdrawals of ₹25,00,000/– and ₹45,00,000/–, thereby evidencing a sham circulation of funds. Similarly, identical amounts were shown as payments to and

receipts from entities like *New Era Exports* and *Bulland Housing Pvt. Ltd.*, further indicating illegal circulation of money.

It is alleged that large sums amounting to ₹3,49,70,000/– were transferred from the said unauthorized account to *Bulland Housing Pvt. Ltd.* between 10.12.2009 and 02.02.2010 under the guise of an agreement to purchase and develop a property at the Taj Nagari Project, Agra. The Petitioners assert that the purported Agreement for Sale dated 05.12.2012 is forged and fabricated, being unregistered and backdated, with several inconsistencies, including unexplained excess transfer of ₹9,70,000/– beyond the agreed amount, continued payments even after the *status quo* order passed by the Hon'ble Company Law Board on 31.12.2009, and the absence of forfeiture or tax treatment of the amount in *Bulland Housing Pvt. Ltd.'s* own filings, where the same was shown merely as "Sundry Creditors."

The Petitioners therefore contend that the alleged transactions and the purported agreement were fraudulent, created through manipulation of company accounts and forged documents in collusion between Respondent No.2 and the directors of *Bulland Housing Pvt. Ltd.*, solely with the intent to divert and misappropriate the funds of Respondent No.1 Company.

xii. The Petitioners contend that the present Company Petition is fully maintainable under Sections 397 and 398 of the Companies Act, 1956, as it seeks redressal against acts of oppression and mismanagement perpetrated by the Respondents. It is stated that the Petitioners, being

the legitimate Directors of Respondent No.1 Company, continue to bear the financial expenses for its operations. However, the Respondents, by exploiting the e-filing mechanism, allegedly filed forged statutory forms with the Registrar of Companies, thereby effecting material changes in the records of the Respondent Company without any lawful authority. In these circumstances, the Petitioners assert that no other efficacious remedy is available except to approach this Tribunal under the aforesaid provisions. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* [(2005) 11 SCC 314], wherein it was held that proceedings under Sections 397–398 are the appropriate remedy in cases involving allegations of oppression and mismanagement rather than approaching a civil court in taking the ground of violation of statutory or contractual rights.

The Petitioners further submit that this Tribunal is vested with wide powers under Sections 397 to 402 of the Companies Act, including the authority to grant consequential reliefs such as cancellation of sale deeds executed through an illegally constituted Board of Directors. It is submitted that such relief is integral to restoring the status quo ante in cases where the transfer of Company assets is the result of acts of oppression and mismanagement. In support of this proposition, reliance is placed on *Gangadhar Madupu v. Katta Corp Pvt. Ltd.*, 2018 SCC OnLine NCLAT 227; *Elaine Info Solutions Pvt. Ltd. v. M/s J & A Avenues India Pvt. Ltd.*, Company Appeal (AT) No. 210 of 2019; *Galaxy Enterprise v. Indiraben*, Company Appeal (AT) No. 38 of 2023; and

Narayanasamy & Ors. v. Neela Spinning Mills Pvt. Ltd. & Ors., (2009) 152 Comp. Case 655, wherein similar reliefs for setting aside sales in favor of third parties were upheld by the adjudicating authorities.

6. The reply has been filed on behalf of Respondent No. 1 Company and Respondent No. 2, wherein it has been espoused as under:–

i. Respondent Nos. 1 and 2 submit that the present petition is not maintainable and deserves dismissal at the threshold, as it has been filed by the Petitioners after unlawfully removing the records of Respondent No. 1 Company from its branch office at Mathura.

ii. It is stated that, on 15.12.2009, the Petitioners and their associates forcefully entered the said branch office, stole the company's records, cash, and other materials, and fled before the police could seal the premises. A complaint in this regard was lodged by the Respondents before Police Station, Highway, Mathura, on 17.12.2009, duly acknowledged by the authorities.

iii. The Respondents further contend that after having taken away the records, the Petitioners filed the present petition in December 2009, deliberately alleging illegal removal of directors and alteration of shareholding, despite being in possession of the very documents that would disprove their allegations. It is further alleged that, on 17.02.2010, the Petitioners again gained access to the sealed premises with police assistance and removed the remaining company records. Complaints dated 17.02.2010 and 19.02.2010 were consequently filed before the SSP, Mathura. According to the Respondents, the Petitioners are in complete possession of all company records and have

intentionally concealed them from this Tribunal to mislead the proceedings.

iv. The Respondents contend that the Petitioners' claim of being original promoters of Respondent No. 1 Company is factually incorrect. It is submitted that the Memorandum of Association of the Company clearly records the original subscribers as Mr. Vinod Kumar Bhadana and Mr. Anup Agrawal, who have no connection with the Petitioners. Thus, neither the Petitioners nor Respondent No. 2 were part of the Company at the time of its incorporation and were inducted only at a later stage. The Respondents further submit that the Petitioners have not even disclosed in the petition the date or manner of their induction, thereby rendering their claim of being founding members baseless.

v. The Respondents submit that the Petitioners' claim regarding the removal of Respondent No. 2 under Section 283(1)(g) of the Companies Act is entirely baseless. It is contended that no Board Meetings were ever held on 21.06.2009, 28.07.2009, or 01.09.2009, as alleged. The Petitioners have failed to produce any notices or resolutions evidencing such meetings. Moreover, the minutes of the Board Meeting dated 07.09.2009 contain no reference to the removal of Respondent No. 2.

vi. It is further submitted that the allegation of removal due to non-attendance of meetings is a later fabrication to justify an unlawful attempt to oust Respondent No. 2. To clarify the position, a Board Resolution dated 18.09.2009 confirmed that Respondent No. 2 continued as a Director of the Company.

vii. The Respondents also highlight contradictions in the Petitioners' own pleadings. In the civil suit filed by them, it is alleged that Respondent No. 2 was removed on 12.09.2009 due to malpractices, while in the FIR filed subsequently, the same ground of misconduct is cited instead of non-attendance. Additionally, the Petitioners have relied on a Board Resolution purportedly dated 07.09.2009 but backdated to 29.05.2009, indicating a premeditated conspiracy to illegally remove Respondent No. 2.

viii. In light of these inconsistencies and fabricated documents, the Respondents contend that the Petitioners have taken contradictory stands and manipulated records to suit their narrative. The entire petition, based on this false premise, lacks credibility and deserves outright dismissal.

ix. The Respondents submit that the Petitioners voluntarily resigned from the Directorship of Respondent No. 1 Company after committing serious financial and statutory irregularities.

x. In 2008, it was discovered that the Consent Petitioner No. 3 had, in 2007, illegally transferred certain Company land in favour of his wife, Petitioner No. 2. Consequently, the Board directed him to resign, and he ceased to be a Director. Later, in August 2009, Respondent No. 2 unearthed major discrepancies in the Company's accounts, including excessive and unexplained cash withdrawals made under the Petitioners' instructions. Between June and August 2009, ₹3.42 crores were deposited into the Company's bank account, out of which ₹3.38 crores had already been withdrawn. Statements of employees such as

Umesh Verma, Vinod Kumar Gupta, and Virendra Singh corroborated that these withdrawals were at the Petitioners' behest. The Company accordingly cautioned its bankers to prevent further unauthorized transactions.

xi. It is also submitted that the Petitioners, along with Consent Petitioner No. 3, had illegally sold Company owned properties during the same period. Further, several irregular ROC filings came to light, Form 32s showing cessation and appointments of Directors, including Petitioner No. 2, Umesh Verma, Manoj Kumar, and the purported cessation of Virendra Singh along with an unauthorized change of the Company's registered office on 09.09.2009.

xii. Subsequent enquiry revealed that these filings had been made using the digital signature of Dewan Singh without Board authorization. On being confronted, Dewan Singh resigned on 03.11.2009, which was accepted by the Company. On the same day, the Board called Umesh Verma, Manoj Kumar, and Petitioners 1 and 2, informed them of the proposed criminal action, and both Umesh Verma and Manoj Kumar immediately tendered their resignations, which were accepted.

xiii. Anticipating similar action, Petitioners 1 and 2 also submitted their resignations on 11.11.2009, citing personal reasons and requesting leniency. The Board accepted their resignations on same day. The Respondents assert that these resignations were voluntary and duly recorded in the minutes.

xiv. Regarding filing of forms by Respondent No. 7, it is contended that he alone can explain his role. The Petitioners' argument that his

appointment is invalid due to lack of signature on a later resolution is misplaced, as non-signature only indicates absence from that meeting, not lack of Directorship. Any delay in obtaining a DIN is a compoundable procedural lapse, not an illegality.

xv. Finally, the Respondents rely on the affidavit of Mr. Dewan Singh Negi, who stated that he was a domestic employee of the Petitioners and had signed certain documents under their instructions. He affirmed that no Board meetings were ever held to remove Respondent No. 2 as a Director, thereby confirming that Respondent No. 2 continued to hold office lawfully and that all his actions were in the interest of Respondent No. 1 Company.

xvi. The Respondents submit that one of the main projects of the Company, the Agra Project, required substantial working capital. Accordingly, in the Board meeting held on 21.11.2009, Respondent No. 2 subscribed to 4,85,000 equity shares of ₹10 each, paying ₹48,50,000 to the Company, which was well within the then authorised share capital.

xvii. Subsequently, an Extraordinary General Meeting (EGM) was convened on the same date, for which notices were duly served to all shareholders. The EGM was attended by five major shareholders, and it approved the increase of authorised share capital from ₹1.5 crore (15 lakh shares) to ₹2 crore (20 lakh shares).

xviii. Thereafter, Respondent No. 2 invited other shareholders, including Petitioner Nos. 1 and 3, to subscribe to the additional shares, but they declined to invest further. Consequently, in the Board meeting held on

09.12.2009, 5,00,000 new shares of ₹10 each were allotted to interested parties, of which Respondent No. 2 received 4,99,400 shares.

xix. The Respondents contend that the entire process of enhancement of authorised share capital and subsequent allotment of shares was carried out legally, transparently, and in compliance with all statutory requirements, leaving no scope for allegations of oppression or mismanagement.

xx. The Respondents contend that the powers of this Tribunal are summary in nature, and it is not a fact-finding authority empowered to appreciate or evaluate detailed evidence. They rely on precedents to assert that such matters fall outside the Tribunal's jurisdiction:

xxi. In D. Srinivasan & Ors. v. H.S. Viswanath & Ors. (2008) 145 Comp Cas 563 (CLB), it was held that questions involving civil disputes or cancellation of deeds cannot be adjudicated under sections 397/398, as they require extensive examination of evidence suitable for a civil court.

xxii. Similarly, in Ansar Khan & Anr. v. Finecore Cables Pvt. Ltd. & Ors. (2007) 140 Comp Cas 76 (CLB), the Company Law Board observed that cases involving allegations of forgery or fabrication of records require oral testimony and cross-examination, which cannot be addressed in summary proceedings under the said provisions.

xxiii. The Respondents also highlight that the Petitioners have already instituted Civil Suits No. 667 and 837 of 2009 before the Civil Judge, Mathura, seeking similar reliefs.

xxiv. Accordingly, it is submitted that this Tribunal lacks jurisdiction to adjudicate the present petition, as it involves disputed factual controversies already pending before a competent civil court empowered to conduct a full evidentiary inquiry.

xxv. The Respondents argue that this Tribunal lacks the power to cancel the impugned sale deeds under Section 242(e) or (f) of the Companies Act, 2013. In the present case, the sale deeds were allegedly executed between Respondent No. 1 Company and certain individuals who, as per the Petitioners' own showing, are relatives of Respondent No. 2, not directors or managers of the company. The Respondents contend that the transferees under the sale deeds cannot be classified as "relatives" within the meaning of Section 2(77) of the Act, which limits the definition of "relative" to members of a Hindu Undivided Family, spouses, or persons related in a manner prescribed under the rules. Therefore, the allegation that the properties were transferred to the relatives of Respondent No. 2 is unfounded. As regards Section 242(f), the Respondents submit that while it empowers the Tribunal to modify or terminate agreements between the company and any other person, such action can only be taken after notice and with the consent of the concerned party. Since no such consent has been obtained from the purchasers in whose favour the sale deeds were executed, the Tribunal cannot exercise powers under Section 242(f) either. Accordingly, the Respondents submit that this Tribunal lacks jurisdiction to cancel or interfere with the sale deeds in question under Sections 242(e) or (f) of the Act.

xxvi. The Respondents submit that the relief sought by the Petitioners for cancellation of sale deeds is beyond the jurisdiction of this Tribunal, it is contended that under Section 31, only a civil court may adjudge a written instrument void or voidable and direct its cancellation where such instrument, if left outstanding, may cause serious injury to any person. Reliance is placed upon the judgment of the Allahabad High Court in Sheo Prasad Misra vs. IVth Additional District Judge, Ghazipur & Ors., (2005 All LJ 2385), wherein it was held that a suit for cancellation of a void sale deed lies only before a civil court under Section 31 of the Specific Relief Act. Accordingly, the Respondents argue that the present petition, to the extent it seeks cancellation of sale deeds, is not maintainable before this Tribunal, and such relief can be sought only before the competent civil court.

7. The Respondent No.12 & 20 also filed separate reply espousing therein:-

i. Respondent Nos. 12 and 20 have contended that the present petition is not maintainable and suffers from suppression of material facts. Respondent No. 12, Smt. Anshu Agarwal, and Respondent No. 20, M/s Mars Nirman Pvt. Ltd., are independent and bona fide purchasers of certain immovable properties from Respondent No. 1, M/s Neel Padam Builders Pvt. Ltd., much prior to the initiation of the present proceedings.

ii. It is stated that Respondent No. 12 and Respondent No. 20 purchased (i) land measuring 8½ bighas situated at Mauza Girdharpur, Mathura, and (ii) a plot admeasuring 334.44 sq. mtrs. at 113C, Tatvadarshi Vatika, Mathura, through duly executed and registered sale deeds. In

the first property, Respondent No. 12 holds 10% share, while Respondent No. 20 holds 90%. The second property is solely owned by Respondent No. 12.

iii. The sale deeds were executed by Respondent No. 1 through its Director, Shri Ashok Agarwal (Respondent No. 2), who was duly authorized by Board Resolutions dated 07.04.2009, 14.08.2009 and 25.09.2009. The respondents assert that the total consideration was duly paid, including stamp duty and registration charges. Respondent No. 20 withdrew the funds through its bank account, and payments were made by cheque and cash as reflected in the records. The purchasers took every precaution to verify title and authority and acted in good faith.

iv. It is further stated that the petitioners have already instituted two civil suits, being Civil Suit Nos. 667/2009 and 837/2009 before the Civil Judge (Senior Division), Mathura, seeking identical reliefs. In view thereof, the answering respondents have filed an application under Section 10 CPC seeking stay of the present proceedings, and another application for vacation of interim orders passed against them.

8. In the reply filed by him, the respondent no. 36 has espoused thus:–

i. Respondent No. 36, a real estate development company promoted by Mr. Santosh Kumar Sharma and Mrs. Lalita Sharma, has its present directors as Mr. Santosh Kumar Sharma, Mrs. Lalita Sharma, and Mr. Anil Kumar, who was appointed as an Additional Director on 17.12.2009. It is asserted that the management of Respondent No. 36 is entirely distinct from that of Respondent No. 1, with no common directors between the two companies.

ii. Respondent No. 1 had approached Respondent No. 36 seeking to sell parts of its land to raise funds for an upcoming project in Agra. Considering this a commercially viable opportunity, Respondent No. 36 agreed to purchase certain lands situated at Mauza Aduki, Anand Nagar, District Mathura from Respondent No. 1.

iii. It is submitted that the Board of Directors of Respondent No. 1 had passed a resolution dated 14.08.2009 authorizing Mr. Virender Singh and Mr. Pooran Singh Sinsiwar to execute agreements to sell and sale deeds on behalf of the company. Since the specific plot numbers were not mentioned in that resolution, Respondent No. 36 sought a further resolution for clarity. Consequently, Respondent No. 1 issued another resolution dated 14.12.2009 specifying the plot details and reiterating the authorization of Mr. Virender Singh and/or Mr. Pooran Singh to execute the sale deeds. Respondent No. 36 contends that it had no reason to doubt the authenticity of these resolutions, as both individuals were publicly known directors of Respondent No. 1, a reputed builder in Mathura.

iv. Respondent No. 36 has submitted that it paid the entire sale consideration of ₹1,71,00,000/- to Respondent No. 1 through two cheques dated 26.12.2009 and 30.12.2009, amounting to ₹47,50,000/- and ₹1,23,50,000/- respectively. Upon receipt of the consideration, the duly authorized signatory of Respondent No. 1, Shri Pooran Singh, executed two sale deeds dated 24.12.2009 in favour of Respondent No. 36, transferring a total of 149 plots situated in Sectors 1 and 2 of the Anand Nagar Project, Mathura.

v. Subsequently, Respondent No. 36 discovered certain typographical and factual errors in the sale deeds, which were duly rectified through two rectification deeds dated 26.12.2009. These corrections included rectifying wrongly mentioned sector and plot numbers, adjusting plot areas that did not match, and substituting plots that had already been sold to third parties. After these corrections, the deeds accurately reflected the plots purchased by Respondent No. 36.

vi. It is contended that the transactions were bona fide, for valid consideration, and conducted in the ordinary course of business.

vii. Further, some of the plots acquired were subsequently sold by Respondent No. 36 to independent third-party purchasers during the regular course of its business, including sales in favour of Mrs. Chhavvi Agarwal, Smt. Ranjana Pathak, and Mr. Mahesh Chand, for due consideration between February and March 2010.

viii. It is submitted that the only relief sought against Respondent No. 36 concerns the cancellation of sale deeds executed in its favour. However, the CLB does not possess jurisdiction to annul concluded sale transactions or cancel sale deeds executed between a company and third parties. It is argued that under Section 402(f), the CLB may only set aside transactions constituting fraudulent preferences undertaken to defeat the claims of creditors, which is not the case here. The sales in favour of Respondent No. 36 were effected in the regular course of business and therefore cannot be interfered with under the said provision.

9. Stand taken by Respondent No. 28 in her reply:-

i. It has been submitted by Respondent No. 28 that she is the mother of Respondent No. 2, Shri Ashok Agarwal. The Petitioners are her close relatives, Petitioner No. 1 being her nephew, Petitioner No. 3 her sister-in-law, and Consent Petitioner No. 3 her brother-in-law. It is submitted that she has inherited certain property and funds upon the demise of her husband and, out of her personal resources, purchased Plot No. 13, Anand Nagar, Sector 1, Mathura, through a registered sale deed dated 12.10.2009 for a consideration of ₹3,16,100/-, which was duly paid to the Respondent Company. The said sale deed was executed on behalf of the Respondent Company by Respondent No. 4, Shri Virendra Singh, who was duly authorised by Board Resolutions dated 14.08.2009 and 08.10.2009.

ii. It is further submitted that, being the mother of Respondent No. 2, she falls within the definition of "relative" under the Companies Act. Respondent No. 2 had accordingly made the requisite disclosures and abstained from voting on the Board Resolution dated 08.10.2009. It has also been submitted that the Respondent Company is a reputed real-estate developer engaged in the business of colonisation, construction and development of real-estate projects and has successfully executed several projects in Mathura.

iii. It has been submitted by Respondent No. 28 that she purchased Plot No. 13, Anand Nagar, bona fide, in good faith and for valuable consideration, without any knowledge of the alleged disputes or irregularities concerning the said property. It is contended that at the time of purchase, she had no knowledge or reason to believe that the

affairs of the Respondent Company were being conducted in a manner prejudicial to the interests of the Company or its shareholders. Being a stranger to the internal management of the Company, she could not be expected to go behind the public records or investigate the internal affairs of the Company.

iv. The case of Respondent No. 28 is that she had no involvement in the management of the Respondent Company and found that the sale deed dated 12.10.2009 was executed by Respondent No. 4, Shri Virendra Singh, who was duly authorised through Board Resolutions dated 14.08.2009 and 08.10.2009. She was therefore satisfied that the transfer was validly executed and was not required to inquire beyond the said resolutions. It is thus contended that no ground exists to invalidate the sale of Plot No. 13 in her favour.

v. It has also been submitted that the Petitioners themselves have admitted that the Respondent Company was the owner of the plots, including Plot No. 13, and have not disputed the authenticity of the registered sale deed dated 12.10.2009, which they have relied upon in their pleadings.

vi. Respondent No. 28 has further submitted that, from a plain reading of Sections 397 and 398 of the Companies Act, the remedies contemplated therein are preventive in nature and can be invoked only when the affairs of a company are being conducted in an oppressive or prejudicial manner. These provisions are intended to bring to an end acts of oppression or mismanagement on the part of controlling shareholders and to prevent their continuance, not to reopen or invalidate

transactions that have already been concluded on the ground of alleged past mismanagement.

vii. It has been submitted that even the equitable powers conferred under Section 402(f) of the Companies Act cannot be exercised to set aside a past or concluded transaction, including a completed conveyance of immovable property, and that any question of title, if raised, can only be adjudicated by a competent Civil Court.

viii. Respondent No. 28 has also stated that she subsequently sold Plot No. 13 to Smt. Machala Devi, wife of Shri Satyavir Singh, resident of Village and Post Office Baramai (Kheda Post), Tehsil Sadabad, District Hathras (Mahamayanagar), through a registered sale deed dated 09.04.2010, registered in the office of the Sub-Registrar, Mathura-I. This fact was duly disclosed in her reply to C.A. No. 50 of 2010.

ix. It is contended that any order invalidating a bona fide and legally valid transaction would not only affect Respondent No. 28 as a third-party purchaser but would also prejudice the rights of the subsequent transferee, Smt. Machala Devi, who has not been impleaded as a party to the present proceedings and may otherwise suffer adverse orders without an opportunity of being heard.

x. Respondent No. 28 has further pointed out that the Petitioners have not alleged that the said transfer of Plot No. 13 was effected with any fraudulent intent or constituted a preferential transaction to defeat the creditors of the Company. Hence, the essential ingredients for invoking Section 402(f) of the Companies Act are not satisfied, and no relief can be granted under the said provision.

xi. It has been further submitted that the relief sought under Section 402(f) of the Companies Act is barred by limitation, as the said provision prescribes a period of three months for invoking such relief, which had already expired when the Petitioners introduced prayers seeking to set aside the transfer of Plot No. 13 in the present proceedings. Accordingly, the said relief is stated to be not maintainable and liable to be dismissed on the ground of limitation.

xii. It is also submitted that a perusal of the amended petition would show that there are no specific or direct allegations against Respondent No. 28.

10. In the reply filed by her the respondent no. 27 has espoused :-

i. It has been submitted by Respondent No. 27 that she is the maternal aunt of the wife of Respondent No. 2, Shri Ashok Agarwal. It is stated that she has purchased Plots No. 11 and 12 in Anand Nagar, Sector 1, Mathura, from her own funds as an investment, through a registered sale deed dated 12.10.2009 for a total consideration of ₹4,81,700/-, which was duly paid to the Respondent Company.

ii. It can be seen that except for the details pertaining to the said purchase, the contentions and averments made by Respondent No. 27 in her reply are identical to those stated by Respondent No. 28 in her reply, and the same may be read and relied upon mutatis mutandis in support of her defence.

11. The stand taken in the reply filed on behalf of respondent no. 26 is as under :-

i. It has been submitted by Respondent No. 26 that he is the maternal uncle (Mausa) of the wife of Respondent No. 2 i.e., Shri Ashok Agarwal. He decided to purchase Plots No. 9 and 10 in Anand Nagar, Sector 1, Mathura, by way of investment. The said plots were purchased through a registered sale deed dated 12.10.2009 for a total consideration of ₹4,81,700/-, duly paid to the Respondent Company, and registered in the office of the Sub-Registrar, Mathura-I.

ii. The remaining averments made by Respondent No. 26 may be relied upon in the same manner as the averments made by Respondent No. 28.

12. Submissions made by Respondent No. 25 in its reply are as under:-

i. It has been submitted by Respondent No. 25 that she is the aunt (chachi) of the wife of Respondent No. 2, Shri Ashok Agarwal. It is averred that she has inherited certain property and funds upon the demise of her husband and from her personal resources, purchased Plots No. 7 and 8 in Anand Nagar, Sector 1, Mathura, through a registered sale deed dated 12.10.2009 for a total consideration of ₹4,81,700/-, which was paid to the Respondent Company. The said sale deed was registered in the office of the Sub-Registrar, Mathura-I.

ii. The remaining averments made by Respondent No. 25 are similar to the averments made by Respondent No. 28 in its reply.

