

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**  
**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) No. 7 / 2022**  
**(IA Nos. 53, 54 & 55 / 2022 and IA No. 1350 / 2025)**

**In the matter of:**

**P.M. Johnny**

Pittappillil House,  
Bandadka P.O., Kasarkode District  
Kerala – 671 541

... Appellant

**V**

**K.J. Paul**

Kureekal House,  
Near Thikkakara Temple,  
University Post, Kochi,  
Kerala – 682 021

...Respondent No. 1

**Bindu Paul**

W/o K.J. Paul, Kureekal House,  
Near Thikkakara Temple,  
University Post, Kochi,  
Kerala – 682 021

...Respondent No. 2

**K.A. Mathai**

Kochappilly House,  
Chembumku, Kakkanad,  
Ernakulam,  
Kerala – 682 030

...Respondent No. 3

**Seaqueen Builders Pvt. Ltd.**

3<sup>rd</sup> Floor, Kurickal Arcade,  
Near Changamuzha Park,  
Edapally, Kochi, Kerala – 682 024

...Respondent No. 4

**K.P. Augustine**

VII / 131, Sastri Nagar,  
Kuzhikkattumyalil House,  
Nadathara, Trichur, Kerala – 680 014

...Respondent No. 5

**Dr. Santha Kumar K**  
Chartered Accountant,  
Residing at TC 39 / 2738,  
'Sree Priya', Koorkkanchery,  
Thrissur, Kerala – 680 007

**...Respondent No. 6**

**Suresh T.N.**  
Chartered Accountant  
M/s. Salitha & Suresh,  
66/3785-A, Meenakshi Estate,  
Rajaji Road, Ernakulam,  
Kochi, Kerala – 682 035

**...Respondent No. 7**

**The Registrar of Companies, Kerala**  
Company Law Bhavan,  
BMC Road, Thikkakara P.O.,  
Kakkanad, Kochi,  
Kerala – 682 021

**...Respondent No. 8**

**Augustine Paul Manoj**  
94, Postling Street, Kenwick,  
Western Australia – 6107

**... Respondent No. 9**

**Present :**

For Appellant : Mr. Sriram Venkatavaradan, Advocate

For Respondents : Mr. Joseph Kodianthara, Senior Advocate  
For Mr. Prasad Vijayakumar, Advocate for R1 & R3  
Dr. KS. Ravichandran, PCS for R2  
Mr. Bhagavath Krishnan, Advocate  
For Mr. Mohan Pulickkal, Advocate for R5 & R9

**J U D G M E N T**  
**(Hybrid Mode)**

**Per : Justice Sharad Kumar Sharma, Member (Judicial):**

1. The Appellant by invoking the provisions contained under Section 421 of the Companies Act, puts a challenge to the impugned order dated 01.12.2021, that was

passed by the Ld. NCLT, Kochi Bench, in Company Application No. 86 / KOB / 2021, as preferred in TCP / 14 / KOB / 2020.

2. The consequential effect of the impugned order was that, the Appellant who has not expressed his willingness to buy the shares at the higher price of Rs.1,941/- and as per the direction issued by the Judgment of 07.12.2017, as it was rendered in TCP / 67 / 2016 P.M. Johny & Anr. V. M/s. Seaqueen Builders Private Limited & 3 Ors., being the proceedings those were held under Sections 397, 398, 402, 111, 237, 210, 220, 260, 291 & 292 of the Companies Act, 1956, wherein the Appellants were given the first option to buy the shares of the Respondent herein.

3. Primarily, the controversy at hand, would be confined to the determination about the implications, which would be flowing from the order that was passed by the Ld. NCLT on 07.12.2017, as to upto what extent, the latitude which was given therein could be extended for the purposes of determining the propriety of the impugned order, which is subject matter under challenge in the instant Company Appeal.

4. Facts are that, the proceedings of the aforesaid Company Petition being, TCP / 67 / 2016 stood initiated at the behest of the Appellant herein, wherein the Respondent No. 4, Company herein i.e. M/s. Seaqueen Builders Private Limited, was alleged to have been incorporated on 02.01.1995 and was registered with the Registrar of Companies having its Head Office situated at 32 / 2982 B. Sahrudaya Building, Ponnuruni, Vyttila P.O., Ernakulam – 682 019.

5. The Company was engaged in the Real Estate business of the property development, business in the manner as prescribed in the Memorandum of Association of the said Company.

6. The controversy began and which was made as subject matter of the proceedings of the aforesaid Company Petition (TCP/67/2016) was that, the Petitioner No. 1, therein i.e the Appellant to the instant Company Appeal contended that he was holding 59000 shares in the Respondent No. 4 Company and the Petitioner No. 2 therein, contended that he was the ex-director of the Respondent No. 4 Company i.e. M/s. Seaqueen Builders Private Limited and claimed to have held 1000 shares.

