NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 122 of 2026

[Arising out of Order dated 16.03.2026 passed by the National Company Law Tribunal, Mumbai Bench – I, in C.P. No.216 of 2025]

IN THE MATTER OF:

1. Mr. Nayan Shah
R/o The Imperial, Apartment No. 2108,
North Tower, B. B. Nakashe Marg, Tardeo,
Mumbai, Maharashtra – 400034, India.
Email ID: nayan@cheersin.com
Phone No. - +91 98201 55567

...Appellant No. 1

2. Ms. Jigna Nayan Shah
R/o The Imperial, Apartment No. 2108,
North Tower, B. B. Nakashe Marg, Tardeo,
Mumbai, Maharashtra – 400034, India.
Email ID: jignashah005@gmail.com
Phone No. - +91 98201 55567

...Appellant No. 2

Versus

1. Cheers Interactive (India) Private Limited
A Company registered under the provisions of The Companies Act, 2013,
Having its registered office at:
The Imperial, Apartment No. 2108,
North Tower, B. B. Nakashe Marg, Tardeo,
Mumbai, Maharashtra – 400034, India.
Email ID: finance@cheersin.com
Phone No. +91 9833737735 **...Respondent No. 1**

2. Mr. Hitesh Chunilal Shah
R/o A - 3002/3102 Beau Monde,
Appasaheb Marathe Marg, Prabhadevi,
Mumbai, Maharashtra – 400025.
Email ID: hitesh.cheersin@gmail.com
Phone No. - +91 98203 01888 **...Respondent No. 2**

3. Mr. Chunilal Meghji Shah
R/o A -3002/3102 Beau Monde,
Appasaheb Marathe Marg, Prabhadevi,
Mumbai Maharashtra – 400025.
Email ID: mp.shah@yahoo.com
Phone No. - +91 98203 01888 **...Respondent No. 3**

Present:

For Appellant	:	**Mr. Ramji Srinivasan & Mr. Sumant Batra, Sr. Advocates with Ms. Lalima Ghosh, Ms. Shefali Munde, Mr. Sarthak Bhandari and Mr. Aryansu Tripathi, Advocates.**
For Respondents	:	**Mr. Arun Kathpalia, Sr. Advocate with Ms. Aakashi Lodha and Mr. Aditya Dhupar, Advocates for R-2.**
		Mr. Krishnendu Datta, Sr. Advocate with Mr. Namanjeet S. Bhatia and Ms. Alina Merin Mathews, Advocates for R-3.
		Mr Gaurav Mitra, Sr Advocate with Mr Aditya Vikram Bajpai, Advocates for R-1.

J U D G M E N T

[Per; Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by the appellants being aggrieved by the order dated 16.03.2026 under Section 241 read with Section 242 of the Companies Act, 2013 (hereinafter referred to as the **"Companies Act"**), passed by the Ld. NCLT, Mumbai Bench – I, in C.P. No. 216/2025, filed by Mr. Hitesh Chunilal Shah, Respondent No. 2 in the present appeal.

2. Before proceeding further, it will be relevant to understand the status and role of parties to the present *lis*:-

2.1. The Appellant No. 1, Mr. Nayan Laxmi Chand Shah is the son-in-law of Respondent No. 3, Mr. Chunilal Meghji Shah. He is CEO of the Company (R-1) since 2002, though not a shareholder.

2.2. The Appellant No. 2, Ms. Jigna Nayan Shah, is the wife of Appellant No. 1 and Daughter of Respondent No. 3, Mr. Chunilal Meghji Shah.

2.3. Respondent No. 1 is the company Cheers Interactive (India) Private Ltd., which is the subject matter of the present *lis*.

2.4. Respondent No. 2, Mr. Hitesh Chunilal Shah is the son of Respondent No. 3, Mr. Chunilal Meghji Shah and was the original petitioner in C.P. No.216/2025.

2.5. Respondent No. 3 is Mr. Chunilal Meghji Shah, the Patriarch of the family being father of the Appellant No. 2 & Respondent No. 2 and father-in-law of Appellant No. 1. He was the Chairman of the Board of the company.

2.6. As per the records (pages 268 to 270) of the appeal paper book, the company was incorporated on 14.07.2000 with Respondent No. 2, Respondent No. 3 & Appellant No. 2 having 100 shares each.

2.7. As on 31.03.2001, Respondent No. 1 & Respondent No. 3 held 99.99% shares and Appellant No. 2 held only 0.01% shares.

2.8. In the period 2002-05, the father, Respondent No. 3 gifted a substantial chunk of his shareholding to Appellant no. 2.

2.9. As on 30.09.2005, father and son (Respondent No. 2 & Respondent No. 3) hold 50% of shares in the company and the daughter, Appellant No. 2 held the remaining 50% shares. There were minor changes in the shareholding in the *interregnum*.

2.10. On 22.07.2020, father (Respondent No. 3) transferred 67,150 shares to daughter (Appellant No. 2) as a gift. As a consequence of this transfer, the Appellant No. 2 held 53.67% of shares whereas, Respondent No. 2 was holding

40.19% shares and Respondent No. 3 was still continuing to hold 0.44% shares.

