NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) NO. 47 OF 2026

In the matter of:

Jindal Poly Films Limited **Appellant**

Vs

Ankit Jain & Ors **Respondent**

For Appellant:Dr A.M. Singhvi, Sr Advocate, Mr Ramji Srinivasan, Sr Advocate, Mr Divyam Agarwal, Aniket Aggarwal, Mayank Ratnaparkhe, Priya Chauhan, Kavya Jha, Ayush Yadav, Shefali Monde, Arjun Bhatia, Advocates.

For Respondent:Mr. Sunil Fernandes, Sr Advocate, Ms Shankari Mishra, Advocate for R16.

Mr Abhijeet Sinha, Sr Advocate with Mr. Bishwajit Dubey, Mr Saikat Sarkar, Advocates for R4 to 6.

Mr. Krishnendu Dutta, Sr Advocate with Mr.Shankari Mishra, Ms Niharika Sharma, Mr Harsh Gurbani, Mr Harshit Chauydhary, Advocates for R17.

Mr Arun Kathpalia, Sr Advocate and Mr. Abhinav Vasisht, Sr Advocate with Mr. Vaibhav Kakkar, Mr. Abhishek Swaroop, Mr Anupam Prakash, Mr Manav Sharma, Ms Akshita Sachdeva, Ms. Abhilasha Sharma, Ms Diksha, Advocates for R1 to R3.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal challenges the impugned order dated 05.02.2026 passed by the Ld.NCLT whereby an IA No.*132/2024* filed by appellant challenging the maintainability of Company Petition No.*58/2024,* filed by Respondent No.1 to 3 before the Ld. NCLT, under Section *245* of the Companies Act, 2013 was dismissed and consequently the directions were given to issue public notice of

the Company Petition to all public shareholders of the appellant company in terms of Rule *87* of the NCLT Rules, 2016.

2. It is the submission of the learned senior counsel for the appellant the appellant is a public listed company having approximately *40000* public shareholders and the Respondents No.1 to 3 who had filed the Company Petition collectively hold only *4.99%* of the share capital and that the issuance of notice has serious repercussion upon the reputation of the appellant company since the proceedings under Section *245* of the Companies Act, 2013 has wide *in-rem* consequences and issuance of public notice has created a situation of panic amongst its public shareholders, potentially triggering of fall in the share price of the company; affecting adversely its revenue etc and during the pendency of the Company Petition before the Ld. NCLT, the appellant's share price had fallen from Rs *587* on 23.02.2024 to Rs.*404*/- as on 05.02.2026 i.e. drop of *31%* in value and the notice has caused irreparable loss to reputation and market harm which cannot be undone. It is the submission of the learned senior counsel for the appellant the Company Petition is filed only *qua* three impugned transactions and all are of years 2019, 2021 and 2022 *viz* the past transactions, which cannot be dealt with under Section *245* of the Companies Act, 2013. The said transactions are as under:-

> *4.1.1. IMPUGNED TRANSACTION 1: SALE OF RPS AND OPS BY APPELLANT*
>
> *(i) Between FY 2013 - FY 2017, Appellant invested INR 263.59 crores in Redeemable Preference Shares (RPS) and INR*

440.20 crores in Optionally Convertible Preference Shares (OCPS) of its group company, R-16/ Jindal Powertech.

(ii) R-16/ Jindal Powertech's account was declared NPA on 31 December 2016. Resultantly, by FY 2019, the investments were progressively devalued down to zero in the Appellant's books due to negative net worth and continuous cash losses of R-16/ Jindal Powertech.

(iii) On 29 May 2021, R-17/ Jindal Thermal signed a Master Resolution Agreement with its lenders and settled debt of INR 9,431.49 crores for INR 2,540 crores. On 11 June 2021, R-16/ Jindal Powertech entered into an OTS with its lenders and settled debt of INR 428 crores for INR 103 crores. Consequently, their financial health and the value of the Appellant's investments - was expected to improve.

(iv) However, on 16 March 2023, Appellant sold the OCS investment to SSJ Trust (a promoter group trust) for INR 66.03 crores and the RPS investment to a group company, R-18/ Jindal Poly Investment for INR 39.53 crores.

