

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.07.2018	Delivered on 03.08.2018
---------------------------	----------------------------

CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal Nos.220 to 223, 227, 228, 230 to 237 of
2018 and C.M.P.Nos.11240, 11241 & 11279 of 2018

- 1 Mr.SYED MOHAMED SALAHUDDIN
2 Mr.HAMEED SYED SALAHUDDIN
3 Mr.AHMED SYED SALAHUDDIN
4 Mr.ARIFBUHARY RAHMAN
... Appellants in OSA Nos.220 & 221 of 2018
- 1 Mr.ESSA ABDULLA AHMED AL GHURAIR
... Appellants in OSA.Nos.222 & 223 of 2018
- 1 ETA STAR HOLDING LIMITED,
C/O. MAHENDRA ASHER & CO
P.O.BOX NUMBER 4421
DUBAI, UAE REP BY ITS DIRECTOR
MR.SYED MOHAMED SALAHUDDIN.
... Appellants in OSA.Nos.227 TO 228 of 2018
- 1 STAR HEALTH AND ALLIED INSURANCE CO LTD.
NO.1 NEW TANK STREET
VALLUVAR KOTTAM HIGH ROAD,
NUNGAMBAKKAM, CH-34, TN, INDIA.
... Appellants in OSA.Nos.230 & 231 of 2018
- 1 MR.V.P.NAGARAJAN
C/O STAR HEALTH AND ALLIED INSURANCE CO LTD
NO.1, NEW TANK ST, VALLUVAR KOTTAM HIGH RD
NUNGAMBAKKAM CH-34
... Appellants in OSA No.232, 233 of 2018

1 MR.C.M.KANNAN UNNI
C/O STAR HEALTH AND ALIED INSURANCE CO LTD.
NO.1 NEW TANK STREET VALLUVAR KOTTAM
HIGH ROAD NUNGAMBAKKAM CHENNAI-600 034.
... Appellants in OSA No.234, 235 of 2018

1 Mr.V.JAGANNATHAN
C/O. STAR HEALTH AND ALLIED INSURANCE CO.LTD.
No.1, NEW TANK STm VALLUVAR KOTTAM HIGH ROAD
NUNGAMBAKKAM CHENNAI-34
... Appellants in OSA No.236, 237 of 2018

VS

1 AHMED ABDULLA AHMED AL GHURAIR

2 IBRAHIM ADLLA AHMED AL GHURAI

3 STAR HEALTH AND ALLIED INSURANCE COMPANY LTD.
No.1 NEW TANK ST, VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM, CHENNAI-34

4 ETA STAR HOLDINGS LTD
C/O. MAHENDRA SHER & CO
P.O. BOX NUMBER 4421
DUBAI. UAE

5 Mr.ESSA ABDULLA AHMED AL GHURAIR

6 MR.V.JAGANNATHAN

7 MR.V.P.NAGARAJAN

8 Mr.C.M.KANNAN UNNI सत्यमेव जयते

9 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE

10 EMIRTES TRADING AGENCY LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE

... RESPONDENTS in OSA Nos.220 & 221 of 2018

1 Mr.AHMED ABDULLA AHMED AL GHURAIR

2 Mr.IBRAHIM ADBLLA AHMED AL GHURAI

3 STAR HEALTH AND ALLIED INSURANCE COMPANY LTD.
NO.1, NEW TANK ST
VALLUVARKOTTAM HIGH ROAD NUNGAMBAKKAM
CHENNAI.

4 ETA STAR HOLDINGS LTD
C/O. MAHENDRA SHER & CO
P.O. BOX NUMBER 4421
DUBAI. UAE

5 Mr.SYED MOHAMED SALAHUDDIN

6 Mr.HAMEED SYED SALAHUDDIN

7 Mr.AHMED SYED SALAHUDDIN

8 Mr.ARIF BUHARY RAHMAN

9 Mr.V.JAGANNATHAN

10 Mr.V.P.NAGARAJAN

11 Mr.C.M.KANNAN UNNI

12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE

13 EMIRTES TRADING AGENCY LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE

... RESPONDENTS in OSA No.222 & 223 of 2018

1 Mr.AHMED ABDULLA AHMED AL GHURAIR

2 Mr.IBRAHIM ADBLLA AHMED AL GHURAI

3 STAR HEALTH AND ALLIED INSURANCE COMPANY LTD.
NO.1 NEW TANK ST, VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM, CHENNAI-34

4 Mr.SYED MOHAMED SALAHUDDIN

5 Mr.ESSA ABDULLA AHMED A1 GHURAIR

6 Mr.HAMEED SYED SALAHUDDIN

7 Mr.AHMED SYED SALAHUDDIN

8 Mr.ARIF BUHARY RAHMAN

9 Mr.V.JAGANNATHAN

10 Mr.V.P.NAGARAJAN

11 Mr.C.M.KANNAN UNNI

12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE.

13 EMIRTES TRADING AGENCY LLC
SALAHUDDIN ROAD
P.O. BOX 5239 DUBAI, UAE

... RESPONDENTS in OSA.Nos.227 & 228 of 2018

1 AHMED ABDULLA AHMED AL GHURAIR

2 IBRAHIM ABDULLA AHMED AL GHURA

3 ETA STAR HOLDINGS LTD
C/O MAHENDRA ASHER & CO
PO.BOX-4421 DUBAI UAE

4 MR.SYED MOHAMED SALAHUDDIN

5 MR.EASA ABDULLA AHMED AL GHURAIR

6 MR.HAMEED SYED SALAHUDDIN

7 MR.AHMED SYED SALAHUDDIN

8 MR.ARIF BUHARY RAHMAN

9 MR.V.JAGANNATHAN

10 MR.V.P.NAGARAJAN

11 MR.C.M.KANNAN UNNI

12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
PO BOX.5239 DUBAI UAE.

13 EMIRATES TRADING AGENCY LLC
SALAHUDDIN ROAD
PO.BOX 5239 DUBAI UAE

... RESPONDENTS in OSA Nos.230 & 231 of 2018

1 AHMED ABDULLA AHMED AL GHURAIR

2 IBRAHIM ABDULLA AHMED AL GHURA

3 STAR HEALTH AND ALLIED INSURANCE CO LTD.
NO.1 NEW TANK STREET
VALLUVAR KOTTAM HIGH ROAD
NUNGAMBAKKAM CH-34 TN INDIA.

4 ETA STAR HOLDINGS LTD
C/O MAHENDRA ASHER & CO
PO.BOX-4421 DUBAI UAE

5 MR.SYED MOHAMED SALHUDDIN

6 MR.EASA ABDULLA AHMED AL GHURAIR

7 MR.HAMEED SYED SALAHUDDIN

8 MR.AHMED SYED SALAHUDDIN

9 MR.ARIF BUHARY RAHMAN

10 MR.V.JAGANNATHAN

11 MR.C.M.KANNAN UNNI

12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
PO BOX.5239 DUBAI UAE.

13 EMIRATES TRADING AGENCY LLC
SALAHUDDIN ROAD
PO.BOX 5239 DUBAI UAE

... RESPONDENTS in OSA Nos.232 & 233 of 2018

1 AHMED ABDULLA AHMED AL GHURAIR

2 IBRAHIM ABDULLA AHMED AL GHURA

3 STAR HEALTH AND ALLIED INSURANCE CO LTD.
NO.1 NEW TANK STREET
VALLUVAR KOTTAM HIGH ROAD
NUNGAMBAKKAM CH-34 TN INDIA.

4 ETA STAR HOLDINGS LTD
C/O MAHENDRA ASHER & CO
PO.BOX-4421 DUBAI UAE

5 MR.SYED MOHAMED SALHUDDIN

6 MR.EASA ABDULLA AHMED AL GHURAIR

7 MR.HAMEED SYED SALAHUDDIN

8 MR.AHMED SYED SALAHUDDIN

9 MR.ARIF BUHARY RAHMAN

10 MR.V.JAGANNATHAN

11 MR.V.P.NAGARAJAN

12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD
PO BOX.5239 DUBAI UAE.

