IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY THE 06TH DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. Nos.1387 to 1392 of 2018
in
A.No.292 of 2018
in
C.S.No.33 of 2018

1. Ahmed Abdulla Ahmed A1 Ghurair
Villa-A-Chiller 126-34 Abu Hail
DM 74 Dubai, United Arab Emirates
through his Power of Attorney Holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates.

2. Ibrahim Abdulla Ahmed A1 Ghurair
67, Abubaker Siddique Road
Deira, Dubai, UAE
through his power of attorney holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates. : Applicants/Plaintiffs

Vs.

1. Star Health and Allied Insurance Company Limited
No.1, New Tank Street, Valluvar Kottam High Road,
Nungambakkam, Chennai 600 034
Tamil Nadu 600028, India.

2. ETA Star Holdings Limited
C/o. Mahendra Asher & Co
P.O.Box Number 4421
Dubai, UAE.

3. Mr.Syed Mohamed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam
Chennai 600 034, India.
Also at:

Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

4. Mr.Essa Abdulla Ahmed A1 Ghurair
P.O.Box 128704
Building #3580467, Street 4, A1 Quoz 3
Dubai, UAE.

5. Mr.Hameed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

6. Mr.Ahmed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

7. Mr.Arif Buhary Rahman
No.8, Subba Rao Avenue,
3rd Street, Nungambakkam
Chennai 600 006, Tamil Nadu India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

8. Mr.V.Jagannathan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

9. Mr.V.P.Nagarajan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

10. Mr.C.M.Kannan Unni
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

11. ETA STAR Holding LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE.

12. Emirates Trading Agency LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE. :Respondents/Defendants

A.Nos. 1387 and 1388 of 2017:

Star Health and Allied Insurance Company Limited
No.1, New Tank Street,
Valluvar Kottam High Road,
Nungambakkam, Chennai 600 034
Tamil Nadu 600028, India. : Applicant/1st Respondent/
1st Defendant

-Vs.-

1. Ahmed Abdulla Ahmed A1 Ghurair
Villa-A-Chiller 126-34 Abu Hail
DM 74 Dubai, United Arab Emirates
through his Power of Attorney Holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates. : 1st Respondent/
1st Applicant/ 1st Plaintiff

2. Ibrahim Abdulla Ahmed A1 Ghurair
67, Abubaker Siddique Road
Deira, Dubai, UAE
through his power of attorney holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates. : 2nd Respondent/
2nd Applicant/ 2nd Plaintiff

3. ETA Star Holdings Limited
C/o. Mahendra Asher & Co
P.O.Box Number 4421
Dubai, UAE. :3rd Respondent/
2nd Respondent/2nd Defendant

4. Mr.Syed Mohamed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam
Chennai 600 034, India.
Also at:

Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE. :4th Respondent/
3rd Respondent/3rd Defendant

5. Mr.Essa Abdulla Ahmed A1 Ghurair
P.O.Box 128704
Building #3580467, Street 4, A1 Quoz 3
Dubai, UAE. :5th Respondent/
4th Respondent/4th Defendant

6. Mr.Hameed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE. :6th Respondent/
5th Respondent/5th Defendant

7. Mr.Ahmed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE. :7th Respondent/
6th Respondent/6th Defendant

8. Mr.Arif Buhary Rahman
No.8, Subba Rao Avenue,
3rd Street, Nungambakkam
Chennai 600 006, Tamil Nadu India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE. :8th respondent/
7th Respondent/7th Defendant

9. Mr.V.Jagannathan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.
: 9th Respondent/8th Respondent/
8th Defendant

10. Mr.V.P.Nagarajan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam

Chennai 600 034,
Tamil Nadu 600 028, India. : 10th Respondent/
9th Respondent/9th Defendant

11. Mr.C.M.Kannan Unni
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034,
Tamil Nadu 600 028, India. :11th Respondent/10th
Respondent/10th Defendant

12. ETA STAR Holding LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE. : 12th Respondent/11th
Respondent/11th Defendant

13. Emirates Trading Agency LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE. :13th Respondents/
12th Respondent/12th Defendants

A.No.1387 of 2018:

Application praying that this Hon'ble Court be pleased to revoke the order dated 12.01.2018 in A.No. 292/2018 in C.S.No.33 of 2018.

A.No.1388 of 2018:

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.33 of 2018.

A.Nos. 1389 and 1390 of 2017:

Mr.Syed Mohamed Salahuddin
No.6, Wallace Garden
2nd Street, Nungambakkam,
Chennai 600 034
Also At:
Villa 123-494,
29th Street, Al Muteena
Deira, Dubai, UAE. :Applicant/3rd Defendant

-Versus-

1. Ahmed Abdulla Ahmed A1 Ghurair
Villa-A-Chiller 126-34 Abu Hail
DM 74 Dubai, United Arab Emirates
through his Power of Attorney Holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates.

2. Ibrahim Abdulla Ahmed A1 Ghurair
67, Abubaker Siddique Road
Deira, Dubai, UAE
through his power of attorney holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates. : Responents/Plaintiffs

3. Star Health and Allied Insurance Company Limited
No.1, New Tank Street, Valluvar Kottam High Road,
Nungambakkam, Chennai 600 034
Tamil Nadu 600028, India.

4. ETA Star Holdings Limited
C/o. Mahendra Asher & Co
P.O.Box Number 4421
Dubai, UAE.

5. Mr.Essa Abdulla Ahmed A1 Ghurair
P.O.Box 128704
Building #3580467, Street 4, A1 Quoz 3
Dubai, UAE.

6. Mr.Hameed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

7. Mr.Ahmed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

8. Mr.Arif Buhary Rahman
No.8, Subba Rao Avenue,
3rd Street, Nungambakkam
Chennai 600 006, Tamil Nadu India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

9. Mr.V.Jagannathan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

10. Mr.V.P.Nagarajan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

11. Mr.C.M.Kannan Unni
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

12. ETA STAR Holding LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE.

13. Emirates Trading Agency LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE. :Respondents/Defendants

A.No. 1389 of 2017:

Application praying that this Hon'ble Court be pleased to revoke the leave granted to sue dated January 12, 2018 in A.No.292 of 2018 in C.S.D.No.47818 of 2017.

A.No. 1390 of 2017:

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.33 of 2017.

A.Nos. 1391 and 1392 of 2017:

ETA Star Holdings Limited
C/o. Mahendra Asher & Co
P.O.Box Number 4421
Dubai, UAE.
Represented by its Director
Mr.Syed Mohamed Salahuddin :Applicant/2nd Defendant

-vs-

1. Ahmed Abdulla Ahmed A1 Ghurair
Villa-A-Chiller 126-34 Abu Hail
DM 74 Dubai, United Arab Emirates
through his Power of Attorney Holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates.

2. Ibrahim Abdulla Ahmed A1 Ghurair
67, Abubaker Siddique Road
Deira, Dubai, UAE
through his power of attorney holder
namely Bartholomew Kamya
working at ETA Star Building
Salahuddin Road, PO, Box 5239,
Dubai United Arab Emirates. : Respondents/Plaintiffs

3. Star Health and Allied Insurance Company Limited
No.1, New Tank Street, Valluvar Kottam High Road,
Nungambakkam, Chennai 600 034
Tamil Nadu 600028, India.

4. Mr.Syed Mohamed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam
Chennai 600 034, India.
Also at:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

5. Mr.Essa Abdulla Ahmed A1 Ghurair
P.O.Box 128704
Building #3580467, Street 4, A1 Quoz 3
Dubai, UAE.

6. Mr.Hameed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India

Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

7. Mr.Ahmed Syed Salahuddin
No.6, Wallace Garden
1st Street, Nungambakkam,
Chennai 600 034, India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

8. Mr.Arif Buhary Rahman
No.8, Subba Rao Avenue,
3rd Street, Nungambakkam
Chennai 600 006, Tamil Nadu India
Also At:
Villa 123-494, 29th Street, A1 Muteena
Deira, Dubai, UAE.

9. Mr.V.Jagannathan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

10. Mr.V.P.Nagarajan
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

11. Mr.C.M.Kannan Unni
C/o. Star Health and Allied Insurance Co Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road, Nungambakkam
Chennai 600 034, Tamil Nadu 600 028, India.

12. ETA STAR Holding LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE.

13. Emirates Trading Agency LLC
Salahuddin Road,
P.O.Box 5239, Dubai UAE. :Respondents/Defendants

A.No.1391 of 2018:

Application praying that this Hon'ble Court be pleased to revoke the leave granted to sue dated January

12, 2018 in A.No.292 of 2018 in C.S.D.No.47818 of 2017.

A.No.1392 of 2018:

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.33 of 2018.

These Applications coming on this day before this court for hearing the court made the following order:-

Introduction:

A.Nos. 1387 & 1388 of 2018 have been filed by the first defendant to revoke the Leave granted to institute the suit within the jurisdiction of this Court in A.No. 292 of 2018 by order dated 12.01.2018 and to reject the plaint in C.S.No. 33 of 2018.

2. A.Nos. 1391 & 1392 of 2018 have been filed by the second defendant to revoke the Leave granted to institute the suit within the jurisdiction of this Court in A.No. 292 of 2018 by order dated 12.01.2018 and to reject the plaint in C.S.No. 33 of 2018.

3. A.Nos. 1389 & 1390 of 2018 have been filed by the third defendant to revoke the Leave granted to institute the suit within the jurisdiction of this Court in A.No. 292 of 2018 by order dated 12.01.2018 and to reject the plaint in C.S.No. 33 of 2018.

4. C.S.No. 33 of 2018 had been filed by two plaintiffs, (i) Ahmed Abdulla Ahmed Al Ghurair and (ii) Ibrahim Abdulla Ahmed Al Ghurair. They are brothers. They are residents of Dubai, United Arab Emirates. They are both represented by their Power of Attorney, Bartholomew Kamya.

5. They have filed the suit against their another brother Mr.Essa Abdulla Ahmed Al Ghurair, resident of Dubai, United Arab Emirates, who is shown as fourth defendant and also against Star Health and Allied Insurance Company Ltd., which company is shown as the first defendant and against ETA Star Holdings Limited, which company is shown as the second defendant and against Mr.Syed Mohamed Salahuddin, Mr. Hameed Syed Salahuddin and Mr.Ahmed Syed Salahuddin, who are shown as the third, fifth and six defendants and Mr. Arif Buhary Rahman, who is shown as the seventh defendant and Mr.V.Jagannathan, Mr.V.P.Nagarajan and Mr.C.M.Kannan Unni, who are shown as the eighth, ninth and tenth defendants and ETA STAR Holding LLC and Emirates Trading Agency LLC, which companies are shown as the eleventh and twelfth defendants.

6. The plaint had been filed seeking a Judgement and Decree:

(a) Declaring the beneficial interest of defendant No. 2 in the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8 held by defendant Nos. 3, 4, 5, 6 and 7 constituting a total of 6.16% of the shareholding of defendant No.1 as described in Para 34;

(b) permanently injunct defendant Nos. 1, 3 to 10 from in any manner interfering with the beneficial interest of defendant No.2 with respect to suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8;

(c) permanently injunct defendant Nos. 1, 3 to 10 from acting in any manner or dealing with the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8, which is likely to prejudice the interests of defendant No.2;

(d) direct that appropriate measures be taken by defendant Nos. 1, 8, and 9 to make and record the beneficial interest of defendant No.2 over and with respect to the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8; and

(e) direct that if not already issued no duplicate share certificates are issued to defendant Nos. 3, 4, 5, 6 and 7 with respect to the original share certificate in the possession of defendant No.11 and direct the cancellation of any duplicate share certificate if any issues; or direct that in the event the duplicate shares have been issued in favour of defendant Nos. 3 to 7 the same be cancelled.

(f) The plaintiffs also seek costs of instituting the suit.

