NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 161 of 2024
& I.A. No. 3701, 3702, 3703, 3852, 4305, 5932 of 2024

(Arising out of Impugned Order dated 15.05.2024 passed by the National Company Law Tribunal, Court No.2, New Delhi in C.P No. 48/ND/2024)

IN THE MATTER OF:

1. Mr. Satya Prakash Bagla
7/17 L.G.F, Near Hauz Khas Metro
Station, Sarvapriya Vihar,
New Delhi 110 016.
Email ID: satya@exclusivecapital.in **Appellant No.1**

2. **Mr. Achal Kumar Jindal**,
7/17 L.G.F, Near Hauz Khas Metro
Station, Sarvapriya Vihar,
New Delhi 110 016.
Email ID: achal@exclusivecapital.in **Appellant No.2**

VERSUS

1. Mrs. Kanta Agarwala,
8a, Queen's Park, Ballygunge,
Kolkata 700 019.
Email Id: Kanta.Agarwala63@Gmail.Com **Respondent No.1**

2. Mr. Suresh Kumar Agarwala,
8a, Queen's Park, Ballygunge,
Kolkata 700 019.
Email Id: Suresh.Agarwala56@Gmail.Com **Respondent No.2**

3. **Exclusive Capital Limited**,
No.7/17 L.G.F, Near Hauz Khas
Sarvapriya
Vihar, New Delhi 110016.
Email Id: Achal@Exclusivecapital.In **Respondent No.3**

4. Mr. Johnson Kallarachal Abraham,

7/17 L.G.F, Near Hauz Khas Metro
Station, Sarvapriya Vihar,
New Delhi 110 016.
Email Id: Johnsonka949@Gmail.Com **Respondent No.4**

5. Mr. Rajeev Uberoi
E1 /62, Arera Colony,
Bhopal-462 016.
Email Id: Rajeevuberoi1957@Gmail.Com **Respondent No.5**

6. Mr. Krishnama Chary Mudumba,
3-7-32, Sree Nilayam, Plot No. 40,
Road No. 2, Sri Sainagar Colony,
Mansurabad,
Hyderabad -500 068.
Email Id: Mkchary999@Gmail.Com **Respondent No.6**

7. Mr. Om Prakash Sambharia,
Rz B 25 3 Street No. 8, Gurudwara
Road, Mahavir Enclave, Palam
Village So, South West Delhi,
Delhi - 110 045.
Email Id: Sambhariaom@Yahoo.Com **Respondent No.7**

8. Mr. V.V Kale
16a/20, W.E.A, Main Ajmal Khan
Road, Karol Bagh,
New Delhi-110005.
Email Id: Varad@Vvkale.Com **Respondent No.8**

9. Mr. Havinder Singh,
B-80, Sharda Puri, Ramesh Nagar,
New Delhi-110 045.
Email Id: Singh.Harvinder1702@Gmail.Com **Respondent No.9**

Present:

For Appellants	Mr. Siddharth Yadav, Sr. Adv. alongwith Mr. Apoorv Agarwal, Mr. Manav Goyal, Ms. Ritika Gusain, Ms. Aastha & Ms. Amrita.
For Respondents	Mr. Arijit Maitra, Ld. Observer.

Mr. Sidhant Kumar & Ms. Ekstha Kashyap, for R-1 & 2.

With

Comp. App. (AT) No. 162 of 2024 & I.A. No. 3718, 3719, 3720 of 2024

(Arising out of Impugned Order dated 15.05.2024 passed by the National Company Law Tribunal, Court No.2, New Delhi in C.P No. 48/ND/2024)

IN THE MATTER OF:

Mr. Johnson Kallarachal Abraham
C 12, Tower-6, Type 4, East Kidwai Nagar, New Delhi-110023
Email Id: Johnsonka949@Gmail.Com **Appellant No.1**

VERSUS

1. **Exclusive Capital Limited**,
No.7/17 L.G.F, Near Hauz Khas
Sarvapriya
Vihar, New Delhi 110016.
Email Id: Achal@Exclusivecapital.In **Respondent No.1**

2. **Mrs. Kanta Agarwala,**
8a, Queen's Park, Ballygunge,
Kolkata 700 019.
Email Id: Kanta.Agarwala63@Gmail.Com **Respondent No.2**

3. **Mr. Suresh Kumar Agarwala,**
8a, Queen's Park, Ballygunge,
Kolkata 700 019.
Email Id: Suresh.Agarwala56@Gmail.Com **Respondent No.3**

4. **Mr. Satya Prakash Bagla**
7/17 L.G.F, Near Hauz Khas Metro
Station, Sarvapriya Vihar,
New Delhi 110 016.
Email Id: Satya@Exclusivecapital.In **Respondent No.4**

5. **Mr. Achal Kumar Jindal**,
7/17 L.G.F, Near Hauz Khas Metro

Station, Sarvapriya Vihar,
New Delhi 110 016.
Email Id: Achal@Exclusivecapital.In **Respondent No.5**

6. **Mr. Rajeev Uberoi**
E1 /62, Arera Colony,
Bhopal-462 016.
Email Id: Rajeevuberoi1957@Gmail.Com **Respondent No.6**

7. **Mr. Krishnama Chary Mudumba,**
3-7-32, Sree Nilayam, Plot No. 40,
Road No. 2, Sri Sainagar Colony,
Mansurabad,
Hyderabad -500 068.
Email Id: Mkchary999@Gmail.Com **Respondent No.7**

8. **Mr. Om Prakash Sambharia,**
Rz B 25 3 Street No. 8, Gurudwara
Road, Mahavir Enclave, Palam
Village So, South West Delhi,
Delhi - 110 045.
Email Id: Sambhariaom@Yahoo.Com **Respondent No.8**

9. **Mr. V.V Kale**
16a/20, W.E.A, Main Ajmal Khan
Road, Karol Bagh,
New Delhi-110005.
Email Id: Varad@Vvkale.Com **Respondent No.9**

10. **Mr. Havinder Singh,**
B-80, Sharda Puri, Ramesh Nagar,
New Delhi-110 045.
Email Id: Singh.Harvinder1702@Gmail.Com **Respondent No.10**

Present:

For Appellant	Mr. Siddharth Yadav, Sr. Adv. alongwith Mr. Apoorv Agarwal, Mr. Manav Goyal, Ms. Ritika Gusain, Ms. Aastha & Ms. Amrita.
For Respondents	Mr. Arijit Maitra, Ld. Observer. Mr. Sidhant Kumar & Ms. Ekstha Kashyap, for R-1 & 2.

J U D G E M E N T

(25.08.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals filed by the Appellants i.e., Company Appeal (AT) No. 161 of 2024 and Company Appeal (AT) No. 162 of 2024 under Section 421(1) of the Companies Act, 2013 ("**Companies Act 2013**") arising out of Impugned Order dated 15.05.2024 passed by the National Company Law Tribunal, ("**The Tribunal**") Court No.2, New Delhi in C.P No. 48/ND/2024).

Company Appeal (AT) No. 161 of 2024

2. This appeal is filed by the Appellants i.e. Mr. Satya Prakash Bagla who is the promoter, managing director and shareholder of the Exclusive Capital Ltd. (Respondent No.3) since 08.09.2021 and Mr. Achal Kumar Jindal who is a director and shareholder of the Exclusive Capital Ltd. (Respondent No.3) since 13.10.2021.

Mrs. Kanta Agarwala, who is the shareholder of the Exclusive Capital Ltd., is the Respondent No.1 herein.

Mr. Suresh Kumar Agarwala, who is the shareholder of the Exclusive Capital Ltd., is the Respondent No.2 herein.

Exclusive Capital Limited, (Company) is a Non – Banking Financial Company (NBFC) registered with the Reserve Bank of India (RBI), is the Respondent No.3 herein.

Mr. Johnson Kallarachal Abraham, who is the director and shareholder having 1 equity share in the Company, is the Respondent No.4 herein.

Mr. Rajeev Uberoi, who was an erstwhile Independent Director of the Company, is the Respondent No. 5 herein.

Mr. Krishnama Chary Mudumba, who was an additional director of the Company, is the Respondent No.6 herein.

Mr. Om Prakash Sambharia, who is an Erstwhile Business Head of the Company, is the Respondent No.7 herein.

Mr. V.V Kale, erstwhile Auditor of the Company, is the Respondent No.8 herein.

Mr. Havinder Singh, who is the Erstwhile Company Secretary of the Company, is the Respondent No.9 herein.

Company Appeal (AT) No. 162 of 2024

3. This appeal is filed by the Appellant i.e. Mr. Johnson Kallarachal Abraham, the Director of the Company and also holding 1 equity share of the Company.

Exclusive Capital Limited, (company) is the Respondent No.1 herein.

Mrs. Kanta Agarwala, who is the shareholder of the Company, is the Respondent No.2 herein.

Mr. Suresh Kumar Agarwala, who is the shareholder of the company, is the Respondent No.3 herein.

Mr. Satya Prakash Bagla, who is the managing director and majority shareholder of Company since 08.09.2021, is the Respondent No.4 herein.

Mr. Achal Kumar Jindal, is the director and holding 1 equity shareholder of the Company. is the Respondent No.5 herein.

Mr. Rajeev Uberoi who, was former Independent Director of the company, is the Respondent No. 6 herein.

Mr. Krishnama Chary Mudumba, who was a former Independent Director of the Company, is the Respondent No.7 herein.

Mr. Om Prakash Sambharia, who was former Business Head of the company, is the Respondent No.8 herein.

Mr. V.V Kale who is Erstwhile Auditor of the company, is the Respondent No.9 herein.

Mr. Havinder Singh, who is the former Company Secretary of the company, is the Respondent No.10 herein.

Common pleadings by the Appellants

4. The Appellants in both the appeals are aggrieved by the common Impugned Order and have made common pleadings in conjoint manner by same counsel for all Appellants before us. Hence, we will record their pleading hereinafter and refer them collectively as the Appellants.

5. The Appellants submitted that Appellant Satya Prakash Bagla, who was the original Respondent No. 2 in Company Petition No. 48 of 2024 ("the Petition"), holds 21,11,844 equity shares, constituting 90% of the total shareholding in the Company. The Appellants stated that Appellant Mr. Johnson Kallarachal Abraham and Mr. Achal Kumar Jindal are directors and shareholders of the Company and holds 1 equity share each in the company.

6. The Appellants submitted that the Company, formerly known as UT Leasing Limited, is a public limited NBFC incorporated on 08.04.1994 under the Companies Act, 1956, having its registered office at New Delhi. It was stated that the authorised share capital of the Company consists of 2,50,00,000 equity shares of ₹10 each and that, at the time of filing of the Company Petition, the issued, subscribed and paid-up capital comprised 23,46,500 equity shares. The Appellants further contended that the shareholding pattern clearly reflected that Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala together held only 10% of the equity shares, whereas the Appellant Mr. Satya Prakash Bagla held approximately 90% of the shareholding, while the Appellants Mr. Achal Kumar Jindal and Mr. Johnson Abraham and certain other shareholders each held only one equity share each.

7. The Appellants contended that the Company (formerly UT Leasing Ltd., incorporated on 08.04.1994) was taken over and RBI approved the change in control in favour of Appellant Mr. Satya Prakash Bagla on 08.09.2021. Mr. Achal Kumar Jindal and Respondent Mr. Rajeeb Uberoi were appointed as directors on

13.10.2021. The company was renamed "Exclusive Capital Ltd." on 16.12.2021, with corresponding RBI approval. It was further submitted that on 16.12.2021, the Ministry of Corporate Affairs approved the change of the Company's name to Exclusive Capital Limited**,** and on the same date the Company was registered with the RBI as a Non-Deposit Taking Non-Systemically Important Non-Banking Financial Company (NBFC) engaged in providing debt financing solutions to micro and small enterprises. The Appellants submitted that the Company thereafter commenced its operations as NBFC in accordance with the applicable regulatory framework.

8. The Appellants further submitted that owing to the goodwill, business reputation and credibility of the Appellant Mr. Satya Prakash Bagla, an entity named Teesta Retail Private Limited, invested an amount of Rs. 315 Crores in the Company between October 2021 and March 2022, against Optionally Convertible Debentures (OCDs) aggregating to Rs. 315 Crores issued by the Company. The Appellants contended that the said investment substantially strengthened the financial position and business prospects of the Company and constituted one of the most significant capital infusions received by it.

9. The Appellants further submitted that after the infusion of Rs. 315 Crores through OCDs, the Company became conscious that the transaction had the potential to affect the leverage ratio prescribed under the Non Banking Financial Company Non-Systematically Important Non Deposit Taking Company (Reserve Bank) Directions 2016 (NBFC Directions) governing NBFCs. Accordingly, the

Company sought an expert legal opinion to ensure regulatory compliance. The Appellants contended that the expert opinion clarified that the existing OCDs were inconsistent with the prudential norms prescribed by the RBI relating to leverage ratio and Compulsorily Convertible Preference Shares (CCPS), which would form part of the Company's owned funds and Tier-I Capital the proposed conversion of CCDs to CCPSs required only the approval of the debenture holder and shareholders and prior approval of the RBI was not required merely for conversion of OCDs into CCPS. The Appellants stated that as per opinion of the expert, RBI approval would have become necessary only if, at the stage of conversion of CCPS into equity shares, the resulting shareholding exceeded the threshold prescribed under Paragraph 61 of the NBFC Directions. The Appellants submitted that the Company acted strictly in accordance with the said legal advice for ensuring complete regulatory compliance.

10. The Appellants stated that Teesta Retail Private Limited, being the holder of the OCDs, consented to such conversion by its letter dated 26.08.2022 based on which the Company resolved through Circular Resolution No. 07/2022-23 dated 25.08.2022 to convert the OCDs amounting to Rs. 315 Crores into CCPS of an equivalent value.

11. The Appellants stated that Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala acquired their shareholding on 05.09.2022, i.e., after the aforesaid investment had already been made by Teesta Retail Private Limited. It was submitted that before purchasing the shares, Respondents Mrs. Kanta

Agarwala and Mr. Suresh Kumar Agarwala had exercised due diligence regarding the affairs of the Company and were fully aware of the investment of Rs. 315 Crores as well as the financial structure of the Company. The Appellants therefore contended that the minority shareholders entered the Company with complete knowledge of the existing affairs and cannot subsequently challenge transactions of which they had prior knowledge.

12. The Appellants further submitted that in the Board Meeting held on 27.09.2022, the Board formally approved the transfer of shares in favour of Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala and simultaneously ratified and approved the conversion of OCDs into CCPS pursuant to Sections 55 and 62(3) of the Companies Act, 2013 read with Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.

13. The Appellants stated that during the same Board Meeting, the Board also considered and approved an omnibus approval mechanism for related party transactions in accordance with Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014. It was resolved that related party transactions up to an aggregate value of Rs. 10 Crores for the financial year 2022-23 and thereafter could be entered into after following the prescribed legal framework. The Appellants submitted that all subsequent transactions were undertaken within the scope of such approval.

14. The Appellants further submitted that the 28th Annual General Meeting of the Company was held on 29.09.2022 with the written consent of Respondents

Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala to convene the meeting at shorter notice. During the said AGM, the shareholders approved the audited financial statements for the financial year 2021-22. It was specifically recorded in the balance sheet that the Company had proposed revision of the terms of the OCDs and their conversion into CCPS and that the debenture holder had already granted consent on 26.08.2022.

15. The Appellants submitted that Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala were, at all material times, fully aware of the investment made by Teesta Retail Private Limited, the temporary issue relating to the leverage ratio, the expert legal opinion obtained by the Company, the proposed conversion of OCDs into CCPS, the approvals granted by the Board and shareholders, and the disclosures contained in the financial statements. Despite possessing complete knowledge of these transactions, Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala never raised any objection or grievance until they instituted the Company Petition No. 48/ND/2024 in 2024. The Appellants therefore contended that the allegations subsequently levelled by the minority shareholders were wholly belated, devoid of bona fides, and constituted an afterthought intended to challenge transactions that had long since been validly approved and implemented.

