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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.18 OF 2012
IN
COMPANY PETITION NO.177 OF 2007

Prudence Maynard,)
Indian National, residing at 701,)
Sai Paradise, Plot No.100,)
Sector No.1(S), New Panvel)
Navi Mumbai – 410 206 (Maharashtra))

...Appellant
Ori. Petitioner

....Versus....

- 1). Mundhra Container Freight Station)
Private Limited, a private limited)
company incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049.)
)
- 2). Capt. Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
)
- 3). Mr.Navjit Grewal,)
Indian Inhabitant, residing at)
12B, Kalumal Estate, A.B. Nair)
Road, Juhu, Mumbai – 400 049.)
)
- 4). Mrs.Alka Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
)
- 5). Mrs.Kavita Navjit Grewal,)

- | | | | |
|-----|-------------------------------------|---|----------------|
| | Indian Inhabitant, residing at |) | |
| | 12B, Kalumal Estate, A.B. Nair |) | |
| | Road, Juhu, Mumbai – 400 049. |) | |
| | |) | |
| 6). | Punjab Terminals Private Limited, |) | |
| | a private limited company |) | |
| | incorporated under the |) | |
| | Companies Act, 1956, having its |) | |
| | Registered Office at 12B, |) | |
| | Kalumal Estate, A.B. Nair Road, |) | |
| | Juhu, Mumbai – 400 049. |) | |
| | |) | |
| 7). | Georgina Maynard, |) | |
| | British National 701, Sai Paradise, |) | |
| | Plot No.100, Sector No.1(S), |) | |
| | New Panvel, |) | |
| | Navi Mumbai – 410 206. |) | ...Respondents |

WITH
COMPANY APPLICATION NO.15 OF 2012
IN
COMPANY APPEAL NO.18 OF 2012
IN
COMPANY PETITION NO.177 OF 2007

- | | | | |
|-----|-------------------------------------|---|---------------|
| 1). | Prudence Maynard, |) | |
| | Indian National, residing at 701, |) | |
| | Sai Paradise, Plot No.100, |) | |
| | Sector No.1(S), New Panvel |) | |
| | Navi Mumbai – 410 206 |) | |
| | (Maharashtra) |) | |
| | |) | |
| 2). | Miss Georgina Maynard, |) | |
| | acting through her mother & Natural |) | |
| | guardian, Mrs.Prudence Anthony |) | |
| | Maynard, residing at |) | |
| | 701, Sai Paradise, |) | |
| | Plot No.100, Sector No.1(S), |) | |
| | New Panvel, |) | |
| | Navi Mumbai – 410 206. |) | ...Applicants |
| | |) | ...Appellants |

....Versus....

- 1). Mundhra Container Freight Station)
Private Limited, a private limited)
company incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049.)
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 - 2). Capt. Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
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 - 3). Mr.Navjit Grewal,)
Indian Inhabitant, residing at)
12B, Kalumal Estate, A.B. Nair)
Road, Juhu, Mumbai – 400 049.)
)
 - 4). Mrs.Alka Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
)
 - 5). Mrs.Kavita Navjit Grewal,)
Indian Inhabitant, residing at)
12B, Kalumal Estate, A.B. Nair)
Road, Juhu, Mumbai – 400 049.)
)
 - 6). Punjab Terminals Private Limited,)
a private limited company)
incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049.)
- ...Respondents

WITH
COMPANY APPEAL NO.19 OF 2012
IN
COMPANY PETITION NO.199 OF 2007

Prudence Maynard,)

Indian National, residing at 701,)
Sai Paradise, Plot No.100,)
Sector No.1(S), New Panvel)
Navi Mumbai – 410 206 (Maharashtra))

...Appellant
Ori. Petitioner

....Versus....

- 1). Punjab Terminals Private Limited)
a private limited company)
incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049.)
)
- 2). Mr.Navjit Grewal,)
Indian Inhabitant, residing at)
12B, Kalumal Estate, A.B. Nair)
Road, Juhu, Mumbai – 400 049.)
)
- 3). Capt. Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
)
- 4). Aai Shree Khodiya Leasing And)
Finance Private Limited,)
a private limited company)
incorporated under the Companies)
Act, 1956, having its Registered)
Office at B/708, Fair Deal House)
Opp. St.Xavier's Hostel,)
Swastik Char Rasta, Off. C.G. Road)
Navrangpura, Ahmedabad – 380 009)
)
- 5). Ankush Holding Limited,)
A Company incorporated under)
the Companies Act, 1956, having)
its registered office at B-12, Sulabh)
Flats, Nr.Mirambica School Road)
Naranpura, Ahmedbad - 380 013.)
)
- 6). Asopalav Traders Private Limited,)

- A Company incorporated under)
the Companies Act, 1956, having)
its registered office at 106, Prarmbh,)
SBS Street, Stadium Circle,)
Navrangpura, Ahmedbad - 380 009.)
)
- 7). Saharshi Securities Private Limited,)
A Company incorporated under)
the Companies Act, 1956, having)
its registered office at B-12, Sulabh)
Flats, Nr.Mirambica School Road)
Naranpura, Ahmedbad - 380 013.)
)
- 8). Steps Securities Private Limited,)
A Company incorporated under)
the Companies Act, 1956, having)
its registered office at 106, Prarmbh,)
SBS Street, Stadium Circle,)
Navrangpura, Ahmedbad - 380 009.)
)
- 9). Ankush Finstock Limited,)
a private limited company)
incorporated under the Companies)
Act, 1956, having its Registered)
Office at B/708, Fair Deal House)
Opp. St.Xavier's Hostel,)
Swastik Char Rasta, Off. C.G. Road)
Navrangpura, Ahmedabad – 380 009)
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- 10). Mundhra Container Freight Station)
Private Limited, a private limited)
company incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049)
)
- 11). Georgina Maynard,)
British National 701, Sai Paradise,)
Plot No.100, Sector No.1(S),)
New Panvel,)
Navi Mumbai – 410 206.)
- ...Respondents

WITH

COMPANY APPLICATION NO.16 OF 2012
IN
COMPANY APPEAL NO.19 OF 2012
IN
COMPANY PETITION NO.199 OF 2007

- | | | | |
|-----|-------------------------------------|---|---------------|
| 1). | Prudence Maynard, |) | |
| | Indian National, residing at 701, |) | |
| | Sai Paradise, Plot No.100, |) | |
| | Sector No.1(S), New Panvel |) | |
| | Navi Mumbai – 410 206 |) | |
| | (Maharashtra) |) | |
| | |) | |
| 2). | Miss Georgina Maynard, |) | |
| | acting through her mother & Natural |) | |
| | guardian, Mrs.Prudence Anthony |) | |
| | Maynard, residing at |) | |
| | 701, Sai Paradise, |) | |
| | Plot No.100, Sector No.1(S), |) | |
| | New Panvel, |) | |
| | Navi Mumbai – 410 206. |) | |
| | |) | ...Applicants |
| | |) | ...Appellants |

....Versus....

- | | | |
|-----|----------------------------------|---|
| 1). | Punjab Terminals Private Limited |) |
| | a private limited company |) |
| | incorporated under the |) |
| | Companies Act, 1956, having its |) |
| | Registered Office at 12B, |) |
| | Kalumal Estate, A.B. Nair Road, |) |
| | Juhu, Mumbai – 400 049. |) |
| | |) |
| 2). | Mr.Navjit Grewal, |) |
| | Indian Inhabitant, residing at |) |
| | 12B, Kalumal Estate, A.B. Nair |) |
| | Road, Juhu, Mumbai – 400 049. |) |
| | |) |
| 3). | Capt. Rajeev Niroota, |) |
| | Indian Inhabitant, residing at |) |
| | 504B, Anisha Apartments, |) |
| | Yari Road, Versona, |) |
| | Mumbai – 400 061. |) |
| | |) |
| 4). | Aai Shree Khodiya Leasing And |) |

- Finance Private Limited,)
a private limited company)
incorporated under the Companies)
Act, 1956, having its Registered)
Office at B/708, Fair Deal House)
Opp. St.Xavier's Hostel,)
Swastik Char Rasta, Off. C.G. Road)
Navrangpura, Ahmedabad – 380 009)
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- 5). Ankush Holding Limited,)
A Company incorporated under)
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its registered office at B-12, Sulabh)
Flats, Nr.Mirambica School Road)
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- 6). Asopalav Traders Private Limited,)
A Company incorporated under)
the Companies Act, 1956, having)
its registered office at 106, Prarmbh,)
SBS Street, Stadium Circle,)
Navrangpura, Ahmedbad - 380 009.)
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- 7). Saharshi Securities Private Limited,)
A Company incorporated under)
the Companies Act, 1956, having)
its registered office at B-12, Sulabh)
Flats, Nr.Mirambica School Road)
Naranpura, Ahmedbad - 380 013.)
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- 8). Steps Securities Private Limited,)
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- 9). Ankush Finstock Limited,)
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Swastik Char Rasta, Off. C.G. Road)

Navrangpura, Ahmedabad – 380 009)
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10). Mundhra Container Freight Station)
Private Limited, a private limited)
company incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049) ...Respondents

WITH
COMPANY APPEAL NO.49 OF 2014
IN
COMPANY PETITION NO.177 OF 2007

Prudence Maynard,)
Indian National, residing at 701,)
Plot No.100, Sector No.1(S), New Panvel)
Navi Mumbai – 410 206 (Maharashtra)) ...Appellant
...Ori.Petitioner

....Versus....

- 1). Mundhra Container Freight Station)
Private Limited, a private limited)
company incorporated under the)
Companies Act, 1956, having its)
Registered Office at 12B,)
Kalumal Estate, A.B. Nair Road,)
Juhu, Mumbai – 400 049)
)
- 2). Capt. Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
Yari Road, Versona,)
Mumbai – 400 061.)
)
- 3). Mr.Navjit Grewal,)
Indian Inhabitant, residing at)
12B, Kalumal Estate, A.B. Nair)
Road, Juhu, Mumbai – 400 049.)
)
- 4). Mrs.Alka Rajeev Niroota,)
Indian Inhabitant, residing at)
504B, Anisha Apartments,)
)

- | | | | |
|-----|-------------------------------------|---|----------------|
| | Yari Road, Versona, |) | |
| | Mumbai – 400 061. |) | |
| | |) | |
| 5). | Mrs.Kavita Navjit Grewal, |) | |
| | Indian Inhabitant, residing at |) | |
| | 12B, Kalumal Estate, A.B. Nair |) | |
| | Road, Juhu, Mumbai – 400 049. |) | |
| | |) | |
| 6). | Punjab Terminals Private Limited, |) | |
| | a private limited company |) | |
| | incorporated under the |) | |
| | Companies Act, 1956, having its |) | |
| | Registered Office at 12B, |) | |
| | Kalumal Estate, A.B. Nair Road, |) | |
| | Juhu, Mumbai – 400 049. |) | |
| | |) | |
| 7). | Brett Maynard, (British National),) |) | |
| | Res : 73, Barnwell Drive, |) | |
| | Hockely Essex – 5554UZ |) | |
| | United Kingdom. |) | |
| | |) | |
| 8). | Georgina Maynard, |) | |
| | British National 701, Sai Paradise, |) | |
| | Plot No.100, Sector No.1(S), |) | |
| | New Panvel, |) | |
| | Navi Mumbai – 410 206. |) | ...Respondents |

WITH
COMPANY APPLICATION NO.38 OF 2015
IN
COMPANY APPEAL NO.49 OF 2014
IN
COMPANY PETITION NO.177 OF 2007

- | | | |
|-----|-------------------------------------|---|
| 1). | Prudence Maynard, |) |
| | Indian National, residing at 701, |) |
| | Sai Paradise, Plot No.100, |) |
| | Sector No.1(S), New Panvel |) |
| | Navi Mumbai – 410 206 |) |
| | (Maharashtra) |) |
| | |) |
| 2). | Miss Georgina Maynard, |) |
| | acting through her mother & Natural |) |
| | guardian, Mrs.Prudence Anthony |) |

Maynard, residing at)
 701, Sai Paradise,)
 Plot No.100, Sector No.1(S),)
 New Panvel,)
 Navi Mumbai – 410 206.)

...Applicants
 ...Appellants

....Versus....

- 1). Mundhra Container Freight Station)
 Private Limited, a private limited)
 company incorporated under the)
 Companies Act, 1956, having its)
 Registered Office at 12B,)
 Kalumal Estate, A.B. Nair Road,)
 Juhu, Mumbai – 400 049)
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- 2). Capt. Rajeev Niroota,)
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- 3). Mr.Navjit Grewal,)
 Indian Inhabitant, residing at)
 12B, Kalumal Estate, A.B. Nair)
 Road, Juhu, Mumbai – 400 049.)
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- 4). Mrs.Alka Rajeev Niroota,)
 Indian Inhabitant, residing at)
 504B, Anisha Apartments,)
 Yari Road, Versona,)
 Mumbai – 400 061.)
)
- 5). Mrs.Kavita Navjit Grewal,)
 Indian Inhabitant, residing at)
 12B, Kalumal Estate, A.B. Nair)
 Road, Juhu, Mumbai – 400 049.)
)
- 6). Punjab Terminals Private Limited,)
 a private limited company)
 incorporated under the)
 Companies Act, 1956, having its)
 Registered Office at 12B,)
 Kalumal Estate, A.B. Nair Road,)

Juhu, Mumbai – 400 049.	)	
	)	
7). Brett Maynard, (British National),)	)	
Res : 73, Barnwell Drive,	)	
Hockely Essex – 5554UZ	)	
United Kingdom.	)	...Respondents

Ms.Fereshte Sethna with Ms.Shreema Doshi, Mr.Adhiraj Malhotra, Ms.Kameela Diler i/b Duttmenon Dunmorrsett for the Appellant.

Mr.Rahul Narichania, Senior Counsel with Mr.Shyam Kapadia, Mr.Abhishek Mishra and Mr.Amin Kherada i/b Mr.Amin Kherada for the Respondent Nos.1 to 6 in COAPP No.18 of 2012, for the Respondent Nos.1 to 3 and 10 in COAPP No.19 of 2012 and for the Respondent Nos.1 to 6 in COAPP No.49 of 2014.

Mr.V.R. Dhond, Senior Counsel with Mr.Abhishek Khare and Ms.Roshni Nail i/b Khare Legal Chambers for the Respondent No.7 in COAPP No.49 of 2014.

Mr.Tejevver Singh for the Respondent no.7 in COAPP No.18 of 2012, for the Respondent No.11 in COAPP No.19 of 2012 and for the Respondent No.8 in COAPP No.49 of 2014.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH JANUARY, 2017
PRONOUNCED ON : 11TH APRIL, 2017

JUDGMENT :-

1. By these three appeals filed under section 10-F of the Companies Act, 1956, the appellant has impugned a common order passed by the Company Law Board on 17th October, 2011, dismissing the three company applications filed by the appellant in three separate company petitions filed before the Company Law Board. By consent of the parties, the aforesaid appeals were heard together and are being disposed of by a common judgment.

2. Insofar as Company Application No.457 of 2011 filed by

the appellant, which came to be dismissed by the said common order dated 2nd September, 2011 is concerned, the appellant in the said company application had prayed that the order dated 25th June, 2011 passed by the Company Law Board be modified and the respondent nos.2 and 3 be directed to exit the respondent nos.1 and 6 companies. The appellant had also prayed for an order of dispensation of valuation ordered by the Company Law Board by the said order dated 25th June, 2009 and to hear the company petition itself on merit. The appellant in the alternate prayed that the valuation shall be done on the basis of the audited balance sheet ending on 31st March, 2011 and the value of diversion of business of other entities incorporated by the respondent nos.2 and 3 should also be factored in the valuation process.

3. Insofar as Company Application No.399 of 2011 filed by the appellant is concerned, the appellant had prayed for an amendment in Company Petition No.177 of 2007. The appellant also filed Company Application No.398 of 2011 *inter-alia* praying for transfer of Company Petition (46 of 2011), which was filed by the appellant before the Company Law Board, Mumbai against Mundhra Containers Freight Station Private Limited for various reliefs. In the said Company Petition (46 of 2011), the appellant had also impleaded the respondent nos.1 and 6 herein as the respondents initially and deleted its names subsequently. The company applications for various reliefs referred to aforesaid were originally filed by the appellant in Company Petition Nos.177 of 2007 and 199 of 2007 along with her daughter, who is now transposed as one of the respondent in these appeals.

4. Mr. Anthony Maynard and the respondent no.2 and 3 incorporated the respondent no.1 i.e. Mundhra Containers Freight Station Private Limited for the purpose of carrying on business of container freight and various other businesses. In the month of October, 2005, the said Mr. Anthony Maynard and the respondent nos.2 and 3 also incorporated the respondent no.6 i.e. Punjab Terminals Private Limited for the purpose of carrying on similar business at Ludhiyana.

5. It was the case of the respondent nos.2 and 3 that the aforesaid three promoters had initially invested equally in the respondent nos.1 and 6 companies in the names of each promoter and their respective spouses and were granted shareholding in these companies. It is the case of the respondent nos.2 and 3 that the shareholding of the promoters and their family members was however altered in the respondent nos.1 and 6 companies during the life time of the said Mr. Anthony Maynard i.e. during 2005-2006 in view of the said Mr. Anthony Maynard having declined to contribute any further amount in the respondent no.1 and the respondent no.6 companies.

6. It is the case of the respondent nos.2 and 3 that there was no agreement between the three promoters that their respective shareholdings in the respondent nos.1 and 6 companies would be maintained at 1/3rd each. It is the case of the respondent nos.2 and 3 that the said Mr. Anthony Maynard never objected to the change in the shareholding pattern in the respondent nos.1 and 6. It is the case of the respondent nos.2 and 3 that the said Mr. Anthony Maynard was employed on full time basis initially with Gujarat Adani Ports Limited

and subsequently he joined APM Terminals and used to be outside India for substantial period till his death. According to the respondent nos.2 and 3 the said Mr.Anthony Maynard had contributed only Rs.77,87,680/- and thereafter did not contribute any further capital / investment.

7. On 7th January, 2007, the said Mr.Anthony Maynard expired. The appellant claims to be the widow of the said Mr.Anthony Maynard. Ms.Georgina Maynard, who is the respondent no.7 in Company Appeal Nos.18 of 2012 and the respondent no.11 in Company Appeal No.19 of 2012 and the respondent no.8 in Company Appeal No.49 of 2014 is daughter of the said Mr.Anthony Maynard. The respondent no.7 in Company Appeal No.49 of 2014 is son of the said Mr.Anthony Maynard. Some time in the month of October, 2007, the appellant along with her daughter filed two separate petitions i.e. Company Petition No.177 of 2007 and Company Petition No.199 of 2007 before the Company Law Board, Delhi under sections 397, 398, 402 and 403 of the Companies Act, 1956 against the respondent nos.1 and 6 and also impleaded its promoters and others alleging oppression and mismanagement by other two promoters and prayed for various reliefs. The Company Law Board, Delhi passed an interim order in the said Company Petition No.177 of 2007 on 30th October, 2007 directing the respondent nos.1 and 6 and other respondents to the said petition not to go ahead with the right issue of shares for the time being and to maintain *status-quo* with respect to the shareholding as on the date of the said order in the respondent no.1 and the respondent no.6 companies. The Company Law Board also recorded that since the petitioner (appellant herein) was willing to go out of the two

companies on proper consideration, the respondents may indicate their willingness to purchase shares of the appellant and her daughter on 15th November, 2007.

8. On 15th November, 2007, the respondent nos.2 and 3 made a submission before the Company Law Board in Company Petition No.177 of 2007 that they were willing to purchase those shares of the appellant and her daughter at a valuation as provided in the articles. By the said order, the Company Law Board suggested that instead of time consuming valuation, the respondent no.1 company could indicate a total sum which is to be paid to the appellant herein against the share of the appellant and her daughter. It was further directed that the said procedure shall be followed in respect of the respondent no.6.

9. On 29th November, 2007, the Company Law Board recorded that the respondent no.1 had given a proposal for buying out appellant which may be considered by the appellant and report on 7th January, 2008.

10. On 7th January, 2008, the Company Law Board adjourned the matter to 16th January, 2008 and directed that on the adjourned date, when both the parties will indicate the quotation of consideration for the shares of the appellant. It was made clear that in case of no compromise, the petition would be heard on 11th and 12th February, 2008.

11. On 20th April, 2009, the Company Law Board passed an order recording that the parties had agreed that the appellant will get

out of the company on valuation of her shares in both the companies as 1/3rd share subject to the deduction of the issue price of her entitled shares in right issue. The valuation will be based on the balance sheet as on 31st March, 2008. It was recorded that the parties to approach M/s.Bansi Mehta and M/s.Grant Thoraton and ascertain the fees chargeable by them. The matter was adjourned to 14th May, 2009. On 21st May, 2009, the appellant and her daughter submitted a memorandum i.e. "Points To be Factored into Determination of the fair value" of equity in the respondent nos.1 and 6. By the said memorandum, the appellant sought inclusion of the other companies incorporated by the respondent nos.2 and 3 in which the husband of the appellant or the appellant was not a shareholder and made various other suggestions. It is the case of the appellant that the said memorandum was relied upon by the appellant and her daughter before the Company Law Board.

12. On 25th June, 2009, the Company Law Board recorded that in the hearing held on 20th April, 2009, the parties had agreed that the appellant and her daughter would go out of the respondent nos.1 and 6 on fair valuation of their shares as a 1/3 shareholders, and consideration so arrived at would be subject to the deduction of the amount of issue price on the entitlement of the appellant and her daughter in the right share. It was recorded that the valuation is to be based on the balance sheets as on 31st March, 2008. It is further recorded that since the parties could not agree on the name of the valuer, the Company Law Board had indicated during the hearing on 21st May, 2009 that the Company Law Board itself would appoint a valuer.

13. The Company Law Board appointed M/s.Chaturvedi and Shah, Chartered Accountants to determine the fair value of the shares of the appellant and her daughter in the respondent nos.1 and 6 herein. It was made clear that the valuation would be based on the balance sheets as on 31st March, 2008. Their entitlement would be as 1/3rd shares in both the companies. The respondents will negotiate the remuneration payable to the valuers and pay the same. It was directed that both sides would be at liberty to make oral and written submissions. It was provided that the valuers will take into consideration the submissions made by the parties and would also circulate draft valuation reports to the parties and will also take into consideration while preparing the final valuation report, the submissions of the parties in relation to the draft valuation reports and directed the valuers to submit the final valuation report latest by 30th September, 2009.

14. On 14th July, 2009, the appellant and her daughter through their advocates approached M/s.Chaturvedi & Shah, Chartered Accountant, who were appointed as the valuers by the Company Law Board and informed the said valuers of the order dated 25th June, 2009 passed by the Company Law Board. The appellant requested the said valuers to schedule the appointment for discussing the matter of the proposed valuation contending that there were various key ancillary prospect and / or valuation that would require due factoring when carrying out the requisite valuation.

15. On 16th July, 2009, the appellant and her daughter submitted a memorandum to the valuers for consideration. It is the case of the respondent nos.1 to 6 that the said valuers however,

objected to the appellant relying upon the said memorandum as the same was unsigned and did not bear any stamp of filing before the Company Law Board and the same contained various submissions, which would have required the valuers to audit the accounts of the respondent company afresh and were beyond the order dated 25th June, 2009.

16. On 16th September, 2009, the Company Law Board passed an order recording that the appellant and her daughter had confirmed that they had not received the accounts reported to have been attached to the notice and that the respondents may through the counsel deliver the accounts and connected papers on the same day. On 25th August, 2009, the appellant and her daughter through their advocates addressed a letter to the valuers M/s.Chaturvedi & Shah, Chartered Accountants recording that a meeting was held on 16th July, 2009. In such meeting, they had handed over a copy of the memorandum which was filed by the appellant before the Company Law Board on 21st May, 2009 containing relevant matters required to be factored into determination of "Fair Value" of Equity in two companies and requested to inform about the steps being taken in regard to the valuation process.

17. The appellant and her daughter requested the valuers to arrange a meeting and inform the appellant to enable the appellant to participate and discuss the matter. They also requested the valuers to inform whether any communication / liason had occurred between the valuers and the respondent companies. On 25th August, 2009, the said valuers recorded that the said copy of the memorandum furnished by the appellant and her daughter to the said valuers was

unsigned and undated document and did not carry any acknowledgement of the Company Law Board. The appellant and her daughter were informed that the said valuers had called the information and details from the respondents and were awaiting the same. Learned advocates representing the appellant and her daughter were informed that whenever the appellant and her daughter wanted to meet the said valuers, they should meet the valuers with a prior appointment.

18. On 26th August, 2009, the appellant and her daughter through their advocates informed the said valuers that they had instructed their advocates to forthwith apply to the Company Law Board for removal of the valuers from handling of the entrusted task of valuation and to ensure that no further steps should be taken by the valuers in respect of the valuations until further orders of the Company Law Board and made it clear that no fees / charges would be liable to be paid to the said valuers by the appellant and her daughter.

19. On 28th August, 2009, the said valuers replied to the said letter dated 25th August, 2009 addressed by the learned advocates for the appellant and her daughter and stated that the Company Law Board had not passed any order or instructed for removal of the valuers from handling the entrusted task of valuation and had directed to continue the valuation process and accordingly the valuers would proceed with the assignment. The said valuers made it clear that if the appellant and her daughter had anything to submit to the said valuers relating to the valuation, they were free to submit the same with the valuers.

20. On 15th October, 2009, the appellant and her daughter filed an affidavit before the Company Law Board alleging that they had conveyed their in-principal consent to explore the possibility of sale of their shareholding in two companies subject to the fair valuers to be appointed in the matter and the valuation to be conducted on fair basis to avoid prohibiting costs associated with the conduct of the proceedings in New Delhi. It was also alleged that there was no scope for the appellant and her daughter to agree to any order for sale of shares without all conditions imposed in her memorandum dated 21st May, 2009 being conceded by the respondent. She also made various allegations against the respondents regarding its alleged attempt to influence the valuers. The appellant and her daughter expressed a desire to continue to prosecute their petitions and requested the Company Law Board to set the petitions down for final hearing forthwith.

21. On 15th October, 2009, the Company Law Board directed the respondents to file reply to Company Application Nos.530 of 2009 and 531 of 2009 and directed issuance of notice to the valuers. By an order dated 22nd January, 2010, the Company Law Board directed that the valuers shall submit its report on valuation within four weeks from the date of the said order.

22. On 20th January, 2011, Mr.Brett Maynard, the respondent no.7 in Company Appeal No.49 of 2014 who is son of Mr.Anthony Maynard filed a Company Application (42 of 2010) before the Company Law Board and applied for his impleadment as a co-respondent. The Company Law Board recorded that the appellant

and her daughter had admitted that the respondent no.7 was the son of Mr.Anthony Maynard from a former marriage and was entitled in equal proportion in the shareholding of late Mr.Anthony Maynard in the first respondent no.1 company by operation of law. The Company Law Board also referred to paragraph 4 of the company petition No.177 of 2007 filed by the appellant herein and her daughter stating that they would welcome Mr.Brett Maynard-respondent no.7 to join the company petition.

23. The Company Law Board accordingly passed an order on 20th January, 2011 permitting impleadment of the respondent no.7 as a co-respondent. The said order is not impugned by the appellant and her daughter. On 9th February, 2010, M/s.Chaturvedi & Shah, Chartered Accountants submitted a valuation report opining that the fair value of the equity shares of the company as on 31st March, 2008 would be Rs.2,944/- per equity share of Rs.10/- fully paid up.

24. On 4th March, 2010, the appellant and her daughter filed Company Application (120 of 2010) before the Company Law Board *inter-alia* praying for keeping the order dated 22nd January, 2010 by which the valuers were directed to submit its report within four weeks, in abeyance until disposal of the Company Application No.531 of 2009 and in the alternate, prayed that the valuation report submitted by M/s.Chaturvedi & Shah, Chartered Accountants before the Company Law Board be quashed and set aside.