(v) Contesting Respondents allege that this caused loss of INR 2518.45 crores to Appellant and consequent proportionate loss to public shareholders

4.1.2. IMPUGNED TRANSACTION 2: WRITE-OFF OF LOAN PROVIDED TO R-17/ JINDAL THERMAL: Trade advance of INR 83.85 crores was provided by Appellant to its group company, R-17/ Jindal Thermal (which operates a power plant) towards purchase of electricity to be generated in the future. This trade advance was converted into a loan in FY 2017. Appellant wrote off the loan in FY 2019. Contesting Respondents allege that this caused loss of INR 127.96 crores to Appellant and consequent proportionate loss to public shareholders. However, despite writing off the earlier loan, Appellant provided fresh loans of INR 150 crores and INR 260 crores to R-17/ Jindal Thermal in FY 2021 and FY 2022respectively.

4.1.3. IMPUGNED TRANSACTION 3: SALE OF INVESTMENT BY APPELLANT'S SUBSIDIARY: By FY 2017, Jindal Films - a wholly owned subsidiary of the Appellant - had acquired 11.41% equity stake in R-17/ Jindal Thermal for INR 31.18 crores. In FY 2021, this investment was sold to Champak Niketan - a company majorly owned by Gunjan Trust (a promoter group trust) for merely INR 6.93 crores. Contesting Respondents allege that this caused loss

of INR 135.34 crores to Appellant and consequent proportionate loss to public shareholders.

3. The learned senior counsel for the appellant argued that Section 245 of the Companies Act, 2013 cannot be activated for *past* and *concluded* transactions as it uses the word "*are being conducted"* which means the act which warrant interference has to be *in praesenti* and is contrary to the language of Section *241* wherein the words "*have been" and "are being conducted" a*re being used' *b)* the impugned order is passed merely on the threshold and prima facie opinion irrespective of the fact Section *245* is not applicable to *in-personam* proceedings; and *c)* none of the provisions under Section 245(4) were delved upon.

4. Section 245 of the Companies Act, 2013 reads as under:-

> ***245. Class action.*** *— (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely: —*
>
> *(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;*
>
> *(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;*
>
> *(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;*

(d) to restrain the company and its directors from acting on such resolution;

(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

(f) to restrain the company from taking action contrary to any resolution passed by the members;

(g) to claim damages or compensation or demand any other suitable action from or against—

> *(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;*
>
> *(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or*
>
> *(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;*

(h) to seek any other remedy as the Tribunal may deem fit.

(2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(3) (i) The requisite number of members provided in sub-section (1) shall be as under:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—

(a) whether the member or depositor is acting in good faith in making the application for seeking an order;

(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of sub-section (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—

(a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;

(c) two class action applications for the same cause of action shall not be allowed;

(d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

(6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.

(7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(9) Nothing contained in this section shall apply to a banking company.

(10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

5. Qua contention *(a)* it was argued the acts complained of were concluded in the years 2019, 2021 and 2022 and thus the remedy lies elsewhere but not under Section *245* of the Companies Act, 2013.

It was argued that if one peruse sub-section *(1)* and more specifically sub sections *(a),(b),(d), (e)* and *(f)* it gives power to the Ld. Company Court to *restrain a continuing act* which means such act has to be in present and even sub-sections *(g)* and *(h)* of Section 245 have to be read/interpreted in the light of Section *245(1) (a),(b),(d), (e)* and *(f)* and further Section *245* cannot be held to be a substitute for Sections *241-242* of the Companies Act, 2013 as it represents an action *in-rem* but whereas Sections *241-242* represents *in praesenti* actions.

6. Qua contention *(b)* it was argued the Ld. NCLT had only examined the threshold *viz 4.99%* of the shareholders who had filed the Company Petition as also had looked upon only the *prima facie opinion* of the shareholders and nothing else. It is the submission sub-section *(1)* and *(4)* of Section *245* of the Companies Act, 2013 have been completely ignored. The impugned order does not even examine as to if Section 245 is available for past actions, *much less* the issue of good faith of Respondents No.1 to 3 in making application or if the Respondents No.1 to 3 could have pursued their grievance under Sections *241-242* of the Companies Act, 2013 and lastly the past acts were allegedly ratified by the Company and shareholders in the respective AGMs. It was the case of the appellant the impugned order omitted to examine if the transactions complained of had actually caused any loss to the appellant company or to its

reputation or such allegations are merely a reflection of the loss that may have been caused to the company. It was argued the compensation for *reflection loss* cannot be addressed to under Section 245 (supra).

