



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.6
C. P. No.98/BB/2023

IN THE MATTER OF:

M/s. Zeeshan Ali Khan & Another ... Petitioner
Vs.
M/s. Sha'S Airborne Travels Pvt. Ltd & Ors. ... Respondent

Petition under Section 59 of CA, 2013

Order delivered on: 11.02.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSEL PRESENT:

For the Petitioner : Shri Naman G Joshi, PCS
For the R-2 : Appeared
For the R-3 : Shri Mohd. Taher Shaikh

ORDER

C.P.No.98/BB/2023 is allowed vide separate order. File be consigned to record room.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

PS



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

[Through Physical hearing/ VC Mode (Hybrid)]

C.P. No. 98/BB/2023

Application under Section 59 of the Companies Act, 2013

IN THE MATTER OF:

MR. ZEESHAN ALI KHAN

Orchid Habenaria, No.76/5, 3rd Floor,
Coles Road, Frazer Town,
Bangalore - 560005

...Petitioner 1

MS. SHAHIDA BANU

No.61/1, Coles Road,
Frazer Town, Bangalore North,
Bangalore - 560005

...Petitioner 2

Versus

M/s. SHA'S AIRBORNE TRAVELS PRIVATE LIMITED

Registered office at: No.68/1, Concord Plaza,
Coles Road, Frazertown,
Bangalore - 560005

...Respondent No.1

MR. MOHAMMED SHAKIR

No.3, 2nd Cross, KGN Layout,
Near BHEL Layout, B.G.Road,
Bangalore - 560041

...Respondent No.2

M/s. RAMESH ASHWIN & KARANTH

No.37/E, 2nd Floor, Beside Surana College,
South End Road, Near South End Circle,
Basavanagudi, Bangalore - 560004

...Respondent No.3

REGISTRAR OF COMPANIES, BANGALORE

'E' Wing, 2nd Floor, Kendriya Sadana,
Kormangala, Bangalore - 560034

...Respondent No.4

Order delivered on: 11.02.26

Coram:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

Counsels Present:

For the Petitioner : Shri Naman G Joshi, PCS
For the R-2 : Shri Saif Ahmed Khan
For the R-3 : Shri Mohammed Taher Shaikh



O R D E R

Per RADHAKRISHNA SREEPADA, Member (Technical)

1. The Company Petition has been filed on 01.08.2023 with following prayers:

- a. To treat increase in authorized capital as act of ultra vires and allotted shares on such increased capital as void-ab-initio.*
- b. Consider and treat allotment of 59,500 equity shares made on 31.03.2021 illegal and void-ab-initio and allow **R1** for rectification of register of members by removing name of **R2**.*
- c. Direct **R1** to refund the amount received of Rs. 5,95,000/- for illegal allotment of 59,500 equity shares made on 31.03.2021.*
- d. To direct **R4** to treat allotment as void-ab-initio and restore the capital structure of the company to prior to fraudulent allotment of shares.*
- e. To pass such order as it may think deem fit.*

2. Facts of the case & Submissions of the Petitioner:

1. **M/s. Sha's Airborne Travels Private Limited** a company incorporated on 06.06.2008 by **P1** and **P2** under the provisions of Companies Act, 1956 bearing CIN No. U63040KA2008PTC046669 and having registered office at No. 68/1, Concord Plaza, Coles Road Frazertown, Bangalore 560005, copy of certificate of incorporation and master data is enclosed.

2. As per the latest available audited financials of company the present capital structure of **R1** consist of authorized capital of INR 25,00,000/- (2,50,000 equity shares of Rs. 10/- each) and paid-up capital of INR 23,95,000/- (2,39,500 equity shares of Rs. 10/- each). Copy of the audited financial statements as on 31.03.2022 is enclosed.



3. **P1 and P2** is director and promoter of company who is handling administration and overall business of company and is husband of **P2**.

4. The shareholding pattern of the company consists as below mentioned:

Shareholding pattern pre void-ab-initio allotment shares to R2

SL. NO	NAME OF SHAREHOLDER	NO. OF SHARES	PERCENTAGE OF SHAREHOLDING
1.	Mr. Zeeshan Ali Khan	1,76,000	97.77%
2.	Ms. Shahida Banu	4,000	2.23%
TOTAL		1,80,000	100%

Shareholding pattern post void-ab-initio allotment shares to R2

S no	NAME OF SHAREHOLDER	NO. OF SHARES	PERCENTAGE OF SHAREHOLDING
1	Mr. Zeeshan Ali Khan	1,76,000	73.49%
2	Ms. Shahida Banu	4,000	1.67%
3	Mr. Shakir Mohammed	59,500	24.84%
TOTAL		2,39,500	100%

Copy of the extracts of the register of members is enclosed.

5. The present composition of board of directors of the company is as follows:

S no	NAME OF DIRECTOR AND DIN NO.	POSITION
I.	Mr. Zeeshan Ali Khan (DIN:02076329)	Director
2.	Ms. Shahida Banu (DIN: 02076342)	Director



6. **P1** and **P2** were busy obtaining necessary licenses and approval to carry on objects of company and company was in need of investment because of unfavorable business conditions. Further commitment made by **R2** to assist in bringing additional capital of Rs. 1,00,00,000/- (Rupees One Crore Only) from investors within 6 (six) months for at least 15% of share capital, considering commitment made by **R2** and his career background in banking sector he was regularized as non-executive director in the annual general meeting held on 29.09.2018.
7. Further in spite of continuing as director of company **R2** has failed to bring committed capital to the company, **R2** requested for some more time considering COVID and tourism industry situation petitioners were agreed to continue him as director of company so that he can bring investment in company. Further he also expressed that now he being director will help him to present better before investors to raise funds. This decision was taken by the petitioners in safeguarding interest of company and its stakeholders. But hidden motive of **R2** was unread by petitioners of taking control over affairs of company was never realized by them.
8. P1's father and P2's father-in-law was not well since February first week and he passed away in the first week of the March, **R2** consider it right opportunity as **P1** and **P2** were both not in proper state of mind by losing their loved one and they were unavailable from First week of February till Second week of April. Further, post the death of Father of P1, the mother of P1 went into depression and got an attack of Alzheimer and became bed ridden. It became very difficult for P1 and P2 to take care of her on a day-to-day basis, during that period petitioner were completely relied on the R2 for the operation of the company. Taking undue opportunity of this situation **R2**



acted ultra vires and has created false documentation for increase in authorized capital of the company mentioning the date of serving notice for extra-ordinary general meeting (**EGM**) as 01.02.2021 and date of EGM as 22.02.2021 with forged signature of petitioners on these documents. Copy of the Notice of EGM, Extract resolution of EGM, altered MOA, form SH-7 is enclosed.

9. Further **R2** realized that his fabricated and false documents filed with Registrar of Companies, Bengaluru in form SH-7 for increase in authorize capital was "Void" because without articles of association (**AOA**) authorizing increasing authorize capital company cannot increase in memorandum of association (**MOA**). Therefore, to rectify the noncompliance **R2** does another fraudulent activity and his activity proves that fabricated notice of EGM by forging signatures of petitioners for alteration articles of association of the company to enable to increase authorized capital. The date of serving notice of EGM as 01.03.2021 and date of EGM as 22.03.2021, to the surprise and utter shock of petitioners **R2** is this activities were planned during the period of Death of the father/ father-in-law of the petitioner and 40 days' ritual periods, when petitioner was not in the position to look in to the affairs of the company. Copy of Notice of EGM, EGM extract, altered AOA and e-form MGT-14 is enclosed.
10. Subsequent to false, illegal and void actions by increasing in authorized capital and amending AOA again **R2** has fabricated the resolution and documents for allotment of 59,500 equity shares in his favour by forged signatures of Petitioner. Board resolution emphasis that, allotment was made under rights issue, whereas **R2** was never shareholder of company neither the rights issue offer was made to existing shareholders i.e. **PI**



and P2 nor those offers renounced in favour of **R2**. Further no share certificates also issued against fraudulent allotment. This clearly indicates that fraudulent and illegal act of the **R2**. Copy of board resolution, list of allottees and e-form PAS-3 is enclosed.