25. The Company Law Board passed an order on 9th May, 2011 and referred to the order dated 25th June, 2009 passed by the Company Law Board thereby appointing M/s.Chaturvedi & Shah,

Chartered Accountants to determine the fair value of the shares of the company and had issued various directions in that regard. The Company Law Board perused the valuation report submitted by the said valuers. It was held by the Company Law Board that a fresh opportunity was not granted to the appellant and her daughter to make submissions on the valuation. The draft report was not circulated amongst the parties and consequently the submissions of the parties in relation thereto were also not considered. The copies of the written submissions were not exchanged.

26. It was held that the Company Law Board therefore, deemed fit not to accept the valuation dated 9th February, 2010 and directed the said valuers to submit a fresh report of valuation after complying with the directions at serial Nos.(iv) to (viii) as contained in the order dated 25th June, 2009 and directed the parties to appear before the same valuers on 20th May, 2011. However, it was made clear in the said order dated 9th May 2011 that all this was not due to any bias or extraneous consideration on the part of the said valuers but perhaps in an anxiety to complete the assignment within four weeks as directed by an order dated 22nd January, 2010.

27. Being aggrieved by the said order dated 9th May, 2011 by the Company Law Board, the appellant along with her daughter filed an appeal under section 10-F of the Companies Act, 1956 before this Court.

28. On 22nd July, 2011, the parties filed minutes of the order before this Court duly signed by their respective counsel. In the said minutes of the order, it was agreed and ordered that in the order

dated 25th June, 2009 passed by the Company Law Board, Principal Bench, New Delhi in Company Petition Nos.177 of 2009 and 199 of 2009, for the name "M/s.Chaturvedi & Shah, Chartered Accountants" substituted the name "M/s.V.B. Haribhakti & Co." 42, Free Press House, Nariman Point, Mumbai. It was further ordered that the said valuers M/s.V.B. Haribhakti & Co. shall complete the valuation and submit a fresh report to the Company Law Board or or before 31st October, 2011. Rest of the said order remained unaltered, including the parties agreement that the appellant would go out of the two companies of fair valuation of their shares. The parties agreed that the representations to the valuers shall be in accordance with the said order dated 25th June, 2009. It was clarified that the said substitution was being ordered without any adverse reflection on M/s.Chaturvedi & Shah or any of its partners and on the express condition that all the allegations against them were withdrawn by the appellant. The parties were directed to appear before the said valuers on 29th July, 2011 at 3:00 p.m. It is not in dispute that the said minutes of the order was duly signed by the counsel appearing for the appellant, her daughter and the respondent nos.1 to 6.

29. On 29th July, 2011, the appellant and her daughter through their advocates filed a praecipe in this Court in the said Company Application (Lodging) 23 of 2011 and Company Application (Lodging) No.24 of 2011, which were filed in Company Appeal (Lodging) No.24 of 2011 and Company Appeal (Lodging) No.25 of 2011 respectively for seeking circulation of the papers and proceedings in those matters before Shri Justice S.J. Kathawalla to enable the appellant to apply for speaking to the minutes of the order dated 22nd July, 2011.

30. In the said praecipe, it was alleged by the appellant that the counsel appearing for the appellant had made submissions before this Court on 22nd July, 2011 that any valuation report by substitute valuers be stipulated for submission to the Company Law Board within six months, which was not objected to by the counsel for the respondents, however, the order recorded that such valuation report would be submitted within three months and accordingly required rectification in paragraph 1(b) through replacing “31.10.2011” with “31.01.2012.”

31. It was also alleged that this Court at the time of passing the order had specifically observed that the appellant and her daughter were at liberty to apply to the Company Law Board to submit that they were not bound to exit / sell their shareholding and/or that the valuation date of 2008 was no longer relevant and/or for an express direction that the valuers should take into account the entities to which business of the respondent no.1 - company in Company Appeal (Lodging) No.24 of 2011 had been siphoned. It was alleged that however, that had not been reflected in the said order and therefore, may be suitably incorporated in the manner deemed appropriate by this Court in the interest of justice.

32. By the said praecipe, the then appellant and her daughter also prayed for dispensing with the requirement of filing a detailed paper book as per practice note no.29. It was mentioned in the said praecipe that the appellants had notified lawyers representing the respondents regarding the said application for speaking to the minutes of the order. No order came to be passed by Shri Justice S.J. Kathawalla on the said praecipe.

33. On 29th July, 2011, the then appellants i.e. the appellant herein and her daughter through their advocates addressed a letter to M/s.V.B. Haribhakti & Co. contending that the valuation exercise might not be required at all, in view of the fact that they had instructed their learned advocates to move an application before the Company Law Board to submit that they were not bound to sell their stake in the respondent no.1 company and/or respondent no.6 company and as such it would be pointless to embark on such an exercise. In the alternate, it was contended that it was their case that any valuation of the respondent nos.1 and 6 must occur based on the latest books of accounts of the respondent nos.1 and 6 as also factor in diversions of corporate opportunities to Contrans Logistics, Navitrans Terminals, Aditya Container Freight Station and Altair Infrastructure Private Limited in such valuations.

34. It was the case of the appellant and her daughter that with a view to ensure that a fair and transparent valuation process was carried out, they had requested the valuers to issue appropriate comprehensive directives in that regard. Along with the said letter, they also sent a letter of authority authorizing their advocates to represent them before the valuers as may be perceived to be relevant in connection with imminent valuation of 33% shareholding in the respondent nos.1 and 6 which had been directed to be carried out by the said valuers M/s.V.B. Haribhakti & Co. vide order dated 22nd July, 2011 passed by this Court.

35. On 10th August, 2011, the said valuers replied to the said letter dated 29th July, 2011 addressed by the learned advocates for

the appellant and her daughter and clarified various issues. The new valuers referred to the order dated 22th July, 2011 passed by this Court and the order dated 25th June, 2009 passed by the Company Law Board and conveyed that according to those orders, the valuation of the shares of the respondent nos.1 and 6 companies was to be based on the balance sheets as on 31st March, 2008 and accordingly the valuers would indicate the valuation of shares of the respondent nos.1 and 6 considering the balance sheets as on 31st March, 2008 and thus the valuers would indicate the valuation of the shares of the respondent nos.1 and 6 alone. The said valuers also issued various directions in the said letter and conveyed that the valuers would ensure fair and transparent process as set out in the said letter.

36. On 2nd September, 2011, the appellant and her daughter filed Company Application (457 of 2011) before the Company Law Board in Company Petition (177 of 2007) *inter-alia* praying for modification of the order dated 25th June, 2009 passed by the Company Law Board and to direct the respondent nos.2 and 3 to exit the respondent nos.1 and 6 and in the alternate prayed for modification of the order dated 25th June 2009 to permit the said Company Petition to be set down for final disposal on merit and to dispense with any valuation of shareholding of the respondent nos.1 and 6.

37. In the alternate to prayer clause (b), the appellant and her daughter prayed that the order dated 25th June, 2009 passed by the Company Law Board be modified to direct any valuation of shares to be carried out on the basis of (I) audited final statements of the

respondent nos.1 and 6 i.e. on the basis of the balance sheets as on 31st March, 2011 and (ii) to factor into valuation, the value of the diversion of the business to M/s.Contrans Logistic Pvt. Ltd., Navi Trans Terminals Pvt. Ltd., Aditya Container Freight Station Pvt. Ltd. and Altair Infrastructure Private Limited. The appellant and her daughter also prayed that the costs of the valuation be borne by the respondent nos.2 and 3 including in relation to the costs paid to M/s.Chaturvedi & Shah and M/s.V.B. Haribhakti & Co.

38. The appellant and her daughter also filed a separate Company Application (398 of 2011) on 2nd August, 2011 before the Company Law Board *inter-alia* praying for the directions that the Company Petition No.46 of 2011 which was filed by them before the Company Law Board, Mumbai against Mundhra Corporate Services Private Limited be transferred to the Principal Bench, New Delhi and be consolidated and heard along with the present Company Petition No.177 of 2007 and Company Petition No.199 of 2007, which was already pending before the Company Law Board, New Delhi.

39. On 21st June, 2011, the appellant and her daughter also filed company application (399 of 2011) in Company Petition No.177 of 2007 before the Company Law Board *inter-alia* praying for a permission to amend some of the averments made in the said Company Petition No.177 of 2007 as per Schedule – A appended in the said company application. By a common order dated 17th October, 2011, the Company Law Board dismissed the Company Application Nos.398 of 2011 and 399 of 2011 and declined to issue notice in Company Application Nos.457 of 2011 and 459 of 2011 and dismissed both those company applications in *limine*. The Company

Law Board issued notices to the respondents in Company Application No.458 of 2011.

40. Being aggrieved by the said common order dated 17th October, 2011, the appellant and her daughter filed three separate Company Appeals bearing Nos.18 of 2012, 19 of 2012 and 49 of 2012 in this Court. They also applied for interim reliefs by filing separate company applications.

41. On 24th February, 2012, the respondent nos.1 to 6 filed Company Application (112 of 2012) before the Company Law Board *inter-alia* praying for permission to purchase the shares of Brett Maynard, son of late Mr.Anthony Maynard, who was impleaded as respondent no.7 pursuant to an order passed by the Company Law Board. On 17th May, 2012, the Company Law Board disposed of the said Company Application (112 of 2012) with a direction to the respondent no.1 for transmitting the shares of the respondent no.7 in his name and to rectify the share register of the companies.

42. On 8th June, 2012, the appellant and her daughter filed an application bearing Company Application No.389 of 2012 *inter-alia* seeking an injunction against the respondent no.7 from dealing with his shareholding in the respondent no.1 and for other reliefs. By an order dated 22nd November, 2013, the Company Law Board dismissed the said Company Application No.389 of 2012 filed by the appellants. Being aggrieved by the said order dated 22nd November, 2013, they have filed Company Appeal (49 of 2014) under section 10-F of the Companies Act, 1956 before this Court.

43. On 9th June, 2016, the learned advocate appearing on behalf of Prudence Maynard (original appellant No.1) informed this Court that she would no longer be appearing for Ms.Georgina Maynard who was appellant no.2 on the ground that there was conflict of interest between the original appellant no.1 and daughter (original appellant no.2). On 13th June, 2016, this Court ordered that the original appellant no.2 i.e. daughter of the original appellant no.1 be transposed as the respondent no.7 in Company Appeal No.18 of 2012 as the respondent no.11 in Appeal No.19 of 2012 as as respondent no.8 in Company Appeal No.49 of 2014. Ms.Georgina Maynard was accordingly transposed as one of the respondent.

44. Ms.Sethna, learned counsel for the appellant invited my attention to some of the above referred orders passed by the Company Law Board and also by this Court including the order dated 22nd July, 2011. She submits that the original petitioners had filed a memorandum before the Company Law Board on 21st May, 2009 thereby making various suggestions which were to be considered by the Company Law Board before passing any further order in the pending proceedings filed by her client. She submits that the said memorandum dated 21st May, 2009 was not controverted by any of the respondents and was admittedly on record before the Company Law Board when the Company Law Board passed an order on 25th June, 2009 thereby appointing M/s.Chaturvedi & Shah, Chartered Accountants as Valuers.

45. It is submitted by the learned counsel that since the Company Law Board did not accept the request made by the appellant and her daughter and did not consider the suggestions

made by them in the said memorandum and remanded the said matter to the Chartered Accountants namely M/s.Chaturvedi & Shah, her client had filed an appeal along with daughter of her client before this Court under Section 10F of the Companies Act, 1956. She submits that her client had also filed an affidavit before the Company Law Board on 15th October, 2009 in which they had referred to a Memorandum detailing all of the pertinent issues that were liable to be considered in relation to the valuation of the shares of the respondent nos.1 and 6 which the respondents had allegedly conceded at such hearing of 21st May, 2009 before the Company Law Board. It was alleged in the said affidavit that in the order dated 25th June, 2009, a specific liberty was reserved by the Company Law Board to make submissions to the valuers for due consideration which liberty was granted in terms of the assurance of the Chairman of the Company Law Board alleged to have been made to the appellant and her daughter at the hearing of 21st May, 2009. It was also alleged that an assurance was made that all rights of the appellant and her daughter would be duly protected by the valuer including but not limited to issues specifically encompassed in the memorandum dated 21st May, 2009.

46. It was further alleged that there was no scope for the appellant and her daughter to agree to any order for sale of shares without all conditions imposed in the memorandum dated 21st May, 2009 being conceded by the respondents. In the said affidavit, it was alleged that the appellant and her daughter had no faith in the process which was devised to facilitate her unlocking the full value of her rightful shareholding including that of her minor daughter and she desired to continue to prosecute her petitions notwithstanding the

immense financial difficulty involved in due pursuit.

47. It is submitted by the learned counsel for the appellant that since in the said order dated 22nd July, 2011 passed by this Court, certain submissions made by her client on the aspect of valuation report and certain observations made by this Court at the time of passing the said order were not recorded in the said order, the appellant filed a praecipe on 29th July, 2011 before this Court for speaking to the minutes of the said order dated 22nd July, 2011. She submits that none of the respondents controverted any of the allegations made by the appellant in the said praecipe dated 29th July, 2011. She submits that this Court did not pass any order on the said praecipe dated 29th July, 2011, however granted liberty to the appellant to apply for modification of the order dated 25th June, 2009 before the Company Law Board.

48. It is submitted that pursuant to the said liberty granted by this Court, the appellant filed an application (457 of 2011) before the Company Law Board for various reliefs. She invited my attention to the averments made in the said application before the Company Law Board. She submits that the appellant had accordingly prayed before the Company Law Board for modification of the order dated 25th June, 2009 and to direct the respondent nos.2 and 3 to exit the respondent nos.1 and 6 and in the alternative to dispense with any valuation of shareholding of the respondent nos.1 and 6 and in the alternative to direct any valuation of share to be carried out on the basis of the audited financial statements of the respondent nos.1 and 6 on the basis of balance sheet as on 31st March, 2011 and to factor into the valuation the value of diversion of business of

M/s.Contrans Logistic Pvt. Ltd., Navi Trans Terminals Pvt. Ltd., Altair Infrastructure Pvt. Ltd. and Aditya Container Freight Station Pvt. Ltd.

49. It is submitted by the learned counsel that the arrangement arrived at between the parties which was recorded in the order dated 22nd July, 2011 passed by this Court constituted an Agreement. She submits that the date of entitlement of payment of the appellant on the basis of the price was not agreed in the said order dated 22nd July, 2011. She submits that the case of the appellant and her daughter was already placed on affidavit time and again before the Company Law Board as well as before this Court which could not have been overlooked by this Court. She submits that since the agreement recorded in the order dated 22nd July, 2011 did not record all the terms and conditions agreed upon by the parties, this Court while construing the said agreement has to consider the case of the appellant and the pleadings filed before the Company Law Board and before this Court for ascertaining the true and correct intention of the parties before the said order dated 22nd July, 2011 came to be passed by this Court.

50. It is submitted that there was no agreement for accepting the valuation report of M/s.V.B. Haribhakti & Co., Chartered Accountants who were appointed as Valuers by this Court. She also invited my attention to the letter dated 23rd July, 2011 addressed by the appellant and her daughter in support of the submission that the real intention of the appellant and her daughter was rightly placed on record by the appellant and her daughter in the said letter immediately after the said order dated 22nd July, 2011 came to be

passed by this Court. It is submitted by the learned counsel for the appellant that the Court has to consider the surrounding circumstances, documents and pleadings on record before the Company Law Board as well as before this Court before the date of the said order dated 22nd July, 2011 passed by this Court which the Company Law Board failed to ascertain the true and correct intention of the parties to arrive at the said agreement before the said order dated 22nd July, 2011 came to be passed by this Court.

51. Learned counsel for the appellant also invited my attention to the corrections made in the said minutes of the order and would submit that originally there was a specific reference to the affidavit filed by the appellant and her daughter which reference was subsequently deleted by the parties in the said order as is apparent from bare perusal of the said minutes of the order dated 22nd July, 2011. She submits that the respondents had asked the appellant to withdraw the said affidavit. She submits that the appellant and her daughter had accordingly by letter dated 23rd July, 2011 recorded as to what transpired in the Court. She submits that the Company Law Board did not consider the contents of the praecipe filed by the appellant and her daughter before this Court and that there was no denial to the contents of the said praecipe. The Company Law Board did not consider the letter dated 23rd July, 2011 addressed by the appellant and her daughter. She submits that there was no affidavit-in-reply filed by the respondents to the averments made in the Company Appeal No.457 of 2011. She submits that interpretation of the order dated 22nd July, 2011 passed by this Court by the Company Law Board is totally perverse, without any basis and overlooking the memorandum which was on record before the Company Law

Board as well as before this Court, the affidavit filed by the appellant and her daughter, recording letter dated 23rd July, 2011 and the praecipe filed by the appellant and her daughter on 29th July, 2011.

52. It is submitted by the learned counsel that since Shri Justice S.J. Kathawalla who had passed the said order dated 22nd July, 2011 was satisfied with the case of her client as to what transpired in the Court on 22nd July, 2011 and the same being not recorded in the said order was pleased to grant stay of the proceedings before the Company Law Board by passing the order in one of these appeals on 14th March, 2015 in which appeal, the appellant and her daughter had admittedly impugned the order passed by the Company Law Board in Company Application Nos.398 of 2011, 399 of 2011, 457 of 2011 and 459 of 2011. She submits that the orders passed by the Company Law Board which are impugned in these four applications discloses total non-application of mind. She submits that in none of the orders passed by the Company Law Board or by this Court, there was a rejection of memorandum filed by the appellant. It is submitted that since the Company Law Board had permitted the appellant to make submission before the valuers, that itself indicates that all the issues raised by the appellant in the memorandum and in the affidavit before the Company Law Board were permitted to be made before the Company Law Board.

53. It is submitted by the learned counsel for the appellant that there was neither any implied nor any express waiver by the appellant of the conditions / suggestions / points raised by the appellant in the affidavit filed by the appellant before the Company Law Board as well as before this court which were to be considered by the valuers while

submitting its valuation report. She submits that the appellant was not expected to accept the valuation of the shares of the respondent nos.1 and 6 on the basis of the valuation as on 31st March, 1998 though the said valuation was not done for quite sometime. She submits that the appellant also could not have waived her right to seek valuation of the share of the other companies incorporated by the respondent nos.2 and 3 and diverting the business of the respondent nos.1 and 6 to those companies as part of the valuation of the respondent nos.1 and 6.

54. It is submitted that the jurisdiction of the Company Law Board under sections 397 and 398 of the Companies Act, 1956 is an equitable jurisdiction which shall be exercised by this Court while hearing this appeal and an appropriate order in favour of the appellant be passed by accepting the suggestions made by the appellant in the affidavit and also in the memorandum. She submits that the Company Law Board ought to have considered those points/suggestions raised by the appellant while passing the impugned orders in the company applications filed by the appellant.

55. Learned counsel for the appellant placed reliance on Article 16 of the Articles of Association in support of her submission that even under the said Articles of Association which is a contract between the parties, respondent nos. 2 and 3 were bound to offer and pay the fair value for exit of the appellant. She submits that the said agreement provides for payment of a fair value for exit of minority shareholders.

56. It is submitted by the learned counsel for the appellant that

under the Articles of Association of the respondent nos.1 and 6, the appellant had claimed the right. She submits that since the appellant had established that there was corporate diversion of the business opportunity by diverting the entire business of respondent nos.1 and 6 to other companies incorporated by the respondent nos.2 and 3, the appellant was right in demanding that the entire value of business opportunity to be considered as part of the assets of the respondent nos.1 and 6 and ought to have been considered as assets of respondent nos. 1 and 6. She submits that the information about the siphoning of business by the respondent nos.2 and 3 to the other companies came to the knowledge of the appellant only after order dated 20th April, 2009 came to be passed by the Company Law Board and thus the appellant immediately raised the said issue, in the month of May, 2009 itself.

57. It is submitted by the learned counsel for the appellant that there was no delay on the part of the appellant insofar as submission of the valuation report by erstwhile valuer M/s.Chaturvedi & Shah as well as by the subsequent valuer is concerned. She submits that though the Company Law Board had set aside the valuation report submitted by the M/s.Chaturvedi & Shah dated 9th February, 2009 and had accepted the case of the appellant that the valuation report dated 9th February, 2009 submitted by the said M/s.Chaturvedi & Shah was incorrect, the Company Law Board directed the said Chartered Accountants to submit a fresh valuation report.

58. Learned counsel for the appellant invited my attention to the averments made by the respondent nos.1 to 6 in the Company Application No.116 of 2011 *inter-alia* praying for permission to raise

additional funds by the respondent nos.1 and 6. She submits that the appellant did not accept the offer of the respondent nos.1 and 6 for allotment of preference share to the appellant. She invited my attention to the paragraph 22 of the said application and would submit that even the said averments would clearly indicate that there was no binding agreement between the parties arrived at before the Company Law Board at any stage. She submits that so called agreement dated 22nd July, 2011 recorded by this court cannot be construed as a binding agreement. It is submitted that there is no agreement between the parties which is capable of enforcement. She submits that the surrounding circumstances ought to have been considered by the Company Law Board and by this court while interpreting the order dated 22nd July, 2011 passed by this court.

59. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in case of **Parayya Allayya Hittalamani vs. Paraya Gurulingayya Poojari & Ors. (2007) 14 SCC 318** and in particular paragraphs 14 to 22 in support of her submission that even while construing the consent decree passed by the court, evidence is permitted to show the real intention of parties as to why the consent terms were filed and the consent decree was obtained.

60. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd. vs. The State of Uttar Pradesh & Ors., AIR 1979 SC 621** and in particular paragraph 6 and would submit that it must be intentional act with full knowledge of rights of the parties failing which there would be no waiver/abandonment of the rights.

61. It is submitted by the learned counsel that since the respondent nos.1 and 6 being Private Limited Company and being in the nature of quasi partnership, the valuation of the share of the appellant will have to be made on the basis of a going concern. She submits that the valuation of the share of the appellant cannot be on the basis of the assets as on 31st March, 2008 but has to be on the basis of the date when the order is passed by this Court in this petition. Learned counsel placed reliance on the judgment of the Supreme Court in the case of **Vaishnav Shorilal Puri and Ors. vs. Kishore Kundanlal Sippy and Ors., 2004 120 Comp Cases 681 Bom.** and more particularly paragraphs on pages 716 to 718 and 725 in support of the submission that the valuation of the shares of the appellants will have to be made on the basis of the valuation prevailing on the date of the order.

62. It is submitted that separate companies were formed by the respondent nos.2 and 3 in the month of November 2006 so as to divert the business opportunity of the respondent nos.1 and 6 - companies. She submits that husband of the appellant expired on 7th January, 2007. The appellant came to know about such siphoning of the business opportunity by the respondent nos.2 and 3 in favour of other companies only in the month of May, 2009.

63. Learned counsel for the appellant placed reliance on the judgment of this Court in the case of **Vaishnav Shorilal Puri and Anr. vs. Kishor Kundan Sippy and Ors., (2006) 6 comp LJ 74 (Bom)** and more particularly paragraphs on page 118 thereof. Learned counsel placed reliance on an order of the Supreme Court in the case of **Kishore Kundan Sippy and Anr. vs. Vaishnav**

Shorilal Puri and Ors., (2008) 12 SCC 770 and would submit that the said dispute between the said two parties was settled before the Supreme Court. She submits that the judgment of this Court in the case of **Vaishnav Shorilal Puri and Anr.** (supra) decided by the learned Single Judge is approved by the Supreme Court on question of law.

64. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of **Chavalier I.I. Iyyappan & Anr. vs. The Dharmodayam Company, 1962 (1) SCR 85** and in particular paragraphs on page 95 and would submit that the respondent nos.2 and 3 were holding fiduciary capacity and were trustees of the assets of the respondent nos.1 and 6-companies and thus could not do anything in regard to the assets of those two companies which would prejudicially affect its rights.

65. Learned counsel for the appellant placed reliance on the judgment of this Court in the case of **Vinod Kumar & Anr. vs. Sigmalon Equipment P. Ltd. & Ors., 2005 (5) Bom.C.R. 84** and more particularly paragraphs on page 89 in support of her submission that the date of valuation must be the date on which the judgment is delivered. She submits that the value of the assets of the companies are amended and thus the valuation has to be on the closest date of the judgment. She submits that this Court also while passing an order dated 22nd July 2011 had directed that the valuation report shall be submitted within six months from the date of the said order. She submits that the appellant cannot suffer any prejudice because of the delay in submission of the valuation report or due to pendency of the proceedings before the Company Law

Board or before this Court.

66. Learned counsel for the appellant placed reliance on the judgment of this Court in the case of **Nafan B.V. Vs. Saf Yeast Company (P) Ltd. & Ors., (2016) 1 Comp LJ 36 (Bom)** and in particular paragraph 147 in support of her submission that for the purpose of the valuation of the shares, it would be most appropriate to consider the date on which the judgment is delivered as a reference.

67. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of **Commissioner of Wealth Tax vs. Mahadeo Jalan and Mahabir Prasad Jala and Ors., (1973) 3 SCC 157** and in particular paragraphs 4 to 12 and 14 in support of her submission that the valuer has to take into consideration various principles of law laid down by the Supreme Court on various aspects of the valuation of the shares of the company. She submits that the sale value of all the assets has to be taken into consideration for the purpose of distribution of the shares of the appellants.

68. It is submitted by the learned counsel for the appellant that the Company Law Board had committed an error of law by rejecting the application filed by the appellant for carrying out amendment to the company petition which was filed under Sections 397 and 398 of the Companies Act, 1956. Learned counsel placed reliance on the judgment in the case of **Ebrahimi vs. Westbourne Galleries Ltd. and Ors., (1972) 2 All ER**. She also placed on the judgment of the Calcutta High Court in the case of **Bajrang Prasad**

Jalan & Ors. vs. Mahabir Prasad Jalan & Ors., AIR 1999 Calcutta 156 and in particular paragraph 101 in support of her submission that the value of the shares of the appellants shall be fixed as on the date of passing of the judgment keeping in view of the fact that the properties of the respondent nos.1 and 6 are immovable properties and during the course of pendency of the proceedings, the value might have gone up.

69. Learned counsel for the appellant invited my attention to certain allegations made by the appellant in the company petition filed by her against the respondent nos.1 to 6 under Sections 397 and 398 of the Companies Act, 1956. She submits that the other directors of the respondent nos.1 and 6 have illegally diluted the shareholdings of Mr. Anthony Maynard from 33% to about 17%. She submits that the respondent nos.1 and 6 have also failed to transmit the shareholdings of the appellant in her favour and have made various attempts to exclude the appellant from participating the management of the respondent nos.1 and 6. The respondent nos.2 and 3 had given very short notice of the meetings of the respondent nos.1 and 6 then required in law. She submits that meetings of the respondent nos.1 and 6 were placed far away from the place of residence of the appellant and were fixed not in Mumbai.

70. It is submitted that the respondent nos.1 and 6 also did not permit the appellant to take inspection of the record. Learned counsel placed reliance on Article 27 of the Articles of Association of the respondent nos.1 and 6 and would submit that under the said Article, the appellant is entitled to become a permanent director of the respondent nos.1 and 6.

71. It is submitted by the learned counsel for the appellant that by the said order dated 22nd July, 2011 passed by this Court, only the name of the valuer was substituted. She submits that the said order was only a conditional consent order and in view of the conditions imposed while passing the said order were not acted upon by the respondents, the said conditional consent order was not binding upon the appellants.

