



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.05.2021

Pronounced on : 25.05.2021

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Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Comp.Appeal Nos.5 to 10 of 2016
and

C.M.P.Nos.12006 to 12009 of 2016,
12839, 12840 of 2016 and 4491, 4496 of 2021

Comp.Appeal No.5 of 2016:

Vasanth Mills Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

..Appellant/Applicant

/versus/

1.Nandakumar Athappan

2.M/s Cheran Enterprises Private Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

3.CG Holdings Private Limited,
No.19, Raja Annamalai Building,
Marshalls Road.

4.Kangeyam Cheniappa Palanisamy,
R/o No.322, Thadagam Road,
Coimbatore 641 002.

5.Cherran Properties Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

6.State Bank of India,
Erode Main Branch Road,
Erode 638 001.

.. Respondents 1 to 6/Respondents 1 to 6

Prayer: Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order of the Hon'ble Company Law Board, Additional Principal Bench, Chennai dated 30.12.2015



made in C.A.No.2 of 2015 in E.P.No.35 of 2011 in C.P.No.65 of 2005.

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For Appellant : Mr.T.R.Rajagopalan,
Senior Counsel for
M/s Waraon and Sai Rams

For Respondents : Mr.J.Sivanadaraj for R1
Mr.Ramakrishnan, Senior Counsel
for Mr.S.Arjunsuresh for R3

Comp.Appeal No.6 of 2016:

Vasantha Mills Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

..Appellant /Applicant

/versus/

1.O.R.E.Holdings Limited,
IFS Court, Twenty Eight,
Cybercity, Ebene,
Mauritius.

2.M/s Cheran Enterprises Private Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

3.CG Holdings Private Limited,
No.19, Raja Annamalai Building,
Marshalls Road.

4.Kangeyam Cheniappa Palanisamy,
R/o No.322, Thadagam Road,
Coimbatore 641 002.

5.Cherran Properties Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

6.Nandakumar Athappan

7.Ramasamy Athappan



8.State Bank of India,
Erode Main Branch Road,
Erode 638 001.

.. Respondents 1 to 8/Respondents 1 to 8

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Prayer: Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order of the Hon'ble Company Law Board, Additional Principal Bench, Chennai dated 30.12.2015 made in C.A.No.2 of 2015 in E.P.No.36 of 2011 in C.P.No.76 of 2005.

For Appellant : Mr.T.R.Rajagopalan,
Senior Counsel for
M/s Waraon and Sai Rams

For Respondents : Mr.ARL.Sundaresan,
Senior Counsel for
Mr.K.Gowtham Kumar for R1
Mr.J.Sivanandaraj for R6 to R7
Mr.Ramakrishnan, Senior Counsel
for Mr.S.Arjunsuresh - R3

Comp.Appeal No.7 of 2016:
Vasantha Mills Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

..Appellant/5thRespondent

/versus/

1.Nandakumar Athappan

1st Respondent/Petitioner

2.M/s Cheran Enterprises Private Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

3.CG Holdings Private Limited,
No.19, Raja Annamalai Building,
Marshalls Road.

4.Kangeyam Cheniappa Palanisamy,
R/o No.322, Thadagam Road,
Coimbatore-641 002.

5.Cherran Properties Limited,
Cheran Towers,
Arts College Road, Coimbatore 641 018.



6.State Bank of India,
Erode Main Branch Road,
Erode 638 001.

.. Respondents 2 to 6/Respondents 1 to 3, 5 and 6

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Prayer: Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order dated 31.12.2015 passed by the Company Law Board, Additional Principal Bench, Chennai in E.P.No.35 of 2011.

For Appellant :Mr.T.R.Rajagopalan,
Senior Counsel for
M/s Waraon and Sai Rams

For Respondents :Mr.J.Sivanandaraj for R1
Mr.Ramakrishnan, Senior Counsel
for Mr.S.Arjunsuresh for R3

Comp.Appeal No.8 of 2016:

Vasantha Mills Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

..Appellant/5thRespondent

/versus/

1.O.R.E.Holdings Limited,
IFS Court, Twenty Eight,
Cybercity, Ebene,
Mauritius.

1st Respondent/Petitioner

2.M/s Cheran Enterprises Private Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

3.CG Holdings Private Limited,
No.19, Raja Annamalai Building,
Marshalls Road.

4.Kangayam Cheniappa Palanisamy,
R/o No.322, Thadagam Road,
Coimbatore-641 002.

5.Cherran Properties Limited,
Cheran Towers,
Arts College Road,Coimbatore 641 018.



6.Nandakumar Athappan

7.Ramasamy Athappan

8.State Bank of India,
Erode Main Road,
Erode 638 001.

..Respondents 2 to 8/Respondents 1 to 4,6 to 8

Prayer: Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order dated 31.12.2015 passed by the Company Law Board, Additional Principal Bench, Chennai in E.P.No.36 of 2011 in C.P.No.76 of 2005.

For Appellant : Mr.T.R.Rajagopalan,
Senior Counsel for
M/s Waraon and Sai Rams

For Respondents : Mr.ARL.Sundaresan,
Senior Counsel for
Mr.K.Gowthamkumar for R1
Mr.J.Sivanandaraj for R6 and R7
Mr.Ramakrishnan, Senior Counsel
for Mr.S.Arjun Suresh for R3

Comp.Appeal No.9 of 2016:

1.C G Holding Pvt.Ltd.,
No.19, Raja Annamalai Building,
Marshalls Road,
Chennai.

2.Kangayem Cheniappa Palanisamy

.. Appellants 1&2/ Respondents 2&3

/versus/

1.O.R.E.Holdings Pvt.Ltd.,
3 Floor, Les Cascades,
Edith Cavell Street,
Port Louis, Mauritius.

...1st Respondent/Petitioner

2.M/s Cheran Enterprises Pvt. Ltd.,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.



3.Cheran Properties Limited,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

4.Vasanth Mills Ltd.,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

5.Nandakumar Athappan

6.Ramasamy Athappan

7.State Bank of India,
Erode Main Branch Road,
Erode 638 001.

.. Respondents

Prayer:

Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order dated 31.12.2015 passed by the Company Law Board, Additional Principal Bench, Chennai in E.P.No.36 of 2011 in C.P.No.76 of 2005.

For Appellants : Mr.Ramakrishnan, Senior Counsel
for Mr.S.Arjun Suresh

For Respondents : Mr.J.Sivanandaraj for R5, R6
Mr.T.R.Rajaraman, Senior Counsel
for M/s Waraon and Sai Rams for R4
Mr.ARL.Sundaresh, Senior Counsel
for Mr.K.Gowthamkumar for R1

Comp.Appeal No.10 of 2016:

1.CG Holdings Pvt.Ltd.,
No.19, Raja Annamalai Building,
Marshalls Road,
Chennai.

2.Kangayem Cheniappa Palanisamy
R/o No.322 Thadagam Road,
Coimbatore 641 002.

.. Appellants/ Respondents 2&3

/versus/

1.Nandakumar Athappan

1st Respondent/Petitioner



2.M/s Cheran Enterprises Pvt.Ltd.,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

3.Cheran Properties Ltd.,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

4.Vasanth Mills ltd.,
Cheran Towers,
Arts College Road,
Coimbatore 641 018.

5.State Bank of India,
Erode Main Branch Road,
Erode 638 001.

.. Respondents 2 to 5/Respondents 1,4 to 4

Prayer: Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order dated 31.12.2015 passed by the Company Law Board, Additional Principal Bench, Chennai in E.P.No.35 of 2011 in E.P.No.65 of 2005.

For Appellants : Mr.V.Ramakrishnan,
Senior Counsel for
Mr.S.Arjun Suresh

For Respondents : Mr.J.Sivanandaraj for R1
Mr.T.R.Rajagopalan, SeniorCounsel
for M/s Waraon and Sai Rams for R4

COMMON JUDGMENT

(The case has been heard through Video Conferencing)

Prelude:

The root and genesis of these 6 Company Appeals is the two company petitions viz C.P.No.65/2005 and C.P.No.76/2005 filed under Sections 397, 398, 402 and 403 of the Companies Act, 1956, alleging oppression and mis-management in respect of M/s Cheran Enterprises Private Limited Company incorporated on 12/11/2003, under the provisions of Companies Act, 1956.