16. The Appellants further submitted that the Tribunal failed to appreciate that the OCDs had been issued against a genuine investment of ₹315 Crores made by Teesta Retail Private Limited and that, upon obtaining expert legal advice regarding the leverage ratio prescribed under the NBFC Directions, the Company immediately initiated corrective measures by converting the OCDs into CCPS, after obtaining the consent of the investor, approval of the shareholders and approval of the Board of Directors, strictly in accordance with the Companies Act, 2013. The Appellants stated that the Tribunal committed a manifest error in treating the issuance of OCDs and their subsequent conversion into CCPS as contrary to the NBFC Directions as, such conversion did not require prior approval of the RBI.

17. The Appellants further submitted that the Tribunal erred in concluding that the conversion of OCDs into CCPS diluted the shareholding of the minority shareholders and thereby amounted to oppression. The Appellants contended that, as on the date of the Impugned Order, the CCPS had not been converted into equity shares and, consequently, there had been no dilution whatsoever of the equity shareholding of Respondents Mrs Kanta Agarwala and Mr. Suresh Kumar Agarwala It was argued that the apprehended reduction in shareholding was merely speculative and incapable of constituting an act of oppression under Sections 241 and 242 of the Companies Act, 2013.

18. The Appellants submitted that the Tribunal further erred in observing that the liabilities of the Company exceeded several times its paid-up capital and that such circumstance justified the formation of an opinion that it was just and equitable to wind up the Company. The Appellant argued that the finding regarding the Company's debt position was based on an incorrect factual premise as the Tribunal failed to appreciate that, after conversion, CCPS no longer represented a debt instrument but formed part of the Company's capital structure. Consequently, neither an existing debt nor any future debt liability arose on account of the CCPS. The Appellants contended that the Tribunal erroneously proceeded on the assumption that the Company continued to carry an excessive debt burden despite the complete transformation of the investment into a capital instrument.

19. The Appellants contended that the Tribunal correctly noticed the settled principle laid down in Mohanlal Ganpatram & Anr. v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. that acts already completed by the management ordinarily cannot be undone in proceedings alleging oppression and mismanagement. However, despite recognising the said legal position, the Tribunal proceeded to direct cancellation of the CCPS and refund of ₹315 Crores to the investor. According to the Appellants, such directions were directly contrary to the very legal principle acknowledged in the Impugned Order particularly when the investors itself had never questioned the conversion nor sought any refund. It was contended that the Impugned Order effectively deprived the Company of substantial working capital intended for its business operations, thereby causing serious prejudice to the Company and its shareholders.

20. The Appellants further submitted that even assuming, without admitting, that there had been any regulatory infraction between March 2022 and September 2022 in relation to the issuance of OCDs, the only consequence contemplated under the Reserve Bank of India Act, 1934 (RBI Act) was the imposition of a monetary penalty under Section 58G of the RBI Act. It was argued that the Tribunal travelled far beyond the statutory consequences by characterising the transaction as oppression and mismanagement and directing cancellation of the capital infusion.

21. The Appellant further submitted that any alleged violation of Regulation 6 of the NBFC Directions, assuming without admitting such violation existed, could be examined only by the RBI, being the statutory regulator of NBFCs. The Appellants contended that the jurisdiction exercised by the Tribunal in adjudicating alleged breaches of the NBFC Directions amounted to an impermissible intrusion into the exclusive regulatory domain of the RBI.

22. The Appellants further submitted that the Board Resolution dated 27.09.2022 merely provided that the CCPS could be converted upon giving two months' prior notice at any time within a period not exceeding twenty years from the date of issuance. The Appellants contended that there was absolutely no material to conclude that such conversion would necessarily occur beyond the five-year regulatory period or that it would adversely affect the leverage ratio. According to the Appellants, the Tribunal’s conclusions in this regard were based entirely upon speculation and conjecture rather than any evidence available on record.

23. The Appellants contended that the Impugned Order incorrectly holds that the existence of a larger liability than the paid-up capital is grounds for winding up. Mere existence of larger liabilities, unless defaulted, does not amount to a ground for winding up. In the present case, the "liability" was not even in the nature of a debt repayable at the time of institution of the petition.

24. The Appellants submitted that the Tribunal has concluded that the conversion of OCDs into CCPS itself triggers the need for prior permission under Clause 61(b) of the NBFC Directions, which is entirely misconstrued as Clause 61 applies to progressive creeping acquisitions cumulatively reaching 26%, not to future changes by conversion of CCPS.

25. The Appellants contended that the Tribunal proceeded on the basis that conversion reduces the shareholding of Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala to minuscule levels without appreciating that non-selective, non-discriminatory reduction in shareholding due to corporate operations does not amount to oppression and mismanagement, especially when it does not divest control or participative rights.

26. The Appellants refuted the other allegations regarding non implementation of the alleged Expansion Agreement and submitted that the Tribunal failed to appreciate the correct facts. The Appellants submitted that Respondent Mrs. Kanta Agarwala had expressed her willingness to invest an amount of ₹5 Crores in the Company. Since the process of obtaining approval from the RBI for any prospective change in shareholding was time-consuming, the Company, as a matter of abundant caution, submitted an application dated 28.12.2022 before the RBI seeking approval for the proposed investment. The Appellants contended that, at the relevant point of time, the commercial terms of the proposed investment had not been finalised and, therefore, the application did not specify the exact number of equity shares proposed to be allotted to Respondent Mrs. Kanta Agarwala. It was further submitted that the RBI granted its approval on 30.05.2023, which remained valid for a period of six months. However, despite obtaining the approval, Respondent Mrs. Kanta Agarwala never invested the proposed amount of ₹5 Crores in the Company.

27. The Appellants further submitted that the allegation of the Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala regarding an alleged personal loan of ₹62.05 Crores advanced to the Appellant Mr. Satya Prakash Bagla was entirely unsupported by documentary evidence. The Appellants contended that even assuming, without admitting, that such a personal loan had been advanced, the entire case sought to be built by the Complaining Petitioners was legally untenable. It was submitted that an individual cannot discharge his personal liability by causing allotment of shares of a company without the company itself receiving the corresponding consideration. Such an arrangement would be contrary to the Companies Act, 2013 and settled principles governing issuance of share capital.

28. The Appellants further submitted that the Tribunal erred in accepting the explanation furnished by the Complaining Petitioners that the proposed infusion of ₹5 Crores into the Company was intended to be adjusted against the alleged personal liability of the Appellant Mr. Satya Prakash Bagla. It was contended that such reasoning was wholly speculative and unsupported by any contemporaneous record. The Appellants stated that the application dated 28.12.2022 submitted by the Company to the RBI itself clearly stated that the proposed investor intended to infuse ₹5 Crores into the Company in one or more tranches. This, according to the Appellants, conclusively established that the investment had not yet been made and that no pre-existing adjustment or settlement as alleged in the rejoinder had ever taken place.

29. The Appellants further submitted that the Tribunal committed another serious error in appointing the Administrator and further directing the Administrator to implement the RBI approval dated 30.05.2023 by issuing shares to the Complaining Petitioners and appointing Respondent Mr. Om Prakash Sambharia as Chief Executive Officer and Whole-Time Director. It was argued that the RBI approval itself was expressly valid only for six months and had admittedly expired in November 2023, consequently, no direction could legally have been issued to implement an approval which had already lapsed.

30. The Appellants contended that the Tribunal also failed to appreciate that the Company's application before the RBI merely sought approval in anticipation of a possible change in shareholding beyond the statutory threshold. The application never sought approval for allotment of 28,83,506 equity shares and it was specifically stated therein that the number of shares proposed to be allotted would depend upon the prevailing valuation of the Company at the time of investment. Therefore, according to the Appellants, the direction compelling allotment of a fixed number of shares had absolutely no basis either in the application submitted before the RBI or in the approval granted by the RBI.

31. The Appellants further submitted that the Tribunal completely ignored the fact that Mr. Om Prakash Sambharia himself had declined the proposed appointment as Director by his communication dated 06.09.2023 on account of his preoccupation with other professional assignments. Therefore, the Tribunal could not have compelled implementation of an arrangement which had already become incapable of performance.

32. The Appellants submitted that the Tribunal further failed to appreciate that Respondents (Mr. Rajeev Uberoi, Mr. Krishnama Chary Mudumba, Mr. Om Prakash Sambharia, Mr. V.V Kale, Mr. Havinder Singh) had themselves violated Article 210 of the Articles of Association of the Company by disclosing confidential and proprietary information relating to the affairs of the Company to outsiders.

33. The Appellants further submitted that immediately after the Company's management initiated scrutiny into the unauthorised Assignment Agreement and the role of certain officers, Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala, acting in concert with Respondents (Mr. Rajeev Uberoi, Mr. Krishnama Chary Mudumba, Mr. Om Prakash Sambharia, Mr. V.V Kale, Mr. Havinder Singh) orchestrated a coordinated attempt to undermine the management of the Company. It was contended that on 10.12.2023, within a span of approximately forty-five minutes, certain other senior managerial personnel and professionals including the Company's Company Secretary and Chartered Accountant, simultaneously tendered their resignations. The Appellants submitted that such resignations were neither isolated nor coincidental but formed part of a premeditated conspiracy to destabilise the affairs of the Company.

34. The Appellants contended that Respondent Mr. Havinder Singh, who had been appointed as the Company Secretary on 23.12.2022, acted completely without authority and fraudulently executed an Assignment Agreement in favour of Standard Capital Markets Limited, thereby assigning valuable rights relating to the Company's loan portfolio without obtaining any approval from the Board of Directors. It was submitted that immediately upon discovering the unauthorised transaction, the Company persistently pursued the matter with Standard Capital Markets Limited and ultimately executed a Cancellation Agreement dated 07.11.2023, thereby nullifying the unauthorised Assignment Agreement dated 04.10.2023. The Appellants further submitted that the Company also lodged a police complaint against Respondent Mr. Havinder Singh, the Company Secretary for his illegal and fraudulent acts and that the matter remains under investigation by the competent authorities.

35. The Appellants submitted that the Tribunal failed to appreciate the settled principle of corporate democracy, which mandates that the affairs of a company are to be managed by its duly constituted Board of Directors, and judicial interference is warranted only upon proof of persistent acts of oppression or mismanagement. It was contended that the Impugned Order completely disregarded this settled principle by virtually taking over the management of the Company through the appointment of the Administrator.

36. The Appellants submitted that the Tribunal travelled beyond the pleadings while granting several reliefs which had never been sought by the Complaining Petitioners. It was contended that the appointment of the Administrator had been prayed for only as an interim measure and not as a final relief. Nevertheless, the Tribunal proceeded to appoint the Administrator for taking over the affairs of the Company as a substantive final relief, thereby violating the settled principle that no Court or Tribunal can grant relief beyond the pleadings of the parties.

37. The Appellants submitted that the allegation regarding the purchase of the Bentley Mulsanne vehicle was wholly misconceived and deliberately projected to create an impression of financial impropriety. The Appellants contended that the Company purchased a Bentley Mulsanne vehicle from Luxus Retail Private Limited for a consideration of Rs. 9,09,00,000/-. The Appellants further stated that the transaction was undertaken strictly on an arm's length basis.

38. The Appellants submitted that the Tribunal also erred in treating the purchase of the Bentley as an, overvalued and fraudulent transaction. It was contended that the purchase had been undertaken after obtaining prior approval of the Board in accordance with the omnibus approval mechanism framed under Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014. The Board had authorised related party transactions up to Rs. 10 Crores, and the purchase price of Rs. 9.09 Crores fell well within the approved limits. The

Appellants further submitted that the Bentley vehicle was acquired exclusively for official purposes and constituted a valuable corporate asset. It was argued that the Company's business model primarily involved dealing with high-net-worth individuals, institutional investors and leading business houses, for whom maintenance of an appropriate corporate image formed an integral part of business strategy. The purchase of the vehicle was therefore a legitimate commercial decision taken in the best interests of the Company and could not be characterised as either extravagant or prejudicial.

39. The Appellants submitted that the Tribunal also failed to appreciate that the vehicle had been registered in Mumbai purely for legitimate commercial and tax planning considerations so as to minimise registration charges. Such registration, according to the Appellants, was entirely lawful and could not constitute an act of oppression or mismanagement.

40. The Appellants further submitted that the conduct of the Complaining Petitioners clearly demonstrated that they had no genuine concern for the welfare or growth of the Company. Holding merely 10% of the shareholding, they sought to paralyse the functioning of a profitable Company through speculative allegations and unnecessary litigation with the sole object of causing prejudice to the Appellants, and the Company itself.

41. The Appellants submitted that the Tribunal also failed to appreciate that the real dispute between the parties was purely personal in nature and arose out of an alleged financial transaction between the Complaining Petitioners and the

Appellant Mr. Satya Prakash Bagla in his individual capacity. It was contended that even assuming such personal dispute existed, it could never furnish a valid cause of action for maintaining proceedings under Sections 241 and 242 of the Companies Act, 2013.

42. The Appellants stated that, to expand business and commercial value it was decided to purchase loan facilities of Asian Hotels North Limited (**AHNL**) from IndusInd Bank and obtained an Inter Corporate Deposit (**ICD**) of Rs. 60 crores from Clover Media Pvt. Ltd. on an unsecured basis, with repayment undertaking within 12 months (extendable); an Assignment Agreement was executed with IndusInd Bank on 28.12.2022. Subsequently, an unauthorized Assignment Agreement was discovered, executed by Respondent Mr. Havinder Singh (Company Secretary) with Standard Capital Markets Limited, assigning AHNL loan rights without board authorization. This was cancelled on 07.11.2023 after follow-ups.

43. The Appellants submitted that Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala, along with their son, being well aware that the Appellants would vigorously oppose their nefarious acts to strip the Company of its rights over the AHNL loan facilities, filed the Company Petition before the Tribunal with a malevolent motive. The Petition was devoid of any merit and was filed to obtain the stamp of the Tribunal for taking control of the Company.

44. The Appellants contended that Appellant Mr. Suresh Kumar Bagla filed I.A. No. 174 of 2024 offering to buy shares of Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala at full value plus interest to resolve issues and ensure business continuity. Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala made a counter-proposal to buy shares at double the price. These proposals were recorded in the order dated 24.04.2024 by the Tribunal, but the application remains pending for adjudication by the Tribunal.

45. Concluding arguments, the Appellants requested this Appellate Tribunal to set aside the impugned order and allow both the appeals.

Common pleadings by the Respondents

46. These common pleadings are submitted by Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala (Respondent Nos. 1 and 2 respectively in Company Appeal (AT) No. 161 of 2024 and Respondent Nos. 2 and 3 respectively in Company Appeal (AT) No. 162 of 2024) and have made common pleadings on conjoint manner by same counsel for Respondents before us. Hence, we will record their pleading hereinafter and refer them collectively as the Respondents.

47. Per contra, the Respondents denied all the averments made by the Appellants as misleading and baseless.

48. The Respondents submitted that the Appellants had continuously acted in violation of the statutory framework governing NBFCs by disregarding the mandatory provisions contained in the Non-Banking Financial Company Non-Systemically Important Non-Deposit Taking Company (Reserve Bank) Directions, 2016 as well as the Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023**.** It was contended that these violations were neither technical nor inadvertent but constituted persistent breaches of mandatory regulatory provisions, thereby rendering the management of the Company unfit to continue administering its affairs.