11. Further petitioners believes that during the process of increasing authorized capital, alteration articles and allotment of shares **R3** would have provided all necessary support to **R2** in filing documents with **R4** without taking approval of **PI** because **R3** use to maintain digital signature certificate of **PI** and same digital signature was used in fraudulent manner file those forms with **R4**.
12. When financials were brought before the petitioner, it was nothing but shock to petitioners as capital was modified and their shareholding is brought down by new allotment though there was no such incidents or activity done by the petitioner. Further allotment of share issued was raised before the **R3** but instead of resolving the issue he denied assisting and directed the company to approach different professional to get the problem resolved. Further informed that pros and cons of non-approval of accounts and penalties under the Companies Act, 2013 on the directors of the company. Considering the advice, we have approved the accounts for audit and further started approaching various chartered accountants to resolve the capital issue.
13. When **R2** was questioned he admitted his mistake and agreed that petitioners can take legal actions to correct the wrong and return his money.
14. Later, we have been advised by much of professionals for reduction of capital and selection of reduction of capital option would leave to admission of allotment and increase in



Authorised capital as valid, hence we have not initiated any action unless finally we have learnt about section 59 of Companies Act 2013 hence this application is made to correct the fraudulent act of R2.

15. Petitioners have informed about the legal remedy and action to R2. Further R2 started misbehaving with the P2 (women director of the company). This has led to force the board and shareholders of the company to remove the R2 from the company.

16. **ACT OF ULTRA VIRES INCREASE IN AUTHORIZED CAPITAL:**

1. As mentioned in the facts of the case, since the petitioners were unavailable from First week of February 2021 till 15th of April 2021 from the time of ill-health of **PI's** father and **P2** father-in-law has passed away, there were neither any board meetings nor general meeting were held during that period either for increasing in authorized capital or alteration of articles of association.
2. The transaction for increase in authorized capital and alteration of articles are carried out by **R2** arbitrarily without any approval of board of directors and shareholders of the company by forging signatures of **PI** and **P2**.
3. Further on 22.02.2021 when the R2 has fabricated false documents for increase in authorized capital of company by forged signature of petitioners when company does not have power to increase its authorized capital by its articles and such increase was given to effect from Rs. 18,00,000/- to Rs. 28,00,000/- through fraudulent filing done by **R2** with Ministry of Corporate Affairs (**MCA**). Copy of the pre alteration memorandum of association and articles of association is enclosed.
4. Subsequently when **R2** realized that he has made violation



and found that increased the authorized capital is void and ultra vires which is beyond provisions of AOA of company then again **R2** arbitrarily has fabricated false documents for alteration of articles of association to give power to increase the authorized capital of company by mentioning EGM date as 22.03.2021 which post increase in authorized capital of company. Further with the help of **R3, R2** could be able to file this form with MCA amended copy of articles of association.

5. Further petitioners got to know about fraudulent and false filings done by **R2** with MCA only at the time when the financials were kept before them for approval and to their utter shock and surprise without prior approval of shareholders and board of directors all fraudulent transactions carried on by **R2** arbitrarily, on questioning **R2** about these fraudulent activities he has not even bother to substantiate his act and failed to produce all relevant documents evidencing these transactions. Further he told that "if you do not want to pay unnecessary penalty and become defaulter you do not approve the financials and it does not make any difference to me."

6. Further petitioners were left with question that how single director can hold board and shareholder meeting which took place without their knowledge and in violating due process and procedure mentioned in the Companies Act, 2013 and rules made thereunder, as one director cannot constitute quorum for any board meeting and as petitioners were on leave there are neither board meeting nor EGM were held in the company all documents presented by R1 and R3 was assisting R2 in this process.

7. Further petitioners like to submit that increase in authorized capital is completely void -ab-initio as:

- there was no authorization in articles of association of company



to increase in authorize capital; and

- without the approval of board of directors and shareholders authorized capital of the company has been increased.

17. **ILLEGAL ALLOTMENT OF SHARES TO R2**

1. Petitioners hereby submit that allotment of shares can be done through either in compliance with Section 42 or Section 62 of Companies Act, 2013 and rules made thereunder, however as the R2 has fabricated and created false documents by forged signatures for allotment of shares in his favor to take control of company by ignoring compliances with the provisions of the Section 62 (I)(a) of Companies Act, 2013 as these compliances can lead to disclosure of his ill motive. As fabricated resolution express that allotment was made under rights issue.

2. BRIEF DESCRIPTION OF SECTION 62 (1)(a) of COMPANIES ACT, 2013 AND VIOLATION MADE THERE UNDER:

To allot further shares company can offer the shares to person who are holding shares and offer can be made in proportion of their shareholding and in accordance with Section 62 (1)(a)(i) the offer shall be made by notice specifying number of shares offered and offer period. Subsequently Section 62 (I)(a)(ii) gives right to person to whom offer is made to renounce the shares in favour of other person who can subscribe the shares.

3. Further petitioners like to submit that in the present matter:

- The petitioners were only existing shareholders of the company and
- There was no board meeting held to make offer under Section 62 (1) (a) and
- There was no such offer to existing shareholders and as is no offer hence there was no question of renunciation exists.

4. Therefore, the allotment made to **R2** is in violation of the



provisions of Section 62 (1) (a) and void-ab-initio. If the allotment was not under rights issue, then it should have to comply with Section 42 or Section 62 (1) (c) of the Companies Act, 2013.

5. BRIEF DESCRIPTION OF SECTION 42 OF COMPANIES ACT, 2013 READ ALONG WITH RULE 14 OF COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014:

- a. Shares can be offered on private placement basis at the price determined by registered valuer to selected group of person who has been identified by the board of directors and shareholders approval through special resolution is required to make an offer to such selected person. Subsequently after the approval of shareholders company needs to file e-form MGT-14 with ROC and has to circulate offer letter in form PAS-4 also need to maintain a record of private placement in form PAS-5.
- b. On the receipt of form PAS-4 proposed person to whom offer is made have to make application for allotment shares by depositing offer price in separate bank account opened by company for private placement and has to give written declaration in format Part-B of form PAS-4.

6. BRIEF DESCRIPTION OF SECTION 62 (1)(C) OF COMPANIES ACT, 2013 READ ALONG WITH RULE 13 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014 READ ALONG WITH SECTION 42 OF COMPANIES ACT, 2013 READ ALONG WITH RULE 14 OF COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014:

- a. Shares can be offered on preferential basis to the existing shareholders or to the selected group of person identified by the board of directors if authorized by special resolution at offer price identified by registered valuer



and such offer shall also comply with Section 42. Further to make offer under Section 62(l)(c) company needs to file e-form MGT-14 for intimating to ROC the resolution passed by the shareholders. Subsequently after filing MGT-14 company has to circulate letter of offer in form PAS-4 and has to keep the record of offer in form PAS-5.