2.In these batch of Company Appeals, the core dispute is the execution order passed by the Company Law Board in respect of about 25 acres of land (17.15 acres + 7.80 acres) held by



3. Main parties to the litigation and their interest/claim:
Cheran Enterprises Private Limited ("CEPL" in short): This company was incorporated on 12/11/2003 with authorised capital of Rs.10 crores. The authorised capital was increased to Rs.28 crores after the share purchase agreement dated 13/01/2004, entered between C.G.Holdings and CEPL. 45% of the shares issued, subscribed and paid up capital of CEPL held by CG Holdings Pvt. Limited. 45% of the share issued, subscribed and paid up capital of CEPL held by ORE Holdings Limited. 10% of the share issued, subscribed and paid up capital of CEPL held by Athappan. In respect of this company, the exit scheme was ordered and executed by CLB. The order passed in the execution petitions is the subject matter of these appeals.

Cheran Properties Limited ('CPL' in short): A company promoted by KCP on acquiring the controlling interest in M/s Vasantha Mills Limited. A subsidiary company of CEPL. In this company, CEPL is holding 99.999% of the issued and subscribed capital. M/s Vasantha Mills Limited and M/s CG holdings Private Limited each hold one share. Remaining 4 shares are held by the other companies controlled by KCP.

ORE Holding Limited ('O.R.E' in short): A company incorporated as per law in force at Mauritius. It is wholly owned subsidiary of Odyssey America Reinsurance Company (OARC) incorporated in the State of Connecticut, USA. Pursuant to the Joint venture agreement dated 30/01/2004 ORE invested Rs.75 crores in the form of equity in CEPL to get through 45% direct stake in CEPL and indirectly over it subsidiaries namely CPL and VML.



ORE is the petitioner in C.P.No.76/2005 filed for an order of investigative audit to determine the amount misappropriated, misapplied or diverted by C.G.Holdings and KCP alleging mismanagement and misappropriation and the Petitioner in E.P.No.36/2011 before CLB filed to execute the common order passed in their petition in C.P.No.76/2005 and C.P.No.65/2005 filed by CG Holdings and KCP.

Nandakumar Athappan: NRI invested Rs.4 crores in CEPL and its subsidiaries. As per the share purchase agreement dated 13/01/2004 and under the Joint Venture Agreement dated 30/01/2004, he holds 10% share in CEPL. He is the petitioner in E.P.No.35/2011 before the CLB to execute the order passed in C.P.No.65/2005 and C.P.No.76/2005.

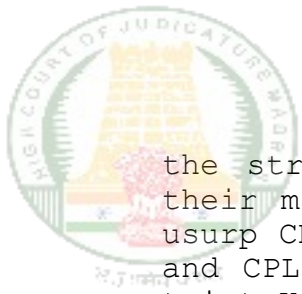
K.C.Palanisamy ('KCP' in short): Promotor of CPL and CEPL filed C.P.No.65/2005 along with CG Holdings Private Limited for the relief to formulate a scheme of exit of the 2nd respondent (ORE Holdings) alleging oppression. The 3rd respondent in C.P.No.76/2005 filed by ORE Holdings for an order of investigative audit to determine the amount misappropriated, misapplied or diverted by C.G.Holdings and KCP alleging mismanagement and misappropriation.

4. Journey of the litigation:

KCP, who took control of the sick company VML offering rehabilitation proposal to BIFR and the promoter of CPL was in need of fund to promote the lands held by VML and CPL. During the year 2003, ORE and N.Athappan got introduced to KCP and offered to arrange funds provided, KCP offers shares in VML, CPL and certain other companies controlled by KCP. After negotiation, a joint Venture Agreement was entered between the parties on 30/01/2004. Before that, CEPL was incorporated on 12/11/2003. Share purchase agreement was entered on 13/01/2004. Accordingly, CG Holdings sold its 80% share in CPL and 17.4% share in VML to CEPL. In consideration, 45% shares in CEPL was allotted to CG Holdings. Athappan, who infused Rs.4 crores, sold his holdings in CPL and VML in exchange of 10% share in CEPL. ORE infused Rs.75 crores and was allotted 45% of share in CEPL. Thus, in CEPL the share holdings of the respective parties was as below:-

CG Holdings : 45% ; ORE 45% ; and N.Athappan 10%.

Soon thereafter, misunderstanding arose between the share holders. CG Holdings and KCP as its Director filed C.P.No.65/2005 alleging that ORE made only the initial funding of Rs.75 crores, but failed to bring the promised fund of Rs.300 crores. Due to the said failure, CEPL had not carried on any business ever since its incorporation. ORE and N.Athappan on



the strength of their holding in CEPL constituting 55% and on their majority strength in the Board of CEPL, are attempting to usurp CEPL from KCP, which would imply taking control of the VML and CPL also. ORE by their oppressive conduct attempting to arm twist KCP to accede to its unjust demand and prayed for a scheme of exit.

5.The relief sought in C.P.No.65/2005 are :-

(a) to declare that the Board Meeting of CEPL held on 21/22.09.2005 and the resolutions passed therein are null and void and not binding on the petitioners or CEPL and consequently, an order of permanent injunction restraining CEPL from giving effect to any of the resolutions purported to have been passed at the said Board Meeting;

(b) to amend the Articles of Association of CEPL to include articles to the effect that so long as C.G. Holdings holds shares in CEPL, no policy decision to increase the authorised capital, sale, disposal or encumbrances of the investments in shares in the subsidiaries be taken by CEPL in general meeting, without the affirmative vote of C.G. Holdings;

(c) to amend the Articles of Association of CEPL to include an Article that so long as C.G. Holdings has its nominee on the Board as a Director no quorum for any meeting of the Board of Directors would be possible without the presence of such a nominee;

(d) to restrain the respondents 3 & 4 or any other nominee of the respondents 2 & 5 from proceeding with the holding of the Board of Directors meeting on 12.11.2005 or any other subsequent date;

(e) to appoint an independent valuer to assess the value of CEPL and loss suffered by it on account of the breach committed by respondent Nos. 2 & 6 under the Joint Venture Agreement and surcharge respondents 2 to 6 who have acted in concert in CEPL for having caused loss, under Schedule XI of the Act;

(f) to formulate a scheme/method of exit of the second respondent from CEPL after taking into account the loss occasioned to CEPL.

6.At the same time, ORE alleging that KCP by misrepresentation induced ORE to enter into Joint Venture Agreement and made ORE to invest Rs.75 crores. Instead of investing the company (CEPL) fund for development of and sale of hotels and IT parks as agreed, divested the fund to discharge the liabilities of his subsidiary companies. Minutes of the Board meeting were fabricated by KCP to enable siphoning of CEPL fund. Listing out the diversion of fund, misapplication of company (CEPL) fund and material breach of Joint Venture



Agreement C.P.No.76/2005 was filed by ORE Holding Company.

7.The relief sought in CP 76/2005 are:-

(i) to remove KCP from the office of Director, Chief Executive Officer and Managing Director of CEPL;

(ii) to restrain KCP and C.G. Holdings, and/or any nominees of CG Holdings from in any manner acting on behalf of CEPL;

(iii) to constitute a Board of Management for CEPL, consisting of independent Directors and the nominee of ORE;

(iv) to direct the CEPL to give effect to all resolutions passed by CEPL in its meeting held on 12.11.2005;

(v) to set aside all contracts entered by or on behalf of the subsidiaries in violation of the provisions of the Joint Venture Agreement;

(vi) to direct the registered office of CEPL and the subsidiaries to be shifted to Chennai;

(vii) to call for all and inspect all statutory records, registers, financial statements, title deeds to properties of CEPL and the subsidiaries;

(viii) to direct KCP to render true and faithful accounts of CEPL and the subsidiaries since their inception;

(ix) to order an investigative audit to determine the amounts misappropriated, misapplied or diverted by C.G. Holdings and KCP; and

(x) to direct C.G. Holdings and KCP to return to CEPL all moveable and Immovable assets, funds, accounts, securities and other properties of CEPL misapplied, misappropriated or diverted by them.

8.The Company Law Board (CLB) heard both the petitions together since the charges and grievances were in relation to the affairs of the one and the same company namely CEPL. Passed a detailed order on 13/08/2008. The operative portion of the said order reads as follow:-

" In view of the foregoing conclusions and in exercise of the powers under Sections 397 & 398 read with Section 402 and with a view to bringing to an end the grievances of CG Holdings, KCP, ORE and Athappan, the following order is passed:

"CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of



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repayment within a period of 12 months in one or more instalments, commencing from 01.11.2008. While making the payment CEPL, CG Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter.