72. Mr.Singh, learned counsel for the respondent no.7 who is daughter of the appellant and the deceased Anthony Maynard submits that his client was the original appellant no.2 in the Company Appeal Nos.18 of 2012 and 19 of 2012 and was subsequently transposed as the respondent no.7 in view of there being conflict of interest between the appellant and his client. It is submitted that the orders passed by the Company Law Board which are impugned by the appellant and his client in these proceedings are illegal. He submits that admittedly the respondent no.7 was minor when various orders came to be passed by the Company Law Board which are impugned by the appellant in the present proceedings. He submits that the respondent no.7 has attained the age of majority only on 18th February, 2015 and only upon she attaining the age of majority, she could dispute the alleged consent given by her through the appellant before the Company Law Board and before this Court which was not in the interest of the respondent no.7.

73. It is submitted that the express leave of the Company Law Board as well as this Court was not recorded before passing any such orders recording the alleged consent. There was no affidavit of

next friend filed by the appellant in any of the proceedings. He submits that there was no affidavit filed by the appellant stating that the alleged consent given by the appellant before the Company Law Board or before this Court was for the benefit of the respondent no.7 who was admittedly minor when such orders were passed. He submits that neither the Company Law Board nor this Court recorded any undertaking of the counsel or certificate of the pleader certifying that the alleged compromise of the appellant and the minor daughter was for the benefit of the minor.

74. It is submitted that the principles of natural justice apply to the proceedings before the Company Law Board as well as before this Court. He placed reliance on Section 10E(5) of the Companies Act, 1956 and also on Order XXXII Rule 7 of the Code of Civil Procedure, 1908 and would submit that the said provision is also in the realm of natural justice. Learned counsel placed reliance on the judgment of the Himachal Pradesh High Court in the case of **Mrs.M.J. Stone & Ors. vs. Union of India & Ors.** decided on 19th March 1975 in FAO Nos.25, 27 & 28 of 1972 and more particularly paragraph 4 in support of his submission that Order XXXII Rule 7 is in the realm of natural justice. It is submitted by the learned counsel that his client does not want any valuation to be made of her share in the respondent no.1 but wants to proceed with the petition filed by the appellants under Sections 397 and 398 of the Companies Act, 1956. He submits that since the proceedings were pending before this Court, the respondent no.7 has not filed any application before the Company Law Board or before this Court for setting aside/recall of the order of the Company Law Board or of this Court on these grounds.

75. Learned counsel invited my attention to the affidavit filed by his client in these proceedings and would submit that his client adopts some of the arguments advanced by the learned counsel for the appellant in so far as the alleged consent not given by her either before the Company Law Board or before this Court is concerned.

76. Mr.Narichania, learned senior counsel for the respondent nos.1 to 6, on the other hand, invited my attention to various orders passed by the Company Law Board in the company petition filed by the appellant along with her daughter and more particularly the orders dated 30th October, 2007, 15th November, 2007, 20th April, 2009 and 25th June, 2009 and in various applications made by the applicants from time to time before the Company Law Board. It is submitted by the learned senior counsel that various orders passed by the Company Law Board would clearly indicate that the appellant along with her daughter have chosen to exit from the respondent nos.1 and 6 with open eyes and thus there was no question of the appellant and her daughter exercising an option to buy shares of other two groups. He submits that the appellant and her daughter had also agreed to the valuation of assets for the purpose of valuation of their shares as on 31st March, 2008.

77. It is submitted that though the appellant, her daughter and the respondent no.7 together did not have 1/3rd share in the respondent no.1 and the respondent no.6, the respondent nos.1 to 6 offered to pay the appellant, her daughter and the respondent no.7, treating their shareholdings as 1/3rd of the total shareholdings of the respondent no.1 to enable them to exit.

78. It is submitted by the learned senior counsel that the order dated 25th June, 2009 passed by the Company Law Board has not been challenged by the appellant on the ground that the Memorandum dated 21st May, 2009 was not considered by the Company Law Board. He submits that the appellant had accepted all consent orders passed by the Company Law Board recording that the appellant and her daughter had agreed to exit the respondent nos.1 and 6 and had acted upon all these orders. They had also approached the Valuer for implementing the orders passed by the Company Law Board for the purpose of their exit.

79. It is submitted that on 14th September, 2009, the appellant and her daughter had applied for substitution of the valuers. On 15th October, 2009, the Company Law Board had passed an order to submit a status report within four weeks from the date of the said order. On 9th February, 2010, the status report came to be submitted by M/s.Chaturvedi & Shah before the Company Law Board. On 9th May, 2011, the Company Law Board rejected the application of the appellant and her daughter for substitution of valuer. The Company Law Board, however, directed that the valuation shall be done afresh by the same valuer. It is submitted that the order dated 9th May, 2011 passed by the Company Law Board came to be impugned by the appellant and her daughter in the month of July 2011 by filing two separate company appeals bearing (Lodging) Nos.24 of 2011 and 25 of 2011 under Section 10F of the Companies Act, 1956 in this Court. He invited my attention to some of the grounds raised by them in the appeal memos in these two company appeals and more particularly pages 874 to 877 of the compilation.

80. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the order dated 22nd July, 2011 passed by Shri Justice S.J. Kathawalla thereby disposing of the said two appeals in terms of the Minutes of Order signed by both the parties through their respective counsel. He submits that by the said order, the parties by consent substituted the earlier valuer by appointing M/s.V.B. Haribhakti & Co. Other terms of the order passed by the Company Law Board remained unaltered. It is submitted that in the memorandum of appeals in Company Appeal (Lodging) Nos.24 of 2011 and 25 of 2011, the appellants had challenged the said order dated 25th June 2009 on the ground that the appellants had not agreed to exit. The appellants also placed reliance on the Memorandum dated 21st May, 2009 in the appeal memo. He submits that in view of the consent order obtained by the parties on 22nd July, 2011 in those two company appeals, all issues raised by the appellant and her daughter in the memorandum and also in the appeal memos in the Company Appeal (Lodging) Nos.24 of 2011 and 25 of 2011 filed in this Court were given up. He submits that the valuation date which was 31st March, 2008 agreed before the Company Law Board was unaltered by consent of the parties in the said order dated 22nd July, 2011.

81. It is submitted that in the said order dated 22nd July, 2011, the appellant and her daughter also did not raise any issue of alleged siphoning of the income of the respondent nos.1 and 6 by the respondent nos.2 and 3 in favour of other four companies or that the income and assets of those four companies to be treated as assets of the respondent nos.1 and 6. He submits that the original paragraph

4 in the draft minutes of the order was admittedly deleted and was counter signed by the learned counsel appearing for the parties. He submits that the said minutes of order with several handwritten corrections was substituted by a typed copy thereof duly signed by the counsel for the parties and was taken on record. My attention is also invited to the order passed by this Court on 22nd July, 2011 in terms of those consent minutes of order duly signed by the respective counsel for the parties.

82. It is submitted by the learned senior counsel that the signature and the authority of the counsel for the appellant and her daughter on the said minutes of the order dated 22nd July, 2011 is admittedly not disputed by the appellant. He submits that in any event, the appellant has not filed any appeal against the said order dated 22nd July, 2011 passed by this Court in terms of Minutes of the order dated 22nd July, 2011 and the said order has thus attained finality.

83. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the praecipe dated 29th July, 2011 filed by the appellant and her daughter through their advocate in this Court *inter-alia* praying for circulation of papers and proceedings of the captioned matters before Shri Justice S.J. Kathawalla to enable the appellant and her daughter to seek speaking to the Minutes of Order dated 22nd July, 2011. He submits that in the said praecipe, they had alleged that the counsel appearing for them had made a submission that any valuation report by substitute valuers be stipulated for submission to the Company Law Board within six months which was not objected to by the counsel for the respondents. It was further alleged

that the said order dated 22nd July, 2011 records that such a valuation report will be submitted within three months and thus the said order required rectification in the date mentioned therein. In the said praecipe, the appellant also alleged that at the time of passing of the said order, this Court had specifically observed that the appellant and her daughter were at liberty to apply to the Company Law Board to submit that they were not bound to exit/sell their shareholding and/or that the valuation date of 2008 was no longer relevant and/or for an express direction that the valuers should take into account the entities to which business of the 1st respondent company in Company Appeal (Lodging) No.24 of 2011 had been siphoned off, however, the same had not been reflected in the said order and thus may be suitably incorporated in the manner deemed appropriate.

84. It is submitted by the learned senior counsel that admittedly no clarification was issued by Shri Justice S.J. Kathawalla on the said praecipe dated 29th July, 2011 as prayed by the appellant and her daughter. He submits that it is clear that the said clarification sought by them were thus rejected by this Court.

85. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the averments made in three company applications filed by the appellants before the Company Law Board in the month of September 2011 for various reliefs. He submits that the Company Appeal (49 of 2014) was filed by the appellant along with her daughter on 4th December, 2013. He invites my attention to ground 'H' on page 4 of the appeal memo in the said appeal contending that the Company Law Board had failed to appreciate

that it was the case of the appellant before this Court that they were prepared to exit only on a fair valuation or no exit at all, since the appellants could not be forced to exit on an unfair valuation. It is further contended in the said ground that the Company Law Board erred in allowing part of the shareholding of late Mr. Anthony Maynard to be purchased by the respondent company even without the fair value of the shareholding being crystallized. He submits that it is thus clear beyond reasonable doubt that the appellants and her daughter had not refused to exit but had only claimed fair valuation for their exit from the respondent no.1. He submits that pursuant to the order passed by this Court on 22nd July, 2011, M/s.V.B. Haribhakti & Co. has already filed a valuation report before the Company Law Board.

86. Learned senior counsel for the respondent nos.1 to 6 submits that since the appellant and her daughter had agreed to exit from the respondent no.1, they cannot be now allowed to take a different stand. He submits that the appellant and her daughter can urge before the Company Law Board that the fresh valuation report submitted by M/s.V.B. Haribhakti & Co. was wrong as far as the valuation is concerned. He submits that cut off date fixed by the parties before the Company Law Board and before this Court as of 31st March, 2008 cannot be deviated. He submits that the allegations made by the appellant and her daughter in the Memorandum and in the additional affidavit cannot be re-opened. It is submitted that the appellants went to the first valuers appointed by the Company Law Board and had accepted the said order passed by the Company Law Board. The appellant, thereafter, made allegations against the first valuer. After the order passed by this Court on 22nd July, 2011

under Section 10F of the Companies Act, 1956, the appellant and her daughter once again agreed to the valuation.

87. Mr.Narichania, learned senior counsel placed reliance on the judgment of this Court in the case of **Adarsh Toddy Kamgar Sahakari Sanstha, Nagpur & Ors. vs. State of Maharashtra & Ors., 1977 Mh.L.J. 508** and in particular paragraphs 9 to 12 thereof and would submit that what transpired in the Court but not recorded in the order cannot be read as a part of the order. He submits that this Court in the said judgment has held that the judges of the Court cannot be dragged into a controversy as to whether the statements ascribed to them are correct or expressed correctly and fully what they had in view. He submits that in this case, though certain allegations were sought to be made by the appellant and her daughter about what transpired in Court are allegedly not part of the order passed by this Court, this Court did not pass any order on the said praecipe thereby rejecting the same. He submits that the argument of the learned counsel for the appellant and her daughter that the order dated 22nd July 2011 did not record the facts correctly as agreed by the parties before this Court is contrary to the principles of law laid down by this Court in the case of **Adarsh Toddy Kamgar Sahakari Sanstha, Nagpur & Ors.** (supra).

88. Learned counsel for the respondent nos.1 to 6 also placed reliance on the judgment of the Supreme Court in the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr., (1982) 2 SCC 463** and in particular paragraph 4 thereof and would submit that the appellant and her daughter cannot be allowed to make a statement contrary to what was recorded by the Court in the

said order dated 22nd July, 2011. He submits that in any event, it was incumbent upon the appellant to call attention of the Court on the same day about the alleged error, if any, in the order recording a statement wrongly or allegedly not recording the statement which exercise was done by the appellants in this case by filing a praecipe on which admittedly no order was passed by this Court. He submits that this Court thus at this stage cannot decide the controversy as to what must have transpired before this Court when the parties had signed the consent minutes of order and the order thereon came to be passed by this Court on 22nd July, 2011.

89. Learned senior counsel for the respondent nos.1 to 6 placed reliance on Sections 397, 398 and 402 of the Companies Act, 1956 and would submit that the Company Law Board has ample power to order valuation of such shares for the purpose of exit of a member of the company. He submits that under Section 634 of the Companies Act, 1956, all orders of the Company Law Board are enforceable as decrees of Court. He submits that the appellant and her daughter had two options under Section 397 and 398 of the Companies Act, 1956 i.e. either to continue the petition filed under those provisions and to take it to its logical conclusion or to exit from the companies on payment of fair valuation. In support of the submission that the Company Law Board has ample power under Section 402 of the Companies Act, 1956 to order valuation, learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of the Delhi High Court in the case of **S.P. Gupta vs. Packwell Manufacturers (Delhi) Pvt. Ltd., ILR (2013) V DELHI 3590,** and in particular page 3604.

90. Learned senior counsel placed reliance on the judgment of the Supreme court in the case of **M.S.D.C. Radharamanan vs. M.S.D. Chandrasekara Raja & Anr., (2008) 6 SCC 750** and in particular paragraph 25 in support of the aforesaid submission.

91. Learned senior counsel for the respondent nos.1 to 6 distinguishes the judgment of the Supreme Court in the case of **Dale & Carrington Invt. (P) Ltd. & Anr.** (supra) on the ground that the Supreme Court had rendered a finding that the share capital was increased by the company behind the back of the parties and the action of the company was found *malafide* and fraudulent with a view to gain control of the company and that also without following proper procedure. He submits that in the said matter which was before the Supreme Court, the Company Law Board had though found the oppression by majority but had directed the company to buy share of the minority shareholding at the face value of the share. He submits that however in this case, there is no finding of any oppression or mismanagement rendered by the Company Law Board against the respondent nos.1 and 6 till date. Mere allegations in the company petition made by the appellant without any finding thereon in favour of the appellant would be of no significance. He invited my attention to paragraphs 5, 6, 7, 9, 11, 22, 29, 30 and 38 of the said judgment and distinguished the said judgment. He submits that there are no allegations of fraud in this case made by the appellant against the respondent nos.1 to 6 nor any such allegations are proved. He submits that reliance on paragraph 38 of the said judgment in the case of **Dale & Carrington Invt. (P) Ltd. & Anr.** (supra) is out of the context.

92. Learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **P.S. Sathappan (dead) by Lrs. vs. Andhra Bank Ltd. & Ors., (2004) 11 SCC 672** and in particular paragraphs 118 and 148 (8) in support of the submission that the judgment of the Court must be read as a whole and ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it. He submits that the judgment of the Supreme Court in the case of **Dale & Carrington Invt. (P) Ltd. & Anr.** (supra) is clearly distinguishable in the facts of this case and would not assist the case of the appellant.

93. Learned senior counsel also placed reliance on the judgment of the Supreme Court in the case of **Gangadhar Behera & Ors. vs. State of Orissa, (2002) 8 SCC 381** and in particular paragraph 28 in support of the submission that judicial utterances are made in the setting of the facts of a particular case and thus if the facts are different, the said judgment cannot be applied as a precedent under Article 141 or Article 215 of the Constitution of India, as the case may be.

94. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the averments and the prayers in Company Application No.457 of 2011 filed by the appellant and her daughter before the Company Law Board which were rejected by the Company Law Board and is subject matter of these appeals. In the said application, the appellant and her daughter had applied for modification of the order dated 25th June, 2009 passed by the Company Law Board to direct the respondent nos.2 and 3 to exit the respondent nos.1 and 6 or in the alternative to permit the company

petition to be set down for final disposal on merits and to dispense with any valuation of the shareholding of the respondent nos.1 and 6 or in the alternate that the order dated 25th June, 2009 be modified to direct any valuation of shares to be carried out on the basis of (i) the audited financial statements of the respondent nos.1 and 6 on the basis of balance sheet as on 31st March 2011 and (ii) to factor into the valuation, the value of diversion of business to **M/s.Contrans Logistic Pvt. Ltd., Navi Trans Terminals Pvt. Ltd., Altair Infrastructure Pvt. Ltd.** and **Aditya Container Freight Station Pvt. Ltd. etc.**

95. It is submitted by the learned senior counsel that since the order dated 25th June, 2009 passed by the Company Law Board was passed by consent of parties, the said consent order could be varied only by consent of parties and not at the instance of one of the parties to the said order. He submits that the respondent nos.1 to 6 had not agreed to the modification of the said order dated 25th June, 2009. He submits that admittedly the said order dated 25th June, 2009 passed by the Company Law Board was not challenged by the appellant. The appellant and her daughter had gone to the said valuer. He submits that even in the subsequent orders passed by the Company Law Board and finally by this Court on 22nd July, 2011, the cut off date fixed as on 31st March, 2008 was not deviated. The parties did not agree at any point of time that the alleged siphoning of business opportunity was to be factored in the valuation of the assets of the respondent nos.1 and 6.

96. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of this Court in the case of **Unmesh**

Kantilal Shah & Ors. vs. Chemosyn Limited & Ors., (2008) 2 Bom CR 761 and in particular paragraphs 72 to 75 and would submit that the principle of interpretation of contract and/or any documents cannot be extended to the interpretation and/or for clarification of unchallenged Consent Order. He submits that the order dated 22nd July, 2011 passed by this Court was final and binding and therefore there is no question of re-opening or re-agitating any issues after the consent order was passed by this Court. He submits that the said judgment squarely applies to the facts of this case.

97. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of the Supreme Court in the case of **Dr.Renuka Datla (Mrs.) vs. Solvay Pharmaceuticals B.V. & Ors., (2004) 1 SCC 149** and in particular paragraph 13 and would submit that the Court has to go by the terms of settlement which are the last word on the subject and if those terms either in express terms or by necessary implication do not contemplate the valuation by any other method, the Court cannot draw any other presumption.

98. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of Madras High Court in the case of **Kuki Leather Private Ltd. & Ors. vs. T.N.K. Govindaraju Chettiar and Co. & Anr., (2002) 110 Comp Cas 474** and in particular paragraphs 14, 15 and 18 in support of the submission that no oral evidence can be led in view of Section 91 of the Indian Evidence Act, 1872 to disprove the consent of the consent order passed by the Company Law Board and also by this Court.

99. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of the Kerala High Court in the case of **Subash Jain & Ors. vs. Pioneer Shopping Complex Pvt. Ltd. & Ors., 2007 (2) ILR Kerala** and in particular paragraph 7 holding that after having agreed to purchase the minority shares on the basis of a report submitted by the valuer appointed by the Company Law Board, majority shareholders cannot wriggle out of their agreement which was accepted by the minority shareholders. It is held that the Company Law Board is duty bound to pass orders under Section 402(b) on the basis of the valuation report submitted by the valuer after hearing both the parties.

100. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of Gauhati High Court in the case of **Subhash Mohan Dev vs. Santosh Mohan Dev & Ors., (2001) 104 Comp Cas 404 (Gauhati)** and in particular paragraph 6 in which it is held that the order passed by the Company Law Board was since an order that was agreed by the parties, in the absence of anything more like fraud, coercion etc. there cannot be any ground for interfering on a consent order in appeal. Such consent order operates as an estoppel. It is submitted that the appellants can argue before the Company Law Board that the valuation made by M/s.V.B. Haribhakti & Co. is not realistic.

101. Learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **Suvaran Rajaram Bandekar & Ors. vs. Narayan R.Bandekar & Ors., (1996) 10 SCC 255** and in particular paragraph 3 in support of the submission that the consent order passed by the Court cannot be modified unless both the

parties give consent for modification thereto. This Court thus cannot modify the order dated 22nd July, 2011 passed by this Court in view of the respondent not having given any consent for such modification.

102. Insofar as the submission of the learned counsel for the appellant that the valuation date of 31st March, 2008 cannot be sacrosanct and the valuation has to be considered on the date of payment to the appellant is concerned, learned senior counsel for the respondent nos.1 to 6 submits that the parties had agreed before the Company Law Board on 25th June, 2009 that the valuation of the shares was to be on the basis of the balance sheet as on 31st March, 2008. He submits that the parties once again agreed before this Court that on 22nd July, 2011 that the valuation was to be done in terms of the order dated 25th June, 2009 on the basis of the balance sheet as on 31st March, 2008. He submits that though the husband of the appellant did not have 1/3rd shareholding in the respondent nos.1 and 6 but held to the extent of 17.23% and 11.32% respectively, respondent nos.1 and 6 had agreed to pay to the appellant, her daughter and the respondent no.7 for 1/3rd shareholding of Mr. Anthony Maynard in view of the appellant having agreed to exit from the respondent no.1.

103. Learned senior counsel placed reliance on the judgment of the Karnataka High Court in case of **Rekha Sports Private Limited & Ors. vs. Khraitilal Rakhra & Ors.(1993) 76 Company Cases, 545** and in particular paragraphs 77 to 79 in which the Court had quoted the observations of Lord Denning made in **Scottish Co-operative Wholesale Society Limited vs. Meyer (1958) 3 All ER, 66**. It is

submitted that the Company Law Board will decide the correctness of the valuation report submitted by M/s.V.B. Haribhakti & Co. He submits that though the appellant and her daughter had filed company petition before the Company Law Board in the month of October, 2007, the date of valuation is normally as the date of filing petition, the parties in this case agreed that the valuation shall be as of 31st March, 2008.

104. In his alternate submission, it is submitted that there has been gross delay on the part of the appellant by not co-operating with the valuers and by stopping the process of valuation on one or other ground. Learned senior counsel invited my attention to the company application filed by the appellant and her daughter before the Company Law Board challenging the valuation report submitted by the erstwhile valuers. He submits that in view of the gross delay on the part of the appellant and her daughter, it will not be equitable for shifting the valuation date as canvassed by the appellant. He submits that even otherwise the valuation date cannot be shifted unless the respondents give their consent for change of the valuation date.

105. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of this Court in case of **Akkadian Housing & Infrastructure Pvt. Ltd. & Ors. vs. Pantheon Infrastructure Pvt. Ltd. & Ors. (2016) 197 Company Cases, 316** and in particular paragraphs 17 to 26 of the said judgment. He submits that Special Leave Petition against the said judgment delivered by this Court is pending. It is submitted that the said judgment applies to the facts of this case. In the said judgment, the High Court approved the order passed by the Company Law Board

not fixing the date of the valuation as the date of the petition but considering the pendency of the petition for about three years, for default of none, fixing a 50% mark – up on the share of profit determined as on the date of the petition to compensate one of the party for delay between the presentation of the petition and order. It is submitted that in this case the appellant herself was fully responsible for the gross delay in the valuation process on one or other ground. This Court thus cannot shift the valuation date or to pay any mark – up.

106. Insofar as the judgment of the Calcutta High Court in case of **Bajrang Prasad Jalan & Ors.** (supra) relied upon by the learned counsel for the appellant is concerned, learned senior counsel for the respondent nos.1 to 6 distinguished the judgment and placed reliance on paragraphs 97 and 98 and would submit that in this case there are no immovable properties of the respondent nos.1 and 6. He submits that though in this judgment the judgment of Lord Denning is quoted with approval, contrary view is taken by the Calcutta High Court.

107. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the averments made by the appellant and her daughter in Company Application No.399 of 2011 filed before the Company Law Board. He submits that for the first time in the said company application, the applicant applied for amendment to the company petition and to add the income of other four companies, alleging diversion of income and business opportunity by the respondent nos.1 to 6 in favour of those four companies and to treat the income and assets of those companies as income and assets of the respondent nos. 1 and 6. He submits that the order dated 9th May,

2011 passed by the Company Law Board had attained finality subject to the modification by an order dated 22nd July, 2011 passed by this Court. The said application for amendment to the company petition was thoroughly misconceived and has been rightly rejected by the Company Law Board. He submits that the allegations of diversion of income and business opportunity to the other four companies were not included in the order dated 22nd July, 2011 passed by this Court.

108. It is submitted that the allegations of diversion and business opportunity were made only on 15th October, 2009 and on 21st May, 2009. He submits that the amendment was sought by the appellant with a view to nullify the order of the Company Law Board and the order passed by this Court. It is submitted that the Company Law Board in the impugned orders rightly rejected the company application for interpreting the High Court order and the impugned orders passed by the Company Law Board and thus the said order cannot be interfered with by this Court.

109. Insofar as the company application filed by the appellant for seeking transfer of the petition (Company Petition No.46 of 2011) filed before the Company Law Board, Mumbai to Company Law Board, Delhi is concerned, it is submitted that the said order passed by the Company Law Board refusing to transfer the proceedings from Mumbai to Delhi was a discretionary order and not being perverse cannot be interfered with by this Court. He submits that in any event, the said company petition filed by the appellant before the Company Law Board, Mumbai was relating to other company and had nothing to do with the pending proceedings filed by the appellant before the Company Law Board, Delhi. It is submitted that the transfer

application made by the appellant was also with a view to nullify the effect of the order passed by the Company Law Board and this Court.

110. It is submitted that insofar as the company which was the subject matter of the company petition filed before the Company Law Board, Mumbai is concerned, no business was carried on by the said company and there was thus no question of any apprehension to the appellant. He submits that if the application of the appellant to transfer the said proceedings pending before the Company Law Board, Mumbai to Company Law Board, Delhi would have been allowed, hearing of the petition and the application filed by the applicant before the Company Law Board, Delhi would have been further stalled, including the process of valuation which was already delayed at the instance of the appellant and would have complicated the matter further. He submits that it is not in dispute that in the company petition before the Company Law Board, Mumbai, the respondent nos.1 and 6 were impleaded as party respondents. The Company Law Board had directed the appellant to delete the names of those two companies which order is implemented by the appellant.

111. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the grounds of appeal in the appeals filed by the appellant and her daughter before this Court, which were heard and disposed of by an order dated 22nd July, 2011 passed by Shri Justice S.J. Kathawalla. He submits that the orders dated 20th April, 2009 and 25th June, 2009 passed by the Company Law Board were not the subject matter of these appeals. The said orders were already merged with the order dated 22nd July, 2011 passed by this Court. It is submitted that by any change in the date of valuation as 31st March,

2008 would be contrary to the order dated 22nd July, 2011 passed by this Court. It is submitted that it is not permissible to seek review of the order dated 22nd July, 2011 in these appeals.

112. Learned senior counsel for the respondent nos.1 to 6 invited my attention to the letters dated 14th July, 2009, 30th July, 2009, 25th August, 2009, 26th August, 2009 and 28th August, 2009 exchanged between the parties and also between the valuers and the appellant and her daughter in support of his submission that they had acted upon the order passed by the Company Law Board and also to show as to how they had committed delay in the valuation process.

113. Learned senior counsel for the respondent nos.1 to 6 placed reliance on the judgment of the Supreme Court in case of **Purnima Manthena & Anr. vs. Ranuka Datla & Ors. (2016) 1 SCC 237** and in particular paragraphs 49 and 50 and would submit that the findings of fact cannot be interfered with by this Court under section 10-F of the Companies Act, 1956. He submits that no question of law has arisen in these appeals which are required to be adjudicated upon by this Court in these appeals filed under section 10-F. He submits that unless the orders passed by the Company Law Board demonstrate perversity or arbitrariness, no question of law arises for consideration. He also placed reliance on the judgment of the Supreme Court in case of **V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors., (2008) 3 SCC 363** and in particular paragraph 16.

114. Learned counsel appearing for the appellant in rejoinder submits that the memorandum submitted by the appellant was not

returned by the Company Law Board but was all throughout on record before the Company Law Board. She submits that the company petitions filed by the appellant have to be heard on merit. The pleadings filed by the parties are not tested by the Company Law Board till date and no finding of fact is rendered on merit of the matter. It is submitted by the learned counsel that this Court cannot consider the written note submitted by the respondent nos.1 to 6 alleging the efforts alleged to have been made by the respondent nos.2 and 3 before the death of the husband of the appellant and post his demise to expand the respondent nos.1 and 6. She submits that these allegations were not on record before the Company Law Board and thus cannot be considered by this Court.