13 EMIRATES TRADING AGENCY LLC
SALAHUDDIN ROAD
PO.BOX 5239 DUBAI UAE

... RESPONDENT in OSA No.234 2018

1 STAR HEALTH AND ALLIED INSURANCE COMPANY LTD.
No.1 NEW TANK ST
VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM CHENNAI-34

2 AHMED ABDULLA AHMED AL GHURAIR

3 IBRAHIM ADBLLA AHMED AL GHURAIR

4 ETA STAR HOLDING LLC
C/O. MAHENDRA ASHER & CO
P.O.BOX NUMBER - 4421
DUBAI, UAE.

5 SYED MOHAMED SALAHUDDIN

6 ESSA ABDULLA AHMED A1 GHURAIR

7 HAMEED SYED SALAHUDDIN
8 AHMED SYED SALAHUDDIN
9 ARIF BUHARY RAHMAN
10 V.JAGANNATHAN
11 V.P. NAGARAJAN
12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD, P.O. BOX 5239 DUBAI.
13 EMIRTES TRADING AGENCY LLC
SALAHUDDIN ROAD P.O. BOX 5239 DUBAI.

... RESPONDENT in OSA No.235 of 2018

1 STAR HEALTH AND ALLIED INSURANCE COMPANY LTD.
No.1 NEW TANK ST
VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM CHENNAI-34
2 AHMED ABDULLA AHMED AL GHURAIR
3 IBRAHIM ADBLLA AHMED AL GHURAIR
4 ETA STAR HOLDING LLC
C/O. MAHENDRA ASHER & CO
P.O.BOX NUMBER - 4421
DUBAI, UAE.
5 SYED MOHAMED SALAHUDDIN
6 ESSA ABDULLA AHMED A1 GHURAIR
7 HAMEED SYED SALAHUDDIN
8 AHMED SYED SALAHUDDIN
9 ARIF BUHARY RAHMAN
10 V.P. NAGARAJAN
11 C.M.KANNAN UNNI
12 ETA STAR HOLDING LLC
SALAHUDDIN ROAD, P.O. BOX 5239 DUBAI.

13 EMIRTES TRADING AGENCY LLC
SALAHUDDIN ROAD P.O. BOX 5239 DUBAI.

... RESPONDENTS in OSA Nos.236 & 237 of 2018

Prayers in Original Side Appeal Nos.220 to 223,
227, 228, 230 to 237 of 2018:-

O.S.A.No.220 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1390 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.221 of 2018 has been filed under Order XXXVI Rule 8 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1389 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.222 of 2018 has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1389 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.223 of 2018 has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1390 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.227 of 2018 has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1391 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.228 of 2018 has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1392 of 2018 in in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.230 of 2018 has been filed under Order XXXVI Rule 8 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1387 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.231 of 2018 has been filed under Order XXXVI Rule 8 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1388 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.232 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1387 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.233 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1388 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.234 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1387 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.235 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1388 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.236 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1387 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

O.S.A.No.237 of 2018 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decreetal order dated 6.6.2018 in A.No.1388 of 2018 in C.S.No.33 of 2018 on the file of Original Side of this Court.

A.No.292 of 2018 has been filed under Order XIV Rule 8 of Original Side Rules read with Order III Rule 1 of Original Side Rules and Clause 12 of the Letters Patent praying to grant leave to the applicant to institute the present suit against the respondents/defendants on the file of Original Side of this Court.

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.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.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.

C.S.No.33 of 2018:-

The Plaint had been filed seeking a Judgment 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 37;

(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;

For Appellants : Mr.AR.L.Sundaresan, S.C., for
in OSA. Nos.220 Mr.P.Giridharan
& 221/2018

For Appellants : Mr.J.Sivanandaraaj for
in OSA. Nos.222 Mr.M.Sricharan Rangarajan
& 223/2018

For Appellants : Mr.M.S.Krishnan S.C., for
in OSA. Nos.227 Mr.K.Gowtham Kumar
& 228/2018

For Appellants : Mr.P.H.Aravind Pandian S.C., for
in OSA. Nos.230 Mr.N.Vijayaraghavan for
& 231/2018 M/s Gopalan Associates

For Appellants : Mr.Arun Karthik Mohan and
in OSA. Nos.232 Mr.Suhrith Parthasarathy
& 233/2018

For Appellants : Ms.Harshini Jothiraman
in OSA. Nos.234
& 235/2018

For Appellants : Mr.N.P.Vijay Kumar
in OSA. Nos.236 and Mr.R.Pradeep
& 237/2018

For Respondents 1 & 2 : Mr.P.S.Raman, S.C.,
in OSA. Nos.221 to 223, Allwin Godwin
227, 228 & 230 to 234/2018
& R2 and R3 in OSA.Nos.
235 to 237/2018

For Respondent No.3 : Mr.P.H.Aravind Pandian, S.C.,
in OSA. Nos.221 to 223 for M/s M.B.Gopalan Associates
& 232 to 234 and for R1 and Mr.Vijayaraghavan
in OSA Nos.235,
236 & 237/2018

For Respondent No.6 : Mr.N.P.Vijayakumar
in OSA. Nos.220 & and Mr.R.Pradeep
221/2018, for R9 in OSA
Nos.222, 223, 227, 228,
230 & 231/2018 & for R10
in OSA Nos.232, 233 & 235/2018

For Respondent No.8 in : Ms.Harshini Jothiraman
OSA.Nos.220 & 221/2018 &
for R11 in OSA Nos.222, 223,
227, 228, 230 to 233, 236 &
237/2018

For Respondent No.7 in : Mr.Arun Karthik Mohan
OSA.Nos.220 & 221/2018 & and Mr.Suhrith Parthasarathy
for R10 in OSA Nos.222,
223,227, 228, 230, 231,
236 & 237/2018
and for R11 in OSA.No.234
& 235 of 2018

For Respondent No.4 in : Mr.M.S.Krishnan, S.C., for
OSA.Nos.220 to 223 & Mr.K.Gowtham Kumar
232 to 237/2018 & for R3
in OSA Nos.230 & 231/2018
& R12 in OSA Nos.232, 233,
234 & 235/2018

For Respondent No.5 in : Mr.AR.L.Sundaresan,S.C.,for
OSA Nos.222, 223 & 232 Mr.P.Giridharan
to 237/2018 & for R4 in
OSA Nos.227, 227, 230
& 231/2018

For Respondent No.6 in : Mr.J.Sivanandaraaj
OSA.Nos.232 to 237/2018 for Mr.Sricharan Rangarajan
& for R5 in OSA Nos.220,
221, 227, 228, 230 & 231/2018

: No Appearance for others
in All OSAs.

COMMON JUDGMENT

M.M.SUNDRESH, J.

These appeals have been preferred by the defendants on the orders passed allowing the applications filed by respondents 1 and 2/plaintiffs and thus, dismissing the applications filed by them.

2.For the sake of brevity, the appellants are referred as defendants as against the respondents 1 and 2 as plaintiffs.

3. Brief Facts:

3.1. Though the learned single Judge has captured the facts with clarity, it would be appropriate to reiterate them to the extent required while dealing with the issues raised.

3.2. The plaintiffs and the defendant No.4 are brothers. They belong to Al Ghurair family. Defendants 3 and 5 to 7 from Buhary family. M/s ETA Star Holding LLC- defendant No.11 is a limited liability company incorporated in the Emirates of Dubai, UAE under UAE Federal Law No.8. It has got its own subsidiaries and associate companies along

with joint ventures. So is the case with defendant No.2. On a combination, these entities exceed 100, forming part of a larger entity named as "ETA Group" (hereinafter referred to as "Group").

3.3. Defendants 3 to 7 are the majority shareholder in defendant No.2, which is also registered and functioning in Dubai. The plaintiffs hold about 34% shares in defendant No.2 as against defendants 3 to 7. Similarly, in defendant No.11, the plaintiffs hold the majority shares of 52% and thus, hold control. About 6.16% of the shares in defendant No.1 is being held in the names of defendants 3 to 7.