7. The Petitioners in the said Company Petition (TCP/67/2016) claimed that, together they held 60000 shares out of the total 95000 issued shares of the 1<sup>st</sup> Respondent Company therein / 4<sup>th</sup> Respondent Company herein, as it was said to be standing as on 31.03.2008, which was representing 63% of the issued share capital structure of the Respondent No. 4 Company herein.

8. Hence, they contended that, in accordance with the share capital holding of the Petitioners therein, they fulfilled the requirements as prescribed under Section 399 of the Companies Act, for filing of the Company Petition (TCP/67/2016).

9. The Appellant, who was one of the Petitioners in the said Company Petition, questions the allotment made on 25.04.2008 and 11.08.2010.

10. Besides that the Appellant had also questioned the very continuation of Respondent No. 3 therein as Director and appointment of Respondent No. 4 therein as a Director of the Respondent Company.

11. According to the Petitioner, as the case had developed before the Ld. NCLT, the shareholding pattern of the Respondent Company, as it stood on 30.09.2005, was as under which is reproduced:

Name	No. of shares	Percentage	Status in this Petition
K.J. Paul	25000 shares of Rs.10	26 %	Respondent No.2 37%
Bindu Paul	10000 shares	11%	
K.P. Augustine	1000 shares	1%	Petitioner No.2 63%
P.M. Johny	59000 shares	62%	
-----		-----	
95000 shares		100%	

12. The Appellant's case was that, the aforesaid shareholding structure of the Company was continued in the same fashion till 31.03.2008 and according to the copies of the Annual Returns, as it was submitted on 30.09.2005 and 29.09.2007 that were placed on the file showed the aforesaid shareholding structure of the Directors of the Respondent Company.

13. The Appellant's case was that, since the majority capital in the Company was contributed by them, but, the majority Directors on the Board i.e. the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the Company Petition they had acted in a dubious manner, in a way that was detriment to the interest of the Respondent Company and the method that was resorted to, by them was in a fashion to keep away the 1<sup>st</sup> Petitioner, Mr. P.M. Johny who was the single largest shareholder and the Petitioner No. 2 Mr. K.P. Augustine who was a Director away from the affairs and management of the Company despite of having a collective shareholding of over 63% in Respondent Company.

14. The Appellant contended that, as the Respondents herein were trying to misuse their position as Directors and were trying to usurp the majority stakes from the Petitioner by making illegal and fake Share allotments in their name without the knowledge of the Petitioners aiming at to gain control of their Company. Accordingly, the Petitioners have given a challenge to the allotment of Shares in relation to the allotments, which were made on 25.04.2008 and 11.08.2010.

15. Be that at it may, the aforesaid Company Petition (TCP/67/2016) was taken up on merits and it was decided by the Ld. NCLT holding thereof that, the allotment of Shares i.e. 5,05,000 shares in favour of Respondent Nos. 2 & 3 therein as made on 25.04.2008 and 11.08.2010 were declared to be illegal and the same was set aside.

16. Consequently, the Ld. NCLT had further held that, the Board's Meeting, which was said to have been conducted on 25.04.2008 and 11.08.2010 were held to

be non-sustainable in the eyes of law and the same was declared to be illegal and all the decisions taken thereof by the said Board's Meeting were turned down, and besides that also the EoGM dated 22.01.2011 and the right offers that were made on 01.02.2011 were also declared to be illegal and void.

17. Based upon the aforesaid conclusion, which was made in the Order of 07.12.2017, the Ld. Tribunal proceeded to close the Company Petition by making the following conclusive observations:

*“Keeping in view the totality of circumstances and the intention of the parties, it is proposed to appoint an independent Auditor within three weeks of passing this Order, with the consensus of the Board of Directors comprising of 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Respondent, failing which, this Bench on mention by any of the Directors, shall appoint the independent Auditor out of the names, if suggested, by the parties, who (Independent Auditor) shall determine the true and fair value of the shares of 1<sup>st</sup> Respondent Company by taking into consideration three Financial Years w.e.f. 2011 onwards. Based on the said value, and keeping in view the shareholding pattern as on 30.09.2005, the first opportunity for purchase of shares of Respondents is given to Petitioner, failing which the Respondents shall purchase the shares of the Petitioner. This process shall commence after the submission of the report of the independent Auditor, who shall submit the same within four weeks from the date of his appointment, and shall get completed within the twelve weeks thereafter. Till this process is completed, there shall not be any change in the composition of the Board constituted by this Bench, and shareholding pattern shall remain the same as on 30.09.2005. The fee of the independent Auditor shall be paid by the 1<sup>st</sup> Respondent Company which shall be fixed as per mutually agreed terms. Accordingly, the interim order, if any stands vacated. No order as to costs.”*