49. The Respondents stated that the Tribunal had correctly taken note of the fact that the Appellants had raised debt through the issuance of OCDs amounting to approximately Rs. 315 Crores**,** despite the Company's net owned funds being merely Rs. 2.34 Crores. It was submitted that this resulted, the Company exceeding the permissible leverage ratio by more than one hundred and seventeen times, thereby violating the RBI Directions which is an admitted and undisputed matter. The Respondents contended that the Appellants themselves had admitted before the Tribunal as well as in the present Appeal that they were conscious that the issuance of OCDs to the extent of Rs. 315 Crores would breach the leverage ratio prescribed under the NBFC Directions. The Respondents submitted that the Appellants' own pleadings clearly establish that they were fully aware of the statutory consequences before undertaking the transaction, thereby demonstrating deliberate disregard of the applicable regulatory framework.

50. The Respondents further submitted that the Appellants' subsequent attempt to portray the conversion of OCDs into CCPS as a corrective measure is wholly misconceived and legally untenable. It was contended that such conversion did not rectify the statutory violation but instead resulted in an additional violation of the NBFC Directions since the conversion substantially altered the shareholding and control of the Company without obtaining the mandatory prior approval of the Reserve Bank of India.

51. The Respondents further submitted that the Appellants had deliberately overlooked the settled accounting and regulatory position that CCPS having a tenure exceeding five years continue to be treated as liabilities under the applicable Indian Accounting Standards (Ind AS) and the RBI Prudential Norms applicable to NBFCs, since the CCPS issued by the Company were convertible within a period extending up to twenty years, they continued to constitute outside liabilities, with the result that the leverage ratio remained in violation even after the purported conversion. It was therefore contended that the Company continues to remain in breach of both the 2016 and 2023 RBI Directions for NBFCs.

52. The Respondents submitted that the RBI vide their letters dated 27.03.2026 held that the Company has been in violations and has penalised the company in mandatory terms, in addition to keeping further regulatory actions under contemplations as per rules. The Respondents emphasized that this proves beyond any doubt that the company was definitely involved in mismanagement and thus Impugned Order was correctly passed.

53. The Respondents submitted that the Appellants had attempted to evade responsibility by falsely alleging that the Respondents were aware of the issuance of the OCDs and had impliedly consented to their subsequent conversion into CCPS. The Respondents categorically denied these allegations and submitted that no such knowledge or consent was ever provided. The Respondents stated that the chronology of events clearly disproves the Appellants' assertions. It was submitted that the Respondents became shareholders of the Company on 5 September 2022, whereas the audited financial statements and balance sheet for the relevant financial year were finalised only on 27 September 2022, immediately after the OCDs had been converted into CCPS. It was contended that the Appellants intentionally delayed the finalisation of the financial statements in order to conceal the earlier violation of the leverage ratio. The Respondents further submitted that the minutes of the Board Meeting dated 27 September 2022 were entered into the minute books only on 20 October 2022 and signed on 22 October 2022**,** thereby further evidencing the concealment of material facts. The Respondents further submitted that at no point of time had the Respondents consented to the conversion of the OCDs into CCPS. It was specifically contended that the mere absence of the Respondents from the Extraordinary General Meeting could never amount to deemed consent for an otherwise illegal transaction. The Respondents further stated that, and even assuming and not admitting such consent had existed, the settled principle of law is that there can be no estoppel against a statute. Accordingly, any purported consent of shareholders cannot validate an act undertaken in violation of mandatory RBI regulations.

54. The Respondents contended that the Tribunal had rightly held that the admitted violations of the NBFC Directions constituted acts prejudicial to the interests of both the Company and the public, particularly in view of the Company's status as an NBFC dealing with public funds. It was submitted that Sections 242(1) and 242(2)(m) of the Companies Act, 2013 confer wide equitable powers upon the Tribunal to pass such orders as may be necessary to bring an end to acts of oppression, mismanagement, and illegality.

55. The Respondents further relied upon the judgment of the Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. [(1981) 3 SCC 333] to contend that the Tribunal possesses ample jurisdiction to interfere with illegal corporate actions, including illegal allotment of shares and violations of statutes other than the Companies Act, 2013. It was submitted that the Hon’ble Supreme Court has authoritatively recognised that the powers of the Company Law Board, and consequently those of the Tribunal under Sections 241 and 242 of the Companies Act 2013, extend to granting appropriate relief where corporate actions violate other statutory provisions. The Respondents therefore contended that the Tribunal rightly exercised its powers under Sections 242 and 420 of the Companies Act,2013 in passing the Impugned Order.

56. The Respondents submitted that the violations committed by the Appellants are extremely serious as they threaten the regulatory existence of the

Company as an RBI-registered NBFC. It was contended that these violations have already been admitted by the Appellants and have been duly considered by the Tribunal while passing the Impugned Order. Accordingly, the Respondents submitted that a strong prima facie case exists in favour of Respondents and that no interference with the findings recorded by the Tribunal is warranted at the interlocutory stage.

57. The Respondents submitted that apart from the admitted violations of the NBFC Directions, the Appellants had systematically siphoned off the funds of the Company by engaging in dubious and fraudulent related party transactions for their personal benefit. It was contended that the true extent of such financial irregularities has not yet been fully uncovered and can only be ascertained through an independent forensic and transaction audit as directed by the Tribunal.

58. The Respondents stated that, at the time of filing the Company Petition before the Tribunal, the Respondents had become aware of one such suspicious transaction involving Luxus Retail Private Limited ("Luxus")**,** a company wholly owned and controlled by the Appellants. Initially, the Respondents had discovered an invoice dated 16 December 2022, evidencing the purported purchase by the Company of a second-hand Bentley motor car from Luxus at an exorbitant price. However, during the pendency of the proceedings, the former Business Head of the Company, Mr. Om Prakash Sambharia, disclosed that the said transaction formed part of a much larger scheme involving diversion of funds, money laundering, and financial fraud.

59. The Respondents further submitted that the Company had advanced a loan of Rs. 14 Crores to Luxus in two tranches, namely Rs. 5 Crores and Rs. 9 Crores, carrying an unusually low rate of interest of merely 7%. It was contended that no loan agreement, security document, or deed of hypothecation was ever executed in favour of the Company. The Respondents stated that while the first tranche of Rs. 5 Crores was repaid, the remaining amount of Rs. 9 Crores was not repaid in the ordinary course but was subsequently adjusted against the purported purchase of the second-hand Bentley vehicle in December 2022. Consequently, money which had originally left the Company under the guise of a loan never returned to the Company as loan repayment, and no interest whatsoever was recovered on the outstanding amount, thereby causing substantial financial loss to the Company. The Respondents contended that the Appellants sought to justify the purchase of the Bentley by asserting that the luxury vehicle was required to impress high-net-worth individuals and that the transaction had allegedly been approved through an omnibus approval. However, the Respondents submitted that such justification is wholly untenable and contrary to the documentary record. Keeping in view the paid up capital of the Company itself was of Rs. 2.34 crores. The Respondents stated that the alleged omnibus approval was passed only through a Circular Resolution dated 21 September 2022, whereas the loan of Rs. 14 Crores had already been advanced to Luxus during March and April 2022. Consequently, the purported omnibus approval could never retrospectively validate or authorize the earlier loan transaction. The Respondents further submitted that even a plain reading of the Circular Resolution demonstrates that it merely laid down broad criteria for considering related party transactions and did not grant approval for any specific transaction, much less the advancement of Rs. 14 Crores to Luxus or the subsequent purchase of a luxury Bentley vehicle.

60. The Respondents further contended that, even assuming without admitting that the purchase of a luxury vehicle was commercially justified, there existed absolutely no necessity to purchase the vehicle from a related party owned and controlled by the Appellants themselves. It was submitted that the vehicle could easily have been purchased through an independent third-party dealer in an arm's length transaction. The Respondents argued that the Company is an RBI-regulated NBFC and not an entity engaged in public relations or luxury services, and therefore the purchase of an expensive Bentley vehicle costing approximately Rs. 9.09 Crores, when the Company's paid-up capital itself was only about Rs**.** 2.34 Crores**,** was wholly irrational, commercially imprudent, and manifestly against the interests of the Company.

61. The Respondents further submitted that the Tribunal rightly took judicial notice of this glaring irregularity and categorically observed that the purchase of a luxury vehicle worth nearly three times the paid-up share capital of the Company reflected complete absence of financial prudence and corporate governance. It was contended that this finding further substantiated the conclusion that the affairs of the Company were being conducted in a manner prejudicial to its interests.

62. The Respondents further submitted that the Bentley transaction was merely one among several suspicious related party transactions undertaken by the Appellants for their own benefit. The Respondents stated that the statutory auditor had highlighted numerous transactions indicating systematic diversion of the Company's funds to entities owned or controlled by the Appellants.

63. The Respondents stated that Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 requires the Audit Committee, while granting omnibus approval, to consider various statutory parameters including the necessity of the transaction, the justification for granting omnibus approval, the identity of the related party, the nature and value of the transaction, the duration of the transaction, pricing methodology, and the maximum permissible amount. It was submitted that none of these mandatory statutory requirements had been complied with in respect of the impugned transactions.

64. The Respondents contended that several related party transactions had admittedly taken place much prior to the passing of the alleged Circular Resolution dated 21 September 2022. These included the loan of Rs. 14 Crores granted to Luxus, the loan of Rs. 4.90 Crores granted to Appellant Mr. Satya Prakash Bagla, and the loan of Rs. 12.89 Crores advanced to Sulojay Realty Private Limited**,** another company owned and controlled by the Appellants. Consequently, these transactions could never have been authorized by a Circular Resolution passed several months later.

65. The Respondents submitted that even those transactions which the Appellants sought to justify under the Circular Resolution were themselves contrary to the conditions prescribed therein. It was pointed out that the Circular Resolution contemplated a monetary ceiling of Rs. 10 Crores for related party transactions, whereas loans amounting to Rs. 14 Crores and Rs. 12.89 Crores had been advanced to Luxus and Sulojay Realty respectively, far exceeding the prescribed limit.

66. The Respondents further contended that the Circular Resolution also stipulated that each tranche of payment should not exceed Rs. 5 Crores. However, despite this express condition, Luxus was advanced a second tranche of Rs. 9 Crores, thereby violating even the internal criteria relied upon by the Appellants themselves. The Respondents further submitted that Respondent Mr. Om Prakash Sambharia, business head of the Company had brought several additional suspicious loan transactions to the notice of the Tribunal, which collectively established a consistent pattern of financial impropriety.

67. The Respondents stated that one such transaction involved Laxmipati Management Services Private Limited**,** to whom a loan of Rs. 3 Crores was sanctioned purportedly for the purchase of a luxury vehicle from Exclusive Motors Private Limited (EMPL)**.** However, the loan proceeds were directly disbursed to EMPL, no vehicle was ever purchased, and no hypothecation or security was created in favour of the Company. Nearly one and a half years later, EMPL repaid approximately Rs. 3.12 Crores, resulting in a substantial loss of interest that the Company would ordinarily have earned on such a transaction.

68. The Respondents further submitted that another suspicious transaction concerned Mr. Jayant Mirani**,** who was granted a loan of Rs. 2.05 Crores despite the fact that he had already availed a separate loan of approximately Rs. 3 Crores from the Bank of Baroda for purchase of the same vehicle, which already stood mortgaged to the bank. It was submitted that despite this existing encumbrance, the Company advanced another loan without obtaining any security or hypothecation. Further, no interest was charged on a substantial portion of the loan, the remaining amount remained unpaid, and no meaningful recovery proceedings were initiated. It was also submitted that the outstanding amount appeared to have been received by Appellant Mr. Achal Kumar Jindal through cash or other undisclosed means, thereby giving rise to serious allegations of financial fraud.

69. The Respondents further submitted that another suspicious transaction involved the remittance of approximately Rs. 6.71 Crores by the Company to Exclusive Motors Private Limited during July and August 2023 towards the alleged purchase of another second-hand Bentley Bentayga vehicle. It was contended that no Board approval or statutory approval was ever obtained for this transaction, no supporting documentation existed in the Company's records, and none of the former employees, including Respondents, had ever seen the vehicle or could even confirm its existence. These circumstances, according to the

Respondents, clearly established that the transaction was sham and designed solely to siphon the Company's funds.

70. The Respondents emphatically contended that the Tribunal rightly concluded that the Appellants could not be permitted to continue managing the affairs of the Company pending investigation. It was submitted that apart from the Appellants themselves, no person presently possesses complete knowledge regarding the financial dealings and true financial position of the Company. Therefore, the appointment of the independent Administrator, who is retired High Court Judge of the Delhi High Court and the direction to conduct a comprehensive transaction audit and forensic audit were absolutely necessary to ascertain the true extent of financial diversion, identify the beneficiaries of such transactions, recover the diverted assets wherever possible, restore statutory compliance, and enable the Administrator to submit periodic reports before the Tribunal.

71. The Respondents submitted that any interference with these directions at the present stage would seriously prejudice the investigation, enable the Appellants to tamper with the Company's financial records, and irreversibly defeat the very purpose for which the Tribunal had appointed the independent Administrator and directed a forensic examination of the Company's affairs.

72. The Respondents submitted that the conduct of the Appellants was not confined merely to regulatory violations and diversion of funds, but also extended to systematically dismantling the internal governance structure of the Company in order to retain absolute and unchecked control over its affairs. It was contended that the Appellants deliberately engineered the resignation of the Company's Key Managerial Personnel, and attempted to suppress all evidence relating to their illegal acts. These circumstances, according to the Respondents, clearly established a continuing pattern of oppression, mismanagement, and abuse of corporate powers, thereby fully justifying the intervention of the Tribunal.

73. The Respondents further submitted that the Appellants had also acted maliciously by removing the Independent Directors of the Company during the pendency of the proceedings before the Tribunal and despite the operation of interim protective orders passed therein. It was contended that these removals were orchestrated solely with the objective of eliminating independent oversight over the affairs of the Company. The Respondents submitted that immediately after service of the Company Petition upon the Appellants and the Company on 28 February 2024, Respondent (Mr. Krishnama Chary Mudumba) was removed from the position of Independent Director without complying with the mandatory provisions of the Companies Act, 2013. It was pointed out that the records maintained by the Registrar of Companies reflected Respondent (Mr. Krishnama Chary Mudumba) as continuing to hold office as an Independent Director as late as 26 February 2024, thereby demonstrating that the subsequent removal was undertaken in undue haste and contrary to law.

74. The Respondents further submitted that Respondent (Mr. Rajeev Uberoi) was also purportedly removed through a Resolution dated 15 February 2024. The

Respondents contended that the said Resolution was neither genuine nor contemporaneous and was disclosed by the Appellants for the first time only through their Reply filed before the Tribunal on 4 April 2024. The Respondents vehemently argued that the alleged Resolution dated 15 February 2024 was fabricated and antedated. The Respondents further submitted that despite the Respondents specifically expressing before the Tribunal, during the hearings held on 22 March 2024 and 2 April 2024, their apprehension that Respondent Mr. Rajeev Uberoi might be removed from the Board, the Appellants deliberately suppressed the existence of the alleged Resolution and failed to disclose the purported removal. Such deliberate concealment, according to the Respondents, further established the mala fide conduct of the Appellants and their lack of candour before the judicial forum.

75. The Respondents submitted that the Tribunal rightly took cognizance of these circumstances and specifically observed in the Impugned Order that the manner in which the Independent Directors had been removed did not inspire confidence in the governance standards of an NBFC entrusted with large volumes of public money. The Respondents contended that these findings were based upon the documentary evidence available on record and therefore deserved complete deference by this Appellate Tribunal.

