IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2022

DATE OF DECISION : 11.03.2022

CORAM

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.Nos.191 & 192 of 2018

Shrutivinda Agro Farms Pvt.Ltd.,
rep.by its Director
Fortune Monarch Mall
Third Floor, No.306 Plot No.707-709
Jubilee Hills Road No.36
Hyderabad, Telangana 500 033 ..Appellant in both the O.S.A's
(Cause title Accepted vide order
of court dated 18.04.2018 made in
C.M.P.No.6412/18 and C.M.P.No.6414/2018
in O.S.A.SR.23041/18, 23049/18)

-vs-

1. Nova Dyeing and Printing Mills Ltd.,
   rep.by its Director Thakur J.Bakshani
   No.123, AC Block
   2nd Avenue, Anna Nagar
   Chennai 600 040

2. Thakur J.Bakshani ..Respondents in OSA No.191/18

1. Thakur J.Bakshani

2. Mr.K.V.V.Krishnam Raju

3. Nova Dyeing and Printing Mills Ltd.,
   rep.by its Director
   Mr.Jagadish A.Sadarangani
   No.123, AC Block
   2nd Avenue, Anna Nagar,
   Chennai 600 040

4. Mr.Harish J.Bakshani

5. Mr.I.Prem Watwani ..Respondents in OSA No.192/18

Memorandum of Grounds of Original Side Appeal No.191 of 2018 is filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the common judgment and decree dated 08.02.2018 passed in C.S.No.627 of 2008 on the file of the Original Side of this Court.

Memorandum of Grounds of Original Side Appeal No.192 of 2018 is filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the common judgment and decree dated 08.02.2018 passed in C.S.No.877 of 2005 on the file of the Original Side of this Court.

For Appellant :: Mr.AR.L.Sundaresan, Sr.Counsel
Mr.Satish Parasaran, Sr.Counsel
for M/s Madhan Babu

For Respondents:: Mr.P.Subba Reddy for R1 & R2 in OSA 191/18 & for R1 & R3 in OSA 192/18
M/s R.M.Priya Dharshini for R4 in OSA 192/18
Mr.A.Vikash for R5 in OSA 192/18

JUDGMENT

T.RAJA, J.

M/s Shrutivinda Agro Farms Private Limited represented by its Director has brought these two original side appeals against the common judgment and decree dated 08.02.2018 passed by the trial Court in Civil Suit Nos.877 of 2005 and 627 of 2008, respectively.

2(a).Civil Suit No.877 of 2005 was filed by Mr.Thakur J.Bakshani/plaintiff against Shrutivinda Agro Farms Private Limited/first defendant and four others seeking for a declaration declaring that the sale agreement dated 14.07.2005 entered into between the first defendant and third defendant/Nova Dyeing and Printing Mills Limited is null and void, as it is against the provisions of the Companies Act and the Memorandum of Articles of Association of the third defendant Company as well as for a permanent injunction restraining the defendants, their men, agents or anybody working under them from enforcing or acting or proceeding in any manner in future in relation to the sale agreement entered into between the first defendant and third defendant dated 14.07.2005.

2(b).Civil Suit No.627 of 2008 was filed by the appellant/plaintiff against Nova Dyeing and Printing Mills Limited/first defendant and Mr.Thakur J.Bakshani/second defendant for a judgment and decree directing specific performance of the terms of the agreement for sale dated 14.07.2005, by executing the sale deed and conveying the Schedule-B mentioned property by the defendants 1 & 2 to and in favour of the appellant/plaintiff with a consequential permanent injunction restraining the defendants, their men, servants, agents or any other claiming under them from in any manner alienating or encumbering or altering the physical features of or parting with the Schedule-B property to any third parties, except in accordance with the agreement for sale dated 14.07.2005 entered into between the parties herein, alternatively, to direct the defendants to make the payment of Rs.78 Crores as damages to the appellant/plaintiff.

3.For the sake of convenience, the appellant-Shrutivinda Agro Farms Private Limited, who is arrayed as the first defendant in C.S.No.877 of 2005 and also the plaintiff in C.S.No.627 of 2008, will be hereinafter referred to as “the first defendant”, the third defendant-Nova Dyeing and Printing Mills Limited in C.S.No.877 of 2005, who is arrayed as the first defendant in C.S.No.627 of 2008, will be hereinafter referred to as “the third defendant company”, Mr.Thakur J.Bakshani, the plaintiff in C.S.No.877 of 2005, who is also arrayed as the second defendant in C.S.No.627 of 2008, will be hereinafter referred to as “the plaintiff”, Mr.Harish J.Bakshani, the fourth defendant in C.S.No.877 of 2005 and Mr.I.Prem Watwani, the fifth defendant in C.S.No.877 of 2005, will be hereinafter referred to as “the fourth and fifth defendants” in this judgment.

4.1.Civil Suit No.877 of 2005 was filed by the plaintiff contending that he and his family members are the major shareholders of the third defendant company holding 54.98% of equity shares out of the total number of 1,23,00,000/- equity shares of Rs.10/- each and apart from the above, the plaintiff and his group of companies also brought in funds to the tune of Rs.1,64,00,000/- by way of unsecured loans for funding operation cash losses from time to time. The plaintiff is the Founder-Promoter-cum-Director of the third defendant company. Originally, the third defendant company was incorporated during the year 1988 under the name and style of “Jupiter Dyeing and Processing Mills Private Ltd.” and subsequently sought for change of name and became as “Nova Dyeing & Printing Mills Ltd”, incorporated with effect from 01.05.1996 and the plaintiff and his family members are holding 59% of the paid-up equity capital.

4.2.It was further pleaded that the main object of the third defendant company is to carry on the business of processing, combing, sizing, preparing, weaving, spinning, curing, dyeing, manufacturing and other activities and it had turnover of several crores of rupees. One Mr.V.C.Dhandapani, Managing

Director of the third defendant company, lodged a complaint to the Pollution Control Board and on account of the same, it had undergone enormous difficulties and hardships and therefore, its activities were in the process of decline and it virtually closed down its activities with effect from 03.02.2005 and it is in the process of settling all the statutory dues. The third defendant company is having valuable lands admeasuring to an extent of 29 acres and buildings/superstructures to an extent of 1,34,000 sq.ft. at Old Mahabalipuram Road. After the third defendant company had closed its activities, number of discussions took place among the Directors of the company to determine the strategy to revive the company and accordingly, on 09.07.2005, Mr.Jagadish A.Sadarangani gave a draft copy of the sale agreement to the fourth defendant to be forwarded to the plaintiff for approval through e-mail. The plaintiff was in abroad at that point of time and therefore, he sent an e-mail message to the fourth defendant clarifying certain clauses in the draft sale agreement sent to him. The plaintiff was also informed that the final draft sale agreement would be sent to his approval after carrying out necessary corrections as approved by the Auditor Thiru.P.Ramachandran. The plaintiff has never received any final draft sale agreement approved and executed by Auditor and he was under bona fide impression that the final draft sale agreement is under process and upon his approval only, the sale agreement would be executed. The third defendant company had also informed the plaintiff about forwarding of the draft sale agreement to their Auditors, namely M/s.Ram and Kumar represented by their partner Thiru.P.Ramachandran and however, the draft sale agreement has never been sent to the said Auditor.

4.3.The plaintiff further averred that the sale agreement came into being between the third defendant company and the first defendant on 14.07.2005, without his consent and approval, especially when he is almost holding an extent of 54.98% of paid-up equity capital. According to the plaintiff, if a company wanted to sell any of its immovable assets, it is mandatory to follow Section 293 of the Companies Act, 1956 read with Article 54 of the Memorandum/Articles of Association of the third defendant company and however, it has not been done and despite the said fact, the plaintiff, being a major shareholder, has not received any notice. Even the sale agreement dated 14.07.2005 entered into between the first defendant and third defendant company is also against Section 23 of the Indian Contract Act, 1872 and it is ab initio null and void and that apart, the sale agreement is one-sided to favour the purchaser, namely the first defendant. The plaintiff would further state that the first defendant did not exhibit due diligence before entering into the sale agreement and therefore, it is hit by Section 46 read with Section 293 of the Companies Act, 1956 and there is no document evidencing adherence to the said mandatory statutory provisions. The plaintiff also took a stand that the clauses/covenants in the said agreement of sale are oppressive and deliberately made with an intention to benefit the first defendant at the cost of the third defendant company and as such, it cannot be enforced under law.

4.4.It was further pleaded by the plaintiff that under Clause 15 of the sale agreement dated 14.07.2005, a sum of Rs.1 Crore out of total consideration of Rs.16.25 Crores, shall be kept in escrow account in a bank, jointly in the name of the defendants 1 and 3 till Mr.V.C.Dhandapani is settled in full, who is the Ex-Managing Director of the third defendant company. The third defendant company, in order to get over the lapse of non-compliance of the statutory provisions, had also purchased additional land having an extent of 7.99 acres in the joint name of promoters in proportion to their shareholding ratio in the third defendant company for the exclusive use of discharging the effluent into the said land. The third defendant company also filed a suit before the Sub Court, Chengalpattu, praying to register the land in the name of their company and pendency of the same, the purchaser/first defendant, with malafide intention, compelled the third defendant company to keep a sum of Rs.1 Crore in the escrow account in respect of Mr.V.C.Dhandapani, which is the subject matter of the said sale agreement. The plaintiff would further state that the consideration of Rs.16.25 Crores minus Rs.1 Crore in the escrow account has been undervalued and it is not an adequate consideration and in the absence of adequate consideration, the sale agreement is not valid and unenforceable and therefore, the plaintiff had filed the suit for the reliefs as stated above.