115. It is submitted that none of the orders passed by the Company Law Board can be considered as orders under Section 402(b) of the Companies Act, 1956 for purchase of the shares of the appellant by the other members of the respondent nos.1 and 6 companies. It is submitted that the order dated 22nd July, 2011 passed by this Court is a conditional consent order which is revocable in view of the conditions imposed by the appellant were incapable of implementation or not implemented. She submits that it is not the case of the respondents that the orders dated 20th April, 2009 or 25th June, 2009 are also agreements entered into by consent of the parties. It is submitted that the appellant is entitled to urge that she was not bound by the consent recorded in the order dated 22nd July, 2011. She submits that the said consent recorded in the order dated 22nd July, 2011 has to be read with the praecipe dated 29th July, 2011, affidavit dated 15th October, 2009 and the letter dated 29th July, 2011 to the Valuer addressed by the appellant. She submits that

the said order dated 20th April, 2009 is not an order of exit.

116. Learned counsel for the appellant submits that even the order dated 25th June, 2009 passed by the Company Law Board clearly indicates that the liberty was granted to the parties to rely upon the documents before the Company Law Board. The memorandum dated 21st May, 2009 was never sought to be withdrawn by the appellant on 25th June, 2009 or any other point of time. She submits that even in the affidavit dated 15th October, 2009, there is a reference made to the memorandum. It is submitted that no compromise deed has reached between the parties in the application made by the respondents before the Company Law Board.

117. It is submitted by the learned counsel that the original minutes of the order filed before this Court on 22nd July, 2011 was handwritten minutes of order and in view of the difference in handwritten minutes of the order and the re-typed minutes of the order, handwritten minutes of order would prevail and would be binding on the parties. Learned counsel once again placed reliance on the judgment of the Supreme Court in the case of **Parayya Allayya Hittalamani vs. Sri Parayya Gurulingayya Poojari & Ors.** (supra). It is submitted by the learned counsel for the appellant that finding of delay rendered by the Company Law Board against the appellant is totally erroneous.

118. It is submitted that in the valuation made by M/s.V.B. Haribhakti & Co., valuation of share of the appellant, her daughter and the respondent no.7 is double of the valuation made by the

Erstwhile Valuer M/s.Chaurvedi & Shah. She submits that all orders prior to 22nd July 2011 passed by the Company Law Board are exploratory whereas, the order dated 22nd July, 2011 is the conditional consent order. It is submitted that the Company Law Board has not considered the surrounding circumstances. She submits that the powers of this Court under Section 10F of the Companies Act, 1956 are very wide. This Court has equitable jurisdiction under Section 10F of the Companies Act, 1956. It is submitted that parties were not ad-idem about the terms and conditions of exit before the Company Law Board. It is submitted that no application is admittedly filed by the respondent nos.1 to 6 under Section 634-A of the Companies Act, 1956.

119. Learned counsel for the appellant distinguishes the judgment of the Madras High Court in the case of the **Kuki Leather Private Ltd. & Ors. vs. T.N.K. Gonvindaraju Chettiar & Co. and Anr.** (supra) on the ground that the order passed by the Madras High Court was comprehensive order. The date and amount was provided in the consent order which recorded a concluded agreement. It is submitted that the appellant, however, did not agree to any such concluded agreement. It is submitted that in this case, the advantage is accrued in favour of majority share holders. It is submitted that the said judgment of the Madras High Court in the case of **Kuki Leather Private Ltd. & Ors. vs. T.N. Gonvindaraju Chettiar & Co. and Anr.** (supra) is clearly distinguishable in the facts of this case.

120. Learned counsel for the appellant distinguishes the judgment of this Court in the case of **Unmesh Kantilal Shah & Ors. vs. Chemosyn Limited & Ors.** (supra) on the ground that the

parties had entered into a Deed of Settlement with concluded terms in the said matter. It is submitted that in this case, no time, date and amount of the valuation is mentioned in any of the orders passed by the Company Law Board. According to the learned counsel, the said judgment of this Court in the case of **Unmesh Kantilal Shah & Ors. Vs. Chemosyn Limited & Ors.** (supra) is clearly distinguishable in the facts of this case.

121. It is submitted that in this case, the appellant had not given up the suggestions made in the memorandum, in the affidavit and in the correspondence. She submits that the parties in these proceedings had not acted upon the order dated 22nd July, 2011 passed by this Court. The appellant had written a letter on 29th November, 2011 to M/s.V.B. Haribhakti & Co. not to proceed with the valuation and thereafter, the appellant immediately filed a praecipe before this Court and filed applications before the Company Law Board. It is submitted that pursuant to the order passed by Shri Justice N.M. Jamdar, the matter was thereafter argued before Shri Justice S.J. Kathawalla who passed various orders in these matters.

122. Learned counsel for the appellant distinguishes the judgment of the Supreme Court in the case of **State of Maharashtra Vs. Ramdas Nayak & Anr.** (supra) on the ground that in that case, the concession was made by the parties before the Court. It is submitted that the said order dated 22nd July, 2011 passed by this Court has to be read with the order dated 25th June, 2009 passed by the Company Law Board along with the orders dated 15th October, 2009 and 21st May, 2009. He submits that the case of the parties in these proceedings is on different footing. He submits that there is no

deemed rejection of the praecipe filed by the appellant. There is no order passed by this Court on the said praecipe.

123. In so far as the judgment of this Court in the case of **Adarsh Toddy Kamgar Sahakari Sanstha, Nagpur & Ors. vs. State of Maharashtra & Ors.** (supra) is concerned, the said judgment is distinguished on the ground that the said judgment was under the provisions of the Contempt of Courts Act, 1971 and is not applicable to the facts of this case. He submits that some of the respondents had not filed any reply to the Company Application No.457 of 2011 filed by the appellant before the Company Law Board and thus the averments made in that company application are deemed to have been accepted by the respondents. She placed reliance on the judgment of the Supreme Court in the case of **Needle Industries (India) Ltd. and Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors.** (supra) and more particularly on paragraph 172 thereof. She submits that the Company Law Board, in this case, has admittedly restrained the respondent nos.1 to 6 from diluting the shareholdings of the appellant and her daughter which would clearly indicate that the acts of the respondent nos.1 to 6 are lack of probity, lack of fairness and duty and not just and equitable. He submits that if the orders passed by the Company Law Board are considered as consent orders, it would have act of unfair prejudice against the appellant.

124. It is submitted that the orders passed by the Company Law Board are perverse and thus questions of law arise which have to be adjudicated upon by this Court under Section 10F of the Companies Act, 1956. She submits that this Court has an ample power to shift

the date of valuation under Section 10F of the Companies Act, 1956.

125. Learned counsel for the appellant again placed reliance on the judgment of the Supreme Court in the case of **Dale & Carrington Invt. (P) Ltd. vs. P.K. Prathapan & Ors.** (supra) and would submit that the Supreme Court in the said judgment had permitted the minority shareholder to sell his shares to majority shareholder in view of the allegation of oppression and mismanagement.

126. It is submitted by the learned counsel that the date of valuation has to be on the date of exit. He submits that the appellant is entitled to buy equity shares and also right of participation, dividend, apply for winding up of the respondent nos.1 and 6 on just and equitable ground and share in surplus in case of winding up of the respondent nos.1 and 6.

127. Learned counsel placed reliance on the judgment of the House of Lord in the case of **Scottish Co-operative wholesale Society Limited vs. Meyer and Anr.** (Supra) and also the judgment of the Supreme Court in the case of **Life Insurance Corporation of India vs. Escorts Ltd. & Ors.** (supra). She also placed reliance on the judgment of the Chancery Division in the case of *Re a Company* (No.005134 of 1986), *ex-parte* Harries and in particular relevant paragraphs on page 399 in support of her submission that the valuation of the property has to be on the date of the order. She placed reliance on the judgment of the Calcutta High Court in the case of **Parshuram Agarwalla vs. Nandlal & Sons**.

Tea Industries Pvt. Ltd. & Ors. (supra). Reliance is also placed on the judgment of the Chancery Division in the case of **Re Ghyll Beck Driving Range Ltd., (1993) BCLC 1126** and in particular relevant paragraphs on page 1134 in support of her submission that the valuation has to be on the date of exit.

128. It is submitted that the respondents cannot be allowed to be unjustly enriched. She also placed reliance on the judgment of this Court in the case of **Akkadian Housing and Infrastructure Pvt. Ltd. and Ors. vs. Pantheon Infrastructure Pvt. Ltd. and Ors., (2016) 197 Comp Cas 316 (Bom)** and more particularly on paragraphs 12 and 17 to 26 and would submit that in that case, delay was condoned by the Company Law Board. This Court did not interfere with the said order. He submits that in the said order, the Company Law Board has shifted the valuation date.

129. Learned counsel for the appellant distinguishes the judgment of the Calcutta High Court in the case **Bagree Cereals (P.) Ltd. & Ors. vs. Hanuman Prasad Bagri & Ors.** (supra) on the ground that the facts of that case are totally distinguishable. She submits that the Company Court cannot go into the allegation that the appellant was only an investor. She submits that the valuation report of M/s.V.B. Haribhakti & Co. is stale, not equitable and contrary to unconscionable bargain.

130. It is submitted that the daughter of the appellant has attained the age of majority in the year 2015 and thus the appellant is unable to deliver 1/3rd shareholdings of the daughter of the appellant. She submits that the appellant cannot compel her daughter to deliver

her shares in the respondent nos.1 and 6 companies for exit. She submits that it is not pleaded by the respondent nos.1 to 6 that there is any collusion between the appellant and her daughter. It is submitted that this Court has ample power under Section 10F of the Companies Act, 1956 to direct M/s.V.B. Haribhakti & Co. to make an additional valuation report on the two factors i.e. firstly on the date of valuation and secondly on siphoning of opportunity and profit transferred to other companies by the respondent nos.2 and 3. This order shall be passed by this Court by exercising its equitable jurisdiction.

131. Learned counsel for the appellant invited my attention to the prayers made in the Company Application No.389 of 2012 and would submit that the prayers are made for exercising right of pre-emption as claimed by the appellant. She submits that right of pre-emption of the appellant is not taken away under any of the orders passed by the Company Law Board or by this Court. She submits that the respondent nos.1 to 6 have no answer to Article 27(a) of the Articles of Association. The appellant has declared her daughter as director under Article 27(c) of the Articles of Association. It is submitted that the appellant had never opposed the right of the respondent no.7 to intervene before the Company Law Board. She submits that the legal heirs of a shareholder can also allege the oppression and mismanagement under Sections 397 and 398 of the Companies Act, 1956 before the Company Law Board.

132. Learned counsel for the respondent no.8 i.e. Ms.Georgina Maynard, daughter of the appellant invited my attention to the affidavit filed by his client in Company Application No.49 of 2014

and reiterated that she has already raised an objection in the said affidavit. He submits that the respondent no.8 is entitled to dispute the consent order at any stage. He submits that in fact some of the orders were consent orders. It is submitted that it was the duty of the Company Law Board to take precaution, knowingly well that the respondent no.8 was minor when various orders came to be passed. He once again placed reliance on Order XXXII Rule 7 of the Code of Civil Procedure, 1908 and would submit that none of the orders passed by the Company Law Board are passed after compliance of the principles of nature justice in so far as his client is concerned.

133. Mr.Narichania, learned senior counsel for the respondent nos.1 to 6 submits that the daughter of the appellant did not file any application before the Company Law Board for recalling the order passed by the Company Law Board and only filed an affidavit in these proceedings. He submits that the order passed by this Court under Order XXXII Rule 7 Sub Rule 2 is voidable and thus the proceedings have to be filed for repudiation of contract or order as voidable. The respondent no. 8 has not taken any steps to recall such orders passed by the Company Law Board or by this Court on 22nd July, 2011 in last two years.

134. It is submitted that outcome of these appeals is not dependant upon outcome of the application that could be filed by the respondent no.8 before the Company Law Board. He submits that the order dated 25th June, 2009 is not challenged by any of the parties. He submits that the interest of the daughter was not affected by the action of the appellant. In her affidavit, the daughter has already acted upon in her interest. Learned senior counsel

distinguishes the judgment of the Supreme Court in the case of **Dale & Carrington Invt. (P) Ltd. vs. P.K. Prathapan & Ors.** (supra) and placed reliance on page 222 thereof. He submits that this Court cannot go beyond the order dated 22nd July, 2011 passed by this Court. He submits that the order dated 25th June, 2009 passed by the Company Law Board has merged with the order dated 22nd July, 2011 passed by this Court. He submits that the prayers of the appellant for shifting the date of valuation and for taking into consideration of the alleged business of opportunity and profit to other four companies by the respondent nos.2 and 3 cannot be gone into by this Court in view of the order dated 22nd July, 2011 which is the consent order having attained finality.

135. It is submitted that admittedly no order was passed by this Court on the praecipe filed by the appellant and no appeal came to be filed by the appellants against the said order dated 22nd July, 2011. Learned senior counsel heavily placed reliance on the judgment of the Supreme Court in the case of **State of Maharashtra vs. Ramdas Nayak** (supra) in support of the submission that the application ought to have been made by the appellant before the same Court for clarification. He submits that though in this case, the applicant has filed a praecipe, since the said order is not clarified, this Court has deemed to have rejected the said application made by way of praecipe.

136. It is submitted that the equity cannot override the law. It is submitted that the order of this Court which has attained finality cannot be challenged in this parallel proceedings.

137. Learned senior counsel for the respondent nos.1 to 6 distinguishes various judgments relied upon by the appellant on the ground that either the same are not applicable to the facts of this case or are not binding on this Court.

REASONS AND CONCLUSIONS

138. I shall first decide whether the appellant had given her consent for exit from the respondent nos. 1 and 6 on the basis of the valuation report to be made by the valuers based on the balance-sheet of respondent nos. 1 and 6 as of 31st March, 1998. This court also has to decide whether the order passed by the Company Law Board based on such alleged consent rendered by the appellant and her daughter is perverse or not.

139. In this context, I shall now deal with some of the orders passed by the Company Law Board in the company applications filed by the appellant and her daughter. By an order dated 30th October, 2007 passed by the Company Law Board, the Company Law Board recorded that the appellant was willing to go out of company on proper consideration. The respondents were directed to indicate their willingness to purchase the shares on the next date i.e. 15th November, 2007. On 15th November, 2007, the respondents made a statement before the Company Law Board that they were willing to purchase the shares of the appellant and her daughter for the valuation as provided in the articles. The Company Law Board however made a suggestion that instead of time consuming valuation, the respondent was to indicate total sums which was to be paid to the appellant and her daughter against their shares. The matter was

adjourned to 29th November, 2007. On 7th January, 2008, the Company Law Board directed that on the adjourned date, both the parties will indicate the quantum of consideration for the shares of the appellant and the daughter.

140. On 20th April, 2009, the Company Law Board recorded that the parties had agreed that the appellant and her daughter will get out of the company on valuation of the shares in both the companies as a 1/3rd shareholder subject to the deduction of the amount of issue price on price of their entitled shares in the right issue. It was agreed that the valuation will be based on the balance-sheet as on 31st March, 2008. The matter was adjourned to 14th May, 2009.

141. On 21st May, 2009, the appellant and her daughter submitted memorandum i.e. "Points To be Factored into Determination of Fair Value" of equity in the respondent nos. 1 and 6. In the said memorandum, the appellant sought inclusion of other companies incorporated by the respondent nos. 2 and 3 in which the husband of the appellant or the appellant was not a shareholder.

142. On 25th June, 2009, the Company Law Board recorded that in the hearing held on 20th April, 2009, the parties had agreed that the appellant and her daughter would go out of the company on fair valuation of their shares as a 1/3rd shareholders in respondent nos. 1 and 6 and the consideration so arrived at would be subject to the deduction of the amount of issue price on the entitlement of the appellant in the right issue. It was also agreed that the valuation was to be based on the balance-sheet as on 31st March, 2008. The Company Law Board accordingly appointed M/s.Chaturvedi & Shah,

Chartered Accountants to determine the fair value of the shares of respondent nos. 1 and 6 based on the balance-sheets as on 31st March, 2008. It was further directed that the entitlement of the appellant would be as a 1/3rd shareholder in both the companies. The Company Law Board directed that the valuer will take into consideration the submissions made by the parties. It was further directed that the final valuation report should be submitted by 30th September, 2009.

143. A perusal of the record indicates that the appellant and her daughter had made a request to the said valuer to schedule the appointment to discuss the matter of the proposed valuer. It is the case of the appellant that she along with her daughter submitted a memorandum on 16th July, 2009 to the valuer for consideration which was objected by the said valuer on the ground that the same was unsigned and did not bear any stamp of signing before the Company Law Board. The appellant and her daughter thereafter requested the said valuer to arrange a meeting to participate and discuss the matter. The appellant and her daughter thereafter informed the said valuer that they had instructed their advocates to apply to the Company Law Board for removal of the said valuer and thus no further steps should be taken by them.

144. It is not in dispute that on 15th October, 2009, the appellant and her daughter filed an affidavit before the Company Law Board alleging that they had conveyed their in-principal consent to explore the possibility of sale of their shareholding in two companies subject to the fair valuers to be appointed in the matter. It was however alleged that there was no scope for the appellant to agree to any

order for sale of shares without all the conditions imposed in the memorandum dated 21st May, 2009 were being considered by the respondents.

145. On 22nd January, 2010, the Company Law Board directed that the valuers shall submit its report for valuation within four weeks from the date of the said order. It is not in dispute that the respondent no.7 who was son of Mr.Anthony Maynard was thereafter impleaded as respondent no.7 in the Company Petition No.177 of 2007. On 9th February, 2010, the said M/s.Chaturvedi & Shah, the valuers submitted a report opining the fair value of the equity shares of the company as on 31st March, 2008 at Rs.2,944/- per equity share of Rs.10 each fully paid up. The appellant and her daughter thereafter applied for setting aside the said report or to keep the same in abeyance until disposal of the Company Application No.531 of 2009.

146. The Company Law Board however was of the view that a fresh opportunity shall be granted to the appellant and her daughter to make submission on the valuation. The Company Law Board deemed fit not to accept the valuation dated 9th February, 2010 and directed the said valuer to submit a fresh valuation report after complying with the directions at serial nos. (iv) to (viii) as contained in the order dated 25th June, 2009. It is not in dispute that the said order passed by the Company Law Board was thereafter impugned by the appellant and her daughter by filing an appeal before this court. On 22nd July, 2011, the parties thereto including the appellant filed a minutes of order before this court duly signed by the respective counsel representing them. A perusal of the said minutes of the order clearly indicates that the parties had agreed that in the order dated

25th June, 2009, passed by the Company Law Board, Principal Bench, New Delhi in Company Petition Nos.177 of 2007 and 199 of 2007, the name 'M/s.Chaturvedi & Shah, Chartered Accountants' was substituted the name of 'M/s.V.B. Haribhakti & Co.' It was further agreed and ordered that the said valuer M/s.V.B. Haribhakti & Co. shall complete the valuation and shall submit fresh report to the Company Law Board on or before 31st October, 2011.

147. The rest of the said order dated 25th June, 2009 passed by the Company Law Board remained unaltered including the agreement that the appellant and her daughter would go out of two companies on fair valuation of their shares. The parties further agreed that the representation to the valuer shall be in accordance with the said order dated 25th June, 2009. The parties were directed to appear before the said valuer on 29th July, 2011.

148. The appellant has not disputed that the said minutes of the order dated 22nd July, 2011 which was filed before this court was duly signed by the counsel appearing for the appellant and her daughter was authorized to appear and sign the consent terms on their behalf respectively in those proceedings. The said minutes of the order filed on 22nd July, 2011 contained various handwritten corrections and initialled where ever such corrections were made by the respective counsel for the parties. It is not in dispute that the said minutes of the order dated 22nd July, 2011 which contained handwritten corrections was letter of substituted by a typed copy which also forms part of the record. It is not the case of the appellant that the counsel who appeared for the appellant and her daughter at that point of time were not authorized to appear on behalf of the appellant and her daughter

or that no Vakalatnama was filed by them in favour of the advocate on record. It is also not disputed by the appellant that the appellant had not taken any action against the counsel who appeared for her and her daughter for signing the said minutes of the order on behalf of the appellant and her daughter without any authority of the appellant and her daughter or that the appellant and her daughter had not agreed for what was provided in the said minutes of the order. The appellant has not disputed that this court had taken the said minutes of the order dated 22nd July, 2011 on record and had disposed of Company Appeal (Lodging) No.24 of 2011 and Company Appeal (Lodging) No.25 of 2011 respectively.

149. A perusal of the said order dated 22nd July, 2011 passed by Shri Justice S.J. Kathawalla and the said minutes of the order duly signed by the respective counsel of the parties clearly indicates that the parties had agreed that by consent, the earlier valuer M/s.Chaturvedi & Shah be substituted by M/s.V.B. Haribhakti & Co. The parties also agreed that the other terms of the order passed by the Company Law Board on 25th June, 2009 remained unaltered. It is not in dispute that the appellant and her daughter did not challenge the said order dated 22nd July, 2011 passed by this court.

150. The appellant and her daughter thereafter filed a praecipe belatedly on 29th July, 2011 for speaking to the minutes of the order dated 22nd July, 2011 passed by this court recording what allegedly transpired in court on 22nd July, 2011 when this court passed an order in terms of minutes of the order dated 22nd July, 2011. It is not in dispute that though the appellant and her daughter had filed the said praecipe for speaking to the minutes of the order dated 22nd July,

2011 before Shri Justice S.J. Kathawalla, no clarification was made by this court on the said praecipe. It is thus clear that this court did not accept what was alleged in the said praecipe dated 29th July, 2011 recording what allegedly transpired in this court when the said order dated 22nd July, 2011 was passed by Shri Justice S.J. Kathawalla.

151. In my view, it is thus clear that the said clarification sought by the appellant and her daughter vide praecipe dated 29th July, 2011 was deemed to have been rejected. This court did not grant any liberty to the appellant and her daughter to apply to the Company Law Board to submit that the appellant and her daughter were not bound to exit / sell their shareholding and/or that the valuation date of 2008 was no longer relevant and/or for express direction that the valuer should take into account the entities to which the business of the 1st respondent company in Company Appeal (Lodging) No.24 of 2011 had been siphoned of. A perusal of the said praecipe clearly indicates that various allegations made by the appellant in the said praecipe recording what had alleged to have been transpired in this court when the said order dated 22nd July, 2011 clearly indicates that those allegations were inconsistent and contradictory.

152. In my view, if the appellant and her daughter had already agreed to exit on payment of the valuation of the shares of the respondent nos. 1 and 6, there was no question of this court granting permission to the appellant and her daughter to raise a plea before the Company Law Board that they were not bound to exit/sell their shareholding and/or that the valuation date of 2008 was no longer relevant and/or for an express direction that the valuers should take

into account the entities to which the business of the 1st respondent company in a Company Appeal (Lodging) No.24 of 2011 had been siphoned of. It is not in dispute that the allegations of the appellant belatedly made to the effect that the business opportunities and the profit of the respondent nos. 1 and 6 were diverted to those four companies incorporated by the respondent nos. 2 and 3 was disputed by the respondents and there is no adjudication thereon by the Company Law Board till date.

153. In my view, in view of serious dispute raised by the respondents about the allegations of the appellant and her daughter about siphoning of the business opportunity and the profit of respondent nos. 1 and 6 to those four entities having not been adjudicated upon till date, no prudent person would have agreed to permit the other party to raise such plea for factoring such assets and profit of those four entities as if the assets of the respondent nos. 1 and 6 for the purpose of valuation of shares.

154. A perusal of various orders passed by the Company Law Board from time to time indicates that in the consent of the appellant and her daughter was recorded that they had agreed to exit from the respondent nos. 1 and 6 however on the condition of payment of fair value on the basis of the balance-sheet of respondent nos. 1 and 6 as on 31st March, 2008. In none of the consent orders passed by the Company Law Board, there was any reference to the allegations of the appellant and her daughter of siphoning of the business opportunity and the profit by the respondents to those four entities.

155. Be that as it may, the fact remains that though in the so

called memorandum submitted by the appellant and her daughter before the Company Law Board and also before this court various suggestions were made which were to be considered by the valuers according to the appellant, while submitting valuation report was brought on record before the Company Law Board and also before this court at some stage, the same was not pursued by the appellant before the Company Law Board and also before this court when various orders were passed by the Company Law Board and when the order dated 22nd July, 2011 was passed by this court.

156. A perusal of the appeal memo in the said Company Appeal (Lodging) Nos. 24 of 2011 and 25 of 2011 also indicates that the appellant had referred to the said memorandum and also to their allegations that the appellant and her daughter had not allegedly agreed to exit, the appellant and her daughter appears to have given up the said plea and the contentions before this court when the parties filed minutes of the order dated 22nd July, 2011 before this court. The demand if any made by the appellant which was contrary to the agreement of parties recorded by the Company Law Board from time to time was even if allowed to be raised contrary to such agreement, this court having passed order on 22nd July, 2011 by consent of parties, all such demands alleged to have been made by the appellant which were allegedly pending on the date of this court passing said order on 22nd July, 2011 in terms of the minutes of the order were deemed to have been withdrawn and/or not pressed.

157. A perusal of the record indicates that by the said consent order dated 22nd July, 2011 passed by this court, the parties had only made substitution of the earlier valuer i.e. M/s.Chaturvedi & Shah by

M/s.V.B. Haribhakti & Co. and had agreed that the rest of the terms and conditions of the order dated 25th June, 2009 passed by the Company Law Board remained unaltered. The parties once again agreed that the valuation would be as on 31st March,2008.

158. It is the case of the appellant now before this court during the course of the arguments that except the said order dated 22nd July, 2011 passed by this court which was though a consent order was a conditional consent order, no other orders passed by the Company Law Board were passed by consent of parties. A perusal of the order dated 22nd July, 2011 *ex-facie* indicates that no such conditions as are canvassed by the appellant were recorded in the said order dated 22nd July, 2011. Even if the argument of the appellant is accepted that the order passed by the Company Law Board including the order dated 25th June, 2009 was not a consent order, the fact remains that the appellant did not challenge any order passed by the Company Law Board except the order dated 9th May, 2011 by which the Company Law Board had directed M/s.Chaturvedi & Shah, the valuer to submit a fresh report of valuation after complying with the directions at serial no. (iv) to (viii) as contended in the order dated 25th June, 2009.

159. A perusal of the order dated 25th June, 2009 passed by the Company Law Board indicates that the said order refers to an agreement arrived in the hearing held on 20th April, 2009 that the appellant and her daughter would go out of the company on fair valuation of their shares of 1/3rd shareholders of respondent nos. 1 and 6 based on the balance-sheet as on 31st March, 2008. The said order is confirmed by the parties in consent minutes of the order

dated 22nd July, 2011 except the substitution of the erstwhile valuer M/s.Chaturvedi & Shah by M/s.V.B. Haribhakti & Co. Clause 1B of the minutes of the order clearly indicates that the parties had agreed that rest of the order dated 25th June, 2009 remained unaltered including the parties agreement that the appellant and her daughter would go out of the two companies on a fair valuation of their shares. It was further agreed that the representation to the valuer shall be in accordance with the said order dated 25th June, 2009. The said valuers were also directed to follow various directions rendered by the Company Law Board in the said order dated 25th June, 2009.