CEPL, CG. Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with SBI, Erode Main Branch, free of any liens or encumbrances towards refund of the investments of ORE and Athappan.

VML shall not alienate or sell any of its Immovable properties till full payment is made to ORE, in terms of this order.

In the event of any failure to make the repayment within the specified time, CEPL, CG Holdings, KCP and VML will duly convey the immovable properties of VML, namely, 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable law, as consideration for reduction of capital and surrender of the shares of ORE and Athappan, upon which ORE as well as Athappan will deliver the share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries, if any, in favour of CG Holdings and KCP.

CEPL is consequently authorized to reduce its share capital and in the meantime, operation of the impugned agreements is suspended, to expedite and ensure due completion of the modalities of exit by ORE and Athappan, thereby, bringing to an end the acts complained of in the present proceedings.

CEPL shall ensure necessary statutory compliances till the whole process, in accordance with



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the aforesaid directions, is properly completed. The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exist of ORE and Athappan from CEPL."

9. On considering the allegations and grievances made against each other, the CLB passed the above order framing a scheme for smooth exit and gaveliberty to the parties to approach CLB in case of any difficulty in implementing the order.

10. C.G.Holdings Pvt. Limited and K.C.Palanisamy, the petitioners in C.P.No.65/2005 filed C.A.No.154/2005 under Regulation 44 of the Company Law Board Regulations, alleging that ORE Holdings and N.Athappan trying to frustrate the implementation of the order by giving false complaint to the police. Due to the representation given to the Bank, they are prevented them from dealing with the Fixed Deposit with SBI, Erode Branch. Therefore, prayed for restrain order and permission to induct new Directors for CEPL.

11. O.R.E Holdings Limited, the petitioner in C.P.No.76/2005 filed C.A.No.155/2005 seeking clarification and further directions from CLB. Particularly, pointing out that being a company incorporated at Mauritius, any transfer of funds from a resident to a non resident should be in compliance of the provisions of FEMA. As per the law in force, a company incorporated outside India not permitted to hold immovable property in India. Therefore, sought for order to permit the O.R.E to cause conveyance of the property to a willing buyer and receive the proceeds. Further, prayed for an order to apportion the money lying in the Fixed Deposit with SBI, Erode Branch between O.R.E and N. Athappan in the ratio of 75:4

12. Taking note of the difficulties brought out by the parties through the above two applications viz C.A.No.154 and 155 of 2005, CLB by its order dated 03/08/2009, modified the earlier order dated 13/08/2008 directing Vasantha Mills Limited to convey the properties to nominee of ORE. Directed SBI, Erode Branch to release 50% of the CEPL's money to ORE and N.Athappan in the ratio of 75:4 and the remaining 50% to C.G.Holdings and K.C.Palanisamy.

13. Challenging the above order of CLB dated 03/08/2009, O.R.E Holdings filed Company Appeals: 21 and 29 of 2009. N.Athappan and R.Athappan filed Company Appeals : 25 and 26 of 2009. C.G.Holdings and K.C.Palanisamy preferred Company Appeal No.27/2009. In these batch of Company Appeals, the Division Bench of this Court formulated questions of law and answered vide common order dated 05/08/2011.



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14.The Division Bench declared the direction permitting the K.C.Palanisamy and C.G.Holding to withdraw 50% of the amount and direction to ORE and Athappan to deposit their share certificate are not supported by any reasons, evidence or materials. The order dated 03/08/2009 virtually nullifies the earlier order. Therefore, the High Court set aside the permission granted to C.G.Holdings and K.C.Palanisamy to deal with 50% of the amount lying in SBI, Erode Branch. Further clarified that, in the event of remote need, the properties of Vasantha Mills Limited i.e. 17.5 acres are to be conveyed to ORE and 7.80 acres to Athappan. O.R.E being a non-resident Company, is not permitted to hold immovable properties in India, however, subject to approval/permission to be obtained by ORE from the competent authority such transfer to be made.

15.As a result, the Company Appeal Nos.21 and 29 of 2009 preferred by ORE and Company Appeal Nos.25 and 27/2009 preferred by N.Athappan and R.Athappan allowed. Company Appeal No.27/2009 disposed of modifying the order of the CLB, dated 03/08/2009 in C.A. No.155/2008 to the effect that the conveyance of immovable properties to nominee of O.R.E is subject to all applicable laws and regulations.

16.To enforce the order of the CLB as modified and clarified by the High Court, O.R.E. Holdings filed E.P.No.36/2011 and N.Athappan filed E.P.No.35/2011 before CLB. Contesting the execution petitions, C.G.Holdings and K.C.Palanisamy filed counter. After the matter was heard and reserved for orders, Vasantha Mills Limited (VML) filed applications in both the execution petitions to stay the execution proceedings till the disposal of the proceedings pending before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). CLB vide, its order dated 30/12/2015 dismissed the Application No. 2/2015, filed by Vasantha Mills Limited. CLB held that Section 22 of SICA does not provide blanket protection. It has to be exercised in a judicial manner by scanning and scrutinizing facts of the case. The applications under consideration are devoid of merits filed after arguments in the execution petition heard and reserved for orders.

17.CLB vide its order dated 31/12/2015, allowed both the execution petitions. In E.P.No.35/2011, CLB declared N.Athappan - the petitioner as the beneficial owner of the land to an extent of 7.80 acres of Vasantha Mills Limited in S.No.113, 124, 125, 123/3B and declared 'ORE Trust' the nominee of ORE Holdings (petitioner in E.P.No.36/2015) as the beneficial owner of the property to an extent of 17.15 acres of Vasantha Mills Limited land out of survey Nos.124,125,123/3B and 113. In case, the respondents fail to execute the sale deed in favour of the petitioner, directed the jurisdictional Registrar to register the sale deed vesting the respective portion of the land in favour of the petitioners/nominee.



18. Challenging the orders of CLB dated 30/12/2015 and 31/12/2015 the present appeals are filed.

19. Vasantha Mills Limited (VML) is the appellant in the following Company Appeals:-

(i) Company Appeal No.5/2016 against the order dated 30/12/2015 passed in C.A.No.2/2015 in E.P.No. 35/2011 in C.P.No.65/2005.

(ii) Company Appeal No.6/2016 against the order dated 30/12/2015 passed in C.A.No.2/2015 in E.P.No.36/2011 in C.P.No.76/2005.

(iii) Company Appeal No.7/2016 against the order dated 31/12/2015 passed in E.P.No.35/2011 in C.P.No.65/2005.

(iv) Company Appeal No.8/2016 against the order dated 31/12/2015 passed in E.P.No.36/2011 in C.P.No.76/2005.

20. CG Holdings Limited and K.C.Palanisamy are the appellants in following Company Appeals.

(i) Company Appeal No.9/2016 against the order dated 31/12/2015 passed in E.P.No.36/2011 in C.P.No.76/2005.

(ii) Company Appeal No.10/2016 against the order dated 31/12/2015 passed in E.P.No.35/2011 in C.P.No.65/2005.

21. In all these appeals, the main contesting respondents are ORE Holdings Private Limited Company, a foreign investor incorporated under the laws of Mauritius and Nandakumar Athappan, S/o Ramasamy Athappan (NRI), a resident of Singapore. The execution petitions filed by them were allowed and the land of VML to an extent of 17.15 acres and 7.80 acres respectively vested on ORE and Athappan.

Maintainability:

22. Before going into the merit of the appeals, a preliminary oral objection regarding maintainability of the company appeals before the High Court under Section 10 F of the Companies Act 1956, raised by the learned counsel appearing for Athappan the petitioner in E.P.No.35/2011 and one of the respondents in these appeals, in view of the notification of 'such date' for giving effect to Section 434 (1)(c) of the Companies Act, 2013.

23. According to Thiru.J.Sivanandaraj, the learned counsel for the respondent Athappan, Section 434(1)(c) of the Companies Act 2013 mandates all proceedings under the Companies Act 1956, pending before the District Court and High Court, are to be transferred to Tribunal on notification of the such date. This



provision came into effect on 15/12/2016. Therefore, the appeals cannot be heard by High Court, but to be transferred to Tribunal.