13. The respondent no. 7 has taken his stand by way of an affidavit dated 16.11.2012, espousing thus: —

i. He has been a Director of the Respondent No. 1 Company since 05.04.2007 and has actively participated in the functioning of the

Board since his appointment. He submitted that he was duly authorised to file necessary statutory forms on behalf of the Company with the Registrar of Companies (ROC) and, accordingly, carried out such filings using his digital signature from November 2009 onwards. The digital signatures of Respondent No. 2 and the erstwhile Director, Shri Dewan Singh Negi (who resigned on 03.11.2009), were kept in custody of the Company's accountant, Mr. I.P. Sharma. Upon direction of the Board to file requisite forms such as Form 32, Form 18, Form 2, and Form 5, Mr. I.P. Sharma refused to hand over the digital signatures in his possession. Due to such insubordination and illegal retention of digital signatures, Mr. I.P. Sharma was removed from service in November 2009.

ii. It was later discovered that several earlier filings with the ROC had been carried out by Mr. I.P. Sharma using the digital signatures of Mr. Dewan Singh Negi, under the instructions of the Petitioners and Consent Petitioner No. 3, and against the directions of the Board. This revelation, according to him, exposed the extent of collusion between the Petitioners and certain employees in attempting to misappropriate the assets of the Company.

iii. In 2009, the Respondent Company planned to expand its commercial base and required funds to undertake new projects. One such project identified by Respondent No. 2 was a proposed commercial and residential complex in Agra, Uttar Pradesh, considered lucrative as the land permitted both residential and commercial development.

iv. To raise funds for the said project, the Board of Respondent Company resolved to generate capital through the sale of certain company owned plots and by issuing further shares within the authorised share capital. In the Board meeting held on 29.10.2009, it was decided to issue additional shares and increase the authorised capital of the Company. However, the Petitioners and the Consent Petitioner No. 3 refused to subscribe to the further share issue. Consequently, in the Board meeting held on 21.11.2009, which Respondent No. 7 attended, 4,85,000 equity shares were allotted exclusively to Respondent No. 2 upon payment of ₹48,50,000/-.

v. An Extraordinary General Meeting was also held on 21.11.2009, wherein the shareholders passed a resolution to increase the authorised share capital from ₹1.5 crores to ₹2 crores to meet funding needs for the Agra project. Despite being duly informed and served with notice and the explanatory statement, the Petitioners did not attend the said meeting.

vi. Following the Petitioner's refusal to invest, he personally decided to invest in the Respondent Company. Accordingly, on 09.12.2009, he subscribed to 50 equity shares of ₹10 each, and the share allotment money paid by him was duly deposited in the Company's bank account. Out of the total share allotment money raised in November–December 2009, a sum of ₹98,50,000/- was utilised towards financing the Agra project.

vii. On 08.09.2009, Respondent No. 2 informed him that he was being prevented from entering the office premises of the Respondent Company

at Mathura. Suspecting that the Petitioners were attempting to unlawfully remove Respondent No. 2 by fabricating documents, the Board convened a meeting on 18.09.2009 and passed a resolution confirming his continuation as a director to prevent any miscommunication to third parties. The Petitioners were also cautioned against such unlawful actions.

viii. He learnt for the first time through the present petition that Respondent No. 2 had been removed from the Board for not attending three consecutive meetings under Section 283(1)(g) of the Companies Act, 1956. However, he asserted that no such meetings were ever held on 21.06.2009, 28.07.2009, or 01.09.2009, nor were any notices issued, rendering those proceedings fictitious and fabricated.

ix. In October 2009, the Petitioners, without Board authority, sold company-owned land valued at about ₹94,38,480/- and misappropriated the sale proceeds for their personal benefit. They also allegedly appointed Mr. Hanif Khan to sell company assets without Board approval, and the sale consideration received in cash was never deposited in the Company's account.

x. In the light of these irregularities, the Board advised Respondent No. 2 to conduct due diligence to ascertain the extent of the Petitioners' illegalities. Consequently, on 03.11.2009, the Board summoned Petitioner Nos. 1 and 2, along with Mr. Dewan Singh Negi, Mr. Umesh Verma, and Mr. Manoj Kumar. During this meeting, it was revealed that the Petitioners had misused the digital signature of Mr. Dewan Singh Negi to file false forms with the Registrar of Companies, including forged

Form 32s showing wrongful appointments and cessations of directors. The Board resolved to initiate criminal proceedings against them for forgery and fraudulent sale of company property, Mr. Umesh Verma, Mr. Dewan Singh Negi, and Mr. Manoj Kumar thereby immediately resigned to avoid liability.

xi. The Petitioners voluntarily resigned from the Respondent Company on 11.11.2009 after requesting the Board not to pursue police complaints against them, citing personal reasons including the impending marriage of Ms. Kanupriya Agarwal. Their resignations were accepted by the Board, and in view of the ongoing Agra project, no further legal action was initiated at that time.

xii. The Board later discovered that the Petitioners continued to misuse the Company's bank accounts in connivance with certain bank officials, despite having been removed as authorised signatories. Consequently, the Board resolved to open a new bank account for the Company at Punjab National Bank, Delhi Gate, Agra, on 24.11.2009. The sale consideration from regular business activities and share allotment proceeds were duly deposited into this new account, which was used for legitimate company expenses, including salary payments and instalments for land purchased under the MOU dated 10.12.2009 with M/s Buland Housing Private Limited.

xiii. On 15.12.2009, the Petitioners and Consent Petitioner No. 3 allegedly attacked the Company's Mathura branch office, forcibly removing and stealing company records and valuable equipment. The police was called for assistance, but by the time it arrived, the Petitioners had fled

with certain documents. A public notice was subsequently published in Dainik Jagran, Mathura Edition, on 16.12.2009, warning the public not to deal with the Petitioners as they were no longer associated with the Company. The police thereafter sealed the Mathura office to secure the remaining company documents.

xiv. A police complaint was lodged against Petitioner No. 1 and Consent Petitioner No. 3 on 17.12.2009. However, on 17.02.2010, the Petitioners allegedly broke open the sealed office and removed additional original property documents, prompting the Company to lodge another police complaint for theft and apprehension of destruction of incriminating records.

14. In the response filed by him, the respondent No. 4 has espoused thus:-

i. He has been associated with the Respondent No. 1 Company as a Director, initially from January 2000 to December 2002, and again since April 2007. He has regularly participated in the Board meetings and has remained fully aware of the functioning of the Company.

ii. As a Director, he was authorized by the Board vide resolutions dated 14.08.2009 and 08.10.2009 to identify prospective buyers and negotiate sale transactions of the Company's lands. His authority was further acknowledged by Petitioner No. 1, who executed an authority letter dated 12.10.2009 recognizing him as an authorised signatory of the Respondent Company.

iii. Around August 2009, he grew suspicious of the Petitioners' involvement in illegal sale transactions of Company lands. Between June and August 2009, developed plots in the Anand Nagar Project, Mathura,

were sold for about ₹3 crores, with most payments received in cash and handed over to Petitioner No. 1. On being questioned, Petitioner No. 1 allegedly justified the cash retention on the ground that funds were required for the engagement and marriage of his sister, Ms. Kanupriya Agarwal.

15. The rest of the averments made by Respondent No. 4 are similar to those made by Respondent No. 7 in its reply.

16. A joint reply has been filed on behalf of Respondent Nos. 29 to 35, espousing thus:-

i. They have no connection or control over the affairs of Respondent No. 1 Company, hold no shares therein, are not employees or officers of the Company, and are complete strangers to its management, except Respondent No. 30 who is remotely related to one of the directors. It is stated that none of the allegations of oppression and mismanagement have any bearing on them.

ii. The petition is misconceived as the reliefs sought effectively challenge certain sale transactions which, even if disputed, could be questioned only on the ground of fraudulent preference or transfer made to defeat creditors—an allegation not even pleaded by the Petitioners. The answering Respondents assert that they are bona fide purchasers for valuable consideration and are in possession of the properties purchased.

iii. The Petitioners are attempting, under the guise of this company petition, to set aside duly executed sale deeds without resorting to the

appropriate civil proceedings, thereby abusing the process of this Tribunal to avoid payment of the requisite court fees. Hence, the petition against these Respondents deserves outright dismissal.

iv. They are bona fide purchasers of various immovable properties acquired through duly registered sale deeds executed by M/s Neel Padam Builders (P) Ltd. for valid and valuable consideration. They assert that the said company has a long-standing reputation in developing and selling plotted residential colonies in Mathura, including projects such as Anandvan, Anandvan Phase-I, and Anandlok.

v. They were interested in Anand Nagar project on the basis of advertisements issued by the company, which represented the colony as a duly sanctioned colony. On being satisfied about the bonafides of the project and that Respondent no. 1 was the owner of the said land and was entitled to sell the same, the answering Respondents approached the Respondent no. I company in this regard and was asked to deposit money as processing fees.

vi. They deposited the required processing fees, appeared before the Sub-Registrar, paid the sale consideration, and had their respective sale deeds executed and registered through the company's authorized representative. The consideration paid was consistent with the prevailing circle rates, ruling out any allegation of inadequate consideration, fraud, or sham transactions.

vii. On the strength of their duly registered sale deeds and possession of the plots, the Respondents claim absolute ownership of the properties

and contend that the Petitioners have no right or locus to challenge their validly acquired title.

17. The record available on DMS reveals that Petitioners have filed rejoinder to the replies filed on behalf of Respondent Nos. 1, 2 and 23 to 37. In rejoinder to the reply filed on behalf of Respondent Nos. 1 and 2, it has been espoused thus:-

I. The Respondent No.2 is neither Director qua the Respondent No.1 nor he is authorised to represent the said Respondent i.e. the Respondent No.1 Company in any manner. These are the Petitioners who are Directors inter alia (amongst 05 Directors) qua the Respondent No.1 and have the actual authority to represent it.

II. The person who got impleaded as Respondents in the petition, in terms of the order dated 07.02.2012 passed by CLB got impleaded themselves as Respondents in the petition are those persons who in connivance with Respondent No. 2, got the valuable lands/plots of the Respondent Company transferred illegally in their favour through R-4 and R-9 on different dates i.e. on 29.09.2009, 30.09.2009, 12.10.2009 and 24.12.2009. The *Modus Operandi* of the conspirators was to first transfer the valuable lands of the Company in the name of their friends, relatives and associates for no consideration. Subsequently, the land was to be sold in the name of actual purchaser causing unjust enrichment to the conspirators and huge loss to the Respondent Company and its shareholders. The Respondents commit such unethical act which burdened the company and its shareholders either without authority or in the name of illegally constituted Board and

improper shareholders. The act was committed by disregarding the authority of the Petitioners, Umesh Sharma, Dewan Singh and Manoj Kumar, the Directors to the Respondent No.1 company.

III. The fact regarding cessation of Respondent No.2 as Directors qua the Respondent No.1 company under Section 283(1)(g) was intimated to the Registrar of Companies on 05.10.2009 and to Respondent No.2 himself on 08.09.2009. The Respondent No.2 in furtherance of his illegal designs, which had began to take shape since April 2009 itself, hatched a conspiracy of hijacking the Respondent Company as well as its assets. Instead of assailing the cessation by resorting to available legal course, the Respondent No.2 conspired with other Respondents and filed various fabricated forms with the Registrar of Companies, in continuation of their malafide intentions by misusing the loop holes in the e-filing system, falsely showing therein the following:

Date of filing of Form	Form No.	Particulars of Form	Form Digitally Signed By
20.11.2009	32	Appointment of Respondent No. 2 as a Director of the Respondent Company in an alleged Board meeting held on 18.09.2009.	Respondent No. 7
20.11.2009	32	Appointment of Respondent Nos. 4, 5 & 8 as Director of the Respondent Company in an alleged Board meeting held on 08.10.2009.	Respondent No. 7

Date of filing of Form	Form No.	Particulars of Form	Form Digitally Signed By
21.11.2009	32	Appointment of Respondent Nos. 16 & 17 as Director of the Respondent Company in an alleged Board meeting held on 02.11.2009.	Respondent No. 7
21.11.2009	32	False statement of Resignation of Mr. Umesh Verma (appointed on 07.09.2009), Diwan Singh Negi and Manoj Kumar (appointed on 07.10.2009) belonging to the Petitioner Group in an alleged Board meeting held on 02.11.2009 w.e.f. 03.11.2009.	Respondent No. 7
21.11.2009	32	Appointment of Respondent Nos. 9, 18 & 19 as Director of the Respondent Company in an alleged Board meeting held on 10.11.2009.	Respondent No. 7
21.11.2009	32	False statement of Resignation of Petitioner No. 1 and Petitioner No. 2 as Directors w.e.f. 11.11.2009 in an alleged Board meeting held on 10.11.2009.	Respondent No. 7

Date of filing of Form	Form No.	Particulars of Form	Form Digitally Signed By
21.11.2009	2	Allotment of 4,85,000 shares in favour of Respondent No. 2 in an alleged Board meeting held on 21.11.2009.	Respondent No. 7 ✓
21.11.2009	5	Increase in authorized share capital of the Respondent Company from Rs.1,50,00,000 to Rs.2,00,00,000 in an alleged Board meeting held on 21.11.2009.	Respondent No. 7 ✓

23.11.2009	18	Shifting of registered office of the Respondent Company from 9, Kailash Hills, New Delhi-110065 with effect from 09.10.2009 to E-71, 2nd Floor Kalkaji, New Delhi i.e the residence of the Respondent No. 2	Respondent No. 7
08.12.2009	32	Appointment of Respondent No. 6, 7 & 10 as Directors of the Respondent Company in alleged Board meeting held on 05.04.2007.	Respondent No. 7
09.12.2009	2	Allotment of 4,99,400 shares in favour of Respondent No. 2 and 50 shares each in favour of Respondent Nos. 4	Respondent No. 7
Date of filing of Form	**Form No.**	**Particulars of Form**	**Form Digitally Signed By**
		to 15.	

IV. The story canvassed in the aforementioned forms enclosed with the main petition is concocted and such concoction is explicit from the following:-

i) All the above Forms have been digitally filed by the Respondent No. 7 who was never a Director in the Respondent Company which is proved by the Annual Return for the year 2007 and 2008, filed with Registrar of Companies.

ii) The Applicants/Petitioners or Mr. Diwan Singh Negi, Mr. Umesh Varma and Mr. Manoj Kumar never resigned from the Directorship of the Company. The Form 32 filed for their resignation does not have the attachment of the copies of resignation which is a mandatory requirement.

iii) In any event, the story of resignation of the Petitioners is completely unbelievable as why would the Petitioners who have

brought this Company to the present position when it owns properties worth crores of rupees will resign and would allow the Respondent No.2 to takeover such a Company.

iv) Even as per the above forms, the Petitioners were Directors of the Company till 10.11.2009 but no notice of any alleged board meetings wherein, registered office was allegedly changed by the Respondents and Respondents were appointed as Directors, was given to the Petitioners.

v) Since Respondent No. 7 was never a Director, all Forms filed by him with the RoC are in any event invalid and should be rejected.

vi) All the Forms have been filed only after cessation of Respondent No. 2 from the Directorship, of the Respondent Company i.e. 07.09.2009.

vii) Even assuming that first allotment of shares was actually made, even after the said allotment the Petitioners/consenting Petitioners group remained in majority, the resolution for increase in authorized share capital could not have been passed without notice of the extra-ordinary general meeting to the Petitioners/Consenting Petitioners group and without consent. No such notice of the meeting was ever given to Petitioners & Consenting Petitioners group nor did the Petitioner group ever accorded its consent for such increase in share capital. Therefore, the increase in authorized share capital was in any event illegal and the second allotment consequent to such illegal increase in authorized share capital is also illegal.

viii) The alleged aforesaid allotment has been made by issue of shares to the Respondents at par whereas the value of shares of the Respondent Company is substantially more in view of value of property owned by the Company.

V. The story canvassed in the forms is concocted as mere filing of forms does not result in any change as alleged in the forms, filed by the Respondents with regard to appointment and resignation of the Directors, allotment of shares etc. If by mere filing of forms, change could be effected in Directorship and Shareholdings of the Company, then any single Director of any Company can try to change the entire Company by simply filing forms with RoC. For example, a Director of any big Company like TATA/RELIANCE can file such forms and claim ownership over such business and can sell all the properties worth lacs of crores himself at throwaway prices. In such a circumstance if promoters of such a Company are restrained from operating their business and wait till the disposal of the entire proceedings, the same would result in gross and irreparable miscarriage of justice. The present case is much worse than the circumstance narrated above because in the present case the forms have been filed by a person who was not even a Director of the Respondent No.1 Company.

VI. The Respondents have not produced either the original or photocopy of the Minutes Books and all other Statutory Records of the Respondent Company including notices.

VII. No notices and/or acknowledgement thereof could be produced by the Respondent No.2 to prove the service of notice for Extra Ordinary

General Meeting of the company/Respondent No.1 before the increase in Authorised Share Capital of the company.

VIII. The Respondent No.2 in connivance with other Respondents started planning illegal designs, which could be begin to take shapes since April 2009. As a part of such illegal design, he stopped attending the office of the Respondent No.1 Company as also the meetings of its Board of Directors. Since, he failed to attend three consecutive board meetings unauthorisedly (without any leave), the position of Director qua the company held by him was deemed as vacated and he seized to be Director w.e.f. 07.09.2009, by operation of Section 283(1)(g) of the Companies Act. In para 21 of the reply Respondent No.2 admitted that he got information regarding cessation from the Board of Directors of Respondent No.1 Company on 08.09.2009 itself i.e. the day following his cessation.

IX. The Respondent No.4 who also happened to be Director of Respondent No.1 Company also colluded with Respondent No.2 and planned illegal design to misappropriate the assets of the Respondent No.1 Company. Thus, he also avoided attending the meeting of Board of Directors qua the company along with Respondent No.2 and remained absent from three consecutive board meetings without seeking any leave or absence, thus seized to be Director of the Company like Respondent No.2 w.e.f. 07.10.2009. Form-32 regarding his cessation was filed before the RoC to the effect and his authority to execute Sale Deed on behalf of Respondent No.1 Company was also withdrawn from 11.10.2009.

X. A perusal of the Purported Resolution dated 18.09.2009 and 08.10.2009 prove that the same are the documents fabricated and concocted in back date.

XI. In the Purported Resolution dated 18.09.2009 it could be recorded that the Respondent No.2 never ceased to be Director in the Board to a Respondent No.1 Company. The relevant excerpt of the Resolution reads thus:-

> *"Resolved further that, at no point of time did Mr. Ashok Kumar Agrawal's directorship in the Company cease and the Board has not approved any resolution to remove him from the directorship of the Company"*

XII. In contradiction of the above in clause (a) of the Purported Resolution, it could be recorded that Fresh Form No. 32 was authorised to be filed before CoC showing re-appointment of Respondent No.2. Relevant excerpt of the Resolution reads thus:-

> *"a. File a fresh Form No.32 "with the Registrar of Companies, NCT of Delhi and Haryana, and undertake all other required legal compliances for confirmation of the continuation or, for the reappointment of Mr. Ashok Kumar Agrawal as the director of the Company ..... "*

XIII. If any Director in Board of a Company has any grievance regarding the decision of his cessation or removal or filing of Form-32 regarding the cessation, remedy available to him is challenged the cessation/removal and not to file Fresh Form-32.

XIV. In the Purported Resolution dated 18.09.2009, it could be recorded that the Respondents were anticipating legal actions on the part of the Petitioner against the filing of Purported Form No. 32 showing the

illegal appointment of Respondent No.2. Relevant excerpt of Resolution reads thus:-

> *"Resolved that if any person including Neelamber Agrawal and N.K. Khandelwal is found to have undertaken any action regarding the directorship of Mr. Ashok Kumar Agrawal or in other regard, without the authority of the Board, strict legal, both civil and criminal be taken against such persons ..... . "*

XV. In the Purported Resolution dated 08.09.2009, it could be recorded that the Respondent No.4 had never ceased to be Director in the Board. The relevant portion of the Resolution reads thus:-

> *"Resolved further that, Mr. Virendra Singh's directorship in the company has not ceased and the Board has not approved any resolution to remove him from the directorship of the company."*

XVI. In total contradiction of the above, it could also be recorded in Para (a) of the purported Resolution that Mr. Ashok Kumar Agrawal i.e. Respondent No.2 was authorised to file Fresh Form No. 32 before RoC showing his re-appointment. The relevant excerpt of the resolution reads thus:-

> *"Resolved that the Board hereby authorizes Mr. Ashok kumar Agrawal (Director), Mr. Dewan Singh Negi (Director) and I or Mr. Narendra Singh (Director) acting severally or joingly and I or any person authorized by them to file Form No.32 with the Registrar of Companies, NCT of Delhi and Haryana and undertake all other required legal compliances for confirmation of the continuation or reappointment of Mr. Virel1dra Singh as the director of the Company, ..."*

XVII. When as per the provisions of Companies Act, a Director cannot delegate his authority to file Form No.32 to any third party, in

resolution dated 08.10.2009, it could be recorded that either any of the Directors or any person authorised by them could file Form No. 32 with the Registrar of Companies. Thus, the provisions of Companies are violated.

XVIII. All the Forms, the steps under which are in question in the present proceedings were filed digitally by Respondent No.7 who was never a Director in the Respondent No.1 Company. The fact is proved by the Annual Return for the year 2007 and 2008, filed with Registrar of Companies.

XIX. The Annual Return for the year 2008 was approved and signed by the Respondent No.2 himself. The Annual Return as annexed with the petition clearly show that as on 299.09.2008, the Respondent Nos. 6,7 and 10 were not Directors qua the Respondent No.1 Company. The names of Directors as per the Annual Return 2007-2008 are as under:-

Sl.No.	Directors as per Annual Return 2006-2007	Directors as per Annual Return 2007-2008
1.	Dinesh Kumar Agrawal	Dinesh Kumar Agrawal (upto 28.01.2008)
2.	Neelamber Agrawal (upto 20.11.2006)	Neelamber Agrawal
3.	Diwan Singh Negi	Diwan Singh Negi
4.	Ashok Kumar Agrawal	Ashok Kumar Agrawal
5.	Narender Kumar Khandelwal	Narender Kumar Khandelwal
6.	Virendra Singh	Virendra Singh
7.	Shyam Singh (upto 20.11.2006)	

XX. Since, Respondent No.7 namely, Shri Narendra Singh was never Director in Respondent Company, thus all the Form 32 filed by him showing appointments and resignations of different persons are illegal and void ab initio.

XXI. Purported Form 32 showing the appointment of Respondent No.7 as Director w.e.f. 05.04.2007 was filed on 08.12.2009, after gap of more than two and a half year, under the signature of Respondent No.7 himself while in the Form 32 itself it is stated that the same should be signed by the Director other than the person being appointed as Director in the existing company.

XXII. The intimation regarding appointment of Respondent No.7 as Director qua Respondent No.1 company was filed only on 08.12.2009, while before said date he had filed various other forms using his digital signatures, electronically. Thus, the Registrar of Companies could not have accepted such Forms signed by Respondent No.7 digitally, when he was not Director of the Company even as per the Form-32 signed and filed by the said Respondent only.

XXIII. The Resolution dated 07.04.2009 did not contain the signature of Respondent No.7, thus apparently, he was not a Director of the Respondent No.1 Company as on said date. The Board Resolution dated 07.04.2009, which authorized R-2 to enter into agreements for sale and purchase related to Khasra Nos. 14, 21, 22, 49, 50 & 52 in Revenue Estate, Mathura (U.P.) was an Unanimous Resolution and the same was signed by Sri Ashok Kumar Agrawal (R-2), Sri N.K. Khandelwal, Sri Diwan Singh & Sri Virendra Singh (R-4). This is not accidental that the names of R-7 do not appear in the said Resolution and thus clearly further establishes that he was/is never a, Director in the Respondent No.1 Company. Otherwise, there is no need to sign 4 Directors and the signatures of 2 Directors were sufficient.

XXIV. The Respondent No.7 in collusion with & acting under instructions from Respondent No.2, was able to exploit the loopholes in the computer filing system of Registrar of Companies to fulfil his and Respondent No.2's unlawful objectives.

XXV. During 2008, Respondent No.4 herein had sold a valuable land in Khasra No. 142 to Mathura Prasad in Village Navada, Tehsil and District Mathura without any authority or without ay resolution from the Board of Directors of the Respondent Company and the consideration realized by the said illegal transfer was misappropriated by him. The Petitioners, suspect that Respondent No.4 has sold some other properties also in the same manner which we now not in the knowledge of the Petitioners.

XXVI. The Respondent No. 2 in connivance with other Respondents got the valuable lands/plots of the Respondent Company transferred illegally by himself and through Respondent Nos. 4 & 9 on 29.09.2009, 30.092009, 12.10.2009 and 24.12.2009. The transfer of the Company's properties was made illegally and without authorization of the Respondent Company and wrongfully by illegally structuring the Board by filing forged Forms with RoC.

XXVII. The resolutions referred to the Respondents for proving their authority to transfer the property of the Respondent Company are completely fabricated and are the results of afterthought. It is submitted that in fact, the Respondents had not at all annexed or even mentioned any of the Resolutions along with the purported Sale Deeds and the purported Resolutions now produced by Respondent No.2 are only fabricated one

and created as the result of an afterthought or otherwise the same would have been annexed with the alleged Sale Deeds.