- b. On receipt of form PAS-4 investor have to make application for allotment of shares by depositing offered price in separate bank account and have to return duly filled Part-B of form PAS-4 to the company.
- c. Further petitioner like to submit that the allotment made in respect of the 59,500 equity shares in favour of the **R2** was unknown fact to them as it was done without approval of board of directors and shareholders and the allotment was made in violation to the provisions of Section 42 and Section 62 of the Companies Act, 2013 which resulted in decreasing there percentage of shareholding in company.
- d. As per the provisions of the Companies Act, 2013 every allotment method is driven through process which obligates the board and company to ensure strict compliance of the provisions if the fundamental compliances were not ensured then allotment considered to be void.

18. **ALLOTMENT OF SHARES AT FACE VALUE:**

Initially when **R2** was regularized as director he has agreed to bring investment from the investor to the tune of Rs. 1,00,00,000/- (Rupees One Crore Only) for 15% of capital but allotment made to himself fraudulently is at face value though there was value which was in the notice of **R2** which is clearly an act of fraud and mischief to gain control over the company.



19. **FALSIFICATION OF ENTRIES IN THE BOOKS OF ACCOUNTS:**

I. Petitioners came to know about all false entries passed in books by **R1** only when the financials were kept before them for approval at time when petitioners seek clarification from **R2** regarding the basis considered while auditing books of company with respect to the ultra vires increasing in authorized capital and illegal allotment of shares they came to know that all these entries were passed by the **R2** by taking control over the books of company when petitioners were not in good state of mind on the demise of their loved once.

II. Further Petitioners believes that **R2** must have sought the support of **R3** in creating false documentation for increase in authorized capital, alteration of articles and allotment of shares in his favour.

III. Petitioners were forced to sign financial statements by **R2 and R3** stating that if the financials were not approved and filed within provided time limit then company will violate the provisions of the Companies Act, 2013 and there will be hefty penalty on executive directors as non-executive directors will not be treated officer in default. Further **R3** also stated that this situation can not be altered and financials need to be approved with these details only.

20. Considering the above-mentioned facts and grounds petitioners believes that the all the activities carried out by **R2** are only with a single motive to take undue control over the affairs of the company, **R2's** greediness tends him towards violating provisions of the Companies Act, 2013 and



rules made thereunder.

21. Further as per order passed by Hon'ble National Company Law Tribunal, Cuttack Bench, in the matter of **Mr. Rai Kwnar Misra V Homebase Estates Private Limited** as the allotment is not compliance with the Section 42 or 62 of the Companies Act, 2013 it was held that;

“In light of the above observations this Tribunal is of firm view that the said **issue, offer and allotment of shares is void-ab-initio** and the same is in **violation of Section 62(1)(c) read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014, read with Section 42 and Rule 14 of the Companies (Prospectus and allotment of securities) Rules, 2014.** Thus, the possibility cannot be ruled out that the entire game of such share issuance **has been played only to take over control of the Company.**” Copy of the order passed by Hon'ble National Company Law Tribunal, Cuttack Bench, in the matter of **Mr. Rai Kumar Misra V Homebase Estates Private Limited** is enclosed.

22. The facts, evidences and above referred case is very much clearly evidence that, **R2** is acting contrary to the interest of company and petitioner in his personal benefit. R2 is actively engaged in illegalities acts to take control over the company.
23. Further considering facts and circumstances after finding legal solution to correct the capital structure, the Petitioners were left with no other option other than approaching National Company Law Tribunal, Bengaluru Bench under



section 59 for appropriate relief against the illegal allotment made by **R2**.

2. **Submissions of the Respondents:**

The **Respondent No.2** filed objections vide Dy.No.1081 dated 16.02.2024 in the submissions, it was stated as under:

1. That the present petition has been filed by the Petitioners praying that this Tribunal hold (i) that the increase in authorized capital as an *ultra vires* act, to treat the allotment of shares on increased capital as *void ab initio*, (ii) treat the allotment of shares made on 31.03.2021 illegal and void ab initio, (iii) allow the 1st Respondent company to rectify its register by removing the name of the 2nd Respondent, (iv) direct the 1st Respondent to refund the amount received of Rs. 5,95,000/- (Rupees Five Lakhs Ninety-Five Thousand Only) towards allotment of 59,500 equity shares made on 31.03.2021, and (v) to direct the 4th Respondent to treat allotment of shares as *void ab initio* and restore the capital structure of the company prior to allotment of shares.
2. At the outset, the 2nd Respondent submits that the present Petition in its current form instituted by the Petitioners is illegal and is liable to be rejected at the outset on the ground of coram-non-judice in view of the peculiar facts and circumstances of the present case.
3. Without prejudice to the preliminary objection raised as to maintainability of the present petition before this Tribunal, the 2nd Respondent denies and disputes all averments and allegations made by the Petitioners as being false, devoid of merit, vexatious and frivolous. It is submitted that no part of the petition shall be deemed to be admitted for want of specific denial save what is specifically admitted herein.



4. The Petitioners have filed the present petition with the sole intention of harassing the 2nd Respondent. Even otherwise the allegations made by the Petitioners of fraud and question of reduction in shareholding and title of the shares is triable exclusively by the trial court. The Petitioners having acquiesced to the increase in authorized capital and the allotment of shares in favour of the 2nd respondent are now estopped from contending to the contrary. It further contended that at time of allotment of shares in favour of the 2nd Respondent the Petitioners were in control of the conduct of the affairs of the company and the entire allotment procedure was taken care of by the Petitioners, who are now taking advantage of the discrepancies in the same.
5. That the present Petition is not maintainable either on law or on facts and is liable to be dismissed *in limine*. The 2nd Respondent submits that the Petitioners have not approached this esteemed Tribunal with clean hands and are guilty of suppressing the material facts of the case. It is further submitted that the Petitioners have presented a distorted version of the facts in the present Petition. The very filing of the present Petition constitutes a gross abuse of the process of law and hence, the present Petition is liable to be dismissed with imposition of heavy costs.
6. Before averting to the merits of the case presented by the Petitioners, the 2nd Respondent would like to place on record the following preliminary objections.

Preliminary Objection as to maintainability: *The present petition is liable to be rejected on the ground of coram-non-judice in light of peculiar facts and circumstances of the case*



7. The Petitioners have *inter alia* made allegations in their petition that the 2nd Respondent has got created false, forged and fabricated the notice of extra-ordinary general meeting dated 01.02.2021 for increasing authorized share capital of the company, without the knowledge of the Petitioners. The Petitioners have further made allegations that on 01.03.2021, after realizing that the articles of association do not authorize increase in share capital, the 2nd Respondent again created false, forged and fabricated notice of EGM for alteration of the share capital of the company. The Petitioners have also made allegations that the 2nd Respondent created false, fabricated and forged board resolution for allotment of shares in his favour. The Petitioners have also made allegations of fraud against the 2nd Respondent and have made allegations regarding commission of illegal acts by the 2nd Respondent.
8. A bare perusal of the petition makes it clear that the Petitioners are seeking the reliefs mentioned hereinabove *inter alia* on the basis of these allegations of fraud, forgery and fabrication of documents by the 2nd and 3rd Respondent which has resulted in the reduction of their shareholding in the 1st Respondent Company.
9. The Petitioners have also taken the contention that the Petitioners had approved the financial accounts which show the 2nd Respondent as shareholder only because the 2nd and 3rd Respondent threatened the Petitioners that they would face hefty fines and penalties under the Companies Act, 2013 if they would not approve the financials.
10. Admittedly, the Petitioners have approached this Tribunal under Section 59 of the Companies Act, 2013. It is submitted that the petition filed by the Petitioners is liable



to be rejected on account of the fact that the petition contains seriously disputed allegations of fraud, forgery and question of title over the shares of the 1st Respondent company. It is submitted that in light of the pleadings made by the Petitioners, the appropriate forum for the Petitioners to aggravate their grievances would be the civil court of competent jurisdiction.