160. A perusal of the typed copy of the minutes of the order dated 22nd July, 2011 indicates that the said minutes of the order containing handwritten corrections was signed by Mr.Ram Kakkar, Advocate i/b. Duttmenon Dunmorrsett on behalf of the appellant and her daughter and was signed by Mr.Ashis Panikkar, i/b. Khare Legal Chambers. Both the learned counsel who appeared for the respective parties had also put their initials wherever corrections were made in the said minutes of the order. A perusal of the minutes of the order on which various corrections were made in hand by the parties further indicates that the originally the parties had inserted at serial no.4 that the appellant had withdrawn their affidavit dated 15th October, 2009 (Ex.3 to the civil application) which paragraph was deleted. There was an initial of the counsel who had signed the said minutes of order on behalf of the parties there also.

161. On the said minutes of order duly signed by the counsel for the parties duly authorized, this court passed an order on 22nd July, 2011. It is specifically recorded in the said order that the minutes of

the order as corrected and signed by the respective advocates for the parties was taken on record and marked 'X' for identification. A typed/fair copy of the said minutes was also taken on record and marked 'X-1'. The said Company Appeal (Lodging) No.24 of 2011 was disposed of in terms of the minutes of the order marked 'X'. When the parties filed typed/fair copy of the said minute of the order dated 22nd July, 2011, even at that stage, the appellant did not raise any objection and/or pointed out that something more was allegedly agreed by and between the parties or various liberties were granted by this court to the appellant but were not recorded in the said minutes of the order.

162. In my view, the parties who had made several corrections on the said minutes of order and had initialled those corrections had consciously agreed to the said order after reading and understanding the consequence thereof. The minutes of the order was signed by the practicing counsel of this court who were duly authorized by their respective client. None of the parties had challenged the authority of the learned counsel who had signed that minutes of the order.

163. Ms.Sethna, learned counsel appearing for the appellant agreed before this court that it was not the case of the appellant that Mr.Ram Kakkar was not authorized to appear on behalf of her client or was not authorized by her advocates' firm who had filed Vakalatnama to appear as counsel on behalf of the appellant and her daughter. A praecipe filed by the appellant before this court on 29th July, 2011 also clearly indicates that it was not the case of the appellant that the said Mr.Ram Kakkar was not authorized to appear on behalf of the appellant and her daughter and was not authorized to

sign the said minutes of order. It was also not the case of the appellant that the said Mr. Ram Kakkar, advocate was pressurized by anybody to sign the said minutes of the order. In my view the case of the appellant now that the said order dated 22nd July, 2011 passed by this court was a conditional consent order is totally untenable, without any basis and contrary to the minutes of the order signed by the respective counsel by the parties and also contrary to the order passed by this court thereon.

164. If according to the appellant, certain more terms were agreed upon by the parties before signing the said minutes of the order dated 22nd July, 2011, the parties were not prevented from inserting those terms also including the liberty if any, alleged to have been granted by this court to the appellant in the said minutes of the order dated 22nd July, 2011 before signing the said minutes of order. In my view, the allegations of the appellant in the praecipe filed by the appellant and in the pleadings subsequently filed after passing of the said order dated 22nd July, 2011 are after thought and contrary to the consent orders passed by the Company Law Board and by this court. The order dated 22nd July, 2011 and various orders passed by the Company Law Board are self explanatory and speak for itself. Nothing what is not recorded in the said consent orders can be read in those consent orders as sought to be canvassed by the learned counsel for the appellant.

165. It is not in dispute that after passing of the said order dated 22nd July, 2011 by this court, M/s.V.B. Haribhakti & Co. the valuers have already submitted a valuation report before the Company Law Board and has complied with the said order dated 22nd July, 2011.

The parties are at liberty to challenge the said valuation made by the said valuers, however not on the issue sought to be raised by the appellant in the memorandum or in the affidavit filed before this court, praecipe or in any other pleadings before the Company Law Board or before this court.

166. A perusal of the appeal memos filed by the appellant in Company Appeal (Lodging) Nos.24 of 2011 and 25 of 2011 clearly indicates that it was not the case of the appellant and her daughter that the said order dated 25th June, 2009 was challenged on the ground that the memorandum dated 21st May, 2009 was not considered by the Company Law Board. A perusal of the record further indicates that the appellant and her daughter had accepted all consent orders passed by the Company Law Board recording that the appellant and her daughter had agreed to exit the respondent nos. 1 and 6 on payment of fair valuation. The appellant and her daughter had also approached M/s.Chaturvedi & Shah, the erstwhile valuers for implementing the order of Company Law Board for the purpose of their exit.

167. A perusal of the order dated 22nd July, 2011 passed by this court indicates that the appellant and her daughter did not raise any issue of any alleged siphoning of the business opportunity of the respondent nos.1 and 6 or profit by the respondent nos. 2 and 3 in favour of other four companies or that income and assets of those companies shall be treated as assets of respondent nos. 1 and 6. Even if the said order dated 22nd July, 2011 passed by this court in terms of the minutes of the order dated 22nd July, 2011 is not considered as a consent order, it is an admitted position that the

appellant has not challenged the said order dated 22nd July, 2011 and has accepted the said order. The said order dated 22nd July, 2011 has attained finality. This court in these proceedings cannot review and/or re-open and cannot probe into the mind of the parties and this court as to what was discussed by the parties before this court and agreed or disagreed before the said order dated 22nd July, 2011 was passed.

168. A perusal of the ground (H) of paragraph (4) of the appeal memo in Company Appeal (49 of 2014) filed by the appellant along with her daughter which appeal is also disposed of by this order clearly indicates that the ground raised by the appellant and her daughter is that the Company Law Board had failed to appreciate that they were prepared to exit only on a fair valuation or no exit at all since the appellant and her daughter could not exit for an unfair valuation. It is thus clear that the appellant and her daughter had agreed to exit from the respondent nos.1 and 6 however only on payment of fair valuation.

169. The arguments now advanced before the Company Law Board post the said order dated 22nd July, 2011 and before this court is contrary to various consent orders passed by this court based on the agreement arrived at between the parties and are after thought. In my view since the parties had agreed to the valuation of the respondent nos.1 and 6 based on the cut off date i.e. 31st March, 2008 which was repeatedly mentioned in various consent orders including the consent order passed by this court on 22nd July, 2011, the submission of the appellant to shift the said valuation date to a later date cannot be accepted in absence of the consent of the

respondents for modification thereof.

170. The appellant and her daughter had subsequently alleged that they were not given opportunity by the said M/s.Chaturvedi & Shah, the valuers. In view of such contention raised by the appellant and her daughter, the Company Law Board was pleased to remand the matter back to the same valuer with a direction to submit a fresh report after giving an opportunity to the appellant and her daughter. It is thus clear that the appellant and her daughter had acted upon the order passed by the Company Law Board at that stage. It is clear that it was as and by way of afterthought that the appellant started raising various issues contrary to the agreement arrived at between the Company Law Board. Be that as it may, the parties fully agreed before this court on 22nd July, 2011 that except the substitution of M/s.Chaturvedi & Shah by M/s.V.B. Haribhakti & Co., order dated 25th June, 2009 passed by the Company Law Board remained unaltered.

171. This court in case of **Adarsh Toddy Kamgar Sahakari Sanstha, Nagpur & Ors.** (supra) has held that the written order passed by the court cannot be interpreted in the light of parole discussion nor the written order could be treated as valid or modified on that basis. It is held by this court that the observations made by the Judge during the course of hearing or even a declaration by the Judge of his intention of what his judgment is going to be is not a judgment or an order of the Court until the Judge has crystallized his intention into a formal shape and has pronounced it in the open Court as the final expression of his mind. It is held that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. Judges may, and often

do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. It is held that the final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "Judgment".

172. This court held that however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallize into a full-fledged judgment and becomes operative. This court held that the Judges of this Court cannot be dragged into a controversy as to whether the statements ascribed to them are correct, or expressed correctly and fully what they had in view. What may have been said or expressed may often enough be in the course of tentative loud thinking and may reflect only very partially what the judges had in view. What ultimately weighs with the Judges in pronouncing the order, when doing so without giving reasons, may often be not reflected in what is tentatively and openly expressed. Judges cannot be drawn into controversy over such matters. It is held that it is not consistent with the dignity of the Court and the decorum of the Bar that any course should be permitted which may lead to controversy as to what a Judge stated in Court and what view he held. Such matters are to be determined only by what is stated in the record of the Court. It is held that which is not so recorded cannot be allowed to be relied upon giving scope to controversy.

173. It is held that to permit the atmosphere of the Court to be vitiated by such controversy would be detrimental to the very foundation of the administration of justice. The judgment considered

the allegations of a party who in his review application had referred in detail as to what according to him, happened in Court on the prior occasion and what each Judge said in the course of the arguments. In the review application, it was set out at length what the presiding Judge said and expressed in the course of the arguments and what his views were and what the other Judges of the Bench said and expressed and what the view of each Judge was. It was also asserted as to how and why the application was dismissed. The party had acted on the basis of some parole discussion which according to him took place at the time of hearing. This court adverted to the judgment of Supreme Court in case of **Associated Tubewells Ltd. v. R.B. Gujarmal Modi, AIR 1957 SC 742** in which it was held by the Supreme Court that in the review application whereof a party had referred in detail as to what, according to him, happened in Court on the prior occasion and what each Judge said in the course of the arguments and as to how and on the application was dismissed.

174. The Supreme Court held that action on the part of the review petitioner was wholly improper. The Judges of the Court cannot be dragged into a controversy as to whether the statements ascribed to them are correct, or express correctly and fully what they had in view. The Supreme Court observed that to permit the atmosphere of the Court to be vitiated by such controversy would be detrimental to the very foundation of the administration of justice. Supreme Court expressed that the said act on the part of the review petitioner was really very unfortunate. This court held that recording of what allegedly transpired in court by one of the party was really very unfortunate. This court deprecated the course adopted by the parties controverting the order passed by this court by making various

allegations or instances transpired in the court and not recorded in the order.

175. In my view, the judgment of Division Bench squarely applies to the facts of this case. The appellant in this case has after signing the minutes of order through her counsel has made an attempt to dispute what was recorded by consent of parties in the said order dated 22nd July, 2011 by placing on record what according to her had transpired in court including the liberty alleged to have been granted by this court to contend various issues before the Company Law Board. The appellant has tried to create such controversy and to drag a Judge of this court in such controversy by falsely recording what transpired in court which was not forming part of the order. Not only the appellant made such attempt by filing a praecipe but though no order was passed by this court on the said praecipe, the appellant pursued those allegations by making various applications before the Company Law Board on the premise that such liberty was granted by this court in favour of the appellant and her daughter to seek modification of the order dated 25th June, 2009 passed by the Company Law Board and seeks various reliefs contrary to the said order dated 22nd July, 2011 passed by this court.

176. In my view the Company Law Board thus rightly rejected such plea raised by the appellant and her daughter based on such liberty alleged to have been granted by this court which were not forming part of the consent minutes of the order. This court had simplicitor taken the said minutes of the order dated 22nd July, 2011 duly signed by the counsel for the parties on record and had passed an order in terms of the minutes of the order duly signed. In my view,

the appellant thus could not have attributed any allegation against this court or could not have recorded any discussion alleged to have been held during the course of the hearing of those two company appeals before this court or as to what allegedly transpired between the parties and this court. The fact remains that this court did not pass any order on the said praecipe which itself would clearly indicate that the contents thereof were *ex-facie*, false and incorrect.

177. It is not in dispute that in view of this controversy raised by the appellant unnecessarily, at the request of the appellant, these matters which were assigned to another Judge of this court, at the request of the appellant, were heard by Shri Justice S.J. Kathawalla for sometime. It is not in dispute that even at that stage also, the appellant and her daughter did not seek any clarification of the said order dated 22nd July, 2011 though there were ample opportunities to the appellant. On the contrary, the record further indicates that Shri Justice S.J. Kathawalla had removed these matters from his board. In my view the application thus made by the appellant by way of praecipe and thereafter various company applications filed before the Company Law Board on the premise that such applications were made based on the liberty alleged to have been granted by this court was based on a false premise by putting the words of the appellant in the mouth of this court which act of the appellant is deprecated and not acceptable.

178. Supreme Court in case of **State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr.**, (supra) has held that the court cannot launch an inquiry as to what transpired in the High Court. It is held that it is simply not done. Public Policy bars the court, the

Judicial decorum restrains the court. Matters of judicial record are unquestionable and are not open to doubt. It is held that the judgments cannot be treated as mere counters in the game of litigation. It is held that the Supreme Court was bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. The court cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. It is held that if the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. Supreme Court held that the principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. The principles laid down by the Supreme Court in case of **State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr.**, (supra) squarely applies to the facts of this case.

179. This court in case of **Unmesh Kantilal Shah & Ors.** (supra) has after adverting to the judgment of Supreme Court in case of **Parayya Allayya Hittalamani** (supra) has held that the principle of interpretation of contract and/or any documents cannot be extended to the interpretation and/or for clarification of unchallenged Consent Order passed by the Company Law Board in question to consider these appeals on merits, arising out of the interlocutory petition/application and order passed thereon, prior to the consent order in question, inspite of the final decision of the main company petition itself. In my view, there is no substance in the submission of the learned counsel for the appellant that the appellant can rely upon the memorandum dated 21st May, 2009, her affidavit filed before the

Company Law Board or this court in support of her contention that various suggestions and/or demands made therein could be made even after the said order dated 22nd July, 2011 passed before the Company Law Board or what had allegedly transpired before the said order dated 22nd July, 2011 between the parties and in court to interpret the said agreement recorded in the said minutes of the order dated 22nd July, 2011 based on the premise that the same was a contract.

180. In my view, the principles for interpretation of a contract cannot be extended to the interpretation of the consent order arrived at between the parties duly signed by the parties themselves or through their advocates. The court has taken on record the minutes of the order duly signed by the advocates by the parties and has disposed of company appeals in terms of those minutes of the order. It was for the parties to record additional terms if any, agreed upon by and between them in the said minutes of order before signing those minutes and ought to have obtained any further liberty and/or directions sought by such party from the court and/or granted by this court. In my view, the application made by the appellant by way of praecipe and thereafter filing of subsequent applications before the Company Law Board based on the alleged understanding of the order dated 22nd July, 2011 passed by this court was mischievous and was not in accordance with the said order dated 22nd July, 2011 which records the agreement arrived at between the parties and is deprecated. The statement made by the learned counsel for the appellant that the appellant is entitled to rely upon the memorandum, affidavit and the praecipe filed by her before this court to read those demands in the consent order is *ex-facie* frivolous and untenable.

181. Supreme Court in case of **Dr.Renuka Dalta** (supra) has held that the court has to go by the terms of the settlement which are the last word on the subject. The terms do not either in express terms or in writing or by necessary implication did contemplates the valuation, the court cannot draw any other presumption. In my view the judgment of Supreme Court in case of **Dr.Renuka Dalta** (supra) would squarely apply to the facts of this case. Both the parties in this case had agreed that the valuation of the assets of the respondent nos. 1 and 6 would be by M/s.V.B. Haribhakti & Co., and that the valuers appointed by consent of both the parties would submit valuation report on the basis of the balance-sheet of the company as on 31st March,1998. The appellant thus cannot be allowed to now contend that the valuation shall be taken as on the date of which the payment is made to the appellant or on the date of exit or when the final order is passed by the court.

182. Madras High Court in case of **Kuki Leather Private Ltd. & Ors.** (supra) has held that no oral evidence can be led in view of section 91 of the Evidence Act, 1872 to disprove the contents of the consent order passed by the Company Law Board and this court. I am thus not inclined to accept the submission of the learned counsel for the appellant that the appellant be granted an opportunity to prove whether terms alleged to have been agreed upon by and between the parties were not recorded in the minutes of the order dated 21st July, 2011 or to prove what transpired in the court. I am in respectful agreement with the views expressed by the Madras High Court in case of **Kuki Leather Private Ltd. & Ors.** (supra).

183. Gauhati High Court in the case of **Subhash Mohan Dev** (supra) has held that the order passed by the Company Law Board was since an order that was agreed by the parties, in the absence of anything more like fraud, coercion etc. there cannot be any ground for interfering with a consent order on appeal. Such consent order operates as an estoppel. In my view Mr.Narichania, learned senior counsel for the respondent nos. 1 to 6 is right in his submission that the appellant can argue before the Company Law Board that the valuation report submitted by M/s.V.B. Haribhakti & Co. is not realistic and the said issue can be considered by the Company Law Board in the pending company petitions.

184. Supreme Court in case of **Suvaran Rajaram Bandekar & Ors.** (supra) has held that if the order is passed by consent of the parties by the court, the same can be modified only by consent of the parties and not otherwise. In my view since the respondents have opposed these appeals and more particularly the arguments that various alleged agreements entered into between the parties before filing the minutes of the order dated 22nd July, 2011 shall be read in the said order and are opposing such arguments vehemently, in my view the said consent order dated 22nd July, 2011 cannot be modified without consent of the respondents. The principles laid down by the Supreme Court in case of **Suvaran Rajaram Bandekar & Ors.** (supra) applies to the facts of this case.

185. Insofar as submission of the learned counsel for the appellant that the memorandum dated 21st May, 2009 was not relied upon by the appellant was allegedly not controverted by any of the respondents and was admitted on record before the Company Law

Board when the said order dated 25th June, 2009 was passed by the Company Law Board or that the Company Law Board did not accept the suggestions made by the appellant in the said memorandum is concerned, in my view even if the said memorandum was brought on record before the Company Law Board, the fact remains that in the said consent order passed by the Company Law Board and in consent minutes of Order passed by this court on 22nd July, 2011, there was no agreement between the parties that M/s.V.B. Haribhakti & Co., the new valuer appointed by consent of the parties would consider the suggestions made by the appellant and her daughter in the said memorandum. There is thus no substance in this submission of the learned counsel for the appellant. Similarly the reliance placed on the affidavit filed by the appellant before the Company Law Board on 15th October, 2009 also cannot be relied upon for this reason. The fact remains that even after filing this affidavit, making various allegations by the appellant or making suggestions in the said affidavit, the fact remains that in the consent order dated 22nd July, 2011, the parties did not agree that the contents of those allegations in the affidavit shall be considered by the said M/s.V.B. Haribhakti & Co., the valuers appointed by consent of parties.

186. In my view there is no substance in the submission of the learned counsel for the appellant that the date of the entitlement of payment of the appellant on the basis of the price was not agreed by the parties in the said order dated 22nd July, 2011 or that this court has overlooked the said affidavit filed by the appellant before the Company Law Board and this court while passing the said order dated 22nd July, 2011. It is not the case of the respondents that the parties had agreed to accept the correctness of the valuation report of

M/s.V.B. Haribhakti & Co., the valuers appointed by consent of parties. On the contrary the submission of the learned senior counsel for the respondents is that the appellant can challenge the said report on the ground that the same is not realistic and not on the ground that the said report did not consider the memorandum, praecipe and affidavit filed by the appellant before the Company Law Board and this court.

187. Insofar as reference to the corrections made in the minutes of the order dated 22nd July, 2011 by the learned counsel for the appellant is concerned, the appellant could not produce any material on record to demonstrate that the respondents had asked the appellant and her daughter to withdraw the said affidavit filed by the appellant and her daughter. Be that as it may, the fact remains that the said order dated 22nd July, 2011 was passed after both the parties through their respective counsel had signed and initialled the said minutes of the order. These allegations made by the appellant are thus without any basis and are incorrect. The respondents were not required to file any reply to the praecipe filed by the appellant and her daughter. In my view, there is no merit in the submission of the learned counsel for the appellant that the interpretation of the order dated 22nd July, 2011 passed by this court by the Company Law Board is perverse or by overlooking the memorandum on record before the Company Law Board, affidavit filed by the appellant recording letter dated 23rd July, 2011 and the praecipe filed by the appellant and her daughter on 29th July, 2011. In my view, the Company Law Board had rightly considered various orders passed by it and also the order dated 22nd July, 2011 passed by this court based on the consent minutes of order.

188. Insofar as submission of the learned counsel for the appellant that Shri Justice S.J. Kathawalla had granted stay of the proceedings before the Company Law Board after having been satisfied with the case of the appellant and her daughter as to what transpired in court on 22nd July, 2011 is concerned, a perusal of the record indicates that even at that stage, the appellant neither applied for any clarification of the order dated 22nd July, 2011 nor the same was clarified by this court. On the contrary, Shri Justice S.J. Kathawalla had removed the matters from the board. A perusal of the record indicates that when the interim stay was granted by Shri Justice S.J. Kathawalla staying the hearing of the company petition filed by the appellant, the matters were placed on board for hearing before the Company Law Board. The Company Law Board in its order dated 25th June, 2009 had permitted the appellant to make submission before the valuers but not on the other issue raised by the appellant in the memorandum, praecipe, affidavit and other correspondence.

189. Insofar as submission of the learned counsel for the appellant that there was neither any implied nor any express waiver by the appellant of the conditions/suggestions/points raised by the appellant in the affidavit filed by her before the Company Law Board as well as before this court which were to be considered by the valuers is concerned, in my view the parties had agreed to restrict the scope of valuation to be made by M/s.V.B. Haribhakti & Co. specifically recorded in the order dated 25th June, 2009 passed by the Company Law Board read with order dated 22nd July, 2011 passed by this court. The question of any reliance on the conditions /

suggestions / points raised in the affidavit and other documents prior to 22nd July, 2011 by the appellant to be considered by the valuers did not arise. The appellant was estopped from relying upon the conditions/suggestions/contentions raised by the appellant to be considered in the valuation report made prior to 22nd July, 2011 after passing of the said order by this court by consent of parties.

190. Insofar as submission of the learned counsel for the appellant that the appellant was not expected to accept the valuation of the shares on the basis of the valuation as on 31st March, 1998 is concerned, in my view the appellant cannot be allowed to raise this issue in view of the appellant having agreed for such cut off date repeatedly before the Company Law Board and also before this court on 22nd July, 2011. It is not in dispute that the company petition was filed by the appellant in the year 1997 whereas the parties had agreed to have valuation of the respondent nos. 1 and 6 as on 31st March, 1998. There is no substance in the submission of the learned counsel for the appellant that the appellant could not have waived her alleged right to seek valuation of the shares of the other companies incorporated by the respondent nos. 2 and 3 and allegedly diverting the business of the respondent nos.1 and 6 to those companies as part of valuation of respondent nos. 1 and 6. The appellant and the other party having signed the minutes of the order and having taken consent order cannot be now allowed to resile from the said agreement. Admittedly no such adjudication of such allegation is made even till today by the Company Law Board in any of the proceedings filed by the appellant nor such allegation can be gone into by the Company Law Board in view of the consent order passed by the Company Law Board as well as by this court.

191. Insofar as reliance placed on Article 16 of the Articles of Association by the learned counsel for the appellant is concerned, in this case the parties have agreed by consent that the appellant and her daughter would exit on payment of fair valuation and had agreed to the appointment of valuer by the Company Law Board. M/s.V.B. Haribhakti & Co. has already submitted a valuation report which can be challenged by the appellant on the ground that the same is not realistic. I am not inclined to accept the submission of the learned counsel for the appellant that her client had established that there was corporate division of business opportunity by diverting the entire business of the respondent nos. 1 and 6 to other companies incorporated by respondent nos. 2 and 3 or that her client was right in demanding that the entire value of the business opportunity to be considered as part of the asset of respondent nos. 1 and 6. Since there was no such agreement entered into between the parties before the Company Law Board or before this court, the appellant could not raise any such demand. Be that as it may, such allegations made by the appellant are admittedly not adjudicated upon by the Company Law Board till date. The question of the appellant therefore demanding the valuation of the assets of the respondent nos. 1 and 6 based on such allegation was even otherwise untenable.

192. Insofar as submission of the learned counsel for the appellant that the averments made by the respondent nos. 1 and 6 in Company Application No.116 of 2011 for permission to raise additional funds for respondent nos. 1 and 6 would indicate that there was no binding agreement between the parties before the Company Law Board is concerned, there is no merit in this submission of the

learned counsel for the appellant. It is not the case of the appellant that the order dated 22nd July, 2011 was not a consent order. The appellant has though now contended that the said order was only a conditional order the appellant is unable to establish such conditions which stood incorporated therein. From the perusal of the said order dated 22nd July, 2011, I am not inclined to accept the submission of the learned counsel for the appellant that the said agreement dated 22nd July, 2011 recorded by this court cannot be construed as a binding agreement or that the same is not capable of enforcement. There is no substance in the submission of the appellant that the Company Law Board or this court has to consider the surrounding circumstances while interpreting the order dated 22nd July, 2011.

193. Insofar as reliance placed on the judgment of Supreme Court in case of **Parayya Allayya Hittalamani** (supra) is concerned, Supreme Court in the said judgment has held that in the event, the document is vague, the same must be construed having regard to surrounding and/or attending circumstances. It is held that in a case where a consent decree cannot refer to the entire disputes between the parties and some vagueness remained, the factual background as also the manner in which existence of rights have been claimed by the parties would be relevant. In the said judgment, the Supreme Court was considering the vague consent terms. It is held that while construing a decree, this court can and in an appropriate case ought to have taken into consideration the pleadings as well as the proceedings leading upto the decree.

194. In this case, the minutes of the order filed by the parties before this court were absolutely clear. The minutes of the order were

signed by the learned counsel appearing for the parties whose authority has not been disputed by the parties. This court disposed of the proceedings in terms of those minutes of order signed by both the parties through their respective counsel. The agreement arrived at between the parties in the said minutes of order dated 22nd July, 2011 was in continuity with the order dated 25th June, 2009 passed by the Company Law Board and the said order was modified only partly to the extent of substitution of the name of M/s.Chaturvedi & Shah by M/s.V.B. Haribhakti & Co. and the date for submission of the valuation report. The judgment of Supreme Court in case of **Parayya Allayya Hittalamani** (supra) relied upon by the learned counsel for the appellant would not assist the case of the appellant.

195. Insofar as judgment of Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd.** (supra) relied upon by the appellant is concerned, the Supreme Court in that case has held that the plea of waiver could be said to have been made out by the State Government. Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act with knowledge. It is held that there can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. In this case, the so called suggestions/demands/conditions were made by the appellant in various documents relied upon by the appellant before the consent terms came to be passed by the Company Law Board and thereafter before this court. It is not the case of the appellant that the appellant was not aware of her alleged rights not to agree to exit or to exit only if additional demand as made by her were agreed by the

respondents. Inspite of all such suggestions/demands/conditions suggested by the appellant, the appellant ultimately agreed to exit on payment of fair value on the basis of the balance-sheet of respondent nos. 1 and 6 as on 31st March, 1998 as per the valuation has to be made by the valuer. In my view the judgment of Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd.** (supra) does not assist the case of the appellant and is clearly distinguishable.

196. Insofar as judgment of this court in case of **Vinod Kumar & Anr.** (supra) relied upon by the learned counsel for the appellant in support of her submission that the date of the valuation must be the date on which the judgment is delivered is concerned, a perusal of the said judgment indicates that there was no such consent order before this court in the said judgment. Both the parties were aggrieved by the valuation report determining the market value of the said shares. This court accordingly held that since both the parties were aggrieved by the valuation report, the valuation *ex-facie* could not be considered as just and proper. In this case, M/s.V.B. Haribhakti & Co. has already submitted a report. The valuation carried out by the valuer is whether realistic or not has to be still considered by the Company Law Board. The judgment of this court in case of **Vinod Kumar & Anr.** (supra) thus would not assist the case of the appellant.

197. Insofar as judgment of this court in case of **Nafan B.V.** (supra) relied upon by the learned counsel for the appellant is concerned, in my view the said judgment would not assist the case of the appellant. There was no agreement between the parties about the date of valuation as in this case. A perusal of the record indicates

that though the first order was passed by the Company Law Board for such valuation by appointing M/s.Chaturvedi & Shah on 25th June, 2009, the appellant though had sought appointment with the said valuer M/s.Chaturvedi & Shah, later made a grievance before the Company Law Board that she was not given an opportunity. Though the Company Law Board accepted the request of the appellant for an opportunity and the matter was remanded back to the valuers for rendering an opportunity to the appellant, the appellant challenged the said order before this court by filing an appeal under section 10F of the Companies Act, 1956.