7. To make good his argument the learned senior counsel for the appellant had referred to the following paras of the impugned order to show as to the reason to pass such an impugned order: -

> ***41.*** *xxxx…All that is required is shareholding of 2% of total share capital as per Rule 84(3)(ii)(b) of the NCLT Rules 2016 and a justifiable prima facie opinion which we observe there is. The Respondent are at liberty to refute each and every allegation on merits.*
>
> ***42****. We refrain from giving an opinion on this issue at present, as we do not want to pre-judge the legal argument on the factual aspects. The Respondents may have a valid defence. For the purpose of prima-facie case to issue notice, we are of the opinion that the ingredients of Section 245 of the Companies Act, 2013 having been satisfied in this case, there is no necessity to go into various factual aspects of the case, as pleaded by the Respondents to come to a conclusion that there is no case under Section 245 of the Companies Act, 2013. This will amount to prejudging the issues.*

Thus it is argued the impugned order is passed only upon the threshold and upon opinion of *4.99%* shareholders and nothing else.

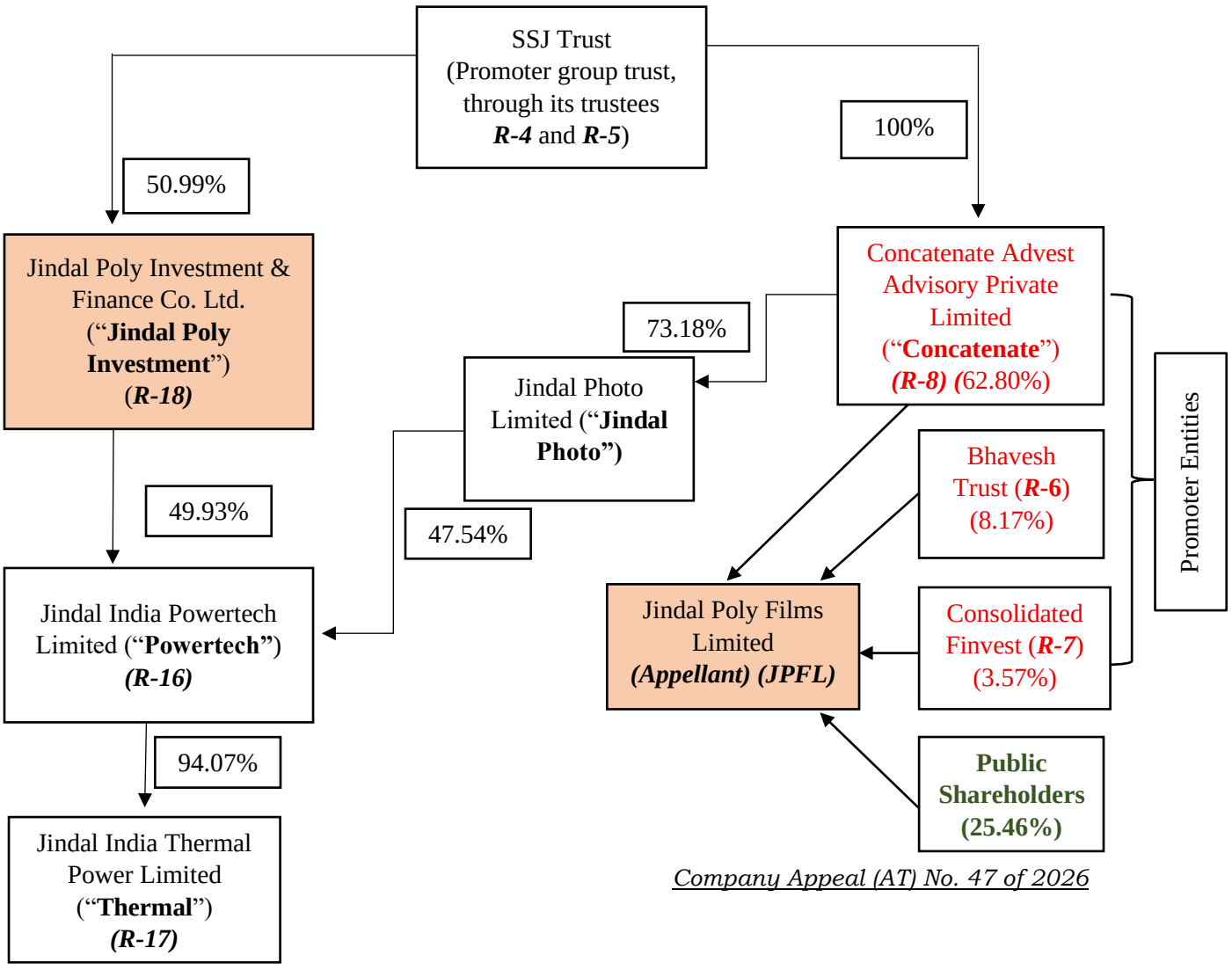
8. The learned senior counsel for the appellant referred to the *57th* Report of the Standing Committee of Finance to show that Ministry of Corporate Affairs had specifically rejected the proposal to include *derivative cause* under Section *245* of the Companies Act, 2013. Further it is argued Section *245 (1)(g)* is also not applicable to facts as it entails compensation/damages *from* and *against* the

company but not *for* the company and whereas entire Company Petition is clothed with the compensation *for* the company.