11. In furtherance of the above, it is submitted that the Hon'ble High Court of Delhi in Shazia Rehman v. Anwar Elahi¹ had held that "14... *As can be seen from the provisions of Section 59 (1) of the Companies Act, 2013, only the company's action (and not individual actions), of which a person is aggrieved, in relation to (a) an incorrect entry; (b) omission to make entry; or (i) delay in making the entry, of the person's name, in its register of members can be challenged before learned NCLT, and the action of an individual shareholder/ member (in the present case, the Defendant No. 1) cannot be challenged. Similarly, in terms of Section 59(2), the learned NCLT can only direct the company to rectify its register of members or to register the transfer of shares*". The court went on to hold that "18... *Section 59 of the Companies Act, 2013 does not envisage an adjudication by the Ld. NCLT in relation to the frauds committed by the company or individuals. In the present case, the specific averments in the Plaint point towards fraud committed by the Defendants No. 1 and 2. The allegations of fraud are to be adjudicated upon only by the civil court through the detailed and meticulous process of trial before it.*"
12. Further in Naresh Dayal v. The Delhi Gymkhana Club Ltd.², the Court held Individual members of a company can sue in a civil court to protect their individual rights and that this



Tribunal has no jurisdiction to decide cause of action over which it has no power under Companies Act.

13. It is further submitted that in Mukesh Jaiswal v. Phool Chand Gupta³, the Court held that this Tribunal cannot decide the question of fraud as the Plaintiff has taken specific ground of fraud.
14. It is further submitted that in accordance, with Section 430 of the Companies, Act, 2013, civil court's jurisdiction is diminished only to the extent that this Tribunal is correspondingly empowered. It is most respectfully submitted that the question as to fraud having been committed by the 2nd Respondent cannot be looked into by this Tribunal in exercise of its powers under Section 59 of the Companies Act, 2013.
15. In the present case, prior to approaching this Tribunal for rectification of the register, the questions as to whether the execution of the board resolutions and forms submitted to the MCA were forged and whether the 2nd Respondent has played a fraud on the Petitioners and the 1st Respondent would have to be decided by a civil court.
16. In the light of the decisions referred to above and the allegations of fraud, fabrication and forgery raised by the Petitioners, it is humbly submitted that the filing of the present petition before this Tribunal by the Petitioners is wholly misconceived and the civil court would be the appropriate for the Petitioners to approach for the declaratory reliefs sought by them.

Petitioners are estopped from contending that the 2nd Respondent has forged and fabricated documents relating to the allotment of shares in his favour and hence played fraud on the Petitioners and the 1st Respondent Company



17. The crux of the allegations made by the Petitioners against the 2nd Respondent is that the 2nd Respondent has *inter alia* taken advantage of the fact that the Petitioners were unavailable to look after the affairs of the 1st Respondent company. The Petitioners allege that due to the death in the family of the Petitioners and due to ill health of one of the family members of the Petitioners, they were completely reliant on the 2nd Respondent for the day-to-day functioning of the 1st Respondent company.
18. That the Petitioners have further alleged that the 2nd Respondent took advantage of the Petitioner' absence by forging and fabricating documents such as the Notice for Extraordinary General Meeting dated 01.03.2021, Extract resolution of the Extraordinary General Meeting 01.03.2021, altered Memorandum of Association, Form SH-7, Notice of Extraordinary General Meeting dated 22.03.2021, Extract of Extraordinary General Meeting dated 22.03.2021, e-form MGT,, list of allottees and e-form PAS-3.
19. That the Petitioners have taken the pleading of fraud and the ground that the Respondent No. 2 has fabricated documents and forged the Petitioners' signatures for the first time at the time of filing of this Petition. The Petitioners have further taken the untenable contention that they were informed about the increase in share capital and the allotment of shares made in favour of the 2nd Respondent for the first time when the financials were brought before them.
20. The Petitioners themselves admit that they approved and forwarded for audit the finances which reflected the name of the 2nd Respondent as shareholder. The Petitioners having approved the finances without any demur or protest, are



now estopped from taking the contention that the 2nd Respondent has played a fraud by forging the Petitioners' signatures and fabricating the documents pertaining to increase in share capital and allotment of shares in favour of the 2nd Respondent.

21. It is also pertinent to note that reasons for removal of the 2nd Respondent as a director of the 1st Respondent company as mentioned in the Minutes of the Board Meeting dated 21.07.2022 and the Extra Ordinary General Meeting dated 29.07.2022 omit any references to the allegations that have been made against the 2nd Respondent for the first time in this petition.
22. That the entire version set up by the Petitioners in the present case is nothing but an afterthought and a cooked up story for the purpose of harassing the 2nd Respondent for the reasons best known to the Petitioners. It is submitted that the Petitioners have not approached this Tribunal with clean hands and have suppressed the material facts of the case.
23. That even in the notices sent to the 2nd Respondent notifying him of the Extraordinary General Meeting dated 29.07.2022 and the Minutes of the said meeting clearly recognize the 2nd Respondent as a shareholder of the 1st Respondent company and further recognize the shareholding pattern of the Petitioners as it stands as on today.
24. That in light of the above, the Petitioners are estopped from taking the contrary stand that the 2nd Respondent has indulged in forgery, fabrication or fraud behind the backs of the Petitioners as alleged. That the Petitioners have not raised these allegations at the time of removal of the 2nd



Respondent as a director of the 1st Respondent company nor have, they raised these allegations at any other point before the removal of the 2nd Respondent as a director and there is no reason forthcoming for the delay in taking action against the alleged acts of the 2nd Respondent.

25. That the Petitioners having signed the documents such as the Extra-Ordinary General Meeting dated 29.07.2022, the Financial Accounts for the FY 2020-2021 and having sent the email dated 21.07.2022 referring to the 2nd Respondent as a shareholder are estopped from setting up the contention that the allotment of shares in favour of the 2nd Respondent was done in a fraudulent manner behind their back by the 2nd and 3rd Respondent collusively. That the 1st Petitioner has also shared a WhatsApp message addressed to the 2nd Respondent disclosing the fees that would be charged by the professional for increasing the authorized share capital of the 1st Respondent company.
26. That this entire petition is an afterthought by the Petitioners to push out the 2nd Respondent and take over hundred percent control of the shareholding of the 1st Respondent company. That in light of the above admissions made by the Petitioners in the financial documents and official communications, the present Petition is liable to dismissed.
27. The 2nd Respondent seeks the leave of this Tribunal to present a paragraph wise remark to the Petition averments on the following lines:
28. **Regarding Paragraph 2 of the Petition:** The averments made in this paragraph are admitted as true.
29. **Regarding Paragraph 3 of the Petition:** The averments made in this paragraph are admitted as true.