76. The Respondents further contended that continuous and successive acts of regulatory non-compliance, diversion of funds, suppression of financial transactions, elimination of Key Managerial Personnel, illegal removal of

Independent Directors, and violation of interim judicial orders clearly established that the affairs of the Company were being conducted by the Appellants in a manner wholly prejudicial to the interests of the Company and its stakeholders. The Respondents submitted that the Tribunal, after appreciating the entire factual matrix, correctly exercised its equitable jurisdiction by appointing an independent Administrator for a limited period of 180 days to take charge of the management of the Company. It was contended that the Administrator, being a retired Judge of the High Court of Delhi, was appointed solely to preserve the assets of the Company, restore statutory compliance, supervise its affairs independently, and facilitate a comprehensive forensic and transaction audit into the conduct of the erstwhile management.

77. The Respondents further submitted that the Administrator had also been directed to evolve an appropriate scheme for the future management of the Company, submit periodic reports before the Tribunal, and seek further directions wherever necessary. Such directions, according to the Respondents, were carefully crafted to protect the Company without causing any irreversible prejudice to the Appellants.

78. The Respondents contended that it is now well settled that the jurisdiction conferred upon the Tribunal under Sections 241 and 242 of the Companies Act, 2013 is of the widest amplitude and is intended to enable the Tribunal to mould appropriate reliefs so as to bring an end to acts of oppression, mismanagement, illegality, and prejudice affecting the affairs of a company. The Respondents therefore submitted that the Impugned Order neither exceeded the jurisdiction of the Tribunal nor suffered from any legal infirmity. On the contrary, the directions issued therein constituted necessary and proportionate measures for safeguarding the Company, protecting its stakeholders, restoring lawful corporate governance, and ensuring that the true extent of the Appellants' financial misconduct is independently investigated.

79. Concluding arguments, the Respondents requested this Appellate Tribunal to dismiss both the appeals with exemplary costs.

Pleadings by the Observer

80. The counsel for the Observer Justice R. K. Gauba, brought to notice that he has already submitted 5 detailed reports which indicate the conduct of the Appellants have not been conducive to the welfare of the Company. The counsel for the Observer also brought to our notice that he has not been paid by the company despite judicial order and urged this Appellate Tribunal to get his remunerations paid by the company.

Findings

81. Having heard the parties, perusal the record made available including the Impugned Order, we find appropriate to capture the basic facts of the case at this stage.

A) Chronology of events relevant in present appeal.

For ease of reference, the material dates, are set out below:

08.04.1994- ECL (formerly UT Leasing Limited) incorporated.

08.09.2021- RBI approves change in control/management of the Company ECL in favour of the Appellant Mr. Satya Prakash Bagla.

13.10.2021- Appellants Mr. Satya Prakash Bagla (on 08.09.2021) and Mr. Achal Kumar Jindal (on 13.10.2021) inducted as Directors; ECL classified as an NBFC.

06.12.2021- Amended certificate of incorporation issued; RBI registration as non-deposit taking NBFC.

Oct. 2021 – Mar. 2022- Teesta Retail Private Limited subscribes to OCDs aggregating Rs. 315 crores in three tranches.

05.09.2022- Complaining Petitioners (the Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala herein) acquire 1,17,325 equity shares each from an erstwhile Director and become shareholders of the company.

26.08.2022- Company Secretary's opinion recommending conversion of OCDs into CCPS to address the leverage-ratio breach.

06.09.2022 & 17.09.2022- Extraordinary General Meetings approve conversion of OCDs into CCPS on shorter notice.

27.09.2022- Board ratifies conversion; approves criteria for omnibus approval of related-party transactions; audited financial statements for FY 2021-22 (disclosing the OCD/CCPS position for the first time) adopted.

29.09.2022- 28th AGM held; shareholders approve the FY 2021-22 balance sheet.

16.12.2022- Purchase of Bentley Mulsanne motor car for Rs. 9,09,00,000/- .

28.12.2022- The company applies to RBI for approval to allot shares to the Complaining Petitioners (the Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala) and to appoint Mr. Sambharia as CEO/Whole-Time Director.

30.05.2023- RBI grants the approval sought, valid for six months.

30.11.2023 - Validity of the RBI approval dated 30.05.2023 lapses, allegedly without implementation by the company.

10.12.2023- Five Key Managerial Personnel, including the Company Secretary and Chartered Accountant/Statutory Auditor, resign within a short span.

Feb.–Mar. 2024- Independent Directors (Mr. Rajeev Uberoi and Mr. Krishnama Chary Mudumba) removed from the Board; petition C.P. No. 48/ND/2024 filed and served.

22.03.2024, 02.04.2024, 08.04.2024- The Tribunal passes interim protective orders restraining board meetings/business of the Company; Contempt Petition No. 9 of 2024 subsequently instituted alleging violation thereof.

15.05.2024- The Tribunal passes the Impugned Order allowing C.P. No. 48/ND/2024.

B) **Financial facts of the Company (at the relevant time)**

Following facts relevant to several of the findings of the Tribunal in Impugned Order, are recorded below:

Paid-up equity share capital: Rs. 2,34,65,000/-

OCDs issued to Teesta Retail Pvt. Ltd. (Oct. 2021 – Mar. 2022):

Rs. 3,15,00,00,000/-

Resultant leverage ratio (outside liabilities ÷ owned funds): ≈ 117.77 as noted from RBI letter dated 29.03.2026 (RBI's ceiling: 7)

OCDs converted to CCPS (27.09.2022): Rs. 3,15,00,00,000/- (convertible into equity at any time within 20 years)

Shareholding of Complaining Petitioners (the Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala herein acquired 05.09.2022):

1,17,325 equity shares each (two individuals)

82. In order to give contextual reference, we note that the broad allegations raised by the Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala in the Company Petition No. 48/ND/2024 were:

> (i) the Company failed to comply with the Expansion Agreement, causing grave prejudice to Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala;
>
> (ii) the Company illegally converted the OCDs to CCPS without requisite RBI approval under the NBFC Directions;
>
> (iii) The Appellants caused the resignation of key managerial personnel by intimidation and harassment, and the Company withheld their salaries without justification;

(iv) Appellant Mr. Satya Prakash Bagla purchased a Bentley Mulsanne EWB 20My luxury car for his personal use with the Company's funds at an exorbitant price of Rs. 9,09,00,000/- from Luxus Retail Pvt. Ltd., a company held and controlled by the Appellants; along with such more transactions

(v) There was consistent failure by the Appellants to disclose material information to the Board and independent directors regarding loan defaults, quarterly financial statements, accounting of transactions, and related party transactions;

(vi) Appellant Mr. Achal Kumar Jindal and Mr. Johnson Abraham consistently worked to further the interests of other parties/companies related to Appellant Mr Satya Prakash Bagla.

In light of the above allegations, Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala sought the reliefs, *inter alia*: Direction to the Company to apply to RBI to extend the validity of the RBI approval and allot 28,83,506 shares to Respondent Mrs. Kanta Agarwala as per the Expansion Plan; Removal of Appellant Mr. Satya Prakash Bagla as Managing Director, Removal of the Appellant Mr. Achal Kumar Jindal and Mr. Johnson Abraham as Directors of the company; Appointment of Respondent Mr. Om Prakash Sambharia as

CEO/WTD or Managing Director in place of Appellant Mr. Achal Kumar Jindal, setting aside the purchase of the luxury car from Luxus etc.

83. We note that the Appellants, have assailed the Impugned Order and submitted the following parts for consideration:

(a) that the direction cancelling the CCPS and treating the underlying Rs.315 crore as an instantly repayable debt was never a relief sought by any party and travels beyond the pleadings, effectively imposing a crippling, contrived debt liability on the Company that amounts to a disguised winding-up, a jurisdiction alien to Section 242 of the Companies Act, 2013;

(b) that Respondent Mr. Rajeev Uberoi, Mr. Krishnama Chary Mudumba, Mr. Om Prakash Sambharia, Mr. V.V Kale, Mr. Havinder Singh, not being petitioners and lacking the locus under Section 244 of the Companies Act, 2013 to maintain a petition in their own right, could not be permitted to indirectly found a case of oppression through unverified and uncorroborated allegations in their replies;

(c) that the conversion of OCDs into CCPS, even if in breach of the NBFC Directions, was at worst, visited with the consequence prescribed in Section 58G of the Reserve Bank of India Act, 1934 read with Section 58B (5) (aa) thereof, namely, monetary penalty and not automatic characterisation as oppression, and mismanagement;

(d) that the Luxury Car purchase was expressly found by the Tribunal (at paragraph 67 of the Impugned Order) to fall within the Board's omnibus approval for related-party transactions dated 27.09.2022, and, that being so, could not simultaneously be treated as an act of oppression without a finding that the transaction was unfair, overpriced or not at arm's length;

(e) that the mass resignation of key managerial personnel was, on the Tribunal's own findings (paragraph 62 of the Impugned Order), “a matter of investigation” as to whether it was attributable to misconduct of the resigning employees or of the Appellants and an unresolved factual controversy cannot found a conclusive finding of mismanagement; and

(f) that the appointment of the Administrator and 180-day suspension of the Board is a drastic, quasi-winding-up measure disproportionate to the findings actually recorded, particularly when an unadjudicated offer by Appellant Mr. Satya Prakash Bagla to buy out Respondents Mrs. Kanta Agarwala & Mr. Suresh Kumar Agarwala at fair value remained pending consideration by the Tribunal itself.

84. On the other hand, the Respondents supported the Impugned Order and submitted:

(a) that the issuance of OCDs disregarding the leverage ratio ceiling, and their subsequent conversion into CCPS without RBI's prior permission under Clause 61(b) of the NBFC Directions, despite the progressive acquisition of shareholding it entailed, was a device to entrench the Appellants' control and to dilute the minority to a vanishing shareholding, and was rightly found to be not bona fide.

(b) that the unauthorised assignment of the Company's valuable rights over the AHNL debt to VSJ, the coordinated resignation of the entire senior management within 45 minutes, the removal of an Independent Director by a Board resolution of doubtful provenance, and the admitted multiple related-party transactions (car purchase, loan of Rs.5.07 crore to the Appellant Mr. Satya Prakash Bagla , loan of Rs.12.89 crore to Sulojay Realty Pvt. Ltd.) etc collectively established a pattern of the affairs of the Company, a NBFC, being conducted in a manner prejudicial to the Company and to public interest within the meaning of Section 241(1)(a) of the Companies Act, 2013.

(c) that, having regard to the fact that the Company is an NBFC, regulated by RBI in the public interest, the appointment of the independent Administrator and a forensic audit was a proportionate and appropriate exercise of the wide remedial powers under Section 242(1) and 242(2), including clauses (e), (f), (k), (m) of the Companies Act, 2013, to bring to an end the matters complained of.

85. Now we would like to take into consideration the board summary of the Impugned Order and note specific directions contained therein which aggrieved the Appellants.

A) THE IMPUGNED ORDER — SUMMARY OF FINDINGS

a) The Tribunal, at paragraphs 50 to 61 of the Impugned Order, held that the leverage ratio prescribed by Regulation 6 of the NBFC Directions was breached manifold (the quotient being computed at 134.24 as against the ceiling of 7); that the breach was not denied by the Company or its then management; that the conversion of OCDs to CCPS was, on the material before it, "not a bona fide act" but "a ruse to circumvent the provision of the [RBI] circular"; and that such conduct fell within Section 241(1)(a) of the Companies Act 2013 as prejudicial both to the interest of the Company and to public interest, given since the Company is a RBI-regulated NBFC.

b) At paragraphs 62 to 72, the Tribunal dealt with the mass resignation of Key Managerial Personnel, the removal of Independent Directors, the purchase of the Bentley motor car, related-party loans, the non-implementation of the RBI approval letter dated 30.05.2023, and the absence of a satisfactory explanation for these matters, concluding that there was "improbity" in the conduct of the Company's affairs warranting intervention under Section 242 of Companies Act 2013.

c) By its operative directions as contained in para 73 (A to N), the Tribunal appointed the Administrator; suspended the Board for 180 days; directed cancellation of the OCDs/CCPS with refund of Rs. 315 crores to the holder; directed a transaction audit by an independent auditor; directed the Administrator to secure compliance with the NBFC Directions and the RBI letter dated 30.05.2023; directed evolution, within 150 days, of a scheme for a new Board; and reserved liberty to the Administrator to seek clarifications from the Tribunal. The petition was disposed of with clarification that nothing in the order would disqualify Respondent Nos. 2 and 3 therein and the Appellant Mr. Satya Prakash Bagla and Mr. Achal Kumar Jindal herein, from holding directorships elsewhere.

B) We also take into consideration the specific direction as contained in the Impugned Order which reads as under:

> *"73. In the aforementioned conspectus, we are convinced that the present case warrants appointment of Ld. Administrator to manage the function and affairs qua the Respondent No.1. In the wake, Hon'ble Mr. Justice R.K. Gauba, a former Judge Delhi High Court is appointed as Administrator qua the Respondent No.1.*
>
> *A. The Ld. Administrator so appointed would cause to be prepared with respect to the company: -*
>
> *(a) a complete inventory of*
>
> *(i) all assets and liabilities of whatever nature;*
>
> *(ii) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;*
>
> *(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors; …….*
>
> *(e) proforma accounts of the company, where no up-to-date audited accounts are available; and*
>
> *(f) a list of workmen of the company and their dues referred to in subsection (3) of section 325.*

B. The Ld. Administrator would also take over all the functions of the board qua the Respondent No.1 and the power and function of the board would remain in abeyance for a period of 180 days.

C. The OCDs/CCPS issued by the Respondent No.1, in violation of the RBI regulations, shall stand cancelled and money, thereof, shall be returned to respective holders and necessary formalities in this regard would be completed.

D. The Ld. Administrator will take appropriate steps after consulting the CC PS holders with regard to the above, and for this purpose, he would be at liberty to deal with the assets of Respondent No.1 as he deems fit and as per applicable law.

E. For the purpose of verifying the allegations regarding dubious financial transactions, including those with related parties, for siphoning of funds from the respondent company, a transaction audit for the relevant period of such transactions be carried out. The Ld. Administrator will appoint a reputed Auditor/Audit Firm for the purpose.

F. The Ld. Administrator would appoint/engage Key Managerial Persons and skilled professionals to assist him in managing the affairs of the company (Respondent No.1) and to ensure that the provisions of Non Banking Financial Company-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 as also the letter dated 30.05.2023 issued by RBI are complied with and no defiance thereof persist. G. For a period of 180 days, the Board of Directors would remain in suspended position.

Nevertheless, the Respondent Nos.2 to 4 would be paid the same pay and allowances as they are drawing as on date.

H. On expiry of the period of 150 days the Ld. Administrator would evolve a scheme regarding composition of fresh Board of Directors and running the affairs of the company. While doing so, the Ld. Administrator would consult all stakeholders. In the meantime, the Ld. Administrator will file a monthly report regarding the affairs of the Respondent No.1 before this Tribunal, by way of IAs.

I. An appropriate application for approval of the scheme/plan to be evolved by Ld. Administrator (as above) shall be filed before this Tribunal by way of an IA, before expiry of 180 days. Nevertheless, if circumstances warrant, an application for extension of time may be filed by the Ld. Administrator. During this period, the Ld. Administrator will file a report at the end of every month apprising this Bench of the development during the month.

J. The Ld. Administrator shall do all acts as necessary, keeping in view the complications involved in the present case.

K. All parties are directed to cooperate with the Ld. administrator and the management of Respondent no.1 are directed to make available all documents information requisition by the learned administration.

L. The Ld. Administrator would be entitled to same pay, allowances and facilities as are admissible to CEO/MD of the Respondent.