2.11. The company was not giving any dividends and was rewarding the shareholders through payment of salaries and other benefits.

2.12. Both the sides are *ad idem* that the company is a closely held family company in the nature of quasi-partnership.

3. Respondent No. 2 filed C.P. No. 216/2025 before the Ld. NCLT, Mumbai alleging commission of oppressive acts and mismanagement in the affairs of the company by Ms. Jigna Shah (Appellant No. 2) and Mr. Nayan Shah (Appellant No. 1).

3.1. The father was not a petitioner though as Respondent No. 4 in the said petition, he supported the case of the petitioner. The allegations before the Ld. NCLT were that Appellant No. 1 and Appellant No. 2 are taking decisions without appropriately convening the meetings, are creating third-party rights, are dealing with company assets without consent and are operating bank accounts without appropriate safeguards.

3.2. The petitioner also sought equal remuneration, access to records and appointment of Independent Administrator and Forensic Auditor and directions for disgorgement for alleged wrongful gains.

3.3. After noting the facts and arguments of both sides, the Ld. NCLT vide impugned order gave the following directions:

> *"60. Having noted that there is complete breakdown of mutual trust, respect and confidence between Petitioner and Respondent No. 4 on one hand and*

Respondent No. 2 & 3 on the other hand, we fee that either of group needs to exit from CIPL by providing exit to other in the interest of CIPL which is running company having potential to grow and generating employment as well. It is noted that the Petitioner and Respondent No. 4 are founders of CIPL, but Petitioner had consented to exit from CIRP in October, 2022, which failed as Respondent No. 2 made it conditional upon settlement of their difference(s) in relation to other properties owned by the family. However, it is noted that the Petitioner had expressed its willing to provide exit to Respondent No. 2 & 3 at much higher valuation at present. On the other hand, Respondent No. 2 & 3 are in control of affairs of CIPL and running the business. Since, CIPL is a family owned company and its business value is mainly derived from its client portfolio & relationship and human resources and both the groups understands it well, we consider it appropriate to allow both the groups to bid for the other group's shareholding to determine the value to be paid by the successful group to the other group for their exit in transparent manner. Accordingly, we appoint Mr. Chandra Bhan Singh (Ex-NCLT Member) having contact no. 9818888486, Email id: cbsingh60@gmail.com as the Observer to carry out and supervise the bidding process, in terms of following broad guidelines for the purpose:

a. The bidding process shall be carried out on basis of audited financial position of CIPL as on 31st March 2025.

b. Both the groups shall submit their initial bids to him within 30 days of this order and thereafter, the Ld. Observer shall carry out a Swiss Challenge Mechanism to discover the highest value offer.

c. The group giving highest bid value shall acquire the shares held by other group by making payment to them within 3 months from the date of closure of such bidding process.

d. The successful bidder shall deposit 10% of bid value on completion of bidding process in an escrow account to be opened in name of CIPL and operated by Observer.

e. In case the successful bidder fails to pay the final consideration within time or such period as the Observer, after discussion with both the *group, permits on such conditions as he may consider appropriate,*

f. The group exiting CIPL shall deposit the shares with Observer with duly executed transfer deeds within 7 days of deposit of 10% bid value in manner aforesaid.

g. The Observer shall inform the individuals, other than family members, if they wish to exit from CIPL within 7 days from closure of bidding process and they shall inform their decision to exit within 7 days to the Observer, failing which they shall remain invested in CIPL.

h. The Observer shall be entitled to attend the Board meeting of CIPL till the transaction is complete and shall be paid remuneration @ Rs. 50,000/- for each such meeting.

i. The composition of board and shareholding structure shall not be changed till the process is over and the Order dated 19th December 2025 for this purpose shall remain in force till such time.

j. The Observer shall be paid a consolidated remuneration of Rs.5,00,000/- plus GST if applicable, besides the remuneration for attending the board meeting.

k. CIPL shall file a compliance report duly certified by Observer after completion of process.

61. In terms of above, CP 216 of 2025 is allowed and disposed of."

4. In its oral and written submissions, learned Sr. Counsel for the appellants has submitted as under:-

4.1. The Appellant No. 1 has been involved in the business and operations of the company as its CEO and has played a prominent role in its growth and development. The company is engaged in the business of market research and consulting.

4.2. In March 2022, the Respondent No. 2 refused to provide personal guarantees to the bank towards the credit facilities showing that he was not interested in running the company nor in protecting the interests of the company.

4.3. With the intent to bring the disputes to an end, the global settlement was undertaken and informal document called the "Initial Meeting Notes" was signed which contemplated the execution of a future definitive settlement agreement whereby the Respondent No. 2 and Respondent No. 3 were to exit from the R-1 Company as shareholders and directors and would transfer the common family lands as agreed between the parties. The underlying settlement discussions stood terminated in May 2023.

4.4. The Respondent No. 2 took leave from the R-1 Company in October 2022 and ceased participating in the management of the R-1 Company and completely stopped attending all Board Meetings.

4.5. Respondent No. 2 and Respondent No. 3 incorporated a competing entity Meg One on 28.12.2022, though they later resigned from the said company. Thereafter, Respondent No. 2 established another competing entity called Futurescalex Insights Private Limited.