5.1.A detailed written statement was filed by the first defendant-Shrutivinda Agro Farms Private Limited denying all the averments made by the plaintiff. The first defendant pleaded that it is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of agriculture and allied activities. In June 2005, when the first defendant came to know about the decision of the third defendant company to dispose of its land and building situated at Kalipattur Village, Old Mahabalipuram Road, Chengalpattu District having approximately 26 acres and 55 cents to discharge the huge liabilities of the third defendant company including the statutory dues, labour and staff settlement, the first defendant expressed its willingness to purchase the suit property. Therefore, after negotiations, on verification of the title deeds of the third defendant company in the said property, both the parties entered into an agreement for sale dated 14.07.2005, inter alia, the first defendant agreed to purchase the land and building of the third defendant company for a sale consideration of Rs.16,25,00,000/- free from all encumbrances. Accordingly, at the time of entering into the agreement, the first defendant paid an advance of Rs.2,00,00,000/- and subsequently, paid a further sum of Rs.50,00,000/- on 18.08.2005 vide cheque no.321739 drawn on HDFC Bank. Since then, the first defendant kept ready the balance sale consideration and expressed its readiness and willingness to pay the balance sale consideration to the third defendant company to complete the sale transaction within the stipulated period of four months from the date of the sale agreement. However, after 2 ½ months, availing Rs.2,50,00,000/- from the first defendant towards settlement of the striking workers dues, realising that there was a sudden spurt in the price rise of land after the year 2005, as the State Government announced the Old Mahabalipuram Road as Information Technology corridor, the plaintiff filed the suit seeking for a declaration declaring that the agreement for sale dated 14.07.2005 is null and void and also for a consequential permanent injunction restraining the defendants therein from implementing the sale agreement and obtained an order of interim injunction restraining the defendants, their men from in any way enforcing or proceeding in relation to the sale agreement dated 14.07.2005, citing a reason that the agreement is in contravention of Section 293 of the Companies Act read with Article 54 of the Memorandum/Articles of Association of the third defendant company, without knowing the fact that the said provisions would come into play only prior to the sale of the suit property and not at the time of entering into an agreement of sale, in view of Section 46 of the Companies Act, 1956, which says that contracts on behalf of the company may be made in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged and that such contract would by law be valid, although made by parol only on behalf of the company by any person acting under its authority and that contract made under this section shall bind the company.

5.2.The first defendant also further pleaded in the written statement that pursuant to the payment of Rs.2,50,00,000/-, with the bona fide intention, proceeded to purchase the adjacent land covered in S.Nos.31/2B, 14/1, 14/2 and 17/2 for a valid consideration. Such purchase of the adjacent properties also would show that the first defendant was ready and willing to purchase the property always, because, without the suit land, the first defendant may not have access to the aforementioned survey land. Knowing the bad intention of the plaintiff, the first defendant filed the Civil Suit No.627 of 2008 before this Court praying for a decree of specific performance of the agreement for sale dated 14.07.2005, on the ground that the decision to sell the said property was the conscious decision taken by all the shareholders of the third defendant company which included the plaintiff herein also, because the draft sale agreement was forwarded to the plaintiff and the plaintiff also actively participated in the negotiations and only thereafter, the agreement for sale was signed by the parties on 14.07.2005. For all these reasons, the first defendant sought for dismissal of the suit.

6.Mr.K.V.V.Krishnam Raju, the second defendant in C.S.No.877 of 2005 filed a memo adopting the written statement filed by the first defendant.

7.1.In the meanwhile, when O.A.No.968 of 2005 in C.S.No.877 of 2005 was moved by the plaintiff seeking an order of interim injunction, the third defendant company represented by Mr.Jagdish A.Sadarangani, filed a detailed counter affidavit supporting the sale agreement dated 14.07.2005, stating that when the workers in the third defendant company went on strike, it became impossible to run the company, hence, the mill ought to be shut down. Accordingly, in April 2005, the Board of Directors formally shut down the unit and started negotiations with the employees for an amicable settlement. Even before 2005, the company did not have funds to pay its creditors. Hence 13 acres were hypothecated to M/s Trident Textile Mills Limited for a sum of Rs.1,50,00,000/- in 2004-05. Accordingly, power of attorney was executed in favour of Mr.Jagdish A.Sadarangani representing the third defendant company to sell the land if the loan amount was not repaid within 12 months. Based on the same, it was decided that the whole mill can be sold as lock, stock and barrel and it was also decided that apart from settling the creditors dues, the amount available would be sufficient for settlement of the workers dues. At the same time, negotiations were held with the other purchasers and finally the first defendant offered Rs.16,25,00,000/- for the lands only and subsequently an agreement was entered into. Based on the sale agreement, Rs.2,50,00,000/- was received from the first defendant,which was exclusively used for settlement of the workers dues and also to pay back the loan to M/s Trident Textile Mills Limited in which the plaintiff was also the Founder. Under these circumstances, it was pleaded that it was not very clear as to how the plaintiff committing himself to all the transactions, can go back from the sale agreement.

7.2. The third defendant company, in the counter affidavit, also denied the allegation of non-compliance of Section 293 of the Companies Act, because, when in fact most of the shares were being held by only three families who were together at an emergency Board meeting and EGM, confirming all the transactions, authorised the Chairman to sign the agreement for sale. Since all the shareholders were present either in person or represented through their family members including the plaintiff, the meeting was called at short notice and the minutes were recorded by Mr.Jagdish A.Sadarangani as the Chairman. In the said meeting, it was resolved that the plaintiff and other Directors had agreed that the filing of resolution with the Registrar of Companies would be done by the Managing Director to complete all formalities. Since these were only procedural in nature, Mr.Jagdish A.Sadarangani being the Chairman of the third defendant company, was duly authorised to execute all the documents, apart from being the power of attorney holder of the properties. Finally, as Chairman of the third defendant company, issued a certified copy of the minutes genuinely believing that the fourth defendant-Managing Director would take appropriate steps to complete the legal formalities by filing the forms with the Registrar of Companies. Therefore, the provisions of Section 293 were in fact complied with and it could be seen that only because of the conspiracy between the fourth defendant and his brother, the plaintiff herein, now relying on the technicalities based on the papers which are to be formally filed with the Registrar of Companies, wherein no specific approval from the Registrar of Companies is required in this regard, pleading wrongly that Section 293 has not been complied with, wrongly filed the suit to hold the sale agreement as null and void, which is neither factually nor legally correct. Hence the allegation of non-compliance of Article 54 of the Memorandum/Articles of Association of the company and Section 293 of the Companies Act, is totally devoid of any truth.

7.3.It was also stated that Section 23 of the Indian Contract Act was not violated, for the simple reason that when Rs.2,50,00,000/- was received from the first defendant as part of the sale consideration, the said money was utilised for settlement of the workers dues and claims. Therefore, after receiving the above money from the first defendant, the plaintiff having been acquiesced of the resolution passed in the Board meeting held on 24.06.2005, cannot now go back from the sale agreement. It was also further pleaded that the allegation of the plaintiff that no notice was received is now being used as technicality, particularly, when more than 95% of the shareholders stood together and held an EGM waiving 21 days notice and that the meeting was held at the registered office itself, wherein all the shareholders represented by their family members and since it was an unanimous decision to sell, only the resolutions were recorded by the Chairman and signed the draft minutes and left it with the Managing Director to be circulated to all the Directors. Based on the strength of this meeting, certified copy of the authority to sign the sale agreement was furnished to the purchaser/first defendant. Hence it is totally denied that there was no meeting or no resolution and the certified copy provided is true giving authority to the Chairman of the company to enter into the transaction. Even there was no violation of Section 192 also, as the company could otherwise file Form-23 with belated filing fees which would in any event not invalidate the transaction. Therefore, when the Directors acted only in the interest of the shareholders, the sale agreement is enforceable in law, as it is beneficial to the company.

8.Opposite to the above stand taken by the third defendant in the suit, the plaintiff himself filed a written statement on behalf of the third defendant, taking a stand that he became the Chairman of the third defendant company with effect from 10.04.2006 and he also stated that there was no necessity to sell the property in a hurry. Interestingly, the plaintiff, stepping into the shoes of the third defendant, also admitted the case of the defendant that on receipt of Rs.2,50,00,000/- from the first defendant, the said amount has been utilised towards repayment of the loan to M/s Trident Textile Mills Limited, wherein the plaintiff was the Chairman and Founder.

9.The fourth defendant also filed a written statement supporting the stand of the first defendant that major decisions of the company have been taken only with the consent of the plaintiff. Therefore, this defendant became a witness to the sale agreement and signed the Board resolution on the bona fide belief that the then Chairman would have obtained the consent of the plaintiff before entering into the sale agreement. It was also further pleaded that the Chairman of the third defendant company had given a draft copy of the sale agreement to be forwarded by e-mail to the plaintiff and this defendant sent the e-mail on 09.07.2005 as per the instructions of Mr.Jagdish A.Sadarangani. The plaintiff, after perusal of the e-mail sent back to this defendant and General Manager (Finance) Mr.Anand Gessani with instructions to forward the copy of the sale agreement to the Auditor of the plaintiff, who is also the Auditor of the third defendant company to review the draft sale agreement. This message was passed on to the Chairman Mr.Jagdish A.Sadarangani. The fourth defendant, in his written statement, clearly stated that major decisions have been taken only with the consent of the plaintiff, therefore the plaintiff cannot go back from the sale agreement, the fourth defendant pleaded.

10.1.The fifth defendant also filed a written statement stating that when there was a spurt in the price rise as per the State Government's announcement that Old Mahabalipuram Road is an Information Technology corridor, the plaintiff, having given his consent to enter into the sale agreement dated 14.07.2005 for selling the plant and machineries and also the land, has wrongly questioned the correctness of the sale agreement. It was also the stand of the fifth defendant in the written statement that there was a labour strike in the company. There were number of unsecured creditors pressing for repayment of the amounts due to them and some of them also threatened to institute proceedings for winding up of the company. In such circumstances, the Board of Directors had to take a decision to wind up the manufacturing activities of the company and to sell the entire unit consisting of 29 acres of land and building and machinery in order to repay all the creditors including the labourers and their claims and to pay the statutory claims such as taxes, etc. Thereafter, the Board of Directors made calculations about this and all of them came to an unanimous decision that if they sell the company, they could repay all the debts and the other dues and they would be able to realise their investments which they have paid for purchase of the shares in the company. The plaintiff's elder brother, the fourth defendant himself was one of the Directors of the company and he also took part in the Board's meeting and shareholders meeting, which resolved in favour of selling the immovable property of the company. When the fourth defendant has been taking part in the entire affairs of the company, because he has been actually managing the day-to-day affairs of the company, for the simple reason that the plaintiff is very much attached to his elder brother, who is the fourth defendant, the plaintiff had immense confidence in the fourth defendant, because the fourth defendant is managing the business of the plaintiff elsewhere also.