7. While instituting the suit, the plaintiffs had filed A.No. 292 of 2018 seeking leave to institute the suit within the jurisdiction of this Court. This was necessitated since the second, eleventh and twelfth defendants had their registered Office at Dubai, United Arab Emirates and also since the fourth defendant was a permanent resident at Dubai, United Arab Emirates and further because the plaintiffs had given an alternate address at Dubai for the third, fifth, sixth and seventh defendants. On appreciation of the facts stated in the affidavit filed in support of the application, this Court had granted Leave to institute the suit by order dated 12.01.2018.

8. Suit summons was thereafter directed to the defendants. Learned counsels entered appearance on their behalf. The first defendant, Star Health and Allied Insurance Company Limited filed A.No. 1387 of 2018 and the second defendant, ETA Star Holdings Limited filed A.No. 1391 of 2018 and the third defendant, Mr.Syed Mohamed Salahuddin filed A.No. 1389 of 2018 all seeking to revoke the leave granted by this Court. The defendant Nos. 4, 6, 7, 8, 9 and 10 have filed memos adopting the averments in said applications. Simultaneously, the first, second and third defendants also filed A.Nos. 1388 of 2018, 1392 of 2018 and 1390 of 2018 respectively seeking to reject the plaint.

9. Substantial arguments were advanced and even before examining the facts of the case and analysing the arguments advanced, this Court places its deep appreciation for the extremely lucid and scholarly arguments advanced by the learned Senior Counsels for the respective parties. The arguments were heard to the benefit and advantage of this Court. On behalf of the plaintiffs, arguments were advanced by Mr.P.S.Raman, learned Senior Counsel assisted by M/s. Shardul Amarchand Mangaldas, who were represented by Ms. Ritu Bhalla and also by Mr.Abishek Jenasenan and Mr.Yajur and Mr.Allwyn. On behalf of the first defendant, arguments were advanced by Mr.P.H.Aravind Pandian, learned Senior Counsel assisted by Mr.N.Vijayaraghavan. On behalf of the second defendant, arguments were advanced by Mr.Sathish Parasaran, learned Senior Counsel assisted by Ms.Priyanka Shetty and V.Ashwin. On behalf of the third, fifth, sixth and seventh defendants, arguments were advanced by Mr.A.R.L.Sundaresan, learned Senior Counsel assisted by Ms. Priyanka Shetty and by Mr.P.Giridharan, Mr.Dominic S. David and Mr.S.Santosh. On behalf of the fourth defendant, arguments were advanced by Mr.Vijay Narayan, learned Advocate General assisted by Mr.Sricharan Rangarajan. On behalf of the eighth defendant, arguments were advanced by Mr.R.Sankara Narayanan, learned Senior Counsel assisted by Mr.N.P.Vijayakumar and Mr.S.Pradeep. On behalf of the ninth defendant, arguments were advanced by Mr.Arun Karthik Mohan, and Mr.Suhrith Parthasarathy, learned counsels, and on behalf of the tenth defendant, arguments were advanced by Mr.R.Yashod Vardhan, learned Senior Counsel assisted by Ms.J.Harshini. The eleventh and twelfth defendants chose not to participate in the proceedings.

Facts in Brief as disclosed in the plaint:

10. The plaintiffs are resident Nationals of Dubai, UAE. They hold 34% shares in the second defendant. They are minority shareholders. The third, fourth and seventh jointly hold 66% of the shares of the second defendant and are the majority shareholders. The first defendant is a Company registered under the Companies Act 1956 and has its registered office at Chennai. It was incorporated on 17.06.2005. It is engaged in Health Insurance business in India. The authorised share capital is Rs.600/- Crores and the issued and subscribed capital is at Rs. 455.57 Crores. The second defendant is a Company incorporated under the laws of Jebel Ali Free Zone Authority and has office at Dubai, UAE.

11. The third defendant holds 2.98% of shares in the first defendant. The fourth defendant holds 3.18% of shares in the first defendant. The fifth, sixth and seventh defendants hold 0.002% each of the shares in the first defendant. Consequently, the third to seventh defendants jointly hold 6.16% of the shares of the first defendant. All the share certificates relating to the said 6.16% are with the eleventh defendant. The eleventh defendants holds these shares since they are 100% beneficial holder of the second defendant.

12. It is the case of the plaintiffs that the third to seventh defendants had made declarations that the shares of the first defendant in their name were actually held by them for and on behalf of the second defendant. Conversely, they acknowledged that the second defendant had a beneficial interest in the shares of the first defendant, though the shares were in their names. Since the second defendant had a beneficial interest in the shares in the names of the third to seventh defendants, the actual share certificates were in the possession of the eleventh defendant, who in turn had a 100% beneficial holding over the second defendant. This declaration by the third to seventh defendants was discontinued when there was de-consolidation of accounts between the second and eleventh defendant.

13. According to the plaintiffs, the majority group of shareholders of the second defendant should have taken some steps in order to assert that the second defendant was having a beneficial interest in the shares of the first defendant though allotted in the names of the third to seventh defendants. However, the majority shareholders, namely, the third, fourth and seventh defendants, who held 66% of the shares of the second defendant, did not take any steps. Since the majority shareholders did not come forward to take steps, the second defendant was prejudiced. Consequently, the minority shareholders, namely, the plaintiffs, who together held 34% in the shares of the first defendant, have initiated this Suit seeking such declaration with respect to the shares of the first defendant.

14. The eleventh and twelfth defendants are Companies incorporated under the Laws of UAE and having registered Office at Dubai, UAE. The twelfth defendant had provided funds for and on behalf of the second defendant towards the shares held by the third to seventh defendants of the first defendant Company. In the suit, no relief has been sought against the eleventh and twelfth defendant.

15. It is the claim of the plaintiffs that even the pre-incorporation expenses of the first defendant were met by the funds remitted by the twelfth defendant. The eleventh and twelfth defendant are part of the ETA Group of Companies at Dubai, UAE.

16. According to the plaintiffs, the twelfth defendant had remitted a total sum of Rs.1,43,00,000/- towards pre-incorporation expenses of the first defendant between April 2005 and October 2005. These have been recorded in the books of the second defendant. The plaintiffs have further claimed that four share certificates for a total of 33,200 shares were issued on 11.07.2005 in favour of the third, fifth and seventh defendants, who are shown as subscribers to the Memorandum of Association of the first defendant. The outstanding call amounts on these shares were satisfied from the remittance made in March 2006 by the twelfth defendant. All these share certificates are in the custody of the eleventh defendant in their capacity as beneficial interest holder of the second defendant. The third, fifth to seventh defendants have made declarations acknowledging the beneficial interest of the second defendant in the above said shares.

17. It is further stated that on 21.12.2005 a sum of Rs.50/- lakhs was remitted by the twelfth defendant by bank transfer from Mashreq Bank in Dubai to the Bank Account of the first defendant in Andhra Bank, Chennai Main Branch. Share certificates were issued in favour of the third defendant. This has also been recorded in the books of accounts of the second defendant. The beneficial interest had also been recorded.

18. On 16.01.2006, the second defendant issued payment instructions to HSBC Bank, Dubai, for an amount of Rs.16,25,00,000/- to be deposited in the account of the first defendant for Andhra Bank, Chennai. In this connection, Document No. 15 of the plaint is relevant:-

Kindly arrange to remit INR 162,500,000/- (INR One Hundred and Sixty Two Million and Five Hundred Thousand only) as per details given below:-

Beneficiary	*STAR HEALTH AND ALLIED INSURANCE COMPANY LIMITED*
Account with Bank	*Andhra Bank Chennai Main Branch Esplanade Chennai 600 001. India SWIFT CODE: ANDBINBBMAD*

Account No.	*10000422* *INR 162,500,000/-* *(INR One Hundred and Sixty Two Million and Five Hundred Thousand only)*
Reference	*Towards contribution towards equity share capital by:* *Mr.Syed M Salahuddin INR 78,500,000* *Mr.Essa Al Ghurair INR 84,000,000*

Kindly debit out account number 020-880266-001 under separate advice to us

Thanking you,

Yours faithfully
For ETA STAR HOLDINGS LIMITED

According to the plaintiffs contribution was towards equity share capital held by the third and fourth defendants. Share certificates were also issued and recorded as having beneficial interest by the ETA Group.

19. Again, on 06.03.2006 the first defendant received further investment by four demand drafts amounting to Rs.3,32,000/- from the twelfth defendant. This was also recorded as beneficial interest of the second defendant. The eleventh defendant is in possession of the shares issued.

20. It has been stated between December 2005 and March 2006, a total sum of Rs.16,78,32,000/- had been received by the first defendant from twelfth and second defendants towards issue/allotment of shares.

21. On 25.06.2009, the third defendant issued a personal cheque of Rs.2,13,00,000/- which was honoured on 07.07.2009 and in the accounts of the second defendant it was reflected that the investment was made in the first defendant.

22. On 28.06.2009, a further investment was made in the first defendant by the twelfth defendant through payment instructions to Emirates Bank to debit a sum of Rs.2,14,00,000/- to the credit of the first defendant and which was actually credited on 01.07.2009.

23. In the year 2011, two investments were made on 26.12.2011 to a total sum of Rs.17,70,00,000/- by payment instructions to Bank of Baroda to debit the account of twelfth defendant and credit the account of the first defendant. Share certificates in the names of the third and fourth defendants were issued by the first defendant on or around 10.02.2012.

24. It has been specifically stated by the plaintiffs that the third to seventh defendants admitted and acknowledged that the second defendant had a beneficial interest in the share certificates of the first defendant issued in their names. The third to seventh defendants also do not have physical possession of the share certificates. The original share certificates for 2,72,20,448 shares were handed over to the eleventh defendant by the third to seventh defendants. It is also claimed in the plaint that the third, fourth and seventh defendants have signed blank share transfer forms with respect to the shares of the first defendant in favour of the second and eleventh defendants. These are stated to be relevant facts to emphasise that the second defendant has a beneficial interest over the shares of the first defendant but held in the names of the third to seventh defendants.

25. It has been further stated in the plaint that deconsolidation of the accounts and businesses of the second defendant with that of the eleventh defendant was effected in 2016 with retrospective effect from 2014. This was due to the failure of the third, fourth and seventh defendants to sign financial statements of the second defendant. It has been stated that till the time the first defendant had requirements for funds, the interest of the second defendant was acknowledged. But however, this was stopped subsequently. It has been specifically stated that the entire remittance towards the suit shares of 6.166% of the first defendant, were by the funds provided by the twelfth or second defendants and no part of the funds came from the personal accounts of the third to seventh defendants.

26. It has been further stated that the tenth defendant, who was the Company Secretary, had direct knowledge of these facts. The eighth and ninth defendants also had direct knowledge of these facts.

27. It is under these circumstances that the second plaintiff wrote a letter dated 01.06.2017 to the eighth defendant, who was the Chairman and Managing Director of the first defendant protesting that the investments made by the second defendant were denied. However, the first defendant by their letter dated 07.06.2017 refused to take notice of the claim asserted by the ETA Group. The second plaintiff sent another letter dated 12.06.2017 to the first defendant and addressed to the eighth defendant giving details in support of the claim of the ETA Group. He also called for a meeting in person. However, the eighth and ninth defendants and other Directors of the first defendant failed to attend any meeting proposed by the second plaintiff. They sent a letter dated 27.06.2017 stating that they had earlier replied on 07.06.2017 itself and had nothing further to state. The second plaintiff sent another letter dated 09.07.2017 reiterating his stand. The first defendant responded by letter dated 27.07.2017 stating that they are not obliged to offer any clarification. It is under these circumstances that the plaintiffs have filed the present suit.

28. The plaintiffs claim that the second defendant is under the control of wrong doers. They further claim that the eighth, ninth and tenth defendants are in active collusion with the third to seventh defendants and they all have joined together to deprive the second defendant of its beneficial interest in the suit shares, namely, 6.16% of shares of the first defendant.