4.6. Respondent No. 2 has breached his fiduciary duties as a Director of the R-1 Company under Section 166.

4.7. Respondent No. 2 started poaching key employees and key clients of the company, resulting in financial losses to the company.

4.8. Respondent No. 2 absented himself from the Board Meetings which were presided over by Respondent No. 3. In the Minutes of the Meetings, Respondent No. 3 recorded absence of Respondent No. 2.

4.9. The Board decided to have independent investigation though Chief Legal Officer.

4.10. The company filed a Criminal Complaint with Deputy Commissioner of Police, Crime Branch, Cyber Mumbai against Futurescalex and its ex-employees on 27.03.2025.

4.11. It was for the first time through letter dated 01.04.2025 that Respondent No. 2 described himself as the Whole-Time Director and alleged exclusion form management by stating that he never received any notices of Board Meetings, even though the said notices were sent by his own father.

4.12. It was only counter blast to the FIR filed that Respondent No. 2 filed the company petition before the Ld. NCLT.

4.13. It is argued that the impugned order suffers from four fundamental errors; **(a)** ignores the admitted breach of fiduciary obligation by Respondent No. 2 in starting a competing business and poaching employees/clients; **(b)** ignores the statutory vacation of office under Section 167 due to repeated failure to attend the Board Meetings; **(c)** confers a casting vote upon Respondent No. 3 jeopardising the R-1 Company's governance and **(d)** ignoring the Articles of Association, specifically Article 11 and 12, giving pre-emptive rights to the existing shareholders to purchase the shares of the exiting shareholders.

4.14. The petition was not maintainable as per the judgement of Bombay High Court in the case of ***'Rajeev Kapur & Ors.' Vs. 'Grentex', [(2013) Comp Cas 28],*** due to dishonest conduct of Respondent No. 2 aided by Respondent No. 3.

4.15. It is submitted that because the majority does not want any lingering disputes, they are willing to offer the minority an exit strictly in terms of the Articles. The exit through Swiss Challenge by either party as ordered by the Ld. NCLT is against the Articles of the Company. Further since Respondent No. 2 and Respondent No. 3 have acted against the interest of the company they should not be given an opportunity to bid for the company.

4.16. The Hon'ble Supreme Court in ***'M.S.D.C. Radharamanan' Vs. 'M.S.D. Chandrasekara Raja', [(2008) 6 SCC 750]*** has considered similar situation of irreconcilable differences but has directed the one who was in management to buy out the other.

4.17. The majority shareholders should not be forced to sell their shares to the minority shareholders, for which reliance is placed on ***'Yashovardhan Saboo' Vs. 'Groz-Beckert Saboo Ltd.', [1992 SCC OnLine CLB 10]*** and ***'G. Govindraj' Vs. 'Venture Graphics P Ltd.', [2004 SCC OnLine CLB 61].***

4.18. Any challenge raised by the contesting respondents *qua* removal as a Director is not maintainable in a petition under Section 241, being directorial dispute and not a shareholder dispute.

4.19. It was prayed that the order be set aside and the present appeal be allowed. It is submitted that the best course of action in the present case is to follow the exit mechanism provided for in the Articles of the R-1 Company whereby the appellants are allowed to pay out the respondents. This will protect the interests of the company and bring an end to the disputes between the parties.

5. In its oral written submissions, the learned Sr. Counsel for the Respondent No. 1 Company has submitted as under:

5.1. Respondents No. 2 and 3 are causing loss to the company due to diversion of business to their new undertakings namely, M/s Megone Research and Advisory Pvt. Ltd. and M/s Future Scalex Pvt Ltd.

5.2. The Ld. Sr. Counsel submitted that the business of the company involved handling of confidential information and mutual confidentiality agreements were signed with various customers. It is alleged that Respondent No. 2 has violated the confidentiality of data.

6. In its oral written submissions, the learned Sr. Counsel for the Respondent No. 2 has submitted as under:

6.1. The company was incorporated on 18.07.2000 and is engaged in Knowledge Process Outsourcing (**"KPO"**). The company was started by Appellant No. 2, Respondent No. 2 and Respondent No. 3 as per the Memorandum of Association. Respondent No. 2 and Respondent No. 3 along with Appellant No. 2 were directors since 2000.

6.2. Appellant No. 1's saree business was not doing well, and he being the elder son-in-law was brought in the company as CEO and Respondent No. 2 was designated as COO.

6.3. Appellant No. 1 does not hold any shares. Appellant No. 2 originally held 100 shares and subsequently shares were gifted to her generally by Respondent No. 3 and also by Respondent No. 2.

6.4. Respondent No. 2 and Respondent No. 3 were in majority until 2020 when some more shares were gifted to Appellant No. 2 by Respondent No. 3.

6.5. Presently, Appellant No. 2 holds 53.67% shares, Respondent No. 2 holds 40.19% shares, Respondent No. 3 holds 0.4% shares. Balance shares are held by employees/friends.

6.6. Till 2020, when Respondent No. 2 & Respondent No. 3 were majority shareholders, the company ran smoothly but after Appellant No. 2 became majority shareholder, Appellant No. 1 created a hostile environment and differences arose between the parties.