9. We have heard the arguments advanced by the learned counsels from both sides. We find the Respondents have filed the Company Petition on the ground the financial transactions mentioned in para *2* above were concealed by its promoters; undervalued it to their own benefits and consequently the promoter group violated SEBI (LODR) Regulations. Before examining the issues raised it would be appropriate to give a chart of related companies before us: -

1. **Position of Appellant Companies:**

Structure of various promoter group entities of the JPFL



10. Now what we have gathered from the facts is during the financial years *2013-14* to financial year *2016-17*, the appellant company had subscribed to the following number of Redeemable Preference Shares (RPS) and Optionally Convertible Preference Shares (OCPS) issued by Respondent No.16 in the following manner: -

Amounts in INR crores	***FY 2013-14***	***FY 2014-15***	***FY 2015-16***	***FY 2016-17***	***Total***
(% Redeemable shares	*167.00*	*38.50*	*39.29*	*18.80*	*263.59*
(% Optionally convertible shares)	-	*191.20*	*249.00*	-	*440.20*
Total	***167.00***	***229.70***	***288.29***	***18.80***	***703.79***

11. It is alleged by the Respondents there were *44.02* crores of OCPS with face value of Rs.*10* each and total of *26.35* crores of RPS with face value of Rs.*10* each and the terms of issuance of OCPS were *(a)* there shall be no dividend payable; and *(b)* they shall be convertible into equity shares of Rs.*10* each on maturity after five years, which maturity date was later modified in the year 2019-20 by Respondent No.16 to *10* years instead of *5* years. Similarly, no dividend was payable on RPS and were made redeemable with only *10%* premium in all, at the end of 15th year. The rational for these investments was Respondent No.17 was setting up a power plant and had a cost over-run and it was agreed with the lenders to finance the increased cost and, therefore, Respondent No.*18*; the appellant and one M/s Jindal Power Limited, has stepped in to meet such short fall(s).

12. It was argued the appellant then wrote off all the RPS and OCPS in its books in the year *2018-19* for reasons of negative networth; of continuing cash loss of Jindal Power Tech Ltd i.e. Respondent No.16. It was alleged despite the negative networth and continued cash loss and contrary to the commercial prudence/wisdom the appellant continued infusing more money in Respondents No.*16 and 17*, during the financial years 2020-21 and 2021-22 and allegedly a loan of Rs.*106.50* crores was converted to RPS worth Rs.*108.77* crores to be redeemed in the financial year *2021-22* and further a loan of Rs.*150* crores and Rs.*260* crores was given by the appellant to Respondent No.17 for payment of debt to secured financial creditors of Respondent No.*17* in the financial year 2021-22.

13. Thereafter on 29.05.2021 Jindal Power-Tech/Respondent No.16 had entered into OTS with IFCI for Rs.*103* crores against the debt of Rs.*428.32* crores and whereas M/s Jindal Thermal/Respondent No.17 signed Master Resolution Agreement for *Rs.2541 crores* against the debt of Rs.*9431* crores, which resulted in benefit of the said companies viz Respondents No.*16* and *17* to the tune of Rs.*7305* crores. Now the appellant, being the funding entity had clear knowledge of the benefit and valuation increase which enhanced its net worth as the equity value *per* share of Respondent No.*18* rose from Rs. -35.07 in the financial year 2020-21 to +49.77 in financial year 2021-22. Likewise for Jindal PowerTech i.e. Respondent No.16 the carrying value of RPS increased from Rs.*717* crores in FY 2020-21 to Rs.*1682* crores in financial year 2021-22 resulting in the equity value

rising from -17.84 in financial year 2019-2020 to *+45.13* crores in the financial year 2021-22.