10.2.It was also pleaded that the fourth defendant, on receipt of the copy of the sale agreement dated 14.07.2005, sent the draft of the sale agreement by e-mail to the plaintiff, who was fully aware of the intended sale transaction and the clauses mentioned in the agreement. Moreover, the plaintiff who was in U.S., on 10.07.2005, requested the fourth defendant, his elder brother to clarify certain clauses in the draft sale agreement. On receipt of the e-mail, the plaintiff did not object or protest about entering into the sale agreement. It was also the claim of the fifth defendant in the written statement that all the shareholders knew that the company was running in loss. The shareholders knew the loss of the company could be wiped out only if the property of the company is sold and the creditors are paid; that only if the property of the company was sold, they could realise their share capital in full. Therefore, the plaintiff fully knew that the emergency shareholders meeting/Board meetingwas convened by his brother and himself upon the legal advice and now the papers in regard to the company are under the custody of the Managing Director, cannot now take a plea that there is a lacuna in the sale agreement. The fifth defendant also pleaded clearly that Section 46 of the Companies Act was duly complied with. Therefore, the plaintiff is prevented from filing the suit, as he is one of the Directors who has from time to time taken unanimous decisions for selling the property only for saving the company from its debts and to realise the money invested by the shareholders. It was also pleaded in the written statement that the plaintiff cannot at this stage state that there was no General Body meeting or resolution passed, when he had in fact done so.

10.3. With regard to the Board meeting held on 24.06.2005, the fifth defendant pleaded that on 24.06.2005, when the plaintiff was in India, the Board met and upon legal advice, shareholders meeting was also called on the same day which was chaired by Mr.Jagdish A.Sadarangani and after the authorisation to sell was passed at the EGM, then immediately the board minutes was recorded formally authorising Mr.Jagdish A.Sadarangani and Mr.Harish J.Bakshani, the Chairman and Managing Director respectively, to sell the property. After that the Managing Director stated that he would look after the resolution to complete the documentation in regard to the sale transaction so that it would enable them to proceed further without any hurdles. When negotiations took place for sale of the plant and machineries and land, finally the offer of Rs.16,25,00,000/- was made by the first defendant. This was also discussed with the plaintiff. The workers also informed that if they were paid with a consolidated amount of Rs.1,10,00,000/-, they would be satisfied with their claim and accordingly, they were finally settled of their claim. Therefore, the plaintiff knew very well that the entire agreement for sale was entered into for resurrecting the company from further loss, as otherwise the company would have to lose the entire capital and its business assets.

11.The trial Court, upon consideration of the respective pleadings and oral and documentary evidence, on hearing the respective learned counsel appearing for the parties, on the issues framed therein, decreed the Civil Suit No.877 of 2005 filed by Mr.Thakur J.Bakshani declaring that the sale agreement dated 14.07.2005 is null and void, inter alia, on the premise that the conditions mentioned in Section 293(1)(a) of the Companies Act have not been complied with, and dismissed the Civil Suit No.627 of 2008 filed by Shrutivinda Agro Farms Private Limited seeking for specific performance of the agreement of sale, inter alia on the ground that no pre-suit notice was issued calling upon the defendants to perform their part of the obligation. Therefore, Original Side Appeal No.191 of 2018 has been filed by the appellant against the dismissal of the C.S.No.627 of 2008 and the Original Side Appeal No.192 of 2018 has been filed against the decree passed in C.S.No.877 of 2005. Hence, both the appeals are taken up together and disposed of by this common judgment.

12.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first defendant, leading the arguments, submitted that the first defendant is a Private Limited Company incorporated under the Companies Act, 1956 and engaged in the business of acquisition and development of lands and properties. In June 2005, the first defendant learnt about the decision of the third defendant company to dispose of its land and building situated at Kalipattur Village, Old Mahabalipuram Road, Chengalpattu District measuring approximately 26.55 acres described in the schedule thereunder and the first defendant expressed its interest in purchasing the said property. After negotiations, due diligence and verification of title of the second defendant, both the parties also entered into an agreement for sale dated 14.07.2005 for a total sale consideration of Rs.16,25,00,000/- free from all encumbrances. The said agreement was signed by one Mr.K.V.V.Krishnam Raju, for and on behalf of the first defendant and Mr.Jagdish A.Sadarangani, Director and Chairman, for and on behalf of the third defendant company. The first defendant, at the time of entering into the above said agreement for sale, paid an advance of Rs.2,00,00,000/-, the receipt of which was duly acknowledged by the third defendant company as per clause 2 of the sale agreement. Clause 3 provided for payment of further advance of Rs.50,00,000/- by the first defendant to the third defendant company within one month from the date of the agreement and clause 4 provided for payment of the balance sale consideration of Rs.13,75,00,000/- within four months. It was further agreed that the representative of the third defendant company shall sign, execute and register the required deeds of sale in favour of the first defendant or in the alternative, facilitate the take over of the third defendant company by the first defendant. Ever since the date of agreement, the first defendant has kept ready the balance sale consideration and expressed its readiness and willingness to pay the balance sale consideration to the third defendant to complete the sale transaction within the stipulated period of four months from the date of agreement. The first defendant further proceeded with the purchase of other adjacent properties for valuable consideration with the object of consolidating all the lands including Schedule-B property for developing the same as a single project. Moreover, the properties purchased by the first defendant, subsequent to the agreement, have access only through the suit property and without the suit property, the other lands cannot be put to use, therefore, the first defendant was always ready to pay the balance sale consideration.

13.Continuing his arguments, Mr.Sundaresan submitted that when the first defendant was called for a meeting on 4.10.2005 with the directors of the third defendant company to discuss certain issues relating to the sale of the suit property, a representative of the first defendant viz., Mr.T.Sitaram Reddy attended the meeting and when the plaintiff, a non-resident

Director of the third defendant company, who had come to Chennai from U.S.A. to conclude the sale transaction, sought for an amendment of the sale agreement so as to exclude 13 acres of land from the purview of the agreement. But the said request for amending the sale agreement was refused by the first defendant, as it is against the terms of the agreement for sale. But all of a sudden, the first defendant received a notice from the plaintiff's counsel that he had filed a suit in C.S.No.877 of 2005 on the file of this Court against the first defendant and other persons seeking a decree of declaration that the agreement for sale dated 14.07.2005 is null and void and for other reliefs, on the ground that the plaintiff, being a majority shareholder, has never consented for the execution of the agreement for sale; that the agreement for sale was entered into without his approval, is a blatant falsehood; that the agreement is in contravention of Section 293 of the Companies Act read with Article 54 of the Memorandum/Articles of Association is untenable; inasmuch as the said provisions would come into operation on completion of the sale of the suit property and not at the time of entering into the agreement for sale. Besides, the first defendant submits that the plaintiff, with the full knowledge of the terms of the agreement, agreed and approved the agreement for sale. Even the pleadings contained in the plaint filed in C.S.No.877 of 2005 would show that the entire body of shareholders and the directors of the third defendant company including the plaintiff had decided to sell the suit property and the draft copy of the sale agreement was forwarded to the plaintiff for his perusal. Moreover, it is also evident from the e-mail dated 10.7.2005 sent by the plaintiff that he was fully aware of the proposed sale of the suit property and had assented to such course of action. The said e-mail also supports the case of the first defendant that the plaintiff had not only approved the sale of the suit property, but actively involved during the negotiations in approval of the sale agreement.

14.Mr.Sundaresan, learned Senior Counsel further submitted that when the third defendant company had received Rs.2,00,00,000/- as advance and subsequently a sum of Rs.50,00,000/- on 18.08.2005 from the first defendant for settlement of the dues of the workers who resorted to a strike, as it was not possible to run the company and in April, 2005 also, the Board formally shut down the unit and started negotiations with the workers for an amicable settlement, the third defendant received the aforesaid money, which was exclusively used for the settlement of the workers and also to pay back the loan to M/s Trident Textiles Mills Limited, it is not open to them to back out from the sale agreement. This crucial aspect has been overlooked by the trial Court. Secondly, the trial Court, ignoring the legal aspect that the first defendant has complied with the conditions enumerated in

Section 293 of the Companies Act, wrongly dismissed the suit filed by the first defendant for specific performance and decreed the suit filed by the plaintiff declaring that the sale agreement dated 14.07.2005 is null and void. When most of the shares were being held only by three families who were together and emergency shareholders meeting and board meeting authorised the Chairman to sign the agreement for sale; that all the shareholders were present either in person or represented through their family members including the plaintiff; that the meeting was held and the minutes were also recorded by Mr.Jagdish A.Sadarangani, as Chairman; that it was obvious that the plaintiff and two directors had agreed that the filing of resolution with the Registrar of Companies would be done by the Managing Director to complete all the formalities and the Chairman having been duly authorised to execute all the documents and a copy of the minutes having been given to Mr.Harish J.Bakshani to take appropriate steps to complete the legal formalities and filing the documents with the Registrar of Companies, the provisions of Section 293 were in fact complied with and it can be seen that only because of the collusion between Mr.Harish J.Bakshani and the plaintiff,who are brothers, now relying on the technicalities which are to be formally filed with the Registrar of Companies, wherein no specific proceeding from the Registrar of Companies is required in this regard, the trial Court wrongly came to the conclusion that the provisions of Section 293 of the Companies Act have not been complied with. Mr.Sundaresan, learned Senior Counsel, primarily assailing the impugned judgment of the trial Court, submitted that the suit filed by the plaintiff is collusive in nature, because the plaintiff and Mr.Harish J.Bakshani are brothers, if so, the plaintiff, joining hands with Mr.Harish J.Bakshani, to wriggle out from the sale agreement, has filed the suit taking a stand that the provisions of Section 293 of the Companies Act have not been complied with.

15. Mr.Satish Parasaran, learned Senior Counsel appearing for the appellant contended that the impugned judgment suffers from apparent mistakes, inasmuch as when the findings are recorded in favour of the first defendant holding that the first defendant is a bona fide purchaser and the sale agreement is bona fide one in paragraph-96 of the judgment, instead of decreeing the suit for specific performance in favour of the first defendant, the trial Court has wrongly dismissed the same. Secondly, drawing the notice of this Court to paragraph-46 of the impugned judgment, he submitted that when the trial Court accepted the case of the first defendant that admittedly the amount of Rs.2,50,00,000/- paid by the first defendant has been utilized by the third defendant company to settle their debts even prior to the ratification of Ex.P6-agreement for sale, the said act implies the intention of the third defendant company to

give effect or go ahead with Ex.P6 agreement anticipating that Ex.P6 will go through in its entirety. Thirdly, the trial Court has also found that the first defendant has irretrievably altered its position by purchasing the adjacent lands to the suit property under Exs.D4 to D10 sale deeds on the basis of the sale agreement-Ex.P6 and therefore, it is not in a position to alter its position to the utmost disadvantage. Fourthly, the trial Court has also given a finding that insofar as the sale of machineries under Ex.P22-Minutes of the Board Meeting is concerned, it was done with the consent of the plaintiff. Though the plaintiff was not present in the meeting, a minutes was drawn with his consent and it got signed. Moreover, the plaintiff would also admit that all major decisions were taken by the Board of Directors which comprised of Mr.Jagdish A.Sadarangani-Chairman, Harish J.Bakshani-Director, Prem I.Watwani-Director, Nisha J Bakshani-Director and himself. Fifthly, the plaintiff would also admit that from the advance amount received from the first defendant, the creditors were settled of their dues. Again the trial Court in paragraph-69 of the judgment held that if this Court construes that the sale of land and immovable properties of M/s Nova Dyeing and Printing Mills Limited as (a) forbidden by law, (b) would defeat the provisions of law or is fraudulent and (c) involves or implies injury to the person or property of another and also the Court regards it as immoral or opposed to public policy, equally this Court has to declare the sale of plant and machineries by the said company under Ex.P6 as null and void, for the reason that the sale of plant and machineries would also amount to sale or otherwise dispose of the whole or substantially the whole of the undertaking of the company and that without the plant and machineries, the third defendant company could not function effectively. The trial Court also gave a finding that the defence of the plaintiff shows that he gave his consent and as such, the Board of Directors' resolution to sell the same is available and the said sale has not been challenged by anyone of the shareholders of the third defendant company and therefore, it cannot be declared as null and void, because the plaintiff has given his consent for the sale of the land, then the prayer for specific performance ought to have been granted. There being a material irregularity, the impugned judgment shall be set aside by decreeing the suit for specific performance, he pleaded.