6.7. The company does not declare dividend, being a quasi-partnership, profits were distributed equally as remuneration across family factions. From 2022, Respondent No. 2's salary/remuneration was unilaterally stopped and subsequently in 2005 even Respondent No. 3's salary was stopped.

6.8. To maintain family peace, the Respondent No. 2 agreed to exit under the Settlement dated 13.10.2022 for Rs.60 crore to be paid by 27.012023 with a liberty to compete with the company. The amount of Rs. 1.01 crore was paid but no further payment followed. Respondent No. 2's access to the company record was denied, which led to filing of the C.P. No. 216/2025.

6.9. There is no error in the impugned order. The Ld. NCLT has held that appellants had oppressed the Respondent No. 2 and Respondent No. 3 and mismanaged the affairs of the Company and in light of the dispute and differences between the two shareholder factions has directed that the shares be subjected to an *inter se* bidding process through the Swiss Challenge mechanism under the supervision of the Court appointed observer.

6.10. The actions of the appellants may be considered in the background of settlement arrived at on 13.10.2022, a copy of which is placed at page No.330, Volume 2 of the appeal paper book which records that shareholding of Respondent No. 2 will be purchased for Rs.60 crore by 27.01.2023, that no other monetary or other new points will be brought up, that no Company data will be used and that no non-compete is fine i.e., parties can have competing business. This Agreement was intended to be implemented. On 17.10.2022, Appellant No. 2 paid a part-sum of Rs. 1.01 crore to Respondent No. 2 as evidenced by document placed at page No.331 of the appeal paper book. The appellants failed to make further payments and the Respondent No. 2 addressed the communication dated 09.02.2023 referring to the settlement and stating that in spirit of the settlement, Respondent No. 2 had removed himself from management and has given the laptop for cleaning all company data. Respondent No. 2 proposed an extension for payment by appellants till 26.02.2023 and in the alternative also offered his willingness to purchase the shareholding of Appellant No. 2 at the same terms with the premium of 10% on purchase consideration, and the consideration was offered to be paid within 60 days of signing of contract.

6.11. The appellants responded to its letter vide letter dated 28.02.2023 expressly admitting that there were irreconcilable differences between the parties and brought in strenuous considerations stating that the settlement dated 13.10.2022 is not for the company alone but a full & final settlement arrangement between the respective family members and also involved transfer of jointly held family lands. It is in complete bad faith, the appellants tried to expand the scope of executed Settlement Agreement, despite the

Settlement Agreement expressly providing that no other monetary claims or other new issues should be raised. Between October 2022 and February 28, 2023, no such issue was raised. It was much after the expiry of the due date for payment, that for the first time other issues regarding family land were raised in the said letter dated 28.02.2023 more so, to overcome the compliance of the settlement relating only to the company.

6.12. While Respondent No. 2 had voluntarily, suo moto, complied with the terms of the settlement dated 13.10.2022 and had applied for leave, extended the leave and had refrained from participating in the affairs of the company, the other side refused to make payment.

6.13. In the period 2023-25 even mediation was pursued through Mr. Cyril Amarchand Mangaldas but the same failed due to the unreasonable conduct of the appellants.

6.14. No notices were sent to Respondent No. 2 for Board Meetings. The Minutes of the Meetings also do show the signature or presence of Respondent No. 2.

6.15. Respondent No. 2 despite his substantial shareholding was excluded from the affairs of the company and was denied access to company records. On specific written request, limited financial data was provided on 15.05.2025 and 31.05.2025.

6.16. On 17.07.2025, for the first time, Appellant No. 1 took a stand that Respondent No. 2 was no longer a whole-time director, as he was appointed only till 31.03.2025 vide resolution dated 12.03.2020. This letter nowhere mentions termination of directorship under Section 167 or otherwise.

6.17. Respondent No. 2 does not face any disqualification under Section 167 as notices for the Board Meetings were never issued, neither the Minutes of the Meetings were served upon him.

6.18. As far as contention that there is conflict of interest under Section 166 of the Companies Act, it is argued that the Settlement Agreement dated 13.10.2022 expressly provided that there will be no non-compete clause and since the Respondent No. 2 had agreed to exit from the company, he was entitled to establish his own business.

6.19. Respondent No. 2 adopted in good faith to implement the Settlement Agreement, which was confined to the R-1 Company only, though 4-1/2 months later an attempt was made by Appellant No. 1 to introduce more issues in it.

6.20. Regarding poaching of employees by FutureScalex, it is submitted that more than 80 employees have left out R-1 Company of which only 19 employees have chosen to join FutureScalex. Respondent No. 2 was running the company for more than 2 decades and it is natural that some employees have faith in him over the appellants.

6.21. Regarding poaching of clients, it is submitted that in the KPO business where business solutions are found for companies, it is not difficult to know through data available in public domain which companies are in need of such consultancy. Many of these companies have more than one consultant. Details of all Fortune 500 Companies are in public domain and there is no breach of any confidential data by Respondent No. 2.

6.22. On the argument of confidential data, no evidence has been laid out by the appellants regarding misuse of any confidential data. The Respondent No. had given his laptop for deleting all data. In any case this issue has been raised before the Bombay High Court and no interim orders have been passed in that case.