30. **Regarding Paragraph 4 of the Petition:** The shareholding pattern produced at the 2nd table to this paragraph is admitted as the true and correct shareholding pattern as on date. However, the allegations that the allotment of shares was void-ab-initio is denied as false.
31. **Regarding Paragraph 5 of the Petition:** The averments made in this paragraph are admitted as true.
32. **Regarding Paragraph 6 of the Petition:** The averment regarding the appointment of the 2nd Respondent as a director on 29.09.2018 is admitted as true. The averment that there was a commitment made by the 2nd Respondent that he would bring additional capital of INR 1,00,00,000/- (Rupees One Crore Only) is denied as false and the Petitioners are put to strict proof of the same. A copy of the Minutes the Meeting dated 21.09.2018 and the Extract of Minutes of the AGM dated 29.09.2018 are herewith marked and produced as **ANNEXURE - A and B respectively**.
33. **Regarding Paragraph 7 of the Petition:** The averments made in this paragraph are vehemently denied as false and the Petitioners are put to strict proof of the same. It is denied that the 2nd Respondent failed to bring committed capital to the company. The further allegations that the 2nd Respondent requested for more time and expressed he would now be in a better position to raise funds is denied as false and the Petitioners are put to strict proof of the same. In fact, the 2nd Respondent had raised an amount of INR 25,00,000/- (Rupees Twenty-Five Lakhs Only) in January 2019 and arranged for the 1st Respondent company to be approved as a registered Hajj Pilgrimage organizer, with the Ministry of Minority Affairs, Union of India. Copy of the Investment Agreement dated 31.01.2019 is enclosed. Copy



of the Certificate of Registration dated 04.06.2019 is enclosed.

34. **Regarding Paragraph 8 of the Petition**: The averment regarding the ill health and demise of the 1st Petitioner's father and the ill health of the 1st Petitioner's mother is not within knowledge of the 2nd Respondent. The averment that the 2nd Respondent considering it to be the right opportunity as the Petitioners were not in a right state of mind and created false documentation, acted ultra-vires and forged signatures of the Petitioner is vehemently denied as false and the Petitioners are put to strict proof of the same. In fact, the 1st Petitioner had forwarded a WhatsApp message dated 17.03.2021 to the 2nd Respondent informing him that the increase in share capital of the 1st Respondent company would be done without delay and informed him about the charges payable for the increase in share capital. WhatsApp message dated 17.03.2021 sent by the 1st Petitioner is enclosed.
35. **Regarding Paragraph 9 of the Petition**: The averments that the 2nd Respondent had fabricated false documents with the Registrar of Companies as the increase in authorize share capital was ultra vires the Articles of Association is denied as false and the further averment that the date of service of notice and date of EGM were planned during the period of death of the 1st Petitioner's father is also denied as false and the Petitioners are put to strict proof of the same. That a perusal of the WhatsApp message produced hereinabove at paragraph no. 33 demonstrates that the 1st Petitioner was well aware of the increase in authorized share capital.



36. **Regarding Paragraph 10 of the Petition:** The averments that the 2nd Respondent fabricated documents for the purpose of allotment of 59,500 equity shares in his favour is denied as false and the Petitioners are put to strict proof of the same. It is submitted that the Petitioners being the only shareholders of the 1st Respondent Company at the time of allotment of shares in favour of the 2nd Respondent; were responsible for the conduct of the 1st Respondent company at the time, and the entire allotment procedure was taken care of by the Petitioners. It is submitted that the discrepancies at the time of allotment of shares in favour of the 2nd Respondent are directly attributable to the Petitioners. It is trite law that a person who has done a wrong cannot take advantage of his own wrong. It is submitted that the present petition showcases the clear mala fides of the Petitioners who have cleverly and deliberately conducted the affairs of the company in a manner to prejudice the interests of the 2nd Respondents.
37. **Regarding Paragraph 11 of the Petition:** The averments pertaining to collusion with the 4th Respondent is vehemently denied as false and the Petitioners are put to strict proof of the same.
38. **Regarding Paragraph 12 of the Petition:** The averments that the modification of authorized share capital and reduction of their shareholding is herewith denied as false. The Petitioners were at all times aware of the said acts as is evidenced by the fact that they have not raised any questions against it even at the time of removal of the 2nd Respondent as director. The further allegation that the Petitioners have signed the financials after considering the penalties under the Companies Act, 2013 is herewith denied



as false and the Petitioners are put to strict proof of the same. Notice of EGM vide email dated 21.07.2022 is enclosed. Minutes of the Meeting dated 21.07.2022 along with email dated 22.07.2022 enclosed. Email dated 22.07.2022 sent by the 2nd Respondent to the Petitioners is enclosed.

39. **Regarding Paragraph 13 of the Petition:** The averment that the 2nd Respondent admitted his mistake and agreed that the Petitioners can take legal action to correct the wrong is vehemently denied as false, vexatious and absurd.
40. **Regarding Paragraph 14 and 15 of the Petition:** The averments made in these paragraphs are denied as false and vexatious and concocted for the sole purpose of filing of the present petition. The averments that the 2nd Respondent has started misbehaving with the 2nd Petitioner is vehemently denied as false. The further averment that the 2nd Respondent started misbehaving upon being informed of the legal remedy is false and concocted in addition to being contradictory to the stand taken by the Petitioners at paragraph no. 13 of the Petition. The averment that for these reasons the 2nd Respondent had to be removed as a director from the 1st Respondent company is denied as false and the Petitioners are put to strict proof of the same. That at the time of removal of the 2nd Respondent as director, he was not permitted to join the VC link as the link provided to him was erroneous which issue was raised by the 2nd Respondent via email. Email dated 29.07.2022 sent by the 2nd Respondent is enclosed. Minutes of the extraordinary general meeting dated 29.07.2022 is enclosed. Notices sent by the Petitioners recommending the 2nd Respondent's removal is enclosed.



41. That the averments regarding the falsification, fabrication, forgery and fraud alleged to have been played by the 2nd Respondent for the purpose of increasing the authorized share capital of the 1st Respondent and the subsequent allotment of shares are denied as false and the Petitioners are put to strict proof of the same. The Financial Returns for the FY2020-2021 showing the increase in authorized share capital is enclosed. It is further submitted that the Petitioners have at no point confronted or questioned the 2nd Respondent about the acts alleged to have been done by him prior to filing of this petition. In fact, the Petitioners began avoiding the calls of the 2nd Respondent and went as far as to lock him out of the 1st Respondent company's office premises prior to removing him as director in the 1st Respondent company. A copy of the entire WhatsApp conversation between the 1st Petitioner and the 2nd Respondent from 18.12.2021 till 24.09.2022 is enclosed.

The Respondent No. 3 have filed reply vide Dy.No.3116 dated 31.05.2024 in their submissions, it was stated as under:

3. OBJECTIONS filed by R3 to the Petition:

R3 has filed his objections to the petition vide Diary no _____ filed on _____ contending that the Petitioners have dragged **R3** in the present matter on baseless grounds and without any evidence to prove involvement of **R3** in dispute between shareholders and management, therefore to protect the interest of **R3** it is necessary to bring true and correct facts before Bench.

1. Petitioner has appointed M/s. Ramesh Ashwin & Karanth (Chartered Accountants) as statutory auditors of company since incorporation and currently **R3** is appointed till the Financial Year 2023-24.



4. It is stated that since incorporation of company **PI** only use to coordinate with **R3** in getting books of accounts audited and for any other professional guidance required from time to time and **R3** had always acted professionally and independently throughout their period of appointment as auditors of the company.

5. During the process of audit for FY 2020-21, **R3** observed that the authorized capital and paid up capital of the Company has been increased and the relevant ROC forms for the said increase have been performed by a practicing company secretary and accordingly, the relevant documents and forms filed with the Registrar of Companies, Bengaluru, were presented. Based on the documents produced, **R3** performed the normal audit procedures to ensure its reporting duties under the Companies Act, 2013.

6. Further, R3 affirms that based on the financial statements approved by the Petitioners, **R3** has issued its audit report. **R3** has never forced the Petitioners to approve the financial statements at any point of time.