16.Again Mr.Satish Parasaran submitted that the trial Court has also held in paragraph-96 that on perusal of oral and documentary evidence, the Court is of the considered view that the first defendant is an agreement holder to buy the suit property. When the trial Court has given a finding in favour of the first defendant that the agreement, Ex.P6 is a bona fide transaction, the sale should also be held as bona fide, accordingly, the sale deed should have been directed to be executed. The learned Senior Counsel also submitted that the trial Court has also in paragraph-75 has given a finding in favour of the first defendant that admittedly, it is not the case of the plaintiff that the sale consideration fixed is low or inadequate and the consent of the General Body was not obtained and that his consent has also not been obtained, though he is a major shareholder, and the agreement is one-sided favouring the first defendant. Therefore, when the plaintiff has given his consent for the sale of plant and machineries of the third defendant company; that the plaintiff has also given his consent for the sale of land of the third defendant company for a valuable consideration; that he has also admitted that the advance of Rs.2,50,00,000/- paid by the first defendant has been utilized for settlement of the dues of the workers and also towards the loan of M/s Trident Textiles Mills Limited and when the plaintiff has failed to establish that the clauses in the Ex.P6 agreement for sale are prejudicial to the interest of the company and the sale agreement is a mala fide one, merely on the ground that Section 293(1)(a) of the Companies Act has not been complied with, the trial Court cannot dismiss the suit for specific performance, inasmuch as Section 293 is totally inapplicable to the present case. When the plaintiff has consented for the sale of plant and machineries, the plant and machineries of the third defendant company having been sold away in December, 2005, the third defendant undertaking ceased to exist, hence, Section 293 of the Companies Act will not be applicable to any non-existing company. Taking support from the judgment of a Division Bench of Karnataka High Court in International Cotton Corporation (P) Ltd., v. Bank of Maharashtra, (1971) 41 Comp Cas 226 (Kar), he has argued that the Division Bench, referring to the decision of the Apex Court in Secretary, Madras Gymkhana Club Employees' Union v. Management of Gymkhana Club, AIR 1968 SC 554, has held that the word 'undertaking' has been defined as any business or any work or project which one engages in or attempts as an enterprise analogous to the business or trade. The business or undertaking of the company must be distinguished from the properties belonging to the company.

17. Again referring to the judgment in R.C.Cooper v. Union of India, (1970) 1 SCC 248, wherein the Apex Court has explained the word 'undertaking' as meaning the entire organisation, whether it has a plant or whether it has an organisation, is considered as one whole unit and the entire business of the going concern is embraced within the word 'undertaking', the learned Senior Counsel has argued that in the case on hand, when the plant and machineries were sold with the consent of the plaintiff in December, 2005, the undertaking ceased to exist, therefore, Section 293 of the Companies Act

will not apply. Concluding his arguments, Mr.Satish Parasaran would contend that the sale agreement dated 14.07.2005 is not against Section 23 of the Indian Contract Act, as the trial Court in its findings has categorically held that the first defendant is a bona fide holder of the agreement for sale, besides the plaintiff has not chosen to terminate the same by issuing notice to the first defendant at the earliest point of time. On this basis, he sought for allowing the appeals.

18. Per contra, Mr.P.Subba Reddy, learned counsel appearing for the plaintiff argued on how Section 293 of the Companies Act is applicable. When Section 293 puts restrictions on the powers of the Board of Directors of a public company or a private company not to sell the whole of the undertaking of the company without the consent of such public company or a subsidiary, in the general meeting, in the case on hand, the general body meeting was not convened before entering into the agreement for sale under Ex.P6 between the first defendant and the third defendant company and the justification given by the first defendant shows that the shareholders of the third defendant company consisted of close family members and to that extent, the plaintiff had participated in the Board of Directors meeting and passed the resolution under Ex.P22, hence, the compliance of Section 293 has been made. Ex.P22 is the minutes of the meeting of the Board of Directors of M/s Nova Dyeing and Printing Mills Limited/third defendant and the Directors present at the meeting were Mr.Jagdish A.Sadarangani-Chairman, Mr.Harish J.Bakshani in his capacity as the Managing Director, Mr.I.Prem Watwani in his capacity as the Director. While so, as per the minutes of the said meeting, leave of absence was granted to the plaintiff and his wife Mrs.Nisha T.Bakshani. In respect of the said minutes relating to authorisation to sell the land and building of the company, it cannot be treated as sufficient compliance of Section 293. The object of Section 293 shows that the Directors cannot sell away the shares belonging to the shareholders, for which consent of the General Body is required and thereafter, the same should be informed to the Registrar of Companies. This compliance has not been followed, therefore, the trial Court has held that in the interest of the shareholders, non-compliance of Section 293 before entering into the sale agreement, is unacceptable.

19. Referring to the judgment of a learned single Judge of the Bombay High Court in Nirad Amilal Mehta v. Genelec Limited and others, CDJ 2008 BHC 999, Mr.Subba Reddy argued that when there was a General Body meeting held and a decision taken to sell the assets, no notice was given to any member, therefore, Section 171 of the Companies Act requires at least 21 days prior notice. That also has not been complied with. So also, Section 173 of the Companies Act requiring an explanatory statement to

be annexed to the notice of the meeting. When Section 171 of the Companies Act requires 21 days prior notice to be given to the members, it was held by the learned single Judge that the undertaking cannot be sold without the consent of the shareholders. In the present case, neither the General Body meeting was held nor 21 days prior notice as per Section 171 of the Companies Act was given. Therefore, the findings given by the trial Court that Section 293 of the Companies Act has not been complied with for selling the land of the undertaking, are in order and the same do not call for any interference. Although the first defendant claims that there was a resolution passed by the Board authorising the sale of plant and machineries, authorising the retrenchment of the workers working in the third defendant company and authorising the Board of Directors to sell the land in question, the Board Resolution cannot be converted as approval in the Annual General Meeting, as the law will not permit to do so. When the Board resolution was passed on 27.07.2005, only thereafter the sale agreement ought to have been entered into. But in the present case, the sale agreement was entered on 14.07.2005. When 21 days prior notice has not been given to the shareholders under Section 171 of the Companies Act, the sale agreement cannot have any legal force. Mr.Subba Reddy further contended that the whole agreement for sale is not only invalid, but also against Section 23 of the Indian Contract Act, inasmuch as ignoring the interest of the majority shareholders, only a handful of directors cannot sell away the shares of the plaintiff. Referring to the annual report for the year 2004-05, Mr.Subba Reddy contended that the sale agreement entered with the third defendant on 14.07.2005 specifically mentions that it is subject to the approval of the members in the General Body meeting. Due to the objections raised by Mr.Thakur J.Bakshani, the plaintiff and his family members controlled companies, this matter was not included in the Annual General Meeting for the financial year 2004-05 which was held on 21.09.2005 and this matter did not come up for discussion at the aforesaid Annual General Meeting of the company, therefore, the sale of land was not brought by the shareholders as required under Section 293(1)(a) of the Companies Act at the General Body Meeting of the shareholders of the company on 21.09.2005, hence, the sale agreement cannot be enforced. Hence, the trial Court has come to the conclusion that since the consent of the shareholders in the extraordinary general body meeting has not been obtained, in terms of Section 293 of the Companies Act, the sale agreement cannot be enforced. When the interest of the shareholders are to be taken note of, the resolution passed by the company, as per Section 192(4)(ee) of the Companies Act, requires ratification at the hands of the Registrar of Companies. That also has not been done. Therefore, the sale agreement to sell the land of the undertaking is not legally permissible.

20.Again Mr.Subba Reddy, pointing out Clauses 4, 8 & 14 of the agreement for sale of the landed property, argued that clause 4 of the said agreement says that the purchaser shall pay the balance sum of Rs.13,75,00,000/- to the vendor in full within four months and on receipt of the same, the vendor shall sign, execute and register the required deed in favour of the purchaser or in the alternate, the vendor would sell and the purchaser shall purchase the entire shares and take over the company without any liabilities. After paying out Rs.2,50,00,000/-, the first defendant has not paid the balance sum. Clause 8 of the agreement also shows that the sale transaction shall be completed within four months and similarly, clause 14 of the agreement also says that if the vendor fails to register the sale deed or in the alternate, fails to transfer the company within six months due to staff, labour and creditor problems, then the purchaser would be given an option to settle the vendor's staff, In the present case, after making the payment of Rs.2,50,00,000/-, the balance consideration has not been paid, therefore, there is no continuous readiness and willingness shown by the appellant/first defendant. As a matter of fact, even the filing of the Civil Suit No.627 of 2008 by the first defendant just 19 days before the expiry of the limitation period, is fatal, because of inordinate delay and, as the relief of specific performance is also an equitable relief, the first defendant is not entitled to get the same. When the suit for specific performance should be filed within a reasonable time showing the continuous readiness and willingness, Mr.Subba Reddy, relying upon the judgment of a Division Bench of this Court in the case of S.Sarojini and another v. P.Mariappan and another, 2018 (4) CTC 13, submitted that if the agreement holder seeking the decree of specific performance is found with blemish conduct not showing its readiness and willingness from the date of agreement till the date of decree, the decree for specific performance cannot be granted. In the present case, when the agreement dated 14.07.2005 stipulated that the balance consideration shall be paid within four months, even after expiry of the four months period, without showing its readiness and willingness to make the entire sale consideration, the first defendant chose to file the Civil Suit No.627 of 2008 just 19 days before the expiry of the period of limitation. That shows that the first defendant was not ready and willing to perform their part of the obligation. Hence, the trial Court has rightly dismissed the suit and the same requires no interference. He also relied upon a judgment of the Apex Court in the case of Jagjit Singh (dead) through legal representatives v. Amarjit Singh, (2018) 9 SCC 805 for the proposition that the failure to establish readiness and willingness would disentitle the agreement holder to the relief of specific performance of contract. Concluding his arguments, Mr.Subba Reddy also argued that the plaintiff, after filing the suit, with the leave of the

Court, had also deposited the sum of Rs.2,50,00,000/- in 2007 in the name of the Registrar General, High Court, Madras and the said amount is lying in fixed deposit with the accrued interest. Therefore, the first defendant cannot have any grievance or plead that he had paid part of the sale consideration long time back.