6.23. The FutureScalex has a meagre turnover of Rs.2-3 crore compared to turnover of Rs.80-90 crore of the company. The downfall in business of the company is not because of competing business, but due to actions of appellants.

6.24. Consequence of conflict of interest under Section 166 is penalty and not disqualification, for which no meeting has been called by appellants under Section 184.

6.25. Respondent No. 2 was denied the access to the company while simultaneously the agreed payment has not been made. The actions taken by Respondent No. 2 in terms of the settlement, like going on leave and not attending to the affairs of the company, and creating a company for himself, the same are now being utilised to portray breach of fiduciary duty, whereas it is the appellants who have breached the settlement.

6.26. The reliance on FIR lodged by the company is to mislead this Tribunal as the name of the Respondent No. 2 or Respondent No. 3 does not figure in the FIR.

6.27. There is financial oppression of the Respondent No. 2 and Respondent No. 3, who are original founders of the company and were entitled to share in profits of the company, which was earlier paid as remuneration.

Remuneration has been stopped arbitrarily. Respondent No.2's remuneration was stopped in 2022-23 and Respondent No. 3's remuneration was stopped from January 2025. The company is presently being unilaterally controlled by the appellants.

6.28. The judgment of the Hon'ble Supreme Court in the case of ***'Rajeev Kapur' (supra)*** has no application in this case, as in the Rajeev Kapur case, the parties have agreed that they will not do any competing business, which is not so in the present case. In the present case, the settlement specifically mentions that there will be no non-compete clause, that is, the respondent can set up competing business.

6.29. Both sides agreed that there is a breakdown of trust between the two groups. In this situation, competitive bidding is the only solution. The appellants had in any case failed to purchase the shares at the agreed price as per settlement dated 13.10.2022.

6.30. It is settled position of law that appropriate orders can be passed by the Ld. NCLT to give just and equitable relief as held in following cases:

> ***i. 'M.S.D.C. Radharamanan' Vs. 'M.S.D. Chandrasekara Raja & Anr.', [(2008) 6 SCC 750],***
>
> ***ii. 'Tata Consultancy Services Ltd.' Vs. 'Cyrus Investments Pvt. Ltd. & Ors.', [(2021) 9 SCC 449],***
>
> ***iii. 'Atlas Equifin Pvt. Ltd.' Vs. 'Jackie Shroff & Ors.', [Comp. App. (AT) No. 46 of 2023],***

iv. 'Benett Coleman & Co.' Vs. 'Union of India & Ors.', [1973 SCC Online Bom 41].

6.31. Further, it is submitted that cross-bidding by warring groups has been ordered in following cases of oppression and mismanagement:

i. 'Namtech Consultants Pvt. Ltd.' Vs. 'GE Thermometrics India Pvt. Ltd.', [Company Appeal (AT) No.3 of 2006],

ii. 'Pinakin Kharwar' Vs. 'Nagina Processors Pvt. Ltd. & Ors.', [2018 SCC OnLine NCLAT 616],

iii. 'Shibaankur Roychowdhury & Ors.' Vs. 'Pralaykumar Roychowdhury', [2021 SCC OnLine NCLAT 6040].

6.32. The appellant's reliance on the pre-emptive right under the Articles is misplaced. This applies on the case of a unilateral sale or transfer of share by one group of shareholders to the other. This was followed while agreeing for exit in settlement dated 13.10.2022. However, presently both the groups are at loggerheads and seek to oust the other. The pre-emptive mechanism, therefore, does not appropriately address the present *inter se* dispute.

6.33. In the facts and circumstances of the case, it is submitted that Ld. NCLT correctly ordered competitive bidding of shares by the two groups through Swiss Challenge mechanism under supervision of an independent observer. It is the most appropriate remedy and the order of the Ld. NCLT may be sustained.

7. The learned Sr. counsel for the Respondent No. 3 (Father) in his oral and written submissions has stated as under:

7.1. Respondent No. 3 adopts the submissions made by Respondent No. 2.

7.2. All finances of R-1 Company were brought in by Respondent No. 2 and Respondent No. 3. The shareholding of Appellant No. 2 is of shares gifted mainly by Respondent No. 3 and some by Respondent No. 2.

7.3. The shareholding of the company has changed in the following manner over the years:

2000	*A2, R2 and R3 held 100% shares each.*
2000-2002	*R2 and R3 held 99.99% shares, Appellant No.2 held 0.01% shares.*
2001	*A1 was inducted as CEO – Director since his saree business was not doing well and he was living with R2 and R3.*
2005	*R3 gifted portion of shareholding to A2, bringing her shareholding to 50%. <u>However, R3 was continued to be paid remuneration/ pay outs in lieu of his life interest in the Shares so gifted.</u>*
2005-2020	*Further shares were transferred by R2 and R3 to the A2 changing shareholding of A2 to 53.67%, R2 to 40.19% and R3 to 0.44%. No shares of the Company are held by Appellant No.1*

7.4. Despite the fact that the shareholding of appellants is by way of gifts from Respondent No. 3, the appellants have consistently acted contrary to the interest of the company and to the prejudice of Respondent No. 2 and Respondent No. 3. Appellants have unilaterally and arbitrarily completely stopped paying any remuneration to Respondent No. 3 from January 2025 onwards.