198. The appellant thereafter agreed and gave consent for substitution of erstwhile valuers M/s.Chaturvedi & Shah by appointing M/s.V.B. Haribhakti & Co. and agreed that the remaining terms and conditions of the order dated 25th June, 2009 would remain unaltered. The appellant thereafter raised frivolous issue by filing a praecipe and various applications before the Company Law Board contrary to such consent order dated 22nd July, 2011 read with the order passed by the Company Law Board and more particularly order dated 25th June, 2009. Though the Company Law Board rightly passed an impugned order and though the said M/s.V.B. Haribhakti & Co. has already submitted a valuation report quiet sometime back before the Company Law Board, the appellant filed these appeals by raising various frivolous issues. As a result as on today, there is no adjudication on the report submitted by the said M/s.V.B. Haribhakti & Co. as to whether the said report is realistic or not.

199. In my view the delay was caused because of the conduct of the appellant in filing various frivolous applications before the

Company Law Board and also various proceedings before this court. The date of valuation thus cannot be shifted to the date of the order as canvassed by the learned counsel for the appellant.

200. Insofar as reliance placed by the learned counsel for the appellant in case of Ebrahimi (supra) and on the judgment of Calcutta High Court in case of Bajrang Prasad Jalan & Ors. (supra) in support of the submission that the value of the shares of the appellant shall be fixed as on the date of passing the judgment is concerned, in my view those judgments would not assist the case of the appellant for the reasons in this case both the parties had agreed that the appellant shall exit on payment of fair value taking into consideration the valuation as on 31st March, 2008. The appellant is guilty of delay from the date of the order passed by the Company Law Board appointing the valuer for the said purpose. The appellant thus cannot be allowed to raise this issue that the valuation of the shares shall be fixed as on the date of passing of the judgment keeping in mind that the properties of the respondent nos. 1 and 6 are immoveable properties and valuation thereof might have gone up.

201. Insofar as submission of the learned counsel for the appellant that the respondent nos. 1 and 6 and the directors have illegally diluted the shareholding of Mr. Anthony Maynard is concerned or that the respondent nos. 1 and 6 have failed to transmit the shareholding of the appellant is concerned or that the respondent nos. 1 and 6 have excluded the appellant from participating in the management is concerned, these allegations need not be gone into by this court in the present proceedings and if any such allegations are made by the appellant in the company petitions which were

pending before the Company Law Board and are now pending before the National Company Law Tribunal, the appellant can agitate these allegations in those proceedings.

202. Insofar as the submission of the learned counsel for the appellant that none of the orders passed by the Company Law Board can be considered as the orders under section 402(b) of the Companies Act, 1956 for purchase of the shares by the appellant and her daughter by the other members of the respondent nos. 1 and 6 are concerned, a perusal of the order passed by the Company Law Board from time to time referred to aforesaid including the order dated 25th June, 2009 clearly indicates that the appellant and her daughter had agreed to exit from the respondent nos. 1 and 6 on payment of fair value. Only after such agreement of the appellant and her daughter, the Company Law Board after obtaining consent of the respondents had appointed M/s.Chaturvedi & Shah for the purpose of valuation. A perusal of the order passed by the Company Law Board clearly indicates that those orders fully satisfied the conditions set out under section 402(b) of the Companies Act, 1956 for the purchase of the shares of the appellant and her daughter by other members of the respondent nos. 1 and 6.

203. Insofar as submission of the learned counsel for the appellant that the valuation of M/s.V.B. Haribhakti & Co. shows the valuation of the respondent nos. 1 and 6 at double the valuation made by M/s.Chaturvedi & Shah is concerned, it is not in dispute that the respondents have not challenged the valuation made by M/s.V.B. Haribhakti & Co. If it is contended by the appellant before the Company Law Board that the valuation of M/s.V.B. Haribhakti & Co.

which shows the valuation which is double of the valuation made by the erstwhile valuer and even such report is not realistic, the Company Law Board can decide the said issue as to why the said double amount of valuation reflected in the report of M/s.V.B. Haribhakti & Co. shall be corrected and the valuation at higher amount shall be considered. I am not inclined to accept the submission of the learned counsel for the appellant that all orders prior to 22nd July, 2011 passed by the Company Law Board are exploratory or that the order dated 22nd July, 2011 is a conditional consent order.

204. Insofar as reliance placed by the learned counsel for the appellant on the judgment of Supreme Court in case of **Needle Industries (India) Ltd. and Ors.** (supra) is concerned, the Supreme Court has discussed the equitable jurisdiction of the Company Court. In the said judgment, the company petition under sections 397 and 398 was disposed of by the Company Law Board. The Supreme Court held that though the parties had failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting was held in accordance with law.

205. As a measure of neutralisation of the benefit which one set of shareholders received, the Supreme Court issued certain directions regarding payment of dividend. In this case without prejudice to the rights and contentions of the respondents that the appellant is not entitled to seek shifting of the date of valuation from 31st March, 2008 to some other date, the respondent nos. 1 and 6

have offered interest at the rate of 10% per annum on the amount payable to the appellant in terms of the valuation report of M/s.V.B. Haribhakti & Co. from the date of report i.e. 30th October, 2011 till 31st December, 2017, in the event of the appellant accepting the valuation report submitted by M/s.V.B. Haribhakti & Co. on 30th October, 2011. The said without prejudice statement is made in writing by the respondent nos. 1 to 6 before this court on 17th January, 2017 and is taken on record. It was made clear in the said statement that the said statement was valid for a period of 3 months from the date of the said statement and if the appellant refuses to accept the report within 3 months, statement shall stand withdrawn and the offer will no longer be valid. The appellant however did not convey her consent accepting the report of M/s.V.B. Haribhakti & Co. till conclusion of the arguments before this court. There is no dispute that the Company Law Board while entertaining a petition under sections 397 and 398 of the Companies Act, 1956 and this court while hearing the appeal under section 10F has equitable jurisdiction. However, such equitable jurisdiction can be exercised to do equity to both the parties and not to a party who is at fault and is responsible for gross delay.

206. Insofar as judgment of Supreme Court in case of **Dale & Carrington Invt. (P) Ltd.** (supra) relied upon by the learned counsel for the appellant is concerned, a perusal of the said judgment indicates that in that case the share capital was increased by the company behind the back of the contesting party. The Supreme Court has rendered a finding that the said increase in the shareholding was *malafide* and fraudulent with a view to gain control of the company and that also without following proper procedure. The Supreme Court in the said judgment had rendered a finding that

there was an oppression by majority over the minority and the Company Law Board had permitted the majority shareholders to buy the shareholding of the minority shareholder at the face value. In this case, there is no finding of oppression and mismanagement rendered by the Company Law Board till today since the said company petition filed by the appellant is still pending. The judgment of Supreme Court in case of **Dale & Carrington Invt. (P) Ltd.** (supra) thus would not assist the case of the appellant.

207. In my view, the judgment has to be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only the part of it. The judgment of Supreme Court in case of **Dale & Carrington Invt. (P) Ltd.** (supra) was given in the facts of that case which are totally distinguishable in the facts of this case. Similar view is taken by the Supreme Court in case of **P.S. Sathappan (dead) by Lrs.** (supra) and the judgment of the Supreme Court in the case of **Gangadhar Behera & Ors.** (supra).

208. Insofar as submission of the learned senior counsel for the respondent nos. 1 and 6 that though the husband of the appellant did not have 1/3rd shareholding in the respondent nos. 1 and 6, the respondent nos. 1 and 6 had offered 1/3rd shareholding to the appellant and her family is concerned, this court cannot re-open this issue in view of the parties having agreed before the Company Law Board that fair value would be paid by the respondent nos. 1 and 6 to the appellant, legal heir of said Mr. Anthony Maynard on the basis of 1/3rd shareholding.

209. This court in case of **Akkadian Housing & Infrastructure**

Pvt. Ltd. & Ors. (supra) approved the order passed by the company Law Board not fixing the date of the valuation as on the date of petition but considering the pendency of the petition for about three years for default of none fixed 50% mark up on the share of profit to compensate one of the party. The Special Leave Petition against the said judgment delivered by this court is pending. In this case, this court is of the view that the delay was attributable on the part of the appellant. The said judgment of this court thus would not assist the case of the appellant.

210. A perusal of the impugned order passed by the Company Law Board in Company Application No.457 of 2011 indicates that the Company Law Board has considered various orders passed by the Company Law Board from time to time recording the agreements between the parties regarding exit of the appellant and her daughter in respondent nos.1 and 6 on the basis of the valuation based on balance-sheet as on 31st March, 2008. The Company Law Board also considered the order dated 25th June, 2009 passed by the Company Law Board and also the order dated 22nd July, 2011 passed by this court in terms of the minutes of the order signed by the respective counsel for the parties and rightly held that the order dated 25th June, 2009 which was modified only insofar as name of the erstwhile valuer was concerned and the date of the submission of the report by the new valuer. The Company Law Board held that the order dated 9th May, 2011 had attained finality subject to the modification contained in the minutes of the order dated 22nd July, 2011 and thus the appellant could not be allowed to raise the issue of diversion of corporate opportunity from respondent no.1 to other companies. In my view, the order passed by the Company Law Board

thus rejecting the said Company Application No.457 of 2011 is based on the earlier orders passed by the Company Law Board on record and also based on the consent terms passed by the High Court and is not perverse. No question of law arises in this appeal under section 10F of the Companies Act, 1956.

211. Insofar as order passed by the Company Law Board in Company Application No. 399 of 2011 which was for seeking an amendment in Company Petition No.177 of 2007 is concerned, a perusal of the order passed by the Company Law Board indicates that the said company application is rejected by the Company Law Board on the ground that the amendment sought by the appellant in the said company application was sought to circumvent the order dated 9th May, 2011 passed by the Company Law Board and the order dated 22nd July, 2011 passed by this court. In my view, the order passed by the Company Law Board on 9th May 2011, 25th June, 2009 and various orders passed in the company petition and company application filed by the appellant have attained finality. The order dated 22nd July, 2011 passed by this court also has attained finality. The said application for amendment of the Company Petition No.177 of 2007 prayed by the appellant in Company Application No. 399 of 2011 was in teeth of the various orders passed by the Company Law Board and this court and thus this court does not find any infirmity with the order passed by the Company Law Board dismissing the Company Application No.399 of 2011 for the reasons recorded therein. There is no perversity in the said order passed by the Company Law Board and thus no interference is warranted in this company appeal.

212. Insofar as Company Application No.398 of 2011 *inter-alia* praying for transfer of company petition (46 of 2011) which was filed by the appellant before the Company Law Board, Mumbai is concerned, the said Company Petition No.46 of 2011 was filed by the appellant against Mundhra Container Freight Station Private Limited for various reliefs before the Company Law Board, Mumbai. The appellant had also impleaded the respondent nos. 1 and 6 herein in the said company petition as respondents. The names of the respondent nos. 1 and 6 are subsequently deleted by the appellant from the arena of the said Company Petition No.46 of 2011 pursuant to an order passed by the Company Law Board. A perusal of the record indicates that the reliefs and the nature of the allegations made by the appellant against the said company which is a different company who is respondent to the said petition are different. In my view Mr.Narichania, learned senior counsel for the respondent nos. 1 to 6 is right in his submission that the said application belatedly made by the appellant for transfer of that petition which was pending before the Company Law Board, Mumbai to the Company Law Board Delhi was with a view to delay the outcome of the company petitions filed before the Company Law Board, Delhi. The Company Law Board in my view thus rightly rejected the said company application for seeking transfer of the Company Petition No.46 of 2011 pending before Mumbai Bench of the Company Law Board and to consolidate the same with Company Petition Nos.177 of 2007 and 199 of 2007 on the ground that the appellant had to exit from the respondent nos. 1 and 6 and therefore transfer and consolidation the said Company Petition No.46 of 2011 with Company Petition Nos.177 of 2007 and 199 of 2007 would only complicate the issues further. In my view there is thus no merit in these appeals impugning the said common order

dated 17th October, 2011 insofar as rejection of the Company Application No.398 of 2011 is concerned.

213. In so far as the submission of the learned counsel for the appellant that the respondent nos.1 and 6 themselves had applied for permission to raise additional funds by the respondent nos.1 and 6 in the Company Application No.116 of 2011 which offer was not accepted by the appellant and it would thus indicate that there was no binding agreement between the parties arrived at before the Company Law Board at any stage is concerned, in my view, there is no merit in this submission of the learned counsel for the appellant. The Company Law Board had not granted any such permission to the respondent nos.1 and 6.

214. In my view, there is no merit in the submission of the learned counsel for the appellant that since the respondent nos.1 and 6 being Private Limited Company and being in the nature of quasi partnership, the valuation of the share of the appellant will have to be made on the basis of a going concern. The parties have already agreed to the valuation date and also the ratio of the parties for the purpose of valuation by consent.

215. In so far as the reliance placed on the judgment in the case of **Vinod Kumar & Anr. vs. Sigmalon Equipment P. Ltd. & Ors.** (supra) relied upon by the learned counsel for the appellant is concerned, the said judgment would not assist the case of the appellant in view of the fact that the parties in this case had by consent agreed that the valuation shall be on the basis of the

balance sheet of the respondent nos.1 and 6 as on 31st March 2008.

216. In so far as the allegation of the appellant that the other directors of the respondent nos.1 and 6 had diluted the shareholdings of Mr. Anthony Maynard from 33% to about 17% is concerned, since those allegations are to be dealt with the National Company Law Tribunal in the company petition filed by the appellant, this Court need not go into those allegations at this stage in these appeals arising out of the interlocutory orders. Similarly, the allegation of the appellant that the respondent nos.1 to 6 did not permit the appellant to take inspection of the record is concerned, the said issue also can be raised before the National Company Law Tribunal in the pending company petitions if already raised in those petitions and need not be dealt with by this Court.

217. A perusal of ground 'H' on page 4 of the appeal memo in the Company Appeal No.49 of 2014 filed by the appellant indicates that it is urged by the appellant herself that the Company Law Board had appreciated that it was the case of the appellant and her daughter before this Court that they were prepared to exit only on a fair valuation or not to exit at all. It is thus clear that the appellant had categorically agreed to exit, however, on payment of fair valuation. The question of now raising an issue of not exiting by the appellant from the respondent nos.1 and 6 does not arise.

218. Under Sections 397 and 398 of the Companies Act, 1956, the petitioner has two options available i.e. (i) to exit from the company in question on payment of fair valuation and (ii) to pursue

the petition or an appropriate action alleging oppression and mismanagement and to take it to its logical conclusion. In my view, the appellant could not pursue both the options simultaneously, once having agreed to exit from the respondent nos.1 and 6 on the condition that the appellant is paid fair valuation of her share. The Company Law Board has ample powers under Section 402 of the Companies Act, 1956 to order the valuation in the event of the petitioner having agreed to exit. The orders passed by the Company Law Board under Section 402 of the Companies Act, 1956 for valuation of such shares for the purpose of exit of the appellant is enforceable as a decree of the Court. In my view, the judgment of the Delhi High Court in the case of **S.P. Gupta vs. Packwell Manufacturers (Delhi) Pvt.** (supra) relied upon by Mr.Narichania, learned senior counsel for the respondent nos.1 to 6 would apply to the facts of this case and would assist their case.

219. The Supreme Court in the case of **Dr.Renuka Datla (Mrs.) vs. Solvay Pharmaceuticals B.V. & Ors.** (supra) has held that the Court has to go by the terms of settlement which are the last words on the subject and if those terms either in express terms or by necessary implication do not contemplate the valuation by any other method, the Court cannot draw any other presumption. In my view, since the parties have filed consent Minutes of order and having agreed that the appellant and her daughter would exit on payment of fair valuation on the basis of the valuation of the shares of the respondent nos.1 and 6 and on the basis of balance sheet as on 31st March 2008, no other method as canvassed by the learned counsel for the appellant can be read in the said order as the same

had not been contemplated and agreed by the parties in the said order.

220. The Kerala High Court in the case of **Subash Jain & Ors. vs. Pioneer Shopping Complex Pvt. Ltd. & Ors.** (supra) has held that after having agreed to purchase the minority shares on the basis of a report submitted by the valuer appointed by the Company Law Board, majority shareholders cannot wriggle out of their agreement which was accepted by the minority shareholders. It is held that the Company Law Board is duty bound to pass orders under Section 402(b) on the basis of the valuation report submitted by the valuer after hearing both the parties. In my view, the principles of law laid down by the Kerala High Court in the case of **Subash Jain & Ors. vs. Pioneer Shopping Complex Pvt. Ltd. & Ors.** (supra) would apply to the facts of this case. In this case, the appellant who was the minority shareholder had agreed to exit on payment of fair valuation and also agreed to the appointment of the valuers by the Court which order was also agreed by the respondents, the appellant cannot be allowed to wriggle out of the said agreement. I am respectfully in agreement with the views expressed by the Kerala High Court in the case of **Subash Jain & Ors. vs. Pioneer Shopping Complex Pvt. Ltd. & Ors.** (supra).

221. Supreme Court in the case of **Suvaran Rajaram Bandekar & Ors. vs. Narayan R. Bandekar & Ors.** (supra) has held that the consent order passed by the Court cannot be modified unless both the parties give consent for modification thereto. This Court thus cannot thus modify the order dated 22nd July, 2011 passed by this Court. In my view, the principles of law laid down by the Supreme

Court in the case of **Suvaran Rajaram Bandekar & Ors. vs. Narayan R. Bandekar & Ors.** (supra) would apply to the facts of this case. I am respectfully bound by the said judgment.

222. A perusal of the grounds of appeal filed by the appellant and her daughter in the Company Appeal (Lodging) Nos.24 of 2011 and 25 of 2011 indicates that the orders dated 20th April, 2009 and 25th June 2009 which were passed by the Company Law Board in the company applications filed by the appellant and her daughter were not the subject matter of those two appeals. In my view, both those orders i.e. 20th April, 2009 and 25th June, 2009 had already merged with the order dated 22nd July, 2011 passed by this Court and thus this Court cannot change the date of valuation from 31st March, 2008 to the date of passing final order for exit of the appellant and her daughter or to any other date which would be contrary to the order dated 22nd July, 2011 passed by this Court and which has attained finality.

223. In so far as the submission of the learned counsel for the appellant that this Court cannot consider written note submitted by the respondent nos.1 and 6 alleging efforts made by the respondent nos.2 and 3 before the death of the husband of the appellant and post his demise to expand the respondent nos.1 and 6 is concerned, since these allegations were not on record before the Company Law Board and before this Court, this Court does not propose to deal with the contentions raised in the said written note submitted by the learned counsel for the respondent nos.1 and 6.

224. In so far as the submission of the learned counsel for the appellant that there being inconsistencies/difference in the Minutes of the Order with handwritten corrections and in re-typed Minutes of Order, the Minutes of Order with handwritten corrections would prevail and would be binding on the parties is concerned, in my view, there is no merit in this submission of the learned counsel for the appellant for the reason that the counsel for the parties had put their initials on the corrected portion of the Minutes of Order containing handwritten corrections. Admittedly in the re-typed Minutes of Order dated 22nd July, 2011, corrected Minutes of Order which were duly agreed by the parties and signed by their respective counsel were re-typed. This Court had thereafter passed an order in terms of the Minutes of Order and thus there was no question of any inconsistencies/difference in those two sets of Minutes of Order.

225. In so far as the submission of the learned counsel for the appellant that in this case, no time, date and amount of the valuation was mentioned in any of the orders passed by the Company Law Board or by this Court is concerned, a perusal of various orders passed by the Company Law Board and the order dated 22nd July, 2011 passed by this Court clearly indicates that the parties had agreed about the shareholdings of the appellant, name of the valuer, valuation to be made on the basis of the balance sheet of the respondent nos.1 and 6 as on 31st March, 2008. All requisite details of valuation agreed upon were mentioned in the consent order.

226. In my view, there is no merit in the submission of the learned counsel for the appellant that the parties in those proceedings before this Court had not acted upon the said order dated 22nd July,

2011. Pursuant to the said order, M/s.V.B. Haribhakti & Co. has already submitted the valuation report before the Company Law Board. In my view, there is no merit in the submission of the learned counsel for the appellant that there is no deemed rejection of the praecipe filed by the appellant. The appellant could not produce any order passed on the said praecipe. Shri Justice S.J. Kathawalla who heard these matters at some point of time even after 22nd July, 2011 admittedly did not pass any order as canvassed by the appellant. It is thus clear that the said praecipe filed by the appellant was deemed to have been rejected.

227. In so far as the submission of the learned counsel for the appellant that since the respondent had not filed any reply to the Company Application No.457 of 2011 before the Company Law Board, the averments made in that company application have deemed to have been accepted by the respondent is concerned, it is not in dispute that the respondent had vehemently opposed the said application and had relied upon various orders passed by the Company Law Board and also the order dated 22nd July, 2011 passed by this Court. In these circumstances, it cannot be urged that what was alleged in the said company application was deemed to have been admitted. The averments made in that application were *ex-facie* contrary to the order passed by the Company Law Board and also the order dated 22nd July, 2011 passed by this Court.

228. In my view, there is no merit in the submission of the learned counsel for the appellant that the appellant was entitled to buy equity shares of the other members and also exercise its right of participation, dividend, entitled to apply for winding up of the

respondent nos.1 and 6 on just and equitable ground and share in surplus in case of winding up of the respondent nos.1 and 6 in view of the fact that the appellant had agreed to exit from the respondent nos.1 and 6. The appellant cannot on one hand agree to exit from the respondent nos.1 and 6 on payment of fair valuation and on the other hand, can apply for enforcement of various rights permitted under the Articles of Association and Memorandum of Association and/or of the provisions of the Companies Act, 1956.

229. In so far as various judgments relied upon by the learned counsel for the appellant referred in paragraph 127 aforesaid in support of the submission that the valuation of the property has to be on the date of the order is concerned, in my view, the parties having agreed the date of valuation as on 31st March, 2008 cannot be now allowed to insist for some other date for the purpose of valuation of the property including the valuation as on the date of order or actual exit. Those judgments thus would not assist the case of the appellant.

230. In so far as the submission of the learned counsel for the appellant that the valuation report of M/s.V.B. Haribhakti & Co. is stale, not equitable and contrary to unconscionable bargain is concerned, in my view, since the said report has been submitted pursuant to the consent order passed by this Court, the said report cannot be challenged on such ground. Be that as it may, whether the valuation made in the said report is realistic or not has to be decided by the Company Law Board.

231. In so far as the submission of the learned counsel for the appellant that this Court shall exercise equitable jurisdiction in favour of the appellant in the facts of this case is concerned, in my view, an equity cannot override the law. A perusal of the record clearly indicates that the appellant herself was responsible for gross delay by not accepting the consent order passed by the Company Law Board as well as by this Court on one or the other grounds and has not proceeded with the matter in respect of the valuation report submitted by M/s.V.B. Haribhakti & Co.

232. In so far as the submission made by the learned counsel for the respondent no.7 who is daughter of the appellant and deceased Mr.Anthony Maynard is concerned, there is no dispute that his client has become major on 18th February 2015. There is no dispute that she was a party to all the proceedings before the Company Law Board and also before this Court which were jointly filed by the appellant and the daughter. In view of the statement made by the appellant through her counsel that there was conflict of interest between the appellant and her daughter, she has been transposed as one of the respondents in these three appeals. It is not in dispute that though the respondent no.7 became major as far back as on 18th February, 2015, she has not filed any application till date for setting aside various consent orders passed by the Company Law Board and by this Court on 22nd July 2011. The respondent no.7 has admitted before this Court through her counsel that some of the orders were consent orders. Be that as it may, invocation of Order XXXII Rule 7 of the Code of Civil Procedure, 1908 itself would pre-suppose that various orders passed by the Company Law Board and the order dated 22nd July, 2011 were consent orders.

233. In so far as the submission of the learned counsel for the respondent no.7-daughter that the consent allegedly given by the appellant on behalf of the respondent no.7 before the Company Law Board was without any express leave of the Company Law Board as well as this Court or there being any affidavit of next friend filed by the appellant in any of the proceedings or that the consent orders were not in the interest of the respondent no.7 is concerned, though the respondent no.7 has attained the age of majority on 18th February, 2015, the fact remains that for last more than two years, she has not applied for setting aside those consent order either before the Company Law Board or before this Court on such grounds. On the contrary, the record indicates that she has also acted upon those consent orders.

234. In my view, the transposition of the respondent no.7 at belated stage clearly indicates the collusion between the appellant and her daughter. The respondent no.7 has not alleged any *malafides* against the appellant in recording consent on her behalf before the Company Law Board and before this Court.

235. In so far as the submission of the learned counsel for the respondent no.7 that the principles of natural justice apply to the proceedings before the Company Law Board as well as before this Court and in support of this submission, reliance placed on Section 10 E (5) of the Companies Act, 1956 and on Order XXXII Rule 7 of the Civil Procedure Code, 1908 is concerned, in my view, the order passed by the Court under Order XXXII Rule 7 is voidable at the

instance of minor and unless such minor chooses to challenge such consent order, such order is good and cannot be set aside.

236. In so far as the reliance placed on the judgment of the Himachal Pradesh High Court in the case of **Mrs.M.J. Stone & Ors. vs. Union of India & Ors.** (supra) is concerned, there is no dispute about the propositions of law laid down by the Himachal Pradesh High Court in the said judgment. However, since the respondent no.7 has not taken any steps to challenge various consent orders passed by the Company Law Board and the order dated 22nd July, 2011 passed by this Court, the respondent no.7 cannot apply orally to ignore those consent orders passed by the Company Law Board and by this Court. I am not inclined to accept the submission of the learned counsel for the respondent no.7 that his client is entitled to dispute any consent order at any stage and in any proceedings.

237. In my view, since the order passed by the Company Law Board and by this Court under Order XXXII Rule 7, Sub-rule (2) is voidable, appropriate proceedings had to be filed for repudiation of the contract as voidable. Since no steps are taken by the respondent no.7 after attaining the age of majority till date, those orders passed by the Company Law Board and also by this Court would continue to be binding on her. The order dated 22nd July 2011 is not challenged by any of the parties including the respondent no.7. In my view, Mr.Narichania, learned counsel for the respondent nos.1 to 6 is right in his submission that interest of daughter is not affected by the action of the appellant in this case. In my view, the respondent no.7 cannot challenge the order passed by the Company

Law Board or the order dated 22nd July, 2011 passed by this Court in these parallel proceedings.

238. In so far as the submission of the learned counsel for the appellant that the appellant is unable to deliver the shares of her daughter in the respondent nos.1 and 6 companies for exit is concerned, in my view, as on today, since various consent orders passed by the Company Law Board and the order dated 22nd July, 2011 passed by this Court are binding on the appellant and the respondent no.7, both the parties are bound to deliver their respective shares in the respondent nos.1 and 6 companies on payment of fair valuation.

239. In so far as the submission of the learned counsel for the appellant that the parties were not *ad-idem* about the terms and conditions of exit before the Company Law Board is concerned, a perusal of the record indicates that all the parties were clear about consent which they had given before the Company Law Board and also before this Court and were *ad-idem* about the terms and conditions of exit. The appellant never applied for recall of any of those orders at any point of time on the ground that the appellant was not *ad-idem* about any terms and conditions of exit before the Company Law Board and before this Court. On the contrary, the appellant had raised a false plea that various terms and conditions demanded by the appellant were not incorporated in the order passed by the Company Law Board and by this Court. The appellant was throughout under legal advice and cannot be allowed to urge that the parties were not *ad-idem* about the terms and conditions of exit.

