NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 102 of 2020

[Arising out of the Impugned Order dated 03.06.2020 passed by the National Company Law Tribunal, Guwahati Bench in CP No./16/59/213/241/244/GB/2018]

IN THE MATTER OF:

1. Shri Anup Kumar Khemani
S/o DD Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

2. Sangeeta Khemani
W/o Anup Kumar Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

3. Landspaces Developers Pvt. Ltd.
Through its Director, Sunil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005

4. Ved Promoters Pvt. Ltd.
Through its Director, Saloni Bansal
Address: Sanmati Plaza, 4th Floor, GS Road, Ruwahati-781005

5. Venkatesh Associates Pvt. Ltd.
Through its Director, Anil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005

...Appellants

Versus

1. Balendra Choudhury
S/o Late Bhabananda Choudhury
House No. 73, P.P. Road Rehabari, Guwahati-781008

2. Shri S.M.B. Baruah
S/o Late Ratna Malla Buzar Baruah

House No. 75, KRB Road, Bharalumukh, Guwahati-781009

3. M/s Assam Medical Corporation Pvt. Ltd.
Through its MD, Dr. SC Kumar
Gopinath Nagar, Kalapahar, Guwahati-781016

4. Shri Sunil Agarwal
S/o Hanuman Prasad Agarwal
Pinaki path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003

5. Shri Bal Kishan Bansal
S/o Rohitash Chandra Bansal
Sanmati Plaza, 4th Floor, GS Road, Ashoka Furniture, Guwahati-781005

6. Shri Shanky Agarwal
S/o Sunil Agarwal
3rd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006

7. Shri Anil Agarwal
S/o HP Agarwal
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

8. Kabita Agarwal
D/o Jagdish Prasad
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

9. Nina Agarwal
D/o Vishambhar Lal
Pinaki Path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003

10. Saloni Bansal
D/o BK Bansal
Vidyashree, Pension Para Road, Silpulhuri, Guwahati-781003

11. Shri Sachin Chandra Kumar
S/o Late AR Kumar
15, Own House, Rupalim Path, Rukmini Gaon, Guwahati-781022

12. Shri Rajendra Prasad Hansaria
S/o Late Satyanarayan Hansaria
1505 Royal Empire, T37 Lokhandwala Road, Andheri West, Mumbai-400053.

13. Shri Abhijit Neog
S/o DP Neog

Banashree, House No. 15, Bye Lane No. 7, Sub lane No. 2, Guwahati.

14. Aruna Bansal
W/o BK Bansal
Address: Vidyashree, Pension Para Road, Sliphukuri, Guwahati-781003.

...Respondents

<u>Present</u>:

For Appellant	**:**	Ms. Anindita Mitra, Advocate.
For Respondents	**:**	Mr. Atanu Saikia, Ms. Sujata Nath, Advocates for R- 1 & 2. Mr. Abhinav Hansaria, Advocates for R-3.

<u>WITH</u>
<u>Company Appeal (AT) No. 103 of 2020</u>

<u>[Arising out of the Impugned Order dated 03.06.2020 passed by the National Company Law Tribunal, Guwahati Bench in CP No./16/59/213/241/244/GB/2018]</u>

<u>IN THE MATTER OF:</u>

M/s Assam Medical Corporation Pvt. Ltd.
Through its MD, Dr. SC Kumar
Gopinath Nagar, Kalapahar, Guwahati-781016

...Appellant

Versus

1. Balendra Choudhury
S/o Late Bhabananda Choudhury
House No. 73, P.P. Road Rehabari, Guwahati-781008

2. Shri S.M.B. Baruah
S/o Late Ratna Malla Buzar Baruah
House No. 75, KRB Road, Bharalumukh, Guwahati-781009

3. Shri Sunil Agarwal
S/o Hanuman Prasad Agarwal
Pinaki path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003

4. Shri Bal Kishan Bansal
S/o Rohitash Chandra Bansal
Sanmati Plaza, 4th Floor, GS Road, Ashoka Furniture, Guwahati-781005

5. Shri Anup Kumar Khemani

S/o DD Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

6. Shri Shanky Agarwal
S/o Sunil Agarwal
3rd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006

7. Sangeeta Khemani
W/o Anup Kumar Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

8. Shri Anil Agarwal
S/o HP Agarwal
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

9. Kabita Agarwal
D/o Jagdish Prasad
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

10. Nina Agarwal
D/o Vishambhar Lal
Pinaki Path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003

11. Saloni Bansal
D/o BK Bansal
Vidyashree, Pension Para Road, Silpulhuri, Guwahati-781003

12. Landspaces Developers Pvt. Ltd.
Through its Director, Sunil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005

13. Ved Promoters Pvt. Ltd.
Through its Director, Saloni Bansal
Address: Sanmati Plaza, 4th Floor, GS Road, Ruwahati-781005