21.Further Mr.Subba Reddy pleaded that when there is no counter claim made by the first defendant in the written statement, peculiarly, they have amended the plaint only after 8 long years claiming damages. As per Article 55 of the Limitation Act, for any breach of the clauses of the agreement giving rise to damages, three years period is the maximum limitation. Therefore, the first defendant ought to have filed their claim for damages within a reasonable time of three years, which has not been done. Hence the said claim is also not legally maintainable.

22. We have given our anxious consideration to the rival contentions and upon consideration of the entire materials available on record, this Court frames the following points for determination:-

(i) When the third defendant undertaking ceased to exist in December, 2005 on selling off its plant and machineries and retrenching all the work force by settling their dues, whether the compliance of Section 293 of the Companies Act is required in the present case?

(ii) When the plaintiff Mr.Thakur J.Bakshani has admitted in the plaint and also pleaded before the trial Court that the decision taken for sale of plant and machineries of Nova Dyeing and Printing Mills Limited was with his knowledge, concurrence and due to unanimous decision of the Directors in the Board, whether can he take a contra stand in the same plaint that the sale agreement dated 14.07.2005 is without his consent, hence the sale agreement is per se null and void?

(iii) Whether the principle of estoppel will apply against the plaintiff's own admission before the trial Court, as per Section 115 of the Evidence Act?

(iv) When Section 397 of the Companies Act provides relief in cases of oppression, again Section 398 provides relief in cases of mismanagement of the affairs of the company and Section 402 empowers the Tribunal to terminate any agreement reached between the Directors, whether the plaintiff, without challenging the Board's resolution dated 24.06.2005 before the Tribunal, can be allowed to file a civil suit for the same relief?

(v) Whether the suit for specific performance filed by the first defendant is maintainable on the ground of readiness and willingness under Section 16(c) of the Specific Relief

Act, 1963?

23.Point No.(i): As rightly contended by the learned Senior Counsels appearing for the appellant/first defendant, the expression 'undertaking' has not been defined in the Companies Act. However, the expression 'undertaking' as per the Webster's Dictionary would mean, anything undertaken or any business, work or project which one engages in or attempts, as an enterprise. A Eleven-Judge Bench of the Apex Court in R.C.Cooper v. Union of India, (1970) 1 SCC 248 has discussed the expression 'undertaking' as follows:-

> "164. The word "undertaking" is used in various statutes of our country, viz., the Indian Electricity Act, 1910, (Sections 6, 7, 7-A), Indian Companies Act [Sections 125(4)(f), 293 and 394], Banking Regulation Act, 1949 (Section 14-A), Cotton Textiles Companies, (Management of Undertakings and Liquidation or Reconstruction) Act, 1967 [Sections 4(1), 5(1)(2)]. By the word "undertaking" is meant the entire organisation. These provisions indicate that the company whether it has a plant or whether it has an organisation is considered as one whole unit and the entire business of the going concern is embraced within the word "undertaking..."

A careful reading of the above judgment shows that the word 'undertaking' means the entire organisation, that means the company whether it has a plant or whether it has an organisation, the same is considered as one whole unit and the entire business of the going concern is embraced within the word 'undertaking'. The said judgment also tells us that the undertaking is an amalgam of all ingredients of property and is not capable of being dismembered. That would destroy the essence and innate character of the undertaking, because in reality, the undertaking is a complete and complex weft and the various types of business and assets are threads which cannot be taken apart from the weft. Again the word 'undertaking' has been explained by the Division Bench of the Calcutta High Court in Pramod Kumar Mittal v. Andhra Steel Corporation Ltd. and others, (1985) 58 Comp Cas 772(Cal), after discussing various authorities, to answer whether the term 'undertaking' requires compliance under Section 293 of the Companies Act, has held that a closed unit not giving any production cannot be said that it is an undertaking of the company.

24. Again the Apex Court in Secretary, Madras Gymkhana Club Employees' Union v. Management of Gymkhana Club, AIR 1968 SC 554, had an occasion to consider the meaning of the word

'undertaking' and observed that the word 'undertaking' must be defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade". When the Eleven-Judge Bench of the Hon'ble Apex Court in the decision in R.C.Cooper's case (supra) has defined the word 'undertaking' as the entire organisation as one whole unit and the entire business of the going concern is embraced within the word 'undertaking' and this judgment has also been followed consistently in various decisions holding that if the unit of the company has been closed and has not been in production for more than five years past, the same cannot be said that it is an undertaking of the company, in the case on hand, whether the third defendant company can be considered as an undertaking for the purpose of applying Section 293 of the Companies Act when it ceased to exist?

25.To answer the same, let us look at the admitted position of the parties. The plaintiff in his own plaint has clearly admitted that the company's activities have completely come to a virtual close with effect from 03.02.2005. The relevant portion of the said admission made by the plaintiff before the trial Court is extracted as under:-

> "4...The Plaintiff further states that due to certain complaint made to Pollution Control Board by the then Managing Director, Mr.V.C.Dhandapani, the Company had undergone enormous difficulties and for the past six years, the Company's activities are in the process of decline and the Company's manufacturing activities virtually closed with effect from 03.02.2005. Now the Company is under the process of settling all the statutory dues, staff settlement dues and all its Trade Creditors."

Secondly, all the workers of the company were also retrenched in 2005. The plaintiff, in his cross examination, has also admitted as follows:-

> "As the Mill had stopped its businesses in February 2005 the company had only focused on settling creditors and retrenching the workers." [page 98 Vol-II]

Therefore, when the entire workers were also retrenched and consequently and thirdly the plant and machineries were also sold in July, 2005 prior to the filing of the suit in October, 2005 and fourthly, when the entire business operation of Nova Dyeing was virtually closed on 03.02.2005, the third defendant company had lost the character of an undertaking and therefore, when they have entered into a sale agreement on 14.07.2005, there was no ongoing working unit or undertaking to do any business, hence, a mere barren land and building alone cannot constitute an undertaking. Therefore, in our considered view, Section 293(1)(a) of the Companies Act cannot be applied.

26.Although we find that Section 293 of Companies Act cannot be applied to a closed unit, for the purpose of selling the plant and machineries and retrenching the workers and to effect the sale of the land, Article 54 of the Articles of Association of the company is necessary to be referred to, hence, the same is also extracted as under:-

> "POWERS AND DUTIES OF DIRECTORS
> 54. In furtherance of and without prejudice to the general powers conferred by or implied in Article and other powers conferred by these Articles and subject to the provisions of Section 292 and 293 of the Act, it is hereby expressly declared that it shall be lawful for the Directors to carryout all or any of the objects set forth in the Memorandum of Association and to do the following things.
> (a) To purchase or otherwise acquire for the company any property, rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions as they fit and to sell, let, exchange or otherwise dispose of property privileges and undertakings of the company upon such terms and conditions and for such consideration as they may think fit..."

27.A perusal of the above Article 54 of the Articles of Association, among other things, clearly shows that subject to the provisions of Sections 292 and 293 of the Companies Act, it shall be lawful for the Directors to carry out all or any of the objects set forth in the Memorandum of Association and to do the following things, namely, (a)...to sell, let, exchange, or otherwise dispose of property privileges and undertakings of the company upon such terms and conditions and for such consideration as they may think fit.

28.When we have found in the preceding paragraph that Section 293 of the Companies Act cannot be applied to a closed unit, Article 54 gives power to the Board of Directors to sell, let, exchange or dispose of the property of the company upon such terms and conditions. Therefore, in compliance of Article 54, the Board meeting was held on 24.6.2005 at 10.30 A.M., at BNT Export House, No.126, Nelson Manickam Road, Aminjikarai, Chennai, the registered office of the company under Ex.P22. In the said meeting, decision was taken (a) to sell the subject land belonging to the third defendant company and the entire minutes of the said Board meeting dated 24.06.2005 were drawn with the consent of Mr.Thakur J.Bakshani, the plaintiff and leave of absence was also given to him, as requested by him for the said meeting. Even in the cross examination, Mr.Thakur J.Bakshani, P.W.1, has deposed that after 05.02.2005 the third defendant company has not commenced its business activities till date, namely, 16.4.2014 for about nine long years, since the labourers went on strike. [Useful reference can be had from page 79 Vol II of the paper book]. The relevant portion is given as under:-

> "...After 5th February 2005, the Nova Dyeing Printing has not commenced its business activities till date since the labourers went on strike. The labour strike went on till October 2005, however, I am not sure of the date. However, I can assert that the labour issue was resolved in 2005. The settlement with the labourers was by settling all their dues and by retrenching them. The assets of Nova Dyeing and Printing Mills company in the form of its machineries were sold during July - October 2005. All the machineries of the company were disposed of during the said period. However, I am not sure to state if the sale of the machineries was concluded before the settlement was arrived at with the workers. The sale of the machinery was with my consent and it was the decision of the Board. The Board of Nova Dyeing Printing Mills Ltd then consisted of 1. Mr.Jagdish Sadarangani, the Chairman, 2. Mr.Harish J.Bakshani, Managing Director, 3. Mr.Prem Watwani, Director, 4. Mrs.Nisha T.Bakshani, Director and 5. myself, Director. In addition to us Mr.V.C.Dhandapani, continued to be a director of Nova Dyeing however never participated in the board meeting. My consent was obtained before a decision to sell the machineries were taken by the board of Nova Dyeing and Printing Mills Ltd. Ex.P22 is the extract of the board meeting in which the machineries of the company were decided to be sold and though I was not present for the said meeting the minutes drawn were with my consent and knowledge as discussed and agreed earlier."
>
> (emphasis supplied)

29. The above admission of the plaintiff clearly shows that the minutes of the meeting were drawn with his consent and

knowledge as discussed and agreed earlier. Further, in the meeting held on 24.06.2005, the Board of Directors had passed a resolution to sell the land and building of the company, which is given as under:-

> "Item No.4
> AUTHORISATION TO SELL LAND AND BUILDING OF THE COMPANY
> RESOLVED THAT approval of the Board be and are hereby accorded to dispose the factory Land and Building of the company situated at No.30, Kazhipattur Village, Old Mahabalipuram Rod, Chengai District-603 103.
> RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani, Chairman of the company be and is hereby authorized to negotiate with prospective buyers to dispose the above property on the terms and conditions mutually agreed between the company and the prospective buyers.
> RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani be and is hereby authorized to finalise the Sale Agreement / Deed duly affixing the common seal of the company in the presence of Mr.J.Haresh Bakshani, Managing Director of the company whose also sign as witness thereof.
> RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani be and is hereby authorized to do all such acts, deeds and things which are necessary in this regard."