24. Per contra, Thiru.V.Ramakrishnan, learned Senior Counsel appearing for the appellants in Comp.Appeal Nos.5 to 8 of 2016, submitted that the appeals are to be heard by the High Court, in view of Section 10 F of the old Act and Section 434 (1) (b) of the new Act. The Section 434 of the new Act deals with transfer of certain pending proceedings. Since, the preceding Clause 434 (1) (b) exclusively deals with appeals pending in the High Court on 'such date', the term 'all proceeding' used in Section 434(1) (c) of the new Act does not include appeals pending in High Court. Section 434(1)(b) is a 'stand alone' provision and it empowers High Court as the appellate forum against the decisions or orders of CLB passed before constitution of NCLT. Consequent to the commencement of Section 434(1)(b) with effect from 01/06/2016 and repeal of the old companies Act, 1956 from 30/01/2019 and in view of the saving clause in Section 465 of the companies Act, 2013. Further, appeals filed under Section 10 F of the Companies Act, 1956 in the High Court has to be continued and proceeded under Section 434(1) (b) of the Companies Act, 2013.

25. Section 434 (1)(c) speak about transfer of pending proceedings in the Courts to Tribunal. This provision will not apply to the pending appeals in the High Court against the decision or order of CLB. Precisely, that is the reason why section 434(1)(b) emphasis that order/decision of CLB before 'such date' must be filed in High Court within 60 days from the date of communication of the CLB order. The Companies (Transfer of proceedings) Rules, 2016 which came into effect from 15/12/2016 also silent about transfer of appeals from High Court to NCLT. To buttress his submission, the learned Senior counsel also refer the judgment of the Supreme Court rendered in Kaledonia Jude and Fibres Pvt Ltd -vs- Axis Nirman and Industries Ltd reported in [2021 (2) SCC 403].

26. This Court is of the view that this issue is no more res integra after the clarification given by the Hon'ble Supreme Court in Kaledonia Jude and Fibres Pvt Ltd case cited supra and for the reasons given below.

27. These appeals are filed under Section 10 F of the Companies Act, 1956 within the permissible period of limitation. The orders impugned in these appeals are dated 30/12/2015 and 31/12/2015. The appeals were filed during the month of March, 2016. On the date of filing these appeals, Section 434 of the Companies Act, 2013 was not notified. In exercise of the power conferred under Section 419(1) of the Companies Act, 2013 the Central Government constituted NCLT and NCLAT on 01/06/2016. On the same day, notification issued for transfer of pending



matters or proceedings or cases before Company Law Board to National Company Law Tribunal (NCLT). Section 434 (1) (a) and (b) came into effect from that day. As far as, the appeals against the order of CLB passed before the 01/06/2016, the governing provision is Section 434(1)(b) which reads as under:-

"Section 434 (1) (b): any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding filed within a further period sixty days; and not exceeding sixty days;"

28. Under the 1956 Act, after insertion of Section 10 E and constitution of Board of Company Law Administration, disputes in connection with the affairs of the Companies, were resolved either through Company Law Board or through Courts depending upon the nature of relief sought. They are the forums of first instance (original jurisdiction). Under Section 10 F, the High Court is the appellant Court against any order or decision passed by the Company Law Board. After the Companies Act 2013, from 01/06/2016 all matters, proceedings or cases pending before CLB constituted under Section 10 E of the 1956 Act are to be transferred to concern NCLT by virtue of Section 434(1)(a). All proceedings pending before the Courts, after the date of notification i.e. 15/12/2016 were also to be transferred to Tribunal (i.e) NCLT. To distinguish matters of first instance and Appeals, clause (b) in subsection (1) of Section 434 is incorporated in the Act. The Section, which deals with transfer of proceedings pending before CLB and Court, restricts to proceedings of first instance (original jurisdiction) and not appeals. That is the reason why Clause (b) finds place in the Sub-Section(1) of Section 434. This clause makes clear that the transfer of proceedings is not in respect of appeals against the order or decision of CLB passed prior to 01/06/2016 and pending on the file of High Court. Section 434 (1)(b) though on first reading may look like misfit in the scheme of drafting, on deep reading, it makes clear that this provision is incorporated with purpose.

29. As a sunset clause Section 434(1)(b) takes care of cases decided by CLB before Section 434(1)(a) came into effect. Also,



Section 465(2) (b) saves actions done under the repealed Act i.e 1956 and such Acts are deemed to be done under the new Act, 2013, in so far as it is not inconsistent with the new Act. Therefore, if one read Section 10 F of the 1956 Act and Section 434(1)(b), will find these two Sections are identically worded. Further, the power of the High Court conferred under Section 10 F of the old Act as appellate forum, cannot be taken away without substituting appropriate appellate forum. Under the scheme of the new Act, the forum of first instance of all company disputes is NCLT and the Appellate forum is NCLAT. The decision of CLB cannot be challenged before NCLT since it is not an appellate forum. Like wise, the decision of CLB cannot be challenged before NCLAT, since it is an appellate forum for decision or order passed by NCLT and not for CLB. Therefore, legally and logically, the High Court alone be the appellate Court to decide these appeals.

30.The plea of the respondents Counsel that Section 434(1) (c) has to be applied and the appeals have to be transferred to Tribunal has no force. As submitted by the learned Senior Counsel for the appellants, the appropriate appellate forum against the decisions of the CLB prior to 01/06/2016 is the High Court under Section 434(1)(b). Hence, this Court holds that these appeals are maintainable.

31.Comp. Appeal Nos. 5 and 6 of 2016:

These two appeals are against the order of the CLB dated 30/12/2015 passed in the applications filed by Vasantha Mills Limited (VML). Aggrieved by the dismissal of the Application No.2/2015 in E.P.No.35/ 2011 and Application No.2/2015 in E.P.No.36 of 2011, these two appeals are filed by VML raising the following questions of law:-

"(i) Whether the Hon'ble Company Law Board, Chennai, was right in rejecting the appellant's plea of stay of proceedings under Section 22(1) of the SICA, 1985 on the ground that orders have been reserved in C.A.No.2 of 2015 in E.P.No.36 of 2011?

(ii) Whether the provisions of Section 634A, 397, 398, 402 and 403 of the Companies Act, 1956 will override Section 22(1) of the SICA Act, 1985?

(iii)Whether the Hon'ble Company Law Board has jurisdiction to order execution proceedings against the appellant, when an appeal under Section 25 of the SICA Act is pending before the AAIFR?

(iv)Whether the Hon'ble Company Law Board could have applied the decision in Arjun Singh v. Mohindra Kumar & Ors., (1964) 5 SCR 946 and Pujya Sindhi Panchayat



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v. CL Mishra, AIR 2002 Raj 274 to the present case?

(v) Whether the Hon'ble Company Law Board ought to have considered that the protection under SICA, 1985 is not merely for the benefit of the appellant but for also its workers?

(vi) Whether the impugned order passed by the Hon'ble Company Law Board, was illegal and without jurisdiction?"

32. In response to these appeal and question of law raised, the first respondent had filed a common counter, wherein it is stated that the application filed by VML, after reserving order in the execution petition is not maintainable and the order of the CLB dated 30/12/2015 is unimpeachable. The execution petitions, after affording full opportunity to the parties, were reserved for orders on 08/09/2015. Thereafter, the applications under Section 22 (1) of SICA was moved, to the stay the execution proceedings. Relying upon the judgments of the Supreme Court rendered in Arjun Singh -vs- Mohindra Kumar and Ors reported in [1964(5) SCR 946]; judgment of the Delhi High Court rendered in Apollo Finance Ltd -vs- GSL India Ltd reported in [2002 (108) Comp.Cases 184]; and the judgment of Rajasthan High Court rendered in Pujya Sindh Panchayat -vs- CL.Mishra reported in [AIR 2002 Raj 274], the CLB has rightly held that Section 22 (1) of SICA does not give a blanket protection.

33. As far as the facts of this case, the exit scheme of the CLB by orders dated 13/08/2008 and 03/08/2009 got confirmed by the Division Bench of the Madras High Court, after rectifying the errors with modification and some was tested by the Hon'ble Supreme Court in a collateral proceeding and was held as final. The execution petitions filed under Section 634 A to enforce the said order allowed and reached finality. The applications by VML is filed, after lapse of several years invoking the protection under Section 22 (1) SICA, even without furnishing the appeal number pending before AAIFR. Not only the latches but the timing of filing, these applications also found to be ill-motivated. In the Execution petition, VML engaged counsel and filed counter. After arguments orders were reserved. Till then, neither in the company petitions No:65/2005 and 76/2005 nor in E.P.Nos.35 and 36/2011, VML never raised the plea of pendency of matter before BIFR or AAIFR. Just before delivery of the order, a plea unfound, raised in these applications for stay of the execution.