> *M. The Ld. Administrator is at liberty to approach this Bench for any clarification/direction with regard to the issues before him.*
>
> *N. Nothing observed/stated hereinabove would be perceived to have ramification to disqualify the Respondent Nos.2 to 3 from holding the position of Director qua any company. The Petition stands disposed of. No Cost."*
>
> *(Emphasis supplied)*

86. In order to assess the events after passing of the Impugned Order by the Tribunal, we take into consideration the relevant portion of the relevant orders passed by this appellate tribunal, subsequent to filing present appeals by the Appellants, which reads as under:

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 22.05.2024

> *"22.05.2024: We have heard Counsel for the Appellant at some length. The Tribunal has issued directions for the appointment of an Administrator and cancellation of OCD/CCPs and also for return of the amount to the stakeholders……………………*
>
> ***Till the next date of hearing, there shall be status quo in respect of the impugned order as prayed."***
>
> (Emphasis supplied)

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 31.05.2024

> *"31.05.2024: This is an appeal filed against the impugned order dated 15.05.2024 passed by the Ld. National Company Law Tribunal, Court No.2, New Delhi in CP No.48/ND/2024 wherein an Administrator is appointed of Respondent No.3 with the powers given in para 73 of the impugned order………………*
>
> *5. The appellants have substantially argued the matter and the Respondents shall be arguing on the next date.* ***At this stage, we modify the interim relief of grant of status quo in respect of the impugned order vide our order dated 22.05.2024, to the extent that, we hereby direct let Hon'ble Justice Mr. R.K. Gauba to act as an Observor, and he shall preside over the Board of Directors' Meetings and no major policy decision be taken by the Board and let there be no alienation of assets of R3(Exclusive Capital Ltd) till the next date of hearing. The Ld. Observor in the meantime may prepare a complete inventory of all assets of R3 and also a list of shareholders and a list of secured and unsecured creditors. The Observer shall verify the allegation qua the financial transactions, including those of related party qua siphoning of funds. All the parties to cooperate with the Ld. Observer and to make available to him all documents/information as requisitioned by the Ld. Observer.***

> *6. Ld. Observer shall be entitled to pay and allowances and facilities as admissible to the CEO/Managing Director of Respondent No.2.*
>
> *7. The Ld. Observer shall be at liberty to approach this Tribunal for any clarifications or directions.*
>
> *8. List the appeal on 3rd and 5th July, 2024 for further hearing.*
>
> *(Emphasis supplied)*

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 23.07.2024

> *"23.07.2024: Two applications are listed before us. IA No.4305/2024 for recall of the order dated 31.05.2024 as well as the contempt petition filed by the Respondents. It is the submission of the learned counsel for the Respondent the appellant has not complied with the order dated 31.05.2024 as much as has failed to supply the information as was required by the Ld. Observer…………………………………………………….*
>
> *4.* ***We have gone through the order dated 31.05.2024. The Ld. counsel for the appellant is aggrieved of the fact the said order dated 31.05.2024 requires the Ld. Observer to verify all the allegations made in the pleadings including those related to siphoning of funds and related parties. We have perused the order dated 31.05.2024, we clarify such directions were to examine the financial transactions qua siphoning of funds and of related parties.***

> ***5. In the circumstances let the requisite information as desired by the Ld. Observer in connection to above be supplied and compliance report be filed by the appellant within two weeks.***
>
> ***List on 9th August, 2024."***
>
> *(Emphasis supplied)*

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 09.09.2024

> *"9. The Ld. Observer has furnished Report No. 1 dated 01.07.2024 and has furnished Observer Notes: No. 1 dated 07.06.2024, No. 2 dated 19.06.2024, No. 3 dated 08.08.2024, No. 4 dated 01.09.2024 and No. 5 dated 09.09.2024.*
>
> ***In all his reports and Notes, the Ld. Observer has repeatedly brought out that the Company ECL and the appellants are not cooperating and not providing information and documents necessary and vital for carrying out the mandate given by the Tribunal.***
>
> *15.* ***As a last resort we direct the Appellants and Respondent No.3(ECL) to supply the information/documents requisitioned by the Ld. Observer as enlisted in the chart dated 12.09.2024 on or before 10.10.2024. Noncompliance of these directions will constrain us to take the Contempt Case (AT) No. 17 of 2024 on the next date of hearing for appropriate order(s).***
>
> *(Emphasis supplied)*

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 16.12.2024

> *"16.12.2024: The learned counsel appearing on behalf of the Learned Observer has taken us to the part of the Learned Observer's Report-Note No.2 to submit there have been related party transactions etc. However, no further time is left as at 2 PM, another part heard matter- M/s Quantum Mutual Fund & Ors Vs ICICI Securities Ltd & Anr is pending for remaining argument, List the matter on 23.12.2024 for hearing.*
>
> ***An apprehension is raised by Mr. Rajeev Nayyar, Learned senior counsel on behalf of the Respondent the appellants are in the process of appointing a new director and also are continuously siphoning of money of the company. The Learned senior counsel appearing on behalf of the appellant fairly submits till the next date of hearing, there shall be no appointment of an independent director. It is also directed if an amount of more than Rs.10 lakhs is spent by the company, the directors viz the appellants, shall inform/bring it to the notice of the Ld. Observer and if the amount to be spent is more than Rs.25 lacs, the concurrence of the Ld. Ld. Observer be taken. Put up on 23.12.2024 for further hearing.****"*

(Emphasis supplied)

87. We note that this Appellate Tribunal order dated 23.07.2024 (quoted earlier) was challenged by the Appellants before the Hon'ble Supreme Court, who did not interfere with this Appellate Tribunal order dated 23.07.2024. The order dated 02.12.2024 of the Hon'ble Supreme court reads as under:

> *"**CIVIL APPEAL (arising out of Diary No. 45598 of 2024) order dated 02.12.2024 passed by Supreme Court of India***
>
> *"Delay condoned.*
>
> ***We do not find any good ground and reason to interfere with the impugned judgment and, hence, the present appeal(s) is dismissed.***
>
> *Pending application(s), if any, shall stand disposed of."*
>
> *(Emphasis supplied)*

88. We also take into consideration the **Hon'ble Supreme Court order dated 24.02.2025,** which was passed in identical manner, albeit, in three different matters namely:

A) **Petition for Special Leave to Appeal (C) No. 4349/2025**

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1083/2024 passed by the High Court of Delhi at New Delhi]

ACHAL KUMAR JINDAL ….Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT. LTD. & ORS. …Respondent(s)

(IA No. 40785/2025 - Exemption from Filing C/C of the Impugned Judgment and IA No. 41789/2025 - Permission to File Additional Documents /Facts /Annexures)

B) **Petition for Special Leave to Appeal (C) No. 4534/2025**

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1081/2024 passed by the High Court of Delhi at New Delhi]

SATYA PRAKASH BAGLA …Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT. LTD. & ORS. … Respondent(s)

(IA No. 42520/2025 - Exemption from filing c/c of the impugned judgment, IA No. 42523/2025 - permission to file additional documents/facts/annexures and IA No. 42521/2025 - permission to file lengthy list of dates)

C) Petition for Special Leave to Appeal (C) No. 4540/2025

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1080/2024 passed by the High Court of Delhi at New Delhi]

JOHNSON KA …..Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT LTD & ORS. …..Respondent(s)

(IA No. 42641/2025 - exemption from filing c/c of the impugned judgment, IA No. 42639/2025 - permission to file additional documents/facts/annexures and IA No. 42640/2025 - permission to file lengthy list of dates)

We note that the Operative part of the all above three orders of the Hon'ble Supreme court is same, which reads as under:

> *"<u>In this matter, several issues and questions have been raised for</u> consideration. Notably, the scope and ambit of the order passed by the learned single Judge of the High Court of Delhi dated 26.10.2024 is under scrutiny**<u>, particularly in the light of the ongoing proceedings concerning oppression and mismanagement before the National Company Law Tribunal1/ National Company Law Appellate Tribunal2, which are currently seized of the matter.</u>** The primary prayer in the writ petition pertains to the alleged inaction or failure on the part of the Reserve Bank of India3 in fulfilling its obligations. However, it is pertinent to note that the interim directions issued by the learned Judge appear to address and adjudicate all issues and contentions inter se the parties, including those that are sub-judice before the NCLT/NCLAT and the RBI.*
>
> *Issue notice, returnable in the week commencing 14.04.2025.*
>
> *Notice is accepted by Mr. Sahil Tagotra, learned counsel, who is present in Court on advance notice/caveat for respondent No. 1.*
>
> *Hence, notice need be served on the said respondent.*
>
> *Respondent No. 2, RBI, is represented upon notice being issued to it by this Court, vide order dated 17.02.2025.*
>
> *Notice shall be served upon the unrepresented respondents by all modes, including dasti, upon steps being taken within ten days from today.*

<u>As an interim measure, the following directions are issued: -</u>

"(i) There shall be stay of operation of the directions issued in the order dated 23.10.2024 passed by the learned single Judge in W.P.(C) No. 9877/2024, which supersedes the Board of Directors of Exclusive Capital Limited and appoints an Interim Committee of Administrators4. For the time being and till the date of this order, the payments to be made to the ICA, as per the said order, shall be borne by the writ petitioner.

(ii) <u>The orders passed by the NCLAT in relation to the appointment of the Observer, including the directions and powers given to such Observer, shall, however, continue to operate.</u>

<u>(iii)</u> ***<u>Till the next date of hearing in the present special leave petition, we find it appropriate to direct that Exclusive Capital Limited shall continue with its day-to-day business activities. However, it shall not enter into any financial transaction exceeding ₹10,00,000/- (Rupees Ten Lakhs only) without prior notice to the Observer. If the Observer deems it appropriate, he may bring the details of such transaction to the notice of the NCLT, where proceedings under Section 242 of the Companies Act, 2013, are pending. The NCLT may, thereupon, pass appropriate orders.</u>***

(iv) The proceedings before the RBI, pursuant to its show-cause notice and in view of the liberty granted by this Court, vide order dated 17.02.2025, shall continue and appropriate orders shall be passed, preferably within a period of four weeks from today.

(v) The observations recorded in the order passed by the learned single Judge and in the impugned judgment will not influence the RBI when it takes a decision. The RBI shall also not be influenced by this order, granting stay. It shall take an independent decision on the merits of the matter and proceed in accordance with law.

(vi) ***Liberty is granted to the writ petitioner and the shareholders, who have moved the NCLT, to move an application before the NCLT/NCLAT seeking appropriate directions. If any such application is filed, the same will be considered and decided in accordance with law,*** *without being influenced by the impugned judgment, including the order of the learned single Judge and the present order, granting stay.*

(vii) ***The proceedings before the NCLT/NCLAT may continue. It will be equally open to the petitioner before us, who is the respondent before the NCLT and the petitioner before the NCLAT, to contest/pursue the proceedings."***

(Emphasis supplied)

89. From above, we note that this Appellate Tribunal vide order dated 22.05.2024 directed status quo of the impugned order and by order dated 31.05.2024, this Appellate Tribunal modified its previous order dated 22.05.2024 and changed the status of the Administrator to the Observer. This Appellate Tribunal mandated Observer to enquire into siphoning of funds and preside over the board meeting of the company and also restrained the company from alienating any of its assets and directed that no major decision to be taken by the company in the meantime.

90. We also note that this Appellate Tribunal order dated 23.07.2024 (quoted earlier) reaffirmed the mandate to the Observer. The same (this Appellate Tribunal's order dated 23.07.2024) was confirmed by the Hon'ble Supreme Court in its order dated 02.12.2024 (quoted earlier) passed in Civil Appeal bearing Diary No. 45598 of 2024 and against order dated 24.02.2025 passed in SLP (C) Nos. 4534, 4349 and 4540 of 2025, giving detailed interim reliefs.

91. We also take into consideration that this Appellate Tribunal vide order dated 16.12.2024 (quoted earlier) had directed the company to inform the Observer of any transaction exceeding of Rs. 25 Lakhs for which prior concurrence of Observer was made necessary, which was slightly modified by the Hon'ble Supreme Court of India vide order dated 24.02.2025 (quoted earlier) restricting the management further from entering into any transaction exceeding of Rs. 10 Lakhs without prior notice to the Observer as against Rs. 25 Lakh allowed by this Appellate Tribunal earlier.

92. Thus, the orders of this Appellate Tribunal and the Hon'ble Supreme Court were in nature and with intend to maintain general status quo in the company before the judicial order is finally pronounced by the Tribunal regarding the original CP No. 48/ND/2024 which is still pending for final adjudication of the Tribunal.

93. Having noted the broad allegations of the Respondents in the original Petition No.48/ND/2024, the defence of the Appellants denying contentions in the Impugned Order, proceedings at this Appellate Tribunal and at Hon'ble Supreme Court after passing the Impugned Order (noted all orders above) we now proceed to frame issues in order to decide the appeals before us. Accordingly, we frame the following issues.

Issues

Issue I: (a) What is the scope of Oppression and Mismanagement under Sections 241-242 of the Companies Act 2013?

(b) What is the scope of interference by this Appellate Tribunal, under Section 421 of the Companies Act, 2013 in context of the detailed Impugned order dated 15.05.2024 passed by the Tribunal under Section 242 of the Companies Act, 2013?

Issue II: (a) Whether the case of oppression and mismanagement must be made out from the petition alone, and, if so, whether the Impugned Order is vitiated by reliance on the replies of Respondent Nos. 6 to 10, in petition no 48/ND/2024 none of whom are members of the Company?

(b) Whether the petition no.48/ND/2024 filed by the Respondents before the Tribunal, met the criteria of section 241-242 of Companies Act, 2013 and

further whether the prima facie case of oppression and mismanagement has been made out by the Appellants?

Issue III: (a) Whether the breach of the leverage ratio prescribed by Regulation 6 of the NBFC Directions, issued by the RBI and the subsequent conversion of OCDs into CCPS, constitute conduct prejudicial to the Company and to public interest under Section 241(1)(a) of the Companies Act 2013, notwithstanding the contention that the same stood cured and has no lingering effect?

(b) Whether the existence of a penal remedy under Section 58G of the RBI Act, 1934 ousts, or renders disproportionate the exercise of, the Tribunal's jurisdiction under Sections 241/242 of the Companies Act, 2013, in respect of the very same regulatory breach?

(c) Whether prior approval of RBI, under Para 61 of the NBFC Regulation was required for the conversion of OCDs into CCPS, and, if the Appellant's narrower construction of Para 61 of NBFC Regulation is correct and whether that affects the ultimate finding of oppression and mismanagement by the Tribunal?

Issue IV: (a) Whether the purchase of the Bentley motor car and the related-party loans (to Luxus, Laxmipati/Exclusive Motors, Mr. Jayant Mirani, and Sulojay Realty) were validly sanctioned by the omnibus approval dated

27.09.2022, and whether these transactions establish improbity in the management of the Company's affairs?

(b) Whether the allegations of non implementation of the Expansion Agreement has any substance?

Issue V: Whether the mass resignation of Key Managerial Personnel and the removal of the Independent Directors during the pendency of the petition constitute relevant and probative material for the purposes of Sections 241/242 of the Companies Act, 2013?

Issue VI: Submission of five reports by the Ld. Observer and issue of non payment of remuneration to the observer.

Now we shall deal various issues framed by us, issue-by-issue.

Issue I: (a) What is the scope of Oppression and Mismanagement under Sections 241-242 of the Companies Act 2013?

(b) What is the scope of interference by this Appellate Tribunal, under Section 421 of the Companies Act, 2013 in context of detailed Impugned order dated 15.05.2024 passed by the Tribunal under Section 242 of the Companies Act, 2013?