29. The plaintiffs have further stated that they came to know from reports in the Newspapers that the equity of the first defendant is to be sold to private equity investors through a bidding process. The third to seventh defendants along with eighth and ninth defendants are attempting to sell their investments in the first defendant Company. If such a sale is to happen then the second defendant which had financed the purchase of such shares would be put to loss if its beneficial interest is not recorded in the books of the first defendant. Since neither the majority shareholders of the second defendant nor the second defendant have chosen to approach the first defendant to record beneficial interest, the plaintiffs have come forward by instituting this suit in the nature of a derivative action.

30. This Court, on appreciation of the facts of the case had held that substantial part of cause of action had arisen within the jurisdiction of this Court and had granted leave to institute the suit. The first, second and third defendants have filed A.Nos. 1387, 1391 and 1389 of 2018 to revoke the said leave.

31. In the affidavit filed in support of A.No. 292 of 2018 seeking leave to institute the suit, the power of Attorney Agent of the plaintiffs had stated that the plaintiffs are minority shareholders holding 34% of the shares in the second defendant and had filed the suit to protect the interest of the second defendant and in turn their own interest also. They have sought a declaration that the second defendant has a beneficial interest over 6.16% of shares of the first defendant. It had been stated that the shares might be alienated. It had been further stated that substantial part of cause of action arose within the jurisdiction of this Court where the registered office of the first defendant is located and where it carries on business. It had been further stated that the entire subject matter of the suit are the shares of the first defendant, which are held by the third to seventh defendants. It had further stated that the third, fifth, sixth and seventh defendants normally reside in Chennai. It had been further stated that cause of action also arose within Chennai where the correspondences between the second plaintiff and the first defendant through the tenth defendant took place. Claiming that substantial part of cause of action arose within the jurisdiction of this Court leave to institute the suit was sought. Leave was also granted by this Court.

Applications/Memos by the Defendants:

32. In the affidavit filed in support of A.No. 1387 of 2018, filed by the first defendant, it had been stated that the second defendant is a body corporate situated in Dubai. It had been stated that there are no disputes with respect to the ownership or management or shareholding of the first defendant. It had been stated that it was understood that a purported dispute had arisen in the management/control of the second defendant and that the first defendant had no connection with respect to such dispute. It had been stated that the books of accounts, nature of investments, ownership investments and decisions of management of the affairs of the second defendant cannot be adjudicated by this Court since the second defendant, is registered outside the jurisdiction of this Court. Consequently, the Courts in India cannot supervise or regulate the affairs of the second defendant. It has been stated that leave should be revoked on this one ground itself.

33. It had been further stated that the plaintiffs are not share holders of the first defendant. They are also not Directors of the first defendant. They seek a relief in favour of the second defendant, which is incorporated outside the jurisdiction of this Court. It had been stated that only the Courts in Dubai would be competent to supervise and regulate such disputes. It had been stated that the plaintiffs have no right to sue and consequently, the suit itself is not maintainable. It had been further stated that the disputes between the plaintiffs and the third to seventh defendants arose in or about 2013 and the suit had only been filed in the year 2018 and consequently, the suit is barred by limitation. It had been further stated that the plaintiffs had filed the suit when private equity investors had shown interest in purchasing shares of the first defendant. It had been stated that the suit is an abuse of process of law. It had been further stated that the suit is barred by Section 89 of the Companies Act 2013 and Section 187(C) of the Companies Act 1956. It had been further stated that neither this Court nor any Court in India is a convenient forum for adjudicating the disputes in the suit. The disputes have to be adjudicated by Courts in Dubai, which alone has jurisdiction. It had therefore been stated that the leave granted should be revoked.

34. A similar affidavit had been filed in support of A.No. 1388 of 2018, which had been filed by the first defendant, to reject the plaint in C.S.No. 33 of 2018.

35. The second defendant had filed A.No. 1391 of 2018 to revoke the leave granted in A.No. 292 of 2018 and A.No. 1392 of 2018 to reject the plaint. A common affidavit had been filed in both the applications. This affidavit had been sworn by the third defendant in the suit.

36. In the affidavit, it had been stated that the second defendant was not interested in seeking the relief claimed in the plaint, namely, declaration that the second defendant is the beneficial interest holder of 6.16% of shares of the first defendant. It had been stated that shortly after the incorporation of the first defendant on 11.07.2005, 33,200 shares were issued to the third, fifth, sixth and seventh defendants, who are promoters of ETA Group. They were recorded as subscribers in the Memorandum of Association in their individual names. On 08.03.2006, further share certificates were issued to the third and fourth defendants. The plaintiffs have not claimed any relief against these share certificates. On 24.09.2009, further share certificates were issued in the names of the third and fourth defendants, for which again relief is not sought. Similarly on 10.02.2012 further share certificates have been issued to the third and fourth defendants, over which also no relief has been sought in the plaint.

37. It had been further stated that there is no record to show that the the second defendant had beneficial interest over the suit shares. It had been further stated that the businesses of the ETA Group were deconsolidated with effect from 2014. In 2017, the second plaintiff issued letters, nearly 12 years after the issue of the share certificates. It had been further stated that this Court does not have jurisdiction to entertain the present suit. It had also been stated that the plaintiffs have no locus to institute the suit.

38. It had been specifically stated that the second defendant is a Company incorporated under the Laws of Jebel Ali Free Zone Authority and is outside the jurisdiction of this Court. It had been further stated that the plaintiffs are claiming derivative action in respect of the second defendant, which is registered and carrying on business outside the jurisdiction of this Court. It had been further stated that no cause of action arose within this Court. It had therefore been stated that the leave should be revoked.

39. It had been further stated that the plaintiffs have no locus to institute the suit on behalf of the second defendant, which is a separate legal entity. The second defendant alone has a right to bring any action with respect to its rights. It had been further stated that there is no factual basis for the claims of the plaintiffs and that the claims are not enforceable. It had been further stated that the claims are barred under the Companies Act. It had been further stated that a second degree derivative suit cannot be maintained and this Court does not have territorial jurisdiction. It is under these circumstances that the second defendant claimed that the leave should be revoked and also that the plaint should be rejected.

40. The third defendant had filed A.Nos. 1389 & 1390 of 2018 to revoke the leave granted and to reject the plaint. Again a common affidavit had been filed in support of both the Applications. The third defendant had sworn to the affidavits filed in support of the applications filed by the second defendant. He filed similar identical affidavit on his own behalf. Since the affidavit had been summarised in the foregoing paragraphs, it is not repeated once again.

41. The fourth defendant filed a memo adopting the submissions made on behalf of the third defendant. The sixth defendant filed a memo also adopting the contentions made by the third defendant. The seventh defendant also filed a memo adopting the contentions made by the third defendant. The eighth defendant filed a memo adopting the contentions made by the first defendant. The tenth defendant filed a memo adopting the contentions made by the first defendant.

42. Counter affidavits were filed by the plaintiffs with respect to the applications filed and also with respect to the memos filed. The plaintiffs reiterated that they have locus, that the suit is within the period of limitation that this Court has jurisdiction to adjudicate the issues and that the suit has been filed with *bona fide* intent. It had been specifically stated that this Court has jurisdiction to examine the issues raised, since the registered office of the first defendant is situated within the jurisdiction of this Court and any declaration relating to beneficial interest has to be made only in the registers maintained by the first defendant. It had also been pointed out that the issue relating to grant of leave or rejection of the plaint has to be considered only with respect to the averments made in the plaint and if the plaint discloses a cause of action and if such cause of action is within the jurisdiction of this Court, then the suit is maintainable within the jurisdiction of this Court.

Arguments:

43. Heard Mr.P.S.Raman, learned Senior Counsel for the plaintiffs; Mr.P.H.Aravind Pandian, learned Senior Counsel for the first defendant; Mr.Sathish Parasaran, learned Senior Counsel for the second defendant; Mr.A.R.L.Sundaresan, learned Senior Counsel for the third, fifth, sixth and seventh defendants; Mr.Vijay Narayan, learned Advocate General and for the fourth defendant; Mr.R.Sankara Narayanan, learned Senior Counsel for the eighth defendant; Mr.Arun Karthik Mohan, learned counsel for the ninth defendant and Mr.R.Yashod Vardhan, learned Senior Counsel for the tenth defendant. Since no reliefs were claimed against the eleventh and twelfth defendants, they did not participate in the judicial proceedings.

44. Mr.P.S.Raman, learned Senior Counsel for the plaintiffs stated that the Court should examine only the averments in the plaint to decide whether any part of the cause of action arose within the jurisdiction of this Court, which would enable the Court to examine the disputes relating to such cause of action. The learned Senior Counsel also stated that under Order 7 Rule 11(a) of the Code of Civil Procedure, the stipulation required is that the 'plaint' must disclose cause of action and distinguished it from determining whether 'the plaintiffs' have a case in hand. To determine this, the averments of the plaint alone has to be considered.

45. The learned Senior Counsel further took the Court through the pleadings and stated that the plaintiffs have alleged fraud on the part of the defendants and had further alleged that owing to inaction by the third, fourth and seventh defendants, the second defendant was seriously prejudiced, in as much as much as its beneficial interest over the shares of the first defendant was denied. Since the majority shareholders of the second defendant, namely, the third, fourth and seventh defendants have not come forward to protect the interest of the second defendant, the plaintiffs, who are the minority shareholders have instituted the suit to protect the beneficial interest of the second defendant. This is a derivative action and the learned Senior Counsel asserted that clearly the plaintiffs have a cause of action.

46. With respect to the cause of action arising within the jurisdiction of this Court, the learned Senior Counsel pointed that the entire *lis* surrounded over a declaration sought primarily against the first defendant, directing that in the books of the first defendant entries must be made recording that the shares in the names of the third, fourth, fifth, sixth and seventh defendants, which are in the possession of the eleventh defendant; are actually shares over which the second defendant has a direct beneficial interest. Since the first defendant is a company incorporated in India and has its registered Office at Chennai, the learned Senior Counsel stated that this Court has jurisdiction to entertain the suit.

47. The learned Senior Counsel also pointed out that the third, fifth, sixth, seventh, eighth, ninth and tenth defendants, all have places of residents in India. They dwell within the jurisdiction of this Court. The second defendant alone is registered in Dubai. The fourth defendant is a resident of Dubai. As a matter of fact, if the convenience of the parties is to be taken into account, then the plaintiffs, who are permanent residents of Dubai, have come to Chennai to institute the suit at their cost and consequently, they are also put to inconvenience by instituting the suit at Chennai.

48. The learned Senior Counsel stated that this Court has jurisdiction to entertain the suit and also that the plaintiffs have locus to maintain the present suit. He also pointed out that no part of cause of action arose in Dubai except that deconsolidation of the accounts of the second defendant with that of the eleventh defendant took place at Dubai in the year 2016. However, the plaintiffs do not have any dispute with respect to deconsolidation. But it was only at that point of time in the year 2016, that the plaintiffs came to know that the third to seventh defendants had stopped making declarations in Dubai acknowledging the beneficial interest of the second defendants over the shares of the first defendant which were in their names. That knowledge gave rise to the cause of action for instituting the suit, and that knowledge was in the year 2016 and institution of the suit in the year 2017 was very much within any period of limitation.

49. The learned Senior Counsel stated that the suit is also not barred under Section 34 of the Specific Relief Act. The plaintiffs seek a declaratory relief by way of a derivative action to protect the beneficial interest of the second defendant over the suit shares. The plaintiffs have sought not only a declaratory relief but have also sought injunctions and the civil Courts certainly are competent to grant such reliefs. The learned Senior Counsel also pointed out that limitation is a mixed question of law and fact and cannot be examined at this stage. Moreover if fraud is alleged, then the limitation shall begin to run only from the date of knowledge of the act of fraud. In the present case, that knowledge was in the year 2016 and consequently, the suit is not barred under any law.