14. It was also alleged in the financial year 2021-22 the appellant sold the OCPS to its ultimate parent *SSJ Trust* for *Rs.66* crores whereas the subscription value of those shares was Rs.*440.20* crores and fair market value of the said shares was Rs.*2300* crores approximately. The RPS were sold for Rs.*39* crores to Jindal Poly-Investments but whereas the subscription value of those shares was Rs.*2500* crores. It was also argued an independent valuer was engaged by the appellant for assessing the price of shares and it assessed it as Rs.*1.50* per shares for OCPS and Rs.*1.49* per share for RPS as fair valuation, whereas at the same time the holding company of the appellant i.e. Respondent No.8 herein went through a merger wherein valuation of the equity of Jindal Thermal, Respondent No.17 was shown to be Rs.*20.53* per share and further Jindal Poly Investments *viz* buyer of RPS, in its annual returns for the financial year *2022-23* stated that Jindal Powertech i.e. Respondent No.16 issued *81* odd lakh shares of Rs.*10* each at premium of Rs.*20* per share to Respondent No.8, thus thereby causing huge monetary loss to the appellant.

15. Now the sale of OCPS and RPS Investment by the appellant to SSJ Trust and Jindal Poly Investment and Finance Co Ltd were related party transactions but no disclosures were made to the Stock Exchanges and only when Respondents No.1 to 3 had highlighted this, the omission was corrected describing it as an *over sight*. It was the contention of the respondents firstly

the sale transaction was grossly *undervalued;* purposefully structured in a manner to bypass the statutory obligations under Rule *23* of the SEBI (LODR) Regulations 2015 to avoid the materiality threshold prescribed therein. Now had the transaction been valued correctly the materiality threshold would have required a mandatory approval of majority of the minority shareholders before the General Body and thus thereby deliberately undervaluing it the directors of the appellant company in collusion with independent valuers had caused the minority public shareholders a grave loss and also purposefully violated law *viz* Rule *23* of SEBI (LODR) Regulations, 2015. The relevant portion of which is as under: -

> *23. Related party transactions.*
>
> *(1) to (3)*
>
> *…….*
>
> ***(4)*** *All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2)] shall require [prior] approval of the shareholders through resolution and [no related party shall vote to approve] such resolutions whether the entity is a related party to the particular transaction or not:*
>
> *[Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.*
>
> *Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice]*
>
> *[Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to*

the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;]

16. The respondents thus allege concealment of facts; abuse of position to make wrongful gains from transactions to the prejudice of the shareholders/company, which fall within the definition of *fraud* as is in Explanation to Section *447* of the Companies Act, 2013. It is argued once it alleged the shares are being undervalued; the transactions being concealed from shareholders; wrong information being supplied to Stock Exchanges; it all would cover the facts within the definition of *fraud* per Explanation of Section *447* of the Act and thus only a class suit would be appropriate in these circumstances.

17. We have heard the arguments of both the appellants and respondents in detail.

18. The issues raised by the Learned Senior Counsel for the Appellant can be culled into three regions: ***a)*** the Petition does not satisfy the test of sub-section *1* of Section *245* as it relates to the continuing acts and not the past acts; ***b)*** sub Section *(1) (g)* of Section 245 cannot be interpreted to include word "*for*"; ***c)*** the non-consideration of the statutory ingredients of sub Section *4* of Section *245* read with Rule *87(3)(e)* of the NCLAT Rules, 2016.

19. Coming to the alleged non-applicability of sub section *(1)* of Section *245* we need to examine the ingredients of Section *245*. In Section 245, a class action can be brought by group of shareholders or depositors etc. if they are of the opinion the management and conduct of the affairs of the company are being

conducted in a manner prejudicial to the interest of the company or its present members or depositors. Now, the Learned Tribunal while entertaining a petition under Section *245* first need to determine whether the quorum of filing of such Petition; being 2% in this case of a listed company, is satisfied and then would also look into the *prima facie* opinion of the shareholders. The facts do show *4.99%* of the shareholders were of the opinion that the affairs of the company are being conducted in the manner prejudicial to its interest and of its members.