14. Venkatesh Associates Pvt. Ltd.
Through its Director, Anil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005

15. Shri Sachin Chandra Kumar

S/o Late AR Kumar
15, Own House, Rupalim Path, Rukmini Gaon, Guwahati-781022
16. Shri Rajendra Prasad Hansaria
S/o Late Satyanarayan Hansaria
1505 Royal Empire, T37 Lokhandwala Road, Andheri West, Mumbai-400053.
17. Shri Abhijit Neog
S/o DP Neog
Banashree, House No. 15, Bye Lane No. 7, Sub lane No. 2, Guwahati.
18. Aruna Bansal
W/o BK Bansal
Address: Vidyashree, Pension Para Road, Sliphukuri, Guwahati-781003.

...Respondents

Present:

For Appellant	:	Mr. Vimal Kirti Singh, Mr. Raj Singh, Mr. Abhinav Hansaria, Ms. Nandita Seth, Advocates.
For Respondents	:	Mr. Atanu Saikia, Ms. Sujata Nath, Advocates for R- 1 & 2.

WITH
Company Appeal (AT) No. 104 of 2020

[Arising out of the Impugned Order dated 03.06.2020 passed by the National Company Law Tribunal, Guwahati Bench in CP No./16/59/213/241/244/GB/2018]

IN THE MATTER OF:

Dr. Kalicharan Das Trust
Having office at: Dr. K.C. Das
Nursing Home, Gopinath Nagar, Guwahati-781016
Through its trustee, Smt. Neelam Hansaria
1505 Royal Empire, T37 Lokhandwala Road,
Andheri West, Mumbai-400053

...Appellant

Versus

1. Balendra Choudhury
S/o Late Bhabananda Choudhury
House No. 73, P.P. Road Rehabari, Guwahati-781008
2. Shri S.M.B. Baruah

S/o Late Ratna Malla Buzar Baruah
House No. 75, KRB Road, Bharalumukh, Guwahati-781009
3. M/s Assam Medical Corporation Pvt. Ltd.
Through its MD, Dr. SC Kumar
Gopinath Nagar, Kalapahar, Guwahati-781016
4. Shri Sunil Agarwal
S/o Hanuman Prasad Agarwal
Pinaki path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003
5. Shri Bal Kishan Bansal
S/o Rohitash Chandra Bansal
Sanmati Plaza, 4th Floor, GS Road, Ashoka Furniture, Guwahati-781005
6. Shri Anup Kumar Khemani
S/o DD Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.
7. Shri Shanky Agarwal
S/o Sunil Agarwal
3rd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006
8. Sangeeta Khemani
W/o Anup Kumar Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.
9. Shri Anil Agarwal
S/o HP Agarwal
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003
10. Kabita Agarwal
D/o Jagdish Prasad
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003
11. Nina Agarwal
D/o Vishambhar Lal
Pinaki Path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003
12. Saloni Bansal
D/o BK Bansal
Vidyashree, Pension Para Road, Silpulhuri, Guwahati-781003

13. Landspaces Developers Pvt. Ltd.
Through its Director, Sunil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005
14. Ved Promoters Pvt. Ltd.
Through its Director, Saloni Bansal
Address: Sanmati Plaza, 4th Floor, GS Road, Ruwahati-781005
15. Venkatesh Associates Pvt. Ltd.
Through its Director, Anil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005
16. Shri Sachin Chandra Kumar
S/o Late AR Kumar
15, Own House, Rupalim Path, Rukmini Gaon, Guwahati-781022
17. Shri Rajendra Prasad Hansaria
S/o Late Satyanarayan Hansaria
1505 Royal Empire, T37 Lokhandwala Road, Andheri West, Mumbai-400053.
18. Shri Abhijit Neog
S/o DP Neog
Banashree, House No. 15, Bye Lane No. 7, Sub lane No. 2, Guwahati.
19. Aruna Bansal
W/o BK Bansal
Address: Vidyashree, Pension Para Road, Sliphukuri, Guwahati-781003.

...Respondents

Present:

For Appellant	**:**	Ms. Urvika Suri, Advocate.
For Respondents	**:**	Mr. Abhinav Hansaria, Advocate.