50. The learned Senior Counsel also rebutted the contentions that the suit is barred by Section 187(C) of the Companies Act 1956 and / or by Section 89 of the Companies Act 2013. These provisions might bar the relief from being granted but would not bar the suit to be instituted.

51. The learned Senior Counsel reiterated that while determining application seeking to revoke leave already granted or to reject the plaint, the averments in the plaint alone has to be considered by this Court. The learned Senior Counsel was emphatic that all the applications filed by the defendants should be dismissed.

52. Mr.P.H.Aravind Pandian, learned Senior Counsel for the first defendant argued that the plaintiffs have no cause of action within Chennai to institute the suit. The plaintiffs have stated that the first defendant should make an entry in their registers that the shares held by the third to seventh defendants actually are to the advantage of the second defendant, who has a beneficial interest. In this regard, the learned Senior Counsel pointed out that under Section 89 of the Companies Act 2013, the third to seventh defendants, who are the actual shareholders must first give a declaration that the shares held in their names or the shares issued in their names are actually held so, for and on behalf of the second defendant. Simultaneously, the second defendant must also give a declaration that the shares in the names of the third to seventh defendants are shares over which the second defendant has a beneficial interest. Only when these two declarations are given, will an obligation accrue to the first defendant to make necessary entries in its books recording that the second defendant has a beneficial interest over the shares which are in the names of the third to seventh defendants. The learned Senior Counsel pointed out that consequently, the two prior declarations are mandatory pre-requisites. For obtaining reliefs with respect to these declarations, the Court which would have jurisdiction would be the Court at Dubai, since the second defendant is a Company registered in Dubai.

53. Moreover, the cause of action arose only owing to deconsolidation of accounts between the second defendant and the eleventh defendant which deconsolidation took place in Dubai. The learned Senior Counsel also pointed out that it was a group of Companies, which held the shares and it was not just the second defendant alone, who could be termed to have a beneficial interest over the shares. It is also specifically not established that it was the second defendant who provided the funds for the incorporation of the first defendant. The holding of the investments was for the benefit of ETA Group as one unit. There were disputes within the ETA Group and it was decided that the shares in individual names would vest on such individuals. Once the ETA Group had taken such a decision, it would not lie in the mouth of the plaintiffs to force the second defendant to seek a declaration that they are beneficial holders of the shares of the first defendant held by the third to seventh defendants.

54. The learned Senior Counsel further stated that the suit, which relates to the management of the second defendant Company, would not be maintainable in Courts in India, since the second defendant is subject to Laws in Dubai. The issues relating to investments and reconciliation of accounts are subject only to the Laws of Dubai. Moreover, the plaintiffs cannot institute the present suit to further their own personal interest. The learned Senior Counsel also stated that since the shares were issued in the year 2005 and since both Section 187 (C) and Section 89 of the Companies Act 1956 and 2013 respectively prescribed a limitation period of 30 days for making a declaration regarding beneficial interest, the suit is hopelessly barred by limitation. The learned Senior Counsel stated that no cause of action arose within the jurisdiction of this Court. He asserted that Leave granted should be revoked and the plaint should be rejected.

55. Mr.Sathish Parasaran, learned Senior Counsel for the second defendant argued that the second defendant does not claim any right or interest over the shares mentioned in the plaint. Very specifically, learned Senior Counsel stated that the second defendant does not have any record in their registers of creation of any beneficial interest in respect of the suit shares. As a matter of fact, he emphatically stated that the second defendant has no beneficial interest in the suit shares. He specifically stated that the legal and beneficial ownership of the suit shares vested with the third to seventh defendants. Consequently, he stated that the plaintiffs cannot be permitted to continue the present litigation.

56. The learned Senior Counsel also stated that derivative action can be permitted only when a serious wrong to a Company is to be prevented. It should be of such scale that it cannot be rectified by a resolution of the members of the Company. It can be resorted to only when there is concrete evidence that the majority members would not sanction any action in the name of the company. In the instant case, the pleadings do not disclose such allegations. The learned Senior Counsel also pointed out that even in the plaint, the plaintiffs have stated that the suit had been instituted to also protect their own interest as shareholders of the second defendant. There are no specific allegations that the third to seventh defendants have neglected or acted against the interest of the second defendant. There is no pleading that the plaintiffs had placed the subject matter of the suit for consideration before the Board of Directors of the second defendant and that the Board refused to act on the same. Infact it was never placed before the Board at all.

57. The learned Senior Counsel pointed out that even if derivative action is said to be maintainable, then such action would lie in the Courts in UAE and not before this Court. The learned Senior Counsel pointed out that Dubai is the Forum conveniens and that this Court is Forum non conveniens. It was pointed out that the second defendant is a Company incorporated under the Laws of Jebel Ali Free Zone Authority. A derivative action on behalf of the second defendant can be maintained only under the Laws of Jebel Ali Free Zone Authority. If the suit is permitted to be proceeded with, then the second defendant would face similar suits in every jurisdiction where individual shareholders claim cause of action arose. The second defendant has no business within the jurisdiction of this Court. The appropriate Forum to test the claim of the plaintiffs is the Courts in Dubai. Moreover payments for the suit shares have been made by the eleventh and twelfth defendants, which are both Companies incorporated under the Laws of UAE and have Offices in Dubai. The issue whether such payments were made on behalf of the second defendant can be determined only in Courts at Dubai.

58. The learned Senior Counsel also stated that both private as well as public interest will have to be weighed and it would be evident that the issues can be decided only in Courts in Dubai. The learned Senior counsel therefore stated that the applications must be allowed and the suit must be rejected.

59. Mr.A.R.L.Sundaresan, learned Senior Counsel for the third, fifth sixth and seventh defendants pointed out that the suit shares of the first defendant were always held by the third, fourth, fifth, sixth and seventh defendants in their individual and exclusive capacity. The learned Senior Counsel also pointed out that the ETA Group has 67 subsidiaries and the second defendant is one among 67 subsidiaries. It is not known which of the 67 subsidiaries specifically contributed towards the capital of the first defendant. Even if it is to be taken that it was the second defendant which contributed towards the capital of the first defendant, the second defendant also has 53 subsidiary Companies. It is highly impossible to determine as to the direct source of the funds which flowed to the first defendant.

60. At any rate, the second defendant had specifically stated that they do not have any beneficial interest over the suit shares. Moreover, the ETA Group had deconsolidated its businesses and very specifically arrangements were made that the shares in individual names would vest with the respective individuals and consequently, the third, fourth, fifth, sixth and seventh defendants would be the lawful owners of the shares which are the subject matter of the suit. Learned Senior Counsel further stated that the shareholding rights has to be agitated only in the Courts in Dubai and the legal action can be initiated only from the place of origin, namely, UAE and a top - down approach has to be initiated and not a bottom - up approach.

61. The learned Senior Counsel also stated that the suit itself is barred by law. The grievance of the plaintiffs can be categorised a shareholders' disputes with respect to the second defendant. This dispute can be agitated only at the place where the second defendant had been incorporated namely Dubai and consequently, the plaint should be rejected and leave should be revoked.

62. Mr.Vijay Narayan, learned Advocate General who appeared for the fourth defendant pointed out that the suit is hopelessly barred by the law of limitation. Even though the issue of limitation is always a mixed question of fact and law, in the present case, the learned Advocate General pointed out that admittedly in the plaint itself, it has been repeatedly stated that there was flow of money to the first defendant from the year 2005 and it was also stated that such flow stopped in the year 2011. The share certificates have been allotted in the year 2005 itself by the first defendant. After 2011, there had been no further flow of funds or allotment of share certificates. The suit had been instituted only in the year 2017 and by no stretch of imagination can the suit be adjudicated to be within the period of limitation. The learned Advocate General asserted that once the suit is specifically barred by statute, it automatically follows that the plaint has to be rejected.

63. The learned Advocate General took the Court through the pleadings to emphasise the fact that even in the pleadings, it has been specifically admitted that the investments had stopped in the year 2011 itself. He was emphatic that the plaint has to be rejected as barred by law.

64. Mr.R.Sankara Narayanan, learned Senior Counsel for the eighth defendant pointed out that the eighth defendant had been impleaded only because he happened to be the Chairman and Managing Director of the first defendant. It is claimed by the plaintiffs that the eighth defendant was aware of the beneficial interest of the second defendant over the shares held by the third to seventh defendants in the first defendant Company. It is further claimed by the plaintiffs that he had failed and neglected to record such beneficial interest and this inaction is prejudicial to the interest of the second defendant. The learned Senior Counsel challenged the claims and argued that primarily the individuals in whose names shares had been allotted should first make a declaration in prescribed form of somebody held beneficial interest over such allotted shares. The company cannot and also has no obligation to record beneficial interest suo motto in its records in the absence of declarations stipulated in Sec. 187 C and / or Sec. 89 of the Companies Act 1956 / 2013.

65. The learned Senior counsel pointed out the provisions of Section 34 of the Specific Relief Act and stated that the plaintiffs must primarily be entitled for a right in the property over which such declaration is sought. In the present case, the suit shares are in the names of the third to seventh defendants and the plaintiffs are not even remotely entitled to the said shares. Even if it is to be considered that the second defendant has a beneficial interest over the said s hares still, the plaintiffs do not satisfy the requirements of Section 34 of the Specific Relief Act, since the declaration is with respect to the rights of the second defendant and not that of the plaintiffs. The learned Senior Counsel pointed out that a derivative action cannot lie in the present case and the Court cannot issue a declaration over a property over which, admittedly the plaintiffs do not have any right, title or interest. The learned Senior Counsel stated that the suit has to fail in view of this one fact alone.

66. Mr.R.Yashod Vardhan, learned Senior Counsel for the tenth defendant argued that there are two aspects pleaded in the plaint. The first related to the affairs of the second defendant. The learned Senior Counsel pointed out Section 187(C) of the Companies Act 1956 and stated that under Sub Section (1), the shareholder must declare in the prescribed form and intimate the person who holds the beneficial interest in such shares. Simultaneously, under Sub Section (2), the person, who holds beneficial interest must also file a declaration within 30 days in the prescribed form. Thereafter, under Sub Section (4), the Company has to make note of such declaration in its registers. The learned Senior Counsel pointed out that in the present case, the third to seventh defendants were issued with share certificates in the years 2005 onwards and they have not come forward to make any such declaration in the prescribed form. Similarly, the second defendant also had not made any declaration that they have a beneficial interest over the shares. It was only thereafter that the second aspect, namely the declaration sought in the plaint can be considered. This alone relates to the first defendant.

There is no obligation on the part of the first defendant to record beneficial interest over the suit shares, since declarations in the prescribed forms have not been presented.

67. The learned Senior Counsel further pointed out that Article 58 of the Limitation Act is attracted in this case. The right to sue accrued from the date when declarations should have been made under Section 187(C) in pursuance of purchase of shares. The suit is hopelessly barred by limitation according to the learned Senior Counsel. The learned Senior Counsel stated that there had been two distinct causes of action which have been mingled together in the present suit. The first cause of action was with respect to the third to seventh defendants and the second defendant making separate declarations as required under Section 187(C)(1) and (2) of the Companies Act 1956 and which alone would give rise to the second cause of action with respect to the first defendant in recording such declarations. The second cause of action, namely recording of such declaration comes into effect only when the original declarations have been made in the prescribed forms. The two causes of action are independent of each other. Consequently, the suit has to fail. The first cause of action arose within the jurisdiction of the Court at Dubai and unless that is determined, the plaint would not have any legs to stand. According to the learned Senior Counsel, the suit should be rejected.

Broad Points for Determination:

68. I have carefully considered the arguments advanced. The broad points which arise for consideration are

(i) Whether the plaint discloses cause of action?

(ii) Whether such cause/causes of action had arisen within the jurisdiction of this Court?

(iii) Whether the suit, from the statements in the plaint is barred by any law?