94. Before applying the relevant laws to the facts, it is useful to set out, the statutory scheme the statutory scheme under the Companies Act, 2013.

i) a) Section 241(1)(a) permits any member complaining that the affairs of the company are being, or have been, conducted "in a manner prejudicial to public interest, or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company", to apply to the Tribunal for relief.

b) Section 241(1)(b) additionally permits an application on the footing that "the material change" in the management or control of the company is likely to be conducted in a manner prejudicial to its interests.

c) Section 242(1) empowers the Tribunal, on such an application, to make such order as it thinks fit if it is of the opinion that the company's affairs are being conducted in a manner prejudicial or oppressive to a member or prejudicial to public interest or to the interests of the company, and that the facts would justify the making of a winding-up order on the just-and-equitable ground, but that winding up would unfairly prejudice the applicant. Section 242(2) sets out an illustrative, non-exhaustive menu of reliefs, including (at clause (m)) "any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made." Section 420 empowers the Tribunal to pass such orders as it thinks fit after giving the parties a reasonable opportunity of being heard.

ii) It is thus apparent from the text itself that:

a) "public interest" is an independent and freestanding ground under Section 241(1)(a), distinct from prejudice to the applicant-member personally;

b) the just-and-equitable winding-up threshold under Section 242(1)(b) is a standard to be assessed notionally, and does not require an actual winding-up petition or proof that winding up is in fact the appropriate course; and

c) the reliefs available under Section 242(2) are not confined to a closed list, and clause (m) confers a wide equitable discretion on the Tribunal to mould relief as the justice of the case requires.

95. At the first instance, we need to deep dive into the legal Framework Oppression and Mismanagement under Sections 241–242 of the Companies Act 2013.

A) The Companies Act, 2013 does not define 'oppression'. Courts and tribunals have developed the meaning through case law over decades. The foundational formulation comes from Elder v. Elder & Watson Ltd. (1952) (Scotland), later adopted in Indian jurisprudence: and oppression involves conduct that is burdensome, harsh and wrongful, not merely conduct that is technically legal but produces unfair outcomes.

In the Indian context, oppression typically may manifests through conduct such as:

- Exclusion of a member from management in violation of the understanding on which the company was formed
- Fraudulent allotment of shares to dilute a minority's shareholding
- Withholding of dividends while majority members extract value through inflated salaries
- Conversion of a public company to private without consent of minority shareholders
- Conducting Board or general meetings in violation of the Articles to pass resolutions injurious to minority interests
- Removal of a director in breach of a shareholders' agreement or an understanding between the founding members

Above is only illustrative list and not exhaustive list and will further depend on facts of each case.

We need to take into account one Critical Legal Principle that Oppression is not a one-time act it must be a continuing course of conduct. The Supreme Court in Shanti Prasad Jain vs. Kalinga Tubes ((1965) 2 SCR 720), held that there must be a continuous course of conduct creating a burden on the shareholders which is harsh, wrongful and causes them to suffer continuously. A single act of injustice, however severe, may not constitute oppression.

B) Mismanagement refers to the conduct of the company's affairs in a manner that is prejudicial to the interests of the company itself, or prejudicial to public interest, or likely to result in the company's affairs being conducted in such a manner on account of a material change in management or control. Unlike oppression (which is about harm to members), mismanagement encompasses harm to the company as an entity.

Common instances of mismanagement may inter alia, include:

- Diversion of company funds to related parties without Board approval
- Systematic non-disclosure of material information to minority shareholders or the Board
- Unauthorised disposal of key company assets
- Failure to maintain proper accounts or hold statutory meetings
- Appointment of incompetent or conflicted persons to key management positions

- Removal of key managerial personnel enemas to compromise corporate governance

- Actions that are ultra vires the Memorandum of Association (MOA) /Article of Association (AOA)or the Companies Act, 2013

- Material change in the management or control of the company prejudicial to company interests

- Breach of Regulatory Compliances

Again, above is only illustrative list and not exhaustive list and will further depend on facts of each case.

96. We note that Section 241(1)(a) Section 241(1)(a) of the Companies Act, 2013 expressly contemplates a Tribunal's opinion being founded on conduct that is prejudicial "to public interest" or "to the interests of the company", as distinct from prejudice to a member can be ground for act to be oppression and mismanagement. Where a company is a regulated entity (here, an NBFC registered with the RBI and regulated by the RBI), a demonstrated departure from binding prudential norms issued by the sectoral regulator RBI in the public interest is capable, in principle, of satisfying this limb, particularly where such departure is compounded by other indicia of mismanagement.

97. In this background, we again refer to the foundational decision, of Shanti Prasad Jain vs. Kalinga Tubes Ltd., (Supra) the Hon'ble Supreme Court held that conduct amounts to oppression under Section 397 of the Companies Act, 1956 (the precursor to Section 241 of The Companies Act 2013) only where it is "**burdensome, harsh and wrongful"** and involves "at least an **element of lack of probity or fair dealing**" to a member in his capacity as a shareholder. Mere loss of confidence between majority and minority, or a bona fide difference of business judgment, does not suffice; and **events complained of must be assessed cumulatively, "not in isolation but as a part of a consecutive story",** rather than as a series of disconnected incidents each individually incapable of sustaining relief. This consecutive story approach is of particular significance in the present matter, where the Appellants have sought to compartmentalise the leverage-ratio breach, the related-party transactions, the enmass KMP resignations and the removal of Independent Directors as unconnected episodes, each independently insufficient to found relief.

98. We will also take help of the decision in the case of Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333 is of particular relevance to two of the principal controversies in this appeal. The <u>ratio of the judgement establishes</u> that the jurisdiction under Sections 397-398 of the Companies Act 1956 (now 241-242 of the Companies Act 2013) is an <u>equitable jurisdiction exercised having regard to the totality of circumstances, and that the Tribunal is not confined to a mechanical, transaction-by-transaction test of legality;</u> the question is whether, <u>viewed as a whole, the conduct complained of is oppressive</u>, not merely whether each individual act was, taken alone, unlawful. The Hon'ble Supreme Court emphasised that the power is one to be exercised having regard to the totality of circumstances and the imperative of doing substantial justice between the parties, and that a company court/tribunal may grant relief that it considers just, even moulding it beyond the strict letter of what is pleaded, once the broad substratum of prejudicial conduct is established.

99. Secondly, we also take that importantly, the Hon'ble Supreme Court in this case rejected the argument that the existence of an independent statutory enforcement mechanism under the Foreign Exchange Regulation Act, 1973 (which separately penalised the very shareholding irregularity complained of) ousted the jurisdiction of the company court and found that the two remedies were held to operate in different fields and to co-exist without either excluding the other.

100. We also note that the Supreme Court in ***Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan***, *(2005) 1 SCC 212*, held that an allotment of further shares by a Board, made with the object of gaining control and reducing the shareholding of an existing member to a minority, without notice to or consultation with the affected shareholder, constitutes an act of oppression, notwithstanding that the power to allot was otherwise available to the Board.

101. In view of facts noted earlier in greater details, we find that prima facie, the case was built by the original Petitioners, the Respondents herein, of reasonable apprehensions of Oppression and mismanagement against the

Company and the Appellants and the Tribunal was entitled to deal, decide and pass suitable orders.

102. We also observe limited scope at our level to interfere with Impugned Order, unless absolutely necessary, which we have done by way of our judicial orders for stay, modification in earlier stay order, changing title of the Administrator to the Observer, which was not interfered by Hon'ble Supreme Court (all quoted earlier). We are in view of that this Appellate Tribunal ought not to disturb such a finely balanced, fact-intensive exercise of discretion by the Tribunal merely because another view is possible, unless the findings are shown to be perverse, based on no evidence, arrived at in violation of settled legal principle, or the discretion has been exercised capriciously or on a wrong appreciation of the governing statutory framework.

103. Issue II: (a) Whether the case of oppression and mismanagement must be made out from the petition alone, and, if so, whether the Impugned Order is vitiated by reliance on the replies of Respondent Nos. 6 to 10, in petition no 48/ND/2024 none of whom are members of the Company?

(b) Whether the petition no.48/ND/2024 filed by the Respondent before the Tribunal, met the criteria of section 241-242 of the Companies Act, 2013 and further whether the prima facie case of oppression and management has been made out by the Appellants?

104. It is the case of the Appellants that a shareholder who acquires shares after a transaction is completed, and with knowledge (actual or constructive, through disclosure in audited accounts placed before a general meeting) of that transaction, is thereby estopped from ever complaining of its continuing consequences. On this point, we recall the principle as laid down by the Hon'ble Supreme Court in the case of Needle Industries (supra) is that the test of oppression is not whether the impugned act is legal or illegal, but whether it is burdensome, harsh and wrongful, involving a visible departure from the standards of fair dealing on which a shareholder is entitled to rely and conversely, and equally important for the present case, an act may be technically in breach of a regulatory direction and yet not be oppressive, if it does not involve any lack of probity qua the complaining member's proprietary or membership rights or Corporate Debtor.

105. On the facts in the present case, we note contentions of the Appellants that that: (a) the OCDs were issued between October 2021 and March 2022, before Respondents Mrs. Kanta Agarwala & Mr. Suresh Kumar Agarwala became members (05.09.2022);

(b) the fact and quantum of the OCDs, and their conversion into CCPS pursuant to the EGM resolutions of 06.09.2022 and 17.09.2022 at which Respondents Mrs. Kanta Agarwala & Mr. Suresh Kumar Agarwala having consented to shortened notice,were fully reflected in the audited financial statements for FY 2021-22 approved at the AGM dated 29.09.2022, which Respondents Mrs. Kanta Agarwala & Mr. Suresh Kumar Agarwala did not attend despite notice; and

(c) no grievance was raised by Respondents Mrs. Kanta Agarwala & Mr. Suresh Kumar Agarwala in respect of the OCD/CCPS conversion until the filing of the Company Petition.

These facts do not, by themselves, extinguish the substantive question whether the transaction was in nature of oppression and mismanagement and whether the transaction can be said to have been done without probity or as a device targeted at the minority as opposed to a bona fide, disclosed, board- and shareholder-approved corrective measure to a leverage-ratio breach that had already arisen (the underlying debt) independent of any design against the minority. On the material placed before us, we are prima facie of view that the conversion of CCD to CCPS was against the norms stipulated by the RBI. We will discuss this aspect greater in detail while discussing the Issue No. III later. We also find that the company which is a regulated entity by RBI having only Rs. 2.34 Cr equity and could have been raised 7 times of its funds, had taken funds from outside entity of whopping Rs. 315 cr, much more beyond the permissible limit. This definitely can't be treated as sign of good corporate governance. We observe that being NBFC, the company assumes greater responsibilities. Such prima facie wrong acts are liable to fall under preview of oppression and mismanagement under section 241-242 of the Companies Act, 2013. RBI has also held company to be in violation of all these and penalised the company vide order dated 27.03.2026. We accordingly hold that the conversion of OCDs into CCPS, on this record, could prima facie be treated to be an act of oppression and mismanagement within the meaning of Section 241 of the Companies Act, 2013.

106. The Appellant's propounded the proposition that a case of oppression must be made out from the petition itself, and cannot be improved upon by reliance on material introduced by strangers to the record, is well founded as a general proposition of law. There is substance in the Appellant's grievance that the Tribunal's own reasoning at paragraph 65 of the Impugned Order is, on its face, difficult to reconcile, having itself observed that Respondent Nos. 6 to 9 were not being members of the Company, The Tribunal nonetheless proceeded to treat the very same replies as relevant to conclude that the affairs of the company were being run clandestinely. This internal tension in the reasoning is a legitimate criticism and this Appellate Tribunal take conscious note of it.

107. We have noted the ratio i.e. the case must be made out from the petition from the case of ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad***, *[(2005) 11 SCC 314]*. This decision stipulates the proposition that relief under Sections 397-398 of the Companies Act 1956 (now 241-242 of the Companies Act 2013) must be founded on the pleaded case of the petitioner, and that a petitioner cannot make out a wholly different case at the stage of evidence or argument.

However, we are of opinion that the infirmity, does not, on examination, goes to the root of the Impugned Order. For the purposes of the analysis, even discarding reliance on the replies of Respondent Nos. 6 to 10, the core findings survive independently on the pleadings of the Complaining Petitioners / the Respondents herein themselves, read with the admissions of the Company and its then management in their own replies before the Tribunal inter-alia: (i) the leverage ratio breach and its magnitude; (ii) the timeline and circumstances of the OCD-to-CCPS conversion (; (iii) the purchase of the Bentley motor car from Luxus; (iv) the fact, if not the cause, of mass resignation of Key Managerial Personnel; (v) the alleged non-implementation of the RBI letter dated 30.05.2023 and the Company's own explanation therefor; and (vi) the removal of the Independent Directors during the pendency of the petition independently substantiated by the orders of the Tribunal. Since each of these findings is independently sustainable without recourse to the replies of Respondent Nos. 6 to 10, the technical infirmity identified above, while a fair criticism of the drafting of paragraph 65 of the Impugned Order, does not vitiate the ultimate conclusion reached by the Tribunal and therefore in our opinion the Impugned Order is capable of sustaining, itself on its own merit.

108. Issue III: (a) Whether the breach of the leverage ratio prescribed by Regulation 6 of the NBFC Directions issued by the RBI, and the subsequent conversion of OCDs into CCPS, constitute conduct prejudicial to the Company and to public interest under Section 241(1)(a) of the Companies Act 2013, notwithstanding the contention that the same stood "cured" and has no lingering effect?

(b) Whether the existence of a penal remedy under Section 58G of the RBI Act, 1934 ousts, or renders disproportionate the exercise of, the Tribunal's jurisdiction under Sections 241/242 of the Companies Act, 2013, in respect of the very same regulatory breach?

(c) Whether prior approval of RBI, under Para 61 of the NBFC Regulation was required for the conversion of OCDs into CCPS, and, if the Appellant's narrower construction of Para 61 of NBFC Regulation 2016 is correct and whether that affects the ultimate finding of oppression and mismanagement by the Tribunal?

109. These issues need to be examined with reference to extent RBI framework, where the RBI stipulates norms on Leverage Ratio, Violation, and Penalty. The

leverage-ratio norm can be seen in Regulation 6, Chapter IV of the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 ("NBFC Directions ") which stipulates: "6. Leverage Ratio specify that the leverage ratio of an applicable NBFC (except NBFC-MFIs and NBFC-IFCs) shall not be more than 7 at any point of time, with effect from March 31, 2015."

110. It is observed that the "Leverage Ratio" may be defined as the quotient of total outside liabilities divided by owned funds. On the Company's own admission, the shareholding/owned-funds base of the Company was approximately Rs. 2.34 crore at the relevant time, while the OCDs of Rs. 315 crores were raised from Teesta Retail Private Limited between October 2021 and March 2022. This yields a leverage ratio in far too excess of the prescribed ceiling of 7**, (**we consciously note that the RBI in its letter dated 29.03.2026 in para 5.1.1 stated their ratio breach at 117.77 as on 31.03.2022) a fact that is not and could not credibly be disputed by the Company or the Appellants.