20. Now in this appeal the distinction between derivative and class suit is sought to be argued in the context of maintainability of the Company Petition under Section 245 of the 2013 Act. Section 245 allows a class of members (which also includes the class of minority public shareholders, as in the present case to pursue such actions in relation to the management or the conduct of the affairs of the company which are *prejudicial to the interests of the company* or its members or depositors. A bare perusal of the aforesaid provision clearly demonstrates the Parliament did not intend to limit class action only to actions that affect the shareholders but to extend them to even actions affecting the company. Now Section 245 explicitly contemplates class action being filed for actions which are prejudicial to the interests of not only the members but also the company. Although the wording of Section *245(1)* is very clear as to the Parliament's intent, the Appellant has sought to rely on response of the Ministry of Corporate Affairs to a suggestion of the Standing Committee on Finance on the Companies Bill 2011. Now the concept of class action was considered in the context of company law in India by the Report of the Expert Committee on

Company Law 2005 (also known as the J.J. Irani Committee Report). It observed that, "*A situation may arise whereby the interest of the company may need to be protected from the actions of the persons in control of the company...For this purpose, the law should provide for 'class action / derivative suits on behalf of depositors / shareholders*". Clearly, the committee expected institution of a class action by shareholders / depositors where the company itself was a victim at the hands of the promoters / management, and its interest was required to be protected.

21. The view of the committee then translated into the Companies Bill, 2009 and the Companies Bill, 2011 and ultimately in Section *245* of the 2013 Act. The language of the provision remained identical all throughout being, "...*affairs of the company are being conducted in a manner prejudicial to the interests of the company*...". The only change was in shareholding threshold / right to apply - Companies Bill 2009 empowered even a single member of a company to initiate class action. The response of the Ministry of Corporate Affairs to the suggestion of the Standing Committee refers to para *16.25* of the committee's earlier report 2009-2010) whereby the Standing Committee only suggested changes to the class action provision in terms of filing threshold / shareholding eligibility in view of the opinion expressed by Chambers of Commerce to prevent misuse of the provision against the company.

22. Further the argument of the Appellant that in terms of Section *245(1) (g)*, damages or compensation or any suitable action can only be claimed '*from or against*' the company is also equally flawed. Though the prayer *(a)* of the

Company Petition is a declaration sought *against the act of the company*, but reliefs under Section 245 of 2013 Act can also be claimed against third parties. Section *245(1)(g)(i)* makes it evident that compensation or damage may be claimed *from* or *against* the company or directors or any other person for any fraudulent, unlawful or wrongful act or conduct. The usage of the term "*or*" makes it clear that relief may also be sought against the directors as well. Further, Section *245(1)(g)(iii)* affords claims for damages or compensation or any suitable action *'from or against'* any expert or advisor or consultant or any other person for any incorrect or misleading statement to the company or for any fraudulent, unlawful or wrongful act or conduct. Thus, under Section 245(1) of the 2013 Act, the Ld. NCLT has very wide powers and reliefs thereunder can be sought against third parties, including directors and promoters of the company. In any event, Section 245(1)(h), "t*o seek any other remedy as the Tribunal may deem fit*", is a residuary provision taking within its ambit the matters which are not subsumed within other sub-clauses. The Hon'ble Supreme Court in *CED vs. Kantilal Trikamlal, reported in (1976) 4 SCC 643,* has held that when an expression is a residuary one, *ejusdem generis* would not apply. The reliefs sought in the Company Petition are also maintainable under Section 245 as it would not be proper for a shareholder to seek compensation from' the company when the company itself has been a victim of alleged fraud at the hands of the promoters and the directors - a situation clearly identified in the J.J. Irani Committee Report, culminating into the language of Section *245* as aforesaid. When cash / asset of the company has been siphoned off, it would amount to a

'double blow' for the shareholders, causing further loss of value of the shareholding of the shareholders. Therefore, the compensation sought in the Company Petition is first in the Appellant / JPFL and consequently to the minority shareholders.

23. Section *245(1)(g)* provides for claiming damages or compensation or demand any other suitable action from or against the company; its directors, the auditor, any other person, etc. Further, Section *245(1)(h)* states the application may be filed to seek any other remedy as the Tribunal may deem fit. Hence, the usage of the term '*any other suitable action'* or 'a*ny other remedy as the Tribunal may deem fit'* confers widest of rights to the eligible petitioner(s) to seek and widest of power available to the Ld. NCLT. Notably, in Section 245(1)(g)(iii) the term *unlawful or wrongful act or conduct or any likely act or conduct on his part* makes it evident that the transactions which can be impugned are not limited to being continuing in nature *but also include the transactions already concluded*. In fact, the very relief of damages or compensation, as envisaged itself, takes into account the *past actions*. Damages or compensation can only be granted for *'past and concluded'* transactions. The term 'or' between 'wrongful act or conduct and 'any likely act' includes both actions already undertaken or any actions which are likely to occur. In any event, it has been the stand of Respondent Nos. 1 - 3 that the transactions impugned are not '*past or concluded*', as alleged or at all. The impugned transactions have been systematically orchestrated over a period of time and executed in a manner that its illegality (undervaluation, etc.) was deliberately, and with fraudulent motive / purpose, never brought to the