18. Before we proceed to venture upon the other issues, which had been argued by the Ld. Counsels for the parties.

19. Primarily the controversy, which would be required to be ventured into by this Appellate Tribunal is, as to what would be the parameters which were required to be adopted by the parties to the proceedings, where it was directed for an appointment of an Independent Auditor, who was to take into consideration, the three Financial Years books, the financial standing and the value of the Shares which it carried with effect from 2011 onwards and keeping in view the shareholding pattern as it existed on 30.09.2005, the first opportunity for purchase of the Shares of the Respondents, was given to the Petitioner / Appellant, failing which, the Respondent were then required to purchase the shares of the Petitioner / Appellant.

20. It is this portion of the observation made in the Order of 07.12.2017, which would be the subject matter of scrutiny, as to whether, what rationale inferences could be drawn from the conclusion, which had been extracted hereinabove.

21. The Appellant had attempted to interpret, that upon the procurement of the Valuation Report, as it was directed to be obtained by the Judgment of 07.12.2017 as observed above, and after determination of the shareholding pattern, keeping in view of the shareholding as it was existing in relation to the respective shares held by the Directors in the Respondent No. 1 Company, the Ld. Tribunal felt that, it would be appropriate to appoint an Independent Auditor out of the name as suggested by the parties, in those proceedings of the should jointly appoint an Independent Director out of the name as suggested by the parties in those proceedings of the TCP / 67 / 2016 and the Auditors who was to be thus appointed

were to be independent in nature and will be those, who do not have any relationship with regards to the affairs of the Respondent Company and were directed to determine the true and fair value of the shares of the Respondent Company on the basis of the reports of three previous Financial Years i.e. with effect from 2011.

22. Its based upon the fair value, which was required to be determined by the Independent Auditors who was to be appointed by the Directors, the Ld. Tribunal in the Judgment of 07.12.2017 observed that;

- a) The first opportunity of purchase of shares of the Respondents **be given to the Petitioner.**
- b) Failing which, the Respondent shall purchase the shares of the Petitioner.
- c) In compliance of the directions issued by the Judgment of 07.12.2017 as rendered in TCP / 67 / 2016, it was observed that, both the parties have agreed to appoint two Auditors for the purposes of the procurement of fair value report of the shares as held by them in Respondent No. 1 Company.
- d) The Order as rendered on 07.12.2017, was put to challenge before this Appellate Tribunal in CA(AT) No. 6 / 2018 and the same was upheld by the Appellate Tribunal except for few modification and has issued the following directions:
  - a) It was observed that, in accordance with the observations that were made in Para 34 of the Impugned Order dated 07.12.2017, that ``shall determine the true and fair value of the shares of the Respondent No. 1

Company, by taking into consideration the reports of three Financial Years with effect from 2011 onwards”, shall be deleted.

b) It was directed that, the aforesaid paragraph to be deleted and the following observations made in the order passed by the Appellate Tribunal on 13.12.2018 was that, in their place, the following words are substituted, “shall determine the true and fair value of the shares of the Respondent No. 1 Company, as on the date of its decision, i.e. 07.12.2017”. This was the modification introduced by the Appellate Tribunal to the Order of 07.12.2017 by the Judgment, which was made by the Appellate Tribunal on 13.12.2018. In accordance with the orders passed on 07.12.2017, as well as the order of NCLAT dated 13.12.2018, the Ld. Tribunal was to appoint an independent Auditor to determine the true and fair value of the Company.

23. In furtherance thereto, the Appellant had preferred IA/36/KOB/2020, praying to appoint an independent Auditor as per direction of Ld. NCLT Order dated 07.12.2017, the Ld. Tribunal on 19.02.2020, proceeded to pass an Order in IA/36/KOB/2020, thereby, appointing two independent Auditors to determine the true and fair value of the shares of Respondent Company. Relevant part of the Order dated 19.02.2020 is extracted hereunder:

*“After hearing the learned counsel for the Applicants and the learned Senior counsel for the respondents and also after perusing the whole case records including the Orders of NCLT, Hon’ble NCLAT and judgement of*

*Hon'ble High Court of Kerala, appended with the application, we pass the following order:*