3.4. The plaintiffs are the citizens of U.A.E. Defendants 3 to 7 though being non residents are having their address within the jurisdiction of this Court. The defendant No.1 is situated in Chennai. Defendant No.8 is the Managing Director of defendant No.1. Defendant No.9 was the managerial personnel of Defendant No.2. Defendant No.10 is the Joint Executive Director and Company Secretary of Defendant No.1. These three defendants are admittedly residing at Chennai and doing their business as well on behalf of defendants 1 and 2. Defendant No.12 is also a company incorporated under the Laws of UAE. This appears to be the status.

3.5. The accounts of the defendant No.2 was consolidated with that of the defendant No.11 in the year 2007 through the

acquisition of 100% beneficial interest. On 31.12.2012, defendants 3, 4, 7 and 9 gave a Management Representation letter to audit the affairs of defendant Nos.2 and 11. Thereafter, the Board of Directors of the Group re-assessed the relationship, which has become sour between the shareholders with respect to the company subsidiaries associates and joint ventures. Thus, in pursuant to the resolution, in which both the plaintiffs and defendants 3 to 7 were parties, a decision was made towards the loss of control over different entities. Accordingly, the "Group" deconsolidated the operating results and financial position of certain entities from its consolidated financial statements with effect from 01.01.2014.

3.6. Consequently, the beneficial interest of the assets held on behalf of the "Group" by the individuals and the related parties was withdrawn. This exercise was done with effect from 01.01.2014. Resultantly, a financial statement dated 31.12.2016 was issued by the defendant No.11 reiterating the above, which according to the plaintiffs is only a draft though the content is not in dispute. This financial statement deals with need for deconsolidation, the decision made by the Directors of the Group and the effect on the assets held in the personal names of the shareholders, Directors and related parties. It is apposite to refer the following passages contained in the financial statement of the Defendant No.11 dated 31.12.2016.

"2.4. Deconsolidation of entities due to loss of control.

(i) Deconsolidation of entities due to loss of control during the year ended 31 December 2014.

The on-going disagreements between the shareholders of the Group had a significant impact on Group's relationships with certain subsidiaries, associates and joint ventures, in particular all subsidiaries, associates and joint ventures where the shareholding interest was not legally registered in the name of the Group and the Group was accounting for its interest in these entities based on a confirmation of beneficial shareholding interest obtained from the legal shareholders of these entities. The disagreement between the shareholders, also resulted in the Group losing physical access to the premises, management or books of accounts of certain overseas entities.

During 2014, the Board of Directors reassessed all such relationships in the light of International Financial Reporting Standards - IFRS 10 (Consolidated Financial Statements), IFRS 11 (Joint Arrangements) and IAS 28 (Investment in Associates and Joint Ventures). Based on this exercise, it was concluded that, with effect from 1 January 2014, the Group no longer had the ability to exercise control or significant influence

(as applicable) over all such local and overseas entities where legal ownership was not held in the name of the Group, and a confirmation for beneficial ownership on behalf of the Group was not provided by the legal shareholders of these entities.

The Board of Directors' assessment for the loss of control over these entities was based on the following factors:

(i) Absence of confirmation of beneficial ownership from the legally registered shareholder of these entities;

(ii) No representation of the Group in the Board of Directors of certain overseas entities;

(iii) Lack of a practical ability of the Group to exercise its shareholders rights;

(iv) No involvement of the Group in day to day operations of certain overseas entities;

(v) No visibility over the financial results of these entities due to non-receipt of financial information from certain overseas entities; and

(vi) The Group's shareholding interest in the majority of these entities was held on its behalf by certain individuals and related parties, who were also the legally registered shareholders of these entities. The Directors were of the view that effective 1 January 2014, these shareholders ceased to hold their shareholding interest for the benefit of the Group.

Since it was a loss of control, no consideration was exchanged between the Group and the legal shareholders for the transfer of ownership interest in these entities.

Accordingly, the Group deconsolidated the operating results and financial position of these entities from its consolidated financial statements with effect from 1 January 2014 and.....

ETA Star Holding LLC and its subsidiaries
Notes (continued)

2.6. Assets held in the personal name of shareholders, directors and related parties.

Until 31 December 2013, these consolidated financial statements included certain assets (including investment properties and investments in certain subsidiaries) which were not registered in the name of the respective Group entities and were held in the personal names of certain shareholders of such

Group entities, directors and related parties for the beneficial interest of the Group. These related parties had provided the Group with an undertaking that these assets were held by them for the beneficial interest of the Group effective 1 January 2014, the Board of Directors of the Group based on their assessment and review of the Group's ownership interest in such assets and entities resolved that the Group would only include in its consolidated financial statements the assets over which the Group has legal ownership interest as the Group would no longer have the benefit of beneficial interest in these assets held on its behalf by individuals and related parties. However, the Group continues to consolidated investment held by entities being consolidated under ETA ASCON Holding LLC. Accordingly, the management recorded a provision for impairment against these assets amounting to AED XXX as at 31 December 2014."

3.7. To the abovesaid extent there is no dispute between the parties. It is also not in dispute that the decision of the Board of Directors of the Group general body followed by the defendant No.11 through the draft financial statement would impact the beneficial interest of the defendant No.2 in the shares held in the name of defendants 3 to 7, which is the subject matter of the suit before us.

3.8. On 01.06.2017, a letter was issued by the defendant No.11 signed by the plaintiff No.2 to the defendant No.1 requiring it to take note of the group's interest in its shares and thus, no action would be taken to its prejudice. A reply was given to the letter dated 01.06.2017 by a communication dated 07.06.2017 by the defendant No.1 stating that it has got nothing to do with the defendant No.11 nor ETA Group. In those circumstance, the plaintiffs have come forward to file the present suits seeking the following reliefs.

"In view of the above mentioned facts, it is therefore most respectfully prayed that this Hon'ble Court be pleased to pass a judgment 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;

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 originals share certificate in the possession of Defendant No.11 and direct the cancellation of any duplicate share certificate if any issued:

Or

Direct that in the event the duplicate shares have been issued in favour of Defendant No.3 to 7 the same be cancelled.

f. For costs;

g. Pass any other or such order(s) as this Hon'ble Court may deem fit and proper."

3.9. The present suit has been filed as a derivative action on behalf of defendant No.2 to protect and declare its beneficial interest in the shares available with the defendant No.1 standing in the name of defendants 3 to 7. The averments are to the effect that the defendant No.2 is the beneficial owner, defendants 3 to 7 in collusion with defendants 1, 8 and 9 are acting against the interest of defendant No.2, the share certificates are with the defendant No.11, moneys were transferred from the defendant No.2 and some times through defendant Nos.11 and 12 and defendant No.1 is bound to record the beneficial interest of defendant No.2. The cause of action according to the plaintiffs arose on 31.12.2016 with the draft consolidated financial statement of defendant No.11 records deconsolidation of its account with those of defendant No.2 and thereafter. It has also been stated that in view of the registered office of the defendant No.1 being in Chennai, followed by correspondence between the plaintiff No.2 and defendant No.1, this Court has got jurisdiction. It would be appropriate to place on record the cause of action as shown in the plaint.

54. The Plaintiffs submit that the present lis relates to the denial and non-recognition of

the beneficial interest of Defendant No.2 of the shares held by the Defendants Nos.3, 4, 5, 6 and 7 in Defendant No.1. The cause of action arose on 31.12.2016 when the draft consolidated financial statement of Defendant No.11 records deconsolidation of its accounts with those of Defendant No.2 (refer to Para 42 supra) for the reason that there is "absence of confirmation of beneficial ownership from the legally registered shareholders of the entities" (which inter alia includes Defendant No.2). Thus on 31.12.2016 it became manifested that the recordal of declaration of beneficial interest of the Defendant No.2 would no longer be caused to be made by those in control Defendant No.2 and it's affairs namely Defendant Nos.3, 4 and 7 and which hostile action led to not only the denial of the recording of beneficial interest of Defendant No.2 but also to deconsolidation with retrospective effect of its accounts with Defendant No.11. With the deconsolidation of accounts it became clear that a hostile action denying the beneficial interest of Defendant NO.2 stood taken by Defendant Nos.3, 4 and 7. The cause of action further arose on 07.06.2017 when Defendant No.1 refused to acknowledge the beneficial interest in the suit shares. The cause of action further arose when Defendant No.1 through Defendant No.10 on 27.06.2017 once again refused to acknowledge the beneficial interest in the suit shares. The cause of action further arose when Defendant No.1 through Defendant No.10 on 27.07.2017 once again refused to acknowledge the beneficial interest in the suit shares. The cause of action further arose on 12.11.2017 and 24.11.2017 when newspaper articles, being in public knowledge suggested that the equity of the Defendant No.1 is being sold to private equity investors through a bidding process and the present investors including the Defendant Nos.3 to 7 along with Defendant Nos.8 and 9 are attempting sell their investments in the Defendant No.1 and exit the health insurer. The cause of action further arose on 21.12.2017 when newspaper articles of the Economic Times, being in public knowledge suggested that the five (5) companies have

been shortlisted to purchase the Defendant No.1 and that the floor price of INR 5,500 crore has been put for the sale. The article further suggested that the sale of the Defendant No.2 will help ETA Trading to exit the Defendant No.1, As the beneficial interest of Defendant No.2 has been negated and continues to be negated the cause of action has and is continuing to arise.