30.1.When the plaintiff himself has admitted before the trial Court that with his consent and knowledge, the Board meeting was held on 24.06.2005, in which the approval of the sale of the land and building of the company, was accorded, if at all the plaintiff is aggrieved, without challenging the Board's resolution giving power to the Directors to sell the land, before the Court of law, it is not open to the plaintiff to challenge the consequential decision-the validity of the sale agreement dated 14.07.2005 by filing a suit on the ground that Section 293 of the Companies Act have not been complied with. As we have held already that as per the ratio laid down by the Hon'ble Eleven-Judge Bench of the Apex Court in R.C.Cooper case holding that an undertaking of a company will be the entire integrated organisation consisting of all property, movable or immovable and the entire business of the going concern but not a shut down or closed unit, the restrictions imposed by Section 293 to hold Annual General Meeting to obtain approval are not attracted in the present case. Moreover, the argument advanced on behalf of the plaintiff that the sale agreement is invalid in view of non-compliance of the statutory provisions under Section 293 of the Companies Act, cannot be put against the first defendant, because, the doctrine of indoor management provides for persons dealing with the company to be entitled to presume that the internal requirements as prescribed in the Memorandum/Articles of Association have been properly complied with. The Hon'ble Apex Court in MRF Limited v. Manohar Parrikar and others, (2010) 11 SCC 374, has held as follows:-

> “111. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed. Therefore doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However, suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.”

30.2. The above observation clearly shows that when persons dealing with the company are entitled to presume that the internal requirements as prescribed in the Memorandum/Articles of Association have been duly complied with, as rightly held by the trial Court that the first defendant is a bona fide agreement holder and that the plaintiff has come to the Court with unclean hands, we are of the considered opinion that the trial Court ought to have dismissed the suit for declaration filed by the plaintiff. Therefore, the first point is answered in favour of the first defendant.

31. Point Nos.(ii) & (iii): Admission and Estoppel: Whether the plaintiff-Mr.Thakur J.Bakshani shall be estopped under

Section 115 of the Evidence Act from acting against his own decision taken during the Board meeting held on 24.06.2005 to sell the suit land and also to sell the plant and machineries, particularly, when the entire minutes of the meeting were drawn with his consent and leave of absence was also given to Mr.Thakur J.Bakshani?

32. In this context, it is relevant to extract Section 115 of the Evidence Act, as follows:-

> "115. Estoppel. -- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

33. A careful reading of the above provision clearly shows that when one person, by his declaration or act, has permitted another person to act upon such belief, thereafter, neither he nor his representative shall be allowed to deny the truth of that thing.

34. In the case on hand, the meeting of the Board of Directors of M/s Nova Dyeing and Printing Mills Limited was held on 24th June, 2005 at 10.30 A.M., at BNT Export House, Chennai, the registered office of the company in respect of the Agenda shown in Item Nos.1 to 6. For better appreciation, the said minutes are extracted hereunder:-

"MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE M/S NOVA DYEING & PRINTING MILLS LIMITED ON 24TH JUNE 2005 AT 10.30 A.M. AT BNT EXPORT HOUSE, NO.126, NELSON MANICKAM ROAD, AMINJIKARAI, CHENNAI 600 029, THE REGISTERED OFFICE OF THE COMPANY

DIRECTOR'S PRESENT:

1. SHRI.JAGADISH A.SADARANGANI - CHAIRMAN
2. SHRI.J.HARESH BAKSHANI - MANAGING DIRECTOR
3. SHRI.PREM I.WATWANI - DIRECTOR

ITEM NO.1 LEAVE OF ABSENCE:

Leave of absence was granted to Shri J.Thakur Bakshani and Smt.Nisha T.Bakshani, Directors of the Company.

ITEM NO.2

CONFIRMATION OF THE MINUTES OF PREVIOUS BOARD MEETING:

The minutes of the previous Board Meeting held on 5th April 2005. The draft copy of which was circulated to all the Directors were read and confirmed and the same was signed by the chairman as fair and correct summary of the proceeding.

ITEM NO.3

RATIFICATION OF SETTLEMENT DONE WITH TRADE CREDITORS, WORKERS AND STAFF:

RESOLVED that the following expenditure which was incurred towards settlement of trade creditors, workers and staff in aggregate Rs.284.15 Lacs be and is hereby approved and ratified.

Trade Creditors	Rs.146.95 Lacs
Workers & Staff	Rs.122.89 Lacs
Factory expenses	Rs. 14.31 Lacs
Total	Rs.284.15 Lacs

RESOLVED FURTHER that the above expenditure was met out of the money borrowed from M/s Trident Textiles Mills Limited and out of the Sale proceeds of company's movable Assets such as plant and Machineries.

ITEM NO.4:

AUTHORISATION TO SELL LAND AND BUILDING OF THE COMPANY

RESOLVED THAT approval of the Board be and are hereby accorded to dispose the factory Land and Building of the company situated at No.30, Kazhipattur Village, Old Mahabalipuram Rod, Chengai District-603 103.

RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani, Chairman of the company be and is hereby authorized to negotiate with prospective buyers to dispose the above property on the terms and conditions mutually agreed between the company and the prospective buyers.

RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani be and is hereby authorized to finalise the Sale Agreement / Deed duly affixing the common seal of the company in the presence of Mr.J.Haresh Bakshani, Managing Director of the company whose also sign as witness thereof.

RESOLVED FURTHER THAT Mr.Jagdish A.Sadarangani be and is hereby authorized to do all such acts, deeds and things which are necessary in this regard.

ITEM NO.5:

RATIFICATION OF SETTLEMENT MADE WITH WORKERS & STAFF:

RESOLVED that the list of the workers and the staff with whom the company has entered into individual settlement under section 12(3) & Settlement before Joint Labour Commissioner under Section 18(1) of the Industrial Disputes Act and the copy of the said Agreements which was placed before the Meeting duly initiated by the Chairman for the purpose of identification be and is hereby approved.

RESOLVED FURTHER that the total expenditure of Rs.122.89 Lacs which was incurred by the company towards settlement of dues of all workers and staffs be and is hereby approved and ratified.

ITEM NO.6:

AUTHORISATION TO SELL EXISTING PLANT & MACHINERY:

RESOLVED that approval of the Board be and is hereby accorded to sell the company's existing plant & Machinery for a consideration of Rs.88 Lakhs.

RESOLVED FURTHER that the approval of the Board be and is hereby accorded to enter into suitable sale agreement with the prospective buyers Mr.J.Balan on such terms and conditions as mutually agreed between the Board and the said buyer the draft copy.

RESOLVED THAT the draft copy of the Sale Agreement as placed before the meeting duly authenticated by the Chairman for the purpose of identification be and is hereby approved.

VOTE OF THANKS:

As there was no other business to transact, the meeting was concluded with a vote of thanks to the chair.

PLACE : CHENNAI Sd/-
DATE: 24th June, 2005 CHAIRMAN"

35.1. A careful perusal of item no.1 of the above minutes shows that leave of absence was granted to Mr.Thakur J.Bakshani, the plaintiff and his wife.Item No.2 relates to the confirmation of the minutes of the previous board meeting held on 5.4.2005. This was unanimously accepted and ratified by all the Directors including the plaintiff. Item No.3 relates to ratification of the settlement done with trade creditors, workers and staff aggregating to Rs.284.15 lakhs that was met from the money borrowed from M/s Trident Textile Mills Limited and out of the sale proceeds of movable assets such as plant and machineries of the third defendant company. This was also approved and ratified. Item No.4 relates to the authorisation to sell the land and building of the third defendant company. The first part of the resolution vividly says that the Board has accorded approval to dispose of the factory land and building of the defendant company. The second part of the resolution also says that Mr.Jagdish A.Sadarangani, the Chairman of the third defendant company was authorised to dispose of the above property on the terms and conditions mutually agreed between the company and the prospective buyers. Again the third part of the resolution says that Mr.Jagdish A.Sadarangani was again authorised to finalise the sale agreement/deed duly affixing the common seal of the company in the presence of the Managing Director of the company. Once again the fourth part of the resolution says that Mr.Jagdish A.Sadarangani was authorised to do all such acts, deeds and things which are necessary in this regard. Importantly, this was also not questioned by the plaintiff before any authority viz., the Tribunal. Item No.5 relates to the ratification of settlement made with workers and staff and by virtue of this ratification of settlement, the third defendant company sought to ratify the settlement entered into with the workers and staff under Section 12(3) and the settlement before the Joint Labour Commissioner under Section 18 (1) of the Industrial Disputes Act, as a result, all the workers and staff constituting essential ingredients of undertaking were retrenched in 2005 bringing the undertaking to an end. This was also not questioned by the plaintiff. Item No.6 relates to the authorisation to sell the existing plant and machineries, another component of undertaking. The plaintiff having approved this authorisation also, has acted upon this resolution by selling the plant and machineries for a sum of Rs.88 lakhs and again failed to question any one of the items of the resolution, therefore, he cannot now pick and choose only the sale agreement, when he had received the sale consideration of Rs.2,50,00,000/-. When the plaintiff has approved the resolution of the Board of Directors to sell the land and building and also the plant and machineries of the third defendant company, he shall be lawfully estopped from questioning the sale agreement dated 14.07.2005 entered into by the third defendant with the first defendant. As referred to earlier, when the plaintiff has admitted before the trial Court that he gave his consent for passing the resolution in the Board meeting held on 24.06.2005 for sale of the plant and machineries and also for sale of the land and building, after acting on the minutes of the Board meeting to sell the plant and machineries under Ex.P22, the same plaintiff, without even raising any written objection with regard to the sale of the land, cannot approbate and reprobate only with regard to the sale of the land, since, in the meanwhile, the price of land in the area in question shot up. The detailed, explicit and clear admission made by the plaintiff standing in the witness box before the trial Court, having been extracted in the preceding paragraphs 25 & 28, for the sake of brevity, is again given below:-

> "...My consent was obtained before a decision to sell the machineries were taken by the board of Nova Dyeing and Printing Mills Ltd. Ex.P22 is the extract of the board meeting in which the machineries of the company were decided to be sold and though I was not present for the said meeting the minutes drawn were with my consent and knowledge as discussed and agreed earlier."