- (i) We hereby appoint CA Dr. Santha Kumar K, residing at TC 39/2738, Sree Priya Koorkkanchery, Thrissur, from the panel of names suggested by the applicant and CA Suresh T.N., M/s Salitha & Suresh, 40/7383, Meenakshi Estate, Rajaji Road, Ernakulam, from the panel of names suggested by the respondents, as two independent auditors to individually undertake true and fair value of shares of the Respondent Company as on 07.12.2017. The Auditors are directed to submit the valuation report within a period of 45 days from the date of this Order to the Respondent Company. Thereafter, the entire process delineated in the NCLT, Chennai Order dated 07.12.2017 should be complied within 12 weeks by the parties.*
- (ii) The fee for valuation of respondent company will be borne by the respondent company itself.*
- (iii) Shri. K. J. Paul, Respondent No.1 in this I.A. is directed to file the requisite statutory forms immediately, including those relating to the appointment of the 1<sup>st</sup> applicant as the Managing Director, change in the designation of the Respondent No. 1 from 'Managing Director' to 'Director' and removal of the Respondent No. 2 and Respondent No. 3 from the directorship of Respondent No. 4 Company. He is also directed to participate in the Board Meetings in future and extend his co-operation for the smooth conduct of business of the respondent company.'''*

24. In furtherance thereto, CA Mr. Suresh TN and CA Dr. Santhakumar, had submitted their Valuation Report on 19.05.2021 and 17.06.2021, respectively. Thereafter, the Respondent Nos. 2 to 4 to the main Company Petition filed their application being CA/86/KOB/2021, on 13.08.2021, seeking for a relief to the effect that in an event, if the Respondent Nos. 2 & 3 / Petitioners are not opting to buy the

Applicant / Respondent Nos. 1 to 3's 35,000 shares in the Respondent No. 1 Company at a higher share value of Rs.1,941/-, the Applicant / Respondent Nos. 1 to 3 who have expressed their willingness to do so be permitted to buy out the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents / Petitioners as per the value of Rs.1,941/- with respect to 60,000 shares that were held by them in the Respondent No. 1 Company.

25. The Chartered Accountant thus appointed to determine the fair value of the shares of Company i.e. one Mr. Suresh T N, he had submitted his Valuation Report on 19.05.2021 valuing the shares of the Respondent No. 1 company at Rs.1,941/- per share, as it was the existing value on 07.12.2017, the Respondents in the Company Petition, had unconditionally accepted the above valuation of Rs.1,941/- per share and recorded their willingness to buy 60,000 shares of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents / Petitioners in the Company Petition.

26. Whereas on the other hand, Dr. Santhakumar, the Chartered Accountant, as suggested by the Appellants herein, in his Valuation Report dated 17.06.2021, had valued the shares of the Respondent No. 1 Company at the rate of Rs.1,115/- per share as existing as on 07.12.2017.

27. But, since there had been differences in the valuation of the shares in the two report as submitted CA Mr. T N Suresh and CA Dr. Santhakumar, because, there were various factors, which was attributed in the report for the purposes of justifying the two valuations, to the value the shares of the Respondent No. 1 Company.

28. In CA / 86 / KOB / 2021 in TCP/14/2020, as it was preferred by the Respondent Nos. 1, 2 & 3 to the instant Company Appeal. They had filed the aforesaid Interlocutory Application before the Ld. Tribunal on 13.08.2021 contending thereof that, in an event if the Opposite Number. 2 & 3, to this Application were not opting to buy out the Applicants / Respondent Nos. 2 to 4, 35,000 shares in the Respondent No. 1 Company, at the higher rate as it was determined by the Chartered Accountant Mr. Suresh T N, then, the Applicant / Respondent Nos. 2 to 4, had expressed their willingness to buy the shares, and has also sought that they may be permitted to buy out the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents / Petitioners shares as per the value fixed of Rs. 1,941/- in respect of 60,000 shares held in the Respondent No. 1 Company.

29. In the application CA/86/KOB/2021 thus preferred by the Respondents herein, they had modulated relief is extracted hereunder:

*`` In view of the facts mentioned above the Applicants/Respondents 2 to 4 pray for the following reliefs:*

- (a) To take on record the documents annexed hereto as Annexures **A1, A2, A3 and A4.***
- (b) To direct that in the event of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents / Petitioners are not opting to buy out the Applicants' / Respondents 2 to 4 35,000 shares in the 1<sup>st</sup> Respondent Company at the higher share value of Rs.1,941/-, the Applicants/Respondents 2 to 4 (who have expressed their willingness to do so) be permitted to buy out the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Petitioners at the per share value of Rs.1,941/- with respect to the 60,000 shares held in the 1<sup>st</sup> Respondent Company.*