attention and knowledge of the public shareholders. In the present case, the impugned transactions were never put before the public shareholders either in EGM or AGM to seek their approval, at the time when the same was being undertaken. The promoters and the directors intentionally and systematically undervalued the transactions to deliberately avoid the shareholders vetting and prior approval. Per Reg. *23* of SEBI (LODR) Regulations, a related party transaction above the materiality threshold warrants affirmative prior approval of the shareholders. Undisputedly, the sale of OCPS and RPS investments to SSJ Trust (Respondent No. 4& 5/Trustees of SSJ Trust) and Jindal Poly Investment (Respondent No.18) respectively was a related party transaction. Had the said transactions been undertaken at its actual value (which as per SEBI investigation was~ INR 800 crores and as per fair market value ~ INR *2500* crores), it would have required the prior approval of the shareholders. Allegedly the Appellant and other Respondents i.e., the promoters and directors have, so to say, made the impugned transactions *stale*' by their own conduct. Having allegedly concealed the transactions at the time of commission, the appellant and other Respondents i.e., the promoters and directors now cannot take benefit of their own wrongdoings.

24. In any event, at the time of institution of the Company Petition, the instruments i.e., OCPS and RPS sold to SSJ Trust and Jindal Poly Investment were yet to be converted and / or redeemed by the said entities. Hence, in terms of prayer *'a'* of the petition, the Ld. NCLT could have passed such orders or directions declaring the sale as null and void, thereby restoring the investments

back into the Appellant No.1 Company / JPFL. The question of limitation so alleged is a mixed question of fact and law. The fact when such transactions came to the knowledge of the respondents would be a relevant fact. Thus on maintainability qua sub-section (1) of Section 245, we agree with the Ld. NCLT.

25. Now coming to compliance of Section *245(4)* we note it cannot be relied upon to stall the admission of such an application. Notably, in the facts of the case, only Section *245(4) (a)* (*whether applicant is acting in good faith* and (c) *(whether the cause of action is one which the member could pursue in his own right*) are relevant. Both the aspects have been comprehensively considered by the Ld. NCLT in the Impugned Order by referring, in detail, of the entire factual matrix and the pleadings made before it. Per Section *3(22)* of the General Clauses Act, 1897, a thing shall be deemed to be done in *'good faith'* where it is in fact done honestly, whether it is done negligently or not. The same is evident from the fact that much before filing of the Company Petition, the Respondent Nos. 1 - 3 herein have been vigilant and cognizant of their rights by writing several communications to the officials of the Appellant, requesting for the necessary information and clarifications regarding the impugned transactions. But upon failure of the Appellant to respond adequately, the Respondent Nos. 1 to 3 approached FTI Consultants to have a thorough evaluation done of the transactions on the basis of information collated by them in the public domain. It was only after FTI Consulting completed its evaluation and opined the impugned transactions have caused significant erosion of value of JFPL's shares with loss of almost INR *2500* crores, the Company Petition was

filed. The above aspects have been considered by the Ld. NCLT in its Impugned Order itself. As regards *245(4) (c),* a bare perusal of the reliefs sought in the Company Petition, including relief ***(h)***, would demonstrate the said reliefs are maintainable under Section *245*. Even assuming there could be some overlap between the relief sought under Section *241* and Section *245*, the Respondent Nos. 1 - 3 are agitating rights of the entire class of minority public shareholders of the appellant - which they could not have pursued in their own right. The impugned transactions have caused loss not only to the Respondent No. 1 - 3, but to the entire class of minority public shareholders. Further Rule *85* of the NCLT Rules states the NCLT *'may'* look into additional grounds, the Ld. NCLT has in fact considered the said factors individually and rather set them out explicitly in. Para *44* of the impugned order is relevant in this context.

26. Prima facie the allegations are of illegal and systematic fraudulent acts perpetrated by JPFL, its promoters and directors and in undertaking the impugned transactions have caused significant loss to the entire class of minority public shareholders of JPFL, including Respondent No. 1 - 3. The investigation conducted by the market regulator SEBI and by the Directorate of Enforcement (ED) prima facie establish the '*management and conduct of the affairs of the company (Appellant / JPFL herein) are being conducted in a manner prejudicial to the interest of the company itself as well as its members'*.