7. In view of this it was requested that R3 being a professional, he should be discharged from the array of parties.

4. Rejoinder filed by the Petitioner to the Submissions made by the Respondents:

The Petitioner filed Rejoinder vide diary No.4263, dated 19.07.2024 it was stated as under:

1. The Petitioners deny all the allegations, objections, averments, observations, statements made in reply filed by **R2** unless otherwise specifically admitted herein.
2. Further petitioners like to state that **R2** in its reply repeatedly expressed that his actions are fraudulent which is sign of admission of wrongful action caused by **R2** therefore it is necessary to rectify admitted fraudulent activities. Approaching civil courts is next to impossible as the civil court does not have jurisdiction of Share Capital



rectification in the present matter, and it is also admitted by the respondent in para 4 of reply.

Therefore, considering same petitioners like to state that removing name of **R2** from Register of Members to protect the interest of stakeholders is beneficial for shareholders of the company.

3. Petitioner further believes that their interest can be protected only by way approaching the National Company Law Tribunal, Bengaluru Bench (hereinafter to be referred to as "**Hon'ble Bench**") therefore they have Bench to seek proper justice by rectifying register and repaying the amount transferred into Company.
4. Observations made in para 1 of statement of objections to the main petition does not warrant any specific reply as **R2** had only presented reliefs sought by petitioners.
5. Objections made in para 2 of statement of objections to the main petition are denied in total, the present petition is maintainable under the facts and circumstances presented and it should be heard by Bench only because matter pertains to Section 59 of the Companies Act, 2013 ("**Act**") and it cannot be taken before any forum for justice for rectifying present issue.

As the petitioners have provided sufficient proofs and evidence that there is illegal and void allotment of shares done by **R2** in his favour, with abuse of power and situation without following the procedures specified under Section 62 of the Act, this abuse of power in the allotment of shares is void and bad in Law.

6. Submissions made in para 3 of statement of objections to the main petition are generic and this does not warrant any reply, all the statements and allegations made on **R2** in the petition are true and correct.
7. Allegations made in para 4 of the statement of objections to the main petition are false and not even near to the truth, **R2** has failed to present the fact that how allotment was valid thus **R2** hereby admit



that Bench has jurisdiction as petitioners has presented various evidences to the fact that they were not in position to pursue allotment and there was no procedure followed to give effect to the allotment.

Further petitioners as a shareholders like to express that they had neither increase authorised capital of the nor they had given their consent to allot shares in favor of **R2**, it was **R2** who has taken undue advantage of faith reposed on him to achieve his ulterior motive of becoming shareholder of the company without following procedure for increase in authorised capital and allotment of shares to evident the same petitioner has provided enough evidences in the petition which proves that there is abuse and violation of process set under the Act. All these illegal and void activity of increase in authorised capital and allotment of shares in favor **R2** were done at the time when petitioners were unavailable to take any of such decisions and **R2** had taken such decisions which has been confirmed by the employee of the company by way of affidavit. Copy of the affidavit given by an employee of company confirming that the petitioners were unavailable to present in the company during the period during which increase in authorised capital and allotment of shares happened is enclosed.

8. Allegations made in para 5 of statement of objections to the main petition are baseless and denied completely, **R2** has not presented any proof to prove the allegations made by him. However, petitioners have presented true and correct data with respect to the illegal and void actions of **R2**, therefore, to protect the interest of petitioners it is important that the petition should be heard completely to assess the void allotment.
9. Averments made in para 6 statement of objections to the main petition are repetitive in nature therefore there is no need to give specific reply to this para as they could not prove how allotment of



shares was valid in the process of law. How **R2** was eligible to get scheme under rights issue. Hence the Bench has complete jurisdiction on the matter.

10. Observations made in para 7 of statement of objections to the main petition are correct to the extent admitted herewith, petitioners have made allegation on **R2** about illegally increasing authorised capital, alteration of articles of association and allotment of shares with abuse of position, power and authority in his favor which even true and can be evident from the annexures provided to the petition.
11. Reservations made in para 8 of statement of objections to the main petition are true to the extent admitted herewith, petitioners are seeking relief against void & illegal transactions by abusing process of law and activities carried out by **R2** for achieving his ulterior motive of controlling company by creating and filing false documents without following process of law therefore petitioners humbly prays before the Bench that fraudulent actions of **R2** to be penalized under Section 447, 448 and 449 of the Companies Act, 2013.
12. Observations made in para 9 of statement of objections to the main petition are absolutely correct to the extent admitted herewith, as there was no option left for the petitioners other than to approve the financial statements of the company as they were forced to do so by **R2**. There was no option before the Petitioner other than that on the situation and they followed what had been advised as they are not learned about all their activities, which leads to cause accordingly. 1
13. Objections made in para 10 of statement of objections to the main petition are denied in total, though the petition is filed under Section 59 an allotment itself was void in the process of Law. This malafied activity has been pursued with false documents to accomplish the hidden agenda of R2, activities and transactions done by the **R2** which are under purview of Section 447, 448 and 449, therefore this petition is within the jurisdiction of the Bench and it is in the knowledge of **R2**



that the dispute arises between shareholders and management can be referred only to the Tribunal, to correct the wrong action under the Act.

Further in the present matter is not about dispute between the parties over title of shares the basic fundamental concern of petitioner is that the shares are illegally allotted by **R2** in his favor which needs to be rectified by seeking proper justice from the Bench, so that interest of shareholders can be protected in line of justice and equity.

Such immature statements made by the **R2** that present case is respect to title of shares needs to be referred to civil courts shows that **R2** fails to understand the present case and its gravity which leads to wastage of precious time of judiciary and it is never about title of shares it is about the illegality in the allotment which gave false and void title to **R2** to achieve its alternative motive.

14. Case laws on which reliance placed by the **R2** in the para no 11, 12 and 13 of the statement of objections to the main petition does not stands good in the present matter because matter is all about void allotment by abuse of the process by **R2**, by mischievously creating false documents to give effect to the increase in authorised capital and void allotment of shares but in this case there is abuse of process of the allotment and which is wrong in the eyes of law, hence void allotment will not give an opportunity of becoming member of the company. Therefore, the present matter is more particularly of Section 59 for rectification of Register of Members to seek relief against void allotment.
15. Objections raised in para 14, 15 and 16 of the statement of objection to the main petition are denied in total and same has been kept repeating by **R2**, the R2 completely fails to understand the mechanism of Company Law and proceedings which can be initiated before the Bench in the present matter the rectification of register of



members is caused due to void allotment made by **R2** in is causing grievous harm to the interest of petitioners.

R2 is trying to divert the subject with wrong statement so that more focusing on the wrong committed by him and wants to involve the civil courts in the proceedings, so that the justice is delayed, and no resolution is found for violation done by **R2**. However, the Bench has jurisdiction over the frauds committed by **R2** in accordance with Section 447, 448 and 449, hence approaching this Bench for rectification is the only feasible option of the petitioners.

16. Observations made in para 17 of the statement of objection to the main petition are correct to the extent that admitted herewith, during the absence of the petitioner all activities were carried out by the **R2** without taking permission of petitioners and have taken undue advantage of the same which has been extended up to abusing the process of law and position.
17. Observations made in para 18 of the statement of objection to the main petition are correct, petitioners like to state that **R2** has made those violations and also failed to confirm that process and other secretarial procedure documents were followed which leads to illegal allotment.
18. Allegations made in para 19 **R2** has knowledge that petitioners have strong objections to the fabricated documents created by **R2** and it is also true fact that petitioners came to know about increase in authorised capital and allotment of shares to **R2** at the time when the financial statements of the company were brought before them the fact is also confirmed by R3 Auditor on his reply hence contention of R2 is baseless.
19. Allegations made in para 20 of the statement of objections to main petition are denied in total, petitioners were forced to approve the financial statements as per the optional situation laid before them



because of delayed facts and non-signing of financials was not solution for correcting wrong and void allotment.