111. We note that under the RBI Act, 1934 Sections 45JA, 58B and 58G of the Reserve Bank of India Act, 1934 constitute the relevant penalty architecture for NBFCs. Section 45JA empowers the RBI, where satisfied that it is necessary in the public interest, or to regulate the financial system, or to prevent the affairs of an NBFC being conducted in a manner prejudicial to the interest of the NBFC, to determine policy and issue directions relating to (inter alia) capital adequacy, and every NBFC is bound to comply. Section 58B(aa) makes it an offence, punishable with imprisonment up to three years and fine, for a company to fail to comply with any direction given by the Bank under Chapter IIIB (which includes directions on capital adequacy/leverage issued under Section 45JA). Section 58G provides that, notwithstanding Section 58B, where the contravention is committed by a NBFC, the RBI may after a show-cause notice and opportunity of hearing impose a monetary penalty on the NBFC in lieu of prosecution;

112. The Appellant's argument that a leverage-ratio breach is actionable only by way of penalty under Section 58G and is therefore outside the Tribunal's remit under Sections 241-242 of the Companies Act, 2013, proves too much and must be rejected for reasons. We note that Section 58G is a compounding/penalty mechanism operating between the regulator and the regulated entity and it does not purport to and cannot oust the distinct statutory jurisdiction of the Tribunal under Section 241(1)(a) of the Companies Act, 2013, which is triggered independently whenever the affairs of a company are conducted in a manner prejudicial to the interests of the company, its members, or the public, a jurisdiction Parliament conferred on the Tribunal, not on the RBI. We further note that the RBI's penalty jurisdiction and the Tribunal's oppression/mismanagement jurisdiction address different mischiefs and different complainants: the former vindicates the regulator's supervisory interest; the latter vindicates the minority shareholders' and the company's interest in proper governance. There is no principle of implied exclusion between the two; as both may operate on the same facts.

113. We also observe that the leverage-ratio breach was not relied upon by the Tribunal in isolation rather it was one strand in a wider fact-pattern (the disputed specific performance claim, the mass KMP resignations, the unauthorised Assignment Agreement, and unexplained related-party transactions) that, applying the Needle Industries approach, is properly assessed as a course of conduct rather than a single remediable regulatory lapse. It follows that while a minor leverage-ratio breach, standing alone and promptly and completely cured, might have been arguably addressed through the RBI's own supervisory and penalty mechanism than through a finding of oppression, the Tribunal did not, on the record, treat it as standing alone.

114. We find that the Appellant's characterisation of this as a temporary skew, and immediately cured, also does not prima facie withstand scrutiny of the timeline. The OCDs were issued between October 2021 and March 2022. The Expert (one other Company Secretary's) opinion recommending conversion is dated 26.08.2022, five months later. The audited financial statements for FY 2021-22, which for the first time disclosed the proposed conversion, were adopted only on 27.09.2022, i.e., nearly eighteen months after the Company's certificate of registration as an NBFC and about a year after the OCDs were first issued. On this chronology, the finding of the Tribunal that the violation persisted, unremedied and undisclosed, is a finding of fact amply supported by the record and calls for no interference.

115. We are also of opinion that the Appellants are not correct in arguing that conversion into CCPS extinguished the alleged mischief for all purposes. We need to take into consideration the vital fact that, the CCPS were made convertible into equity at any time within twenty years, far in excess of the five-year threshold ordinarily applied for reckoning whether such an instrument continues to be treated as a liability (rather than as owned funds) for capital-adequacy purposes; in addition to the fact that the Board Resolution dated 27.09.2022 itself contemplated conversion "at any time" up to twenty years. The contention that the leverage-ratio mischief was definitively and finally cured by the conversion is, at the least, not established on the record as an unqualified proposition, and the Tribunal's scepticism on this score cannot be said to be without foundation.

116. On the specific attack by the Appellants on paragraphs 54-55 of the Impugned Order stating that reliance on the "liability being more than hundred times of paid-up capital" as a factor relevant to the "just and equitable" ground under Section 242(1)(b) of the Companies Act 2013 was speculative. In this connection, we need to appreciate that Section 242(1)(b) Companies Act 2013 does not require an actual winding-up petition or a conclusive finding that winding up is warranted; it merely requires that the facts, cumulatively, would justify the making of a winding-up order on just-and-equitable grounds, such that relief short of winding up becomes appropriate. The figure of over 100 times was, on the admitted arithmetic, correct as of the relevant date, and was used by the Tribunal as one of several corroborative circumstances, not as the sole or determinative basis, for invoking its jurisdiction, discloses no error of law on the part of the Tribunal in the Impugned Order.

117. The Respondents, also, refuted the arguments of the Appellants regarding issue of conversion of OCD to CCPS and submitted that seeking to remedy its violations after the fact, the company filed an application with the RBI on 16 September 2024 for post-facto approval of the OCD issuance and the OCD-to-CCPS conversion. The Respondents further submitted that by an email dated 7 February 2025, RBI categorically rejected the company's application for post facto approval for conversion of OCDs to CCPS in view of supervisory concerns.

On the same date, RBI instead issued a show-cause notice to the company inter alia called upon it to show cause as to why its NBFC registration should not be cancelled for noncompliance of the RBI Regulations. The Respondents further conceded that during the SCN proceedings, the RBI expressly reserved its right to take further action. The Respondents also submitted that the RBI has since exercised that right and by order dated 27 March 2026, the RBI imposed a monetary penalty of INR 10.03 Lakhs on the Company for the very violations of the company Management. The RBI Order therefore operates as a formal adjudication by the regulator confirming the very violations that form the substratum of the Petition of the Respondents before this Tribunal and pertinently, the RBI Order is expressly without prejudice to such other action as the RBI may consider necessary, subsequently the door to further regulatory action still remains open wide and therefore in the circumstances, the Appellants' plea of clean chit is incorrect.

118. We have also taken into account the RBI letter dated 27.03.2026 and find that the Appellants' submission that RBI has exonerated the Company is directly contradicted by the RBI's own speaking order dated 27 March 2026, which finds that the company: (i) breached the leverage ratio prescribed in the NBFC Directions; (ii) failed to submit mandated supervisory returns within the prescribed timeline with delays ranging from 9 days to 2.5 years; and also (iii) failed to submit its balance sheet to the RBI within the prescribed timeline.

119. On the issue regarding allegation of the violation of leverage ratio due to conversion of OCD to CCPS without the RBI's approval, the Appellants reiterated with the RBI being a regulator is the exclusive Apex regulator for the NBFC's and is only entity entitled to look into the matter of NBFC like the company herein and therefore, the Tribunal has no jurisdiction to look into these matters. We reiterate that the Tribunal was within the rights to examine the aspect of oppression and mismanagement and one of the aspects was alleged violation of leverage ratio which affects the core foundation of the company. Therefore, we are not persuaded by submission of the Appellants in this regard, after taking into account the RBI's order passed on 27.03.2026 as well as RBI's affidavit dated 29.05.2026 before the Hon'ble Supreme Court dated 29.05.2026 and also keeping in view the ratio of Needle Industries (supra) regarding non conflicting jurisdictional issue already discussed earlier.

120. We also take into account relevant portion of Affidavit filed by the RBI before Hon'ble Supreme Court in Civil Appeal No. 15207 of 2025 on 29.05.2026, which reads as under:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 15207 OF 2025

IN THE MATTER OF:

EXCLUSIVE CAPITAL LTD.
AND OTHERS …APPELLANTS

Versus

MRS. KANTA AGARWALA
AND OTHERS …RESPONDENTS

…………..

9. It is submitted that thereafter, on 01.08.2024, the Reserve Bank of India attempted to conduct an onsite scrutiny and examination of affairs of Exclusive Capital Ltd., however, the scrutiny could not be completed as the accounts were not finalized and the documents were not available at that time. Furthermore, despite various follow-ups, the Exclusive Capital Ltd. failed to finalize its accounts and submit the statutory auditors report to the Reserve Bank of India. ***Thus, the Reserve Bank examined the available data and information on Exclusive Capital Ltd., and upon examination it was revealed that there are certain irregularities and non-compliances concerning (i) breach of leverage ratio, (ii) change in control without approval, (iii) non-filing of returns and (iv) non-finalization of balance sheet.*** *In view of such irregularities and violations, the Reserve Bank of India issued a Show Cause Notice dated 07.02.2025 to the Exclusive Capital Ltd. thereby outlining the aforesaid violations and thus calling upon it to show cause, in writing, as to why its Certificate of Registration should not* *be cancelled by the Reserve Bank of India in terms of sub-Section (6)(iv) of Section 45-IA of the Reserve Bank of India Act, 1934………..*

*12.It is submitted that since the violations concerning breach of leverage ratio, non-finalization of balance sheet and non-filing of returns were rectified as well as the violation pertaining to the failure to obtain prior approval before issuance of Compulsorily Convertible Preference Shares (CCPS) was also clarified, the **<u>Reserve Bank of India vide letter dated 21.03.2025 communicated its decision not to cancel the certificate of registration while reserving the right to take such other action which may be considered necessary by the Reserve Bank in accordance with law</u>** more so after examining the finalized*

accounts and the statutory auditors' reports submitted by the Exclusive Capital Ltd. on 17.03.2025. A true copy of the letter dated 21.03.2025 is annexed herewith as ANNEXURE R-1.

*13.**<u>It is submitted that though the answering Respondent deemed it appropriate to not cancel the certificate of registration as NBFC of the Exclusive Capital Ltd., however, vide Order dated 27.03.2026 the answering Respondent in exercise of its powers under Section 58G(1)(b) read with Section 58B(5)(aa) of Reserve Bank of India Act,1934 for the abovesaid violations</u>** i.e., (i) for breaching the permissible limit of leverage ratio; (ii) for failing to submit certain supervisory returns to RBI as per prescribed frequency and within the stipulated timelines and (iii) for failing to furnish its balance sheet to RBI within the stipulated period; **<u>has imposed a monetary penalty of Rs.</u>***

> ***10.30 Lakhs (rupees Ten Lakh Thirty Thousand only) on Exclusive Capital Ltd.*** *A true copy of the Order dated 27.03.2026 is annexed herewith as ANNEXURE R-2.*
>
> *14.**It is submitted that with the above imposition of penalty, the answering Respondent has concluded its enforcement action against** the Exclusive Capital Ltd apropos the abovesaid violations, **without prejudice to any other action that may be initiated by RBI against the company.***
>
> *15. **It is also submitted that subsequent to the closing of the proceedings initiated vide first Show cause Notice dated February 07, 2025**, based on the documents/information called for and obtained from Exclusive Capital Ltd. **and limited scrutiny conducted by the answering Respondent during May 2025, certain supervisory concerns have been prima facie observed, which are under examination. Any contravention of guidelines/directions issued by RBI would be dealt with as per the provisions of Reserve Bank of India Act, 1934 and the supervisory framework…………….***
>
> *(Emphasis supplied)*

121. Similarly, we also take into account relevant portion of RBI's order dated 29.03.2026, imposing penalty on the company, and the relevant portion reads as under:

भारतीय रिज़र्व बैंक / RESERVE BANK OF INDIA
प्रवर्तन विभाग / ENFORCEMENT DEPARTMENT
नई दिल्ली / NEW DELHI

BEFORE THE ADJUDICATION COMMITTEE, RESERVE BANK OF INDIA, NEW DELHI

IN THE MATTER OF

Non-Compliance with the directions issued by Reserve Bank of India by Exclusive Capital Limited

The Reserve Bank of India, in exercise of powers conferred under Section 58G (1)(b) read with Section 58B (5) (aa) of the Reserve Bank of India Act, 1934 passes the following

ORDER

5.1 Charge: Breach of leverage ratio

5.1.1 Charge in the SCN

*"**The company had failed to comply with the Bank's directions, as the issuance of Optionally Convertible Debentures (OCDs) amounting to ₹315 Crores during the period from October 2021 to March 2022, led to a surge in the leverage ratio to 117.77 as on March 31, 2022, against the permissible limit of 7. The company was in breach of leverage ratio from October 2021 to September 2022."………***

5.1.5 Conclusion

5.1.5.1 While the extant directions issued by the Bank required the company to not exceed its leverage ratio beyond applicable limit of seven at any point of time, the company failed to do so as its leverage ratio had exceeded the permissible limit to approximately 19 in October 2021, and to 117.77 as on March 31, 2022 (referred to in paragraphs 5.1.4.1 and 5.1.4.2). Without controverting the charge, the *company has admitted that the leverage ratio was breached on issuance of OCDs……….*

5.1.5.4 The Committee observes that the new management acquired the NBFC in September 2021, started raising funds from October 2021 which in tum led to the breach of leverage ratio in October 2021 itself. ***The Committee notes that by March 31, 2022, the company's leverage ratio of 117.77 was significantly in excess of the permitted level of seven. This reflects a weak compliance culture.***

5.1.5.5 Based on the above and the findings at paragraph 5.1.4, the ***Committee concludes that the company breached the leverage ratio significantly beyond the permissible limit of seven, and therefore, did not comply with the Bank's directions contained in paragraph 6 of the Master Directions, 2016*** *and now reiterated in paragraph 17 under Chapter II read with paragraph 4(7) under Chapter I of Reserve Bank of India (Non-Banking Financial Companies - Prudential Norms on Capital Adequacy) Directions, 2025 dated November 28, 2025 (Updated as on March 10, 2026), which warrants imposition of monetary penalty………..*

8. ***Accordingly, in exercise of the powers conferred under section 58G(1)(b) read with clause (aa) of section 58B (5) of the Reserve Bank of India Act, 1934, an aggregate monetary penalty of ₹10.30 lakh*** *(Rupees Ten Lakh Thirty Thousand only), is hereby imposed on Exclusive Capital Limited and the company is directed to pay the said penalty of ₹10.30 lakh (Rupees Ten Lakh Thirty Thousand only), within thirty (30) days from the date of receipt of this Order.*

9. A copy of this order be served on the Managing Director of the company for due compliance. ***The imposition of penalty is without prejudice to such other action as the Bank may consider necessary.***

(Emphasis supplied)

122. Above affidavit dated 29.05.2026 and order dated 29.03.2026 by the RBI clearly establish that the company breached the compliances. We note that the RBI has still kept further proceedings under exemptions and RBI has reserved its rights to deal such violations appropriately at later stage. Para15 of the Affidavit of RBI dated 29.05.2026, is reiterated:

15. It is also submitted that subsequent to the closing of the proceedings initiated vide first Show cause Notice dated February 07, 2025, based on the documents/information called for and obtained from Exclusive Capital Ltd. and limited scrutiny conducted by the answering Respondent during May
2025, certain supervisory concerns have been prima facie observed, which are under examination. Any contravention of guidelines/directions issued by RBI would be dealt with as per the provisions of Reserve Bank of India Act, 1934 and the supervisory framework.

(Emphasis supplied)

This clearly support the Impugned Order passed by the Impugned Order in its own way.

123. It is also relevant to record the regulatory philosophy underlying the leverage-ratio prescription, since the Appellant's submissions proceed on the premise that the breach was, in substance, a private or internal matter of capital structuring having no true public dimension. In this connection, we would also like to refer to the preamble to RBI's successor Master NBFC Direction the 2023 i.e. Scale Board Regulations (SBR) which records that such directions are issued "in the public interest" and to "prevent the affairs of any NBFC from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such NBFCs", in exercise of RBI's powers under Sections 45JA, 45K, 45L and 45M of the RBI Act 1934. The NBFC Directions, which governed the Company, at the relevant time, were issued in materially identical exercise of the same statutory powers and for the same protective, systemic purpose. A leverage ceiling of 7 times owned funds is not an arbitrary figure; it is calibrated to ensure that an NBFC's liabilities remain proportionate to its capital base, so that a shock to its asset quality does not immediately imperil its ability to meet its obligations to creditors, counterparties and, ultimately, the wider financial system in which it participates. A breach of the order of 117.77 times, several times the ceiling, by a company whose core business is the deployment of borrowed capital is, on any view, a matter of genuine prudential and public concern, and not a mere technical or accounting irregularity confined to the internal affairs of the Company. The Tribunal's characterisation of the breach as one affecting "public interest" within Section 241(1)(a) of the Companies Act 2013 is, in this Appellate Tribunal's assessment, well founded on this independent basis as well.