55. Since the registered office of Defendant No.1 is in Chennai, the investments made by Defendant No.2 were also made in Defendant No.1 in Chennai, this Hon'ble court will exercise the jurisdiction over the present dispute. Furthermore, the recent correspondences/letters were also exchanged between the Plaintiff No.2 and Defendant Nos.1 and 10 in Chennai. Therefore it is clear that a substantial part of the cause of action has arisen within the territorial jurisdiction of this Hon'ble Court. Leave is being craved to sue the Defendants who are outside the jurisdiction of this Hon'ble Court."

3.10. The learned single Judge allowed the applications filed by the plaintiffs while dismissing the applications filed by the defendants seeking to revoke the leave granted to institute the suit and to reject the plaint inter alia holding that the allegation pertaining to fraud will have to be decided in the suit. There are factual issues which are to be gone into and Section 187 c and 89 of the Companies Act, 1956/2018 though may bar the reliefs, but not the suit. Aggrieved, these appeals are before us.

4. Submissions of the Defendants:

The learned counsels appearing for the defendants would submit that the suit as filed is barred by law. There is no cause of action available to the plaintiffs to maintain the suit within the jurisdiction of this Court. The plaintiffs are attempting to resolve the dispute between the shareholders of the company before the forum, which lacks jurisdiction. The defendant No.2 is admittedly a foreign entity. It is governed by the foreign law. Similarly, the inter se relationship between the defendant No.2 and the plaintiffs is also governed by the foreign law. The claims made are not enforceable even under the Indian Companies Act, 1956 and 2013. The main grievance though not stated specifically stems out from the decision made in the year 2014, by which Board of Directors, through the resolution, decided to deconsolidate and release the beneficial interest. The deconsolidation took place in UAE.

The defendant No.1 has nothing to do with the inter se dispute. The dispute raised in the suit might involve whole lot of subsidiaries and associates of the ETA Group along with the entire shareholders. The decision was made only to resolve the disagreements between the shareholders of the ETA Group. This cannot be challenged in a different form. At best, it is a dispute between the two different groups among the shareholders. These entities are situated outside the jurisdiction of this Court. Clause 12 of the Letters Patent has got no application. There is no corresponding duty on the defendant No.1 to recognise the beneficial interest of defendant No.2. The nature of the transaction between the defendant No.2 and other entities including the defendant No.1 on the one hand and defendant No.1 and defendants 3 to 7 on the other hand can never be made amenable to the jurisdiction of this Court. The suit is barred by limitation. There cannot be a cause of action for an act done in the year 2005 to 2012. The cause of action also clearly shows that it has arisen only in the year 2016 onwards, which is after deconsolidation and the publication of draft financial statement. The plaintiffs and the defendant Nos.2 to 7 are from Dubai. The defendant No.2 is incorporated in Dubai and so is the case of defendant Nos.11 and 12. There is contradiction in the averments regarding the status of defendants 3 to 7 in the pleadings at different times. If they are permanent residents of Chennai, there is no need for a leave. A fraud has to be pleaded and proved. There is no derivative action involved. Consideration is an issue, which can only be decided at Dubai as it involves other entities as well. The Indian Company law enactment is not applicable to defendant No.2. Even otherwise it bars the relief. There is no allegation of misuse of money by defendants 8 to 10. Merely because defendant No.1 is situated at Chennai, a cause of action will not arise. The learned single Judge has committed an error in allowing the applications filed by the plaintiffs while dismissing those of the defendants. To strengthen their submissions, the following judgments are relied upon.

- (i) TATA ENGINEERING AND LOCOMOTIVE CO. LTD., AND OTHERS VS. STATE OF BIHAR AND OTHERS (AIR 1965 Supreme Court 40);
- (ii) BACHA F. GUZDAR, BOMBAY V. COMMISSIONER OF INCOME TAX, BOMBAY (AIR 1955 Supreme Court 74);
- (iii) BHARVAGI CONSTRUCTIONS AND ANOTHER V. KOTHKAPU MUTHYAM REDDY & ORS. (2017 SCC Online SC 1053);
- (iv) A.C. MUTHIAH V. BOARD OF CONTROL FOR CRICKET IN INDIA AND ANOTHER ((2011) 6 Supreme Court Cases 617);
- (v) WEALTH SEA PTE. LTD., VS. JUMBO WORLD HOLDINGS LTD., (C.S.No.742 of 2009 and

- A.Nos.4251 of 2009 and 1737 of 2010 dated 30.11.2016);
- (vi) DR.A.C. MUTHIAH V. BOARD OF CONTROL FOR CRICKET IN INDIA AND ANOTHER (Civil Appeal Nos.3753 of 2011 dated 18.03.2016); and
 - (vii) PEARLITE LINERS (P) LTD., V. MANORAMA SIRSI ((2004) 3 Supreme Court Cases 172).
 - (i) TUTICORIN ALKALI CHEMICALS AND FERTILIZERS LTD., V. M/S COCHIN SILICATE & GLASS INDUSTRIES (OSA NO.250 OF 1989 DATED 11.09.1991).
 - (ii) DURO FLEX PVT. LIMITED VS. DUROFLEX SITTINGS SYSTEMS (2014 (6) CTC 577) FB.,
 - (iii) MYTRAH ENERGY (INDIA) LIMITED VS. GAMESA RENEWABLE PRIVATE LIMITED (2016 (4) LAW WEEKLY 86)
 - (iv) HARI SHANKER JAIN V. SONIA GANDHI ((2001) 8 Supreme Court Cases 233);
 - (v) POPAT AND JOTECHA PROPERTY V. STATE BANK OF INDIA STAFF ASSOCIATION ((2005) 7 Supreme Court Cases 510);
 - (vi) PIRAMAL HEALTHCARE LIMITED VS. DIASORIN S.P.A., ((2010) 172 DLT 131)
 - (vii) VISWANATHAN AND OTHERS V. RUKN-UL-MULK SYED ABDUL WAJID SINCE DECEASED AND OTHERS (AIR 1963 Supreme Court 1)
 - (viii) TUTICORIN ALKALI CHEMICALS AND FERTILIZERS LTD., V. M/S COCHIN SILICATE & GLASS INDUSTRIES (OSA NO.250 OF 1989 DATED 11.09.1991).
 - (ix) DURO FLEX PVT. LIMITED VS. DUROFLEX SITTINGS SYSTEMS (2014 (6) CTC 577) FB.,
 - (x) MYTRAH ENERGY (INDIA) LIMITED VS. GAMESA RENEWABLE PRIVATE LIMITED (2016 (4) LAW WEEKLY 86)
 - (xi) HARI SHANKER JAIN V. SONIA GANDHI ((2001) 8 Supreme Court Cases 233);
 - (xii) POPAT AND JOTECHA PROPERTY V. STATE BANK OF INDIA STAFF ASSOCIATION ((2005) 7 Supreme Court Cases 510);
 - (xiii) PIRAMAL HEALTHCARE LIMITED VS. DIASORIN S.P.A., ((2010) 172 DLT 131);
 - (xiv) R.VISWANATHAN AND OTHERS V. RUKN-UL-MULK SYED ABDUL WAJID SINCE DECEASED AND OTHERS (AIR 1963 Supreme Court 1)

5. Submissions of the Plaintiffs:-

The learned Senior Counsel appearing for the plaintiffs would submit that what is to be seen is from the point of view

of the defendant No.2. If the defendant No.2 seeks the relief against the defendant No.1, the forum is this Court. At this stage, the averments in the plaint alone are to be seen. Defendants 3 to 7 are the permanent residents of Chennai though non resident Indians. Leave has been sought for due to insistence of the Court. As defendant No.2 is controlled by defendants 3 and 5 to 7 and the suit is filed by the plaintiffs being minority shareholders. The deconsolidation and its effects are not challenged specifically but only with respect to the shares held by defendants 3 to 7 in defendant No.1. What is important is a situs of the shares issued. For the purpose of limitation, the date of knowledge is important. The principle of forum non conveniens will not apply, as even the plaintiffs are from Dubai and thus, they do not seek the convenience. As factual adjudication is required and as observed by the learned single Judge, the truth will come out only after full fledged trial. The learned Senior Counsel has made reliance upon the following decisions to buttress his submissions.