27. Nevertheless the impugned order also considered the factors mentioned in sub-section *(1)* and *(4)* of Section *245* in its paras 6, 31, 35, 41, 42 and 47 and

further *qua* Rule *84(3)* and Rule *85* of NCLT Rules, 2016 in paras 8, 30 and 44; as more specifically discussed below:

i. ***The requirement of minimum number of members as per Section 245(1) read with sub-section 3 and Rule 84(3)(ii)(b):***

The Ld. NCLT notes that requirement is minimum of 2% of the share capital as the Respondent company before the Ld. NCLT was a listed company. The Ld. NCLT further notes that the petitioners cumulatively hold 4.99% of the share capital and records its satisfaction in para 8 of the impugned order and again in para 30 of the impugned order.

ii. ***The requirement of "opinion" of the applicants that the management or conduct of the affairs of the company are being conducted in the manner prejudicial to the interest of the company/member/depositor [Section 245(1):***

The Ld. NCLT notes the chart running into four pages reproduced at page 38 to 41 of the impugned order and submission of the Ld. Sr. Counsel that "there is direct loss to the petitioners because of the fraudulent actions undertaken by the Respondents". The Ld. NCLT notes in para 23, 32 and 35 its satisfaction regarding meeting of this criteria. The Ld. NCLT specifically notes in para 31 that *"These transactions are not denied by Respondent albeit the alleged loss. These we hold are prima facie opinion to initiate the proceedings. It is always open to the Respondents to deny the allegation and refute the charge.".*

iii. ***The requirement of "good faith" [Section 245(4)(a)]:***

The Ld. NCLT has reproduced the submissions of the petitioners that the application has been made bonafide and in the interest of justice for securing the rights of the shareholders (page 41). The Ld. NCLT notes the petitioners submissions in para 6 that they have sent various emails to the company which remained un-responded and finally the company through email dated 23.06.2022 refused to share any document and information. The petitioners then had got transaction examined and evaluated by FTI Consulting, a globally reputed audit firm which reported that there has been gross under valuation of transactions resulting in loss in excess of Rs. 2500 crores. The Ld. NCLT has also noted in para 6 that these factual issues were "primarily not controverted".

iv. ***Whether the cause of action is one which the member could pursue in his own right rather than through an order under Section 245. [Section 245 (4)(c)]:***

In para 41 of the impugned order, the Ld. NCLT noted that "*Section 245 is a benevolent legislation to shareholders, depositors against the company and to the company for various reliefs stated therein and for other relief(s) past, present and future"*. It further held in the same para 41 that *"the provisions of Section 245 enable Petitioners, stock holders to initiate proceedings for the benefit of the company also. Merely because there is another option available under Section 241-242 that cannot dis-credit a case under 245 is met by the Petitioners".*

v. ***Consideration whether the act or omission is yet to occur or has already occurred where its likely to be ratified. [Section 245(e) and (f)]:***

In para 35, the Tribunal examines the issue whether Section 245 can be used for past, present and continuing actions and notes that these provisions can be used to remedy past, present and continuing actions and also notes that *"the provisions of Section 245(h) provide for seeking any other remedy as the Tribunal may deem fit make its amplitude wide".*

vi. ***Whether the class has so many members that joining them individually would be impractical, whether there are questions of law or fact common to the class and whether the representative parties will fairly and adequately protect the interests of the class. (Rule 85 of the NCLT Rules, 2016):***

In para 24 to 29 of the impugned order, the Ld. NCLT notes that intervention applications have been filed by other petitioners holding 5.03% of the shares, wherein they have asserted that *"the interveners have chosen not to pursue a separate legal action to avoid multiplicity of lawsuits".* The Ld. NCLT notes in para 44 that *"This provision seeks to address the issue where there are numerous or large number of shareholders and joinder of all of them is impracticable, where the question of law in relation to such fact is common to the class. The representative parties will fairly and adequately protect the interest of the class. The 'inconsistency or multiple adjudication can be avoided in a class action, which is not the case in derivative action. Therefore, this Tribunal under Section 245 has the power to grant relief to shareholders or depositors or class of them, and that*

can include to the benefit of the Company. We primafacie hold in favour of petitioners for issuance of notice".

28. The Ld. NCLT in the impugned order has satisfied itself regarding fulfilment of all requisite pre-conditions under Section 245 read with relevant Rules. Thus, we are not inclined to interfere in the impugned order and hence the appeal is dismissed.

29. Pending applications No.1020 and 1021/2026 are also dismissed.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Dated: 26-02-2026

Bm & R.N.