XXVIII. In the illegal transfers conducted by the Respondents have not followed any of the formalities which were followed by the Respondent Company.

i) There were no booking of plots/lands in the purported sales / transfers which are under challenge herein;

ii) No Booking Forms were executed;

iii) No Receipts of consideration are issued;

XXIX. The transferees of the properties/plots/lands of Respondent No.1 Company are none other than the relatives, close friends, relatives and associates for no consideration. The chart showing the beneficiary of the sale deeds and their relationship with the Respondents is annexed along with rejoinder as Annexure-P/2.

XXX. Respondent Nos. 2, 4 and 9 have illegally transferred the properties/plots/lands of the Respondent Company without any authorization from its Board.

XXXI. As per Section 297, a Director is required to give prior notice and take authorisation from the Board before selling any Company property to a relative. Whereas in the present case, no such notice was given by Respondent No.2 before affecting these transfers to his relatives and dose friends. Further, the Respondent No. 2 does not have any legal authority to sell the property of the Respondent Company and he has been doing all these acts without any legal authority from the

Respondent Company, by illegally showing himself as the authorized representative/Director of the Respondent Company.

XXXII. Respondents have taken the help of some non-existent/ fabricated Resolutions to execute the sale deeds to transfer the valuable lands of Respondent Company. Apart from meeting date 07.04.2009 there was no Board meeting on any of the dates i.e. 14.08.2009, 25.09.2009, 08.10.2009, 14.12.2009 & 30.12.2009 as stated by the Respondents in their reply. The chart showing the details of the Board of Directors on 14.08.2009, 25.09.2009, 08.10.2009, 14.12.2009 & 30.12.2009 is annexed herewith as Annexure-P/3. In terms of the Board Resolution dated 07.04.2009, an authority was given to R-2 to sell the lands belonging to Respondent Company in village Girdharpur. The said authority in favour of R-2 was revoked vide the subsequent Board Resolution dated 07.09.2009. The Board Resolution dated 07.09.2009 is annexed herewith as Annexure-P/4 to rejoinder. The other so called Board Resolutions dated 14.08.2009, 25.09.2009, 08.10.2009, 14.12.2009 & 30.12.2009 are non-existent/fabricated. The Respondent No.2 ceased as member of the Board of Directors qua the Respondent Company under Section 283 (1) (g) of the Companies Act, 1956 on 07.09.2009. Thereafter, the Respondent No.2 by committed an illegal act and reappointed himself as Director of the Respondent Company on 18.09.2009 by filing the forged Form - 32 with the Registrar of Companies.

XXXIII. The properties referred to in the petition and rejoinder owned by the Respondent No.1 Company were transferred by Respondent No.2 to the

other Respondents at negligible consideration. The consideration received for the properties was negligible and was much lower than the circle rate of the property.

18. In the rejoinder filed by the petitioner has given further particulars of illegal sale of assets, transfer of plots and unauthorized transaction carried by the Respondent No.2 in respect of the Respondent No.1. The relevant excerpt of the rejoinder reads thus:-

Various Illegal Sales conducted by the Respondents:-

i. (I). **Alleged transfer of land dated 29.09.2009**:- With regard to the unauthorized transfer of land dated 29.09.2009 the following points are submitted for the kind consideration of this Hon'ble Company Law Board;

i) It is submitted that one of the transferee/Respondent No. 12 is the real sister-in-law of Respondent No. 2 and wife of Respondent No. 11 who is the real younger brother of Respondent No.2.

ii) It is also important to mention that one of the Directors of M/s Marsh Nirman Pvt. Ltd namely, Shri Bhagwati Prasad Gautam (arrayed as Respondent No. 17) has purportedly assumed the office of Director of Respondent No. 1 Company as a result of the illegal filings made in the RoC by the Respondents. Thus, Respondent No. 17 is a common Director of both Respondent No. 1 Company as well as Respondent No. 20. This only proves the criminal conspiracy hatched by the Respondents to transfer the valuable land of Respondent Company to corporate entities which are under control of their close friends. Copy of the Portal from the RoC site which showing the name of the Directors of M/s Marsh Nirman Pvt Ltd is annexed herewith as **Annexure P/5**.

iii) It is submitted that the illegal Conveyance Deed of the first phase was executed by the Respondent No.2 on 29.09.2009 by referring the authority of Board Resolution dated

07.04.2009. But Respondent No.2 in Para No.5.11(xi) @ Page 71 – 72 of his reply has stated that a fresh resolution was passed on 25.09.2009 at the request of Anshu Agrawal and Marsh Nirman Pvt Ltd and accordingly the sale deed was registered on 29.09.2009. In view of the above said fact it is submitted that then what was the need to refer the Board Resolution dated 07.04.2009 for executing the conveyance Deed of the land of the Company on 29.09.2009 without mentioning the alleged Resolution dated 25.09.2009. It is submitted that the above contradiction itself will prove the false played by the Respondents.

iv) Admittedly, the authority given to R-2 on 07.04.2009 was revoked on 07.09.2009 and hence he could not have executed the sale deed on behalf of Respondent Company on 29.09.2009. The fact of revocation of authority was admittedly communicated to Respondent No.2 on 08.09.2009 itself.

v) It is pertinent to note that in Page No.44 to 47 of the purported Sale Deed dated 29.09.2009 executed by **Respondent no.2 in favor of R12 and R20, specifically the Respondent No.2 admitted that he is selling the said property for meeting his personal requirements.** The relevant portion from the sale Deed is extracted hereunder;

> *"^^----------orZeku esa eq> foØsrk izFkeifk dks viuh o vius ifjokj dh t:jrksa gsrq #i;ksa dh lfr vko';drk gSA blfy, eq> foØsrk izFkeifk us viuh mDr Hkwfe dks csp nsuk mfpr le>k gSA ----------*** meaning thereby also that the R2 thinks the property of the Respondent Company as his personal property.

It is submitted that the transferring of property of the Respondent no.1 Company to meet the personal expenses of Respondent no.2 itself shows the width of irregularities played by the Respondents with the properties of the Respondent no.1 Company. Copy of the purported Sale Deeds dated 29.09.2009 and 30.09.2009 executed by Respondent No.2 in favor of Respondent no.12 and 20 are annexed herewith as **Annexure P/6 Colly**. It is now Respondent to explain his said fraudulent act, which has enriched himself and caused grave loss to the Respondent Company and the Petitioners.

vi) It is submitted that as per the Agreement to sell dated 15.04.2009 an advance payment of Rs.20,00,000/- was to be made, which was illegally circulated by the criminal acts of the Respondent No.2 firstly from one of the group companies of New Karmyogi Group M/s Tatvadarshi Bandhu Pvt Ltd belonging to the Petitioner Group, in favor of Respondent No.12 who had ultimately made the said payment again to the Respondent Company in view of the said Agreement to Sell.

vii. a) It is submitted that the cost of the Land increased more than 60 times than what was paid by the Respondent No.1 Company at the time of its purchase. For eg:- In the conceived project, Karmyogi Nagar, when the land was purchased by M/s KBPL (one of the old Karmyogi Group Company), the land value was Rs.30,000 (Rupees thirty thousand) per bega, but now due to the colony development, the c market value prevailing for the said land is Rs.70 lakhs to 1 crores. By considering the increase of land value, due to the illegal transfer of lands, the Respondent Company sustained a heavy and irreparable loss.

vii.b) That the Petitioners further state that for selling the land of the Respondent company on 29.09.2009, the sale consideration, which has been shown in the Conveyance Deed is Rs. 50,00,000/- (Rupees fifty lacs only) wherein even the circle rate of the said property as mentioned in the calculation on stamp paper of the main petition, which shows the circle rate of Rs. 4,67,59,000/- (Rupees four crore sixty seven lacs & fifty nine thousand only). The market value of the properties were near Rs. 8 crores, i.e much higher than what shown in the purported Conveyance deeds.

vii.c) The said sale deed was showing consideration of Rs.50,00,000/- contradicting to Rs.25,00,000/- sale consideration in the Agreement to sale. It is relevant to note herein that what prevents Respondent No.12 from seeking a specific performance of agreement against the

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Respondent no.1 Company? It is submitted that in fact the above said contradiction of amount arose due to the hurry burry illegal execution of sale deeds conducted by Respondent No.2 without any authority and because no money was really being given.

vii.d) The averments in the Reply filed by Respondent No.2 that when Respondent No.12 desired to have the sale deed registered in her name, the Petitioner No.1 the Director of R1 Company, claimed that the surrounding area had been developed by then and that the valuation of the plot had increased and thus wanted to rescind from the Agreement to Sell executed by the Company, is

a blatant lie. The further averments that the Petitioners had deposited a sum of Rs.10,00,000/- into the bank account of Anshu Agrawal to show return of part of the advance amount and thereafter Anshu Agrawal fearing that the transaction would be rescinded, agreed to pay the Company twice the agreed consideration which was accepted by the Company and the amount of Rs.10,00,000/- which was deposited in the account of Rs.10,00,000/- which was deposited in the account of Anshu Agrawal was then once again paid by Anshu Agrawal to the Company etc are totally incorrect due to the reason given in this paragraph. In fact despite the illegal transfer of funds stated in the earlier paragraph, R2 appropriated more money from the group Companies and gave in cash to R11 and R12 without any authority. Due to this illegal acts of R2, the Respondent No.1 Company had suffered loss of interest as well as loss of opportunities several times.

i. (II). <u>Alleged transfer of plot dated 30.09.2009</u>:- With regard to the unauthorized sale dated 30.09.2009 the following points are submitted for the kind consideration of this Hon'ble Company Law Board;

i) It is submitted that the transferee/Respondent No. 12 is the real sister-in-law of Respondent No. 2 and wife of Respondent No. 11 who is the real younger brother of Respondent No.2.

ii) That the Petitioners further state that for selling the land of the Respondent company on 30.09.2009, the sale consideration, which has been shown in the Conveyance Deed is Rs. 4,90,000/- (Rupees four lacs ninety thousand only) wherein even the circle rate of the said property as mentioned in the calculation on stamp paper of the main petition, which shows the circle rate of Rs. 9,36,500/- (Rupees nine lacs thirty six thousand & five hundred only). The Market Value of the land illegally transferred to Respondent No.12 on 30.09.2009 was more than Rs.50 lakhs. This clearly shows that how the Respondents, who have alleged to be the trustee of the company, have transferred the valuable land of the company on such a difference of lower price to their close relatives, friends and associates. It is submitted that the Respondents have no answer to explain the said illegal acts except to procure the forged and fabricated documents, which they have done by submitting the same before the Hon'ble Bench.

iii) That the sale deed dated 30.09.2009 was executed by R-2 in favour of R-12 (Smt. Anshu Agarwal) only, claiming authority vide a earlier purported Resolution dated 14.08.2009 and subsequent Resolution dated 25.09.2009. It is again reiterated that there was no Board meeting on 14.08.2009 & 25.09.2009. Assuming, without admitting, the Resolution dated 14.08.2009, it can be seen from the said Resolution that authority was given to identify the purchaser for plots mentioned in the Resolution. The purchaser R-12 could not have paid a cheque prior to 14.08.2009 for the lands mentioned in the said Resolution. **But surprisingly in the said sale deed the payment for the land was shown through a cheque dated 30.07.2009 i.e. much before the Resolution dated 14.08.2009. These contradictions in the documents filed by the Respondents only prove the falsity and illegality of their claims.**

iv) That perusal of the fabricated Resolution dated 14.08.2009 in favour of R-2, R-4 and R-6 will demonstrate not only the falsity of the Resolution itself but also the intentions of the Respondents. The plots of land shown in the Resolution are not in continuation and there could be no reason why the Board of Directors will choose to identify buyers to sell lands in patches. In fact, the above said Resolution dated 14.08.2009 was prepared in a much later date i.e. subsequent to the execution of the sale deeds to cover up the sales. **In the sale deed dated 30.09.2009 there is neither anymention of any Resolution in favour of Respondent Company nor any annexure of any Resolution.**

i. (III). <u>Alleged transfer of 33 plots dated 12.10.2009</u>:- With regard to the unauthorized transfer of plots/land dated 12..10.2009 the following points are submitted for the kind consideration of this Hon'ble Company Law Board;

i) It is submitted that on 12.10.2009, the Respondent No.4 without any authority transferred 33 valuable plots/lands of the Respondent Company in the name of Respondent No.23 to 35 who are none other than the relatives/ close friends of the Respondents.

ii) **It is submitted that the Respondent No.1 and 2 has annexed the copy of the Letter (Adhikar Patra) in respect of the plots of the Respondent Company, which were sold to the bonafide customers of the Respondent Company.** As averted the said plot are not the part of the said 33 plots, which had been illegally transferred on 12.10.2009. It is further submitted that the said authority letter is in favor of the Respondent No.4 who was removed from the directorship of the Respondent Company. When the Respondent No.4 was removed from the Directorship,

it was resolved by the Board that his previous authority of executing the Sale Deed on behalf of the Company will be nullified w.e.f 11.10.2009. The Petitioner had also filed the said Resolution in the Civil Suit filed before the District Court, Mathura which is annexed with the main Petition. Copy of the Board Resolution dated 07.10.2009 allowing Respondent No. 4 to make sale deeds only upto 11.10.2009 is annexed herewith as Annexure P/7. **It is further submitted that if the Respondent No.2 is really relying on the basis of the authority letters for executing the sale deeds, of the Respondent Company signed by the Petitioner then why they did not produce the authority letters in favor of the Respondent No.4 for executing the rest 33 sale deeds of the Respondent Company executed on 12.10.2009 and for 29.09.2009, 30.09.2009 and 24.12.2009 for the different plots/lands, which are under dispute in the present Company Petition.**

iii) It has been wrongly stated by the Respondents that a sum of Rs. 82,35,300/- has been received in cash on account of transfer of 33 plots on 12.10.2009, and the same has been deposited by the Respondents in the said bank account. This large sum of money has been alleged to be deposited by them in fake bank account on different dates after 24.11.2009 i.e. after a gap of more than one and a half month. It is relevant to note that what prevents the Respondents from depositing the consideration money received out of the above said transfer in lumpsum on the date of receipt itself or at least on the next date. It is submitted that in fact the Respondents did not receive any consideration from the alleged transfer of lands and the entries were shown only through circulation of money.

iv) It is submitted that above transfer of 33 plots were only sham transactions and in fact no consideration was paid. It is submitted that if this Hon'ble CLB will call for the Income Tax Returns of the respective transferees, a perusal of the same will also prove the falsity of the averments made by the Respondents.

i. (IV). Alleged transfer of plots dated 24.12.2009:- With regard to the unauthorized transfer of plots dated 24.12.2009 the following points are submitted for the kind consideration of this Hon'ble Company Law Board;

i) The Respondents fraudulently transferred 148 plots of the Respondent Company by a virtue of two purported Sale Deeds dated 24.12.2009 in the name of M/s Dev Shilpi Nirman Pvt Ltd.

ii) That the Respondent No.36 is not a genuine or bonafide customer of the Respondent No.1 Company. The Directors of the Respondent No.36 are close friends, associates and neighbors of Respondent no. 11 and 12 in whose name the

properties/plots of Respondent no.1 Company have been transferred without any consideration reaching the coffers of the Respondent No.1 Company. Respondent No.36 is an eye wash and it is a Company which has been specifically incorporated as a front in pursuance of and to give effect to the illegal designs of Respondent No.2, 11 and 12 of grabbing the properties of the Respondent no.1 Company. It is submitted that Mr.Santosh Kumar Sharma, one of the Director of the Respondent No.36 Company is a neighbor of and resides in the house adjacent to that of Respondent No.11 and 12 (being younger brother and sister in law of Respondent No.2). In addition to being the Director of the Respondent No.36 Company, Mr.Santosh Kumar Sharma is also a Director of Respondent No.20, a Company to which another plots was illegally transferred by Respondent No.2 himself. Ms.Lalita Sharma, one of the other Director on the other hand resides in the same house of Respondent Nos.11 and 12. Shri Anil Kumar Garg, the third Director (who is Respondent no.23 herein and also a transferee of 3 plots, in his individual capacity) is the brother in law of Respondent No.24, Ms.Neelam Garg. Ms. Neelam Garg is the real sister of Respondent No.12. Thus, the complicity of Directors of Respondent No.36 and Respondent No.2, 11 and 12 is clear. Copy of the portal from the RoC showing the name of the Directors of M/s Dev Shilpi Nirman Pvt Ltd (Respondent No.36) is annexed herewith as Annexure P/8.

iii) That it is further submitted that the Respondent No.2, in connivance with Respondent Nos.4, 7, 9, 11 and 12, had also transferred the land of the Respondent Company, which was previously booked in favour of other customers, the details of which has already given at Page 383 of the CA No.50 of 2010. The details of the land of the Respondent Company booked in favor of other customers are annexed herewith as Annexure P/9. The said plots were booked in the said customers' name @ 1500 per square yard. The said Respondents had even transferred the land of the Respondent Company, which had already been sold (i.e conveyance deeds executed) to the customers of the Company. The details of the said land and customers given at Page 384 of the CA No.50 of 2010. The details of the land which were subsequently Illegally transferred by the Respondents despite of the fact that the same had already been sold by the Respondent Company

to the customers is annexed herewith as **Annexure P/10**. **The said Respondents had transferred the said land @ Rs.837 per square yard to Dev Shilpi Pvt. Ltd. (R-36). In view of the said fact the Petitioner submits that how it is possible that the Respondent Company had first booked the similar situated plots of the Respondent Company in the name of the customers of the Company @ Rs.1500 per sq. yards and the said Respondents had sold the adjoining plots of the Respondent Company @ Rs.837 per sq. yards.** Copies of the Receipts showing the receipt of money from the customers of Respondent No.1 Company are annexed herewith as **Annexure P/11 Colly**. The said conduct of the Respondents crystallized the facts that how, on their part of larger conspiracy, have caused a great loss to the Respondent Company. The list showing the valuation per sq. yard. of the plots transferred and trading profit & loss A/c. of the Respondent Company for the year ending 31st March, 2007 & 2008 are annexed herewith as **Annexure-P/12 Colly**. The profit before tax of the R-1 is shown in a chart as follows;

Year	Profit before Tax
2006 – 2007	2,81%
2007 – 2008	1.71%

So, the investment cost of the plots will be roughly 97.5% of the sale value (Rs. 1500/- per sq. yard) i.e. approx. Rs. 1460/- per sq. yard. It is beyond imagination that any Board of Directors can take the decision to sell plots at more than 40% loss to the R-1.

iii.a) Assuming without admitting that the Petitioners sold such land/plots at the consideration of Rs.3 crores as mentioned by the Respondents in Reply to C.A No. 50 of 2010 or 274 of 2010 the following conclusions become inevitable:

Alleged Sale by Petition (during the month of)	Area (in square meters)
October 2009	5841
Nov/Dec.2009	2540.82
Nov/Dec 2009	355.66
Total Area:	8737.48
TOTAL : (Rounding off to nearest multiple of 50)	8750

i) Total Sale Consideration allegedly received by the Petitioners: Rs.3,00,00,000/- (Rs. 3 crores)

ii) Total Land allegedly sold by the Petitioners (Area in Sq. meters) : 8750

RATE of alleged Sale by the Petitioners: Rs.3428.57 per sq. meter

RATE of transfer of plots by Respondents: Rs.837 per sq. yard (or Rs.1001/- per sq. meter)

Thus as per the assertions of Respondents themselves, the Petitioners sold the said land at the rate of Rs.3428.57 per sq. meter of land. And whereas, as per the admissions of Respondent themselves, Respondent No.2 has transferred land belonging to the Company to his friends and relatives at a mere rate of Rs.837/- per sq. yard i.e Rs.1001/- per sq. meter, thereby causing grave loss to the Respondent Company.

iii.b) In Para No.6.11 (xiv) @ Page 74 of the Reply, the Respondent No.2 averred that the area of the land admeasuring 24314 sq.yard purchased from the farmers by the Respondent Company after converting into plotted development, the approximate saleable area would have been approx. 12,000 sq.yd and the development, administrative and marketing expenses would be Rs.14,00,000. It is submitted that if taken into consideration these calculation as true, the development and administrative expenses will be Rs.1167/- per sq.yd (i.e 14,00,000/12,000). If the administrative and marketing expenses would be taken as Rs.100/- per sq.yd the development expenses will be Rs.1067/- per sq.yd. This averments is contradictory to the stand taken by the Respondent No.2 in Para No.6,19(g) @ Pg.103 of the Reply wherein he has averred that the total saleable area of the colony was approx. 65,000 sq.yds and required total investment for development is Rs.1,25,00,000. If so the development expenses will come only Rs.192.3 (i.e 1,25,00,000/65000). These contradictory stand of development expenses shown in Para No.6.11(xiv) and Para no.6(1)(g) i.e the contradiction of Rs.1067/- and Rs.192.3 clearly shows the false statements and fraudulent submissions of Respondent No.2 which necessitates the serious attention of this Hon'ble Company Law Board.

iii.c) It is pertinent to mention herein that the losses suffered by the Respondent no.1 Company in the transactions entered into by the Respondents are so heavy that it can potentially make the Company bankrupt by selling adjoining plots @ Rs.837/- instead of the market value of Rs.1500/- per sq. yd. It is submitted that in fact, the Respondents had only circulated money through M/s Bulund Housing Pvt Ltd and there was no real transactions of money.

iv.a) In Para No.6.19(g) @ Pg.103 of the Reply, the Respondent No.2 averred that the lands sold to Respondent No.36 was only partially developed and the cost of property were determined taking into account the extent of the development which had taken place till the time of sale. It is submitted that the Respondent No.1 Company never sold plots like this as is where is basis. Further the plots transferred are not contiguous or not situates in one block. It is submitted that the internal development of the plots like roads, pipelines, drainage etc is impossible in individual plots and there is no averments regarding the internal developments of the plots in the alleged Sale Deed or no such Resolution produced which shows that the present contentions in the reply are only the result of afterthought.

v) The Respondents have not given any examples of similar Sale Deeds executed by the Respondent No.1 Company in any previous occasions.