- (i) MAHESH AND ANOTHER VS. T.V.SUNDARAM IYENGAR & SONS LTD., AND OTHERS (C.S.NO.963 OF 1992 DATED 119.02.1993);
- (ii) BOSTON SCIENTIFIC INTERNATIONAL BV & ORS. V. TRIVITRON HEALTHCARE PVT. LIMITED (2015 (5) CTC 190);
- (iii) MAYAR (H.K.) & ORS. V. OWNERS & PARTIES, VESSEL M.V. FORTUNE EXPRESS & ORS. (AIR 2006 SC 1828);
- (iv) UROOJ AHMED, LORDS ENTERPRISES VS. PREETHI KITCHEN APPLIANCES PRIVATE LIMITED (2013 SCC ONLINE MAD. 2969);
- (v) EXPHAR SA & ANR. VS. EUPHARMA LABORATORIES LIMITED & ANR. (AIR 2004 SC 1682);
- (vi) N.RAVINDRAN V. RAMACHANDRAN (2011 SCC ONLINE MAD. 401);
- (vii) BALASARIA CONSTRUCTIONS PRIVATE LIMITED VS. HANUMAN SEVVA TRUST & ORS ((2005) 5 SCC 659);
- (viii) C.NATARAJAN V. ASHIM BAI & ANR. ((2007) 14 SCC 183); and
- (ix) VODAPHONE INTERNATIONAL HOLDINGS B.V. V. UNION OF INDIA & ANR. ((2012) 247 CTR 1).

6. Discussion:-

6.1. The suit for derivative action is an exception to the general principle on the locus. It can be claimed only on a given situation. Such a situation has to be seen contextually from the point of view of the entity, on whose behalf the suit is filed. Incidentally, the inter se relationship between the

plaintiffs and the beneficial owner, which may be a company is also of relevance. It may involve a case of deceit, fraud, inability or incapacity. However, the fundamental factor to be considered is the relationship between the plaintiff and the party, which he seeks to represent.

6.2. "Beneficial Interest" is defined under Section 3 of the Indian Trust Act, 1882 as follows:

"Beneficial Interest" is defined in Section 3 of the Indian Trusts Act, 1882 as--

"beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property."

6.3. There are two parties involved in an issue governing beneficial interest. One is a beneficiary named as "Beneficial owner" and the other is the owner named as "Registered owner" being the Trustee of the property or the asset in question. Thus, one can deduce the underlining principle that the ownership is nonetheless legal over the Trust property, which vests on him but he also acts as a trustee of the beneficiary. A beneficial owner may include a person who stands behind the Registered owner when he acts like a trustee, legal representatives or an agent.

6.4. The following passage in MOUNT ROYAL/WALSH INC. V. JENSEN STAR, THE SHIP (1990) 1 FC 199) of the Federal Court of Appeal in Canada would exemplify the abovesaid position.

In my view, the expression 'beneficial owner' was chosen to serve as an instruction, in a system of registration of ownership rights, to look beyond the register in searching for the relevant person. But such search cannot go so far as to encompass a demise charterer who has no equitable or proprietary interest which could burden the title of the registered owner of the registered owner. As I see it, the expression 'beneficial owner' serves to include someone who stands behind the registered owner in situations where the latter functions merely as an intermediary, like a trustee, a legal representative or an agent. The French corresponding expression 'veritable proprietaire' leaves no doubt to that effect.

6.5. This legal position has also been taken note of by the Apex Court in SUNIL B. NAIK V. GEOWAVE COMMANDER ((2018) 5 Supreme Court Cases 505).

6.6. However, for applying the principles governing a

derivative action, one fundamental test will have to be passed. Such an action will necessarily have the sanction of law, which shall have no application to a foreign entity having beneficial interest, which can be enforced in India especially when there are provisions dealing with such situation. Derivative action against a defendant can only be raised on the undisputed existence of the beneficial interest being held in trust. To put it differently, while considering the territorial jurisdiction over a suit initiated to protect the beneficial interest, the issue qua the existence of such an interest can only be decided provided the same is also amenable to such jurisdiction.

6.7. A cause of action has to involve material facts. Therefore, all facts not being material would not constitute cause of action. Such a material fact may be a fact in issue or a relevant fact. It has to be seen in the context of the averments in the plaint which in turn takes the plaintiffs towards the relief. The aforesaid principle has already been dealt with by one of us (M.M.Sundresh,J.) in MYTRAH ENERGY (INDIA) LIMITED VS. GAMESA RENEWABLE PRIVATE LIMITED (2016 (4) LAW WEEKLY 86) in the following manner.

"8. Cause of Action:-

8.1. Before going in to the merits of the case, let us deal with the word "cause of action". The word "cause of action" has not been defined either under the Civil Procedure Code or under the Letters Patent. A cause of action has to be seen in the context of territorial jurisdiction available to the Court while entertaining a suit. It is the basis for the maintainability of a suit. It is the foundation of a suit, around which, the other provisions of the Civil Procedure Code revolve. While dealing with the cause of action, the Courts are concerned with the material facts required to be established in support of the right of the party to get a judgment. Such a material fact may be a fact in issue or a relevant fact. It has got no relationship with the case of a defendant. Such a fact shall not be equated with the evidence, which is necessary to prove a fact. A cause of action would include not only the right of the plaintiff, but also, the facts disclosing the infringement of its right. Therefore, the facts which are in support of its right and leading to infringement would form cause of action. Thus, what is important is that a fact will have to be material to the suit and the relief. Therefore,

all facts, which are not material, would not constitute cause of action. There has to be an existence or infraction coupled with the right.

8.2. It is nothing but bundle of facts, which, when added with the law applicable provide the adequate right to the plaintiff's relief. In a suit relates to a breach of contract, the making of a contract and its breach would be the proper cause of action. Therefore, the place in which it occurred would be very relevant. Thus, the fact which is remotely connected to another which forms a cause of action cannot be one, just for the purpose of giving jurisdiction to a Court. Similarly, termination of a contract would certainly create a part of cause of action and therefore, the place in which it takes place gives jurisdiction to the Court. The legal position aforesaid has been reiterated by the Division Bench of this Court in D.LAKSHMINARAYANA CHETTIAR AND ANOTHER ((1954) AIR Madras 594) in the following manner.

"41. There is no definition of "cause of action" in the Civil Procedure Code; but it is the fundamental pivot around which many of the provisions of the Civil Procedure Code revolve. It is the basis for the maintainability of the suit. It is the foundation for the adding up of parties, and it is an important ingredient in working out the principle of res judicata and that embodied in Order 2, Rule 2, Civil P.C. It has, therefore, necessarily become the subject of judicial scrutiny. Brett's J. defined it in -- 'Cooke v. Gill', (1373) 8 CP 107 (Z1) a leading case on the subject, to mean "every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse." In -- 'Bead V. Brown', (1889) 22 QBD 128 (Z2), Lord Esher adopted the same definition, but expressed it in more felicitous language as follows:

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of

evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Lord Watson in 'Chandkour v. Partab Singh', 16 Cal 08 (PC) (Z3) approved of the definition, but added a rider that

"the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff."