7.5. The appellants had repeatedly alleged that notices for Board Meetings were signed by Respondent No. 3 and hand delivered to Respondent No. 2 by Respondent No. 3, though in fact, Respondent No. 3 asserts that he himself had no notice of said meetings. The signatures were obtained in good faith, on the pretext of urgent financial requirements of the company as represented by Appellant No. 2, whom Respondent No. 3 trusted as his daughter. Accordingly, Respondent No.3 signed certain documents without reading them. This position has been consistently maintained by Respondent No.3, including in his letter dated 07.10.2025. Respondent No. 3 subsequently realised that his signatures had been obtained on the minutes and were being misused.

7.6. The appellants have wrongly alleged that Respondent no. 3 has not asserted the case of oppression. It is submitted that the same is patently false as evident from the reply filed by Respondent No. 3 before the Ld. NCLT.

7.7. There is no error in the impugned order. The appellants were running the affairs of the company in a prejudicial manner. Bidding of shares of two groups though Swiss Challenge Mechanism under the supervision of an observer is the only just and equitable relief possible in the present case.

7.8. The directions of similar nature have been consistently upheld by the Hon'ble Courts including in cases where minority shareholders have been permitted to buy out the majority shareholders. Respondent No. 3 relies upon the following cases in this regard:

i. 'Namtech Consultants Pvt. Ltd.' Vs. 'GE Thermometrics India Pvt. Ltd.', [Company Appeal (AT) No.3 of 2006],

ii. 'Pinakin Kharwar' Vs. 'Nagina Processors Pvt. Ltd. & Ors.', [2018 SCC OnLine NCLAT 616],

iii. 'Shibaankur Roychowdhury & Ors.' Vs. 'Pralaykumar Roychowdhury', [2021 SCC OnLine NCLAT 6040].

8. We have heard the Ld. Counsels for the Appellants and Respondents and with their able assistance perused the records.

9. We note that the Respondent No. 1 company was established by Respondent No. 2 (Hitesh), Respondent No. 3 (Chunilal) and Appellant No. 2 (Jigna) and they were signatories to the Memorandum of Association. Both the sides are *ad idem* that the company is a closely held family company in the nature of quasi-partnership. We also note that Appellant No. 1 (Nayan Shah) was inducted in 2001 and worked as the Chief Executive Officer (CEO) of the company. On the other hand, Respondent No. 2 (Hitesh) had initiated the company and had worked as Chief Operating Officer (COO). We note that both the sides are competent to run the company having sufficient experience in the company.

10. The parties to this *lis* are close family members. Appellant No. 2 is sister of Respondent No. 2 and daughter of Respondent No. 3. The Appellant No. 1 is husband of Appellant No. 2. Historically the company was not declaring any dividend and Appellants and Respondents were rewarded through payment of salary and other benefits. The initial shareholding of the company was such that Respondent No. 2 and Respondent No. 3 were in clear majority. The Respondent No. 3 (father) gifted a portion of his shareholding to Appellant No. 2 (daughter) bringing her shareholding to 50%. Apparently, the company was doing well and there were no disputes till 2020. Some further shares were gifted by Respondent No. 3 to Appellant No. 2 and the shareholding of

Appellant No. 2 went up to 53.67% and the cumulative share of Respondent No. 2 and Respondent No. 3 went down to 40.63%. Appellant No. 1 does not hold any share in the said company. The balance 5.7% shares are held by employees or other relatives.

11. An attempt was made to reconcile the disputes between the Appellants and Respondents. A settlement was drawn up on 13.10.2022 which was signed by both the sides. Both the sides have owned up their signatures and have not challenged the authenticity of the said document. The said document regarding the settlement is scanned below:

Date: 13th October, 2022

INR 60 Crores (Full and Final) Paid in 105 odd days – by or before 27th January, 2023

a) ECTC will be calculated till 31st March, 2022 (Direct Money Taken). ECTC of INR 2 Crores of this F.Y. will NOT be considered as it was to shut operations (and not profit distribution as there is loss)

b) No other Monetary or other New Points should be brought up

c) Long Term Capital Gains Tax will be on Hitesh's Account

d) Communication to team in January, 2023

e) No Data / Information of the Company to be used

f) No Non-Compete clause is fine

12. As per the above agreement, Respondent No. 2 was to exit Respondent No. 1 company on receipt of Rs. 60 crores as full and final payment to be made till 27.01.2023. The settlement agreement was intended to be acted upon and a sum of Rs. 1.1 crore was immediately paid to Respondent No. 2

by Appellant. On his part, Respondent No. 2 took leave from the company and further extended the leave and began disengaging from the company. From the agreement, reproduced above, it is clear that both the sides have agreed that there will be no non-compete clause, that is, the outgoing party shall be at liberty to do a competing business, the only restriction put was no data/information of the company shall be used by the outgoing party.