This admission of the plaintiff clearly brings his case under Section 58 of the Evidence Act read with Order XII, Rule 6 of the Code of Civil Procedure, which are extracted hereunder:-

> "Section 58 - Facts admitted need not be proved - No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.
>
> Order XII, Rule 6 of CPC - Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

35.2. While Section 58 of the Evidence Act says that facts admitted need not be proved, Order XII, Rule 6 of the Civil Procedure Code would further make it clear that where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may, at any stage of the suit, either on the application of any party or of its own motion and without waiting for determination of any other question between the parties, make such order or give such judgment, having regard to such admissions. In the case on hand also, since the plaintiff in his deposition before the trial Court has admitted that the Board of Directors held a meeting on 24.06.2005 and with his consent minutes were drawn, which is marked as Ex.P22, and the decisions were taken to sell the plant and machineries and as the sale of the land was also part of the decision taken in the Board meeting held on 24.06.2005, without even challenging the minutes under Ex.P22 before the Tribunal, the plaintiff cannot come to the civil Court only questioning the sale of the land. Therefore, on the basis of his own admission, he is not entitled to the relief of declaration sought for in the Civil Suit No.877 of 2005.

35.3. Further, the plaintiff, Mr.Thakur J.Bakshani filed a reply statement for the written statement filed by the fifth defendant, Mr.I.Prem Watwani stating that he has not given his consent for passing the resolution to sell the plant and machineries and land to the third defendant company. The relevant portion of the reply reads thus:-

> "10.....It was fact that there was a Board Meeting on 24.06.2005 when the Plaintiff was in India but was away from Chennai to attend his other business interests and the Plaintiff has not attended the said Board Meeting on 24.06.2005. Further the mere witnessing the transaction by the Fourth Defendant doesn't amount that he has obtained the consent of the Plaintiff..."

Whereas, in his cross examination before the trial Court on 16.04.2014, he has answered the question as follows:- [page 79 Vol II of the paper book]

> "...The sale of the machinery was with my consent and it was the decision of the Board. The Board of Nova Dyeing Printing Mills Ltd then consisted of 1. Mr.Jagdish Sadarangani, the Chairman, 2. Mr.Harish J.Bakshani, Managing Director, 3. Mr.Prem Watwani, Director, 4. Mrs.Nisha T.Bakshani, Director and 5. myself, Director. In addition to us Mr.V.C.Dhandapani, continued to be a director of Nova Dyeing however never participated in the board meeting. My consent was obtained before a decision to sell the machineries were taken by the board of Nova Dyeing and Printing Mills Ltd. Ex.P22 is the extract of the board meeting in which the machineries of the company were decided to be sold and though I was not present for the said meeting

the minutes drawn were with my consent and knowledge as discussed and agreed earlier."

35.4. The above answer given by the plaintiff standing in the witness box before the trial Court clearly and undoubtedly shows that the plaintiff was conscious of the decision taken by all the Directors of the Board for closing down the undertaking, for selling the plant and machineries of the undertaking and also for selling the land and building and also for executing the sale agreement dated 14.07.2005. In view of his own solemn admission made before the trial Court that he was a party to the decision taken on 24.06.2005, we are of the considered opinion that by virtue of Section 58 of the Evidence Act read with Order XII, Rule 6 and Order XV, Rule 1 of the Code of Civil Procedure, the trial Court ought to have decreed the suit for specific performance by dismissing the plaintiff's suit for declaration. Therefore, the points are answered accordingly.

36.Coming to the fourth point whether the plaintiff, without challenging the Board's resolution before the Tribunal under Sections 397, 398 & 402 of the Companies Act, can go to civil Court to challenge only the sale agreement, it may be mentioned that on the basis of the minutes of the Board meeting, when the plaintiff has acted upon the minutes to sell away the plant and machineries without even resorting to Section 293 of the Companies Act and again he has also ratified the settlement made with the workers and staff, for questioning the execution of the sale agreement dated 14.07.2005, the plaintiff ought to have approached the Tribunal/Company Law Board the competent authority for mismanagement either under Section 397 or under Section 398 or under Section 402 of the Companies Act, 1956, which are given as under:-

> "397. Application to Tribunal for relief in cases of oppression:- (1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.
>
> (2) If, on any application under sub-section (1), the Tribunal is of opinion- (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would

justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. Application to Tribunal for relief in cases of mismanagement: (1) Any members of a company who complain -

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

402. Powers of Tribunal on application under Section 397 or 398. Without prejudice to the generality of the powers of the Tribunal under section 397 or 398, any order under either section may provide for -

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of

any members of the company by other members thereof or by the company;
(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely :
(i) the managing director,
(ii) any other director,
(iii) and (iv) [***]
(v) the manager, upon such terms and conditions as may, in the opinion of the Tribunal be just and equitable in all the circumstances of the case;
(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;
(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
(g) any other matter for which in the opinion of the Tribunal it is just and equitable that provision should be made." (emphasis supplied)

37.Firstly, the Tribunal under Section 402 of the Companies Act has got enormous power to deal with, to terminate, set aside or to modify any agreement between the company and any other person not referred to in clause (d). Therefore, having taken a stand that Section 293 of the Companies Act was violated, the plaintiff should have approached the Tribunal, because the plaintiff in such circumstances would have complained that the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member under Section 397, but he has chosen not to do so.

Even Section 398 also says that any member of the company who complains that the affairs of the company are being conducted in a prejudicial manner to the interest of the company, can apply for any relief in case of mismanagement. That course/remedy also has not been availed of. Even under Section 402, when the Tribunal has got enormous power for regulation of the conduct of the company's affairs in future or to set aside any transfer, delivery of goods, payment, modification of any agreement or termination of any agreement or any act relating to property made against the company within three months from the date of application, ironically, it is not known why the plaintiff has not even approached the Tribunal questioning the minutes of the Board meeting held on 24.06.2005. On the other hand, when the Board meeting has authorised the sale of plant and machineries and also the sale of the land and building of the company, the plaintiff, having agreed with the resolution and has also acted upon to sell away the plant and machineries without even complying with Section 293 of the Companies Act, he is again legally estopped from questioning the validity of the sale agreement alone before the civil Court, because, as highlighted above, by virtue of Sections 397, 398 & 402 of the Companies Act, filing a suit before the civil Court challenging the sale agreement is not legally maintainable, as the remedy lies before the Tribunal to question the Board's resolution. This legal aspect has been overlooked by the trial Court. Secondly, the plaintiff having admitted before the trial Court that he had consented to pass the resolution in the Board's meeting to sell away the plant and machineries, to close down the company and to sell the land of the company, is estopped from either going to the civil Court or to the Tribunal. Therefore, the failure to approach the Tribunal under Section 397 or under Section 398 or under Section 402 of the Companies Act to set aside the Board's resolution dated 24.06.2005 giving power to sell the land and challenging only the consequential act of entering into an agreement to sell the land of the third defendant company is fatal, hence, filing civil suit to challenge the sale agreement is unjustified. Accordingly, this point is answered in favour of the first defendant.

38.Point No.(v): Coming to the issue whether the suit for specific performance filed by the first defendant is maintainable under Section 16(c) of the Specific Relief Act, 1963 is concerned, the said section is extracted hereunder:-

> "16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—
> (a) & (b) ....
> (c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract

which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.
Explanation.—For the purposes of clause (c),
(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction."

The above section envisages that the first defendant/ plaintiff in C.S.No.627 of 2008 must plead and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant and the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant, hence, it is required to be considered by the Court while granting or refusing the relief. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances.

39. In this case, it may be mentioned that

(i) both the first defendant/Shrutivinda Agro Farms Private Limited and the third defendant/Nova Dyeing and Printing Mills Limited entered into an agreement for sale on 14.07.2005 at Chennai, in and by which the first defendant has agreed to purchase and the third defendant company has agreed to sell the 'B' schedule property morefully described in the schedule thereunder for a net sale consideration of Rs.16,25,00,000/- free from all encumbrances.

(ii) The said sale agreement was signed by Mr.K.V.V.Krishnam Raju, for and on behalf of the first defendant and Mr.Jagdish A.Sadarangani for and on behalf of the third defendant company on the basis of the minutes of the meeting of the Board of Directors held on 24.06.2005.

(iii) At the time of entering into the agreement, the first defendant paid an advance of Rs.2,00,00,000/-, the receipt of the same was also duly acknowledged by the third defendant vide clause 2 of the agreement for sale.

(iv) Clause 3 of the agreement provided for payment of a further sum of Rs.50,00,000/- by the first defendant within one month from the date of agreement. Subsequent to the sale agreement, the first defendant paid a further sum of Rs.50,00,000/- on 18.08.2005, the receipt of the same also has been duly acknowledged by the third defendant company and ever since the date of agreement, the first defendant has kept ready the balance sale consideration and expressed its utmost readiness and willingness to pay the balance sale consideration to complete the sale transaction within the stipulated period of four months from the date of agreement.

(v) Clause 4 provided for payment of the balance sale consideration of Rs.13,75,00,000/- within four months thereof after the defendant company furnished the details mentioned in clause 10 of the agreement.

(vi) Clause 8 provided that the sale transaction shall be completed within four months.

(vii) Clause 11 recorded that time is the essence of the agreement for sale and in the event of failure to keep up any of the obligations by either party, the other party shall be entitled to claim specific performance of the agreement for sale on the other.

(viii) When the four months time was to expire on 14.11.2005, the plaintiff filed the Civil Suit No.877 of 2005 before the High Court for no fault on the part of the first defendant seeking to declare that the sale agreement dated 14.07.2005 entered into between the first defendant and the third defendant company is null and void against his own brother with a consequential relief of permanent injunction restraining the defendants therein from enforcing any terms and conditions of agreement dated 14.07.2005 in any manner. After filing the suit, the plaintiff obtained an order of injunction on 07.10.2005 restraining the defendants including the plaintiff in the suit for specific performance from enforcing any terms and conditions of the agreement for sale in any manner interfering with the sale agreement.