The above are broad points. Facts being common, discussions on all the three points would naturally overlap and consequently, they are taken up together.

The points discussed:

69. The two plaintiffs (i) Ahmed Abdulla Ahmed Al Ghurair and (ii) Ibrahim Abdulla Ahmed Al Ghurair and the fourth defendant Essa Abdulla Ahmed Al Ghurair are brothers. They are members of what can be termed as the Al Ghurair group. They are all permanent residents of Dubai, UAE.

70. The third defendant Syed Mohamed Salahuddin, the fifth defendant Hameed Syed Salahuddin, the sixth defendant Ahmed Syed Salahuddin are father and sons. They and the seventh defendant Arif Buhary Rahman can be termed as members of the Buhary group. They have permanent residence at Chennai and also have residence at Dubai UAE.

71. The Al Ghurair group and the Buhary group jointly formed the ETA Group of Companies. ETA signifies the Emirates Trading Agency. The ETA Group was head quartered in the UAE.

72. In the Written submissions of the third defendant, it had been stated that the ETA Group had investments in over 23 Companies with the turn over of over 6.5 billion US Dollars. They also had about 100 entities in the UAE and many other entities worldwide. They made investments in various businesses. In or about the year 2005, particularly in Tamilnadu, the Insurance Business opened up to private players. The ETA Group took advantage of this, and with the help of the second defendant, namely, ETA Star Holdings Limited, which was a Company incorporated in UAE Dubai and incorporated under the Laws of the Jebel Ali Free Trade Zone, UAE, they invested in the first defendant Company, namely, Star Health and Allied Insurance Company Limited during the pre-incorporation period and also during the consolidation of the business period. The share holding and Board of Directors of the second defendant was as follows:-

S.No.	***Name***	***Rank in C.S.No. 33 of 2018***	***Shareholding in 2nd defendant Company (number of shares)***	***Shareholding in 2nd Defendant Company (Percentage)***
1.	Mr.Essa Abdulla Ahmed Al Ghurair (Director)	Defendant No.4	180	18%
2.	Mr.Ahmed Abdulla Ahmad Al Ghurair (Director)	Plaintiff No.1	170	17%

S.No.	***Name***	***Rank in C.S.No. 33 of 2018***	***Shareholding in 2nd defendant Company (number of shares)***	***Shareholding in 2nd Defendant Company (Percentage)***
3.	Mr.Ibrahim Abdulla Ahmad Al Ghurair	Plaintiff No.2	170	17%
4.	Mr.Syed Mohamed Salahuddin (Director)	Defendant No.3	250	25%
5.	Mr.Arif Buhary Rahman (Director)	Defendant No. 7	230	23%

73. The above details had been given in the written arguments of the third defendant.

74. It had been further stated that the second defendant is one of the entities of the ETA Group. The second defendant by itself had 53 subsidiaries Companies. The ETA Group had, along with the second defendant, 67 subsidiaries Companies. From the tabular column above, it is evident that the two plaintiffs held together 34% share holding interest in the second defendant company. They are in minority. The third, fourth and seventh defendants together held remaining 66% of the shareholding. They are in majority.

75. While deciding an application seeking to revoke the leave granted by this Court and also an application to reject the plaint, it is settled principle that primarily the averments in the plaint alone have to be read and analysed. The averments in the application seeking to revoke the leave and / or reject the plaint are relevant. It is also to be mentioned that while granting leave to institute the suit, the Court only examines whether some part of the cause of action arose within the jurisdiction of this Court. Clause 12 of the Letters Patent is as follows:-

> *"**12. Original Jurisdiction as to suits.**- And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court; or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees. "*

76. Order 3 Rule 1 of the Original Side Rules is as follows:-

> *"R. 1. An Application for*

leave to institute a suit in the Court shall be made by Judge's summons entitled in the matter of the intended suit, and shall be supported by an affidavit stating the residence and occupation of the defendant, and the reason for instituting the suit in the Court. the application shall be accompanied by the plaint in the intended suit, or a copy thereof.

The Court may direct notice of the application to be given to the defendant.

If leave to sue is granted, the summons to the defendant shall contain the notice set out in Form No.9."

77. The guiding principles have been given in ***Madanlal Jalan vs. Madanlal and others*** reported in ***AIR 1949 Cal 495.*** In Paragraph No. 25, it hasw been stated as follows:-

"On a consideration of the legal principles established by the judicial decisions mentioned above it seems to me that balance of convenience is a material consideration in the exercise of discretion under cl.12. From these judicial authorities the following propositions may, I think, be enunciated:

(a) that an application lies for revoking leave granted under cl. 12 of the Letters Patent;

(b) that such an application should be made at an early stage of hte suit and delay and acquiescence may be a bar to such an application;

(c) that if the application depends on diffcult questions of law or fact the Court should not revoke leave on a summary application but should decide the question at the trial;

(d) That if the defendant shows clearly that no part of the cause of action arose within jurisdiction, the leave should be revoked as a matter of course.

(e) That if only a part of the cause of action aarose within jurisidction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

(f) that assignment is a very important part of the cause of action in a suit by the assignee;

(g) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balacne of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum conveniens;

(h) that the Court may refuse leave or revoke leave on the ground of balance of convenience although there be no evidence of bad faith or abuse of process on the part of the plaintiff;

(i) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument, the Court will, in recognition of the principle of negotiability, insist on a far greater degree of balance of convenience in favour of the defendant and will more readily give or maintain leave than in other cases of assignment;

> *(j) that if the Court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the defendant or might result in injustice the Court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course."*

78. If, on a reading of the plaint, some part of the cause of action arose within the jurisdiction of this Court, then this Court has to take a decision either to grant leave or to inform the plaintiffs to represent the plaint in the Court which has jurisdiction. However, the persuading factor is that the plaint should disclose some cause of action which had arisen within the jurisdiction of this Court and which gives the plaintiffs' right to institute the suit within this Court. If such cause of action or causes of action have arisen outside the jurisdiction of this Court, then the plaint must be directed to be represented in the competent Court in such territorial jurisdiction.

79. The next aspect is to examine whether the plaint is to be rejected under Order VII Rule 11(a) or R.11(d). Order VII Rule 11 (a) and Rule 11(d) are as follows:-

> ***"11. Rejection of plaint.****- The plaint shall be rejected in the following cases:-*
>
> *(a) where it does not disclose a cause of action;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;"*

80. In ***N.Ravindran vs. Ramachandran*** reported in ***2011 SCC Online Mad 401,*** it had been held that,

> *"10. The well settled position is that while considering the Applicaiton under Order 7 Rule 11, C.P.C., Court is not required to take into consideration the defence set up by the defendant in his written statement or other documents. The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the Application, the strength or weakness of the case of the plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether any vexatious or frivolous litigation has been initiated by the plaintiff. The Court cannot take into account materials beyond the plaint to declare that the case of the plaintiff is frivolous or is barred by any law."*

81. In ***Mayar (H.K.) & Ors. Vs. Owners & Parties, Vessel M.V., Fortune Express & Ors.,*** reported in ***AIR 2006 SC 1828,*** it had been held as follows ;

> *"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The*

Court has to read the entire plaint as a whole to find out whether it descloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are rquired to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which reqiures determination by the Court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejction of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

82. Again in ***(2005) 7 SCC 510 Popat and Kotecha Property Vs. State Bank of India Staff Association,*** it had been held that:

"19. There cannot be any

> *compartmentalisation, dissection, segregation and inversions of the language of various paragarphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."*

83. It is seen that if the plaint is to be rejected, then under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, it must be held that the plaint does not disclose any cause of action and / or that the plaint is barred by law. In such case, the exercise of determining whether the cause of action has arisen within the jurisdiction of this Court or has not arisen within the jurisdiction of this Court need not be undertaken since on a reading of the plaint, the Court has determined that either the plaint does not disclose any cause of action or that the suit is barred by law. The suit itself is rejected since it does not disclose any cause of action and / or the plaint is barred by any law.

84. The fundamental distinction between allowing an application filed to revoke the leave granted to institute the suit within this Court and in allowing an application filed to reject the plaint under Order VII Rule 11 (a) CPC is that when the leave is revoked it also means that the plaint discloses a cause of action but that this Court is not the proper Court to decide the lis between the parties. On the other hand, when the plaint is to be rejected under Order VII Rule 11(a) CPC, then it would mean that the plaint does not disclose any cause of action. When leave is revoked, the same plaint can be represented in a competent Court. When the plaint is rejected under Order VII Rule 11 (a) CPC, the plaintiffs may institute a fresh suit on the same cause of action. When a suit is rejected under Order VII Rule 11 (d) CPC, then it would mean that a reading of pleadings indicated that the suit is specifically barred by law.

85. The applications now under consideration have been filed by the first, second and third defendants. All three of them have sought both the reliefs. They seek to revoke the leave. They also seek rejection of the plaint, both under Order VII Rule 11 (a) and under Rule 11(d) CPC. Either way the averments in the plaint will have to be examined to determine whether it discloses a cause of action within the jurisdiction of this Court or whether it does not disclose any cause of action and even if it does disclose a cause of action, whether such cause is barred by law.

86. The suit in C.S.No. 33 of 2018 had been filed seeking a Judgement and Decree for the following reliefs:-

(a) Declaring the beneficial interest of defendant No. 2 in the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8 held by defendant Nos. 3, 4, 5, 6 and 7 constituting a total of 6.16% of the shareholding of defendant No.1 as described in Para 34;

(b) permanently injunct defendant Nos. 1, 3 to 10 from in any manner interfering with the beneficial interest of defendant No.2 with respect to suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8;

(c) permanently injunct defendant Nos. 1, 3 to 10 from acting in any manner or dealing with the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8, which is likely to prejudice the interests of defendant No.2;

(d) direct that appropriate measures be taken by defendant Nos. 1, 8, and 9 to make and record the beneficial interest of defendant No.2 over and with respect to the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8; and

(e) direct that if not already issued no duplicate share certificates are issued to defendant Nos. 3, 4, 5, 6 and 7 with respect to the original share certificate in the possession of defendant No.11 and direct the cancellation of any duplicate share certificate if any issues; or direct that in the event the duplicate shares have been issued in favour of defendant Nos. 3 to 7 the same be cancelled.

(f) The plaintiffs also seek costs of instituting the suit.

87. Along with the plaint, the plaintiffs filed application in A.No. 292 of 2018 seeking leave to institute the suit within the jurisdiction of this Court. In the affidavit filed in support of the said application, the power of attorney of the plaintiffs had stated that the plaintiffs are minority shareholders holding 34% of shares in the second defendant. The suit had been filed to protect the interest of the second defendant and incidentally their own interests also by asserting and protecting the beneficial interest of the second defendants over the shares of the first defendant to an extent of 6.16% which are held in the names of the third to seventh defendants. It had been stated that substantial part of cause of action arose within the jurisdiction of this Court where the registered office of the first defendant is located and where it carries on business. It had been further stated that the entire subject matter of the suit are the shares of the first defendant, which are held by the third to seventh defendants. It had been further stated that the third, fifth, sixth and seventh defendants dwell in Chennai. It had been further stated that cause of action arose within the jurisdiction of this Court where correspondence between the second plaintiff and the first defendant through the tenth defendant took place. Leave was sought since the second, eleventh and twelfth defendants carried on business in Dubai and further since the fourth defendant resided in Dubai. It had been further stated that the eleventh and twelfth defendants are only proper parties to the suit and no reliefs have been sought against them.

88. This Court, on consideration of the application had granted leave to institute the suit. This grant of leave is sought to be revoked in A.Nos. 1387, 1391 and 1389 of 2018 filed by the first, second and third defendants respectively. The primary ground on which leave is sought to be revoked is that any suit concerning the affairs of the second defendant should be instituted only in Dubai, UAE, since the second defendant is a company incorporated under the Jebel Ali Free Zone Authority UAE and is bound by the Laws of Dubai, UAE. It had been urged before this Court that the suit, being an expression of the grievances of the shareholders of the second defendants, has to necessarily instituted within the jurisdiction of the Court where the second defendant has been incorporated, namely, Dubai, UAE.