13. In its submissions, Respondent No. 2 has stated that his actions should be seen in the light of the settlement made with the Appellants. It is his submission he had asked that his bank guarantee should not be used as company had sufficient assets to secure the loan and also, he was intending to exit the company. As per the settlement the entire amount of Rs. 60 crores were to be paid by 27.01.2023. Since the Appellant failed to make further payment, the Respondent No. 2 through communication dated 09.03.2022, in the spirit of settlement, extended date for payment till 26.02.2023 and also in the alternative offered his willingness to purchase the shares of the Appellant No. 2, at the same terms, at a premium of 10% on purchase consideration, and the consideration was offered to be paid within 60 days of signing of contract. This letter was responded to by the Appellant on 28.02.2023 acknowledging irreconcilable differences between the parties and stating that the settlement dated 13.10.2022 is not for the company alone but a full & final settlement arrangement between the respective family members and also involved transfer of jointly held family lands.

14. We note that it was much after the original settlement dated 13.10.2022 and the expiry of the last date of payment of 27.01.2023 that other issues were raised by the Appellants in the said letter. We also note that in point No. (b) of the settlement dated 13.10.2022 scanned above it is clearly recorded that *"No other Monetary or other New Points should be brought up"*. This clearly shows that the settlement agreement pertains only to the exit of Respondents from the company against payment of Rs. 60 crores. The allegations made by the Appellants against the Respondent No. 2 of dissociating from the company and starting competing business need to be seen in the background of the settlement agreement dated 13.10.2022. The exiting party cannot be held liable for dissociating from day to day working of the company or for starting competing business in light of the settlement.

15. The Appellants and Respondent No. 1 company stopped payment of remuneration to Respondent No. 2, and also to Respondent No. 3. It is alleged that Respondent No. 2 did not attend the board meetings but there is no evidence to show that notices of the board meetings were delivered to Respondent No. 2. We further note that the minutes of meetings were duly served on the Appellants No. 1 and 2, and Respondent No. 3 and their signatures were obtained. The minutes were not served on Respondent No. 2 and his signatures are not there even on the acknowledgement of receipt of minutes of meetings. The explanation of the Appellants that since Respondent No. 2 and Respondent No. 3 are staying together, service on Respondent No. 3 leads to knowledge of Respondent No. 2 does not hold good as we find that signatures of both Appellant No. 1 and Appellant No. 2, who are husband and wife staying in the same premises, have been obtained while serving the minutes of meetings. We also feel that considering the differences which arose between the two sides in this period, it was expedient to obtain and keep proof of service of notice of board meetings as well as service of minutes of board meetings made to Respondent No. 2. In absence of evidence of service of notice of board meetings, as also service of minutes of meetings of board of directors, it cannot be said that Respondent No. 2 is disqualified as a director for not attending the board meetings, under Section 167 of the Companies Act, 2013. Reliance is placed on *Raj Singh Chopra and others Vs Jagat Singh Chopra* reported in *(2018) 206 Comp Cas 440* and rather more specifically to para 16 wherein it is held as under:

> *"16. As regards the other issue regarding removal of the Petitioners as Directors, the observations of the learned NCLT are as under: -*
>
> > *"On perusal of the record the respondent not submitted a single document so as to show that statutory notice are issued to the petitioners of the Board meeting which were held before removing them from the office and / or not able to produce the notice of removal with effect from 19.10.2016. The burden of proof lies upon the respondent to show that the notice was served upon the petitioner. Section 167(1)(b) of the Companies Act, 2013 mandates that :*
> >
> > *"..... He absents himself from all the meetings of the Board of Directors held during the period 12 months with or without seeking the leave of absence of the Board....."*
> >
> > *Thus, for the vacation of the Office of the Director under Section 167(1)(b), notices of the meeting which the Director is alleged to have not attended, is a must, vacation on the ground that the Director has failed to attend three consecutive meetings is invalid, if the meetings were not validly held, since, meetings held without notice are not valid."*

Further, we note that in the returns of Respondent No.1 filed before MCA, the Respondent company continued to show Respondent No.2 as a director.

16. On the allegation of use of company data by Respondent No. 2, no evidence has been furnished. It is the say of the Respondents that the details of clients and large companies are available in public database and no data from the company has been used. Respondent No. 2 had given his laptop to the company to erase all data, immediately after settlement agreement dated 13.10.2022 which is not denied by the Appellants. On the allegation of poaching of employees of the Respondent No. 1 company, we note that nearly 100 employees have left the company and only 18 have joined the company started by Respondent No. 2. The movement of employees from one company to the other company in private sector is more a norm than an exception, and no adverse inference can be drawn on this issue unless direct evidence of soliciting is shown, which is absent in this case.

17. We note that the petition under Section 241 read with 242 of the Companies Act, 2013 was filed before Ld. NCLT by Respondent No. 2, who is substantial shareholder of Respondent No. 1 company holding more than 40% of the shares alleging that he has been excluded from running of the company and remuneration payable to him has been stopped. If a substantial shareholder of a family-owned company in the nature of quasi-partnership is kept away from the management of the company, as also to the fruits of profit of the company, without due process and without any justification, the allegations of oppression by majority stand confirmed. The initial founder and substantial shareholder of the company has been side-lined and important financial decisions including borrowings and grant of interest-free loan to Appellant are taken in his absence, ignoring his legitimate expectation to participate in management of the company.