20. Allegations made in para 21 and 24 of the statement of objections to main petition are incorrect, there is no materiality to hide if any let **R2** may disclose with evidence mere allegations will not prove his wrong actions right.

The ground for removal of **R2** as director of the company is produced as below: "Pursuant to breach of promises and non-performance, and more importantly, written complaints received from the Director and also, oral complaints received from customers, regarding bad and immoral behaviour of Mr. Mohammed Shakir and due to internal conflicts, it is observed that Mr. Mohammed Shakir (the Director) is not in a position to discharge his duties as Director effectively and that it is observed that the Director intends to disrupt the ease of business and is not involved in any decisions pertaining to the company operations or in handling escalations. It is also increasingly felt that the director is not aligned with the organization's vision, principles and interests. This is proving to be a hindrance to the growth of the Company, which is detrimental to the Company's future. Hence, it is proposed to remove Mr. Mohammed Shakir from the office of Directorship of the Company in the best interests of the Company. Copy of the special notice issued for removal of R2 as a director is enclosed".

21. Averments made in para 22 of the statement of objections to main petition are baseless and denied in total, **R2** is aware of the illegal allotment of shares made by him in his favor and is also having knowledge that petitioners were trying to find out appropriate solution to rectify it, therefore intention of petitioners are very clear to protect their interest through proper legal channel approached for obtaining justice the Bench.



22. Observations made in para 23 of the statement of objections to main petition are correct to the extent admitted herewith, this allegation was not raised as concern because there was clarity that on the finding of due process this will be rectified hence this cannot be ground.
23. Allegations made in para 25 of the statement of objections to main petition are false and denied in total, it is true that the illegal allotment of shares to **R2** was done without knowledge and without seeking prior permission of petitioners as they were only shareholders at that time.
- However, though the screen shots shared by **R2** for fees related to increase in authorised capital trying to misguide as it was just intimation about the filing fees with referring the reason and petitioner neither replied nor given to the same.
24. Allegations made in para 26 of the statement of objections to main petition are baseless and denied in total, the present petition is filed to rectify the register of members and rectify the void and illegal allotment of shares done by **R2** in his favor. Due to the wrong illegal allotment through conspiracy planned to reduce 100% Share Holding to less to take or due advantage. This petition is against ill will and intent of grabbing forceful control over company from petitioners when they are helpless.
25. The averments made in para 27 to 29 of the statement of objections to main petition do not require any specific reply.
26. Observations made in para 30 the statement of objections to main petition are denied the shareholding pattern presented in para 4 of petition before void ab initio allotment to **R2** is correct as allotment made without following any process of law by creating just some fake documents hence stands void ab initio in favor of **R2** is void ab initio as expressed in petition.



27. The averments made in para 31 of the statement of objections to the main petition does not require any specific reply.
28. Averments made in para 32 of the statement of objections to main petition are denied in total, as expressed in petition in detailed **R2** has made an oral promised to bring investment up to INR 1,00,00,000/- and based on confirmation given by **R2**, petitioners had appointed him as a non-executive director of the company.
29. Allegations made in para 33 of false and incorrect, as stated in petition it is true that **R2** failed to bring any agreed investment, however the claim made by **R2** that he had raised Rs. 2500,000 investments are completely false against to be disputed due to wrong stamp paper and details in various places. Copy of the investment agreement is enclosed.
30. Objections made in para 34 and 35 of statement of objections to main petition are not sustainable and requires strict proof for the same, **R2** is completely in knowledge that there is a demise of Petitioners' father and mother of petitioners are suffering from ill health and considering this situation **R2** got himself encouraged to plan void and illegal activity of allotting shares to himself without approval of shareholders and Board of Directors.
- Further the claim made by the **R2** that he has informed about increase in authorised capital through what's app is false, As R2 had shared some screen shot of calculation of authorized capital but it was unclear with that how he is suppressing that there was approval form shareholders. Approval of Shareholders under Section 61 should be at shareholders' meeting after issuing of notice by attending in physical or through Virtual Conference, now its onus on R2 that there is approval of shareholders for increase in authorized capital.
31. Allegations made in para 36 of statement of objections to main petition are false and shows to the extent how **R2** can lie under oath before the Bench, the question of whether petitioners involved in increase in



authorised capital and allotment of shares does not arise because they were not available and in state of mind to take any decision with respect to the company during period in which **R2** had forcefully taken control over transaction of company which is also proved by affidavits of the employee and not producing renunciation letter, attendance sheet of board meeting and general meeting correspondence Secretarial documents proves that allotment was void-ab-initiation and illegal in the process of law.

32. Objections raised in para 37 of statement of objections to main petition are incorrect and denied in total it is falsely stated by **R2** that petitioners alleged that he had colluded with **R4**, however in fact and as stated in petition **R2** has acted in collusion with **R3**.
33. Allegations made in para 38 of statement of objections to main petition are repetitive in nature and has been already addressed by the petitioners in earlier paras. However as stated earlier also that, due to fear and non-compliance petitioners were forced to approve the financials that do not mean that they had consented activities carried out by **R2** keeping them in dark which is also accepted by R3.
34. Averments made in para 39 of statement of objections to main petition are completely denied and it's true that R2 had agreed that he has made mistake and agreed that petitioners can take necessary steps to rectify the same.
35. Allegations made in para 40 of statement of objections to main petition are false all the allegations made by petitioners on **R2** are true and correct as per their knowledge and backed with appropriate evidences. Further misbehaviour with P2 was one of the reasons for removal of **R2** as a director of the company the reason for removal of **R2** has been explained by petitioner in earlier paras.
36. Allegations made in para 41 of statement of objections to main petition are denied in total and petitioners like to state that they have provided enough proofs and evidences that the **R2** had illegally increased



authorised capital and allotted shares in his favor without taking prior approval of shareholders, Board of Directors and without ensuring compliances as per Companies Act, 2013.

37. Further as expressed earlier also it was informed to the **R2** that petitioners are seeking proper relief for the illegal allotment made by him in his favor and it was also agreed by **R2** that he had done mistake by allotting shares in his favor therefore taking stand that petitioner has not questioned or confronted before making this petition is false. Further the petitioners never sideline **R2** from company it is own actions that made him away from the business of company just to protect the interest of shareholders of the company and image of the company in public as it deals with pilgrims and governmental officials.

5. ANALYSIS:

Heard the Ld. Counsels for the Petitioner and Respondents. We have also gone through the Written submissions filed and the material available on Record. We have also gone through the Provisions of the Companies Act, 2013.

To decide the issues involved, it is necessary to examine the following questions

1. Whether the NCLT can examine and decide the Issues of fraud
Consequently, Whether this Petition is maintainable or not
2. Whether a Rights issue can be made to increase the paid up Capital without increase in the Authorised Capital.
3. Whether Rights issue can precede the increase in Authorised Capital.
4. Whether an Act not as per the Provisions of the Companies Act, 2013 can be considered to be Valid.



5.1. **Whether the NCLT can examine and decide the Issues of fraud Consequently, Whether this Petition is maintainable or not**

The present petition filed under Section 59 of the Companies Act, 2013, seeks rectification of the Register of Members. The dispute does not relate to civil title simpliciter (Title Owner of the Shares) but arises out of an alleged illegal increase of authorised share capital, unlawful allotment of shares and consequent alteration of the shareholding structure. The petition also contends that the procedure followed for Rights issue violates the provisions of the Companies Act, 2013. NCLT is vested with the Jurisdiction over matters relating to the Provisions contained in the Companies Act, 2013. It can also deal and decide if any actions have occurred which are inconsistent with the provisions laid down by the Companies Act, 2013. Such matters fall squarely within the jurisdiction of this Tribunal.