Subsequent decisions have followed the lead given by the earlier decisions.

48. In 'Gangi v. Ramaswami', 12 Mad LJ 103 (Z.7), Bhashyam Aiyangar J. struck a different note which is more in consonance with the later view regarding the meaning of the word "cause of action." There a first suit was brought by the plaintiffs for the recovery of some land which was in the possession of the defendant on the ground that they succeeded to the father's estate, and that the alienation made by the mother during her lifetime was bad. They obtained a decree therein, but subsequently they filed another suit to recover possession against another defendant in respect of another item which they claimed as part of the same inheritance. It was contended that the later suit was barred by Section 43, Civil P. C. In dealing with that contention, Bhashyam Aiyangar J. made the following pertinent remarks at p. 105 :

"The former suit was instituted against the de-fondant therein, by reason of his wrongfully withholding from the plaintiffs, on the death of their mother, possession of the land in Schedule B, and the present suit is brought on the defendants herein similarly withholding the land comprised in schedule A, the defendants in both the cases having respectively come into possession of the lands comprised in schedules B and A under separate alienations made by the mother in favour of each on a different occasion. It will thus be seen that though the ground of title is one and the same in both the

suits and the cause of action in respect of both arose at the same time, viz., the date of the mother's death, yet the persons who wrongfully withheld the land in schedule A are quite different and there was no manner of combination or privity between them in respect of the lands which they severally withheld.

"The words 'cause of action' have fill along been held to mean 'every fact which it is material to be proved to entitle the plaintiff to succeed; every fact which the defendant would have a right to traverse' and have no relation whatever to the defence, but refer entirely to the grounds set forth in the plaint as the cause of action: (1873) 6 CP 107 (Z1), -- 'Shankar Baksh v. Daya Shankar', 15 Ind App 66 (PC) (Z8), 16 Cal 98 (PC) (33).

"Though the ground of title on both suits are founded in one and the same and the causes of action also arose at the same time, yet the properties comprised in the two suits are different and the persons who severally withheld the same are also different. A reference to Section 50, C. P. C. clearly shows that in every suit the plaint must show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. This clearly shows that the cause of action is not an abstraction, something independent of the defendant, but that the plaint should disclose a cause of action against the defendant."

We respectfully agree with the aforesaid observations of the learned Judge, and this passage clearly brings out the distinction between the ground of title and the cause of action. A cause of action is something more than a ground of title. It not only includes the facts necessary to support the plaintiff's title, but also the facts which entitled him to relief against a particular defendant.

49. An interesting and instructive discussion, if we may say so, on the question raised is found in --

'Bahadur Singh v. Sultan Husain Khan', AIR 1922 Oudh 171 (29). Syed Wazir Hasan A. J. C. held that,

"A revisioner has a separate cause of action in respect of each alienation made by the widow, and a suit to recover property comprised in one alienation is not barred by Order 2, Rule 2, C. P. C. by reason of a proper suit for the recovery of property comprised in another alienation."

The learned Judge traced the history of the meaning of the words "cause of action" and then made some weighty observations to the following effect at p. 175 ;

"Though the cause of action has no relation to the defence which may be set up by the defendant, yet it would be an error to suppose that it has no relation to the defendant and his acts preceding the suit. A 'cause of action' is not a theoretical term entirely picked up from text books and placed on a plaint. In cases of torts, the right of the plaintiff and its infringement by the defendant will generally make up the 'cause of action'. In --'Williams v. Morland', (1824) 107 ER 620 (210), cited by Bowen L. J. in --'Bransden v. Humphrey', (1885) 14 QBD 141 (211), Little-dale J. said 'Generally speaking, there must be a temporal loss or damage accruing from the wrongful act of another, in order to entitle a party to maintain an action on the case.' Order 7, Rule 5 (Act 5 of 1908) is based on the same principle. It is as follows : 'The plaint shall show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. 'Now in the present case the defendants' connection with the land in suit is wholly different from his connection with the lands covered by the other sales both in point of time and the subject matter of the alienations. Their act of infringement of the plaintiffs' right qua the property in suit is 'different from their act or acts of infringement of the plaintiffs' right qua one or the other of the properties previously in suit."

It would be seen from the aforesaid decisions that though under Act 3 of 1859 this court was inclined to take the view that the unity

of title was synonymous with cause of action, the later decisions clearly laid down that cause of action was something more than unity of title, and that it would include not only the right of the plaintiff but also the facts disclosing the infringement of that right.

8.3. A similar view has been taken by the Apex Court in A.B.C. LAMINART PVT. LTD., AND ANOTHER V. A.P. AGENCIES, SALEM (1989 AIR 1239), in which, the following passage would be apposite.

"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a fight to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

6.8. Clause 12 of the Letters Patent has got several facets. A leave is required to be obtained only when a part of cause of action arises. Such a cause of action, as discussed above, shall involve a material fact. Therefore, the relief sought for against the defendant No.1 being at best a consequential one cannot give a cause of action. Even the defendant No.2 cannot seek such a relief without resolving its dispute as against defendant Nos.3 to 7. Such a dispute can only be dealt with by a competent forum at Dubai under its own law.

6.9. The principle governing forum non conveniens would fundamentally require the existence of a jurisdiction. Thus, when there is no jurisdiction available to a Court, the aforesaid principle will have no application. The Full Bench of our High Court has considered in extenso the principle governing forum conveniens in DURO FLEX PVT. LIMITED VS.

DUROFLEX SITTINGS SYSTEMS (2014 (6) CTC 577) through the following paragraphs.

"35. Learned counsel emphasised that it has been the consistent practice of the Madras High Court to consider the issue of convenience of parties in ascertaining appropriateness of jurisdiction. In Seshagiri Row vs. Nawab Askur Jung Aftal Dowlah Mushral Mulk, reported in (ILR 30 Mad. 438), it was observed by the Division Bench that having regard to the wordings of Clause-12 of the Letters Patent, it was clear that the fact whether cause of action arises in part within the local limits is not the question, and notwithstanding that the cause has arisen within the local limits, the court may decline to leave to sue. The question of convenience cannot be thus excluded from consideration. This view was cited with approval in Madanlal Jalan vs. Madanlal and others reported in AIR 1949 Cal. 495, where the Judge has held that the balance of convenience is a material consideration in the exercise of discretion under Clause 12 of the Letters Patent and has enunciated the following legal principles:

- "a) that the application lies for revoking the leave granted under Clause 12 of the Letters Patent;
- b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;
- c) that if the application depends on difficult 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 arose within jurisdiction, 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;
.....
- g) that in giving or refusing leave or

maintaining or revoking leave, the Court will ordinarily take into consideration the balance 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;.....

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".

36. The said view was approved in the affirmative by the Honourable Supreme Court in *Kusum Ingots and Alloys Ltd., vs. Union of India* and Another reported in 2004 (6) SCC 254, inter alia holding that High Court may refuse to exercise its discretionary jurisdiction even if a small part of the cause of action arises within its territorial jurisdiction, applying the test of 'forum conveniens'.

37. Learned counsel for the respondent referred to different judicial pronouncements on the principles of 'forum conveniens', referring to relevant passages therein :-

(a) In *P.J.Parameswara Pattar vs. Viyathan Mahadevi* reported in (AIR 1923 Mad. 272), the Division Bench has observed that 5. The real question to be considered is the balance of convenience. Nearly the whole of the alleged cause of action arise in Malabar. There would be no ground at all in my judgment for bringing it here if it did not happen that two of the defendants reside here who, it is alleged, have in their power here a very material document....

(b) In *Clan Line Steamers Co. Ltd. vs. Gordon woodroffe and Co. and others* reported in (1979) 1 MLJ 349, it has been held thus:

It is asserted now before us on behalf of the respondent/plaintiff that the entire evidence regarding the subject matter of the suit would be available only in Madras, for the main ground on which the suit has been filed is that the second defendant, who was the Chairman of the plaintiff-company at the relevant time misused his position as Chairman of the company and the trust reposed in him as such Chairman and induced the proposed fourth defendant and the first defendant to terminate the agency of the plaintiff and give it to the third defendant company which was formed by the second defendant. Further, in the case now before us there are no circumstances which would show that the plaintiff has chosen this forum male fide, nor can it be said that the forum chosen is such that if the court permits the suit to go on, the other party would be so handicapped in his defence that it would lead to injustice or that the balance of convenience is decidedly or overwhelmingly against the suit going on in the forum chosen by the plaintiff.