18. The Appellants had contended that the impugned order ignores the Articles of Association, especially Articles 11 and 12 giving pre-emptive rights to the existing shareholders to purchase the shares of the selling shareholders. The said Articles 11 and 12 are as under:

> *"11. Except as herein provided no shares in the Company Shall be transferred unless and until rights of preemption hereinafter conferred shall have been exhausted.*
>
> *12 Any member who intends to transfer shares (hereinafter Called the 'Vendor') shall give notice in writing w The Board of his intention That notice shall constitute the Board his agent for the sale of the said shares at a price to be agreed upon by the Vendor and The Board or in the event of disagreement at a price which the Auditors of the Company for the time being shall certify in writing, to be the fair value thereof as between a Vendor and the purchaser. In certifying the fair value, the Auditors shall be acting as an expert and not as an arbitrator and accordingly the Indian Arbitration Act, 1940, shall not apply."*

19. We note that both the sides are willing to buyout the other side. As per the settlement agreement dated 13.10.2022, the Respondent No. 2 had agreed to sell his shares to Respondent No. 1 for an agreed consideration of Rs. 60 crores. This in essence complies with the requirements of Articles 11 and 12. On failure of Appellants to make the said payment, Respondent No. 2 had also offered to buyout the shares of the Appellant No. 2, at the same terms, at a premium of 10% on purchase consideration earlier agreed on 13.10.2022. Thus, in essence Articles 11 and 12 regarding pre-emptive rights of the existing shareholders to buyout exiting/selling shareholders is complied with.

20. The Ld. Sr. Counsel for the Appellants has relied upon the case of *Rajeev Kapur* cited *supra* stating "dishonest" conduct of Respondent No. 2 aided by Respondent No. 3 makes the Respondents/Petitioners case non-maintainable. We note that in the case of *Rajeev Kapur,* the parties had agreed that they will not establish any competing business and then had started competing business whereas in the present case the parties had agreed on 13.10.2022 that there will be no non-compete clause, that is the Respondents can set up competing business. The Appellant had also relied upon the judgment of the Hon'ble Supreme Court in *'M.S.D.C. Radharamanan' Vs. 'M.S.D. Chandrasekara Raja', [(2008) 6 SCC 750] 'Yashovardhan Saboo' Vs. 'Groz-Beckert Saboo Ltd.', [1992 SCC OnLine CLB 10]* and *'G. Govindraj' Vs. 'Venture Graphics P Ltd.', [2004 SCC OnLine CLB 61]* that in case of irreconcilable differences, it is the party who is the management, who should get the right to buyout the other. We note that these decisions are of no help to the Appellants in the peculiar circumstances of this case as an agreement for buyout of the Respondent minority shareholder was reached on 13.10.2022 which was not complied with. The Appellants had also relied upon the case of *'Yashovardhan Saboo' Vs. 'Groz-Beckert Saboo Ltd.', [1992 SCC OnLine CLB 10]* and *'G. Govindraj' Vs. 'Venture Graphics P Ltd.', [2004 SCC OnLine CLB 61]* stating majority shareholders should not be forced to sell their shares to the minority shareholders. As noted, in this present case the minority shareholder (Respondent No. 2) had first agreed to sell his shares to the majority shareholder, an offer which was accepted and part consideration was paid, but later it was not complied with. Further, we note that the Ld. NCLT in the impugned order has not directed any party to buyout the other party compulsorily but has directed both the parties to bid inter-se under "swiss challenge method", under the supervision of an independent observer.

21. We note that both the sides are *ad idem* there are irreconcilable differences between them and there is irretrievable breakdown in mutual trust and confidence. We note both the sides are competent to run the company, having vast experience. In this context allowing both the sides to bid under "swiss challenge method" under supervision of an independent observer as ordered by Ld. NCLT is the most appropriate remedy.

22. The authority of Ld. NCLT to make such order is contained in Section 242(2)(b) of the Companies Act, 2013, wherein it can order purchase of shares by other members. The said sub-section reads as under:

> *"242(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for-*
>
> *(a) ....*
>
> *(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*
>
> *..........."*

The Ld. NCLT can order buy out of one side/member by the other member/side.

23. We note in *Ravi Development v. Shree Krishna Prathisthan (SC) (2009) 7 SCC 462, Sri Devi Karumariamman Educatinal Trust v. Central Bank of India*

(Madras High Court) (2020 SCC OnLine Mad. 21516) and *Reji Abraham v. Punjab National Bank (Madras High Court) (W.P. No. 22088 of 2026)* the use of "Swiss Challenge Method" for determination of fair price was held to be fair, transparent and "not violative of Article 14 of the Constitution of India". Sale through "Swiss Challenge Method" in the facts of this case, when both sides are willing to buyout the other, and are competent to run the company, cannot be said to be unfair, arbitrary, non-transparent or unreasonable.

24. In the conspectus of facts of this case, we find no reason to interfere in the well-reasoned order of the Ld. NCLT. We find no merit in the appeal and it is accordingly dismissed. Interim orders are vacated. Pending IAs, if any, are also closed. No order as to costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 18.09.2026
Ram N. / Himanshu