240. Supreme Court in the cases of **Purnima Manthena & Anr. vs. Ranuka Datla & Ors.** (supra) and **V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors.** (supra) has dealt with the powers of the Company Court under Section 10F of the Companies Act, 1956 and has held that the findings of fact cannot be interfered with by this Court under Section 10-F of the Companies Act, 1956 unless the order passed by the Company Law Board demonstrate perversity or arbitrariness and only if the question of law arises for consideration. In this case, the Company Law Board has rendered various findings of facts which are not perverse or arbitrary and in view of the fact that no question of law arises in these appeals, filed under Section 10F of the Companies Act, 1956, the same cannot be entertained on that ground also. The principles of law laid down by the Supreme Court in the cases of **Purnima Manthena & Anr. vs. Ranuka Datla & Ors.** (supra) and **V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors.** (supra) squarely apply to the facts of this case. I am respectfully bound by the said judgments.

241. In my view, no infirmity can be found with the impugned order passed by the Company Law Board which are the subject matter of the Company Appeal Nos.18 of 2012 and 19 of 2012 and the orders being not perverse, the same cannot be interfered with by this Court in these appeals under Section 10F of the Companies Act, 1956.

242. I shall now deal with the submissions made by the parties in Company Appeal No.49 of 2014 and shall decide the legality and

validity of the orders passed by the Company Law Board which are the subject matter of the said appeals.

243. Insofar as Company Appeal No.49 of 2014 is concerned, Ms.Sethna, learned counsel for the appellant invited my attention to the impugned order passed by the Company Law Board dismissing the Company Application No.389 of 2013 filed by the appellant in Petition No.177 of 2007 *inter-alia* praying for injunction against the respondent no.7 in any manner dealing with, selling, alienating, transferring, encumbering the shareholding of late Mr.Anthony Maynard in the respondent no.1 and also praying for an order and direction against the respondent nos.1 to 7 to furnish the copies of the writings relating to issuance of the duplicate share certificates of the respondent nos.1 to 7 while considering the matter of issuance of the duplicate share certificates to the respondent no.7 at the meeting of 19th June, 2012 and seeking direction to the respondent nos.1 to 5 to deliver up to the appellant and her daughter after due transmissions, the originals of the share certificates representing to 2/3rd of the shareholding of late Mr.Anthony Maynard in the respondent no.1 and/or duplicate share certificates. Learned counsel also invited my attention to the various averments made in the Company Application No.389 of 2012 and prayers sought by in the said company application.

244. It is submitted by the learned counsel for the appellant that the respondent no.7 is the step son of the appellant. The appellant has 26% shareholding interest in the respondent no.1 company. If the respondent no.7 sells his 1/3rd shareholding out of shareholding of the late husband of the appellant i.e. Mr.Anthony Maynard, the

shareholding of the appellant in that event would be less than 26%. She submits that the appellant has right of permanent directorship in the respondent no.1 on the basis of the shareholding of her late husband. She placed reliance on Article 27(b) of the Articles of Association of the respondent no.1 in support of her submission that she is entitled to be a permanent director of the respondent no.1 company. She submits that the appellant is entitled to buy the shares of the respondents including respondent no.7. The respondent nos.1 to 6 cannot enter into any Agreement with the respondent no.7 in violation of the Articles of Association.

245. At this stage, Mr.Narichania, learned senior counsel appearing for the respondent nos.1 to 6 states that no agreement between the respondent nos.1 to 6 and the respondent no.7 is in place in respect of 1/3 shareholding of the respondent no.7 out of the shareholding of late Mr.Anthony Maynard. He submits that the respondent no.7 however, intends to sell his 1/3rd share to the other group. The statement made by Mr.Narichania, learned senior counsel for the respondent no.1 is accepted.

246. It is submitted by the learned counsel for the appellant that the respondent no.1 could not have transmitted the 1/3rd shareholding of the late husband of the appellant separately in favour of the respondent no.7 as those 1/3rd shares were not separately capable of being transferred validly. She submits that the respondent no.1 could not have transmitted 1/3rd share of late Mr.Anthony Maynard directly in favour of the respondent no.7 without the consent of the appellant and her daughter. She submits that no consent of all three legal heirs of Mr.Anthony Maynard was taken before transmission of those 1/3rd

share of total shareholding of late Mr. Anthony Maynard in favour of the respondent no.7.

247. It is submitted by the learned counsel that on 20th January, 2011, the respondent no.7 had filed Company Application No.42 of 2010 for seeking impleadment in the company petition filed by the appellant. On 24th February, 2012, the respondent nos.1 to 6 filed Company Application No.112 of 2012 in the said company petition filed by the appellant *inter-alia* seeking permission to purchase the shareholding of the respondent no.7 in the respondent no.1. She submits that the said application filed by the respondent nos.1 to 6 was opposed by the appellant. On 17th May, 2012, the Company Law Board passed an order directing the respondent no.1 to transmit 1/3rd of the shareholding of late Mr. Anthony Maynard in favour of the respondent no.7 and to rectify the register of shares of the respondent no.1.

248. It is submitted that on 5th June, 2012, the respondent no.1 rectified the register of shares without holding a board meeting. On 8th June, 2012, the respondent no.1 issued a notice for holding a meeting to rectify shareholding of the respondent no.7 in the register of shares of the respondent no.1. On 19th June, 2012, the respondent no.1 passed a resolution for rectifying shareholding of the respondent no.7 in the register of shares of the respondent no.1. In the said board meeting, the appellant was admittedly present.

249. On 13th July, 2012, the appellant filed the said Company Application No.389 of 2012 *inter-alia* praying for various reliefs already referred to aforesaid. Learned counsel for the appellant

invited my attention to Article 3(a), Articles 5, 16 to 22 and 27. It is submitted by the learned counsel that there are two categories of pre-emption rights provided in the Articles of Association. She submits that the shareholders of the respondent no.1 are entitled to exercise intra-group preemption right. She submits that in the event of there being no scope of intra-group pre-emption right because of any member not willing to purchase the share of another member for a fair value, only then Article 18 will be triggered. She submits that admittedly since the respondent no.7 never offered to sell his entitlement of 1/3rd share in the shareholding of late Mr. Anthony Maynard to the appellant for the fair value, the respondent no.7 could not have offered to sell his 1/3rd shareholding to the other shareholders / members of the respondent no.1.

250. It is submitted that the Board of Directors of the respondent no.1 acted as an agent for sale of the shares of one member of the company to another member of the company. She submits that in this case, no notice came to be issued to the board of the respondent no.1 under Article 18 of a member desiring to sell his shares. She submits that since the mandatory procedure under Articles of Association for transfer / transmission of shares is not followed by the respondent nos.1 to 6 while transmitting the shares in favour of the respondent no.7, the said decision on the part of the respondent no.1 is not binding on the appellant. The appellant herself could have purchased the shares of the respondent nos.1 to 6 and also the respondent no.7.

251. It is submitted that the entire mechanism of transfer / transmission under Articles 18 to 21 is not at all followed by the

respondent no.7. The appellant is entitled to bring embargo against the respondent no.7 from selling his shares illegally transmitted in his favour. She submits that in order to get the best price, the appellant could offer to purchase the shares of the respondent nos.2 to 7. The respondent no.7 ought to have offered his shareholding to the appellant first before offering those shares to the other members of the respondent no.1. She submits that if the appellant sells her 22% which would be below 26.8% shareholding of the respondent no.1, the valuation would be less and would not be a fair value. The appellant could have negotiated with the respondent nos.2 to 6 for better value in that case.

252. It is submitted by the learned counsel for the appellant that the Company Law Board has dismissed the company application filed by the appellant merely on the ground that the appellant had agreed to exit the respondent company and thus the appellant was a seller and not the buyer and therefore, could not claim any pre-emptive rights over the shares of the respondent no.7. She submits that the Company Law Board has not gone into the issue as to who is entitled to exercise preemptive rights under the Articles of Association or not at all in the impugned order though the said issue was raised by the appellant before the Company Law Board. She submits that the Company Law Board has proceeded on the premise that the appellant had admitted in the company petition that the respondent no.7 was entitled to have 3128 shares in the respondent no.1 out of the total shareholding of late Mr.Anthony Maynard in the respondent no.1.

253. It is submitted that the appellant had admitted the

entitlement of the respondent no.7 provided he would have joined the appellant in the company petition. She submits that the said alleged admission in the company petition as construed by the Company Law Board was not an unconditional averment, but was subject to the condition that the respondent no.7 ought to have joined the appellant in the company petition against the respondent nos.1 to 6. Learned counsel invited my attention to the prayer clauses (h), (l), (p) and (o) in support of her submission. She submits that the respondent no.1 and its directors could not have even maintain the application filed before the Company Law Board for transmission of the shares in favour of the respondent no.7 to the extent of 1/3rd shareholding of late Mr.Anthony Maynard in favour of the respondent no.7.

254. It is submitted that since the order passed by the Company Law Board for transmission of the shares in favour of the respondent no.7 itself was without jurisdiction and illegal, the appellant was not required to challenge the said order by filing any appropriate proceedings for declaration that the said order was illegal and void. She submits that though the appellant had not impugned the order passed by the Company Law Board on 20th January, 2011 impleading the respondent no.7 as a party respondent, the appellant cannot be precluded from seeking any relief against the respondent no.7.

255. It is submitted that the respondent no.7 could be at most be treated as proforma respondent. She submits that no express consent of the appellant could be inferred by the Company Law Board in the impugned order. The order passed by the Company Law Board is contrary to Article 16 of the Articles of Association of the respondent no.1. It is submitted that non-transmission of the shares

in favour of the appellant by the respondent nos.1 to 6 which admittedly she was entitled to in the shareholding of her late husband Mr. Anthony Maynard itself is an act of oppression and mismanagement.

256. It is submitted by the learned counsel that the pleadings in the company petition filed by the appellant and the prayers sought therein have to be read together for the purpose of true and correct interpretation. It is submitted by the learned counsel for the appellant that the share certificate issued by the company under section 84 of the Companies Act, 1956 is *prima-facie* title in respect of the shares and unless a requisite mandatory procedure under section 84 of the Companies Act, 1956 is valid, the respondent no.1 company could not have issued any duplicate shares in lieu of the shareholding of late Mr. Anthony Maynard in favour of the respondent no.7 to the extent of 1/3rd share claimed by him. She submits that issuance of the duplicate shares in favour of the respondent no.7 itself is illegal and no further effect thereon could be given by the respondent no.1 based on issuance of such duplicate shares.

257. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in case of **Dale & Carrington Invt. (P) Ltd. & Another vs. P.K. Prathapan & Ors., (2005) 1 SCC 212** and in particular paragraph 38. Relying upon the said judgment, learned counsel for the appellant submits that if the High Court under section 10-F of the Companies Act, 1956 comes to the conclusion that allotment of shares in favour of a party is by committing manipulation and fraud and if the shares are transferred not for a proper price, the Court can set aside such transaction. She submits

that wrongdoer cannot be rewarded and the oppressed party cannot be penalized.

258. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in case of **Bihar State Electricity Board, Patna & Ors. vs. Green Rubber Industries & Ors. AIR 1990 Supreme Court 699** and in particular paragraph 21 in support of her submission that the Court has to consider and interpret the contract with reference to its object and the whole of its terms and shall make an endeavor to collect the intention of the parties even though the immediate object of enquiry is to ascertain the meaning of an isolated clause. She submits that the Company Law Board thus ought to have applied the articles which provide the right of the pre-emption *inter-se* between the members of the respondent no.1 before seeking transfer of their shares to an outsider or others.

259. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in case of **M.O.H. Uduman & Ors. vs. M.O.H. Aslum, AIR 1991 Supreme Court 1020** and in particular paragraph 14 and would submit that the Court has to construe a contract as a whole and the intention of the parties must be gathered from the language used in the contract by adopting harmonious construction of all the clauses contained therein. She submits that the respondent no.1 company being a glorified partnership, the Company Law Board ought to have construed the Articles of Association as a contract of the partnership. In support of this submission, learned counsel also placed reliance on the judgment of this Court in case of **Unity Realty and Developers Ltd. vs. BW Highwar Star Pvt. Ltd. & Ors., 2010(1) Bom.C.R. 333** and in particular paragraphs 44 to 48.

260. It is submitted that the Court has to make business sense to business dealings while interpreting the business dealings between the parties. Learned counsel also placed reliance on the judgment of this Court in case of **Novartis Vaccines & Diagnostics Inc. vs. Aventis Pharma Limited, 2010(2) Bom.C.R. 317** and in particular paragraphs 39 and 40 in support of the submission that the contract / agreements has to be read as a whole while considering the nature and purpose of the business and few clauses cannot be read in isolation.

261. Learned counsel for the appellant placed reliance on the judgment of this Court in case of **Rai Bahadur Gujarmal Modi & Brothers Pvt. Ltd. vs. Godfrey Philips India Ltd. (2008) 143 Company Cases 148 (Bom)** and in particular paragraph 18 in support of the submission that before issuance of the duplicate share certificate under section 48(2) of the Companies Act, 1956, the respondent no.1 and respondent no.7 ought to have proved that the original shares of the late Mr.Anthony Maynard were lost or destroyed and only if there was no dispute that the original shares were lost or destroyed, the Company Court could have passed an order for issuance of the duplicate share certificate in favour of the respondent no.1. She submits that issuance of the duplicate shares itself was illegal and contrary to section 84(2) of the Companies Act, 1956.

262. Learned counsel for the appellant placed reliance on the order passed by the Company Law Board before Company Law Board – Eastern Region Bench in case of **Dr.Rajiv Das vs. United Press Ltd. & Ors. (2002) 111 Company Cases 584** and in particular

a portion of the judgment on page 588. It is submitted that the allotment in severalty of shares in favour of the respondent no.7 could only be done in an action for partition and not by the Company Law Board in an action under section 84 of the Companies Act, 1956.

263. Learned counsel for the appellant placed reliance on the judgment delivered by the Division Bench of this Court in case of **Bajaj Auto Ltd. vs. Western Maharashtra Development Corporation Ltd. 2015(4) Bom C.R. 499** and in particular paragraph 27 in support of the submission that right of pre-emption provided in the Articles of Association to a third party or another shareholder does not constitute restriction of free transferability and has to be strictly complied with.

264. Learned counsel for the appellant placed reliance on the judgment of this Court in case of **Sugrabai Alibhai & Ors. vs. Amtee Properties Pvt. Ltd. & Ors. (1984) 55 Company Cases 734** and in particular relevant paragraphs on pages 735 and 736 in support of her submission that the appellant was entitled to inspect the books of account of the respondent no.1 under section 208 of the Companies Act, 1956 and other books and papers referred in the said provision. She submits that the respondent no.1 however, did not permit the appellant to take inspection of the books of accounts and other related documents. She submits that the respondent no.1 has refused to provide access and inspection of the books and documents to the appellant.

265. Learned counsel for the appellant submits that the order passed by the Company Law Board dismissing the company

application of the appellant simplicitor on the ground that the appellant had agreed to exit from the respondent no.1 company and thus the question of exercising any right of preemption did not arise is *ex-facie* perverse and thus deserves to be set aside and the company application filed by the appellant deserves to be allowed and thus the company appeal deserves to be allowed.

266. Mr.Dhond, learned senior counsel for the respondent no.7 invited my attention to paragraphs 3 and 4 of the Company Petition No.177 of 2007 filed by the appellant before the Company Law Board and would submit that the appellant herself had admitted in the said petition that late Mr.Anthony Maynard died intestate and had left surviving next kin i.e. the appellant, the then minor daughter and the respondent no.7, each of whom were entitled to equal proportion of shareholding of late Mr.Anthony Maynard in the respondent no.1, by operation of law. He submits that it is averred by the appellant in the said company petition that 1850 equity shares were standing in the name of the appellant and 9382 equity shares were standing in the name of her late husband Mr.Anthony Maynard.

267. It is averred that the appellant and her daughter are entitled to and have right to apply under section 399 of the Companies Act, 1956 by virtue of their holding / controlling 12.43% shareholding in the respondent no.1.It is averred that the appellant and her daughter reserved a liberty for respondent no.7 who is entitled to 3128 equity shares out of aggregate 9382 equity shares held by late Mr.Anthony Maynard in the respondent no.1. Learned senior counsel for the respondent no.7 invited my attention to the prayer clauses of the said company petition (177 of 2007) filed by the

appellant and would submit that the appellant herself had prayed for an order and direction against the respondent no.1 to transmit the shareholding of late Mr.Anthony Maynard to and deliver over related share certificates to his legal heirs i.e. the appellant, her daughter and the respondent no.7 in equal proportion.

268. It is submitted by the learned senior counsel that entitlement of the respondent no.7 who has 1/3rd shareholding in the share of late Mr.Anthony Maynard is admitted and recognized by the appellant in the company petition itself filed by her. He submits that it is the case of the appellant herself that the said shareholding of the said Mr.Anthony Maynard has to be divided in equal proportion to the appellant, her daughter and the respondent no.7. It is submitted that the question of exercising any alleged preemptive right by the appellant did not arise. The respondent no.7 is entitled to 3118 equity shares out of the total shareholding of late Mr.Anthony Maynard in the respondent no.1 which is rightly transmitted by the respondent no.1 in favour of his client. He submits that the respondent no.7 had absolute right in those shares and thus the appellant could not exercise any alleged right of preemption in those shares.

269. It is submitted by the learned senior counsel that the appellant never argued before the Company Law Board or had pleaded that the entitlement of the respondent no.7 to the 3118 shares was conditional upon the respondent no.7 joining the appellant in the company petition filed by her. He submits that in view of prayers in the said company petition, the arguments now advanced across the bar in this appeal are totally untenable and contrary to the

pleadings and prayer clauses in the said company petition.

270. It is submitted by the learned senior counsel that the respondent no.7 had applied for his joinder as a party respondent to the company petition filed by the appellant. The appellant had opposed the said application of the respondent no.7 for his joinder. The Company Law Board has allowed the said application on 20th January, 2011. He submits that the appellant has admittedly not impugned the said order dated 20th January, 2011 passed by the Company Law Board and thus cannot indirectly challenge the said order in this company appeal at this stage.

271. It is submitted by the learned senior counsel that in view of the fact that the appellant, her daughter and the respondent no.7 are entitled to hold the shareholdings of late Mr.Anthony Maynard equally, there is no question of the appellant claiming to be the first holder of those shares and there is thus no question of the respondent no.7 joining the appellant first before applying for preemption of his 1/3rd entitlement in the shareholding of late Mr.Anthony Maynard. He submits that the entitlement of the appellant, her daughter and the respondent no.7 in respect of the dividend, voting rights, sale of shares is identical. The consent of the appellant or her daughter was thus not necessary for transmission of the shares in respect of his entitlement in his name.

272. It is submitted that the appellant could not act exclusively on behalf of all the legal heirs of late Mr.Anthony Maynard. He submits that this argument of the appellant is *ex-facie* self-destructive. It is submitted that the respondent no.7 is holding 3118

shares in the respondent no.1 company pursuant to an order dated 17th December, 2012 passed by the Company Law Board directing the respondent no.1 to transmit those shares in favour of the respondent no.7. He submits that the said order dated 17th December, 2012 passed by the Company Law Board is already implemented by the respondent no.1 and the transmission of all those 3118 shares in favour of the respondent no.7 is completed.

273. Learned senior counsel for the respondent no.7 invited my attention to the reply filed by the respondent nos.1 to 6 before the Company Law Board in Company Application No.389 of 2012 stating that after splitting of share certificates into two certificates, the share certificate for 1/3rd shares were transmitted in the name of the respondent no.7 as per the directions of the Company Law Board and issuance of the duplicate shares and transmission of shares was further ratified in the board meeting dated 19th June, 2012. He submits that the appellant has admittedly not challenged the said order passed by the Company Law Board directing the respondent no.1 to transmit 3118 shares in the name of the respondent no.7 and to rectify register of shares.

274. It is submitted that the said order itself could have been challenged under section 10-F of the Companies Act, 1956 or before the Supreme Court. The said order having attained finality thus cannot be directly or indirectly challenged in this company appeal by the appellant. He submits that the resolution for transmission of shares has also attained finality in view of the appellant not challenging the said resolution. She was also issued a notice dated 19th June, 2012 by the respondent no.1. He submits that the

respondent no.1 has also issued duplicate shares of the entire shareholding of Mr.Anthony Maynard and not only duplicate shares only to the respondent no.7 as is apparent from the affidavit filed by the respondent no.1 company before the Company Law Board.

275. Mr.Dhond, learned senior counsel invited my attention to prayer clause (c) of the Company Application No.389 of 2012 and would submit that the appellant herself had prayed in the said company application for an order and direction against the respondent nos.1 to 5 to deliver to the appellant after due transmission, the originals of the share certificates/duplicate representing $\frac{2}{3}^{\text{rd}}$ of the shareholding of late Mr.Anthony Maynard in the respondent no.1. He submits that the arguments advanced by the learned counsel for the appellant in this appeal are *ex-facie* contrary to and inconsistent with the prayers sought by the appellant herself in the company application as well as the company petition filed by her.

276. Learned senior counsel invited my attention to paragraph 15 of the company application filed by the appellant and would submit that the appellant and her daughter were entitled to $\frac{2}{3}^{\text{rd}}$ of $\frac{1}{3}^{\text{rd}}$ shareholding of late Mr.Anthony Maynard in the respondent no.1 and that the respondent no.7 is entitled to and corresponding claim of $\frac{1}{3}^{\text{rd}}$ of such shareholding. He also invited my attention to the averments made in paragraph 16 and would submit that the arguments now advanced before this Court by the appellant is contrary to the averments made therein. He also invited my attention to the averments made in paragraph 17 and would submit that the preemption now claimed by the appellant is based on an oral agreement between the respondent no.2 and respondent no.3 with

Mr. Anthony Maynard which is untenable and is false.

277. Learned senior counsel invited my attention to prayer clause (a) of the said company application in which the appellant had prayed for an injunction against the respondent no.7 from dealing with, selling, alienating, transferring, encumbering the shareholding of late Mr. Anthony Maynard in the respondent no.1. He submits that the said prayer clause (a) itself indicates that ownership of the respondent no.7 of 3118 shares of the respondent no.1 company is thus accepted by the appellant. He submits that it was for the respondent no.7 to decide whether to join the appellant or not. The respondent no.7 has refused to join the appellant and to claim the alleged right of preemption jointly. He submits that the alleged oral agreement pleaded by the appellant in the company application is without particulars and cannot be allowed to be raised. He submits that no such alleged oral agreement was pursued by the appellant in her submission before the Company Law Board.

278. Learned senior counsel for the respondent no.7 placed reliance on Article 5 of the Articles of Association and would submit that under the said Article, member cannot transfer his share to a non-member if buying member is available and is willing to purchase the same at the price agreed upon by the transferor and the Board of directors and failing agreement at the price fixed by the auditors of the company. He placed reliance on Articles 16 to 18 and would submit that Article 16 is not redundant and must be given due meaning to it. He submits that under Article 16, it is not mandatory that if the member decides to sell his shareholding, he must first offer to his immediate family members. No such restriction is imposed

under the said Article. He submits that Articles 17 and 18 are procedural in nature, whereas Articles 5 and 16 gave right to the member to sell his shareholding to other members of the company. He submits that there is no dispute that the Articles of Association are in the nature of contract and shall be given a business meaning. Learned senior counsel submits that there is no dispute about the proposition of law laid down by various Courts in aforesaid four judgments relied upon by the learned counsel for the appellant in support of a proposition that Articles of Association are in the nature of contract. It is submitted that the Company Law Board has rightly interpreted Articles 16 to 22 and has held that no such bar is created from selling or transferring the shares of a member of the company as canvassed by the appellant. He submits that this Court shall not interfere with the plain language of the Articles of Association and the findings recorded by the Company Law Board which are not perverse.

279. Mr.Narichania, learned senior counsel for the respondent nos.1 to 6 adopts the submissions made by Mr.Dhond, learned senior counsel for the respondent no.7 on the interpretation of the Articles of Association and on the correctness and validity of the impugned order passed by the Company Law Board. He submits that under Article 5 of the Article of Association, shares can be offered to any member of the company and there is no restriction that the shares can be offered / sold only to the members of the family of a existing member of the company. He submits that since the appellant had agreed to exit from the respondent no.1 company, the alleged right of preemption even otherwise does not survive. He submits that the purchaser of the shares must continue to be a member of the

company for exercising the alleged right of preemption. There is no express prohibition from selling the shares to any other member under any of the Articles of Association.

280. Learned senior counsel placed reliance on the judgment of the Gauhati High Court in case of **Radhabari Tea Co. P. Ltd. vs. Mridul Kumar Bhattacharjee & Ors. (2010) 153 Company Cases, 579** Gauhati and in particular paragraphs 122, 129 and 131 in support of his submission that preemptive right to buy the shares of the company is granted in favour of a member by a private company under Articles of Association so that his right of control is not taken away. He also placed reliance on a commentary of Palmer's on Company Law, which is referred to by the Gauhati High Court in the said judgment with approval.

281. It is submitted by the learned senior counsel that now in view of the conflict between the appellant, her daughter and the respondent no.7, the appellant cannot demand possession of the shares of the respondent no.7 in her favour. The appellant has not amended the appeal memo for transfer of proportionate share in her favour. The appellant had filed the joint application with her daughter before the Company Law Board.

282. Insofar as issuance of duplicate shares is concerned, learned senior counsel for the respondent nos.1 to 6 submits that the respondent no.1 had followed requisite procedure under section 84(2) of the Companies Act, 1956 before issuance of duplicate shares not only to the respondent no.7 but also in the name of late Mr. Anthony Maynard. He submits that the appellant was admittedly present in

the board meeting when such decision was taken. He submits that all three members i.e. the appellant, her daughter and the respondent no.7 have conceded that all three members are entitled to 1/3rd share each in the shareholding of late Mr. Anthony Maynard. He submits that since the original share certificates were not with the appellant or with her daughter or with the respondent no.7, the respondent no.1 had issued the duplicate share certificates.

283. It is submitted that since the order of the Company Law Board directing the respondent no.1 to issue duplicate shares is not challenged, the said order has attained finality and cannot be challenged directly or indirectly in these proceedings. He submits that the appellant has not applied for any declaration that issuance of duplicate shares was in violation and non-compliance of section 84 of the Companies Act, 1956. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of **V.S. Krishnan & Ors. vs. Westfort Hi-Tech Hospital Ltd. & Ors., (2008) 3 SCC 363** and in particular paragraph 35 in support of his submission that duplicate shares were rightly issued by the respondent no.1 after complying with requisite procedure under section 84(2) of the Companies Act, 1956.

284. Learned senior counsel for the respondent nos.1 to 6 also placed reliance on the judgment of the Supreme Court in case of **Bharat Amratlal Kothari & Anr. vs. Dosukhan Samadkhan Sindhi & Ors., (2010) 1 SCC 234** and in particular paragraph 30 in support of his submission that the Court can grant only those reliefs which are specifically prayed for by the petitioner. Though the Court has very wide discretion in granting relief, the Court cannot ignore and keep

aside the norms and principles governing grant of relief which is not even prayed for by the petitioner. He submits that the appellant has admittedly not challenged the decision of Company Law Board to issue duplicate shares issued by the respondent no.1 company pursuant to the order passed by the Company Law Board and thus that order cannot be set aside by this Court in this appeal.

285. Learned senior counsel for the respondent nos.1 to 6 invited my attention to prayer clause (c) of the company application filed by the appellant regarding allotment of 2/3rd shares in favour of the appellant and her daughter and 1/3rd share in favour of the respondent no.7. He submits that the appellant has thus recognized the respondent no.7 as the owner of those 3118 shares and thus no prayer for injunction could be granted even otherwise by the Company Law Board against the respondent no.7.