19. The Petitioners also stated in the rejoinder filed by them that the Respondents entered into sale transaction qua the properties of the Respondent No.1 in violation of the order passed by the CLB/Bench on 31.12.2009. In terms of the stand taken in the petition as also in the rejoinder, the Petitioners are Real Legitimate Directors qua Respondent No.1. The allegations made in Para 6 of the rejoinder reads thus:-

6. THE PETITIONERS ARE THE REAL LEGITIMATE DIRECTORS OF THE RESPONDENT COMPANY:

a. The points which proves that Respondent No.2, after 07.09.2009, i.e after the date of his cessation, was not in the management of the Respondent No.1 Company:- It is submitted that the Respondent No.2 has not given any proof that he and his purported Board of Directors of Respondent No.1 Company were in real management of the Comapny . Further in his own reply, Respondent No.2 has categorically admitted that he has no role in the management of the Respondent No.1 Company. The important points from his Reply are extracted hereunder for the kind perusal of this Hon'bel Company Law Board;

i) In Para No.19 @ Pg.9 of the Reply, Respondent No.2 categorically admitted that the marketing and sale of the developed plots of the Respondent Company in Mathura was under the direct/indirect supervision of Consent Petitioner No.3 and later the direct supervision of the Petitioner No.1 after his return from the United States of America. It proves that Respondent No.2 has no role in the marketing or sale of the lands of the Respondent Company.

ii) In Para No.19 @ Pg.9 of the Reply, Respondent No.2 categorically admitted that the Bank Account signatories of the Respondent Company were under the control of the Petitioners.

iii) In Para No.21 of the Reply, Respondent No.2 admitted that he has no access on the Accounts of the Respondent Company.

iv) In Para No.5.11 (xxiii) @ Pg.82 of the Reply, Respondent No.2 admitted that the Accountant of the Respondent No.1 Company Mr.I.P Sharma was under the direct control of the Consent Petitioner No.3.

v) In Para No.5.11(xxiii) @ Pg.82 of the Reply, Respondent No.2 alleged that the Accountant of the Respondent No.1 Company Mr.I.P. Sharma filed false Forms with RoC by using the digital signatures of Dewan Singh Negi under the instructions of the Petitioners. If so, why till date the Respondent No.2 has not taken any legal action against the above said Mr.I.P Sharma or Dewan Singh Negi? Without prejudice it is submitted that the Respondent have not given any explanation that why they have not approached this Hon'ble Board if any such illegalities were there. If the above said Mr.I.P Sharma had committed any illegalities, then what prevents the Respondents from initiating criminal proceedings against him? It is submitted that Mr.I.P Sharma was not removed from the Respondent No.1 Company as alleged by the Respondents. He has worked with the Respondent No.1 Company till December 2011 and inorder to prove that aspect, the PF Receipt of the above said Mr.I.P Sharma is annexed herewith as **Annexure P/15**. During January, 2012, he was transferred to M/s Karmyogi Kuteer Pvt Ltd (one of the New Karmyogi Group Company).

vi. **It is submitted that if Respondent No.2 is/was in real management, then why he has opened new purported Bank Accounts in the name of the Respondent Company? Why he could not manage the operation of the Regular Bank Accounts of the Company. In fact if he**

was/is in management of the Respondent No.1 Company, he could very well change the Authorized signatories of the regular Bank Accounts of the Company and he could very well operate the said accounts without any problem. Instead of doing that, he opened new purported Bank Accounts for managing his illegal rolling of funds, which categorically shows that he or his purported Board of Directors were not in the management of the Respondent No.1 Company. In fact only by the illegal filings of purported Forms before Roc on 20.11.2009 and onwards, he was only shown as Director in the records in the RoC and he have no actual control over the regular bank accounts of the Company since he was not in management of the Company.

vii. No Annual Returns of the Respondent Company has been filed before RoC from 2009 onwards. If he is in real management, he should have taken steps for filing the same.

b. It is further submitted that by filing such forged and fabricated forms, Respondents may have projected themselves as the Directors of the Respondent Company in the RoC. However, as is evident from the Bank Statements submitted by the Petitioners, it is the Petitioners, who are the part of the Promoters of the Company as well its legitimate Directors, running the business affairs of the Company, inter alia, performing, in addition to several others, the following pertinent functions of the Respondent Company:

i) incurring administrative expenses such as payment of salaries to staff, interest on loans, telephone, internet, electricity, transport etc. and providing proper administration,

ii) running the projects on site by getting development work done by the team and on contractual basis also, including incurring expenses on site development,

iii) dealing with various government authorities and other local bodies and matters in relation to external development charges. The various notices relating to External Development Charges which proves the above aspect are annexed herewith as Annexure P/16 Colly.

iv) managing the company affairs including legal matters already pending with the other parties,

v) dealing with farmers and land owners,

vi) maintaining the accounts, upkeeping of several documents of the company and dealing with several financial matters,

vii) dealing with the genuine customers of the Company, and arranging refunds of advance payment given by customers whose registry could not be affected due to the order of the Hon'ble Court to maintain status quo.

viii) Refund of loan, payment of EDC etc and legal expenses.

ix) These aforesaid functions clearly establish that the Petitioners are in actual control and management of the Respondent Company, being the legitimate Directors thereof. Furthermore, the Petitioners have been attending office on a regular basis and even the staff of the Respondent Company had been regularly functioning in the office till it was locked by the police pursuant to the events dated 15.12.2009. Copy of the attendance sheet of the Respondent Company for the months of September, October, November and till December 14, 2009 are annexed herewith as **Annexure- P/17 Colly.** It is also evident from the said attendance sheet that Respondents are neither attending nor running the office of the Respondent Company. It is also pertinent to mention that the following Respondents (who have been allegedly shown as Directors of Respondent Company through illegal structuring and forged forms filed with RoC) had stopped attending the office of the Respondent Company from the middle of October, 2009. In the Respondent Company except the Directors belonging to the Family Group i.e the Petitioners herein, Consent Petitioner No.3 and Respondent No.2, all other Directors and staff members have to sign the Attendance Register kept in the office of the Company on each and every day. Hence the following chart will prove the date of stopping of presence of the following staff members/directors. The respective dates from which the Respondents stopped attending the office have been mentioned in the table below:

Respondent Nos.	Name of Respondents	Date from which Respondent stopped attending office (Date inclusive)	Department
4	Virender Singh	16.10.2009	Land Purchase/Real Estate
6	Md. Shakir Khan	11.10.2009	Marketing Assistant in Mining and Crusher Division

Respondent Nos.	Name of Respondents	Date from which Respondent stopped attending office (Date inclusive)	Department
7	Narender Singh	15.10.2009	Marketing Executive in Mining & Crusher
8	Pooran Singh	17.10.2009	Site in charge in Mining & Crusher

c. **That the fact that R6and R10 are/were not the Directors of Respondent Company can be very well verified from the following points, submitted for the kind perusal of this Hon'ble Board;**

i) The returns for the year 2008 filed with RoC are identical to the Annual Return of year 2008 which were approved and signed by Respondent No. 2 himself. The said annual returns, as annexed in the Petition, clearly show that as on 29.09.2008 the Respondent Nos. 6, 7 and 10 were not Directors of the Respondent No. 1 Company.

ii) **The Resolution dated 07.04.2009 does not contain the signatures of R-6 and R10 which proves that they are not Directors of the Respondent Company**:- That the Board Resolution dated 07.04.2009 which authorized R-2 to enter into agreements for sell and purchase related to Khasra Nos.14, 21, 22, 49, 50 & 52 in Revenue Estate, Mathura (U.P.) was an Unanimous Resolution and the same was signed by Sri Ashok Kumar Agrawal (R-2), Sri N.K. Khandelwal, Sri Diwan Singh & Sri Virendra Singh (R-4). This is not accidental that the names of R-6, R-7 (Narender Singh) & R-10 do not appear in the said Resolution and thus clearly further establishes that they were never Directors in Respondent Company. Otherwise there is no need to sign 4 Directors and the signatures of 2 Directors were sufficient. It is submitted that the said Board Resolution does not contain the signature of Petitioner No.1 because on that date he was in USA and the said Resolution passed after discussing with him through telephone.

iii) **Names of Respondent No.6 and 10 are not in the Portal of the Ministry of Company Affairs which proves that they are not Directors of the Company:-** That the Respondents have filed a copy of the result of the search conducted on the portal of the Ministry of Company Affairs reflecting the status of the Board of Directors of the Respondent Company as on 01.10.2009 (Annexure-R/4). The petitioners admit the said Annexure-R/4 as true and correct and are grateful to the Respondents for the said research work. As per Annexure-R/4 Sri Narender Singh, Shakir Khan and Vivek Jain were not Directors in the Respondent Company. In fact the truth resides deeper at sub-conscious level also and whatever hundred lies the persons or their advocate tell, some times, it comes up automatically. The name of R-2 (Sri Ashok Kumar Agarwal) is present in Annexure-R/4 even though he was removed from the Directorship of the Company from 07.09.2009 u/s 283(i)g. This was because of the fact that the Form-32 showing the removal from the Board of Directors was filed on 05/10/2009 i.e. subsequent to 01.10.2009.

d. **Respondent No.6, 7, 8 and 9 were the employees of the Respondent No.1 Company and they had never a place in the Board of Directors of the Respondent No.1 Company:-** It is submitted that the Respondent No.2 in connivance with others purportedly filed Form 32 showing the appointment of Respondent No.6, 7, 8 and 9 as Directors of the Respondent No.1 Company. It is submitted that in fact the above said persons were only employees of the Respondent No.1 Company. A chart showing the name of the employees of the Respondent No.1 Company are annexed herewith as **Annexure P/18**. A perusal of the same will prove that the above said persons have no role or place in the Director Board of the Respondent no.1 Company and they were purportedly appointed for the attaining the illegal goals of Respondent No.2.

e. **Involvement of Petitioner No.1 in the management of the Respondent Company:-** It is submitted that the Petitioner No.1 who is the son of Consent Petitioner No.3 is very actively involved in all the works and management of the Respondent Company from the initial stage onwards. Further he was also a part of the Decision Making Unit of the Respondent Company and the entire New Karmyogi Group. It is submitted that the Petitioner No.1 had attended several Board Meetings during

June 2007 to May 2009 whenever he was on India trip and in those particular situations when he was outside of India, he used to contact the Board of Directors through telephone and used to give his suggestions, instructions and opinions. Further the active role of Petitioner No.1 in the Respondent Company is admitted by the Respondent No.2 himself and as stated in the earlier paragraph, in Para No.19 @ page 9 of his reply, Respondent No.2 categorically admitted that *'the marketing and sale of the developed plots of the Respondent Company in Mathura was under the direct/indirect supervision of the Consent Petitioner No.3 and later the direct supervision of the Petitioner no.1 after his return from the United States of America.'*

f. **Involvement of Petitioner No.2 in the management of the Respondent Company:-** It is submitted that the Petitioner No.2 who is the wife of the Consent Petitioner No.3 as well as the mother of the Petitioner No.1 is the unavoidable part of the DMU of the Respondent Company as well as the entire New Karmyogi Group. **In fact new Karmyogi Group was formed by the initial investment made by the Petitioner No.2 out of the sale proceeds of her personal plot of 312 sq.yards situated in Kant Enclave.** It is submitted that the Petitioner No.2 is not a house wife but she is a Director/Share holder of almost all New Karmyogi Group Companies. Above all she is the head of 'Anandam' which is a formed for the happiness and other welfare activities of the New Karmyogi Group. She is continuously attending in all Meeting of the Group and actively involved in the management of business as well as Decision Making Unit of the entire Group Companies including Respondent No.1 Company.

20. According to the Petitioner, the Respondent No.2 handled the funds and wealth of the company by opening different bank accounts and misused the same. The allegations made in Para 7 of the rejoinder reads thus:-

7. **ILLEGAL HANDLING OF MONEY BY OPENING UNAUTHORISED BANK ACCOUNTS IN THE NAME OF RESPONDENT NO.1 COMPANY:**

a. That the aforesaid misdeeds of the Respondents become evident if the Bank Statement dated 03.02.2010 is referred to in this regard (filed by the Respondents before this Hon'ble Board). It is reiterated that the same is not the regular bank

account of the Respondent Company, but it is an account which has been opened by the Respondent No. 2 to carry out his own illegal acts. It is further submitted that the said account was opened without any notice to and without obtaining prior authorization from the Board and the same is not in the knowledge of the Directors or shareholders of the Respondent Company. The following facts can be observed from the said bank statement:

i) The said Bank Account was admittedly opened by the Respondents on 24.11.2009 i.e. after they had already illegally transferred many of the Company's properties to the relatives and friends of Respondent No. 2.

ii) As per the assertions of the Respondents, the Authorised share capital of the Respondent Company was increased on 21.11.2009, on which date the first alleged share allotment of Rs. 48,50,000/- (Rupees Forty Eight Lacs and Fifty thousand only) was also made. **Assuming this to be true, the amount ought to have been deposited in the Company's account by draft/cheque /cash few days before the date of the said allotment on 21.11.2009. However, the said amount was deposited only on 25.11.2009 (i.e. four days after the actual share allotment) by RTGS, wherein funds were transferred on the same date itself, before which date, the said account had a balance of only Rs. 5,000/- (Rupees Five Thousand only).**

iii) Immediately thereafter, on 26.11.2009 and 27.11.2009, Respondent No. 2 made huge withdrawals of Rs. 25,00,000/-(Rupees Twenty Five Lacs each) and Rs 20,00,000/- (Rupees Twenty Lacs), respectively, thereby withdrawing a total of Rs. 45,00,000/- (Rupees Forty Five Lacs only). Respondents have failed to offer any details showing how this huge amount of Rs. 45,00,000/- was spent.

iv) As stated above, before the alleged second allotment of shares of Rs. 49,94,000/- (Rupees forty Nine Lacs and ninety four thousand only) on 09.12.2009, the said amount should have been deposited in the Company's accounts. However, it is clear that in this case, the Respondents deposited Rs. 49,94,000/- in the said account on 09.12.2009 itself, out of the monies i.e. Rs. 45,00,000/- (Rupees Forty Five Lacs only) withdrawn by the Respondent No. 2 on 26.11.2009 and 27.11.2009, respectively from the same account.

v) This clearly indicates that the above said second share allotment was also bogus and invalid and this sham was created by circulation of monies by Respondent No. 2. It is submitted that a perusal of the personal Bank Account of Respondent No.2 will prove all the malpractices and illegal circulation of money conducted by him.

b. Several huge payments were made by Respondent No. 2, illegally acting on the aegis of Respondent Company to **Bulund Housing Pvt. Ltd., which is the sister concern of Dev Shilpi Pvt. Ltd.**, Respondent No. 36.

Date	Payment
10.12.2009	Rs. 45,00,000/-
29.12.2009	Rs. 1,20,00,000/-
30.12.2009	Rs. 51,20,000/-
25.01.2010	Rs. 53,50,000/-
27.01.2010	Rs. 40,00,000/-
02.02.2010	Rs. 40,00,000/-
TOTAL:	**Rs. 3,49,70,000/-**

c. It is submitted that such payments were mainly inter-transactions i.e. circulating of money through the above said fake Bank Account between Respondent Company (through Respondent No.2) and Bulund Housing Pvt. Ltd. **It is submitted that there are no genuine transactions and no registered sale Agreements of land between Respondent Company and Bulund Housing Pvt. Ltd have been executed** against which such huge amount of Rupees Three Crore Forty Nine Lacs and Seventy Thousand, was payable by the Respondent Company to the latter. Also, No sale deeds have been annexed by Respondents in their reply to explain the said transfer of money to them. Further, there is no Board Resolution of the Respondent Company authorising purchase of any land/plot and making payment to M/s Bulund Housing Pvt. Ltd.

d. It is submitted that on 18.12.2009, an amount of Rs. 53,50,000/- (Rupees Fifty Three Lacs and Fifty Thousand only) was given by Respondent Company to New Era Exports. On 25.01.2010, the exact same amount of Rs. 53,50,000/- was received back

by the Respondent Company. And again there is no genuine transaction or reason for such payments, thereby proving that it is mere circulation of money belonging to the Respondent Company by Respondent No. 2, and other Respondents. Further, on 25.01.2010, itself the same amount of Rs. 53,50,000/- is given to Bulund Housing by the Respondent Company. It is also relevant to point out that M/s Bulund Housing Pvt. Ltd., M/s Mars Nirman Pvt . Ltd (R-20)and M/s Dev Shilpi Pvt Ltd. (Respondent No. 36) are sister concerns and are controlled and managed by the close friends and relatives of Respondent No. 2, 11 and 12. It is submitted that Shri P.L. Sharma and Mrs. Kavita Sharma, both Directors of Bulund Housing Pvt. Ltd. are relatives of Shri. Santosh Kumar Sharma and Smt. Lalita Sharma, who are the common Directors of both Respondent No. 20 as well as Respondent No. 36. It is stated that the monies ostensibly received from Respondent Nos. 20 and 36, on account of the alleged transfers of land made to them, were returned back to them by Respondent No. 2 under the garb of payments made to Bulund Housing Pvt. Ltd. (transfer of huge amounts to Bulund Housing Pvt. Ltd., by Respondent Company, in the absence of any actual sale transaction with them, as already highlighted above).The Petitioners also apprehend that the RTGS payment received by the Company at the time of 1st alleged share allotment of Rs. 48,50,000/- was also received either from Respondent No. 20 or from Respondent No. 36. **This chain of events can be confirmed from the respective bank statements of these three concerns and of Respondent No.2. Thus, they are merely internal transactions between such companies and circulation of money carried out with the collusion and connivance of the Respondent No 2 and such other Respondents.**

e. The Bank statement also reflects frequent and heavy withdrawals made by Respondent No. 2 from such bank account. Such heavy withdrawals are not in the course of business of the Petitioners and the Respondent Company. Further, such withdrawals were not made for any legitimate business purposes, but for the circulation of money, received and refunded between their (Respondent No.2, 11, 12 and their friends) Group Companies in the favour of sister concern, M/s Bulund Housing Pvt. Ltd. Such heavy withdrawals are also likely to create several problems for the Company in the future with regard to incidence of taxes and otherwise as well.

f. The Bank Account has been opened with Punjab National Bank, Agra, Raja Mandi by the Respondent No.2. It is submitted that the Respondent Company has no ongoing projects or any other work in Agra. Such Bank Account has been opened in Agra by Respondent No. 2 specifically with the sole purpose of effecting illegal transfer of money to his family, relatives and close associates, including cash amounts for the purchase of stamp as well as shares of Respondent Company, in furtherance of the conspiracy to enable them to effect the transfer of 148 properties (plots) of the Respondent Company and to cloak its illegal activities with a measure of authenticity.

g. It has been wrongly stated that a sum of Rs. 82,35,300/- has been received in cash on account of transfer of 33 plots on 12.10.2009, and the same has been deposited by the Respondents in the said bank account. . This large sum of money has been alleged to be deposited by them in fake bank account on different dates after 24.11.2009 i.e. after a gap of more than one and a half month. Thereby, they have just circulated the money by making heavy withdrawals from the said account and just depositing them back without showing any expenses from such withdrawals. It is relevant to note that what prevents the Respondents from depositing the consideration money received out of the above said transfer in lumpsum on the date of receipt itself or at least on the next date. The admission of non-depositing of consideration amount in the Bank Account of the Respondent Company on the date of transfer itself will show the illegal circulation of money.

h. Without prejudice to the other contentions and without admitting, it is submitted that if the Respondents are in real management of the Respondent Company, then what prevents them in operating the regular Bank Accounts of the Respondent Company even after the purported resignation of the Petitioners and what was the necessity of opening new Bank Accounts that too without any authority.

21. The rejoinder filed by the Petitioners also mentioned about the incidents which resulted in filing of criminal complaints by the Petitioners and Respondent No.2. The averments made in para 8 of the rejoinder reads thus:-

8. **VARIOUS POLICE COMPLAINTS FILED BY THE PETITIONERS & RESPONDENTS:-**

a. That for a very long time, Respondent No. 2 along with some other Respondents have been working in collusion with the local police authorities at Mathura, Uttar Pradesh and have repeatedly harassed the legitimate Directors as well as staff of Respondent Company. When the said harassment continued, Petitioner No.2 was constrained to make a representation to the Chief Minister as well as Principal Secretary (Home) of Uttar Pradesh Government vide her letter dated 22.10.2009, requesting them to accept her complaint and lodge a FIR against Respondent No. 2 and his co-conspirators. Copy of the Representation dated 22.10.2009 filed by Petitioner No.2 before the Chief Minister and Principal Secretary (Home) of Uttar Pradesh Government is annexed herewith as **Annexure P/19**.

b.1 **Incident of Theft and Attack on 15.12.2009 in Mathura office of R1 Company:**-That Respondent No. 2 with his co-conspirators attacked the office of the Respondent Company at Chandan Van, Mathura on 15.12.2009, stole and decamped with various Company records, amongst other valuables, cash, cheque books etc. of the Company. A complaint of the said theft was made on the same day to the police i.e. complaint dated 15.12.2009 (receipt given by the police authority on 18.12.2009) which has been annexed in the main Petition. Apprehending that the police authorities were hand in glove with Respondent No. 2 and his co-conspirators, Petitioner No. 2 also made a complaint dated 16.12.2009 to the Hon'ble Chief Minister, U.P. with regard to the above said incident, requesting for their interference in the said matter. In addition to this, Petitioner no.1 also wrote a letter to SSP, Mathura informing about the incident as well as the background of the said theft in the office of Respondent Company. However, to counter the above said complaint, Respondent No. 2 has filed a complaint on 20.12.2009 before S.H.O. Thana- Narhauli Highway, Mathura, interalia making the false counter allegations of theft against the Petitioners and accusing them of misappropriating Company's properties, taking away its valuable equipments and illegally stealing records of the Respondent Company by attacking the branch office of the Company in Mathura with the aid of goons or criminal elements. The Respondents however working hand in glove with local police, managed to file/change another false complaint before the police about incidents of 15.12.2009 and could also manage the police to show 17.12.2009 as the date of filing of the said false complaint. However, this was only a

cover up for the illegality and theft committed by the Respondents themselves for which the Petitioners had already filed the above said complaint dated 15.12.2009. It is further submitted that the Respondents have concocted this false story only to cover up their own acts of illegal structuring of Board of Directors or shareholding of the Respondent Company by filing forged forms, stating the forged resignations, with the RoC and fabricating Board Resolutions to misappropriate the properties and assets of the Company. It is also submitted that the Respondents have abused the legal procedure by filing false and fabricated complaints in this regard. It is also submitted that no FIR was registered on the above said complaint of Petitioner No. 2 made on 15.12.2009 under the influence exerted upon them by Respondent No.2. Finally, approximately after five (5) months, on 12.05.2010, an FIR was registered by PS Mathura Highway being FIR No. 253 of 2010, against Respondent no.2, 11 and others for attacking the office of Respondent Company in Mathura on 15.12.2009, after the orders of the court passed in the petition under Section 156(3) Code of Criminal Procedure filed by Petitioner No. 2 herein. The copy of the FIR No. 253/2010 dated 12.05.2010 is annexed herewith as **Annexure- P/20**. **Charge Sheets were duly submitted in the above cases by the police after the investigation.** Copy of the Charge Sheet in FIR No.253/2010 is annexed herewith as **Annexure P/21**.

b.2 That it is pertinent to mention, that the complaints made by the Respondents are concocted as an afterthought, as various contradictions emerge on the face of the alleged complaints made by the Respondent No. 2 to the police. **In the false complaint made on 20.12.2009, to the police, SHO Thana Highway, Mathura, (certified copy of which has been obtained by Petitioners from the office of SDM, Mathura), Respondent No. 2 alleges that the said incident had occurred at the A-22-23, Motikunj office of the respondent Company in Mathura, whereas the other complaint which shows 17.12.2009 as the receiving date, mentions that the alleged theft took place at Chandanvan office. But the vehicles number etc allegedly stolen by the Petitioner are one and the same in both the complaints which itself unambigulously proves the falsity of the above said complaints.** Copies of complaint made by Respondent No. 2 to police on 20.12.2009 and the copy of the Complaint purportedly showing a receiving date as 17.12.2009 are annexed herewith as **Annexure P/22 Colly**. The details given in the following comparative chart of

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the above said two complaints clearly proves the falsity of the said complaints;

Descriptions	Complaint made on 20.12.2009	Complaint showing an allegedly receiving date of 17.12.2009
Date of Incident	19.12.2009	15.12.2009
Properties allegedly stolen:		
1. JCB	Engine No.4H-2079/ 0403473 , Engine Type: 4R 1040, Model January 2005	Engine No.4H-2079/ 0403473 , Engine Type: 4R 1040, Model January 2005
2. Tractor-Escort Farmtrac 45 with trolly	No. HR 38 M 0201	No. HR 38 M 0201
3. Tractor – Escort Farmtrac 45 with water tanker	No.HR 38 M 0203	No.HR 38 M 0203
4. Tractor- Escort Farmtrac 45 with Compressor	No.HR 38 M 0204	No.HR 38 M 0204

It is submitted that a perusal of the above chart clearly proves that the Respondent No.2 had shown the same items as stolen on two different dates, which itself proves the falsity of both the above said complaints.

b.3 That after the incidents of 15.12.2009, the local police placed a lock on the office premises of the Respondent Company at Mathura. It is submitted in this regard that the Petitioners had made several written representations to the police and allied authorities for opening of the office of the Company, ever since the same was locked on 15.12.2009. Since the local police authorities were already hand in glove with Respondent No. 2, they did not accede to the request of the Petitioners herein. However, when the Petitioners made further representation to higher officials in Police and other administrative authorities in this regard, police authorities conducted their own inquiry into the incident. **The locks on the said office were opened by the police on 17.02.2010, after the said inquiry supported the bona fide claims of the Petitioners herein and possession of the office premises were given back to the Petitioners.** Contentions made by the Respondents about attempts made by them towards getting the office unlocked by the police and the alleged request to police dated 17.01.2010 and 19.02.2010 are false and denied. **It is also submitted that allegations about the Petitioners stealing essential records of the Respondent Company or impairing the functioning of the Respondent Company or using illegal influence over the state administration are also false and concocted.** A perusal of the contents in the complaint filed by Respondent no.2 before the Senior Superintendent of Police, Mathura on 19.02.2010 and the complaint dated 25.02.2010 filed before the Judicial Magistrate, Mathura will proves the falsity and contradictory stand of Respondents No.2;

Allegation in the complaint dated 19.02.2010 addressed to SSP, Mathura.	Allegation in the complaint filed under Sec.156(3) Cr.PC filed before the Learned Judicial Magistrate dated 25.02.2010
The office premises at A/A-24 Chandanvan, Mathura which was locked on 15.12.2009 by the police has been opened and handed over to Mr.Dinesh Kumar Agrawal, Umesh Verma, Neelamber Agrawal, Mrs. Meenakshi Agrawal, Manoj Kumar and Diwan Singh Negi on 19.02.2010 without giving prior notice to the Respondents.	On 17.02.2010 at 9 a.m. the ex-directors of the Company under the leadership of Syam Singh and Hansmukh Rana with every illegal elements trespassed in the branch office of the Company at Chandan Van, Mathura after breaking the lock therein and destroyed the evidences which are against them and taken away the important documents.

Copy of the complaint filed by Respondent no.2 before the Senior Superintendent of Police, Mathura on 19.02.2010 is annexed herewith as **Annexure P/23**. Copy of the complaint dated 25.02.2010 filed before the Judicial Magistrate, Mathura under Sec.156(3) of the Code of Criminal Procedure are annexed herewith as **Annexure P/24**.It is pertinent to mention herein that after elaborate investigation and inquiry the police found that there is no substances in the allegations raised in the complaints and accordingly filed a Closure Report/Final Report in the above said complaint before the Learned Judicial Magistrate, Mathura for closing the further proceedings in the said complaint.

c. On 11.12.2009 Respondent No.9/Pooran Singh Sinsinwar stolen a Wagon Drill LCC No.AAA CA 4074 DY M006 belonging to Respondent No.1 Company under the instruction of Respondent No.2. With regard to the said incident, Mr.Manoj Kumar, the Director of Respondent No.1 Company has filed an FIR before the Pahadi Police Station against Respondent No.9. True copy of the FIR registered by the Pahadi Police Station is annexed herewith as **Annexure P/25**.