(ix) When the trial Court has granted interim injunction restraining the defendants, more particularly, the first defendant/plaintiff in C.S.No.627 of 2008 for specific performance not to enforce any terms and conditions of the agreement for sale in any manner, the first defendant has been injuncted from issuing even the pre-suit notice calling upon the third defendant company to come forward to execute the sale deed on the basis of the sale agreement dated 14.07.2005, that has become the subject matter of lis in C.S.No.877 of 2005.

(x) When the first defendant had paid a sum of Rs.2,00,00,000/- as advance at the time of entering into the sale agreement dated 14.07.2005 and also paid a further sum of

Rs.50,00,000/- on 18.08.2005, after receiving the said amount which was exclusively used for settlement of the workers dues and also to pay back the loan of M/s Trident Textiles Mills Limited in which the plaintiff was the Chairman, when there was a sudden spurt in price rise of the land after 2005, because the State Government made an announcement that the Old Mahabalipuram Road has become an Information Technology corridor, the plaintiff has hurriedly filed the Civil Suit No.877 of 2005 and obtained an injunction order restraining the first defendant not to issue even the pre-suit notice.

(xi) Therefore, when the first defendant had paid Rs.2,00,00,000/- on the date of agreement and also a further sum of Rs.50,00,000/- on 18.08.2005, having received notice along with the order of injunction, the filing of the civil suit for specific performance against the defendants therein for execution of the sale deed on the basis of the sale agreement clearly averring and pleading that the first defendant has performed its part of the contract, are all the relevant material circumstances sufficiently proving the readiness and willingness of the first defendant to perform the execution of the sale deed, ought to have been considered by the trial Court while granting the said relief.

40.In similar circumstances, the Apex Court in Man Kaur (Dead) by L.R's v. Hartar Singh Sangha (2010) 10 SCC 512, has held that to adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The relevant portions of the judgment read thus:

> 12. Section 16(c) of the Specific Relief Act 1963 (`Act for short) bars the specific performance of a contract in favour of a plaintiff who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than terms of the performance of which has been prevented or waived by the defendant). Explanation (ii) to section 16 provides that for purposes of clause (c) of section 16, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Thus in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove

his readiness and willingness to perform his obligations under the contract in terms of the contract. (See : N.P. Thirugnanam to R. Jagan Mohan Rao - AIR 1996 SC 116 ; Pushparani S.Sundaram v. Pauline Manomani James - 2002 (9) SCC 582 ; and Manjunath Anandappa v. Tammanasa - 2003 (10) SCC 390).

> 13. In the first case, this Court held :
>
> "The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."

41.Therefore, as per the above judgment of the Apex Court, to adjudge whether the first defendant (plaintiff in C.S.No.627 of 2008) was ready and willing to perform his part of the obligation, the Court must take into consideration the attending circumstances prior and subsequent to the filing of the suit. In this context, the conduct of the first defendant prior to the filing of the suit would show that the first defendant had purchased 8 acres of nearby land and the access to the purchased land is only through the suit schedule property. After the sale agreement, legitimately expecting that the sale agreement would materialise, the first defendant had purchased the adjacent lands. Now in view of refusal of decree for specific performance, the first defendant is unable to use the purchased land. These attending circumstances prior and subsequent to the filing of the suit would indicate that the first defendant was ready and willing to perform their part of the contract. This apart, the trial Court also, in paragraph-96 of the impugned judgment, has held in favour of the first defendant that the first defendant was a bona fide agreement holder to buy the suit property. The said portion is given as under:-

> "96. This Court, on a perusal of oral and documentary evidence, is of the considered view that the first defendant has shown bonafide as Agreement Holder to buy the suit property."

42.When the trial Court also has come to the conclusion that the first defendant is a bona fide agreement holder and has also recorded a finding that the Board of Directors of the third defendant company in the minutes of the meeting under Ex.P22 dated 24.06.2005 have accorded approval for sale of the plant and machineries for a consideration of Rs.88 lakhs, the contra stand taken by the plaintiff would clearly show that he has not come to the Court with clean hands, therefore, the relief of declaration sought for by the plaintiff to hold the sale agreement as null and void, ought not to have been granted. Therefore, we are of the considered opinion that there is a material irregularity committed by the trial Court holding that the third defendant had sold away the plant and machineries for Rs.88 lakhs on the basis of the minutes of the Board meeting dated 24.06.2005 and the plaintiff did not challenge the said sale would technically amount to taking a contra stand, clearly exposes the unclean hands of the plaintiff, because when the trial Court has given a finding that the third defendant had sold away the plant and machineries on the basis of the minutes of the Board of Directors dated 24.06.2005 without complying with Section 293 of the Companies Act, cannot give a finding that the written agreement for sale dated 14.07.2005 would violate Section 293 of the Companies Act. Even the explanation given under Section 16(c) of the Specific Relief Act, 1963 shows that for the purpose of clause (i) of Section 16(c) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court.

43.1. Moreover, the Apex Court in its recent judgment in Kamal Kumar v. Premlata Joshi and others, (2019) 3 SCC 704, has again reiterated the settled principles of law that the decree for specific performance is a discretionary and equitable relief, for which the material questions required to be gone into are: (i) existence of valid concluded contract; (ii) readiness and willingness of plaintiff to perform his part of contract; (iii) plaintiff performing his part of contract and its extent and manner, and whether such performance is in consonance with terms of contract; (iv) whether it is equitable to grant relief of specific performance regarding suit property or it causes any hardship to defendant, and if yes, how and in what manner such relief can be granted; and (v) entitlement of plaintiff to any other alternative relief such as refund of earnest money with interest etc., and on what grounds such relief can be granted?

43.2. In the case on hand, firstly, both the parties have executed the agreement for sale dated 14.07.2005 for sale of the land in question. Secondly, the first defendant (plaintiff in C.S.No.627 of 2008), showing its readiness and willingness, paid a huge sum of Rs.2,00,00,000/- as advance, at the time of executing the agreement for sale. Thirdly, the first defendant (plaintiff in C.S.No.627 of 2008) had also paid a further sum of Rs.50,00,000/- on 18.08.2005 and has been readily and willingly waiting to pay the balance sale consideration. Fourthly, the plaintiff (Mr.Thakur J.Bakshani) has only filed the C.S.No.877 of 2005 challenging the correctness of the agreement for sale and obtained an order of injunction dated 07.10.2005 against the defendants therein not to interfere in any manner with the sale agreement. Besides, on the basis of the sale agreement and the payment of part consideration, the first defendant (plaintiff in C.S.No.627 of 2008) has also purchased 8 acres of nearby land, and has been waiting for the execution of the sale deed on payment of the balance consideration, as the access to the purchased land is only through the suit land. When the first defendant (plaintiff in C.S.No.627 of 2008) has fulfilled the aforementioned conditions, we are of the considered opinion that the first defendant would suffer hardship, if the equitable relief of specific performance is not granted. Moreover, when the first defendant has proved its readiness and willingness to perform its part of the contract by paying part of the sale consideration of Rs.2,50,00,000/- and the plaintiff has not disputed the execution of the sale agreement and that the first defendant has also filed the Civil Suit No.627 of 2008 seeking the relief of specific performance within the time of three years, as the limitation for filing the suit as prescribed under Article 54 of the Limitation Act having not commenced, the judgment and decree passed by the trial Court, without considering the aforementioned aspects, dismissing the suit for specific performance, in our considered view, are unjustified, as the trial Court ought to have held that the sale agreement is valid and enforceable one.

43.3.The Hon'ble Apex Court in A.Kanthamani v. Nasheen Ahmed, (2017) 4 SCC 654, relying upon the decision of the Privy Council in Bank of India v. Jamsetji A.H.Chinoy, 1949 SCC OnLine PC 81 on the question as to how and in what manner the plaintiff is required to prove his financial readiness so as to enable him to claim specific performance of the contract/agreement, also quoted with approval the view taken by Chagla A.C.J., inter alia that "it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness".

44.In the present case, as we have discussed above, when the plaintiff has obtained an order of injunction dated 07.10.2005 restraining the first defendant not to interfere with the sale agreement dated 14.07.2005 in any manner, the non-issuance of pre-suit notice by the first defendant, cannot be taken as a defence by the plaintiff, as the first defendant has to respectfully comply with the order of injunction. Moreover, when the plaintiff has obtained an order of injunction not to interfere with the sale agreement, the first defendant was lawfully prevented from issuing the pre-suit notice. Therefore, the plaintiff, having obtained an order of injunction dated 07.10.2005 against the first defendant, cannot complain that there was no readiness or willingness to perform the execution of the contract. Besides, the sale agreement dated 14.07.2005 entered into between the parties has not been terminated by the defendant company-M/s Nova Dyeing. As a matter of fact, the plaintiff, having received part of the sale consideration of Rs.2,50,00,000/-, utilised the same and above all, no notice whatsoever has been given to cancel or terminate the sale agreement. Hence, the fifth point is also answered in favour of the first defendant that the suit for specific performance is maintainable in law, more particularly, when the trial Court has given two findings, namely, (i) that the plaintiff has come to the Court with unclean hands, for the reason that he has given his consent to pass the resolution in the Board meeting, which gives power to sell the plant and machineries and also the suit land, after selling the plant and machineries, he cannot challenge the sale of the land and (ii) when the first defendant was the bona fide sale agreement holder, the suit filed by the plaintiff should have been dismissed and the suit filed by the first defendant for specific performance should have been decreed, since the plaintiff has come to the Court with unclean hands.

45.Therefore, for all the aforementioned discussions and conclusions, answering all the points in favour of the first defendant and against the plaintiff, the impugned common judgment and decree passed by the trial Court are set aside and the original side appeals are allowed. As a necessary corollary, C.S.No.627 of 2008 filed by M/s Shrutivinda Agro Farms Private Limited seeking for specific performance of the agreement for sale dated 14.07.2005 is decreed by directing the purchaser to deposit the balance sale consideration before the trial Court within a period of two weeks from the date of receipt of a copy of this order and on such deposit, the sale deed in respect of the 'B' schedule property shall be executed by the vendor in favour of the purchaser within a period of four weeks therefrom. In view thereof, the alternate prayer for damages stands rejected. For the very same reasons, C.S.No.877 of 2005 is dismissed. Consequently, C.M.P.Nos.9923 to 9926 of 2018 are closed. However, there is no order as to costs throughout.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

ss

To

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

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.16724

+4cc to Mr.P.SubbaReddy, Advocate, S.R.No.16746

O.S.A.Nos.191 & 192 of 2018

SV(CO)
RGA(13/04/2022)