286. Learned counsel for the respondent nos.1 to 6 also placed reliance on Rule 4(3) of The Companies (Issue of Share Certificate) Rules, 1960. He submits that there was no question of publication of any advertisement for inviting objections from any member of public before issuance of the duplicate shares since the shares are transmitted in favour of the respondent no.7 on the basis of the order passed by the Company Law Board which has attained finality. Learned senior counsel distinguished the judgment of the Company Law Board relied upon by the learned counsel for the appellant in case of **Dr.Rajiv Das vs. United Press Ltd. & Ors , 111 Company Cases 584 (CLB)** on the ground that the said judgment does not assist the appellant. He submits that the order passed by the Company Law Board is even otherwise not a precedent and is not

binding on this Court.

287. Learned senior counsel also distinguished the judgment in the case of **Rai Bahadur Gujarmal Modi & Brothers Pvt. Ltd. vs. Goderfy Philips India Ltd., (2008) 143 Company Cases, 148** on the ground that in that case the objection was raised by the objector, whereas in this case there is no controversy that the respondent no.7 is entitled to 1/3rd share in the shareholding of late Mr. Anthony Maynard. Insofar as the judgment of this Court in case of **Bajaj Auto Ltd. vs. Western Maharashtra Development Corporation Ltd. 2015(4) Bom C.R. 499** is concerned, learned senior counsel submits that he has no dispute about the proposition of law laid down in the said judgment.

288. It is submitted by the learned senior counsel that as a matter of record, the said Mr. Anthony Maynard did not have 1/3rd shareholding in the respondent no.1 company, however, the respondent no.1 had offered to pay to the appellant, her daughter and the respondent no.7 for 1/3rd shareholding. There was thus no question of the appellant having any controlling interest in the respondent no.1. He submits that even if the shares of the respondent no.7 are considered as shareholding of the appellant, the total shareholding of the appellant and the respondent no.7 would not be 26%. It is submitted by the learned senior counsel that the respondent no.1 is ready to transmit 1/3rd share in the name of the appellant and her daughter respectively of the total shareholding of Mr. Anthony Maynard in the respondent no.1 company and is ready and willing to deposit those shares before the National Company Law Tribunal subject to the outcome of the pending proceedings filed by

the appellant against the respondents, which are now pending before the National Company Law Tribunal. It is submitted that the appellant has intention to oust the respondent nos.2 and 3 with the help of private equity investors.

289. Ms.Sethna in rejoinder submits that the respondent no.7 was not entitled to apply for duplicate shares. The appellant had opposed issuance of the duplicate shares in the meeting and also specifically in writing. Insofar as the prayer in the company application and the averments made by the appellant to which the respondents have placed reliance upon are concerned, it is submitted that the prayers and the averments have to be considered together for its true and correct meaning and interpretation. It is submitted that the appellant is not required to challenge the order passed by the Company Law Board directing the respondent no.1 to transmit 1/3rd shares in the name of the respondent no.7. The appellant could have applied for pre-emption against the respondent no.7. She submits that in any event since the order passed by the Company Law Board is illegal, the same cannot be relied upon by the respondents.

290. It is submitted that the appellant and her late husband were the permanent directors of the respondent no.1 under Article 27(a) of the Articles of Association. She submits that the rights of pre-emption provided in the Articles of Association cannot be taken away. The respondent nos.1 to 6 have no answer to Article 27(a) of the Articles of Association. The appellant has nominated her daughter as a director under Article 27(c) of the Articles of Association. She submits that the appellant had never opposed the right of the respondent no.7 to intervene before the Company Law Board.

291. It is submitted that the appellant had not challenged the order opposing the right of the respondent no.7 to intervene in the company petition. She submits that the entire order passed by the Company Law Board is based on the premise that the appellant had agreed to exit though the appellant had always claimed her right of pre-emption. She submits that the finding of the Company Law Board is totally perverse and thus have to be interfered with by this Court under section 10-F of the Companies Act, 1956. She submits that the appellant has already filed a separate proceeding i.e. testamentary suit. The legal heirs of the shareholders can also allege the oppression and mismanagement against the company under section 397 and 398 of the Companies Act, 1956 before the Company Law Board.

292. Learned counsel for the respondent no.8, the daughter of the appellant invited my attention to the affidavit filed by her client in Company Appeal No.49 of 2014 and would submit that her client became major on 18th February, 2015, whereas she has been transposed as the respondent no.8 on 13th June, 2016. He placed reliance on Order XXXII Rule 7 of the Code of Civil Procedure and submits that the respondent no.8 is entitled to dispute the alleged consent order passed by the Company Law Board at any stage. It is submitted that it was the duty of the Company Law Board to take precaution that the respondent no.8 was minor when the impugned orders were passed by it. It is submitted that the respondent nos.1 to 6 have not disputed that the provisions of Order XXXII Rule 7 of the Code of Civil Procedure are in realm of the principles of natural justice, which are not followed by the Company Law Board. He

submits that since these company appeals were pending before this Court, the respondent no.8 did not take any separate steps so far before the Company Law Board.

**REASONS AND CONCLUSIONS IN COMPANY
APPEAL NO.49 OF 2014 :**

293. The appellant has impugned the order dated 22nd November, 2013, passed by the Company Law Board dismissing the Company Application No.389 of 2012 filed by the appellant and her daughter *inter-alia* praying for injunction against the respondent no.7 from dealing with, selling, alienating, transferring, encumbering the shareholding of the late Mr.Anthony Maynard in the respondent no.1 and for directions against the respondent nos.1 to 7 to furnish the copies of various writings and against the respondent nos.1 to 5 to deliver up to the appellant, after due transmission, the originals of the share certificates representing of 2/3rd shareholding of the late Anthony Maynard in the respondent no.1 and / or duplicate share certificates.

294. A perusal of the averments made by the appellant in the Company Petition No.177 of 2007 filed by the appellant under sections 397, 398, 402 and 403 of the Companies Act indicates that it was averred by the appellant herself and her daughter in the said petition that the appellant had handed over the death certificate of the husband of the appellant to the respondent no.2 when he had visited the residence of the appellant with a request to ensure transmission of the shareholding of her late husband in the respondent no.1 company to the names of the appellant, her daughter and the respondent no.7 in equal proportions. It is averred in the company

petition that the respondent no.2 had promised the appellant that he would ensure that requisite measures would be taken after which duly transmitted share certificates would be delivered over back to the appellant.

295. In paragraph 20 of the company petition, it is averred that the appellant had received the intimation of purported extra ordinary board meeting scheduled to be held on 21st April, 2007 at Days Inn Hotel in Navi Mumbai with an agenda of the meeting annexed with the said notice.

296. A perusal of the prayers in the said company petition indicates that in prayer clause (H), the appellant and her daughter prayed for restoration of the appellant and her daughter / Maynard's family shareholding in respondent no.6 to 33.34% and to restrain the respondents by an order and injunction from in any manner whatsoever selling, transferring, alienating, assigning, encumbering, altering or dealing with either the shareholding of the respondent no.6 or the shareholding of the respondent no.6 in the respondent no.1 company. Punjab Terminals Private Limited was impleaded as the respondent no.6 in the said petition.

297. Similar prayer was also made in prayer clause (L) insofar as the shareholding of the late Mr.Anthony Maynard in the respondent no.1 is concerned. In the said prayer, the appellant sought an order and direction to transmit the shareholding of the late Mr.Anthony Maynard to and deliver over the related share certificates to his legal heirs i.e. the appellant, her daughter and the respondent no.7 in equal proportions. A perusal of the company application (389

of 2012) filed by the appellant in the said Company Petition No.177 of 2007 indicates that in paragraph 15 of the said company application, it is averred by the appellant that it was an admitted position that the appellant and her daughter were entitled to 2/3rd of 1/3rd shareholding of the late Mr. Anthony Maynard in the respondent no.1 and that the respondent no.7 is entitled to the corresponding claim of 1/3rd of such shareholding.

298. In paragraph 16 of the said company application, it is averred that in the event of the original share certificates for any reasons were untraceable, then the respondent no.1 was liable to issue duplicate share certificates, transmit those shares to the extent of two-third shareholding over to the appellant, acting for herself and as mother and natural guardian of her daughter, who was the petitioner no.2 in the said company application and to rectify the register of members accordingly. In paragraph 17 of the said company application, it is contended by the appellant that she and her daughter were entitled to the right of pre-emption in relation to the shareholding liable to stand transmitted over to the respondent no.7.

299. In the prayers of the said company application, the appellant applied for an injunction against the respondent no.7 from dealing with, selling, alienating, transferring, encumbering the shareholding of the late Anthony Maynard in the respondent no.1 company. The appellant also prayed for an order and direction against the respondent nos.1 to 5 to deliver up to the appellant and her daughter, after due transmission, the original of the share certificates representing two-third of the shareholding of the late

Mr. Anthony Maynard in respondent no.1 and / or the duplicate share certificates.

300. It is not in dispute that pursuant to an application made by the respondent no.7 (Company Application No.42 of 2010), for seeking impleadment in the company petition filed by the appellant, the Company Law Board passed an order for impleadment of the respondent no.7 in the said company petition. The said order for impleadment of the respondent no.7 in the company petition, which was filed by the appellant and her daughter has not been impugned by the appellant or by her daughter. It is also not in dispute that the respondent nos.1 to 6 thereafter filed a company application (112 of 2012) in the said company petition filed by the appellant, *inter-alia* praying for permission to purchase the shareholding of the respondent no.7 in the respondent no.1 company. The said application was opposed by the appellant. On 17th May, 2012, the Company Law Board passed an order directing the respondent no.1 to transmit 1/3rd of the shareholding of the late Anthony Maynard in favour of the respondent no.7 and to rectify the register of shares of the respondent no.1.

301. It is not in dispute that on 5th June, 2012, the respondent no.1 has already rectified the register of shares and has given effect to the order of transmission passed by the Company Law Board in favour of the respondent no.7. The respondent no.1 also passed a resolution on 19th June, 2012 for rectifying the shareholding of the respondent no.7 in the register of shares of the respondent no.1. It is not in dispute that the appellant was present in the said board meeting when the said resolution was passed by the respondent

no.1. The appellant did not challenge the order passed by the Company Law Board directing the the respondent no.1 to transmit 1/3rd of the shareholding of the late Mr.Anthony Maynard in favour of the respondent no.1 and to rectify the register of shares of the respondent no.1.

302. It is thus clear that the said order passed by the Company Law Board recognizing the entitlement of the respondent no.7 to 1/3rd of the shareholding of the late Mr.Anthony Maynard has attained finality and has been implemented and acted upon. The respondent no.1 has already issued the duplicate shares to the respondent no.7. These facts are brought on record by the respondent no.1 in its affidavit filed before the Company Law Board. In my view, the orders of impleadment of the respondent no.7 passed by the Company Law Board in another company application filed by the respondent no.7 and the order of the Company Law Board in the company application filed by the respondent nos.1 to 6 for transmission of 1/3rd of the shareholding of the late Mr.Anthony Maynard in the respondent no.1 company and to rectify the register of shares having attained finality, the appellant cannot challenge those orders directly or indirectly in this company appeal, which is arising out of altogether different order.

303. In my view, this Court has no power to set aside those orders passed by the Company Law Board which had attained finality in this company appeal. Mr.Dhond, learned senior counsel for the respondent no.7 and Mr.Narichania, learned senior counsel appearing for the respondent nos.1 to 6 are right in their submissions that since those orders passed by the Company Law Board were not challenged by the appellant, those orders cannot be set aside by this

Court in this company appeal in absence of any challenge to those orders.

304. In my view, the Company Law Board was even otherwise right in passing an order of impleadment of the respondent no.7 as a party respondent to the company petition filed by the appellant and her daughter and also in passing order of transmission of $\frac{1}{3}^{\text{rd}}$ of the shareholding of the late Mr. Anthony Maynard in favour of the respondent no.7 and to rectify the register of shares to the extent of $\frac{1}{3}^{\text{rd}}$ of the total shareholding of the late Anthony Maynard in the respondent no.1 company. The appellant thus cannot be permitted to advance any arguments contrary to the pleadings filed by her before the Company Law Board.

305. Insofar as the submission of the learned counsel for the appellant that the Court has to consider the pleadings and the prayers in the company petition and the company application filed by the appellant in toto to ascertain the true and correct meaning thereof is concerned, on a plain reading of the entire pleadings in the company petition as well as in the company application makes it clear beyond reasonable doubt that the appellant had admitted that the respondent no.7 was entitled to $\frac{1}{3}^{\text{rd}}$ of the shareholding of the late Mr. Anthony Maynard in the respondent no.1 company and had as a matter of fact prayed for transmission of the shareholding of the late Mr. Anthony Maynard and for delivery of related share certificates to the appellant, her daughter and the respondent no.7 in equal proportions. The appellant had also prayed for a declaration that the appellant and her daughter were entitled to $\frac{2}{3}^{\text{rd}}$ of $\frac{1}{3}^{\text{rd}}$ of the late Anthony Maynard in the respondent no.1 company and that the

respondent no.7 was entitled to and correspondingly claiming $\frac{1}{3}^{\text{rd}}$ of such shareholding. In the company application, the appellant had also prayed for an order and direction against the respondent nos.1 to 5 to deliver to the appellant and her daughter, after due transmission, the originals of the share certificates representing $\frac{2}{3}^{\text{rd}}$ of the shareholding of the late Anthony Maynard in the respondent no.1 and /or duplicate share certificates.

306. The next question that arises for the consideration of this Court is whether the respondent no.1 could have issued any duplicate shares in favour of the respondent no.7 and that also without allegedly not following the requisite procedure under the provisions of the Companies Act, 1956 and other provisions of law.

307. It is not in dispute that neither the appellant and her daughter, nor the respondent no.7 could produce the original share certificates of the late Mr.Anthony Maynard before the respondent no.1 for transmission of those shares in their respective names in the ratio of $\frac{1}{3}^{\text{rd}}$ of the total shareholding of the late Mr.Anthony Maynard in their favour each and to rectify the register of shares. The respondent no.1, in my view, thus after following the requisite procedure under the provisions of the Companies Act, 1956 and also various other provisions of law have rightly issued the duplicate shares to the extent of $\frac{1}{3}^{\text{rd}}$ of the total shareholding of the late Mr.Anthony Maynard in favour of the respondent no.7 and has already implemented the said order passed by the Company Law Board.

308. A perusal of the company petition along with the company

application filed by the appellant and her daughter also clearly indicates that in her alternate prayers, the appellant herself had prayed for issuance of duplicate share certificates of the originals of those share certificates representing 2/3rd of the shareholding of the late Mr. Anthony Maynard if originals were not available with the respondent no.1. I am thus not inclined to accept the submissions of the learned counsel for the appellant that the respondent no.1 could not have issued any duplicate share certificates in favour of the respondent no.7. Be that as it may, the respondent no.1 has already made a submission before this Court that the duplicate share certificates in respect of 1/3rd share of the appellant and her daughter also would be issued by the respondent no.1 and can be deposited with the National Company Law Tribunal. The appellant is thus not affected in any manner whatsoever insofar as the duplicate share certificates are concerned.

309. A perusal of prayer clause (a) of the company application clearly indicates that the ownership of the respondent no.7 of 3118 shares in the shareholding of late Mr. Anthony Maynard in the respondent no.1 is accepted by the appellant. The appellant thus cannot be allowed to now urge that the respondent no.1 could not have transmitted 3118 shares in the name of the respondent no.7 and those shares ought to have been offered by the respondent no.7 or by the respondent no.1 company to the appellant first to enable the appellant to exercise her alleged pre-emptive rights to purchase those shares. In my view, Mr. Dhond, learned senior counsel for the respondent no.7 is right in his submission that it was for the respondent no.7 to decide whether to offer his shares to the appellant or to other members of the respondent no.1. Admittedly the

respondent no.7 has refused to approach the appellant to enable the appellant to exercise her alleged pre-emptive rights. In my view, the respondent no.7 being one of the legal heir of the late Mr.Anthony Maynard was entitled to the transmission of the said 3118 shares out of the total shareholding of the late Mr.Anthony Maynard in the respondent no.1 company. The appellant has also not disputed the fact that the respondent no.7 was entitled to transmission of those shares in his name.

310. In my view, since this Court has already held in the forgoing paragraphs of this judgment that the appellant had already agreed to exit from the respondent nos.1 and 6 on payment of fair valuation of her entitlement to the extent of 1/3rd in the total shareholding of the late Mr.Anthony Maynard, the question of the appellant similarly exercising her alleged right of pre-emption in the shareholding of the respondent no.7 or in shareholding of other members of the respondent nos.1 and 6 companies did not arise. A party, who has agreed to exit, cannot simultaneously exercise her alleged rights of pre-emption, if any.

311. Be that as it may, a perusal of Article 5 of the Articles of Association indicates that a member cannot transfer his share to a non-member if a buying member is available. In my view, under Article 16, it is not mandatory that if the member decides to sell his shareholding, he must first offer those shares to his immediate family members. In these circumstances, the respondent no.7 was not bound to offer those shares first to the appellant or her daughter and is free to sell his shares to other members though they may not be his family members.

312. It is the case of the appellant herself now that there is conflict of interest between her and her daughter and as a result of such alleged conflict, the daughter of the appellant, who was the petitioner no.2 with the appellant before the Company Law Board and also in these appeals as appellant no.2, this Court has already transposed her as one of the respondent in these three appeals. Even if the respondent no.7 would have transferred his 3118 shares and even if the daughter of the appellant would have transferred even her shares in favour of the appellant, inspite of the alleged conflict with the appellant, the shareholding of the appellant would not be to the extent of 26% of the total share capital of the respondent no.1. I am thus not inclined to accept the submission of the appellant that the appellant would have better bargaining power to negotiate the price or transfer of any shares with other members of the respondent no.1 even if she was forced to exit from the respondent nos.1 and 6.

313. The Gauhati High Court in case of **Radhabari Tea Co. Pvt. Ltd.** (supra) has held that the pre-emptive rights to buy the shares of the company are granted in favour of a member by a private company under the Articles of Association so that his right of control is not taken away. In my view since none of the Articles of Association in this case provides for a mandate to offer the shares to the family members first before offering the same to the other members of the company, the judgment of the Gauhati High Court would not assist the case of the appellant. The respondent no.7 being one of the legal heir of the late Anthony Maynard is entitled to deal with those 3118 shares in the manner he deems fit subject to the provisions of the Articles of Association, Memorandum of Association

and other provisions of law.

314. Insofar as the submission of the learned counsel for the appellant that the respondent no.1 had not followed the requisite procedure under section 84(2) of the Companies Act, 1956 before issuance of duplicate shares to the respondent no.7 is concerned, it is not in dispute that the appellant herself was present in the board meeting in which such decision was taken. All the legal heirs of the late Mr. Anthony Maynard had admitted in the pleadings that all three members were entitled to 1/3rd shares each in the shareholding of the late Anthony Maynard. The respondent no.1 had transmitted those 3118 shares in favour of the respondent no.7 in compliance with the order passed by the Company Law Board. The appellant had admittedly not applied for any declaration that issuance of duplicate shares by the respondent no.1 in favour of the respondent no.7 was in violation of section 84 of the Companies Act, 1956. In my view, the judgment of the Supreme Court in case of **V.S. Krishnan & Ors.** (supra) would assist the case of the respondent nos.1 and 7 on this issue.

315. The Supreme Court in case of **Bharat Amratlal Kothari & Anr.** (supra) has held that the Court can grant only those reliefs which are specifically prayed for by the party. The appellant had admittedly not challenged the decision of the Company Law Board directing transmission of 3118 shares in favour of the respondent no.7 and had prayed for issuance of the duplicate shares against the respondent no.1 if the original shares were not traceable.

316. In my view, the respondent no.1 was not required to

publish any notice for inviting objections from any member of public before issuance of the duplicate shares under Rule 4(3) of the Companies (Issuance of Share Certificate) Rules, 1960 for the reason that those shares were issued by the respondent no.1 company in favour of the respondent no.7 on the basis of the order passed by the Company Law Board which order has attained finality. Be that as it may, the appellant and her daughter also had admitted categorically the entitlement of the respondent no.7 in those 3118 shares out of the shareholding of the late Mr.Anthony Maynard in the respondent no.1 company. In my view, the judgment of the Company Law Board in case of **Dr.Rajiv Das** (supra) relied upon by the learned counsel for the appellant would not assist the case of the appellant on the ground that the said order passed by the Company Law Board is not a precedent and is not binding on this Court and even otherwise not applicable to the facts of this case.

317. Insofar as the judgment of this Court in case of **Rai Bahadur Gujarmal Modi & Brothers Pvt. Ltd.** (supra), relied upon by the learned counsel for the appellant is concerned, the said judgment would not assist the case of the appellant for the reason that in this case there is no dispute raised by the appellant that the respondent no.7 is not entitled to 1/3rd in the shareholding of the late Mr.Anthony Maynard but has proceeded on the premise that the appellant, her daughter and the respondent no.7 are entitled to 1/3rd share each in the shareholding of the late Mr.Anthony Maynard.

318. Insofar as the submission of the learned senior counsel for the respondent no.1 that though the late Mr.Anthony Maynard did not have 1/3rd shareholding in the respondent no.1, the respondent no.1

had offered to pay to the appellant, her daughter and the respondent no.7 for 1/3rd shareholding is concerned, since the parties have agreed that the appellant and her daughter would be paid fair valuation on the basis of 1/3rd shareholding of the late Mr. Anthony Maynard, this Court cannot go into the issue as to whether the late Mr. Anthony Maynard was actually entitled to and / or was holding less than 1/3rd shareholding in the share capital of the respondent no.1 or not at this stage.

319. Insofar as the submission of the learned counsel for the appellant that the appellant has a right of permanent directorship in the respondent no.1 on the basis of the shareholding of her late husband is concerned, in my view, since the appellant had agreed to exit from the respondent no.1 on payment of fair valuation, the appellant cannot exercise such right of permanent directorship as canvassed by the appellant even if she is otherwise entitled to exercise such alleged rights. There is no merit in the submission of the learned counsel for the appellant that the appellant is entitled to buy the shares of the respondent including respondent no.7.

320. Insofar as the submission of the learned counsel for the appellant that the respondent nos.1 to 6 have entered into an agreement with the respondent no.7 for buying his 3118 shares in the respondent no.1 in violation of Articles of Association is concerned, learned senior counsel for the respondent nos.1 to 6 has already made a statement before this Court that there is no such agreement between the respondent nos.1 to 6 on one hand and the respondent no.7 on another hand in place as on today. There is no basis of such apprehension expressed by the appellant.

321. In my view, there is no substance in the submission of the learned counsel for the appellant that under Article 3(A), Articles 5, 16 to 22 and 27, there are two categories of pre-emptive rights provided in the Articles of Association. In my view, the submission of the learned counsel for the appellant is contrary to those articles relied upon by the appellant. Those articles do not provide any intra-group pre-emption as sought to be canvassed by the learned counsel for the appellant. The Board of Directors of the respondent no.1 were not required to issue any notice to the appellant under Article 18 of the Articles of Association to the effect that the respondent no.7 had desired to sell his shares to other groups of the respondent no.1. The appellant had already agreed to exit from the respondent no.1 on payment of fair valuation. Be that as it may, the respondent nos.2 to 5 have not entered into any agreement with the respondent no.7 for transfer of shares of the respondent no.7 in their favour till date.

322. There is no substance in the submission made by the learned counsel for the appellant that the respondent no.1 has not followed the mechanism for transfer or transmission of shares under Articles 18 to 21. The respondent no.1 has complied with the order passed by the Company Law Board for transmitting the shares in favour of the respondent no.7, which order has attained finality and the validity thereof cannot be gone into by this Court in these company appeals.

323. There is no merit in the submission of the learned counsel for the appellant that the Company Law Board has dismissed the company application which is the subject matter of the Company

Application No.49 of 2014 only on the ground that the appellant had agreed to exit and thus was not entitled to claim any pre-emptive rights over the shares of the respondent no.7. In my view, the order passed by the Company Law Board is a reasoned order and is not perverse.

324. Insofar as the submission of the learned counsel for the appellant that since the order passed by the Company Law Board directing the respondent no.1 to transmit 3118 shares in favour of the respondent no.7 is illegal, the appellant was not required to challenge the said order is concerned, there is no merit in this submission of the learned counsel for the appellant. The said order passed by the Company Law Board has attained finality in view of the appellant not having challenged the said order. Whether the said order passed by the Company Law Board is illegal or not cannot be decided in this company appeal in view of the appellant not having challenged the said order. No order can be declared as illegal or void in parallel proceedings. Unless an order is challenged by filing appropriate proceedings and it is declared as void or illegal in such proceedings a party cannot urge that he is not bound to challenge such order on the ground that the said order is void or illegal or that the same is not binding on that party. There is thus no merit in the submission of the appellant that the respondents cannot rely upon those orders passed by the Company Law Board.

325. Insofar as the submission of the learned counsel for the appellant that the respondent nos.1 to 6 have no answer to Article 27(a) of the Articles of Association is concerned, in my view, there is no merit in this submission. The said article does not improve the

case of the appellant. The appellant had already agreed to exit from the respondent no.1 and thus no reliance can be placed even otherwise on the said article.

326. Insofar as the submission of the learned counsel for the appellant that her client has already filed a separate Testamentary Suit is concerned, the same is not relevant for the purpose of deciding this appeal. This Court does not express any views on the merits of the said Testamentary Suit.

327. Insofar as the submission made by the learned counsel for the respondent no.8, the daughter of the appellant is concerned, it is not in dispute that she has been now transposed as the respondent no.8 in the Company Appeal No.49 of 2014 also. Insofar as the submission made by the learned counsel that the respondent no.8 is entitled to dispute the alleged consent order passed by the Company Law Board at any stage is concerned, in my view, there is no merit in this submission. Though the respondent no.8 has become major on 18th February, 2015, till date no proceedings are filed by her for challenging various consent orders passed by the Company Law Board and the order dated 22nd July, 2011 passed by this Court. Merely because these company appeals were pending before this Court, there was no bar against the respondent no.8 from challenging the orders passed by the Company Law Board or the order dated 22nd July, 2011 passed by this Court. The appellant had appeared before the Company Law Board and had represented the respondent no.8 as her natural guardian. It is clear that the appellant has in collusion with the respondent no.8 had applied for her transposition before this Court as the respondent no.8 with a view to delay the out come of the

company petition filed by her.

328. In my view, there is no merit of any nature whatsoever in Company Appeal No. 49 of 2014 also filed by the appellant. This Company Appeal No.49 of 2014 also thus deserves to be dismissed.

329. No question of law arises in any of these company appeals and thus no interference with the impugned order passed by the Company Law Board is warranted in these appeals under section 10F of the Companies Act, 1956.

330. I therefore, pass the following order :-

- a). The Company Appeal No.18 of 2012, Company Appeal No.19 of 2012 and Company Appeal No.49 of 2014 are dismissed.
- b). In view of dismissal of the Company Appeals, the Company Application Nos.15 of 2012, 16 of 2012 and 38 of 2015 do not survive and are disposed of accordingly.
- c). The hearing of the Company Petition No.177 of 2007 and Company Petition No.199 of 2007 along with all pending company applications therein, if any, pending before the National Company Law Tribunal is expedited. The National Company Law Tribunal shall make an endeavour to dispose of the said proceedings within one year from the date of communication of this order.
- d). All the parties to the said proceedings are directed to co-operate with each other and with

the National Company Law Tribunal to dispose of the aforesaid Company Petitions and all interlocutory applications therein expeditiously as directed aforesaid.

e). There shall be no order as to costs.

(R.D. DHANUKA, J.)

331. At this stage, learned counsel appearing for the appellant seeks stay of the operation of this judgment. The application for stay is opposed by the learned counsel for the respondents. The application for stay is rejected.

(R.D. DHANUKA, J.)