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d. **Complaint filed by Petitioner No.2 before EoW:-** That as soon as the Petitioners discovered the fraud committed by the Respondents, Petitioner No. 2 also lodged complaint with SHO Kalkaji, New Delhi dated 14.12.2009 (received by the police on 16.12.2009) in this respect. The same was forwarded by the said SHO to the Office of the Public Prosecutor for legal opinion on the matter. The Public Prosecutor opined in the favour of existence of a prima facie case of cognizable offence under Section 420/34 IPC against several of the Respondents arrayed herein. Irrespective of the said opinion given by the Public

Prosecutor, Respondent No. 2 managed with the police officials to delay the matter and hence, no F.I.R. was registered by them in the present matter. Instead, after more than two months, police officials at PS Kalkaji, referred the matter to the Economic Offences Wing (E.O.W.) of the Delhi Police to delay it further. E.O.W. after completing its preliminary inquiry has finally lodged an F.I.R. No. 60 /2010 dated 27.04.2010 under Section 420/34 of IPC against Respondent Nos. 2, 4, 6, 7, 9, 10, 16, 17, 18 and 19. A copy of the complaint dated 14.12.2009, letter of SHO to the Public Prosecutor, opinion of the PP dated 08.02.2010 and a copy of the FIR dated 27.04.2010 are annexed herewith as **ANNEXURE P/26 (Colly).**

e. **FIR No.99/2010 dated 18.02.2010 filed by Petitioner No.2 against R2 and his associates :- Since the Respondent No.2 in connivance with other Respondents have registered many purported Transfer Deeds i.e Transfer Deeds dated 12.10.2009 (33 plots) and 24.12.2009 (148 plots), the Petitioner No.2 filed a criminal complaint against them before SHO, Highway, Mathura who were trying to take possession of those plots with the help of unsocial elements. After the investigation of the above said crime, the police registered the FIR on 18.02.2010 and after a thorough investigation filed a Charge Sheet on 26.10.2010 against Respondent no.2 and 16 others which have confirmed several allegations including purported Resignation letters of Petitioners group Directors and false filing of Form No.32 of R7 by putting back date etc.** Copies of the FIR No.99/2010 dated 18.02.2010 and Charge Sheet dated 26.10.2010 are annexed herewith as **Annexure P/27 Colly.**

22. While filing the rejoinder, the Petitioner also gave detailed actual narration to rebut the plea raised on behalf of the Respondents that the Petitioners had resigned from the position of Director qua the Respondent No.1. The narration as given in para 9 of the rejoinder reads thus:-

9. **ALLEGATION OF PURPORTED RESIGNATION LETTERS OF PETITIONER GROUP DIRECTORS AND ITS ALLEGED THEFT:-**

a. **No prudent man will believe the story of the resignation of the Petitioners who have substantial share holding in the Respondent Company:-** That 4th & 6th Form-32 filed by R-7 on 21.11.2009 respectively show the false and fabricated resignations of Sri Diwan Singh, Sri Manoj Kumar and Sri Umesh Verma & Petition No. 1 & 2. Apart from the fact that R-7 was never a Director and had no authority to file any such Form, neither of Sri Diwan Singh, Sri Manoj Kumar and Sri Umesh Verma & Petition No. 1 & 2 resigned from the Board of Directors and continue to remain as Directors and manage the affairs of Respondent Company. All the resignation letters

stated by R-7 in the Form-32s are false and fabricated. It is important to mention that P-1 & P-2, who have substantial interest in Respondent Company had no reason or occasion to resign from the Board of Directors. All these resignations were shown to remove the actual Directors and bring in conspiring parties to the Board of Directors of Respondent Company.

b. **It is submitted that the Petitioner Group Directors have never resigned from the Board of Directors of the Respondent No.1 Company and the Form 32 filed by the Respondent No.2 in connivance with Respondent No.7 with regard to the effect of resignation of Petitioner Group Directors are only purported Forms and that too without annexing the copies of the alleged Resignation Letters of the Petitioner Group Directors which is a mandatory requirement.**

c. It is submitted that subsequently in result of the afterthought, the Respondents fabricated a false story that the Petitioners stolen their resignation letters from the Company, but the above said allegation is self contradictory and unbelievable. Without admitting or without prejudice, it is submitted that if there were any such Resignation Letters, then the originals of the same must be kept in the Head Office of the Respondent No.1 Company i.e at Delhi because all the statutory documents of a Company should be kept in the Head Office. In usual practice, only copies are kept in the branch office i.e at Mathura. In view of the above point itself the story of alleged stolen of purported resignation letters from the branch office at Mathura is unbelievable and only a concocted story fabricated by the Respondents as afterthought.

d. It submitted that the Petitioners have filed a criminal complaint against the Respondent No.2 with regard to the different fraud and forgery committed by them and the complaint is pending before the Economic Offence Wing of Police Department at Delhi. While questioning by the police, Respondent No.2 stated to the police that the alleged resignation letters of the Petitioners are still in his custody and he will produce the same before the Hon'ble CLB. The above aspect is clear from the perusal of the copy of the Legal Opinion given by the Chief Prosecutor, Patiala House Court, New Delhi in the complaint of the Petitioner No.2. The relevant part is extracted hereunder;

> **"During enquiry the alleged Ashok Agrawal and other directors were asked to provide the resignation letters of the complaiants but they give reply that the complainant and other directors gave the resignation letters and with them and they will produce it in Company Law Board. Despite requests they did not provide the same. They were asked to provide minutes of the meeting when the alleged resignation of above named directors were accepted, but they failed to supply those minutes of meetings also. They**

also told that matter is pending before the Company Law Board and they submitted these papers to CLB"

Copy of the Legal Opinion given by the Chief Prosecutor, Patiala House Court, New Delhi in the complaint of the Petitioner No.2 is annexed herewith as **Annexure P/28**.

e. The alleged complaints dated 17.02.2010 and 19.02.2010 made by Respondents to police are also false and allegations of Petitioners stealing their alleged resignation letters after the opening of the office by the police, have been specifically concocted to cover up the fact that such resignation were never in existence, as Petitioners had never resigned for the Directorship of the Respondent Company. Several contradictions are apparent from the false complaints made to the Police Authorities and before the court as explained in earlier paragraphs. It is submitted that in the complaint dated 20.12.2009 there was no mentioning of any alleged theft of Company Documents against the petitioners. But in the complaint purportedly showing a back date of 17.12.2009, it was alleged that the documents of the Company was taken away by the Petitioners which is confirmed to be an afterthought.

f. In his complaint under Section 156(3) of Cr. P. C., filed before the Court of Second Upper Judicial Magistrate, Mathura on 25.02.2010 Respondent No. 2 has falsely alleged that the Petitioners have resigned from the Directorship of the Company, in order to escape liability for the alleged fraud and embezzlement committed by them in the Respondent Company. Respondent No. 2 further falsely alleges therein, that the Petitioners did a turnabout and attacked the office of Respondent Company on 15.12.2009 through goons, to retrieve the alleged resignation letters, so submitted by them. It is submitted that the above story is contradictory and implausible. It is evident that this story is a concoction in light of the other complaints made to the police by Respondent No.2 dated 20.12.2009 and the new/changed complaint dated 17.12.2009, about the same alleged incident of theft dated 15.12.2009. It is submitted that such earlier complaints are absolutely silent on such alleged conspiracy to retrieve resignation letters.

g. It is therefore apparent that the Respondent No. 2 cannot seem to get his story straight. Without prejudice to the above contentions, it is submitted that Respondents have wrongly made such unsubstantiated allegations which are irrelevant in the instant case. It is reiterated that the Petitioners are

thus, are responsible for the maintenance and upkeep of the documents and thus there exists no reason for them to steal any statutory documents which are legitimately in their possession by virtue of them being in control of the Respondent Company.

23. In para 10 of the rejoinder, the Petitioners have questioned the conduct of Respondent No.2 regarding Tajnagari Project of Agra and Purported Agreement to Sale between M/s Buland Housing Private Limited and Respondent No.1 Company. Para 10 of the rejoinder reads thus:-

10. PURPORTED TAJNAGARI PROJECT OF AGRA AND PURPORTED AGREEMENT TO SALE BETWEEN M/S BULAND HOUSING PRIVATE LIMITED AND RESPONDENT COMPANY:-

a. It is submitted that the Respondent Company have no ongoing projects in Agra and it was not decided or even thought of any new projects in Agra. The purported Agreement for Sale of Agra Project is produced by the Respondents first time while filing the present Reply and they have not annexed the same along with their earlier Replies to C.A No.50 of 2010 or in C.A No.274 of 2010. It shows that the purported Agreement which is produced now was only a fabricated document by putting a back date in order to submit false evidence and the purported Agreement was not manufactured till then. Further the said purported Agreement is not a Registered one also, which clinchingly proves that the same has been fabricated recently by putting a back date for misleading this Hon'ble Company Law Board.. The story of purported Agra project is now concocted by the Respondent only to justify their illegal acts. The purported Agreement for Sale dated 10.12.2009 produced by the Respondent No.2 is only a fabricated document. It is further submitted that the Respondent No.2 did not supply the copy of the last page of the above said purported Agreement to Sale to the Petitioners herein intentionally because a perusal of the last page of the said purported Agreement for Sale will reveal that the same was an unregistered one and fabricated by the Respondents putting a back date as a result of an afterthought.

b. The purported Agreement for Sale dated 10.12.2009 produced by the Respondent No.2 is an unregistered agreement which have no legal sanctity. Any contract of sale (agreement to sell) of an immovable property which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of The Transfer of Property Act, 1882. Section 54 of TP Act states that sale of immoveable property can be made only by a registered

instrument. According to the settled principles of law, an unregistered agreement is not admissible in evidence.

c. In Para No.19 @ Pg.9 of the Reply, **Respondent No.2 categorically admitted that the marketing and sale of the developed plots of the Respondent Company was under the direct/indirect supervision of Consent Petitioner No.3 and later the direct supervision of the Petitioner No.1 after his return from the United States of America. It proves that Respondent No.2 has no role in the marketing or sale of the lands of the Respondent Company. Further Respondent No.2 also stated in his Reply that he has no access on the Accounts of the Company. If this is true, then how can the Respondent No.2 can plan for a big project in Agra that too needs the investment of Rs.7 crores when he has no ideas about the financial strength of the Company?**

d. It is submitted that the financial transaction shown by the Respondents with M/s Buland Housing Pvt Ltd are only inter rolling of funds and a perusal of the bank accounts of the relevant parties will prove the falsity of the alleged story of Agra project. **It is submitted that if this Hon'ble Company Law Board will call for the Bank Accounts Statements of the following persons/entities of the relevant period and peruse, then the same will prove the illegal rolling of funds in between the Respondents with a malafide intention to grab the money of the Respondent No.1 Company;**

i) The Bank Accounts unauthorisedly opened in the name of Respondent No.1 Company in State Bank of Indore, Agra and Punjab National Bank, Agra
ii) Mr.Ashok Kumar Agrawal (Respondent No.2)
iii) Bank Accounts Statements as well as the whole Accounts maintained by M/s Marsh Nirman Pvt Ltd (Respondent No.20)
iv) Bank Accounts Statements as well as the whole Accounts maintained by M/s Dev Shilpi Nirman Pvt Ltd (Respondent N o.36)
v) Bank Accounts Statements as well as the whole Accounts maintained by M/s Buland Housing Pvt Ltd

e. **The advance consideration of Rs.3,49,70,000/- allegedly given to M/s Bulland Housing Pvt Ltd is only an afterthought and raised by Respondent No.2 in his Reply in the first time which is nothing but only an attempt to justify the illegal rolling of the funds of the Respondent No.2 Company.**

f. It is further submitted that on perusal of the above said purported Sale Agreement it can be seen that time was purportedly made as the essence of the said purported Agreement and also purportedly made forfeiture clause also therein. It is submitted that usually in real estate business, forfeiture clause is not included in any Agreement to Sell for heavy amount and there should be a clause to refund the entire advance consideration amount without any interest or in rare

cases refund of advance consideration amount after deducting 1 to 5% of the amount. Hence the purported Agreement will reveal its falsity and prove that it is only a concocted document made only afterthought by putting a back date. .

g. **Further a perusal of the contents of the purported Agreement to Sell itself reveals its falsity. According to the said purported Agreement, out of total Rs.7 crores, Rs. 3 crores should be paid on or before 31.01.2010 and Rs.3 crores should be paid on or before 28.02.2010 and the last installment shall be paid on or before 15.03.2010. It is submitted that if it is like so then what was the necessity to pay the rest amount after paying 2.162 crores when the Respondent No.2 got information that a status quo order was issued by this Hon'ble Company Law Board and no project can be proceed further especially when he knows that there is a forfeiture clause in the Agreement. It shows that the alleged Agreement is only a purported one, manufactured by the Respondents by putting a back date in order with an intention to make false evidence as an attempt of justifying their illegal activities.**

h. It is submitted that the Respondent No.2 never explained what was the amazing profitability of the purported Agra project. It is submitted that in fact, the Respondent No.1 Company was running good projects in Mathura and by illegally transferring such valuable lands, there was no such need or benefit of the Respondent No.1 Company to enter into any new projects in Agra by transferring the plots at 40% loss.

i. That the following points are also submitted for the kind consideration of this Hon'ble Company Law Board;

i) According to the Respondents, apart from the alleged sale of the valuable lands of the properties, they have purportedly increased the Authorised Share Capital of the Company and allotted shares to themselves. Without admitting and without prejudice to the above contentions it is submitted that if it is like so, then **why did the Respondent No.2 sold the properties of the Respondent No.1 Company for depositing the money for his so called Agra project and why he has not tried to raise the necessary funds by allotting the shares only? It is very interesting to note that according to Respondent No.2, he himself has purchased shares worth more than Rs.98 lakhs. Why the Respondent No.2 had sold the lands of the Company before making an attempt of collecting funds only through allotment of shares?** This crucial aspect clingingly proved that the alleged Agra project is only an afterthought engineered to cover up the illegal enrichment and misappropriation of the lands/plots of the Respondent Company and in fact there was/is no such project in the consideration of Respondent Company.

ii) Further, the Respondent No.2 has illegally transferred/sold various lands/plots in Kanhakunj colony and enriched a huge amount of the money in crores. Why he has not deposited the huge fund raised by him through the illegal transfers of the plots in Kanhakunj colony for the purported Agra project?

iii) Another important point submitted for the kind consideration of this Hon'ble Company Law Board is that if the Respondent No.2 was really busy with the purported Agra project, since June 2009, then why he got himself disappeared for 8 days during September 2009 from Mathura to an unknown place? Why his mother filed police complaint for his missing? In short it is submitted that all the averments of the Respondents are contradictory to each other and unbelievable to a prudent man.

It is submitted that several projects of the Respondent Company were pending and in such a situation without conducting any development in the already engaged projects, why the Respondent No.2 committed for a new purported project in Agra? It shows the falsity of the purported Agra project.

24. By way of the rejoinder, the Petitioners have also rebutted the various pleas raised by the Respondents regarding:- (i) Fraud and Embezzlement (ii) Marriage of Ms. Kanupriya (Daughter of Petitioner No.2) and Ms. Rakhi (Sister of R2 and R11); (iii) Mining and sale of other equipments; (iv) resignation of consent Petitioner No.3/ D.K. Agrawal from the Respondent Company; (v) Maintainability of the present petition; (vi) Jurisdiction of the Board or Tribunal under Section 397/402 of the Companies Act to cancel the sale deed; (vii) the plea of forum shopping as also that of joinder of parties etc.

CA 56/2024

25. The CA-56/2024 has been filed by Sh. Neelamber Agrawal (hereinafter referred as Applicant) under Rule 11 of National Company Law Tribunal Rules, 2016, seeking necessary directions from this Tribunal in furtherance

of the bona fide interests of Respondent No. 1 Company i.e. M/s Neelpadam Builders Pvt. Ltd. The prayer made in the application reads thus:-

> *"A. Pass an order permitting the Petitioner and the Respondent No. 2 jointly, for selling the above mentioned Plot Nos. 33,35,37,39,41,43,45,47,71 to 79 and 83 to 91 in the approved map No. 397/M/08-09 of Anand Nagar Sector-1 and Plot Nos. 9 to 12, 14 to 16, 31 to 33, 63 to 65,68,85 and 88 to 90 in the approved map No. 398/M/08-09 of Anand Nagar Sector 2 to carry out necessary development works in the Colony, in the interest of justice, and;*
>
> *B. Pass an Order permitting the Petitioners and respondent no.2 together to revive the existing Bank Account of Respondent No. 1 Company, or; Allow the Applicant and respondent no.2 together to open a new bank account of the Respondent No. 1 Company to be managed jointly by the Petitioner and Respondent No. 2."*

26. The applicant in CA-56/2024 has given the factual matrix in paragraph 7 of the application which reads thus:-

> *"a. That the plots of the Respondent No. 1 company were sold between the launching of the project and approval and thereafter between approval till 10.09.2009*
>
> *b. That afterwards the Respondent No. 1 Company had also made conveyance deed of about 106 Nos. of plots, whose consideration was already received by the Respondent No. 1 company, after seeking permission from the NCLT as per the order passed in in CA No. 168/2015*
>
> *c. That the present Application only pertains to Plot Nos. 33,35,37,39,41,43,45,47,71 to 79 and 83 to 91 in the approved map No. 397/M/08-09 of Anand Nagar Sector-1 and Plot Nos. 9 to 12, 14 to 16, 31 to 33, 63 to 65,68,85 and 88 to 90 in the approved map No. 398/M/08-09 of Anand Nagar Sector 2 ("plots*

in question"). A copy of the approved map No. 397/M/08-09 of Anand Nagar Sector-1 and the approved map No. 398/M/08-09 of Anand Nagar Sector 2 is annexed herewith as Annexure-1(Colly).

d. *That due to the directions of this Hon'ble Tribunal as contained in the Order dated 31.12.2009, The Petitioners and the Respondent No. 2 were unable to take any necessary actions in furtherance of the interests of the Respondent No. 1 Company. That some of the very important Development Works are yet to be completed because no further development works of civic amenities and facilities could be done due to the said status quo order passed by the Company Law Board with regard to the immovable properties of the Respondent No. 1 Company, way back on 31-12-2009. It is submitted that without proper development works, the life of the inhabitants of the Colony (which was developed by the Respondent No. 1 Company) has become hell in the absence of electricity, waterline, proper road facility, etc. That, at present, the customers of the Respondent No. 1 Company are regularly raising several complaints regarding the non-availability of electricity, water and sufficient road facilities in the Colony. That the Customers of Respondent No. I Company are now suffering lot of hardships due to the lack of basic amenities in the Colony and are contacting the Petitioners and the Respondent No. 2 and other representatives/staffs of the Respondent No. 1 Company continuously. That several customers among them are at the last stage of their life and the Respondent No. 1 Company earnestly wants to redress their grievances by carrying out necessary development works in the above Colony for which the intervention of this Hon'ble Tribunal is highly warranted.*

e. *That these customers of the Respondent No. 1 Company are the bonafide purchasers who had paid the full sale consideration to the Respondent No. 1 Company and hence they are entitled to get the*

basic amenities in the Colony and the Respondent Company No. 1 is bound to provide the same."

27. The applicant in CA-56/2024 has submitted that several customers of Respondent No. 1 Company are already in occupation of their respective plots, but they and their families are under severe hardship due to the lack of basic amenities in the colony. It is stated that the absence of proper roads, water supply, electricity, parks, and other civic infrastructure has caused immense mental trauma and inconvenience to the residents.

28. To address these issues, the applicant has sought the indulgence of this Tribunal for permission to sell certain unsold plots of land, contending that the proceeds from such sale will be exclusively utilized for carrying out the remaining development works in the colony and for clearing outstanding dues towards Extra Development Charges (EDC) payable to the Mathura Vrindavan Development Authority (MVDA).

29. Applicant has already discussed the matter with Respondent No. 2, who has expressed consent to the proposed arrangement. For this purpose, applicant proposes to open a bank account in the name of Respondent No. 1 Company, to be jointly operated by the applicant and Respondent No. 2 as co-signatories. In the alternative, they are agreeable to jointly operate and revive the existing bank account of the company if so directed by this Tribunal.

IA 48/2021

30. The IA-48/2021 has been filed on behalf of Respondent No. 2, Shri Ashok Kumar Agrawal, under Rule 11 of the National Company Law Tribunal

Rules, 2016, seeking permission to bring on record certain additional facts that came to his knowledge during the pendency of the present proceedings and germane to the adjudication of the dispute. The prayer mentioned in the captioned application reads thus :-

> *"a. Allow the present application and take the additional affidavit of the Respondent No. 2 on record which may be read as part and parcel to the reply and sur-rejoinder filed by the Respondent No. 1 and 2."*

31. The Applicant in IA-48/2021 has stated that the entire case of the Petitioners rests upon a false narrative that he (Applicant/Respondent No. 2) was illegally appointed and engaged in acts detrimental to the interests of Respondent No. 1 after his alleged removal.

32. According to Respondent No.2 nothing but a malicious and deliberate attempt to oust Respondent No. 2 and other Respondents from Respondent No. 1 Company, despite the Petitioners and the Consent Petitioner having themselves resigned from the Board. The Petitioners, along with the earlier Director who purportedly signed certain extracts relied upon in the petition, have conspired to fabricate documents to mislead this Tribunal. The Petitioners, being habitual offenders who have repeatedly made false statements on oath.

33. The petition was filed in December 2009 and amended in March 2012, both versions consistently allege removal of Respondent No. 2 under Section 283(1)(g) on account of his alleged absence from three consecutive Board meetings. However, in a FIR dated 12.05.2010 filed by Petitioner No. 2, the alleged reason for removal was that Respondent No. 2 was allegedly involved

in misappropriation of funds. This contradictory position, according to the Respondent, demonstrates the falsity and mala fides of the Petitioners.

34. Mr. Dewan Singh Negi, who was allegedly a director of the Respondent No. I company and whose signature appears on the alleged minutes dated 29.05.2009, has himself filed an application before this Tribunal stating that he was merely a domestic help of the Petitioners and had signed papers at their behest without understanding their contents. He has clarified that he was neither aware of his alleged appointment as a Director nor attended any Board meetings of Respondent No. 1.

35. In addition, another individual, Mr. Manoj Kumar, filed an application in 2019 in these proceedings, stating that he too had been wrongly appointed as a Director by the Petitioners and had to insist upon his resignation to avoid being falsely implicated in their illegalities.

36. The Respondent submitted that a conjoint reading of the mentioned applications and documents clearly establishes that the entire case set up by the Petitioners is false, fabricated, and based on manipulated evidence.

CA-405/2022

37. The captioned application has been filed by Smt. Munni Devi, W/o Shri Ranvir Singh (hereinafter referred to as *the Applicant*), who is one of the buyer of a plot in the project *"Anandnagar, Sector-2, Mathura"* developed by M/s Neel Padam Builders Pvt. Ltd. The application has been filed under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, seeking permission to be impleaded as a party in the main petition, *i.e.*, CP No. 120/ND/2009. The prayer made in the captioned application reads thus:–

"In view of the aforesaid facts and circumstances mentioned above, it is most respectfully prayed that the applicant may kindly be impleaded as a Petitioner in the present Petition in the arrays of the parties and in the interest of justice."

38. The Applicant had booked Plot No. 1 admeasuring 201.47 sq. yards in the project titled Anandnagar Sector 2, Mathura, developed by the Corporate Debtor, for a total consideration of ₹6,25,000/-, which was duly paid in full. The payment was acknowledged by the Corporate Debtor through receipts, and also issued an Acceptance-cum-No Dues Certificate dated 26.12.2009, and a Possession-cum-Construction Certificate dated 09.05.2022 to the applicant.

39. Despite receipt of the entire consideration, the Corporate Debtor failed to hand over lawful possession of the plot and did not complete the development of the project, compelling the Applicant to approach this Tribunal for appropriate reliefs.

40. It is noted that the Petitioners had earlier filed C.A. No. 168 of 2015 on 27.07.2015 seeking directions for execution of registered sale deeds in respect of several buyers. Vide order dated 20.09.2016, this Tribunal appointed Mr. S.S. Sharma, Advocate, as Commissioner for execution of the sale deeds. However, due to discrepancies in the list of buyers, certain sale deeds could not be executed, whereafter this Tribunal, in terms of order dated 21.04.2017, directed the filing of a revised chart containing the correct details of the purchasers.

41. In compliance with the said directions, the Petitioners submitted a corrected chart before this Tribunal. Further, vide order dated 27.10.2016, this Tribunal directed that sale deeds be executed in favour of those

purchasers from whom full sale consideration had been received. The Applicant, being one such purchaser, asserts that despite having paid the entire consideration, the sale deed in her favour has not been executed.