34. Further more, VML was declared a sick company as early as 1985. KCP got control of the assets and liability of VML in the year 1992. Much water had flowed since then, more particularly after 2003, when ORE and Athappan came forward to promote the land held by VML. The Joint Venture Agreement between KCP, ORE



and Athappan and the incorporation of 'CEPL' had totally changed the legal and financial character of VML. It is clear as crystal that KCP, after more than a decade of litigation and his futile attempts through all means including criminal prosecutions, to frustrate the implementation of the exit scheme, in the name of VML, just before pronouncing order in the execution proceedings had filed the applications as if VML a sick industry and the appeal under Section 25 of the SICA is pending before AAIFR, therefore, its interest to be protected under Section 22 (1) of SICA.

35.It is by now well settled that the immunity guaranteed under Section 22 of SICA is not absolute. The bar or embargo under Section 22 (1) of the Act, should not lead to any undesirable state of affairs. The cover of preventive umbrella of Section 22(1) of the SICA, cannot be allowed to be misused to torpedo judicial orders. Section 22 is not meant to breed dishonesty nor can it be so operated as to encourage unfair practices. (refer: Deputy Commercial Tax Officer -vs- Corromandal Pharmaceuticals [[1997] 2 SCR 1026])

36.Hence, for the above reasons, the Company Appeals No: 5 / 2016 and 6/2016 deserves to be dismissed for want of merits. Accordingly, the Company Appeals No:5 and 6 of 2016 are dismissed. The orders of CLB dated 30/12/2015 passed in Application No:2/2015 in E.P.No.35/2011 in C.P.No.65/2005 and in Application No:2/2015 in E.P.No.36/2011 in C.P.No.76/2005 confirmed.

37.Comp.Appeals 7 to 10 of 2016:

Out of these four appeals, VML is the appellant in Company Appeal No.7/2016 filed against the order dated 31/12/2015 passed in E.P.No.35/2011 and the Company Appeal No.8/2016 filed against the order dated 31/12/2015 passed in E.P.No.36/2011. CG Holdings Limited and K.C.Palanisamy are the appellants in Company Appeal No.9/2016 filed against the order dated 31/12/2015 passed in E.P.No.36/2011 and the Company Appeal No.10/2016 filed against the order dated 31/12/2015 passed in E.P.No. 35/2011.

38.In all these 4 appeals, the grounds of challenge are almost identical. The Questions of Law raised in these appeals reads as below:-

"(I)Whether the payment due to a foreigner pursuant to a decree providing for buyback of its securities would be subject to the cap imposed by the FEMA regulations No.15/2013-14 dated 01.07.2013 and if so can an amount exceeding the 79 crores be paid as consideration in such a case?

(II)Whether the Madras High Court Order dated 05.08.2011 should be interpreted to water down the



(III) Whether the CLB ought to have considered that the return of monies to ORE was a consideration for buy-back of its shares and thus, the entire transaction was subject to all applicable?

(V) Whether the impugned order permits execution of debt like features in an equity transaction, which has been specifically barred by the RBI vide its circular dated 09.01.2014?

(VII) Is an Order passed by a Court which is against Statute and which results in unjust enrichment one which the Court inherently lacks jurisdiction to pass?

(IX) Once the liability of a party is determined to be a fixed sum of money, can a Court/ Tribunal, in the event of non-payment of that money, direct that the property of the judgment Debtor's group company be transferred to the successful party?

(X) Would the principles enshrined in the CPC and specifically Order XXI Rule 64 of the CPC govern the power of the Hon'ble CLB while passing Orders of



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execution?

(XI) In light of the fact that the value of property is ever changing, does a Court/Tribunal lack the power to direct the property to be conveyed in satisfaction of a money decree?

(XII) Has the Hon'ble CLB acted beyond the limited powers conferred upon it by the Companies Act, 1956?

(XIII) If the Hon'ble CLB, acting under section 634A of the Companies Act, 1956, would not have the power to order a direct transfer of property as a means of executing an Order, would it have the powers to do so under Sections 397- 402?

(XIV) Whether the Madras High Court Order (5.8.2011) should be interpreted to water down the 2008 CLB Order and if so is ORE's prayer to seek a transfer of the property of VML as a matter of right misconceived?

(XV) Whether the letter dated 08.06.2015 constituted of a valid approval by RBI to permit transfer of VML land to ORE Trust?"

39. In response to the questions of law raised by the appellants, both the contesting respondents namely ORE and Athappan had filed their counters. The gist of the counters is that,

i) the order in C.P.No.65/2005 and C.P.No.76/2005 was passed, after hearing all the parties concerned. The Joint Venture Agreement and FDI was made in compliance of FEMA regulations. While framing the Exit scheme, CLB had taken note of those facts and no appeal was filed by these appellants against the order of the CLB dated 13/08/2008.

ii) The subsequent order of CLB dated 03/08/2009 modifying the 13/08/2008 when challenged before the High Court in Company Appeal Nos.21 and 25 to 27/2009 and 29/2009 and O.S.A.Nos.2 to 5/2009, and O.S.A No. 258/2009, the High Court has passed a comprehensive order on 05/08/2011. This order has reached finality with the seal of approval by the Hon'ble Supreme Court in the batch of civil appeals In Chandran Rathnaswami -vs- K.C.Palanisamy and others etc. by order dated 09/05/2013.

iii) The transfer of VML property is a right conferred to the investors namely ORE and Athappan in case of failure to pay back the invested money with interest within the period of 12 months. The claim of the appellants that, the return of monies invested by ORE and Athappan was for a consideration for buy-back of



shares is false and mischievous. The order of the CLB is pursuant to the prayer sought by C.G.Holdings to frame a scheme of exit and passed in exercise of its power under Section 402 of the Companies Act, 1956 to bring an end to the joint venture agreement.

iv) As per the High Court order dated 05/08/2011 in Company Appeal Nos.21 and 25 to 27/2009 and 29/2009, ORE has obtained permission of RBI and had nominated ORE Trust. The relevant documents were produced before CLB in the execution petition and the same has been duly considered by CLB and recorded the same in the order impugned in these appeals. As far as Athappan is concern, RBI vide its letter dated 04/04/2012 had clarified that no approval is required for acquiring land by Athappan. Therefore, the grounds of challenge are without any merits, baseless and frivolous. Contrary to Court records.

40.During the course of argument, the learned Senior Counsel representing Vasantha Mills Limited, condensed and capsule the Questions of Law as below:-

1. Whether the CLB in execution has powers to vary the order sought to be executed ?
2. Whether the CLB in execution is bound to follow Order 21 of CPC ?
3. Whether in the light of the Division Bench order, the CLB had jurisdiction to order vesting of property of greater value than the principal amount decreed and interest thereon?

41.The learned Senior Counsel making a comparison of the operative portion of the CLB order ought to be executed and the order passed in execution petition, submitted that the declaration relief granted and vesting of the property are behind and beyond the decree. Without following the procedures laid under Order 21 of CPC, the CLB had passed the impugned order. The Division Bench of the High Court in its order dated 05/08/2011 had clearly stated that the properties of VML are to be kept as security and only in the event of remote need, the properties of VML i.e 17.15 acres are to be conveyed to ORE and 7.80 acres to Athappan. Thus, it is very clear through the above observation of the High Court that the property is to be held only as security and cannot to be conveyed, unless there is remote need. While so, the CLB erred in vesting the land to the decree holder without any material or justification of remote need. The property is worth several times the principal amount decreed and interest thereon. The property held as security, which is greater in value than the money due, cannot be conveyed. The execution Court is bound to follow the principle of proportionality. In the instant case, the CLB gravely erred in not considering the proportionality of the amount due and the



value of the property conveyed which is held only as security.

42. The learned Senior Counsel representing C.G. Holdings submitted that, the CLB, after its order dated 13/08/2008, had become functus officio. Any change must be only by and before the Appellate Court. The order sought to be executed is the order modified without authority of law. Nullity can be questioned at any stage. Further, in the Division Bench Order, no time limit fixed for repayment of the money invested with interest. Therefore, the stage of 'remote need' never reached in this case. Hence, the declaration and vesting order are premature without authority and a nullity.

43. Per contra, the learned counsels appearing for the respondents contented that, the plea of "functus officio" is ill conceived. The order which was executed by the CLB in exercise of its power under Section 634 A of the Companies Act, is the order passed by the Division Bench of the High Court, which interfered the order modified by the CLB. The original order of the CLB dated 13/08/2008 was not challenged by anyone. The CLB order is of three parts:-

First: CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of repayment within a period of 12 months, in one or more instalments, commencing from 01.11.2008.