89. It had also been further stated that since the second defendant has been registered in Dubai, UAE, the Forum conveniens is only in Dubai UAE and this Court is Forum non conveniens.

90. If leave is to be revoked, then it would mean rendering a finding that the plaint does disclose a cause of action but that cause of action cannot be examined or adjudicated by this Court owing to lack of territorial jurisdiction. Whether this Court has territorial jurisdiction or not is an aspect to be determined from a reading of the plaint.

91. Mr.P.S.Raman, learned Senior Counsel for the plaintiffs had drawn a distinction between the plaint disclosing the cause of action and the plaintiffs having a cause of action. He relied on Judgement in ***K.Mahesh and others Vs. T.V.Sundaram Iyengar & Sons Ltd., in***

C.S.No. 963 of 1992 wherein paragraph Nos. 26 and 48 run as follows:-

> *"**26.** In so far as Order VII Rule 11(a) CPC is concerned, the applicant must show that the plaint does not disclose cause of action. There is a crucial difference between the plaint not disclosing a cause of action and the plaintiff not having cause of action......In order to decide whether Order VII Rule 11(a) CPC is attracted, the court must look only to the averments in the plaint. Cause of action is the bundle of facts which the plaintiff has to allege and prove to get relief from the court....... The cause of action has to be read with the relief as prayed for.*
>
> ***48.** There is a clear distinction between a case where the plaint itself does not disclose any cause of action and a case in which the court after consideration of the entire material including oral and documentary evidence comes to the conclusion that there was no cause of action. In the latter case, the plaint cannot be rejected under Rule 11. A plea that there was no cause of action is different from saying that the plaint itself did not disclose the cause of action. If the plaint discloses a cause of action, the correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Order VII Rule 11(a)."*

92. In the present case, the plaintiffs seek to espouse the cause of the second defendant. The plaintiffs have averred that the second defendant was the conduit through which the twelfth defendant had invested during the pre-incorporation and operational stages of the first defendant. The facts reveal that the third, fifth, sixth and seventh defendants were subscribers to the Memorandum of Association and Articles of Association of the first defendant. Consequently, when the shares of the first defendant were allotted, 2.98% of the shares were allotted to the third defendant, 0.002% of the shares were allotted to each one of the fifth, sixth and seventh defendants. Since at some point of time, the fourth defendant also had sent a personal cheque in favour of the first defendant, and was also actively involved as a member of the Al Guhair group of the ETA group, 3.18% of shares were allotted to the fourth defendant. It is thus seen that the third to seventh defendants together held 6.16% of the shares of the first defendant. The actual share certificates were in the possession of the eleventh defendant. This was so because the eleventh defendant was also a part of the ETA Group and more importantly had a 100% beneficial interest in the second defendant. This fact has not been denied by any of the defendants. The fact that the actual share certificates were in the possession of the eleventh defendant read in conjunction with the fact that the second defendant was one of the subsidiaries of the ETA Group points to the irresistible and logical conclusion that there was a link between the ETA Group and the second defendant and a direct link between the second defendant and the shares in the names of the third to seventh defendants of the first defendant Company. The ETA Group also controlled the second defendant. Naturally, the second defendant also had a semblance of right and interest over the 6.16% of the shares of the first defendant.

93. In the plaint, it had been stated that the eleventh defendant had a 100% beneficial interest in the second defendant. In the written arguments filed by the third defendant, it had been stated that "one such entity of the ETA Group in the UAE was the second defendant namely ETA Star Holdings Ltd., a company incorporated under the Laws of the Jebel Ali Free Trade Zone UAE and headquartered in the UAE." It is thus seen that a chain is established linking the suit shares of the first defendant with the funds infused by the twelfth defendant through the second defendant, which in turn was controlled by the eleventh defendant. In this scenario, the third to seventh defendants are merely pawns holding shares of the first defendant. It is only incidental that the suit shares were in their names. If the ETA group had some other confidante then in all probability one or more among the third to seventh defendants might not have been shareholders or parties to this *lis* at all.

94. It is a fact that both eleventh and twelfth defendants are constituent of ETA Group. In the plaint, it had been further stated that the suit had been filed to protect the beneficial interest of the second defendant with respect to the suit shares namely 6.16% of shares of the first defendant held by the third to seventh defendants. It had been specifically stated that the third, fourth and seventh defendants, who are majority shareholders of the second defendant have not taken any steps to assert the rights of the second defendant. It had been further stated in the plaint that the twelfth defendant paid pre-incorporation expenses of Rs.30 lakhs by remitting the same on or around 14.04.2005. A further amount of Rs.65/- lakhs was remitted on or around 15.06.2005. These amounts were entered in the personal ledger account of the third defendant maintained by the twelfth defendant.

95. At this juncture, it must also be pointed out that the affidavit in the applications filed on behalf of the second defendant had been sworn by the third defendant. In effect the averments in the plaint has been challenged only by the first defendant and by the third defendant. The interest taken by the third defendant to negate the claims of the plaintiffs even on behalf of the second defendant is significant. The second defendant is a separate entity and the Laws in Dubai, might have named the designate to sue and to be sued on behalf of the second defendant. However, the third defendant had taken upon himself the burden of shouldering the cause of the second defendant also. Whether the third defendant has been specifically authorised would itself be an issue to be examined.

96. Moreover, this fact could also be interpreted as confirming the allegation in the plaint that the second defendant was in the clutches of 'wrong doers' meaning primarily the third, fourth and seventh defendants who formed one group. Owing to deconsolidation of business activities, the second defendant had separated itself from the eleventh and twelfth defendants. The fact that the third defendant had filed affidavit on behalf of the second defendant is a relevant fact. Further explanations might be sought with respect to the locus of the third defendant to act on behalf of the second defendant and challenge the claims of the plaintiffs. This fact requires further examination because, as stated above, the plaintiffs claim that they protect the interest of the second defendant, and further claim that the second defendant is under the clutches of 'wrong doers' meaning 'those in management' and the third defendant appears to be one such 'wrong doer', who has exhibited a peculiar and unexplained controlling interest over the second defendant in these proceedings.

97. Be that as it may, a reading of the plaint reveals the flow of funds for direct benefit of the first defendant. It has been specifically stated in the plaint at paragraph No. 20, "the remittance of the said amounts are booked in the accounts of defendant No.2 upon a reconciliation of the accounts of the defendant No.12 and defendant No.2 ......". The first defendant was incorporated on 17.06.2005. The twelfth defendant had remitted a sum of Rs.2,25,000,000/- and by letter dated 18.02.2006, this was mentioned to be remittance towards preoperative expenses.

98. The twelfth defendant remitted further amounts of Rs.15/- lakhs on or around 04.08.2005 and Rs.33/- lakhs on or around 05.10.2005. Again it has been specifically mentioned in paragraph No. 22 of the plaint that "The remittance of the above said amounts are booked in the accounts of the defendant No.2 ....".

99. It has been further specifically stated in the plaint that till October 2005, a sum of Rs.1,43,00,000/- had been remitted by the defendant No.12 "for and on behalf of the defendant No.2" towards the pre-incorporation and incorporation and pre-operative, exploration and preliminary expenses of the first defendant.

100. The above facts in the plaint have not been specifically rebutted in the affidavit filed in support of the first defendant or in the affidavit of the third defendant filed on his behalf and on behalf of the second defendant.

101. In the plaint, it had been further stated that on 11.07.2005, four share certificates bearing folio Nos. 0001, 0002, 0005 and 0006 totalling 33,200 shares were issued in favour of third, fifth and seventh defendants. It had been specifically stated in paragraph No. 24 that the outstanding call on these shares were satisfied from the remittance made in March 2006 by the twelfth defendant for and on behalf of the second defendant. It had been specifically stated that the four share certificates are in the custody of the defendant No.11, the beneficial holder of the second defendant.

102. It had been further stated that on 21.12.2005 an amount of Rs.50/- lakhs had been remitted by the defendant No.12 to the bank account of the defendant No.1. It had been further stated that the amount has been "shown in the books of the defendant No.2...".

103. It had been further stated in paragraph 26 that on 16.01.2006, the second defendant issued a payment instructions to its bankers, HSBC, Dubai that an amount of Rs.16,25,00,000/- to be deposited in the account of the first defendant held with Andhra Bank in Chennai. It was pleaded that this was contribution was towards equity share capital in the names of the third and fourth defendants. This amount has also been shown in the books of the second defendant.

104. It had been further stated that on 06.03.2016, the first defendant received Rs.3,32,000/- from the twelfth defendant and this was also reconciled in favour of the second defendant.

105. It had been further stated that a total sum of Rs.16,78,32,000/- had been received by the first defendant from the twelfth and second defendants towards allotment of shares.

106. It had been specifically stated that ""the defendants 3, 4 and 7 acknoweldged the beneficial interest of the second defendant at that time to making of the financial statements of the second defendant by making various declarations and financial statements....".

107. It has been further stated that the twelfth defendant issued a payment for Rs.1,24,02,088/- in favour of SMS Holdings Limited and this was also reconciled to the second defendant.

108. It has been further stated that on 28.06.2009 a further investment was made in the first defendant and the twelfth defendant paid a sum of Rs.2,14,00,000/- and this amount was also reconciled in favour of the second defendant.

109. It had been further stated that in the year 2011, two bank transactions for a total sum of Rs.17,70,00,000/- was made by the twelfth defendant and this investment was also reconciled in favour of the second defendant.

110. It had been further stated that the beneficial interest of the second defendant had been admitted, acknowledged and marked by the third to seventh defendants over the suit shares issued in their names by the first defendant.

111. It had been further stated that the third, fifth and seventh defendants have also signed blank share transfer forms of the first defendant in favour of the second and eleventh defendants and these share transfer forms are in the possession of the eleventh defendant. The eleventh defendant was the 100% beneficial interest holder of the second defendant till the deconsolidation of the accounts in the year 2016. It had been specifically stated that the third, fourth and seventh defendants had signed representation letters in the year 2009, 2010, 2011 and 2012 that though shares were held in the name of the certain shareholders, they were held for the beneficial interest of the Group. The Group consisted of the second, eleventh and twelfth defendants. There were internal disputes among the shareholders of the Group and there was deconsolidation of the business interest in the year 2016. This deconsolidation was given retrospective effect from the year 2014.

112. The plaintiffs claim that it was only in 2016 when there was deconsolidation of businesses, the plaintiffs came to have knowledge that the third, fourth and seventh defendants had failed to sign the financial statements of the second defendant for the immediately preceding three years. In paragraph 43 of the plaint, it had been stated as follows:-

"At this point as stated in para 42 above, the unholy intent of defendant Nos. 1, 3 to 10 came to be realised by the plaintiffs. Clearly till such time as there was requirement of funds by defendant No.1, the interest of defendant No.2 was acknowledged, admitted and declared by defendant Nos. 1, 3 to 10. Thereafter, the same has been stopped. While defendant Nos. 3, 4, 7 and 9 have made statements admitting and acknowledging the beneficial interest of defendant No.2 whilst giving declarations and statements for the purposes of the financial statements of defendant No.2 and then stopped doing so thereafter, defendant No. 8 is part of the unholy intent in as much as he was aware that though the registered shareholders of the suit shares are defendant Nos. 3 to 7, the beneficial interest over the suit shares does not vest with the registered holders. Defendant No.8 had approached the A1 Ghurair and Buhari families and at every stage was aware that the beneficial interest was not of the registered holders of the suit shares. The remittances for pre-incorporation expenses totalling to INR 1,43,00,000 had been received into the personal account of defendant No.8 from defendant No.12 as part of the understanding of ETA Groups collaborative participation in defendant No.1. All remittances for the suit shares have clearly been received from the account of defendant No.12 or, as the case may be, defendant No.2 and, as has been detailed in the preceding paragraphs, not form the account of the registered holders of the shares. As the CMD of the defendant

> *No.1 it is inconceivable and impossible for him to even take a stand that the CMD was unaware of the identity of the remitters. The remittances were clearly made with the intent and assurance of the marking of the beneficial interest over the suit shares to vest with defendant No. 12 and subsequently defendant No.2."*

113. The plaintiffs have actually widened the scope of the lis and the above extract alleges fraud. Fraud has to be pleaded and proved. The role of the eighth defendant vis-a-vis flow of funds and allotment of shares of the first defendant and his knowledge of the beneficial interest of the second defendant in such shares will have to be examined. The eighth defendant is in Chennai. The allotment of shares of the first defendant was in Chennai. Funds flowed to Chennai. All these are facts relevant to decide the facts in issue.