42. The Applicant submits that her case squarely falls within the scope of the aforesaid orders and that she is entitled to execution of the sale deed in her favour. However, she was not impleaded as a party in the main petition, which, if left unrectified, would cause serious prejudice to her rights.

43. The Applicant asserts that her impleadment is necessary for the proper and effective adjudication of the issues involved and that such impleadment would not cause any prejudice to the existing parties.

CA-408/2022

44. The instant application has been filed by Smt. Kamlesh Singh, W/o Sh. Arjun Singh (hereinafter referred to as the Applicant), who is one of the buyer of a plot in the project (Anandvan, Phase-2, Mathura) of the Respondent Company, M/s Neel Padam Builders Pvt. Ltd. The application has been filed under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, seeking permission to be impleaded as a party in the main petition, *i.e.*, CP No. 120/ND/2009. The prayer made in the captioned application reads thus:–

> *"In view of the aforesaid facts and circumstances mentioned above, it is most respectfully prayed that the applicant may kindly be impleaded as a Petitioner in the present Petition in the arrays of the parties and in the interest of justice."*

45. The Applicant had booked Plot No. 291 admeasuring 250 sq. yards in the project namely Anandvan Phase-2, Mathura, developed by the Corporate Debtor, for which the entire sale consideration was duly paid.

46. Upon receipt of the full and final payment, the Corporate Debtor issued an Acceptance-cum-No Dues Certificate dated 18.08.2007 and a Possession-cum-Construction Certificate dated 14.03.2017, thereby acknowledging no further dues were outstanding in respect of the said plot.

47. The Applicant has made the remaining averments in the captioned application identical to those made in C.A. No. 405/2022.

Invt. Pett. 4/2022

48. The present petition has been preferred by Smt. Rajkumari Sharma (hereinafter referred to as *Applicant No. 1*), Smt. Rajkumari Singh (hereinafter referred to as *Applicant No. 2*), and Smt. Vindhwasani Mishra (hereinafter referred to as *Applicant No. 3*), who are buyers in the project titled *"Anand Nagar"*, situated at Mathura, Uttar Pradesh (hereinafter referred to as *the Project*), developed by the Respondent Company, M/s Neel Padam Builders Pvt. Ltd. The Applicants filed this captioned application under Section 424(3) of the Companies Act, 2013, read with Rule 11 of the National Company Law Tribunal Rules, 2016 r/w Section 420 of the Companies Act, 2013, and Section 151 of the Code of Civil Procedure, 1908, seeking permission to impleaded as parties in the main petition, *i.e.*, CP No. 120/ND/2009. The prayer made in the captioned application reads thus:–

> *"a) Allow the present application and implead the Applicants to join the proceedings as an affected party"*

49. Applicant No. 1, Smt. Rajkumari Sharma, was allotted two adjacent plots bearing Nos. 5 and 6 in Sector-2 of the project for a total consideration of ₹9,42,400/-, against which she paid ₹9,86,320/-. Applicant No. 2, Smt. Rajkumari Singh, was allotted two adjacent plots bearing Nos. A-93 and A-94 in Sector-1, admeasuring 332.67 sq. yards in total, for a consideration of ₹10,13,037/-, which was fully paid in 2009. Applicant No. 3, Smt. Vindhwasani Mishra, was allotted two adjacent plots bearing Nos. 7 and 8 in Sector-2 for ₹9,50,400/-, against which she paid ₹10,13,000/-. The said Applicant had also booked two additional adjacent plots bearing Nos. 9 and 10 in the same sector by paying ₹1,00,000/- as booking amount on 21.11.2009; however, no possession or intimation regarding balance payment has been received since then due to pending proceedings before the erstwhile Company Law Board.

50. The Respondent Company handed over possession of the primary plots to the respective Applicants, who continue to remain in physical possession thereof. However, despite completion of all formalities and repeated requests, the Respondent failed to execute the conveyance deeds or effect registration of the plots in favour of the Applicants.

51. Vide letter dated 23.04.2010, the Respondent informed Applicant No. 1 of disputes among its Directors and of proceedings before the erstwhile Company Law Board, wherein an order dated 31.12.2009 directed maintenance of status quo with respect to the Company's immovable assets. The Respondent expressed its inability to proceed with registries citing the said order, while assuring early resolution; however, no progress has been made till date.

52. The Applicants made several written and oral requests to the Respondent to complete registration and also offered to pay any further dues, if necessary. Each such communication was met with the same response referring to the status quo order. Applicant No. 1 thereafter filed an impleadment application before the Hon'ble Company Law Board, which was rejected vide order dated 24.05.2011, granting liberty to approach the appropriate forum.

53. The Applicants continued to await resolution, relying on repeated assurances from the Respondent's representatives. They subsequently provided a copy of an application dated 25.07.2015 filed by one of the Respondent's Directors, Shri Neelamber Agrawal, before the erstwhile Board, seeking directions for registration of plots in favour of allottees.

54. Following the establishment of this Tribunal, this Tribunal, while considering similar matters, directed registration of several plots, pursuant to which numerous conveyance deeds were executed from 2016 onwards. Despite being identically situated and having made full payment much prior to the initiation of any inter-se disputes among the Respondent's Directors, the Applicants' plots remain unregistered.

55. The Applicants, all of whom are senior citizens and women, had invested their life savings in the said plots for personal residential use. The Applicants contend that internal disputes between the Respondent's Directors cannot lawfully deprive them of the fruits of their lawful ownership, especially when full consideration has been paid long prior to the disputes. They therefore seek appropriate directions for execution and registration of the sale deeds in their favour, in line with this Tribunal's order dated 20.09.2016,

wherein it was observed that allottees who have made full payment are entitled to have their sale deeds executed.

Analysis

56. Chapter VI of the Companies Act, 1956 comprising Sections 397 to 409, and its corresponding in Companies Act, 2013, Chapter XVI comprising Sections 241 to 245 provides a statutory framework for addressing grievances pertaining to corporate oppression and mismanagement, but the chapter does not indicate any clear definition of oppression and mismanagement. This legislative omission has resulted in a wide range of judicial interpretations. Broadly, an allegation of oppression must rest on circumstances that go beyond a mere loss of confidence or an internal deadlock. It must reflect a departure from standards of fairness, and the conduct complained of must amount to a violation of principles of fair play in the affairs of the company. Various judicial precedents have consistently characterised oppressive conduct as burdensome, harsh, and wrongful. A lack of probity or fair dealing in relation to the petitioners' proprietary rights as shareholders has also been recognised as constituting oppression.

57. Like oppression, the term mismanagement is also not defined explicitly in the Companies Act. The term can be characterised as the affairs of the company conducted in a prejudicial, dishonest or inept manner. As can be seen from Section 398 any action detrimental to the public interest, stakeholders or the company itself amounts to mismanagement. Stating succinctly, the management/mismanagement is a question of prudence. Any affair qua the management of the company which is imprudent and is resorted

to not in a prudent and a fair manner, but with ulterior motive and for extraneous reasons may turn to be an act of mismanagement. As outlined in ***Shanti Prasad Jain vs. Kalinga Tubes*** ((1965) 2 SCR 720), the oppression involves a conduct that signifies a visible departure from the standard of fair dealing. It underscores the violation of the conditions of fair play that every shareholder expects when investing in a company. In ***Sangramsinh P. Gaekwad and Ors. vs. Shantidevi P. Gaekwad and Ors.,*** the term, "oppressive" is a conduct related to the manner in which a company's affairs are conducted. The conduct should oppress the minority shareholders, resulting in the majority obtaining pre-dominant voting power or securing pecuniary advantages at the expense of the oppressed. Such acts of operation may take the form of either seeking pecuniary gains to the detriment of minority shareholders or a wrongful usurpation of authority. In ***Mohanlal Ganpatram and Anr. vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and Ors.*** (1964 SCC OnLine Guj 66), the object of Sections 397 and 398 of the Companies Act could be outlined by saying that aim is to halt oppression and mismanagement by controlling shareholders, by preventing their continuance to the detriment of the aggrieved shareholders or the company.

58. Going by the various judicial pronouncements including those by Hon'ble Supreme Court, one may infer that any act which is inept and prejudicial to the interest of the shareholders or company or to public interest amounts to oppressive as also an act of mismanagement.

59. While analysing the scope for exercising the jurisdiction under Section 402 of the Companies Act, 1956 we may not be oblivious of the settled legal position that the aim and object of the Section 397-398 of the Companies Act is to hold operation and mismanagement by controlling shareholders, preventing their continuation to the detriment of the aggrieved shareholders or the company. The remedies do not empower aggrieved shareholders to undo actions already taken by controlling shareholders in managing the company. Such is the view also taken in **Mohanlal Ganpatram** (ibid).

60. Coming to the issues involved in the present petition, it is the case of the petitioners that Respondent No. 2, Shri Ashok Kumar Agarwal, was inducted as a Director of Respondent No. 1, M/s Neelpadam Builders Pvt. Ltd., on 30.05.2004. Subsequently, on 21.08.2006, the company allotted 20,000 shares to Respondent No. 2 and 1,45,000 shares to his wife, Smt. Archana Agarwal.

61. According to the Petitioners, Respondent No. 2 was removed as a Director on account of his failure to attend three consecutive Board Meetings held on 21.06.2009, 28.07.2009, and 01.09.2009 without seeking leave of absence. It is their case that, by virtue of Section 283(1)(g) of the Companies Act, 1956, Respondent No. 2 thereby vacated the office of Director on 07.09.2009. Form 32 recording his cessation was thereafter filed with the Registrar of Companies on 05.10.2009 by the petitioners. The relevant excerpt from the pleadings in the amended petition at page 19, reads thus:-

(iii) That the mental condition of the Respondent No. 2 was not normal and he stopped taking interest into the affairs of the Respondent Company. That the Respondent No. 2 had also not attended the meeting of the Board of Directors of the Company held on 21/6/09, 28/7/2009 and 1/9/2009. The Board took notice of the unwell condition of the Respondent No 2 and further in view of the non attending three consecutive meetings, without the leave of absence, on the aforesaid dates and finally decided to take the decision for cessation, of the Respondent No 2, from the Directorship of the Respondent Company, under the provisions of Section 283(1)(g) of the Companies Act, 1956 on 7/9/2009. The information of which was duly sent to the Respondent No. 2 on 8/9/2009. The Copies of Form-32 filed in this regard are annexed herewith and marked as **Annexure "A/6"**.

62. In the reply, Respondent No. 2 has asserted that no meetings were held on the three dates relied upon by the petitioners. He further stated that the extract of the minutes of the Board Meeting dated 07.09.2009 contains no reference of his removal from the Board on account of non-attendance. According to Respondent No.2, the petitioners have made contradictory statements on different occasions, he could draw our attention to Civil Suit No. 667/2009, filed on 29.09.2009 by the petitioners before the Civil Court, Mathura, wherein according to the pleadings filed by the petitioners, it was stated that Respondent No. 2 was removed from the directorship of the company on 12.09.2009, on account of alleged malpractices. The relevant excerpt of the pleadings before Civil Court reads thus:-

न्यायालय अपर सिविल जज सीनियर डिवीजन प्रथम मथुरा ।

वाद सं॰667 सन 2009

नील पदम बिल्डर्स बनाम श्री अशोक कुमार

महोदय,

निवेदन है कि प्रतिवादी को उसके विरूद्ध वाद प्रस्तुत किये जाने की अधिकार हो चुके थे तथा तद पश्चात दिनांक 30॰9॰2009 को वह स्वयं न्यायालय परिसर में मौजूद था उसने श्री रमेश कुमार शर्मा एडवोकेट को मार्फत अनौपचारिक रूप से पत्रावली को अवलोकित भी करा लिया था प्रतिवादी ने अपने अनुचित इरादे को पूरा करने के उद्देश्य से एक पंजीकृत विक्रय पत्र दिनांक 29॰9॰2009 को अपनी सगी भाभी श्रीमती अंजू अग्रवाल व एक व्यक्ति संतोष कुमार शर्मा के नाम वादी सं॰1 कम्पनी के एक प्लाट का निष्पादित कर दिया तत्पश्चात इस वाद की जानकारी कलापों में संलिप्त हो रहा है वह कम्पनी के पूर्व निदेशक होने का दुरूपयोग कर रहा है उसने यह धमकी दी है कि वह अपने इन क्रिया कलापों को जारी रखेगा और निषेधाज्ञा प्रार्थना पत्र की सुनवाई भी नहीं होने देगा यदि निषेधाज्ञा प्रार्थना पत्र के निस्तारण से पूर्व ही प्रतिवादीगण वादी सं॰1 की संपत्तियों को हस्तान्तरित करता रहा तो वादी को अपार क्षति होगी इन परिस्थितियों में यह अति आवश्यक है कि निषेधाज्ञा प्रार्थना पत्र के निस्तारित होने तक प्रतिवादी के विरूद्ध वादी सं॰1 की सम्पत्तियों को हस्तान्तरित व भार उत्पन्न करने से निषेधित किया जावे जैसा कि माननीय उच्चतम न्यायालय का विधिमत है ।

श्रीमती अंजू अग्रवाल के नाम निष्पादित कर दिया दोनों ही बैनामों में कम्पनी के किसी प्रस्ताव का कोई हवाला दर्ज नहीं है निदेशक पद से प्रतिवादी को दिनांक 12॰9॰2009 को ही हटाया जा चुका है अपने मेल है लोगों के पक्ष में अनाधिकृत दस्तावेज निष्पादित करके प्रतिवादी कम्पनी को क्षति पहुंचा रहा है तथा सरेआम धोखाधड़ी व जालसाजी के क्रिया

63. Our attention is also drawn by Respondent No. 2 to the FIR lodged by the petitioners on 12.05.2010 at Highway Police Station, Mathura registered as FIR No. 253/10, wherein the petitioners have set out the reasons for the removal of Respondent No. 2 from Respondent No. 1 company. The relevant excerpt of the FIR reads as follows:–

"[…]

Ashok Kumar has illegally grabbed the money after selling the property of company under fraud and cheating. Hence Ashok Kumar has terminated from the company.

[…]"

64. We heard the counsels for the parties and perused the record. It is not in dispute that originally the Petitioners and the consent Petitioners had held 82.9% of the total equity share capital qua the Respondent No.1. The shares held by the Petitioners were 39% of the total equity and the balance of 82.9% were held by other consenting Petitioners. The list of the consent Petitioner reads thus:-

LIST OF SHAREHOLDERS WHO HAVE CONSENTED TO THE PRESENT PETITION

S.No.	Name and Address	Fathers Name / Husband Name	No. of Shares held	Amount (In Rs.)
1.	Kailash Leasing & Finance Pvt. Ltd. Registered office: D/28, Vishwa Karma Colony, Lal Kuan, New Delhi-110044	N.A.	100000	10,00,000
2.	Diwan Singh R/o B-10- Surya Vihar-III Faridabad-Haryana	Late Shri Uttam Singh	3000	30,000
3.	Shri Dinesh Kumar Agrawal R/o I/24, Eros Garden, Charmwood Village, Faridabad	Late Sh. Moti Lal Agrawal	20000	2,00,000
4.	Shri Priyamvada Agrawal I/24, Eros Garden, Charmwood Village, Faridabad	Shri Dinesh Kumar Agrawal	89000	8,90,000
5.	Tatvadarshi Bandhu Pvt Ltd	N.A.	61000	6,10,000

65. The incorporation of the Respondent No.1 Company was consequence of expansion of the business of New Karmyogi Group, developed by the Petitioners along with the consent Petitioner No. 3 through its various group companies viz. Tatvadarshi Bandhu Pvt. Ltd. Karmyogi Homes (P) Ltd., Kailash Leasing and Finance (P) Ltd., Dab Developers (P) Ltd. and Sukh Chaon Builders (P) Ltd. In the said group companies, the relatives /employees/friends and the family members of the Petitioners were inducted as the Directors and the Shareholders.

66. The salient issue espoused in the petition is that the shareholding of the Petitioner and the consent Petitioners could be diluted by the Respondent No.2 in connivance with Respondent Nos. 4, 7, 9 and 12. The other issues raised are to buttress the aforementioned salient issue i.e. to change the control of the company and alienate its assets, the Respondent Nos. 2, 4, 7, 9, 11 and 12 committed multiple irregularities and illegalities. When the shareholding of the Petitioner and the consent Petitioners was 8,42,000 (Eight Lacs and Forty Two Thousand), the number of shares held by Respondent No. 2 are 20,0000 (Twenty thousand). Since, 2006 the Petitioner along with consent Petitioners were majority shareholders qua Respondent No.1 Company. From the pleadings of the parties it could emerge:-

I. The Respondent No. 2 who is nephew of consent Petitioner No. 3 was introduced in the Respondent Company as Director in the year 2005.

II. In the year 2009, the Respondent No. 2 omitted to attend the meeting of Board of Directors qua the Respondent No.1 Company, held on 21.06.2009, 28.07.2009 and 01.08.2009. Thus, by operation of law viz.

Section 283(1)(g) of the Companies Act, 1956, he ceased to be Director qua the Respondent No.1 w.e.f. 07.09.2009.

III. The Petitioner family filed a Civil Suit No. 667 of 2009 in the Court of Civil Judge, Senior Division, Mathura by mentioning all the acts and asking for the relief that the Respondent No. 2 is not related with the company and not authorised to sign any document on behalf of the company and therefore should be stopped form dealing with the assets of the company and holding himself to be representative of the Respondent Company.

IV. After his cessation as Director, the Respondent No. 2 was not authorised to deal with the properties of the Respondent No. 1, but he transferred the properties owned by the Respondent No. 1, in favour of third parties including his relatives for personal gain. The details of the property transferred by the Respondent No. 2 are given in Annexure A-10, A-12 and A-19 which reads thus:-

DETAILS OF THE SALE EXECUTED BY THE RESPONDENT NO 2

S.No	Sale Deed Dated	Property Details	Sale in favour of
1.	29/09/2009	Khasra No. 14 Kh, 21, 22Kha, 49Kha, 50K and 52Kha Total Area 2.033 Hectare	Mrs. Anshu Agrawal W/o Mr. Anil Kumar Agrawal And M/s Marsh Nirman Pvt. Ltd.
2.	30.09.2009	Plot No. 113C, Andrun Tatvadarshi Vatika Colony, Mathura Area 334.44 Sq Mtr.	Mrs. Anshu Agrawal W/o Mr. Anil Kumar Agrawal

X X X

Details of the Sale Deeds that have been illegally executed and transferred by the Respondent No 2

S.No	Sale Deed Dated	Property Details	Sale in favour of
1.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mr. Anil Kumar Garg, S/o Sh Ranjidas Garg
2.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mrs. Neelam Garg, W/o Sh Bhiyambabu Garg
3.	12.10.2009	2 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mrs. Bharda Gupta, W/o Sh Gyanprakash Gupta

4.	12.10.2009	2 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Harishchand, S/o Karodimal Singh
5.	12.10.2009	2 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mrs. Ragini Bansal, W/o Sh A.R Bansal
6.	12.10.2009	1 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mrs. Bharda Tayal, W/o Girirajdharan Tayal
7.	12.10.2009	1 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Harishchand, S/o Karodimal Singh
8.	12.10.2009	4 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Mrs. Mahadevi, W/o Mohan Lal Niwasi
9.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Narinder Sing, S/o Niwal Singh
10	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	S Manoj Kumar, S/o Fakir Chand
11.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Hari Om Sing. S/o Naik Singh
12.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Ramesh Sing, S/o Sultan Singh
13.	12.10.2009	3 plots situated in Anand Naga Colony, Sector 1, Block B, Moja Athuki, Mathura	Sh. Harish Singh, S/o Sh. Mahipal Singh

X X X

Sale by Mr. Ashok Kumar Agrawal / Respondent No. 2

S.N	Sale deed Date	Sale by	Total Plots	Plots No.	Location	Total Area	Respondent No	Sale in favour of: Name	Address	Date of Booking	Amount (Rs.)	By Cash/Cheque
1	29/09/2009	Ashok Kumar Agrawal S/o Shri Guru Sharan Tayal R/o E-71, Kalkaji, New Delhi. A-22-23, Mathura colony, Mathura	1	Khasra No.- 14 Kha, 21,22 Kha, 49 Kha,50 Ka, 52 Kha	Mauja Girdharpur, Mathura	2.033 Hectare	12 & 20 (respectively)	Mrs. Anshu Agrawal W/o Shri Anil Kumar Agrawal & Ms. Marsh Niman Pvt. Ltd. Through Dir. Mr. Santosh Kr. Sharma s/o Shri Suresh Prasad Sharma	1/115, A-5,Babu Gulab Rai Marg,Delhi Gate,Agra & 1/115,A-2,Babu Rai Marg,Delhi Gate,Agra	Nil	50,00,000/-	Cash
2	30/09/2009		1	113C	Andhra Tetradandhi Vatika Colony, Mathura	334.44 Sq. mtr.	12	Mrs. Anshu Agrawal W/o Shri Anil Kumar Agrawal	1/115, A-5,Babu Gulab Rai Marg,Delhi Gate,Agra	"	4,90,000/-	Rs.4,65,000/- Cash Rs. 25000/- Cheque no.599121,dated 30-07-09,State Bank of Indore, Agra
		TOTAL AREA	2			20984.4 Sq. Mtr./ 24714.6 Sq. yds.						

V. Apparently, the documents regarding the transfer of the aforementioned properties were executed by Respondent No.2 after 07.09.2009, when he had already ceased to be Director qua the Respondent No.1 Company by operation of law.

VI. The properties mentioned in Annexure A-12 were transferred to the relatives of the Respondent No.2.

VII. The Petitioners made various complaints against Respondent Nos. 2, 4, 7, 9, 11 and 12 to various authorities like the S.H.O, Thana Sadan, SSP, Mathura, the Principal Secretary (Home) of the Government of Uttar Pardesh, regarding the various illegal acts that were being committed by the Respondents No.2 in connivance with 4, 7,9, 11 and 12 in relation to the respondent No.1 Company.

VIII. With the use of digital signature of Respondent No.7, the Respondent No.2 was re-appointed as Director of Respondent No.1 Company on 18.09.2009.

IX. Regarding appointment of Respondent Nos. 4, 5 and 8 as Directors in Respondent No.1 Company Form-32 - 08.10.2009 was filed with the RoC.

X. Regarding appointment of Respondent Nos. 16 and 17 as Directors in Respondent No.1 Company, the Form-32 -02.11.2009 was filed with RoC.

XI. Regarding appointment of Respondent Nos. 9, 18 and 19 as Director Respondent No.1 Company, the Form-32 - 10.11.2009 was filed with RoC.

XII. The Form-32 - 02.11.2009 which contained the information regarding appointment of Respondent Nos. 4, 5 and 8 as Directors in the Respondent No.1 Company also mentioned about resignation of Mr. Umesh Verma, Mr. Dewan Singh and Mr. Devindra Singh from the directorship.

XIII. The Form-32 - 10.11.2009 filed regarding appointment of petitioner no. 9, 18, 19 also mentioned about resignation by the Petitioners. Though the form indicate non association of the petitioners with the company with effect from 11.11.2009, but it doesn't indicate the date of the meeting of board in which resignation was tendered and accepted. The form also doesn't indicate the date of resignation by the petitioners. Though separate replies have been filed by several of the respondents, but the resignations or copies thereof are not found enclosed with either of them.

XIV. The Respondent no. 7 filed form 32 regarding his own appointment in the month of dec 2009. The form was filed after the lapse of two and a half year without giving any reason. The form reveal that the date of appointment of Respondent no 7 mentioned therein is 05.04.2007.

XV. No valid Board meeting of BOD or shareholder (EGM) was convened for removal of petitioner or increasing the authorised share capital of the petitioner company which could dilute the shareholding of the shareholder.

XVI. The assets of the Respondent No. 1 referred to in Paras 6.19(a), (b), (f) & (g) are transferred/sold to the detriment of the interest of Respondent No.1.

XVII. The assets/properties could be transferred to the relatives of the Respondent Nos. 2, 4 & 9 and for their personal gain, which affected the interest of the company.

XVIII. Certain properties/plots, which had already been allotted to certain bona fide purchasers could be again transferred in the names of third parties/close friends and relatives of Respondent No. 2.

XIX. Certain cheques drawn in favour of the Respondent No. 1 could not be deposited in its account.

XX. The business model of the Respondent No. 1 was to acquire the land, obtain appropriate clearances, permits and licenses from the appropriate authorities and then start the development of land acquired. It was during such process that plots were sold/allotted to customers. However, in deviation to such practise, Rs. 149 Crores could be transferred in favour of company controlled by close associates of Respondent No. 2, 11 & 12.

XXI. Multiple bank accounts are open in the name of the company and individuals to mismanage the affairs of the company.

XXII. The affairs of the Respondent No.1 are conducted in a manner which lack probity and is prejudicial/oppressive for the shareholders as also burdensome for the Respondent No. 1.

XXIII. The petitioners and concerned petitioner are deprived of their control on the company in an improper and irregular manner.