(c) In Tuticorin Alkali Chemicals and Fertilizers Limited vs. Cochin Silicate and Glass Industries reported in (1992) 1 LW 308, it has been held by the Division Bench, We do not say that in considering the balance of convenience as to the forum for instituting a suit, it would be necessary (like the principles of injunction) to see the ultimate injury that a party may suffer, but we do find support for our view and we state in no uncertain terms that in deciding whether to refuse leave or not, it would be necessary to see on facts and not, on assumptions, who shall suffer plaintiff or defendant if leave is granted or refused, as the case may be.

(d) In Brooke Bond (India) Limited vs. Balaji Tea (India) Pvt., Ltd., reported in (1993) 2 MLJ 132, it has been observed by the Division Bench as :-

13. In granting leave to sue on a cause of action only partly arising within the

jurisdiction of the Court the principle of balance of convenience is no doubt applied. The principle of balance of convenience which is an expansion of the doctrine 'Forum Conveniens' has been considered in a Judgement of this Court in Seshagiri Row vs. Nawab Askur Jung Aftal Dowlah Mushral Mulk (ILR 30 Mad. 438). It has been observed in the said Judgement:

Having regard to the wording of Article 12, it is clear that the fact that the cause of action arises in part within the local limits is not conclusive, and that, notwithstanding that the cause of action arises in part within the local limits, the Court may decline to give leave to sue.

As regards the law of this Country, so far as we are aware, it has never been held the question of convenience is not a question which may be taken into consideration in dealing with applications under Clause 12, and we are certainly not prepared to hold that this question should be excluded from consideration.

(e) In National Westminster Bank Ltd., U.K. vs. M/s.Devraj Nensee and Company reported in (1997(1) LW 117), it has been observed by the Division Bench as:

30. Even while granting leave, this Court is bound to consider the forum non-convenience. In paragraph-5 of the affidavit filed in support of the Applications, the second defendant has stated the reasons why the leave should not be granted. It is said therein that both the defendants are carrying on business outside India, and even the credit report was received in England, and all the documents pertaining to the correspondence are in England. The defendants are also permanent residents of England, and even as against the first defendant, liquidation proceedings are pending only in England. If the second defendant is asked to contest the suit before this Court, naturally, it will be put to great difficulties. Taking into consideration these facts also, we feel that this is a fit case where leave to sue as against the second

defendant has to be revoked.

(f) In Parameswari Veluchamy and two others vs. R.T.Jayaraman and seven others reported in 2002(1) CTC 134, it was observed by the Division Bench,Moreover, considerations of convenience are very germane while determining the question of grant, refusal or revocation of leave. Almost all the properties, the documents relating thereto and the witnesses who have knowledge of the same are outside the city of Madras.

(g) In M/s.Murthy Hosiery Mills, represented by its Managing Partner, Miller R.T.Murthy and another vs. The State Bank of India reported in (2011) 3 LW 376), the Division Bench referred to the Judgement of Honourable Supreme Court in Kusum Ingots and Alloys Ltd., vs. Union of India and another (2004) 6 SCC 254 = 2004-4-L.W 310), wherein it was held that even if it was found that part of cause of action has arisen within the jurisdiction of the Court, the Court may refuse to exercise its discretionary jurisdiction on the principle of 'forum conveniens'.

51. A number of judgments were cited in the context of Section 62 of the Copyright Act, which gave the discretion to the litigant to decide the forum, including of this Court in Brooke Bond (India) Ltd. case (supra). Interestingly, this very Court in Glaxo Operations U.K. Ltd. (supra) observed that the expression carrying on business is too wide to embrace the branch or branches where business activities are carried on. The jurisdiction of the Court under Section 20 of the Code of Civil Procedure is different from the jurisdiction under Clause 12 of the Letters Patent. In a proceeding under Clause 12 of the Letters Patent, the plaintiff does not have an absolute right to bring proceedings in the High Court and can only do so with the prior leave of the Court (Food Corporation of India case (supra)). Thus, what is to be seen in case of grant or refusal of leave or revocation of leave is the convenience of the parties or appropriateness of the jurisdiction. Balance of convenience was considered to be material for exercise of discretion under Clause 12 of the Letters Patent and thus, steps have been

enunciated by the Calcutta High Court in Madanlal Jalan's case (supra).

6.10. The judgment referred supra would in clear terms has held that the aforesaid principle would be applicable in dealing with the application seeking leave to sue.

6.11. When a dispute arose against the company, which issued the shares, then the situs would be its registered office. However, when the dispute is between the shareholder and the company with respect to the shares held in another, the mere existence of registered office of the subsequent company is not a factor to clothe jurisdiction. In this connection, it is apposite to refer the following paragraphs of the judgment of the Apex Court in R.VISWANATHAN AND OTHERS V. RUKN-UL-MULK SYED ABDUL WAJID SINCE DECEASED AND OTHERS (AIR 1963 Supreme Court 1).

"Per J.C.Shah, J. (Majority) : The situs of the shares in any question between the Company and the holders thereof was the registered office of the Company in Bellary (outside the State of Mysore), but the share certificates must, on the case of the plaintiffs as set out in the plaint, be deemed to be with the executors and compliance with the decree, if any, passed against the executors for an order of retransfer could be obtained under the Code of Civil Procedure ('see Order XXI, rr. 31 and 32 Mysore Civil Procedure Code). There is no rule of private international law recognised by the courts in India which renders the Bangalore Court incompetent to grant a decree directing retransfer of the shares merely because the shares have a situs in a dispute between the Company and the shareholders outside the jurisdiction of the foreign court: Counsel for the plaintiffs submitted that the Mysore Court was incompetent to deliver an effective judgment in respect of the shares, but by personal compliance with an order for retransfer judgment in favour of the plaintiffs could be rendered effective.

Per Hidayatullah, J (Minority) : It only remains to consider the argument in relation to the shares of the Indian Sugars and Re. fineries Ltd. It was contended that the, shares must be deemed to be situated where they could be effectively dealt with and that was Madras, where the Head Office of the Company was situated. Learned counsel relied upon some English cases in support of his contention. It

is not necessary to refer to those cases. The suits of shares between the Company and the shareholders is undoubtedly in the Country where the business is situated. But in a dispute between rival claimants both within the jurisdiction of a Court over shares the Court has jurisdiction over the parties and the share scripts which are before the Court. The Mysore Court was in this position. Between the rival claimants the Mysore High Court could order the share scrips to be handed over to the successful party and if necessary could order transfer of the shares between them and enforce that order by the coercive process of the law. It would be a different matter if the Company refused to, register the transfer and a different question might then have arisen; but we are told that the Company has obeyed the decision and accepted the executors as the shareholders. The judgment of the Mysore Court on the ownership of the shares is ancillary to the main decision. It is therefore not necessary for me to consider the argument of Mr. Desai that jurisdiction attaches on the principle of effectiveness propounded by Dicey, but which has been criticised by the present editors of his book and by Cheshire. In my opinion, this controversy does not arise in this case, which must be decided on the plain words of s. 13 of the Code of Civil Procedure."

6.12. Keeping in view of the abovesaid principle of law, let us consider the issues raised before us. Admittedly, the defendant No.2 is a foreign entity governed by the laws of Dubai. The plaintiffs are its shareholders. Therefore, any dispute between them will have to be resolved under the laws of Dubai. Hence, the contention of the learned Senior Counsel appearing for the plaintiffs that they are stepping into the shoes of the defendant No.2 seeking a relief against the defendant No.1 cannot be countenanced. This is also for the reason that there must be a declaration in clear terms qua the status of a beneficial interest holder before seeking a relief against the defendant No.1. More so, when defendant No.2 itself denies it.