Second: In the event of any failure to make the repayment within the specified time, CEPL, CG Holdings, KCP and VML will duly convey the immovable properties of VML, namely, 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws.

Third: The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exit of ORE and Athappan from CEPL.

44. The appellants did not evince any genuine interest to comply the first limb of the order and its make-belief attempt to pay got exposed. They tried to siphon out the money lying in the Bank. Therefore, ORE Holdings filed application before CLB since, CLB in its order dated 13/08/2008 gave liberty to the parties to approach CLB in case of difficulty in implementation of the smooth exit. CG Holdings and K.C. Palanisamy (the appellants in Comp. Appeals No. 9 and 10 of 2016) also filed separate application expressing their difficulty in implementing the exit scheme. In the said circumstances, CLB modified its earlier order. However, the said modified order was challenged before the High Court. The order now executed is in consonance with the order of the appellate Court in Comp. Appeals No. 21 and 25 to 27 and 29 of 2009. Therefore, the comparison of the



original order of CLB dated 13/08/2008 with the order passed in the execution petition is misleading and mischievous.

45. Further, the learned Senior Counsel appearing for the respondent- ORE Holdings submitted that, after the order passed by the appellate Court, the order of the CLB got clarified through the appellate Court order dated 05/08/2011. The appellants at no point of time in the past had sought for extension of time to honour their commitment of repaying the invested money with interest. Due to their failure to pay the money within the time prescribed and no sign of attempt to pay the money had resulted in the 'remote need' to invoke the second limb of the CLB order viz, transfer of the land. The declaration of title and vesting of the property is the natural consequence to the decree and not beyond or behind the decree. The order of the CLB constituted under Section 10 E of the Companies Act, are to be enforced by CLB itself. Only in case of inability to execute the order, CLB need to send the case to the Court. Therefore, these appeals, which lack any question of law, are abuse of law to prevent the decree holder from enjoying the fruits of the decree.

46. Heard the erudite arguments of the Mr.T.R.Rajagopalan (Senior Counsel) and Mr.V.Ramakrishnan (Senior Counsel) for the appellants. Mr.ARL.Sunderasan (Senior Counsel) and Mr. J.Sivanandaraj for the contesting respondents. Apart from their respective oral submission, this Court also had an additional advantage of guidance by way of the judgments of the Division Bench of this Court passed in Company Appeals No. 21 and 25 to 27 and 29/2009 and the order of the Hon'ble Supreme Court in the collateral proceedings, which has dealt this case earlier and rendered a detailed judgment.

47. To buttress their arguments, the learned counsels relied upon the following judgments as binding precedent:

(i) Dwarakadas -vs- State of Madhya Pradesh:- 1999(3) SCC 500;

(ii) K.Rajamouli -vs- A.V.K.N.Swamy :- 2001(5) SCC 37;

(iii) Rafique Bibi (Dead) by Lrs. -vs- Sayed Waliuddin (Dead) by Lrs. & Others: 2004(1) SCC 287.;

(iv) Balvant N.Vishwamitra & Ors -vs- Yadav Sadashiv Mule (dead) & Ors: AIR 2004 SC 4377;

(v) Manish Mohan Sharma & Ors.-vs- Rambahadur Thakur Ltd & Ors: 2006(4) SCC 416;

(vi) Narpat Singh -vs- Rajasthan Financial Corporation: - 2008 (1) CTC 73.



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(vii) Bholi -vs- Lachman Singh:CDJ 2008 775;

(viii) V.S.Krishnan & Ors. -vs- M/s Westfort Hi-Tech Hospital Ltd & Ors:- 2008(3) SCC 363;

(ix) M S.D.C.Radharaman-vs- M.S.D.Chandrasekara Raja & Ors:- 2008(6) SCC 750; and

(x) Purnima Manathena & Ors. -vs- Renuka Datla & Ors:- 2016 (1) SCC 237

Functus Officio:

48. 'Functus Officio' is a latin term applied to something, which once has had a life and power, but which has become of no virtue whatsoever, after fulfilling or accomplishing the purpose of its creation. In Dwarakadas case cited supra, after the decree of the trial Court, the decree holder filed an application under Section 152 of the CPC praying for awarding of interest from the date of the suit, till the date of the decree by correcting the judgment and decree on the ground that non-awarding of interest pendente lite was an accidental omission. The trial Court allowed this application and directed the correction of the judgment and decree by awarding interest pendente lite. Aggrieved by the judgment and decree of the trial Court, the Judgement Debtor (JD) appealed to the High Court. The High Court partly allowed the appeal by holding the Judgement Debtor (JD) is liable to pay only a sum of Rs.4,783.33 to the Decree Holder with interest at the rate of 6% pa. The order of the trial Court granting interest pendente lite was set aside. Challenging the High Court order, the Decree Holder took up the matter to the Hon'ble Supreme Court. In the said context, the Hon'ble Apex court said ,

"Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the Tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court, while passing the judgment, decree or order. The omission sought to be corrected, which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is



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to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the Courts below have been liberally construing and applying the provision of Sections 151 and 152 of the CPC even after passing off effective orders in the lis pending before them. No Court can under the cover of the aforesaid Sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial Court specifically held the respondents-State liable to pay future interest only, despite the prayer of the appellant for grant of interest with effect from the date of alleged breach, which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake."

49. Following the above dictum laid in Dwarakadas case, the Hon'ble Supreme Court in its subsequent judgment K. Rajamouli- vs-.V.K.N. Swamy cited supra, held,

"In the present case, neither the arbitrators nor the trial Court awarded pendente lite interest to the decree holder. The executing Court also refused to grant pendente lite interest to the decree holder and the same was upheld by the High Court in the revision petition filed against the order of the executing Court. However, the position would be different where the judgment of a Court provides for pendente lite interest and decree omits to mention such interest. Such a mistake could be corrected under Section 152 CPC. The correct position of law is that a decree cannot add or subtract any relief except what has been provided in the judgment."

50. The four line order of the Hon'ble Supreme Court in Narpal Singh case relied by appellant counsel reads as below:-

"I.A.No.15-16 for clarification and direction of Court's Order dated 3.5.2007 are totally misconceived. Moreover, ordinarily no I.A. lies after a case is finally disposed of. Ordinarily, an I.A. is maintainable only in a pending case. Once a case is finally disposed of the Court becomes functus officio, and thereafter an I.A. lies ordinarily only for correcting clerical or accidental mistake. The same are accordingly, dismissed."



51. Bholi (Dead) By L.R.S. -vs- Lachhman Singh & Ors case arise from a suit for declaration of title alleging the sale deed obtained by defendants by fraud. The plaintiff lost before the trial Court. Pending his appeal before the appellate Court, the parties entered into compromise and a decree was passed. As per the terms of the compromise, the Defendants Nos.8 to 18 agreed to pay a sum of Rs.10,000/- in two installments, one of Rs.7,000/- on or before 30.10.1985 and second installment of Rs.3,000/- on or before 30.5.1986. However, the defendants failed to pay the second installment within the time fixed. An application was filed under Section 147 CPC for extension of time to deposit the second installment which was rejected by the trial Court. Aggrieved thereby, the defendants filed an application under Section 115 CPC which was allowed by the High Court by extending the time enabling the defendants to deposit the second installment. Against the order of the High Court, the plaintiff filed Civil Appeal (CA) before the Supreme Court. The said Civil Appeal was disposed of on 30th October, 2002 with the following observation:-

"It is not disputed that the settlement arrived at between the parties was made part of the decree of the Court. It was a decree like any other decree passed by the Civil Court. Once a decree is passed by the Court, it becomes functus officio to modify the decree. It is only the higher court either to set aside the decree or to modify the decree. Since the court, after passing the decrees became functus officio, it also had no power under Section 148 CPC to extend the time for depositing the money by modifying the terms of the decree which was passed on settlement between the parties. If the Court modifies the decree, it varies the terms of the settlement which is not permissible. In that view of the matter, the High Court fell in error in extending the time for depositing the second installment by the defendants. Consequently, the appeal deserves to be allowed."