XXIV. May be, this Tribunal can have no jurisdiction to interfere with the sale deed, however, in terms of the provisions of Section 397-398 and 402 of the Companies Act, it can always declare the act of oppression and

mismanagement, which result in execution of sale deed as non-est. As a ramification of first declaration, the sale deed would also become non-est, being executed against the interest of the company and the shareholders. Nevertheless, the sale deed executed by company, not questioned by its shareholders or any other person / authority, authorized to file petition under Section 397-398 of the Companies Act, 1956, would not be interfered by this Tribunal at the instance of the company. In other words, after executing the sale deed, the Board of Directors of the company / company cannot maintain a section 397-398 petition against the purchaser alone.

67. In the reply filed by Respondent No. 7, it is stated that he was appointed as a Director of Respondent No. 1 on 05.04.2007. However, apart from this bare assertion, no documentary evidence has been placed on record by him such as an appointment letter, minutes of the Board resolution approving his appointment, entries in the register of directors, or any other statutory record to substantiate his claim. He has merely stated that he filed various forms with the Registrar of Companies from November 2009 onwards using his DSC.

68. The Petitioners, on the other hand, have specifically averred that Shri Narendra Singh, who filed the purported forms with the Registrar of Companies, was never a Director of Respondent No. 1 Company. This contention, according to them, is corroborated by the Annual Returns for the years 2007 and 2008 filed with the Registrar of Companies, which do not reflect his name as a Director at any point prior to the filing of the impugned

forms. The forms alleged by the Petitioners to have been illegally and improperly filed by Respondent No. 7 are as follows:–

Date of filing of Form	Form No.	Particulars of Form	Who filed Form digitally	Page No.
20.11.2009	32	Appointment of Respondent No.2 as a Director of the respondent company in an alleged Board meeting held on 18.09.2009	R-7	163-166
20.11.2009	32	Appointment of Respondent Nos.4, 5 & 8 as Director of the Respondent Company in an alleged Board meeting held on 08.10.2009.	R-7	167-172
21.11.2009	32	Appointment of Respondent Nos.16 & 17 as Director of the Respondent Company in an alleged Board meeting held on 02.11.2009	R-7	173-174
21.11.2009	32	False statement of Resignation of Mr. Umesh Verma (appointed on 07.09.2009), Diwan Singh Negi and Manoj Kumar (appointed on 07.10.2009) belonging to the Petitioner Group in an alleged Board meeting held on 02.11.2009 w.e.f. 03.11.2009	R-7	175, 176, 177
21.11.2009	32	Appointment of Respondent Nos.9, 18 & 19 as Director of the Respondent Company in an alleged Board meeting held on 10.11.2009	R-7	181, 180, 179
21.11.2009	32	False statement of Resignation of Petitioner No.1 and Petitioner No.2 as Directors w.e.f. 11.11.2009 in an alleged Board meeting held on 10.11.2009	R-7	182-183
21.11.2009	2	Allotment of 4,85,000 shares in favour of Respondent No.2 in an alleged Board meeting held on 21.11.2009.	R-7	212-216
21.11.2009	5	Increase in authorised share capital of the Respondent Company from Rs.1,50,00,000 to Rs.2,00,00,000 in an alleged Board meeting held on 21.11.2009	R-7	218-222
23.11.2009	18	Shifting of registered office of the Respondent Company from 9, Kailash Hills, New Delhi 110065 with effect from 09.10.2009 to E-71, 2nd Floor Kalkaji, New Delhi, i.e. the residence of the Respondent No.2	R-7	232-233
08.12.2019	32	Appointment of Respondent No.6, 7 & 10 as Directors of the Respondent Company in alleged Board meeting held on 05.04.2007.	R-7	189, 187, 188
09.12.2009	2	Allotment of 4,99,400 shares in favour of Respondent No.2 and 50 shares each in favour Respondent No.4 to 15	R-7	224-228

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69. We may not be oblivious of the fact that Form 32 under the Companies Act, 1956 was the statutory form required to be filed with the Registrar of Companies for intimation of the appointment, cessation of directors as well as any changes in their status. As has been noted hereinabove it is seen from the pleadings of the petitioners that the Form 32 showing the appointment of Respondent No. 7 as a Director with effect from 05.04.2007 was filed only on

08.12.2009 after a lapse of more than two and a half years. This factual aspect has not been disputed by Respondent No. 7 in his reply.

70. Upon examining the records placed before us by both sides, we find the Annual Return of Respondent No. 1 for the year 2007 and 2008 as also the details of signatories obtained from the MCA portal, placed on record by the parties. Details of signatories placed on record from the MCA portal, reads thus:–

Pg 2183 as on 25.09.2009

View Signatory Details

Company Name : NEEL PADAM BUILDERS PRIVATE LIMITED

Company CIN : U45201DL1998PTC097006

List of Signatories

DIN/PAN	Full Name	Present residential address	Designation	Date of Appointment	Whether DSC Registered
00155685	NEELAMBER AGRAWAL	A-77, NEW FRIENDS COLONY,, NEW DELHI, 110065, Delhi, INDIA	Director	15/11/2006	NO
00162105	DIWAN SINGH NEGI	B-10, SURYA VIHAR-III,, SEHATPUR EXTENSION,, FARIDABAD, 121003, Haryana, INDIA	Director	15/11/2006	YES
00162161	ASHOK KUMAR AGRAWAL	E-71,, KALKAJI,, NEW DELHI, 110019, Delhi, INDIA	Director	30/05/2004	YES
00457023	NARENDER KUMAR KHANDELWAL	PACHORI STREET, GHIYA MANDI, MATHURA, 281001, Uttar Pradesh, INDIA	Director	20/12/2002	NO
01628388	VIRENDRA SINGH	182, HANUMAN NAGAR, MATHURA, 281004, Uttar Pradesh, INDIA	Director	02/04/2007	NO

Pg 2188 as on 28.10.2009

View Signatory Details

Company Name : NEEL PADAM BUILDERS PRIVATE LIMITED

Company CIN : U45201DL1998PTC097006

List of Signatories

DIN/PAN	Full Name	Present residential address	Designation	Date of Appointment	Whether DSC Registered
00155685	NEELAMBER AGRAWAL	A-77, NEW FRIENDS COLONY,, NEW DELHI, 110065, Delhi, INDIA	Director	15/11/2006	NO
00155731	UMESH VERMA	B-44, MOTI KUNJ EXTN., MATHURA, 281004, Uttar Pradesh, INDIA	Additional director	07/09/2009	NO
00162105	DIWAN SINGH NEGI	B-10, SURYA VIHAR-III,, SEHATPUR EXTENSION,, FARIDABAD, 121003, Haryana, INDIA	Director	15/11/2006	YES
01136329	MANOJ KUMAR	H. NO. 163, VILLAGE ANANGPUR, TEH. FARIDABAD, FARIDABAD, 121003, Haryana, INDIA	Director	07/10/2009	YES
01281908	MEENAKSHI AGRAWAL	A-77, NEW FRIENDS COLONY, NEW DELHI, 110065, Delhi, INDIA	Director	20/09/2009	NO
01628388	VIRENDRA SINGH	182, HANUMAN NAGAR, MATHURA, 281004, Uttar Pradesh, INDIA	Director	02/04/2007	NO

71. In Annual Returns for the years 2007 & 2008, as well as in the signatory details furnished by the respondents which are retrieved from the MCA portal, the name of Respondent No. 7, Shri Narendra Singh, is not appearing as a Director on the dates of filing of forms. Apart from these records, no concrete proof has been placed on record in the pleadings to establish that Respondent No. 7 was, in fact, a Director at the time when the aforesaid forms, alleged by the petitioners to be irregular, were filed.

72. We are unable to appreciate how Respondent No. 7 could have filed the said forms with the Registrar of Companies even before filing Form 32 pertaining to his own appointment, and that too in the absence of his name being reflected as a Director in the Annual Returns of Respondent No. 1 for the years 2007 and 2008 as also in details of signatories retrieved from MCA website at given point of time. Furthermore, no statutory document evidencing his appointment such as a Board resolution or any entry in the register of directors has been produced before us.

73. Now coming to the issue of enhancement of authorised share capital and the allotment of shares to Respondent No. 2. It is the contention of the petitioners that Respondent No. 2, in collusion with the other Respondents, illegally enhanced the authorised share capital of Respondent No. 1 Company and thereafter allotted shares in their own favour by filing unauthorised and fabricated statutory forms. It is specifically alleged that (i) No notice of the Board Meeting was ever served upon the Petitioners. (ii) The purported meetings held on 21.11.2009 and 09.12.2009 were not valid proceedings. (iii) The Petitioners' shareholding was diluted from 82.9% to 42.5% through these

impugned allotments. (iv) The consideration stated to have been paid in lieu of allotment of share by Respondent No. 2, was merely circular movement of the Company's own funds.

74. As per pleadings on record, on 21.11.2009, Respondent No. 2 expressed his intention to subscribe to an allotment of 4,85,000 equity shares of face value ₹10 each. On the same day, board meeting purportedly held and 4,85,000 equity shares were allotted in favour of Respondent No. 2. It is stated that Respondent No. 2 paid an amount of ₹48,50,000 to the company towards the said allotment. The relevant excerpt of the minutes of Board Meeting convene on 21.11.2009 reads thus:–

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(606)

CERTIFIED TRUE EXTRACT MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE M/S NEEL PADAM BUILDERS PRIVATE LIMITED HELD ON 21st DAY OF NOVEMBER, 2009 AT 9:00 A.M. AT THE REGISTERED OFFICE OF THE COMPANY AT E-71, KALKAJI, NEW DELHI- 110019.

ALLOTMENT OF SHARES:

The Chairman informed the Board that the Company has received application for allotment of equity shares of the Company. The Board discussed the matter and it was decided to allot 485000 (Four Lacs Eighty Five Thousand) Equity Shares at Rs. 10/- per share (Face Value of Rs. 10/-) to the eligible applicants. After discussion the following resolution was passed:

"RESOLVED THAT 485000 (Four Lacs Eighty Five Thousand) Equity Shares @10/- per share (face value of Rs. 10/-) of the Company be allotted to the following named person(s) in the proportion and Distinctive No. mentioned herein:

S. NO	NAME OF ALLOTTEE	ADDRESS	FOLIO NO.	SHARES ALLOTTED	DISTN. NO.	AMT (PER SHARE)	PREMIUM (PER SHARE)	TOTAL AMT.	TYPE OF SHARE
1.	ASHOK KUMAR AGRAWAL	E-71, KALKAJI, NEW DELHI-110019	15	485000	1015000-15000000	10	-	4850000	Equity

"**FURTHER RESOLVED THAT** Mr. Narendra Singh Director of the Company be and is hereby authorized to file respective form 2, required to be filed u/s 75(1)(a) of the Companies Act, 1956, with the Registrar of Companies, NCT Delhi & Haryana and to do such acts, deeds and things as may be necessary in this behalf for the allotment of Shares of the company."

AUTHORISATION TO NARENDRA SINGH

The Chairman apprised the Board that in order to make the above appointments effective there is need for authorization to sign and file the requisite forms and documents. The Board passed the following resolution unanimously:

नीलपद्म बिल्डर्स प्रा० लि०

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RESOLVED FURTHER THAT Mr. Narendra Singh, Director be and is hereby authorized to prepare, sign and file requisite form(s)/document(s) with the appropriate authorities and take such steps as may be necessary in carrying out the resolution.

FOR **NEEL PADAM BUILDERS PRIVIATE LIMITED**

[Narendra Singh]
For Neel Padam Builders Pvt. Ltd.
Director
Director

Date: [29-11-2012]

75. In reply, Respondent No. 2 pleaded that to increase the authorised share capital, notices for the Extraordinary General Meeting scheduled on 21.11.2009 were served upon all shareholders of Respondent No. 1 Company by hand and the meeting was thereafter convened. The relevant excerpt of the minutes of the Extraordinary General Meeting held on 21.11.2009 reads thus:–

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602

MINUTES OF THE EXTRA-ORDINARY GENERAL MEETING OF SHAREHOLDERS OF NEEL PADAM BUILDERS PRIVATE LIMITED HELD ON SATURDAY, NOVEMBER 21, 2009 AT THE REGISTERED OFFICE OF THE COMPANY AT E - 71, KALKAJI, NEW DELHI.

PRESENT:

1. Mr. Ashok Kumar Agrawal;
2. Mrs. Archana Agrawal;
3. Kailash Leasing & Finance Private Limited;
4. Karmyogi Homes Private Limited; and
5. Tatvadarshi Bandhu Private Limited.

1. CHAIRMAN

Mr. Ashok Kumar Agrawal was elected as Chairman and he was requested to preside over the meeting. The Chairman occupied the Chair and welcomed the members.

The quorum, being present, the Chairman called the meeting to order.

The Chairman stated that the agenda items shall be placed before the meeting in the order contained in the notice.

Item No. 1:

INCREASE OF AUTHORISED SHARE CAPITAL

The Chairman read out the first item on the agenda as contained in the notice dated October 29, 2009 alongwith the explanation as contained in the explanatory statement attached to the said notice. The matter was discussed by the shareholders present and voting and then put to vote by show of hands. The following resolution was passed unanimously as an ordinary resolution:

"**RESOLVED THAT** pursuant to section 94 and other applicable provisions if any, of the Companies Act, 1956, the Authorized Share Capital of the Company be and is hereby increased from Rs. 15,000,000 (Rupees One Crore Fifty Lacs Only) divided into 15,00,000 (Fifteen Lacs) Equity shares of Rs. 10/- (Rupees Ten) each to Rs. 20,000,000 (Rupees Two Crores Only) divided into 20,00,000 (Twenty Lacs) Equity Shares of Rs. 10/- (Rupees Ten) each, by the creation of additional new 5,00,000 (Five Lacs) Equity Shares of Rs, 10/- (Rupees Ten) each ranking pari passu with the existing Equity Shares of the Company.

RESOLVED FURTHER THAT pursuant to Section 16 and other applicable provisions of the Companies Act. 1956, the existing clause V of the Memorandum of Association of the Company relating to the Share

Capital be and is hereby altered by deleting the same and substituting the following clause in its place:

V. The Authorized Share Capital of the Company is Rs.20, 000,000 (Rupees Two Crores Only) divided into 20,00,000 (Twenty Lacs) Equity Shares of Rs. 10/- (Rupees Ten) each."

"**RESOLVED THAT** the articles of association of the company be altered by substituting for article 3 thereof of the following new article:

The authorized Share Capital of the company is Rs. 20,000,000 (Rupees Two Crores Only) divided into 20,00,000 (Twenty Lacs) Equity Shares of Rs. 10/- (Rupees Ten) each with power to increase, reduce, subdivide or to repay the same or to divide the same into several classes and to attach thereto any right and to consolidate or subdivide the same into several classes and to attach thereto any right and to consolidate or subdivide or to reorganize the shares subject to the provisions of the Act, to vary such rights as may be determined in accordance with the regulations of the Company."

Item No. 2:

OTHER MATTERS WITH THE PERMISSION OF THE CHAIRMAN AND CONSENT OF THE MEETING

The Chairman informed the Board that since the issuance of the notice for the present Extra Ordinary General Meeting, there were certain developments regarding confirmation and appointment of directors and proposed to place these matters before the meeting for the approval of the shareholders. The shareholders consented to the same whereupon the Chairman placed the following matters before the shareholders:

1. The Chairman proposed that the directorship of Mr. Ashok Kumar Agrawal which has been confirmed by the Board of Directors of the Company on 18.9.2009 be approved by the shareholders. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

   "**RESOLVED THAT** the appointment/ confirmation of directorship of Mr. Ashok Kumar Agrawal by the Board of Directors of the Company on 18.9.2009 be and is hereby approved.

2. The Chairman proposed that the directorship of Mr. Virendra Singh which has been confirmed by the Board of Directors of the Company on 8.10.2009 be approved by the shareholders. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

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   "**RESOLVED THAT** the appointment/ confirmation of directorship of Mr. Virendra Singh by the Board of Directors of the Company on 8.10.2009 be and is hereby approved and regularized."

3. The Chairman proposed that appointment of Mr Rachit Kulshrestha on 8.10.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

   "**RESOLVED THAT** appointment of Mr Rachit Kulshrestha on 8.10.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

4. The Chairman proposed that appointment of Mr Netrapal on 8.10.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

   "**RESOLVED THAT** appointment of Mr. Netrapal on 8.10.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

5. The Chairman proposed that appointment of Mr Paras Jain on 2.11.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

   "**RESOLVED THAT** appointment of Mr Paras Jain on 2.11.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

6. The Chairman proposed that appointment of Mr Bhagwati Prasad Jain on 2.11.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

   "**RESOLVED THAT** appointment of Mr Bhagwati Prasad Jain on 2.11.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

7. The Chairman proposed that appointment of Mr. Devendra Kumar Jain on 10.11.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana

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Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

"RESOLVED THAT appointment of Mr. Devendra Kumar Jain on 10.11.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

8. The Chairman proposed that appointment of Mr. Gaurav Agarwal on 10.11.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

"RESOLVED THAT appointment of Mr. Gaurav Agarwal on 10.11.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

9. The Chairman proposed that appointment of Mr. Pooran Sinsinwar Singh on 10.11.2009 as additional director of the Company by the Board of Directors be approved and regularized. This motion was seconded by Mrs. Archana Agrawal. The matter was then put to vote by show of hands and the following resolution was passed unanimously as an ordinary resolution:

"RESOLVED THAT appointment of Mr. Pooran Sinsinwar Singh on 10.11.2009 as additional director of the Company by the Board of Directors be and is hereby approved and regularized."

2. VOTE OF THANKS

There being no other item on the agenda meeting concluded with a vote of thanks to the Chair.

For Neel Padam Builders Pvt. Ltd.

Date : 29-11-2012

Director

Place: New Delhi

CHAIRMAN

76. Our attention is also drawn to the subsequent Board Meeting held on 09.12.2009, in which 5,00,000 equity shares of the face value of INR 10 each were purportedly allotted to various parties who had expressed their interest. Respondent No. 2 was allotted 4,99,400 equity shares.

77. Rebutting these pleadings, the Petitioners have drawn our attention to the bank statement filed by Respondent No. 2 to contend that the said allotment was merely a sham and devoid of any genuine financial transaction. It is submitted that the consideration amount of INR 49,94,000/- for the

second allotment dated 09.12.2009 ought to have been deposited into the Company's account in the ordinary course. However, the bank records reflect that Respondent No. 2 withdrew INR 45,00,000/- from the Company's bank account on 26.11.2009 and 27.11.2009, and subsequently, on 09.12.2009, INR 49,94,000/- was deposited into the Company's bank account.

78. According to the Petitioners, the timing and nature second allotment of shares demonstrate that the so-called considerations were merely circulation of funds withdrawn earlier by Respondent No. 2, and deposit it again. The relevant extract of the bank statement filed by Respondent no. 2 and relied upon by the petitioners reads thus:-

Punjab Nat ..nal Bank
BO: AGRA RAJA MANDI
GANDHI ASHRAM , RAJA MANDI - 282002
(Phone: 0562-2855567,2522050)

A/C NO: 0030002100093138 (INR) PAGE: 1
DATE: 03-02-2010

M/S. NEEL PADAM BUILDERS PVT.LTD.
E-71,KALKAJI,
NEW DELHI
DELHI
DELHI - 110019
INDIA

STATEMENT OF ACCOUNT FOR THE PERIOD OF 24-11-2009 to 03-02-2010

DATE	PARTICULARS	CHQ.NO.	WITHDRAWALS	DEPOSITS	BALANCE
24-11-2009	BALANCE B/F				0
25-11-2009	By CASH			5,000.00	5,000.00 Cr
-11-2009	By RTGS 63049366959ASHOK KUMAR A (006200-MUMBAI,PNB HOUSE,FORT)			48,50,000.00	48,55,000.00 Cr
1-11-2009	To CHEQUE BOOK CHARGES		250.00		48,54,750.00 Cr
26-11-2009	To SELF	19801	25,00,000.00		23,54,750.00 Cr
26-11-2009	By CHQ.NO.019801 NOT PAID			25,00,000.00	48,54,750.00 Cr
27-11-2009	To SELF	19802	25,00,000.00		23,54,750.00 Cr
30-11-2009	To MATHURA	19804	20,00,000.00		3,54,750.00 Cr
09-12-2009	By TRF			49,94,000.00	53,48,750.00 Cr
09-12-2009	By CASH			6,000.00	53,54,750.00 Cr
10-12-2009	To BULAND HOUSING(P) LTD	19806	45,00,000.00		8,54,750.00 Cr
10-12-2009	By CASH			45,00,000.00	53,54,750.00 Cr
10-12-2009	To NEW ERA EXPORT	19805	53,50,000.00		4,750.00 Cr
18-12-2009	By CLEARING - 315578 (SOL 243300-AGRA,RCC)			3,50,000.00	3,54,750.00 Cr
22-12-2009	To SLF	19807	3,50,000.00		4,750.00 Cr
26-12-2009	By TRF			1,23,50,000.00	1,23,54,750.00 Cr
29-12-2009	By CLEARING - 599191 (SOL 243300-AGRA,RCC)			25,000.00	1,23,79,750.00 Cr
29-12-2009	To BULIND HOUSING P LTD	19808	1,20,00,000.00		3,79,750.00 Cr
30-12-2009	By TRF			47,50,000.00	51,29,750.00 Cr
30-12-2009	To BULAND HOUSING	19810	51,20,000.00		9,750.00 Cr
15-01-2010	By CASH			5,00,000.00	5,09,750.00 Cr
15-01-2010	To ASHOK	19811	5,00,000.00		9,750.00 Cr
25-01-2010	By CD-0514002100003387 (CH.			53,50,000.00	53,59,750.00 Cr
25-01-2010	To BULAND HOUSING (P) LTD.	19814	53,50,000.00		9,750.00 Cr
27-01-2010	By CASH			40,00,000.00	40,09,750.00 Cr
27-01-2010	To BULAND HOUSING (P) LTD	19815	40,00,000.00		9,750.00 Cr
02-02-2010	By CASH			40,00,000.00	40,09,750.00 Cr
02-02-2010	To BULAND HOUSING	19817	40,00,000.00		9,750.00 Cr
	Cumulative Totals:		4,81,70,250.00	4,81,80,000.00	9,750.00 Cr

79. The Petitioners have specifically denied receipt of notice of the Board Meeting held on 21.11.2009. We can't be oblivious of the fact that under Section 286 of the Companies Act, 1956, the intention of lawmakers from the word "shall" is clear that service of notice of every Board Meeting upon every director is mandatory in nature. The relevant excerpt of Section 286 of the Companies Act, 1956 reads thus:-

> *"286. NOTICE OF MEETINGS*
>
> *(1) Notice of every meeting of the Board of directors of a company* ***shall*** *be given in writing to every director for the time being in India, and at his usual address in India to every other director.*
> [...]"

80. It is the case of Respondent No. 2 that the notice was duly served upon the Petitioners. However, upon perusal of the record, it is observed that Respondent No. 2 has failed to produce any substantive evidence to establish actual delivery of the notice. Even if the notice was claimed to have been delivered by hand, no acknowledgement has been placed on record to reflect that the notice was duly served upon all the directors. It is further observed that Respondent No. 2 purportedly conducted the Extraordinary General Meeting (EGM) on the very same day, i.e., 21.11.2009, on which the Board Meeting was allegedly held. As per Section 171 of the Companies Act, 1956, a clear 21 days' notice is mandatory for convening an EGM, unless consent for shorter notice is obtained from members holding not less than 95% of the share capital or voting power, as the case may be. In the present case, no proof has been produced to show that such notice was duly served upon the shareholders. Moreover, if the meeting was indeed conducted on shorter notice, no record of the requisite consent for shorter notice has been placed

before this Tribunal. One may contend that the petitioners ceased to be directors with effect from 11.11.2009, but as is borne out of record, the Respondent No. 7 could file Form 32 regarding his own appointment only in December 2009. Thus, at the first place, his appointment in itself, vindicated by filling of Form 32 by himself is under cloud and secondly in any case the appointment is finalised after filling of Form 32, thus, any form including Form 32 filed by Respondent No. 7 prior to December 2009 are of no consequence and the same could not have been acted upon. In the wake, none of the Directors regarding whose cessation the Respondent No. 7 filed Form 32 can be treated to be ceased to be the Director qua the Respondent No. 1. Similarly, no individual regarding whose appointment, the said Respondent filed Form-32 can be treated as Director qua the Respondent No. 1. Likewise, the Forms filed by the Respondent No. 7 regarding increase in share capital and allotment of shares in favour of Respondent No. 2 also to be treated as non-est.