- (c) *To direct that in the event of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Petitioners buying out the shareholding of the Applicants/Respondents group, outstanding loans of the Applicants/Respondents group in the 1<sup>st</sup> Respondent Company as per Annexures A1, A2 and A3 statements annexed hereto be also paid with appropriate future interest from 31.07.2021.*
- (d) *In the event of the Applicants/Respondents group exiting the company, direct the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Petitioners to forthwith furnish personal guarantee to secure the outstanding also of Rs.4,26,97,780/- with LIC HFL and release the personal guarantees furnished by the 1<sup>st</sup> Applicant Sri. K.J. Paul and 2<sup>nd</sup> Applicant Smt. Bindhu Paul.*
- (e) *Any other order as may be deemed fit and proper on the facts and in the circumstances of the case.”*

30. Its this application which has been decided by the Ld. Tribunal by this impugned order which is under challenge in this Appeal, and more particularly the concern has been raised to the observations which has been made in Para 18 of the impugned order, which is subject matter of challenge, wherein the Applicants to CA / 86 / KOB / 2021 i.e. the Respondents in the instant Company Appeal had accepted the higher Valuation Report as it stood submitted by Mr. Suresh TN, the Chartered Accountant and they have expressed their willingness to purchase the Shares at the rate of Rs.1,941/- per share, owing to the fact that the Appellant i.e. Respondent Nos. 2 & 3 in this Application (CA/86/KOB/2021) have not expressed their willingness to purchase the shares at the higher value as it had been determined by Chartered Accountant Mr. Suresh T N i.e. at the rate of Rs.1,941/- per share.

31. Hence, in the light of observation made in the Order of 07.12.2017, as there was dis-inclination by the Petitioners to purchase the shares, they contended that, as

the Appellants herein, who were the Petitioners in the Company Petition had not expressed their willingness to purchase the shares at higher price of Rs.1,941/- per share, the Respondents herein may be granted an opportunity to purchase the shares as per the directions contained in the Judgment order of 07.12.2017.

32. The Ld. Tribunal while recording its finding in Para 17 of the impugned order had recorded that, the first opportunity to purchase the shares was required to be given, to be availed by the Appellants herein and since they have not expressed their willingness to purchase the shares as per the Valuation Report of CA Mr. Suresh TN, the Ld. Tribunal had no other option except to comply with the directions given in the order of 07.12.2017, as passed by Ld. NCLT offering the later purchase of shares to the Respondents herein, based upon fair Valuation Report submitted by Mr. Suresh T N, hence, the offer to purchase the shares of the Respondent Company was given to the Respondent herein, with the specific finding recorded in the order that, the Appellants herein had shown in their dis-inclination to purchase the shares at the fair value as it was settled by the Valuation Report of Mr. Suresh T N, and thus, it was proposed to sell the shares to the Respondents herein. A specific finding has been recorded that the first option was given to them but, that has been failed.

The relevant part is extracted hereunder:-

*“During the course of arguments, it is submitted by the applicants herein that they are willing to accept the higher valuation submitted by Sri T.N. Suresh Chartered Accountant at Rs.1941/- per share, if the respondent / Petitioners in the main Company Petition are not willing to buy out the shares at the said share price. In this respect, as per the decision of NCLT, Chennai bench vide*

*order dated 7<sup>th</sup> December, 2017, first opportunity is to be given to the Respondent / petitioner to purchase the shares of Applicant / Respondents. However, the valuation done by the CA Shri T.N. Suresh is not acceptable to his parties, and his request was to take the average of the two valuations. Hence, the first option given to them was failed. Since, the applicants herein are ready to purchase the share for a value of Rs.1941/- per share. In order to solve the issue forever, this Tribunal has to accept their submissions and pass orders.’’*

33. This Company Appeal was argued earlier on number of occasions and today when the proceedings of the Appeal have revived back, the Appellants Counsel contended that though they had restricted their challenge to the impugned order of 01.12.2021, on the ground with regards to the pattern and modalities adopted by the Chartered Accountants who were thus appointed as an independent Auditors for the purposes of valuation of the shares of Respondent No. 4 Company which has been distinctly fixed by them, as to be Rs.1,941/- per share by CA Mr Suresh T N and Rs. 1,115/- as per the report submitted by CA Dr. Santhakumar.

34. But, on the revival of the proceedings of the Appeal, we will have to bear in mind that, after a lapse of more than 5 years, today a different stand altogether has been taken by the Appellant that, they are willing to purchase the share as per the report of Valuation of the Chartered Accountant Mr Suresh T N i.e. valuing the shares at Rs.1,941/- per share, the said proposal by way of an offer now by the Appellant herein today, has been vehemently opposed by the Respondents.