52. Having suffered the above order in the civil appeal filed against the order of the High Court passed under its revisional jurisdiction under Section 115 of CPC, the Defendants filed second Appeal before the High Court after delay of 17 years and same was entertained by the High Court. That order when challenged before the Supreme Court, the Court extracting its earlier order dated 30/10/2002 held:

"after the decision of this Court dated 30.10.2002 the controversy between the parties finally came to an end and it was not



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permissible for the High Court to entertain the second appeal thereafter. In the aforesaid view, we are of the view that the High Court fell in error in entertaining the second appeal by the impugned order. Accordingly, the impugned order passed by the High Court is set aside".

53. Coming back to the facts of the case in hand, as discussed earlier, the exit scheme framed by CLB vide its order dated 13/08/2008 accepted by all the contesting parties and not challenged before the higher forum. What was challenged was the modification of the order dated 13/08/2008 pursuant to the applications filed by CG Holdings and O.R.E. Holdings. However, the error in the modified order dated 03/08/2009 was rectified and cured by the High Court in the appeals vide order dated 05.08.2011. As the result, true test should be is whether the execution order of CLB dated 31/12/2015 is in tune with the order of the High Court order dated 05/08/2011 which modified the CLB order in exercise of its power under Section 10F of the Companies Act.

54. It is to be borne in mind, that the petitions in C.P.No.65 of 2005 and C.P.No.76 of 2005 were filed under Sections 397, 398, 399, 402 and 403 of the Companies Act, 1956 making allegations and counter allegations of oppression and mismanagement. CG Holdings and KCP prayed for an exist scheme, whereas ORE Holdings and Athappan wanted institutional auditing and protection from mismanagement. The object of Sections 397, 398 and 402 of the Companies Act, is well defined and explained by the Apex Court in V.S.Krishnan & Ors -vs- M/s Westfort Hi-Tech Hospital Ltd. & Others reported in 2008 (3) SCC 363 as below:-

"In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to:

(a) Needle Industries (India) Ltd. And Others v. Needle Industries Newey (India) Holding Ltd. And Others, (1981) 3 SCC 333.

(b) M.S. Madhusoodhanan & Anr. v. Kerala Kaumudi (P) Ltd. & Ors., (2004) 9 SCC 204.

(c) Dale and Carrington Investment (P) Ltd. & Anr. v. P.K. Prathapan & Ors., (2005) 1 SCC 212.

(d) Sangramsinh P. Gaekwad & Ors. v. Shantadevi P. Gaekwad (Dead) Through L.Rs & Ors. (2005) 11 SCC 314.

(e) Kamal Kumar Dutta & Anr. v. Ruby General Hospital Ltd., & Ors. (2006) 7 SCC 613."



acres of land morefully mentioned in the order. Similarly it should have paid Rs.4 crores with 8% interest within the one year period to Athappan or in alternate 7.80 acres of land should have been conveyed to him. Even after lapse of several years, the appellants admittedly not complied either of the two options given to them. Hence, CLB in exercise of the power conferred under Section 634A of the Companies Act, had passed the orders in Execution Petitions No.35/2011 and 36/2011 to enforce its earlier order. In the order enforced by CLB, no addition or subtraction of the decree which could materially change the spirit of the order could be seen.

57.The judgments referred and relied by the appellants to impress that CLB has become 'functus officio' after delivery of the order dated 13/08/2008 and CLB execution order is a nullity are in fact both legally and factually not relevant to the case in hand. In all the judgments cited, the Court which has passed the decree later, has altered or modified the decree either by extending the time limit or by awarding interest pendente lite. Whereas in the instant case, the order of CLB dated 13/08/2008 as modified by the subsequent order dated 03/08/2009 was altered and clarified by the appellate Court, thus the order of CLB merged with the order of the High Court. The CLB in exercise of its power under 634 A had executed the order which has the approval of High Court and the Supreme Court. Under Section 10E (5) of the Companies Act, 1956, without prejudice to the provisions of Sub-Section (4C) and (4D) CLB shall in exercise of its powers and in discharge of its functions under the Act or any other law be guided by the principles of natural justice and shall act in its discretion.

58.It is trite principle of law that the decree, which is the formal expression of the adjudication, should go in tune with the judgment/order. The final order in the instant adjudication is the order dated 05/08/2011 passed by the High Court in exercise of the appellate power. On comparing the High Court order with the operative portion of the CLB order passed in the execution petition, this Court find no deviation or modification which is beyond the order/decreed. Declaring the title and vesting the possession is consequential to the main relief and nothing in deviation of the main relief. CLB has inherent power to give full and meaningful effect to its decision.

59.The difference between the CLB order dated 13/08/2008 passed in the company petitions and the impugned order dated 31/12/2015 passed in the execution petitions is the explicit permission to transfer of land to the nominee of the decree holders, after obtaining all the required approval from the competent authorities. This modification is an essential necessity for enforcing the order in letter and spirit. CLB has



not done this modification on its own, but based on the clarification and permission given by the High Court in its order dated 05/08/2011.

60. CLB took up the adjudication under Sections 397, 398 and 399 of the Companies Act to resolve the dispute arose from Joint Venture Agreement. As observed by the Hon'ble Supreme Court in the collateral proceedings, the said dispute has been fully and finally settled by the CLB and the High Court. For the enforcement of the said settlement in a meaningful manner, the modification approved by the High Court vide its order dated 05/08/2011 is inevitable. The execution order is in tune with the clarification made by the High Court in paragraphs 144 to 146 of its order dated 05/08/2011. It is also pertinent to note that RBI vide its letter dated 08/06/2015 had permitted 'ORE Trust' the nominee of ORE Holdings to get the land of VML conveyed in its favour.

61. Therefore, on cumulative consideration of the orders passed by CLB on 13/08/2008 and 03/08/2009, the order of High Court dated 05/08/2011 (reported in 2011 SCC online Mad 1078) and the order of the Supreme Court dated 09/05/2013 (reported in 2013 (6) SCC 740), this Court holds that, the functus officio argument of the appellants is baseless.

Nullity:

62. A Decree can be said to be a nullity, if passed without jurisdiction. A decree is without jurisdiction, if the Court passing the decree, has usurped a jurisdiction, which it did not have and which could not be waived by the parties. A mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to come to the conclusion that the decree is a nullity.

63. In Rafique Biby (Dead) by Lrs. -vs- Sayed Waliuddin (Dead) by Lrs. & Others reported in 2004 (1) SCC 287, the Hon'ble Supreme Court has held that:

"A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal and not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a



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superior Court failing which he must obey the command of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

64. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & others, reported in (1970) 1 SCC 670, it has been held:-

"When the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But where the objection as to jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

65. In the light of the above observations by the Hon'ble Supreme Court, when the order executed by CLB is tested, the procedural infraction alleged is not a ground to call a decree nullity. It is not the case of the appellants that CLB lack jurisdiction to enforce its order. Their case is that, after modification by the High Court, CLB lack jurisdiction to enforce the order dated 13/08/2008. The appellants could not point out anything in the impugned order, which has not been intended by CLB or High Court. CLB order dated 13/08/2008 was subjected to modification vide, order dated 03/08/2009 and that order was appealed and same got interfered/clarified by the High Court vide dated 05/08/2011. Thereafter, CLB in exercise of the power vested in it under Section 634A had passed the order impugned in these appeals. Therefore the argument that CLB should not have entertained the execution petition has no legs to stand and bound to fall. Likewise, the submission that the order in the execution petition is beyond and behind the operative portion of the decree is to say the least, a misconceived submission, made ignoring the fact that modification of the CLB order dated 03/09/2009 was challenged, tested and the error whatsoever found was rectified and cured by the appellate Court. The appellants submission that the order of the CLB dated 31/12/2015 is nullity is legally unsustainable.

Application of Order XXI of CPC:

66. Vesting of civil Court powers in certain matter does not mean that the powers vested to CLB under the Companies Act are divested. CLB is a creation under Companies Act, 1956 and



governed by Companies Act and Regulations framed under the said Act. Actions of CLB should not be looked through the prism 'CPC'.