124. The Appellant's argument that CCPS, not being "equity share capital" within the meaning of Section 43 of the Companies Act 2013, until conversion, does not by itself attract the 26 per cent threshold, is not without force as a matter of statutory construction, and this Appellate Tribunal does not reject it outright. However, that argument of the Appellants, even if accepted, is not determinative of whether the transaction, viewed as a whole, discloses conduct that is burdensome, harsh or wrongful, or lacking in probity and fair dealing, which remains the touchstone for oppression laid down in Shanti Prasad Jain v. Kalinga Tubes Ltd. (supra). Viewed in this light, whether or not Para 61 of NBFC Directions was, in the strictest technical sense, triggered at the moment of the OCD-to-CCPS conversion is not decisive; what matters for the purposes of Section 241 of the Companies Act 2013 is that the exercise, taken as a whole and assessed not in isolation but as a part of a consecutive story theory (Shanti Prasad Jain, supra), evidences a lack of probity and fair dealing. This Appellate Tribunal accordingly upholds the Tribunal's ultimate conclusion on this aspect.

125. Issue IV: (a) Whether the purchase of the Bentley motor car and the related-party loans (to Luxus, Laxmipati/Exclusive Motors, Mr. Jayant Mirani, and Sulojay Realty) were validly sanctioned by the omnibus approval dated 27.09.2022, and whether these transactions establish improbity in the management of the Company's affairs?

(b) Whether the allegations of non-implementation of the Expansion Agreement have any substance?

126. It is noted that the purchase of a second-hand Bentley motor car for Rs. 9,09,00,000/, a sum exceeding three times the entire paid-up share capital of ECL (Rs. 2,34,65,000/-) from Luxus, a company allegedly beneficially owned/controlled by the Appellant Satya Prakash Bagla and has been bone of contention between parties. The defence of the Appellants is that the transaction was covered by an omnibus approval dated 27.09.2022 and was at "arm's length". This defence does not prima facie withstand scrutiny for several reasons. We note from the submissions during our hearings that several of the impugned loans to Luxus (disbursed in tranches on 10.03.2022 and 19.04.2022), to the Appellant (June 2022), and to Sulojay Realty (2022), pre-date the Circular Resolution of 27.09.2022 said to confer omnibus approval, and cannot, as an ordinarily rule, be retrospectively validated by a resolution passed after the event. Even taking the Circular Resolution at its highest, the loan of Rs. 14 crores to Luxus, disbursed in tranches of Rs. 5 crores and Rs. 9 crores, breaches the very tranche-wise ceiling (a maximum of Rs. 5 crores per tranche) said to have been stipulated in that Resolution.

We need to further note that independent of the omnibus-approval controversy, the absence of any loan documentation, security or hypothecation, and the charging of interest, where charged at all, at rates allegedly below prevailing commercial rates, on loans of this magnitude extended by a RBI-regulated lending NBFC to entities controlled by its own promoters/directors, itself is indicative prima facie of a related-party arrangement inconsistent with the fiduciary standard expected of directors dealing with the capital of the company they manage. The explanation of the Appellants that the purchase price of the Bentley was ultimately reconciled against the Rs. 9 crore tranches of the Luxus loan, rather than being recovered in cash with interest, only reinforces the inference of circularity and self-dealing rather than dispelling it.

127. This Appellate Tribunal accordingly finds no infirmity in the Tribunal's conclusion, at paragraph 67 of the Impugned Order, that the purchase of the Bentley, in the context of the Company's modest paid-up capital and the related-party character of the counterparty, discloses improbity in the conduct of the company's affairs.

128. For completeness, the material related-party transactions placed on record and as brought out to our notice during pleading (over and above the Bentley purchase) are tabulated below, without going into detail and correctness of same and leaving it on the Tribunal to look into these in details.

Counterparty — Amount — Salient Features

i. Luxus Retail Pvt. Ltd. — Rs. 14 crores (Rs. 5 cr. + Rs. 9 cr., disbursed 10.03.2022 & 19.04.2022). Interest at 7% p.a.; no loan documentation or hypothecation; Rs. 5 cr. tranche repaid; Rs. 9 cr. tranche adjusted in Dec. 2022 against the Bentley purchase price rather than repaid in cash.

ii. Laxmipati Management Services Pvt. Ltd. / Exclusive Motors Pvt. Ltd. — Rs. 3 crores (07.01.2022). Stated purpose of car purchase; no car shown to have been purchased or hypothecated; settled after 1.5 years at a shortfall of over Rs. 50 lakhs against market interest.

iii. Mr. Jayant Mirani — Rs. 2.05 crores. Car already mortgaged to a bank under a prior loan; no security taken; interest waived on part of the sum; balance said to remain unpaid/unrecovered.

iv. Sulojay Realty Pvt. Ltd. — Rs. 12.89 crores. Company stated to be owned/controlled by related parties; terms not shown to conform to arm's length dealing.

v. Exclusive Motors Pvt. Ltd. (second motor vehicle) — Rs. 6.71 crores (July–Aug. 2023). No supporting documentation on record; existence of the vehicle not verified.

129. It has been brought to our notice by the Respondents that none of these alleged related party transactions is shown to have been recovered in the ordinary course, with interest, in fact; each was either adjusted against a further related-party transaction, allowed to lapse without recovery, or left undocumented. This pattern of circularity, taken cumulatively with the Bentley purchase and other related party transaction reinforces rather than dispels the inference of related-party favouritism at the expense of the Company and its minority shareholders.

130. Now we will look into another issue raised by the both parties which is w.r.t. Expansion agreement. The Appellants denied the allegations of the Respondents regarding non implementation of expansion agreement and submitted that it is the Respondent Mrs. Kanta Agarwala who has not paid.

Therefore, there was no occasion for the company to implement the expansion agreement. Conceding the fact that the company had indeed approach the RBI for approval and RBI approved the same, the Appellants however, stated that the expansion agreement was never placed on record by the Respondents and the Appellants have always denied the existence of such expansion agreement or binding the obligation of the same. The Appellants justified their action in sending the application to the RBI for approval stating that this was only enabling clearance and did not tantamount to automatic and compulsory allotment of shares without consideration. The Appellants further submitted that the Respondent have not taken up the issue of alleged violation of expansion agreement or non implementation of the same before any authority including filing suit for specific performance.

131. On the other hand, the Respondents have brought to our notice that RBI issued its approval to the Expansion Agreement to the company on 30.05.2023, which was granted subject to satisfaction of preconditions by the company inter-alia included:

(1) Prior Public Notice to be issued by the company about change in control/ management.

(2) Original public notice to be submitted by the company with RBI within 7 days.

(3) Objections received, if any, to be furnished to RBI. If no objections received, a confirmation to this effect be sent to RBI after 30 days of publication.

The Respondents submitted that the RBI's Approval was valid for a period of 6 months, that is from 30 May 2023 to 30 November 2023. During the validity, the Appellants failed to give effect to the Expansion Agreement or meet the pre-conditions set out in the RBI Approval. No public notice was issued by the company.

132. Having noted the rival contention for the non implementation of the expansion agreement, we observe that, it is a fact that the company had indeed obtained the written clearance of the RBI for allotting additional shares to the Respondent Mrs. Kanta Agarwala which would have made the Respondents, as majority shareholders of the to the Company. We also take into account the allegation of the Respondents that money was to be adjusted on account of the financial loan submitted to the Appellant Satya Prakash Bagla and the expansion agreement was done with such clear understanding. We also take into consideration that a public notice was to be issued by the company in this regard, which was never issued by the company ECL where the appellants were in management.

133. We are conscious of the fact that the dispute as to whether Respondent Mrs. Kanta Agarwala was liable to infuse Rs.5,00,00,000/- pursuant to the RBI approval dated 30.05.2023, or whether that obligation stood discharged/set off against a disputed personal loan of Rs.62.05 crore alleged to have been advanced by Respondents Mrs. Kanta Agarwala and Mr. Suresh Kumar Agarwala to Appellant Mr. Satya Prakash Bagla in their individual, personal capacities, although may be a dispute inter se between the Appellants and the Respondents, directly concerns the affairs of the Company qua its members. A Section 241/242 proceeding is concerned with the affairs of the company and the rights of members qua the company; disputed financial dealings between the Appellants and the Respondents, being virtually 100% shareholders of the shares in the company, resting assertions can be the legitimate basis for the finding by the Tribunal that the Company's affairs were mismanaged.

134. In this connection to look into this aspect further, we had put a direct query to the Appellants during hearing before us whether the Company issued any demand letter to the Respondent Mrs. Kanta Agarwala calling upon her to pay Rs. 5 Crores, even if no public notice was issued, the Appellants could not link any such demand letters. We do not intent to go further into such allegations by the rival litigants on this issue and leave it to the Tribunal to look into the matter in details, while finally adjudicating the company petition No. 48/ND/2024.

135. Issue V: Whether the mass resignation of Key Managerial Personnel and the removal of the Independent Directors during the pendency of the petition constitute relevant and probative material for the purposes of Sections 241/242 of the Companies Act, 2013?

136. It is an admitted fact that five prominent Managerial Personnel, including the Company Secretary, the Chartered Accountant/Statutory Auditor and the business head, resigned within a short span of time as the same day, and that two

Independent Directors were removed from the Board during the pendency of the petition.

137. We find that the Tribunal correctly declined to conduct what would, in effect, have been a "roving inquiry" into the truth of each individual's allegations of incompetence or misconduct, and confined itself to the objective fact of a mass, near-simultaneous exodus of the very personnel responsible for legal, financial and business compliance of a RBI-regulated NBFC, coupled with the allegedly removal of both Independent Directors. This approach of the Tribunal is found to be consistent with the standard laid down in Shanti Prasad Jain (supra), namely, that events are to be assessed "not in isolation but as a part of a consecutive story".

138. The significance of the removal of Independent Directors, in particular, merits separate emphasis. Sections 149 and 150 of the Companies Act 2013, read with Schedule IV (the Code for Independent Directors), reflect Parliament's considered emphasis that Independent Directors perform a distinct and important governance function i.e. bringing an objective, external perspective to the Board's deliberations and acting as a check on the concentration of unaccountable power in the hands of promoter-directors. This function is of particular importance in a RBI-regulated NBFC entrusted with the deployment of investor capital. Therefore removal of the independent directors , in short order, in the course of a pending oppression petition, in circumstances where one such removal is alleged to have been backdated so as to pre-empt the effect of the Tribunal's interim protective orders, is not a matter to be this treated as incidental or peripheral to the oppression inquiry as it goes to the very heart of whether the Company's governance safeguards were being deliberately dismantled during the pendency of proceedings designed to test the propriety of the very same management's conduct.

139. We have taken defence of the Appellants into consideration that all such employee who resigned, do not find in the definition of KMP as stipulated in Section 2(51), 2013 of the Companies Act 2013 including the Business Head and therefore the Appellants submitted that the allegations are legally not tenable. The Appellants further mentioned that these resignations were rather orchestrated and manipulated by the main contesting Respondents along with their son, in order to de-fame the company, and further such disgruntled employees were engaged in passing the confidential information to the Respondents, violating the Company's commercial interest.

140. On issue of mass resignation, although we have taken note of the pleadings of the Appellant regarding reference to Section 2(51) of the Companies Act, 2013 however the fact remains whether such employees fit in the definition of Section 2(51) of the Companies Act, 2013, or not, nevertheless in sprit, the very fact that many top executives of the company including the business had CFO Auditor, Company Secretary and resigned enmass, do not augur well for the company. It certainly reflects on the corporate governance issue in the company, which are to be legitimately examined and adjudicated finally upon by the Tribunal under

Section 241 and 242 of the Companies Act, 2013 in the pending C.P./48/ND/2024.

ISSUE VI: Submission of five reports of the Observer and the issue of non-payment of remuneration to the observer?

141. Now we will deal issue regarding observer's five reports submitted by Justice R. K. Gauba. We note that the observer has filed five reports including Report No. 2 dated 02.12.2024, giving findings of siphoning of fund and various other such reports which were outside the scope of company petition. The Appellants submitted that the observer report No.2 was based on conjectures and surmises creating wrong impression about the company. The Appellants also stated that the Observer Report No. 5, alleging that both improperly appointed a new CFO and Independent Directors in the breach of the judicial orders of this Appellate Tribunal dated 16.12.2024 and the Hon'ble Supreme Court order dated 24.02.2025, is not correct as the Appellants were obligated for making such appointment which were made to ensure legal compliances.

142. During pleadings, the Counsel for the Observer brought out several discrepancies in the conduct of affairs of the company. The Counsel for Observer also brought that despite his chairing meeting he was not provided a copy of the minutes for approval and minutes were unilaterally issued without even sending copy to him. On this particular issue, we put a pointed query to the Appellants who fairly conceded that they did not take confirmation from the Observer**.** Minutes of meeting held on 20.06.2024 were sent by e-mail to

Observer only on 03.03.2025, after lapse of nine months for which no satisfactory answer could not be given by the Appellants. We do not appreciate such conduct. This action and the conduct of the Appellants is not appreciable in light of background of this case especially keeping in view of Hon'ble Supreme Court as well as this Appellate Tribunal's various orders (quoted earlier) regarding role of the Observer.

143. Having noted that the Observer has since put up five such reports, however, the same could not be discussed or taken into greater consideration during pleading before us, we request the Observer to place all these reports to the Tribunal and request the Tribunal to look into these reports in accordance with law, giving opportunity to all the parties to clarifying their position, before finally adjudicating the main petition no.48/ND/2024.

144. During pleadings the Counsel for the Observer also specifically brought to our notice that he has filed an IA wherein he has brought out that he has not been paid for last couple of months in accordance to settled terms for his appointment. The observer stated that he was to be paid at par with MD/CEO of the company. On this issue, the Appellants tried to differentiate to pay scale of the MD and the CEO, however, the fact remains that the Observer has not been paid despite his Appointment was made by the Tribunal modified by this Appellate Tribunal from the Administrator to Observer and the same was not interfered by the Hon'ble Supreme Court. We leave it to the Tribunal to look into this matter of non payment to observer and sort out at the earliest, so that the observer appointed under judicial orders is paid strictly in accordance with terms and condition of his appointment. The company shall ensure payment as per direction of the tribunal.

Conclusions

145. Based on above detailed analysis and considering various allegations like the leverage-ratio breach, alleged related-party transactions inconsistent with fiduciary norms, alleged non-implementation of the RBI-sanctioned arrangement described internally as “Expansion Agreement”, mass exodus of compliance personnel, and removal of both Independent Directors in alleged defiance of the Tribunal's interim orders, discloses precisely the sort of “consecutive story” that satisfies the Shanti Prasad Jain standard. This Appellate Tribunal finds no error in the Tribunal's reliance on this material as corroborative of the finding of oppression and mismanagement.

146. In view of all circumstances discussed above , we hold that the appointment of the independent Administrator and suspension of the Board for a defined, finite period of 180 days as per the Impugned order pursues the legitimate aim of preventing further prejudice pending a fuller inquiry, is suitable to that aim, and given the admitted regulatory breach, the alleged unexplained related-party dealings, and the mass exodus of compliance personnel , no materially less intrusive alternative was shown to be adequate; this Appellate Tribunal finds no disproportionality in that directions.

147. In view of detailed consideration above, we don't find merit in either of the appeals. Both the appeals fail and stand rejected.

148. No order as to costs. IA, if any, stand closed. We also record that the Tribunal shall decide pending matter including all IAs in accordance with law, without being influenced by any of our observations, which we gave based on pleadings and facts as made available before us.

149. The appeal stand disposed of in the above terms. It is reiterated that nothing in this judgment shall be construed as an expression of opinion on any issue specifically dealt with herein above and the Tribunal shall proceed independently in accordance with law.

150. The case is remanded back to the Tribunal to decide the main petition no. 48/ND/2024 and other pending IAs and issues, in accordance with law. Parties are directed to appear before the Tribunal on **10.09.2026**.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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