6.13. In the case on hand, the fundamental and core facts are not in dispute. They are with respect to the consolidation and deconsolidation of defendant No.2 by the defendant No.11. Similarly, a decision of the general body of a ETA Group, the Board of Directors and the participation of the plaintiffs in

that are also not in dispute. These undisputed happenings lead to the draft financial statement of the defendant No.11. This draft financial statement confirms two things. One is with respect to the deconsolidation and the other is removal of status over the shares held by the individuals. The decision was to implement it with retrospective effect from 10.01.2014. It is an admitted case that the decision of the ETA Group and the draft financial statement of defendant No.11 would make the trustees of the holders of the respective shares involving beneficial interest as absolute owners. The plaintiffs may have grievance over this, but their remedy will lie elsewhere. That is the reason why one of the plaintiffs after issuing notice on behalf of the defendant No.11 to defendant No.1, has chosen to file the suit along with the other in the status of shareholders. May be it is also for the reason that the defendant No.11 cannot wriggle out of the decision of ETA Group followed by its draft financial statement. If we see the cause of action as recorded above, it is abundantly clear that what has triggered the present suit is the aforesaid facts.

6.14. The decision of the ETA Group, which consists of numerous entities, applies to every shareholder of the Group. Accordingly, the status of a registered owner would get transferred into one of absolute ownership. Therefore, even if we go by the averments in the plaint while eschewing the defence of the defendant No.2, no relief can be claimed before this Court. It is an indirect way of challenging the decision of the ETA Group, in which, the plaintiffs were also parties. Any adjudication on this though indirectly, will have a serious spiralling effect, as settled things would get unsettled for the reason that it might have an adverse impact on other shareholders of other entities coming under the umbrella of the ETA Group. The logic and rationale behind the decision of a foreign entity cannot be adjudicated here. Be that as it may, certainly the remedy lies elsewhere. We should also keep in mind defendants 2 and 11 are admittedly situated outside the jurisdiction of the Court though the plaintiffs contend that defendants 3 to 7, despite being non resident Indians are permanent residents of Chennai. This is nothing but an attempt to review the decision made already by the ETA Group as acknowledged by the defendant No.11 in the draft financial statement. After all, the relief that is sought against the defendant No.1 is a mere consequential one. When once the plaintiffs succeed against defendant Nos.2 to 7 then defendant No.1 is bound to give effect to it. For doing so, the remedy for the plaintiffs against defendants Nos.2 to 7 lies elsewhere.

6.15. When the status of defendant No.2 being the foreign company is not in dispute, no relief either direct or indirect can be sought against it under the Indian Law. We are not

concerned with the ultimate relief but the issues leading to it. What we are dealing is nothing but a fight between two groups. Defendant No.2 is controlled by defendant Nos.3 and 5 to 7 whereas, defendant No.11 is by the plaintiffs. This explains the letter sent by the defendant No.11 through the plaintiff No.2 to the defendant No.1 dated 01.06.2017.

6.16. A perusal of the cause of action as indicated in the plaint would show that it started happening only from the date of deconsolidation. Monies were sent by the defendant No.2 and on its behalf by defendant No.12 at least till 2011. Though prima facie, the payment made was not in dispute, the entity from which it emerged actually cannot be decided here. The very fact that payments were made by defendant No.12 on behalf of defendant No.2 followed by book adjustment itself would vouch for the fact that such things have happened involving the other entities of the ETA Group as well and at least defendant No.2 and its subsidiaries. These issues also cannot be looked into by this Court.

6.17. In the plaint, the plaintiffs have not stated anything about the derivative action available to a shareholder on behalf of the company in Dubai. We also note that the Indian Companies Act, 1956/2013 do not have an application to a foreign entity. Even assuming it to be so, Section 187(c) read with 89(8) of the Companies Act, 1956/2013 would disentitle the plaintiffs from getting the relief, when once, the reliefs cannot be granted through a statutory bar, a suit filed claiming it also would be barred. After all, a Court is required to grant a relief, which parties are entitled to in law. Similarly, there is no corresponding duty fixed on the defendant No.1 to seek the declaration from defendants 3 to 7 in favour of defendant No.2. Suffice it is to state that the plaintiffs do not raise any such issue till 2016, though share certificates were issued in the year 2012 itself. Though the limitation is a mixed question of law and fact, when facts are not in dispute, certainly it would apply. A Civil Court is mandated to check its jurisdiction to deal with a lis qua the limitation.

6.18. As against the defendants 8 to 10, there is no specific allegation of misuse of money. This alleged fraud is said to have been committed between 2005-2006/2012. It is to be seen that the plaintiffs knew the factum of share standing in the name of Defendant Nos.3 to 7. As discussed above, the situation stood changed after a decision made in the meeting held by the ETA Group which was given effect in 2016. That is the reason why, the cause of action has been mentioned to be starting from 2016 onwards. Therefore, the alleged role of the defendant Nos.8 to 10 will not give any jurisdiction to this Court. Defendant No.11 who is stated to be in possession of the

shares, is situated in Dubai. As the plaintiffs felt the importance of the defendant No.11 who would in all probability support their case, it has been accordingly arrayed. We have to keep in mind the notice dated 01.06.2017 signed by the plaintiff No.2 on behalf of defendant No.11 on the very issue.

6.19. It is no doubt true that what has to be seen at this stage is the averments in the plaint along with the documents filed. Therefore, there is no difficulty in accepting the submission made by the learned Senior Counsel appearing for the plaintiffs in this regard. However, in the light of the discussion made above, a mere situs of the share in the first defendant's company alone cannot give jurisdiction to institute the suit within the jurisdiction of this Court. Thus, we find that the reasons assigned by the learned single Judge cannot be sustained in the eye of law, particularly, with reference to the provisions of the Companies Act, 1956/2013, the examination of the books of defendant No.1 qua the declaration made, flow of funds and the allegations of fraud made against defendants 7 to 10.

7. Conclusion:

Though number of judgments were cited at the bar, we are of the view that they are not required to be discussed in the light of the findings rendered by us supra. We thus set aside the common order passed by the learned single Judge. Accordingly, Application Nos.1387 to 1392 of 2018 in A.No.292 of 2018 in C.S.No.33 of 2018 filed by the defendants stand allowed. Consequently, application in A.No.292 of 2018 in C.S.No.33 of 2018 filed by the plaintiffs stand dismissed. O.S.A.Nos.220 to 223, 227, 228, 230 to 237 of 2018 are allowed and connected C.M.P.Nos.11240, 11241 and 11279 of 2018 are closed. No costs.

Raa

After pronouncing judgment, learned senior counsel appearing for respondents 1 and 2/plaintiffs would submit that status quo as on today may be ordered to be maintained insofar as the shares in question are concerned.

2.Considering the said submission and taking note of the fact that we have reversed the order of the learned single Judge and there is an order of injunction in currency from January 2018 onwards, we deem it fit to grant limited interim order, directing the appellants to maintain status quo for a period of two weeks from today.

3.In view of the further submission made by the learned senior counsel appearing for respondents 1 and 2/plaintiffs, we hereby clarify that all other findings rendered by us along with the observations are meant to be applied in the context of jurisdiction of this Court alone and they will not stand in the way of the parties agitating the same before the Court of competent jurisdiction including the question of limitation.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi

Copy to:

1. The Sub Assistant Registrar
Original Side,
High Court,
Madras.
2. The Sub Assistant Registrar,
Judicial Section, High Court,
Madras.

+2cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.53081
+2cc to M/s M.B.Gopalan Associates, Advocate, S.R.No.54141,54142
+2cc to Mr.K.Gowtham Kumar, Advocate, S.R.No.53831
+2cc to Mr.M.Sricharan Rangarajan, Advocate, S.R.No.53830
+1cc to Mr.P.Giridharan, Advocate, S.R.No.53706
+2cc to Mr.N.P.Vijayakumar, Advocate, S.R.No.53340
+2cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.53082
+3cc to Mr.Allwin Godwin, Advocate, S.R.No.53085

O.S.A.Nos.220 to 223, 227,
228, 230 to 237 of 2018

JP(CO)
CS/09/08/18

WEB COPY