35. The Ld. Counsel for the Appellant contended that, the entire proceedings resulting into the culmination of the order of 01.12.2021 is bad in the eyes of law

because, there was no strict compliance of the order of 07.12.2017, as it was rendered by the Ld. NCLT in Company Appeal TCP / 67 / 2016 P.M. Johny & Anr. V. M/s. Seaqueen Builders Private Limited & 3 Ors. and the logic as assigned in support of his argument by the Ld. Counsel for the Appellant was that, in view of the directives that were given by the said order of the Ld. Tribunal dated 07.12.2017, the Ld. Tribunal was duty bound to have first offered to the Appellant to purchase the shares at the rate, which was settled by Mr. Suresh T N at Rs.1,941/- per share, but, no such offer was ever extended to them, they contended that, in the light of the grounds, which has been taken by them in the Memorandum of Appeal, the entire proceedings of proposal to sell the shares of the Respondent No. 1 Company to the Respondents would be bad in the eyes of law.

36. The argument as extended by the Ld. Counsel for the Respondents was contrary to the argument extended by the Appellant that, in the light of the specific finding, which has been recorded in the impugned order in fact, there had been an apparent and a knowing dereliction on part of the Appellant, who had failed to accept the fair value as it was given by the Auditor Mr. Suresh T N, valuing the share at Rs.1,941/- per share because, since, despite of the offer having been extended to them by the order of 07.12.2017, they have not availed the same, and hence, after such a lapse of time period, they cannot take the liberty to still revive back that offer and seek for extension of offer for purchase of the shares on the basis

of the report submitted by the Chartered Accountant Mr. Suresh T N, which was report showing higher valuation.

37. The argument as extended by the Ld. Counsel for the Appellant based upon the grounds those have been taken by them in the Memorandum of Appeal that, there was no offer extended to them in pursuance to the decision taken by the Ld. NCLT on 07.12.2017 and after submission of the reports by the two Valuers is per se contrary to the records, for the reason being that;

- a) As per the order of 07.12.2017, the offer to purchase the shares on the basis of the Fair Value Report was required to be **availed** by the Appellant.
- b) In the light of the directions issued by the order of 07.12.2017, there was no such concept or directives of the Tribunal or the Auditor for having offered an opportunity to the Appellant to purchase the fair value shares as settled by Mr. Suresh TN, who had valued the shares at Rs.1,941/- per share, rather it was Appellant to have expressed willingness to purchase share on the higher value of the Auditors Report.
- c) Its only upon when, the Appellant **will not avail** an opportunity to purchase the shares at a fair value, which was settled by the Chartered Accountant, the Auditor, the next opportunity will flow to the Respondent.

38. The contention raised by the Ld. Counsel for the Appellant runs contrary to the finding that has been recorded in the order of 07.12.2017 which shows that, there was offer which was to be extended to them. There was no question of issuing

an offer to the Appellant for purchasing of the shares at the fair value price as settled by the Chartered Accountant Mr. Suresh TN because, that offer automatically as per order, already stood in their favour, subject to their own inclination of acceptance of the offer and if there was no extension, for an acceptance of self-contained offer in the order itself, the logical consequences of not extending the offer to purchase the shares of the Respondent Company, it will automatically move to the Respondents at the fair value as settled by Mr. Suresh TN on a higher side and they were bound to be accepted and that is what the finding has been recorded by the Ld. Tribunal in the impugned order wherein a specific finding has been given that **“the Appellant had not expressed their willingness to buy out the shares at Rs.1,941/- per share i.e. the fair value as determined by Mr. Suresh T N”**, and since they have not expressed their willingness to purchase the shares at the share price as settled, it will be deemed reluctance on part of Appellant to purchase share, thus the decision was taken by the Ld. NCLT to offer the same to be sold to the Respondents who had expressed their willingness to purchase the share at the fair value as settled by the Fair Value report of the CA Mr. Suresh T N.

39. At this stage, the Appellant ventures to questions the propriety of the Valuation of the shares itself, as made by the two Valuation Reports which were submitted by the Chartered Accountants namely CA Mr. Suresh T N and CA Dr. Santhakumar.

40. Appellant at a delayed stage carves his arguments, under the garb of challenging the propriety of the valuation of shares done by the two Auditors, about the valuation of the shares as per the directions given by the order of 07.12.2017, the Appellant cannot take an advantage at this stage by carving arguments when the rights of the Respondent had already been crystallised, on an account of the Appellants own failure to extend their willingness to purchase the shares at a higher fair value as settled by Mr Suresh T N, the Chartered Accountant, that will extinguish their right to purchase, and would be unaffected by the aspect of valuation, when the Appellants themselves have done away their rights to offer for purchase, the challenge to valuation could have been before their time to purchase was over and not thereafter.