114. The remittances as mentioned above had been pointed out on behalf of the defendants. Mr.Vijay Narayanan, learned Advocate General pointed out the dates and stated that the last date of remittance was on 25.02.2012. The plaint is dated 22.12.2017. It had been stressed by the learned Advocate General that the plaint was hopelessly barred by limitation. It was further stated that though limitation is a mixed question of fact and law, in the instant case, facts store at the face of the plaintiffs. He insisted that the plaint should be declared has being barred by law.

115. This submission was convincing, but when an allegation of fraud had been pleaded and knowledge of the same had been given to be in 2016, the year when deconsolidation of businesses among the defendants took place, then a different perspective opens. The suit had been filed seeking a declaration to mark the beneficial interest of the second defendant over the suit shares which stand in the names of the third, fourth and seventh defendants. The fact whether such marking were actually made in the books of the first defendant is a fact to the exclusive knowledge of the first defendant, second defendant and third, fourth and seventh defendants and also incidentally the eighth defendant. The knowledge of the plaintiffs were restricted to a knowledge of the acknowledgements made by the third, fourth and seventh defendants in Dubai, so long as the ETA group existed as one unit. It would be stretching the imagination too far to hold that the plaintiffs knew about the absence of the recordings in the books of the first defendant. They have alleged fraud. Once fraud has been alleged then date of knowledge of the fraud assumes significance. Consequently, though the last investment was in the year 2012, knowledge of fraud was only in the year 2016. This naturally means that the year from when the limitation point starts to run shifts from 2012 to 2016.

116. In **(2007) 14 SCC 183 C.Natrajan Vs. Ashim Bai and Another**, it had been held as follows :

> *"8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each*

case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.

9. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the schedule appended to the Limitation Act."

117. It is the claim of the plaintiffs that they never visualised a situation wherein the third, fourth and seventh defendants would mark the beneficial interest of the second defendant in the statements prepared at Dubai, but not make the same in the books of the first defendant at Chennai. In the plaint, the plaintiffs have specifically stated as follows in paragraph 44 of the plaint:-

*"**44.** Plaintiffs, as already pleaded in the afore going paragraphs, had no reasons to believe that defendant Nos. 1, 3 to 10 would not have taken appropriate steps and measures to mark the beneficial interest of defendant No.2 over the suit shares as they were fully aware of the beneficial interest of defendant No.2. Defendant No.8, being the Chairman and Managing Director of Defendant No. 1 and Defendant No.9, being the Director of Defendant No.1, since 2006, were under a statutory and fiduciary duty to disclose the existence of the beneficial interest of the defendant No.2 in*

> *the said suit shares. This statutory duty stems from paragraph 5.2 of the 'Corporate Governance Guidelines for Insurance companies' dated 18.05.2016 issued by the Insurance Regulatory and Development Authority of India ("IRDAI"), which are applicable to Indian insurance companies such as Defendant No.1. Under the aforesaid provision, the senior management of insurance companies (which includes Managing Director and Executive Directors) are responsible for complete information flow to all stakeholders including the board of directors, investors, policyholders, regulators etc. Further, the fiduciary duty mentioned above, stems from judicial precedents and Section 166 of the Companies Act 2013, whereby a director has the duty to act in good faith in order to promote teh objects of the company for the benefit of its members as a whole, and in the best interests of the company and its shareholders."*

118. Pleadings require proof. Proof can only be through oral and documentary evidence. Evidence can be recorded only when the plaint remains on file.

119. It is seen that the second plaintiff had written a letter dated 01.06.2017 to the eighth defendant. Thereafter there were further letter correspondences in which the first defendant, through the eighth defendant repudiated the stand of the plaintiffs leading to the institution of the suit, which is an expression by the plaintiffs of their readiness to participate in adversial proceedings to determine the issues raised by them.

120. In the written arguments filed on behalf of the second defendant, it had been specifically stated that the second defendant has no interest or beneficial interest over the suit shares. It had been further specifically stated that there was no record of any beneficial interest created in respect of the suit shares. When that is the stand of the second defendant, the only manner in which existence or otherwise of beneficial interest could be determined is by examining the accounts of the first defendant to whom the money flowed even earlier to its incorporation and even thereafter. The source of flow of money could be easily determined from the bank accounts and the books of the first defendant and they would be relevant facts to determine whether the money actually flowed through the second and twelfth defendants or from the individual accounts of the third, fourth and seventh defendants. This flow can be determined only at Chennai where the first defendant has been incorporated and where it has its bank accounts and where the relevant registers are available.

121. It had however been contended by the defendants that to examine the flow of funds, the citus of the suit should be at Dubai. Reliance has been on the following Judgements:-

(1) Minority Shareholders Law, Practice, and Procedure; Fourth Edition; Victor Joffe QC, David Drake, Giles Richardson, Daniel Lightman, Timothy Collingwood, published by ***OXFORD University Press***, in which it had been given as follows:-

*"In **Konamaneni v. Rolls- Royce Industrial Power (India) Ltd.**, Lawrence Collins J held that the question of whether a derivative claim could be brought in relation to a foreign company was determined by the law of the place of that company's incorporation. The judge accepted that support for the lex fori as the law applicable to this question was afforded by **Heyting v. Dupont**, but held with regard to the exceptions to the rule in **Foss v Harbottle:***

Although for purely English domestic purposes, the exceptions to the rule have been regarded as a procedural device, I do not consider that in the international context their real nature is procedural. They confer a right on shareholders to protect the value of their shares by giving them a right to sue and recover on behalf of the company. It would be very odd if that right could be conferred on the shareholders of a company incorporated in a jurisdiction which had not such rule, and under which they had acquired their shares.

Although the English courts plainly have jurisdiction to hear the derivative claim in respect of a foreign company, the courts of the place of the company's incorporation are very likely indeed to be the most convenient forum for making *orders controlling the exercise of discretionary powers, but not so overwhelmingly that they will necessarily be the exclusive forum. Whilst it may be wholly unjust to require recourse to an offshore have to pursue fraudulent directors in a case which has no connection with the jurisdiction other than that it is the place of incorporation, the courts of the place of incorporation will almost invariably be the most appropriate forum for the resolution of the issues which relate to the existence of the right of shareholders to sue on behalf of the company.*

In ***Konamaneni v. Rolls-Royce Industrial Power (India) Ltd.****, where bribery allegations were raised, Lawrence Collins J held:*

I therefore prcoeed on the following basis. The Court has power to permit service on the company in a derivative claim by shareholders against English defendants, but the order for service can stand only if the claimants can show that England is the clearly appropriate forum for determination of the questions whether they are entitled to bring a derivative action and whether the defendants are liable to the company for hte alleged briberty."

(2). ***PIPER AIRCRAFT COMPANY Vs. Gaynell REYNO, Personal Representative of the Estate of William Fehilly, et al. HARTZELL PROPELLER, INC., Nos. 80-848, 80-883,***

Argued Oct. 14, 1981, in which it had been given as follows:-

> *"14. The District Court's distinction between resident or citizen plaintiffs and foreign plaintiffs is fully justified. In koster, the Court indicated that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum. When the home forum has been chosen, it is reasonable to assume that this choice is convenient. When the plaintiff is foreign, however, this assumption is much less reasonable. Because the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less defence.*
>
> *16. In analyzing the private interest factors, the District Court stated tha the connections with Scotland are "overwhelming". This characterization may be somewhat exaggerated. Particularly with respect to the question of relative ease of access to sources of proof, the private interests point in both directions. As respondent emphasizes, records concerning the design, manufacture, and testing of the propeller and plane are located in the United States. She would have greater access to sources of proof relevant to her strict liability and negligence theories if trail were held here. However, the District Court did not act unreasonably in concluding that fewer evidentiary problems would be posed if the trial were held*

in Scotland. A large proprotion of the relevant evidence is located in Great Britain.

The Court of Appeals found that the problems of proof could not be given any weight because Piper and Hartzell failed to describe with specificity the evidence they would not be able to obtain if trial were held in the United States. It suggested that defendants seeking forum non conveniens dismissal must submit affidvits identifying the witnesses they would call and the testimony these witnesses would provide if the trial were held in the alternative forum. Such detail is not necessary. Piper and Hartzell have moved for dismissal precisely because many crucial witnesses are located beyond the reach of compulsory process and thus are difficult to identify or interview. Requiring extensive investigation would defeat the purpose of their motion. Of course, defendants must provide enough information to enabel the District Court to balance the parties' interests. Our examination of the record convinces us that sufficient information was provided here. Both Piper and Hartzell submitted affidavits describing the evidentiary problems they would face if the trial were held in the United States."

(3) ***595 F.3d 206 United States Court of Appeals, Fifth Circuit, Maria Luisa Sandria SAQUI, v. PRIDE CENTRAL AMERICA, LLC; Pride Central America, LLC (Mexican Branch); Gulf of Mexico Personnel Services S. de R.L., de C.V.,*** Defendants - Appellees No. 08 -41059

"11. The district court

> *determined that the private and public interest factors weighed in favour of Mexico as a forum. Saqui contends that the district court improperly weighed the private factors in its decision to dismiss the case for FNC. The factors pertaining to the private interests of the litigants include: (1) the case of access to evidence; (2) the availability of compulsory process for the attendance of unwilling witnesses; (3) the cost of obtaining attendance of willing witnesses; (4) the possibility of a view of the premises, if appropriate; and (5) any other practical factors that make trial expeditious and inexpensive."*

122. By pointing out the ratio in the above judgments, it has been urged by the defendants that since the second defendant has been registered in Dubai, the situs of the suit should be only at Dubai.

123. The defendants attempt to shift the focus of the suit from the first defendant to the second defendant must fail. Declaration is sought only with respect to marking of entries in the first defendant. Whether there had been pre-requisite declarations made or not, can be determined only by examining the books of the first defendant which are available in Chennai. The flow of funds to the first defendant can be examined only at Chennai.

124. If the defendants rely on the pre-requisite declarations to be made as contemplated in both Sec. 187 C of the Companies Act 1956 and Sec. 89 of the Companies Act, 2013, then they must subject themselves to Indian laws, because the Companies Act can never be pressed into service in any Court in Dubai.

125. If defendants claim that the suit is barred by the laws of Limitation or by any Statute held intra vires in India, again, such claim can be examined only in India. The books and bank accounts of the first defendant would have to be examined to determine the flow of funds, its source and the period of flow. This requires evidence to be adduced. This exercise can be done only in Chennai.

126. Moreover, in ***Vodaphone International Holdings B.V. Vs. Union of India & Anr.,*** reported in ***(2012) 247 CTR 1,*** it was held as follows by the Hon'ble Supreme Court :

> *"139. Before concluding, one more aspect needs to be addressed. It concerns the situs of the CGP share. According to the Revenue, under the Companies Law of the Cayman Islands, an exempted company was not entitlted to conduct business in the Cayman Islands. CGP was an "exempted company". According to the Revenue, since CGP was a mere holding company and since it could not conduct business in the Cayman Islands, the situs of the CGP share existed where the "underlying assets are situated", that is to say, India. That, since CGP as an exempted company conducts no business either in the Cayman Islands or elsewhere and since its sole purpose is to hold shares in a subsidiary company situated outside the Cayman*

Islands, the situs of the CGP share, in the present case, existed "where the underlying assets stood situated."