81. Besides, where it is proposed to increase the share capital of a company, the shares are offered to the person who at the date of offer are holders of equity shares of the company in proportion as nearly as circumstances admit, to the capital paid up on those shares at that date. Apparently, the increase shares were offered and allotted to Respondent Nos. 2 and 4. Thus, when the shares were not offered to the Petitioners, the allotment of shares in the name of Respondent Nos. 2 and 4 is illegal and non-est. Further, as all those individuals regarding whose appointment as Director, Form-32 was filed by the Respondent No. 7, regarding whose appointment as Director no Form 32 has been filed till December, 2009 could be treated as validly appointed

Director, more particularly when the procedure regarding their appointment was not followed. It would not be gain said that the Form-32 now replaced by DIR 12 can be filed by authorised company officers like Managing Director, Director, Manager or Company Secretary. In the present case, till December 2009, no Form-32 regarding appointment of Respondent No. 7 had been filed. Though, the appointment as Director is considered as valid from the date of Board/Shareholder Resolution, but the appointed person cannot legally act as Director until their written consent is filed with the RoC along with Form-32. Thus, apparently, prior to 08.12.2009, no Form-32 being filed qua the Respondent No. 7 he could not have acted as Director qua Respondent No. 1 legally. Even thereafter also, he being not Director, the Form-32 filed by him regarding his own appointment was invalid, thus he could never be treated as validly appointed Director qua R-1. Thus, the Board which comprised the individuals who treated themselves as Director on the basis of Form-32 filed by Respondent No. 7 could not be treated as valid Board of Directors. Resultantly, any act committed or executed by such Board was invalid. Therefore, the decision to call EGM, increase share capital and / or allot the shares to Respondent Nos. 2 and 4 taken by such Board was also in valid. Therefore, the Board as existed on 07.10.2009 was validly constituted Board and the shareholding qua the R-1 as on said date is valid shareholding. It is contested issue as to whether the R-2 ceased to be Director by operation of Section 283 (i)(g) of Companies Act, 2013. Nevertheless, the controversy could be set at rest by the Respondents themselves, taking a stand that the R-2 was reappointed as Director w.e.f. 18.09.2009. Thus, the factual position regarding his cessation as Director is admitted. Nevertheless, the Form 32

regarding his fresh appointment was filed by R-7, who was not entitled to act as Director legally, as the Form-32 regarding his own appointment was filed only on 08.12.2009 by himself which he being not MD/Director/CS/Manager qua the R-1 was not entitled to do. Thus, the fresh appointment of Respondent No. 2 as Director was irregular.

82. It is further noted that Respondent No. 2, in his reply, has failed to adequately address the specific allegations raised by the Petitioners in respect of the bank statement produced by Respondent No. 2 himself. The said statement reflects a recurring pattern of withdrawal and immediate redeposit, which prima facie indicates the absence of genuine consideration, the recycling of the Company's own funds, and the creation of an artificial trail intended to lend legitimacy to a premeditated and pre-planned allotment.

83. Once the very foundation is illegal, every subsequent action resting upon it necessarily falls to the ground. The law on this point is well settled. The Hon'ble Supreme Court, in ***Parmeshwari Prasad Gupta v. Union of India*** **(1973 AIR 2389)**, categorically held that a Board Meeting convened without proper notice to a Director is invalid in the eyes of law. Applying the aforesaid settled principle to the present case, the Board Meeting dated 21.11.2009, purportedly convened to approve the increase in authorised share capital and to call an Extraordinary General Meeting (EGM), is held to be invalid and non-est. The Hon'ble NCLAT in ***Bridge E-Solutions Pvt. Ltd. and Ors. v. Bridge Solutions Group Inc, (2020) ibclaw.in 530 NCLAT*** has held that the share capital increased without establishing the need for capital, without following due procedure and obtaining consent of major shareholders

which result in dilution of shareholding is illegal and liable to be declared void. The relevant excerpt of the judgement reads thus:-

> *"21. With the above discussions we are of the view that NCLT has rightly held that the share capital of appellant company was increased without establishing the need for capital and without following due procedure and obtaining consent of major shareholders i.e. Respondent company and even without infusing of funds/paying subscription on behalf of the appellant No.2 to 4. Dilution of shareholding of Respondent from 51% to 47% and the increase of authorised capital from Rs.5 lakh to Rs.40 lakh allegedly on 27.9.2013 is illegal and liable to be declared void."*

84. In the wake of the above findings, the allotments of 4,85,000 shares (21.11.2009) and 4,99,400 shares (09.12.2009) in favour of Respondent No. 2 are hereby declared void ab initio, and stand cancelled. Accordingly, the shareholding pattern of the Company shall be restored to its position prior to the impugned allotments.

85. In ***Ansar Khan and Another vs. Finecore Cables Pvt. Ltd. and Others [(2007) 140 Comp Cas 76 (CLB): 2006 SCC Online CLB 76: (2007) 79 CLA 412]***, the CLB could find a magnanimous solution of the issue before it. In the present case, the situation is different and cannot be resolved, by resorting to the solution found by CLB in the aforementioned case. As far as Sheo Prasad Misra vs. IVth Addl. Dist. Judge, Ghazipur and Others in [2004 SCC Online All 1483] relied upon by the Respondents is concerned, in the said case the sale deed was challenged. Original Suit No. 77 of 1984 was filed by Shrimati K. Devi against the Petitioner Sheo Prasad Misra. The prayer made in the Suit was for cancellation of a registered sale deed executed on

19.11.1983. It was alleged in the suit that the plaintiff was the recorded trainee holder and an imposter has executed the sale deed, registered in the office of Sub-Registrar on 19.11.1989. It was in this way that the sale deed was sought to be cancelled. The objection raised on behalf of the defendant that the suit as filed by the plaintiff was not maintainable being barred by the provisions of Section 331 of U.P.Z.A. and L.R. Act. The learned Munsif rejected the objection and found the suit as maintainable. The Revision Petition preferred against the order of Munsif also came to be dismissed. Finally, the Writ Petition was also rejected and the Suit was found maintainable. At the outset, the judgment is in distinct facts and is not applicable to the present case. Nevertheless, if any support can be withdrawn from the order, the same would be in favour of the Petitioners, for the simple reason that a sale deed executed by an authorised person is challengeable. In the present case, the developments which could take place qua the affairs of the R-1 Company after 07.09.2009 lack probity.

86. In ***Elaine Info Solutions Pvt. Ltd. vs. J & A Avenues India Private Limited and Others*** (2020 SCC OnLine NCLAT 276), the Hon'ble NCLAT could upheld the view taken by Hyderabad Bench of NCLT viz. the sale of land without proper authorisation of the Board was null and void. Para 11 of the judgment reads thus:-

> *"11. We observe herein that Audit Report and relevant financial statement is not reflecting sale of the said land. No board meeting dated 01.08.2015 was held as per the annual return (2015-2016) of the company. Moreover, due diligence was not done by the appellant to verify that the board resolution was passed on 01.08.2015. The original board resolution was not shown to the Appellant and he*

purchased the land on the basis of certified copy of the board resolution. The impugned property is in mother's control. Annual return filed on 02.09.2016 clarifies that no board meeting was held on 01.08.2015. Nothing is in this regard was also mentioned in AGM notice dated 02.09.2016. Under Schedule 5 of Balance Sheet no details for sale of land is reflected. Balance Sheet has been filed in Case no. 258 of 2019 at page 215. The object of the company has been as given in the Memorandum of Association of the company mentioned on page 69 of object of the company is to carry on the business as contractors, sub-contractors, quasi-contractors, builders and developers relating to construction, removal, redecoration, modification, repairing etc of civil land, colonies, sheds, buildings etc. No profit or loss is reflected in the profit and loss account for the financial year 2015-2016 in respect of sale of land. Whereas in Balance Sheet, value of fixed asset has gone up from Rs. 67.29 million to Rs. 76.83 million approximately.

Only agricultural land is shown was fixed assets. A perusal of financial statement shows that balance sheet is at historical cost basis and not on replacement cost basis apparently, hence there may be purchase of land & not sale of land as reflected under "Fixed Assets" in Balance Sheet. Sale of the property of a company requires board resolution to that effect. The sale alleged to have been executed is only on the basis of board resolution dated 01.08.2015 which itself cannot be relied upon. Therefore, the sale of the said land seems to have been executed without proper authorization of the board.

We uphold the order of NCLT, Hyderabad and accordingly dispose of the present Appeals."

87. Further in ***Gangadhar Madupu vs. Katta Corp P. Ltd. and Others*** **[(2018 208 Comp Cas 366 : 2018 SCC OnLine NCLAT 227)]**, Hon'ble NCLAT viewed that the sale of property by an authorized director cannot be protected. Para 16 of the judgment reads thus:-

*"**16.** The arguments on behalf of respondents Nos. 3, 4 and 7 depending action of respondent No. 2 executing sale deed relying on section 176 of the Companies Act, 2013, cannot be accepted. Section 176 provided that no act done by a person as director shall be deemed to be invalid, notwithstanding that it is subsequently noticed that the appointment was invalid for reasons stated in the section. In the present set of facts where it is shown that respondent No. 2 had incurred disqualification and had also resigned, the act of such respondent in subsequently going ahead and holding himself out as director to execute sale deed cannot be protected. Such acts attract criminal liability."*

88. In ***Mrs. Shailja Krishna vs. Satori Global Limited & Ors.*** (2025 LiveLaw (SC) 866), the Hon'ble Supreme Court viewed that the irregular Board meeting give rise to mismanagement of affairs of the company and the interference by the NCLT was justified. Relevant excerpt of the judgment reads thus:-

*"**48.** First, on the issue of notice, clauses 30 and 61 of the AoA read with Section 286 of the 1956 Act, unequivocally mandate that notice of every board meeting must be served on all Directors. Specifically, clause 30 stipulates that "twenty-one days' notice specifying the place, day and hour of a General Meeting shall be given to the members of the company". Mr. Mehta contended that the Appellant, who continued as a Director during the relevant period, was never served with notice of either of the meetings dated 15.12.2010 or 17.12.2010. Moreover, such notices and/or proof of service of such notices were never produced on record before the NCLT. Not only that, the minutes of the meetings were also not produced. Hence, the requirement of notice being mandatory, non-service thereof renders the meetings invalid. Reliance placed by Mr. Mehta on **Sri Parmeshwari Prasad Gupta v. Union of India** is relevant here as*

it was held that absence of notice vitiates the entire proceedings of a board meeting.

49. *Regarding the contention of Mr. Reddy that the notice was accepted by the security guard, the same has been urged to be rejected. The notice accepted by the guard was in respect of the Extra-Ordinary General Meeting (EOGM) which was held on 20.06.2011. This is admittedly not the subject matter of dispute. What we are concerned with are the meetings dated 15.12.2010 and 17.12.2010.*

50. *At this stage, we wish to highlight the contradictory stances taken by the respondents before the NCLT, the NCLAT and before us. Before the NCLT, the stance taken by the COMPANY is that notice for the EOGM was taken by the guard, and not for the meetings held on 15.02.2010 and 17.12.2010. The Appellant rightly contested the same in her rejoinder before the NCLT. Before the NCLAT in the appeal petition, the respondents do not even mention that a notice was sent and the same was accepted by the guard. The only plea they took is that since the Appellant resigned on 17.12.2010, no further notice was required to be sent to her. Before us, in the reply filed to the civil appeal, the COMPANY has taken the stand that the notice for the meeting dated 15.12.2010 was duly received by the guard. This inconsistent stand, we are sure, is only an untoward error, lest our observations be construed as casting imputations. That being said, no documentary proof has been attached to show that the guard accepted any notice for the meetings scheduled on 15.02.2010 oz 17.02.2010. Therefore, the requirement of notice was not complied with.*

51. *Secondly, on the issue of quorum, clause 53 of the AoA mandates that every Board Meeting of the COMPANY must have a quorum of at least two validly appointed Directors. It is an admitted fact that on 15.12.2010, the Appellant was a Director holding 98% shareholding in the COMPANY and the only other Director was the*

third respondent. Hence, in the absence of the Appellant, the meeting did not have the requisite quorum.

52. *Additionally, since the alleged induction of the fifth respondent as an Additional Director in the meeting of 15.12.2010 was itself illegal, the fifth respondent could not be deemed to be a validly appointed Director, and his presence in the subsequent meeting dated 17.12.2010 could not have cured the defect of quorum. Thus, both meetings were vitiated for want of proper quorum.*

53. *In light of the above, we find that the Board Meetings held on 15.12.2010 and 17.12.2010 were invalid on both counts and the resolutions purportedly passed therein, including the acceptance of the Appellant's alleged resignation, do not warrant validation by us.*

CONCLUSION

54. *Collectively taken, all these actions of the COMPANY in serial fashion demonstrate clear oppression and mismanagement in its affairs. Probity is lacking which is prejudicial to the appellant.*

55. *Thus, interference by the NCLAT with the judgment and order of the NCLT, in our opinion, was quite unnecessary. Hence, we set aside the common appellate judgment and order of the NCLAT on the appeals of the respondents and restore that of the NCLT."*

89. As could be ruled by the Hon'ble Supreme Court in ***Sangramsinh P. Gaekwad And Others. vs. Shantadevi P. Gaekwad and Others*** **(2005) 11 Supreme Court Cases 314**, in order to be oppressive, an act need not necessary be illegal or void of law. Even an act which is burdensome, harsh and wrongful may also be called as oppressive. Even an act which lacks probity can also be treated as oppressive. The relevant excerpt of the judgment of the Hon'ble Supreme Court in the above case reads thus:-

*"**189.** We may at this juncture have a look at the case-law operating in the field with a view to find out as to what relief, if at all, could be granted to Respondent 1 by the Gujarat High Court in the facts and circumstances of the present case.*

***190.** In Shanti Prasad Jain v. Kalinga Tubes Ltd. this Court quoted (AIR at p. 1542, para 15) with approval the following passage from the decision in Elder case as summarised at p. 394 in Meyer case;*

> *"(4) Although the word 'oppressive' is not defined, it is possible, by way of illustration, to figure a situation in which majority shareholders, by an abuse of their predominant voting power, are 'treating the company and its affairs as if they were their own property' to the prejudice of the minority shareholders - and in which just and equitable grounds would exist for the making of a winding-up order but in which the 'alternative remedy' provided by Section 210 by way of an appropriate order might well be open to the minority shareholders with a view to bringing to an end the oppressive conduct of the majority."*

***191.** In Shanti Prasad Jain referring to Elder case it was categorically held that the conduct complained of must relate to the manner of management of the affairs of the company and must be such so as to oppress a minority of the members including the petitioners qua shareholders. The Court, however, pointed out that that law, however, has not defined what oppression is for the purpose of the said section and it is left to the court to decide on the facts of each case whether there is such oppression.*

***192.** In Scottish Coop. Wholesale Society Ltd. v. Meyer it was categorically held that the conditions precedent contained in Section 210 of the Act of 1948 must be satisfied before any relief can be granted.*

***193.** Yet again in H.R. Harmer Ltd., In re the Court of Appeal held that: (All ER p. 698 G)*

> *"[T]he section does not purport to apply to every case in which the facts would justify the making of a winding-up order under the*

'just and equitable rule, but only to those cases of that character which have in them the requisite element of oppression."

It was observed: (All ER p. 701 A-B)

It is not lack of confidence between shareholders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involved at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.

194. *In Needle Industries this Court observed: (SCC p. 365, para 44)*

"44. Coming to the law as to the concept of 'oppression', Section 397 of our Companies Act follows closely the language of Section 210 of the English Companies Act of 1948. Since the decisions on Section 210 have been followed by our Court, the English decisions may be considered first. The leading case on 'oppression' under Section 210 is the decision of the House of Lords in Scottish Coop. Wholesale Society Ltd. v. Meyer32. Taking the dictionary meaning of the word 'oppression". Viscount Simonds said at p. 342 that the appellant Society could justly be described as having behaved towards the minority shareholders in an 'oppressive manner, that is to say, in a manner "burdensome, harsh and wrongful". The learned Law Lord adopted, as difficult of being bettered, the words of Lord President Cooper at the first hearing of the case to the effect that Section 210 'warrants the court in looking at the business realities of the situation and does not confine them to a narrow legalistic view'. Dealing with the true character of the company, Lord Keith said at p. 361 that the company was in substance, though not in law, a partnership, consisting of the society, Dr. Meyer and Mr Lucas and whatever may be the other different legal consequences following on one or other of these forms of combination, one result followed from the method adopted, 'which is common to partnership, that there should be the utmost good faith between the constituent members. Finally, it was held that the court ought not to allow technical pleas to defeat the

beneficent provisions of Section 210 (p. 344, per Lord Keith; pp. 368-69, per Lord Denning)."

195. *In Five Minute Car Wash Service Ltd., Re the Court upon considering the nature of relief which can be granted under Section 210 of the Companies Act, 1948 observed that in a case falling under Section 210 of the Companies Act, 1948, relief will be granted if the petitioner establishes that at the time when the petition was presented the affairs of the company were being conducted in a manner oppressive of himself and if he fails to allege facts capable of establishing that the company's affairs are being conducted in such a manner the petition will disclose no ground for granting any relief and must be dismissed in limine. It was observed: (All ER p. 247 B-D)*

"Those who are alleged to have acted oppressively must be shown to have acted at least unfairly towards those who claim to have been oppressed. In Scottish Coop. Wholesale Society Ltd. v. Meyer 32 (a case under Section 210) Viscount Simonds adopted a dictionary definition of the meaning of 'oppressive by, it is said, "burdensome, harsh and wrongful'.

In Elder v. Elder and Watson Ltd., also a case under Section 210, the Lord President (Lord Cooper) said:

'... the essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely."

Lord Keith said:

'... oppression involves, I think, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.'"

196. *The court in an application under Sections 397 and 398 may also look to the conduct of the parties. While enunciating the doctrine of prejudice and unfairness borne in Section 459 of the English*

Companies Act, the Court stressed the existence of prejudice to the minority which is unfair and not just prejudice per se.

197. *The court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. (See London School of Electronics, Re.)*

198. *Furthermore, when the petitioners have consented to and even benefited from the company being run in a way which would normally be regarded as unfairly prejudicial to their interests or they might have shown no interest in pursuing their legitimate interest in being involved in the company.*

199. *In a given case the court despite holding that no case of oppression has been made out may grant such relief so as to do substantial justice between the parties.*

200. *It is now well settled that a case for grant of relief under Sections 397 and 398 of the Companies Act must be made out in the petition itself and the defects contained therein cannot be cured nor the lacuna filled up by other evidence oral or documentary.*

201. *In Shanti Prasad Jain v. Union of India it was held that the power of the Company Court is very wide and not restricted by any limitation contained in Section 402 thereof or otherwise.*

202. *In Shoe Specialities (P) Ltd. v. Standard Distilleries and Breweries (P)39 it is stated: (Comp Cas p. 30 C-D)*

"While exercising the powers under Sections 397 and 402 of the Companies Act, the Court is considering not only the relief that is sought for, but also considers as to what is the nature of the complaint and how the same has to be rectified. It is the interest of the company that is being considered and not the individual dispute between the petitioner and the respondent. If that be so, the interest of the company requires that the majority shareholders must have their say in the management."

203. *In Jesner v. Jarrad Properties a question arose as to whether the conduct and the background of the two companies (their informed way of doing business disregarding the Companies Act, etc.) could be taken into account to decide whether there had been unfair prejudice to one party in an application under Section 459 of the English Companies Act and was answered in the affirmative.*

204*. When a decision is taken on a business consideration, it is trite, the court should not ordinarily interfere.*

205. *The burden to prove oppression or mismanagement is upon the petitioner. The court, however, will have to consider the entire materials on record and may not insist upon the petitioner to prove the acts of oppression. An action in contravention of law may not per se be oppressive. Bhagwati, J. (as His Lordship then was) in Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. (AIR at p. 103, para 49) stated the law, thus:*

"It may be that a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law, and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the Company. Such a resolution can certainly be struck down by the Court under Section 397 or 398. Equally a converse case can happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much in the interests of the Company and of the shareholders."

206. *The said decision has been referred to with approval in Needle Industries (para 49). The conduct which is technically legal and correct, thus, may justify grant of relief on the application of the just and equitable jurisdiction and conversely that conduct involving illegality and contravention of the Act may not suffice to warrant grant of any remedy. An isolated act of oppression may not be sufficient to grant any relief but there should be a continued oppression therefor. The test of lack of bona fides should be applied in both the winding-up petition and while determining an application under Section 397 of*

the Companies Act. (See Guidezone Ltd., Re43.) We may at this juncture notice that Respondent 1 in her application under Section 397 of the Companies Act did not complain of any act of mismanagement. Complaints of mismanagement were made by Respondent 12 only. For the purpose of grant of relief, the High Court could only consider the pleadings filed in Company Petition No. 5 of 1991. If no relief could be granted having regard to the pleadings contained therein, it is inconceivable in law that such relief would be granted on the basis of the pleadings made in other proceedings and totally ignoring the admissions made by Respondent 1 herein in the proceedings initiated by her."

90. In the aforementioned conspectus, we dispose of the present Company Petition [(C.P-120/ND/2009)] as also all the pending applications viz. **CA-56/2024, IA-48/2021, CA-405/2022, CA-408/2022, Invt. Pett. 4/2022** with the following directions:-

I. The Board of Directors qua the Respondent No. 1 would be same as it existed on 17.09.2009.

II. The enhancement of share capital as also allotment of shares in favour of Respondent Nos. 2 and 4 or anyone else after 17.09.2009 would be non-est.

III. The shareholding qua the Respondent No. 1 would be same as it was there on 17.09.2009.

IV. It would be for the Board of Directors as existed on 17.09.2009 to follow process regarding enhancement of share capital and allotment of shares, in due deference to the statutory provisions including the provisions of Companies Act, 2013, applicable on the subject.

V. All the forms filed with RoC under the signature of Respondent No. 7 would be non-est.

VI. All the instruments / sale deed / lease deed / agreement to sale / any other document executed on behalf of Respondent No. 1 after 17.09.2009 and / or by Respondent Nos. 2, 4, 9 and 23 at any point of time would be non-est. However, if any transaction is found by the Forensic Auditor, as entered into bonafidely, by any purchaser not related to the Respondent Nos. 2, 4, 9 and 23 in any manner, on arm's length, as per business model of the Respondent No. 1, by paying due consideration as per the market value of the property, the Board as existed on 17.09.2009 would treat the same as valid.

VII. Akhilesh Pandy & Co. Chartered Accountants, Head Office – Thane / Mumbai, Offices at Delhi, Pune, Banglore, Karnataka, Hyderabad, Asansol, Indore, Ahmedabad and Kanpur. FRN-126433W, UCN-782647 and e-mail-akhil@apcoca.com is appointed as Forensic Auditor to conduct audit qua the affairs of the company from 17.09.2009. The Forensic Auditor will give its report regarding the withdrawal / transfer of money from the accounts of the company / Respondent No. 1 and the transfer of assets owned by the company after 17.09.2009 and by Respondent Nos. 2, 4, 9 and 23.

VIII. The Forensic Auditor would give its report as above within two months.

IX. Based on the report of the Forensic Auditor, the Board of Directors / Members of Respondent No. 1 would take a decision regarding the transactions entered into by the company after 17.09.2009 in the best interest of the company. It would be for the members of the company to retain the assets found as owned by the company, transferred after 17.09.2009 and refund the consideration paid by the purchasers with

interest @ 12 % per annum or to revalidate the instruments / documents / sale deeds / lease deeds etc. executed after 17.09.2009 and / or by Respondent Nos. 2, 4, 9 and 23, subject to such terms and conditions as decided by the members in general meeting, in accordance with law.

X. The Respondent No. 1 would comply with all the provisions of Companies Act and other relevant / applicable laws with reference to its business within six months from today and would pay such fee / penalty, if any, it is liable to pay in terms of the applicable provisions of law.

XI. The Respondent No. 1 would ensure that the plots and lands validly allotted by it prior to 17.09.2009 and on the basis of the transactions re-validated / vindicated by it after receiving the Forensic Audit Report as also the plots found sold by Forensic Auditor for market value at arm's length, bondafidely are developed as per the scheme of allotment and due facilities are provided to genuine allottees within one year from the date of receipt of Forensic Audit report by the Respondent No. 1.

XII. The ramification of the present order would be reversal of the instruments / deeds / documents executed on behalf of Respondent No. 1 after 17.09.2009 and the instruments / deeds / documents executed by Respondent Nos. 2, 4, 9 and 23 and would not create any superior rights in favour of the Respondent No. 1 then the right it had on the properties alienated / transferred in terms of the aforementioned instruments at the time of execution of the same.

XIII. The present order would affect only the act of the company executed after 17.09.2009 and those of the Respondent Nos. 2, 4, 9 and 23 and would not have any bearing on any action by any governmental authority, in any manner.

XIV. The INC 28 be filed by the Petitioners before concerned RoC within 1week days. It goes without saying that the RoC will act upon such directions contained in the present order, which concern him viz. regarding the Board of Directors and shareholding qua the company etc.

XV. The fee of the Forensic Auditor would be negotiated between the Forensic Auditor and Board of Directors as existed on 17.09.2009 and would be paid by the Respondent No. 1. In the event of there being any misunderstanding, it would be open to the Forensic Auditor or to Respondent No. 1 to file appropriate application regarding fixation of the fees of the Auditor before this Tribunal. **The petition stands disposed of. No cost.**

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)