41. Even, if we consider the grounds, which has been taken by the Appellant, none of the grounds stated therein in the Memo of Appeal directly hit upon the question, about the Appellant having ever expressed their willingness to purchase the shares at the fair value as fixed by Dr. Santhakumar, the Chartered Accountant, when they were first made aware of the reports submitted by Dr. Santhakumar, about fixation of the fair value of the shares vide its report, as it was submitted on 17.06.2021.

42. At that stage, if the Appellant has voluntarily waived of his right by implication since, having not offered to purchase the shares now, at this belated stage, at the rate of the valuation fixed by Mr. Suresh T N, they cannot be permitted to revive back their own waiver of having declined to purchase the shares of the

Respondent Company even not having offered to purchase the shares at the fair value as settled by Mr. Suresh, T N and if we looked into the controversy from yet another perspective, if the Appellant now at this stage presses upon to purchase the shares at Rs.1,941/- which is now been offered to be purchased by the Appellant that is based upon the report of Mr. Suresh T N, the Chartered Accountant, it will amount to that, admittedly the Appellant has consequently waived off his rights to put a challenge to the aspect of valuation of the shares as done by the two reports submitted by the Valuers on 19.05.2021 and 17.06.2021 respectively.

43. Since, there had been an apparent failure on part of the Appellant to express their willingness at the earliest available opportunity, as per the directives issued in the order of 07.12.2017, the finding which has been recorded by the Ld. Tribunal that, the first option was given rather to the Appellant and it was at time required to be availed by the Appellant themselves, which has been not availed by them voluntarily, there was no other option left with the Respondent, except to offer the sale of the shares to the Respondents based upon the fair value at Rs.1,941/- as it has been settled by Mr. Suresh T N in his Report of 19.05.2021, which was done and executed upon by sale of shares being made to the Respondents.

44. There could not be any perversity, which could be attached to the impugned order under challenge, in the light of the findings, which has been recorded by the Tribunal, and even in the light of the pleading, which has been brought on record, because it has not been the case of the Appellant that, at any point of time, after the

furnishing of the two Reports by the Auditors leading to the fixation of the fair value of the shares, the Appellant had ever offered to purchase the shares in accordance with the report of Mr. Suresh TN and hence, once they have not done so, at this belated stage when there is a specific finding, which cannot be said to be pervasive in any manner whatsoever, that may be permitted to take a converse stand of extending their willingness to purchase the shares of the Respondent Company at the fair value as settled by Mr. Suresh T N.

45. Even otherwise also, if this argument of the Ld. Counsel for the Appellant is accepted at this stage, it will amount to sitting over the order of the Ld. NCLT itself, which otherwise has attained finality, owing to the Judgment that has been rendered by the NCLAT in Company Appeal (AT) No. 6 / 2018 and that is where, the Ld. Tribunal had rightly observed that the only option left out was that, either of the parties to purchase the shares as per the directions / guidelines framed by the order of 07.12.2017 which was availed by the Respondents that too after the Appellant had not expressed their interest to buy the share and accordingly the Ld. Tribunal had proceeded to affirm the sale of the shares to the Respondents based upon the Valuation Report of Mr. Suresh T N.

46. No apparent procedural or legal anomaly could be found in the sale of the shares which has been made in favour of the Respondents on the basis of the valuation made on 19.05.2021 at Rs.1,941/- per share.

47. The present controversy could be looked into from yet another perspective, that the offer as extended by the Appellant at this point of time, to purchase the shares based upon the report of Mr. Suresh T N, the Chartered Accountant of purchasing the shares at the rate of Rs.1941/- will not have any effective financial input bearing, in relation to the interest of the Company for the reason being that, the said shares at the aforesaid rate has already been purchased by the Respondents in the light of the impugned order which is under challenge, the order has already been effected upon.

48. Even otherwise also, the Appellant cannot be an opportunist in his approach in meeting out the controversy as it was flowing from the order of 07.12.2017 and its enforcement upon the submission of the Valuation Report by the two Auditors. For the reason being that, after the submission of the Valuation Report by the two Auditors, the Appellant, who was an opposite party No. 2 to the Application CA/86/KOB/2021, that was preferred by the Respondents wherein to the said Application, the Appellants had filed their Counter Affidavit on 19.09.2021 has challenged the propriety of the Valuers Report that was submitted by CA Mr. Suresh T N holding it, to be unrealistic, and being a report, which has been solicited by exercising influence of Respondents.