140. At the outset, we do not wish to pronounce authoritatively on the Companies Law of the Cayman Islands. Be that as it may, under the Indian Companies Act, 1956, the situs of the shaers would be where the company is incorporated and where its shares can be transferred. In the present case, it has been asserted by VIH that the transfer of the CGP share was recorded in the Cayman Islands, where the register of members of CGP is maintained. This assertion has neither been rebutted in the impugned order of the Department dated 31.05.2010 nor traversed in the pleadings filed by the Revenue nor controverted before us. In the circumstances, we are not inclined to accept the arguments of the Revenue that the situs of the CGP share was situated in the place (India) where the underlying assets stood situated.

347. Situs of the CGP share stands where, is the next question. Law on situs of share has already been discussed by us in the earlier part of the Judgment. Situs of shaers situates at the place where the company's incorporated and/or the place where the share can be dealt with by way of transfer. The CGP share is registered in the Cayman Islands and materials placed before us would indicate that the Cayman Islands Law, unlike other laws does not

> *recognise the multiplicity of registers. Section 184 of the Cayman Islands Act - provides that the company may be exemmpt if it gives to the Registrar, a declaration that "operation of an exempted company will be conducted mainly outside the Island". Section 193 of the Cayman Islands Act expressly recognises that even exempted companies may, to a limited extent trade within the Islands. Section 193 permits activities by way of trading which are incidental of offshore operations, also all rights to enter into the contract, etc."*

127. The flow of money coming to Chennai to the bank account of the first defendant can be examined only where the records are available, namely at Chennai. Moreover, owing to deconsolidation of accounts and business interests between the second, eleventh and twelfth defendants, it may not be possible to decipher the money flow from Dubai. On the other hand, identifying the flow of money to Chennai, at Chennai which is the end point and tracing it backwards would be a more logical approach in determining the sources of funds. This is also necessitated in view of the fact that the second, eleventh and twelfth defendants appear to have separated from each other to a large extent and therefore, it is from the books of the first defendant that the flow of the funds will have to be determined.

128. It has been further pointed out on behalf of the defendants that the plaintiffs have a personal interest and consequently, the suit is not maintainable.

129. In every case, where the interest of a Company is sought to be protected, it becomes synonymous with the interest of the shareholders. They are both protected. The interests cannot be divorced. The plaintiffs are shareholders of the second defendant Company. Primarily they seek a relief that the beneficial interest should accrue to the second defendant which is a separate legal entity. The plaintiffs may dissolve their shares in the second defendant or even deal with them to the advantage of some third party. But the second defendant is permanent legal entity. The fact that the plaintiffs seek to protect the right interests of the second defendant has to be appreciated since if the shares are to devolve further, the second defendant would continue to ultimately benefit.

130. It had been further argued on behalf of the defendants that under Section 34 of the Specific Relief Act, the plaintiffs must have a direct interest and entitlement over the property, for which the declaration is sought. Section 34 of the Specific Relief Act is as follows:-

> *"34. Discretion of Court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*
>
> *provided that no Court shall make*

> *any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*

131. In the present case, the plaintiffs are not seeking a declaration that they have a beneficial interest. A derivative action is sought only for the beneficial interest of the second defendant. The second defendant has however abjured such interest. Whether such disclaimer or abjuration is the result or effect of collusion or fraud are further aspects to be examined. Such abjuration has to be weighed with the flow of funds through the second defendant to the first defendant, leading to the allotment of shares to the third to the seventh defendants. Examining all these aspects can only be through advancing oral and documentary evidence. This would further imply that the suit has to be retained on file.

132. It had been further contented that the suit relief is barred under Section 89 of the Companies Act 2013 and/or under Section 187C of the Companies Act 1956. It had been contended that primarily the third, fourth and seventh defendants should first make a declaration that though the shares are in their names, a beneficial interest had accrued to the second defendant. Similarly, the second defendant has to make a declaration that they are the beneficial interest holders of the said shares. It has been contended that in the absence of the above declarations seeking a declaration against the first defendant would be akin to putting the cart before the horse.

133. Both the provisions are extracted below :

> ***Section 89 of the Companies Act, 2013 :***
> ***"Declaration in respect of beneficial interest in any share.***- *(1) where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.*
>
> *(2) Every person who holds or acuiqres a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.*
>
> *(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.*
>
> *(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.*

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(6) Where any declaration under this Section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, wihtin thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fess as may be prescribed,

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation

shall, on such payment, stand discharged.

(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to -

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

(ii) receive or participate in any dividend or other distribution in respect of such share."

Section 187C of the Companies Act, 1956 : "Declaration by persons not holding beneficial interest in any share.- *(1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.*

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1974 (41 o f 1974), or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of

the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and s hall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5)(a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(b) If a company fails to comly with the provisions of this section, the compkany, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in

> *respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.*
>
> *(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.*
>
> *(8) The provisions of this section shall not apply to the trustee referred to in Section 187B on and after the commencement of the Companies (Amendment) Act, 2000."*

134. I hold that the declarations made or not made in the books of the first defendant would be to the exclusive knowledge of the first defendant alone and those in charge of management of the first defendant. In this context the eighth to tenth defendants have a vital role to play. Evidence is necessary from their end to disclose facts and to subject themselves to cross examination on all these aspects. The plainitffs have pleaded the facts to their knowledge. It must also be kept in mind that except the third defendant, no other defendant had sworn to an affidavit. Questions raised by the plaintiffs remain unanswered and trial is the answer to determine the actual facts.

135. I hold the plaintiffs cannot be non suited at the threshold. The suit is only at its nascent stage. It still has a rough course to meander. The reliefs sought may be superfluous but if the plaint discloses a cause of action and if the plaintiffs are prepared to battle out the issues at the time of recording the evidence, then again they must be afforded such opportunity.

136. At this stage, the plaintiffs have come to Court primarily claiming a declaration as against the first defendant. Whether the third, fourth and seventh defendants on the one hand and the second defendant on the other hand have made declarations in accordance with the provisions of either Section 187C or Section 89 of the Companies Act 1956 or 2013 are facts to the exclusive knowledge of the first, second, third, fourth and seventh defendants and also the eighth defendant. The plaintiffs could never have had access to the records of the first defendant. The querries raised in the pre-suit notices have not been answered. Consequently, they have sought a declaration only against the first defendant. This declaration is sought because in Dubai, the third, fourth and seventh defendants had made similar declarations and in the plaint, the plaintiffs have stated that they believed that similar declarations had been made in the books of the first defendant. This statement of the plaintiffs has to be tested further through oral and documentary evidence. Consequently, I am not in agreement with this contention raised by the defendants. Trial is the answer to settle facts. At this stage, the plaint averments hold the sway and a reading makes it obvious that the first defendant has to open up its records for scrutiny, and that can be done only during trial.

137. It had been further argued that the ETA group financed the funds to the first defendant and it cannot be claimed that the second defendant alone had a beneficial interest. This was projected in the background of the fact that the ETA group had 67 subsidiaries, one of which was the second defendant and the second defendant in turn had 53 subsidiaries. These are again facts which necessitate trial, which would involve gathering evidence and analysing of the same.

138. The specific case of the plaintiffs is that the eighth, ninth and tenth defendants were in the knowledge of the beneficial interest of the second defendant. I hold the plaintiffs have to be afforded an opportunity of establishing this statement through the cross examination of those defendants. At the threshold, neither can the plaintiffs be denied that opportunity, nor can that statement be brushed away as insignificant.

Conclusion:

139. To sum up, the allegations raised in the plaint have to be examined at Chennai since, the first defendant is registered in Chennai. During its pre-incorporation, incorporation and post incorporation stages, substantial amounts of money had flowed to it. It is only with examination of the books of the first defendant that the source of the funds can be determined. This is because the third to seventh defendants, who are said to have benefitted by allotment of shares in view of the flow of funds have denied the contention of the plaintiffs. The eighth, nineth and tenth defendants, who were in management have not filed any affidavit disclosing facts to their knowledge. The eleventh and twelth defendants have chosen not to participate in these proceedings. The first, third, eighth, nineth and tenth defendants are in Chennai. They are privity to the relevant records and to the facts in issue in this case. I hold that since the plaint discloses cause of action, and substantial cause of action had arisen in Chennai, and since the suit is not barred by any statutue, the issues raised in the suit can be determined in this Court and by this Court.

140. Moreover, the eighth, ninth and tenth defendants, who were in management of the first and second defendants are residents at Chennai and it would be to their convenience if the suit is litigated in Chennai. Their evidence would be crucial. In the plaint, fraud has been alleged against them and they will have to with stand cross examination on such specific aspects.

141. The third defendant, who appears to fight his own cause and also the cause of the second defendant has his residence at Chennai.

142. The fourth defendant has not directly participated in the proceedings, but has only filed a memo which incidentally does not contain his signature. A fax / scanned message has been however enclosed. He is a resident of Dubai. But he has adopted the arguments of the third defendant. So he would not be prejudiced if the suit is conducted in Chennai or for that matter anywhere in the world, since at any rate he is not directly participating in the proceedings and is endorsing the stand of the third defendant.

143. The fifth and sixth defendants are the sons of the third defendant. They have residence in Chennai, and if required to tender evidence, they would not be inconvenienced. The seventh defendant is also a resident of Chennai. These defendants also appear to tag the line of the third defendant, and consequently they would never be prejudiced by the suit being continued in Chennai.

144. The main evidence on behalf of the defendants would be on behalf of the first defendant and by the third defendant and by the eighth, ninth and tenth defendants. The records of the first defendant are in Chennai. These defendants are all in Chennai. The cause of action arose within Chennai. In view of all these reasons, I hold that the applications seeking revocation of the leave have to be dismissed.

145. With respect to the Applications seeking rejection of the plaint on the ground that there is no cause of action and also on the ground that the plaint is barred by statute, I hold that the plaint has disclosed substantial causes of action as analysed in the preceding discussions. The plaint has also alleged fraud. When fraud is alleged, not only sbould the plaintiffs be afforded opportunity to establish the same, but the Court also has a duty to examine them. The trial has to be conducted in Chennai. With respect to the contention that the suit is barred by statute, namely by the provisions of the Limitation Act and / or the Companies Act, I hold that the starting point of limitation began to run only in the year 2016 when the plaintiffs came to know at the time of deconsolidation of the businesses between the second and eleventh defendants that the third, fourth and seventh defendants had stopped making declarations in Dubai that the shares of the first defendant though held by them, were actually on account of the beneficial interest of the second defendant. Knowledge of fraud gives rise to cause of action. With respect to either Section 187 C or Section 89 of the Companies Act 1956 / 2013, I hold that evidence has to be let in by examining the books of the first defendant to determine whether any declaration had actually been made by the third, fourth and seventh defendants on the one hand and by the second defendant on the other hand. This evidence should be correlated with the flow of funds and issue/allotment of shares of the first defendant to the third, fourth and seventh defendants. The provions may bar reliefs from being granted to the plaintiffs, but the suit cannot be held to be barred. Consequently, I hold that by reading of the statements in the suit, it is certainly not barred by any law. The suit has to go through its long course and the plaintiffs cannot be non suited even before they get off the starting block. I hold that these applications will also have to be dismissed.

Result:-

146. In the result, A.Nos.1387 to 1392 of 2018 are all dismissed. All parties have striven hard in putting forth their respective contentions and it would be unjust to mulct them with costs. Parties to bear their respective costs.

Sd/.C.V.K.J

06.06.2018

//Certified to be a true copy//
Dated this the day of 2018

JJ 07/06/2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.