67. A combined reading of Section 10E, 10F and 634A of the Companies Act, indicates that the purpose of CLB does not get fulfilled with passing order but it is also empowered with the power under Section 634A to execute its order. CLB constituted under Section 10E of the Act, is vested with the power of a Civil Court in respect of certain matters enumerated under Section 10E (4C). It is to be noted that, all the 6 heads enumerated under Section 10E (4C) are matters related to pre-trial and during trial but not related to execution. To make it more clear, the matters enumerated are:-

- (a) Discovery and inspection: (Or XI CPC)
- (b) Enforcing attendance of witnesses: (Or XVI CPC)
- (c) Compelling the production of documents: (Or XIII CPC)
- (d) Examining witnesses on oath: (Or X, XVIII CPC)
- (e) Granting Adjournments: (Or XVII CPC)
- (f) Reception of evidence on affidavits (Or XIX CPC)

68. In exercise of its powers and the discharge of its functions, CLB has to be guided by principles of natural justice and shall act in its discretion. It also has power to regular its own procedure [See Section 10 E (5) and (6)]. The CLB while dealing applications filed under Section 634 A of the Act sit as executing Court. Section 634A empowers CLB to execute its own order. It enables CLB to send execution petition to a Court in case of its inability to execute such order. It is left to the discretion of CLB whether it has the ability to execute or not. So, application of CPC in general or order XXI of CPC in particular nowhere contemplated under Companies Act when CLB executes its order. The guiding principle to be followed is the principle of natural justice. The appellants case is not that CLB while executing the order has violated the principle of natural justice. Even if they want to say so, there is none.

69. On examining the Company Law Board Regulations 1991, we find under Regulation 44, the inherent power of the Bench is saved. This Regulation reads as follows:

"Saving of inherent power of the Bench:
"Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench."

70. At this juncture, Regulation 48 is also need to be taken note, which confers CLB with the power to dispense with the requirement of any Regulations, for reasons to be recorded in writing. As observed by the learned Judge in M.S.D Chandrasekar



Raja -vs- Jayabharath Textiles Pvt. Ltd. And Ors reported in [(2014) 1 LW 139], "CLB is conferred with a power under Regulation 48, to do something that even a Civil Court cannot do. A normal Civil Court cannot dispense with the requirements of any specific provision of the Code of Civil Procedure. To my mind, CPC does not confer any such power upon a normal Civil Court. Therefore, it is clear that the CLB is made by regulations, to be a Master of its own procedure, apart from being the Master of ceremonies."

71.The provisions of the Companies Act, 1956 and the judgments referred above without any doubt answers in negative the question about application of Or XXI of CPC in execution of CLB order. Therefore, the order of CLB passed under Section 634A cannot be challenged on the ground of non adherence of the procedures laid under Or. XXI of CPC.

Proportionality:-

72.The learned counsel for the appellants VML, relying upon paragraph 144 of the High Court order dated 05/08/2011, submitted that the property of VML is only kept as security for the repayment of the money vested by ORE and Athappan. Only in case of remote need the land of VML is to be conveyed. That too, proportional to the money payable. At present the value of the property is nearly Rupees 500 crores. Whereas the principle and interest payable to ORE and Athappan is far less. The impugned order is not equitable and therefore, liable to be set aside.

73.In response, the counsels for the respondents submitted that, the submission of appellants is devoid of merit and bonafide. On the date of CLB order which framed the exit scheme, the money invested and the extent of land ordered to be conveyed was proportionate and accepted without any demur. After enjoying the benefit of the exit scheme taking the absolute control of CEPL and its subsidiaries the appellants cannot retract from their commitment.

74. Paragraph 144 of the Division Bench order dated 05/08/2011 read: "ORE, being a non-resident Company is not permitted to hold immovable property, in India. In the first limb, the properties of VML are kept as security and only in the event of remote need, the properties of VML i.e 17.15 acres are to be conveyed to ORE and 7.80 acres to Athappan. ORE, being a non-resident Company, is not permitted to hold immovable properties in India, however, subject to approval/permission to be obtained by ORE from the competent authority."

75.The directions in the order of CLB dated 13/08/2008, is divided into three limbs. The first limb which is referred above is the direction of CEPL to return a sum of Rs.75 crores



and Rs.4 crores invested by ORE and Athappan respectively, together with simple interest of 8% p.a from the date of investment till the day of repayment, within a period of 12 months in one or more installments, commencing from 01/11/2008.

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76. Till the expiry of one year period granted to repay ORE and Athappan their money invested, the appellants representing CEPL never made any genuine attempts to pay. Even thereafter, never sought for extension of time or offered to repay the investment when the dispute between them was pending before High Court and the Supreme Court. At least before the CLB when the execution petitions were pending, they should have deposited the money to show their bonafide. Having failed and deprived the respondents from tasting the fruits of the decree for more than 12 years, had raised the plea of proportionality.

77. The case under consideration is not a suit for recovery of money simplicitor or a suit for specific performance. In a joint venture agreement (JVA) entered between KCP, C.G.Holdings VML and CPL as one group, ORE as another group and Athappan as third group, investment as stated above was made by ORE and Athappan. When the proposed project could not take off due to deadlock among the directors, C.G.Holdings and KCP approached CLB for a exit scheme in C.P.No.65 of 2005. On the other hand, ORE filed C.P.No.76 of 2005 alleging mismanagement and suppression by scheme of exit and passed order containing the following three directions.

(a) CEPL shall return a sum of Rs.75 crores and Rs.4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of repayment within a period of 12 months in one or more installments, commencing from 01.11.2008.

(b) VML shall not alienate or sell any of its immovable properties till full payment is made to ORE, in terms of this order.

(c) In the event of any failure to make the repayment within the specified time, CEPL, CG Holdings, KCP and VML will duly convey the immovable properties of VML, namely 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable law, as consideration for reduction of capital and surrender of the shares of ORE and Athappan.



78. The directions of CLB extracted above without any ambiguity indicates that the order is complete and composite scheme for smooth exit of ORE and Athappan from Cheran groups of company. The immovable property to be conveyed is not alone for the money invested but to relinquish right in the CEPL and its subsidiary companies.

79. In a matter involving an exit scheme framed under the Companies Act, one party is eased out from the management of the Company for a consideration. In such circumstances, the money invested is not the sole criteria for fixing the quit pro quo. There are several other factors come into play to ascertain the 'quit pro quo' to ease out the deadlock for smooth exit. Weighing the money invested in the year 2003-2004 at one hand and the present value of the property at another hand is not fair or equitable test for proportionality. The CLB order dated 13/08/2008 was accepted by the parties without demur, except the applications filed subsequently for effective implementation of the order. The 'remote need' to convey the property had arisen long ago and the appellants had at no point of time had shown sign of complying the first limb of the CLB order. In the given circumstances and facts, after several rounds litigation, the issue of proportionality raised in the execution proceedings is untenable. More particularly, when the proportion between the right of relinquishment viz a viz the extent of land was accepted by parties and never challenged before the appellate forum, this point had lost the character of a question of law for the High Court to entertain under Section 10F of the Companies Act at this stage.

The Question of Law:-

80. To conclude, the scope of Section 10F of the Companies Act which give right to appeal against the decision/order of the Company Law Board before High Court is subject to existence of any question of law. Section 10F reads as under:

"10F. Appeals against the order of the Company Law Board-Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days".



81. Under Section 10F an appeal to the High Court against an order of the Company Law Board entertained only on a question of law. In other words, the Company Law Board is the final authority on facts, unless such findings are perverse based on no evidence or are otherwise arbitrary, appeal is not maintainable. The jurisdiction of the appellate Court under Section 10F is restricted to the question as to whether on the facts as noticed by the Company Law Board and has placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was malafide or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate Court would interfere under Section 10F is if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe relevant materials. (refer V.S.Krishnan & Others v. M/s Westfort Hi-Tech Hospital Ltd., & Others cited supra).

82. In Purnima Manthana -vs- Renuga Datla case, reported in [2016 (1) SCC 237], the Supreme Court had eloquently said, "a question of law as comprehended in Section 10F of the Act, would arise indubitable, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants."

83. Going by the explanation and meaning given by the Supreme Court for the expression 'question of law' found in Section 10F of the Act, this Court truly not able to find any question which satisfy the above test. Most of the questions, does not beg for any answer since already duly answered by the Division Bench and the Supreme Court in the earlier round of litigation. The rest of the questions are not worth to interfere the well considered order of CLB. This Court view that these appeals are yet another act of oppression exercised by the appellants against the respondents, by re-agitating the same cause in a different form through VML to delay the in-evitable.

84. In the result, Company Appeal Nos. 5 to 10 of 2016 are dismissed as devoid of merits. No order as to costs. Interim order stands vacated. The Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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To

The Sub Assistant Register (O.S)
High Court, Madras.

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Pre-delivery common judgment made in
Comp.Appeal Nos.5 to 10 of 2016
& C.M.P.Nos.12006 to 12009 of 2016,
12839, 12840 of 2016 &
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BE (16/07/2021)