49. Simultaneously in the written submission too, which has been filed by the Appellant on 27.10.2021, the Appellant has already taken a stand that, owing to the difference in the valuation report as submitted by the two Auditors, the average value

of each share given by the Auditors has to be taken out, if that be the shape of the pleading as raised by the Appellant, primarily his challenge was still confined to the Valuation Report, and not his intention to purchase the shares as per the value as assigned by the Chartered Account by Mr. Suresh T N, which is now being shown to be made acceptable by them at a much belated stage, when the Company Appeal is being heard at a final stage.

50. Even otherwise also, in the light of the Judgment rendered in **Company Appeal No. 3 / 2006, in the case of, Namtech Consultants Pvt. Ltd. & Anr. v. GE Thermometrics India Pvt. Ltd. & Ors.**, the Hon'ble High Court of Karnataka in its Para 29 & 30, has basically laid down that in such type of peculiar set of circumstances, either of the group has to quit the Company either willingly or reluctantly, the relevant paragraphs of the said Judgment are extracted hereunder:

*“29. Under these peculiar circumstances of this case it is clear that either group has to quit the company most reluctantly in compliance with the directions of the court despite it being capable of running the company. Further, outgoing group, whether it be the group of appellants or that of contesting respondents, would not be in a position better than the group which continues to run the company because the outgoing group has to spend considerable time and energy to establish its own industry with the proceeds of the sale of its shares and to earn profits therefrom. Besides this such group has to suffer monetary loss also as it would not be getting any income till its new establishment starts earning profits. On the other hand, the group which acquires the management of the company and continues to run it would be in a position better than the outgoing group because it could proceed with the production of its products and sell in the world market without any time gap. Therefore, we are of the considered view that the outgoing group has to be adequately compensated by the group which continues to be the management of the company so as to enable the outgoing group to establish its own*

*industry by spending considerable time and earn profits with the money which it gets by sale of its shares.*

*30. It would not be possible to achieve this object if a particular group is directed to sell its shares to the other group at the price to be determined by the third party i.e., an independent firm of Chartered Accountant because though the price of shares would be determined by such Chartered Accountant most scientifically and impartially by taking all the relevant facts into consideration yet such price would only be an '**opinion price**' as could be distinguished from the '**competitive price**' at which a prospective buyer or seller would opt to buy or sell in competition with the other buyer or seller. This object of adequately compensating the outgoing group of shareholders could be achieved by making both the rival groups to compete with each other in the purchase of shares of the company at a price higher than the one determined by the independent chartered accountants. Therefore, we are of the considered view that the price at which the shares of the JV Co. should be ordered to be sold by one group to the another group should be '**competitive price**' and it should certainly be higher than the price determined by the independent chartered accountants. This competitive price can be arrived at by directing each rival group to quote in sealed cover its price (which should be higher than the one determined by the chartered accountants) at which it would agree to sell its shares to the other group and also agrees to buy the shares of the other group and then the group quoting higher price than the one quoted by the other group shall be given first option to buy the shares of the other group at such higher price as quoted by the former. Thus, the object of adequately compensating the outgoing group of the shareholders by the group of shareholders continuing to run the company could be achieved.'*

51. There could not be a possibility to achieve an object on whims of a particular group by enabling them to purchase the share according to their expected share price for the reason being that, the objective was that the opinion price or the competitive price, which in the instant case happens to be the price as settled by Mr Suresh TN, which is on a higher side, that has had to be accepted in the interest of the Company.

52. If that be the situation, since the Respondents themselves have purchased the shares at the rate of Rs.1,941/- per share, acceptance of an offer now as extended by the Appellant at this stage on the same fair value, may not be a feasible which could be carved out as an exception, at this stage under the garb of the Appellant keeping the proceedings pending, by giving a challenge to the process of the valuation of the shares on the basis of the Valuation Report of Mr. Suresh T N.

53. Owing to the fact that, the very objective of attainment of a fair value in accordance with the Valuation Report submitted by Mr Suresh T N, has already been achieved and it cannot be, now ventured into by holding the proceedings de novo by permitting the Appellant to step into the shoes and buy the shares at value of Rs.1,941/- at the belated stage, after a lapse of 5 years when the Appellant by their own conduct has been ousted from, enabling them to purchase the shares at a more fair value as it was settled in the proceedings by the order of 07.12.2017.

54. Hence, the Company Appeal (AT) (CH) No. 7 / 2022 lacks merit and the same is accordingly dismissed. The connected pending Interlocutory Applications, if any, would stand closed.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Jatindranath Swain]**  
**Member (Technical)**

26/02/2026

SR/MS/AK