The main contention raised by the Respondent 2 is that the issue of fraud does not fall within the Jurisdiction of this tribunal and it has to be agitated before a Civil Court only. This view is not Correct in view of the decision of the Hon'ble Supreme Court in the Case of **Shailja Krishna vs Satori Global Limited in CIVIL APPEAL NOS. 6377-6378 OF 2023**. The Hon'ble Court considered this issue as under

"29. In the landmark decision of [Tata Consultancy Services Ltd. v. Cyrus Investments \(P\) Ltd.](#)¹⁹, this Court eruditely delineated the jurisdiction of the Tribunal while passing orders on an application complaining of oppression and mismanagement which is that the Tribunal ought to bring an end to the complaints of oppression and mismanagement and must not only avoid providing solutions that tend to elongate the complaints, but must also provide a solution to the problems. The relevant passages from such judgment read as follows:

180. Therefore, despite the law relating to oppression and mismanagement undergoing several changes, the object that a Tribunal should keep in mind while passing an order in an application complaining of oppression and



mismanagement, has remained the same for decades. This object is that the Tribunal, by its order, should bring to an end the matters complained of.

181. In other words the purpose of an order both under the English law and under the Indian law, irrespective of whether the regime is one of “oppressive conduct” or “unfairly prejudicial conduct” or a mere “prejudicial conduct”, is to bring to an end the matters complained of by providing a solution. The object cannot be to provide a remedy worse than the disease. The object should be to put an end to the matters complained of and not to put an end to the company itself, forsaking the interests of other stakeholders. It is relevant to point out that once upon a time, the provisions for relief against oppression and mismanagement were construed as weapons in the armoury of the shareholders, which when brandished in terrorem, were more potent than when actually used to strike with. While such a position is certainly not desirable, they cannot today be taken to the other extreme where the tail can wag the dog.

182. The Tribunal should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions.

It is on the touchstone of the objective behind these provisions that the correctness of the four reliefs granted by the Tribunal should be tested. If so done, it will be clear that NCLAT could not have granted the reliefs of:

182.1. Reinstatement of CPM.

182.2. Restriction on the right to invoke [Article 75](#). 182.3. Restraining RNT and the nominee Directors from taking decisions in advance.

182.4. Setting aside the conversion of Tata Sons into a private company.

(2021) 9 SCC 449 (emphasis ours)

30. The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such



matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.

31. In the instant case, it is an admitted fact that the determination of whether the gift deed is valid or not is central to the decision herein and, therefore, the NCLT did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the COMPANY, including but not limited to the AoA and the Memorandum of Association.”

In view of the above discussion and the Decision of the Hon’ble Supreme Court, it is clear that NCLT has wide jurisdiction to all such matters that are incidental and/or integral to the Complaint and hence, the petition is maintainable.

2. Whether a Rights issue can be made to increase the paid up Capital without increase in the Authorised Capital and Whether Rights issue can precede the increase in Authorised Capital

The Capital to be issued by a Company should be first authorised as per the Articles of Association. Further the Articles must allow increase or decrease in the Capital as per the requirements of the Company. In the absence of such a provision in the Articles, a company cannot increase the Capital beyond what is authorised.

As per the facts of the present case,

- a. The Rights issue took place on 01.02.21
- b. On that date the Authorised Capital was 18 Lakhs only of Rs 10/- each comprising of 1,80,000 Shares As per Article 3 of AOA and the whole of such authorised capital was issued and paid up.



- c. Hence, there was no possibility of issuing further Capital in any manner.
- d. The Decision to increase the Authorised Capital was taken on 22.03.21
- e. This act of increasing the Authorised Capital is subsequent to the Rights issue.
- f. When there was no Authorised Capital, issue of further Capital is **Void ab initio**.

This Bench further finds that the alleged increase in authorised share capital and alteration of capital structure have not been shown to be supported by a valid shareholders' resolution under Section 61, due notice to shareholders, or lawful alteration of the Memorandum of Association. The burden of proving statutory compliance has not been discharged by Respondent No. 2.

3. Rights issue

Section 62 of the Companies Act, 2013 mandates that any issue of further shares must be offered to existing shareholders by way of a valid rights issue, after issuance of a proper letter of offer, grant of statutory offer period, recognition of the right of renunciation, prior approval of the Board of Directors and compliance with the Articles of Association and applicable statutory procedures mentioned under Section 6 of the Act.

From the material placed on record, this Bench finds that Respondent No. 2 has failed to conclusively prove that the statutory requirements of the Rights offer which include the following have been met.

- a. A valid Board Meeting was convened.
- b. A lawful rights offer was made to the Petitioners
- c. Statutory notice and offer period were granted
- d. The Petitioners were afforded an opportunity to exercise the Option to apply for or renounce their rights.



In the absence of compliance of such statutory requirements, **the allotment of shares in favour of Respondent No. 2 is in violation of Section 62 and is illegal and void ab initio.**

The record prima facie indicates that the impugned actions were carried out unilaterally, without the knowledge or consent of the Petitioners, resulting in dilution of their shareholding.

The Hon'ble Supreme Court in *Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212, held that share allotments made in breach of statutory and fiduciary duties, particularly for the purpose of gaining control, are liable to be set aside. In *P. Varadarajan v. Dr. A. Jawahar Palaniappan*, explained that the Supreme Court in *Dale & Carrington* emphasized the "proper purpose doctrine" regarding directors' duties. Directors must act bona fide and not use their powers for extraneous purposes such as maintaining or acquiring control over the company. The Court noted that wrongful entries or omissions in the register of members cannot be corrected by the company itself but require rectification by the Company Law Board, underscoring the sanctity of the register. Therefore, *Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan* establishes important principles on directors' fiduciary duties, the proper purpose doctrine, and remedies against oppressive conduct in company management. It underscores that directors must exercise their powers in good faith and for proper purposes, and shareholders have recourse against acts of oppression or mismanagement.

4. Whether an Act not as per the Provisions of the Companies Act, 2013 can be considered to be Valid

This Bench also notes that by virtue of Section 6 of the Companies Act, 2013, the provisions of the Act override any contrary arrangement contained in the Memorandum, Articles or any internal understanding. **Any action taken in derogation of the mandatory statutory procedure is rendered illegal and unenforceable.**



6. **DECISION:**

After hearing the Respondent R3 and after going through the written submissions made by both the parties, this Authority vide proceedings dated 26.06.25 discharged R3.

The cumulative facts on record establish that the impugned increase of authorised share capital and allotment of shares are not mere procedural irregularities but go to the root of the matter, rendering the entire exercise **ultra vires and void ab initio**.

In Conclusion and on the basis of the material available, We hold that the allotment of shares in favour of Respondent No. 2 is illegal and void ab initio, and **the consequential entries made in the Register of Members are liable to be rectified** under Section 59 of the Companies Act, 2013.

In View of the above and as the acts of Respondent No. 2 are held to be **ultra vires the Companies Act, 2013 they are prima facie void ab initio**.

6.1. We direct that

- a. The Rights Shares allotted in Violation of the Provisions of the Companies Act,2013 is Set aside.
- b. The Register of Members be rectified by removing the name of Respondent No. 2 in respect of the impugned allotment.
- c. The ROC is Directed to take on record the Revised Shareholding.

Accordingly, the Petition is **allowed**.

6.2 The Registry is directed to forward a Copy of this Order to ROC for Information and necessary action.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**