WITH
Company Appeal (AT) No. 113 of 2020

[Arising out of the Impugned Order dated 03.06.2020 passed by the National Company Law Tribunal, Guwahati Bench in CP No./16/59/213/241/244/GB/2018]

IN THE MATTER OF:

1. Mr. Balendra Choudhury

S/o Late Bhabananda Choudhury
House No. 73, P.P. Road Rehabari, Guwahati-781008

2. Mr. Sobhan Malla Buzarbaruah
S/o Late Ratna Malla Buzar Baruah
Aged about 56 years
House No. 75, KRB Road, Bharalumukh, Guwahati-781009

...Appellant

Versus

1. M/s Assam Medical Corporation Pvt. Ltd.
Gopinath Nagar, Kalapahar, Guwahati-781016

2. Shri Sunil Agarwal
S/o Hanuman Prasad Agarwal
Pinaki path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003

3. Shri Bal Kishan Bansal
Chartered Accountant
S/o Rohitash Chandra Bansal
Sanmati Plaza, 4th Floor, GS Road, Ashoka Furniture, Guwahati-781005

4. Shri Anup Kumar Khemani
S/o DD Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

5. Shri Shanky Agarwal
S/o Sunil Agarwal
3rd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006

6. Sangeeta Khemani
W/o Anup Kumar Khemani
Address: Flat No. 2, 2nd Floor, Sri Kunj, Amravati Path, Christian Basti, GS Road, Guwahati-781006.

7. Shri Anil Agarwal
S/o HP Agarwal
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

8. Kabita Agarwal
D/o Jagdish Prasad
18, Pinaki Path, 7th Bye Lane, Zoo Road, Tiniali, Guwahati-781003

9. Nina Agarwal
D/o Vishambhar Lal
Pinaki Path, RG Barua Road, Zoo Road, Tiniali, Guwahati-781003
10. Ms. Ekta Agarwal
C/o Mr. Sunil Agarwal
R/o Pinaki Path, R.G. Barua Road
Zoo Road Tiniali, Guwahati-781003
11. Saloni Bansal
Chartered Accountant
D/o BK Bansal
Vidyashree, Pension Para Road, Silpulhuri, Guwahati-781003
12. Landspaces Developers Pvt. Ltd.
Through its Director, Sunil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005
13. Ved Promoters Pvt. Ltd.
Through its Director, Saloni Bansal
Address: Sanmati Plaza, 4th Floor, GS Road, Ruwahati-781005
14. Venkatesh Associates Pvt. Ltd.
Through its Director, Anil Agarwal
Address: Ground Floor, Golden Woods Apartment, Sunderpur, RG Barua Road, Guwahati-781005
15. Shri Sachin Chandra Kumar
S/o Late AR Kumar
15, Own House, Rupalim Path, Rukmini Gaon, Guwahati-781022
16. Shri Rajendra Prasad Hansaria
S/o Late Satyanarayan Hansaria
1505 Royal Empire, T37 Lokhandwala Road, Andheri West, Mumbai-400053.
17. Shri Abhijit Neog
S/o DP Neog
Banashree, House No. 15, Bye Lane No. 7, Sub lane No. 2, Guwahati.
18. Ms. Aruna Bansal
W/o BK Bansal
Address: Vidyashree, Pension Para Road, Sliphukuri, Guwahati-781003.

...Respondents

Present:

For Appellant : Mr. Atanu Saikia, Ms. Sujata Nath, Advocates.
For Respondents : Mr. Abhinav Hansaria, Advocate for R-1.

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

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

The four appeals *viz* Company Appeal (AT) No. 102, 103, 104 and 113 of 2020 have been filed against the common impugned order dated 13.01.2020 passed by the Ld. NCLT Guwahati Bench in CP/16/59/213/241/244/GB/2018.

2. The impugned order is regarding sale of shares of the Company *viz* Assam Medical Corporation Pvt. Ltd. by Dr. Kali Charan Das Trust (in short, the "**Trust"**) and other shareholders to Agarwal and Khemani groups (hereinafter referred to as the **"Incoming Shareholders"**). The Company Appeal (AT) No. 102 of 2020 has been filed by the incoming shareholders. The Company Appeal (AT) No. 103 of 2020 has been filed by the Assam Medical Corporation Pvt. Ltd., whose shares have been sold/transferred. The Company Appeal (AT) No. 104 of 2020 has been filed by the Dr. Kali Charan Das Trust, which has sold the shares of Assam Medical Corporation Pvt. Ltd. to the incoming shareholders. All the three appeals relate to sale and transfer of 117 shares of Dr. Kali Charan Das Trust, which has been set aside by the impugned order. The 4th appeal *viz* Company Appeal (AT) No. 113 of 2020 has been filed by the shareholders *viz* Mr. Balendra Choudhury and Mr. SMB Baruah praying that sale of 135 shares by other shareholders (other than those held by Dr. Kali Charan Das Trust) should be set aside as the Ld. NCLT has erred in confirming this sale, though there is no distinction between these shares and shares owned by the Trust.

3. The Brief facts of the case as under:

(i) Late Dr Kalicharan Das, a medical practitioner and philanthropist, established and ran a small nursing home from his residence in or around the year 1953, which gradually evolved into a larger healthcare institution serving the residents of Guwahati and surrounding areas.

(ii) Dr Kalicharan Das, along with six other like-minded persons, Dr Susil Ranjan Roy, Dr Shailendranath Sengupta, Dr Ataur Rahman and Dr Ramani Kanta Talukdar (medical practitioners), Mr Sukumar Dutta (a pharmacist), and Mr Jogendra Narayan Baruah (a businessman), incorporated Assam Medical Corporation Limited on 13.07.1960 as a public limited company with an initial paid-up capital of ₹5,00,000 divided into 50,000 equity shares of ₹10 each. The Government of Assam donated approximately 11 bighas of land, measuring approximately 3.6 acres, at Kalapahar, Guwahati for the said purpose.

(iii) Assam Medical Corporation Limited was subsequently converted into a private limited company on 18.12.1961 under the name Assam Medical Corporation Private Limited (hereinafter called the "Company" or “AMC”), having an authorised share capital of ₹5,00,000 divided into 500 equity shares of ₹1,000 each.

(iv) A Nursing Home under the name "Amcorp’s Nursing Home and Polyclinic" was established in 1966 on the land donated by the Government of Assam.

(v) In the year 1981, Dr Kalicharan Das established the Dr Kali Charan Das Trust (hereinafter called the "Trust") by executing a Trust Deed dated 11.05.1981. Pursuant thereto, he transferred his entire shareholding comprising 117 equity shares of the Company, representing approximately 23.4% of the total share capital of the Company, in favour of the Trust. Dr. Kalicharan Das passed away on 03.03.1983 and thereafter his wife, with assistance of appellant Mr. Balendra Choudhury, who is son of Mrs. Kiran Bala Choudhury, elder sister of Dr. Das, managed the Nursing Home. Mrs. Das passed away on 07.04.1985, and elder sister of Mr. Das inherited the estate, including 55 shares in AMC. Mrs. Kiran Bala Choudhury passed away on 29.03.2021, whereafter on 25.06.2004 her 55 shares were transmitted to the Mr. Choudhury and he became Director of AMC on 30.09.2009 and since then he is continuously holding this position.

(vi) Over a period of time, the Company witnessed a decline in its financial condition and the need for additional fund was felt.

(vii) A meeting of the trustees of the Trust was convened on 27.12.2017 and after deliberations regarding the financial requirements of the Trust and the nursing home, the trustees decided to sell the shares held by the Trust in AMC.

(viii) An Agreement for Transfer of Shares (hereinafter called the "STA"), dated 28.12.2017, was executed between Dr Rajendra Prasad Hansaria, executing the STA in the capacity of Managing Trustee *"for Dr Kalicharan Das Trust"* and Mr. Sunil Agarwal, Mr. Bal Kishan Bansal and Mr. Anup Kumar Khemani, collectively described in STA as the transferees, for the transfer of all 117 shares held by the Trust at ₹4,00,000 per share, that is, total consideration of Rs. 4,68,00,000/-.

(ix) A notice dated 29.12.2017 was issued convening a meeting of the Board of Directors on 03.01.2018 to consider and approve transfer of certain shares lodged for transfer and to consider and approve the resignation tendered by Mr Vinod Hansaria and Dr Madhav Prasad Bajaj from the directorship of the company and simultaneously consider and approve appointment of Mr Sunil Agarwal, CA Bal Kishan Bansal, and Mr Anup Kumar Khemani as directors in the company and to convene an Extraordinary General Meeting (hereinafter called the "EOGM") of the company for confirmation of appointment of new directors and to increase the authorised share capital of the company. No objection was raised by any director to the said transfer of shares.

(x) A meeting of the Board of Directors was held on 03.01.2018 wherein the Board approved the transfer of a total of 85 equity shares held by various existing shareholders in favour of the incoming shareholders, as set out below, and separately resolved to accept resignations of outgoing shareholders with effect from that date:

S. No.	Existing Shareholder (Transferor)	Shares	Incoming Shareholder (Transferee)
1	Mr. Vinay Hansaria	10	Mr. Shanky Agarwal
2	Mrs. Kiran Hansaria	10	Landspaces Developers (P) Ltd.
3	Mr. Vinod Hansaria	10	Landspaces Developers (P) Ltd.
4	Mrs. Neelam Hansaria	10	Landspaces Developers (P) Ltd.
5	Mr. Arvind Nevatia	10	Mr. Anup Kumar Khemani
6	Mr. Madhur Nevatia	10	Mrs. Sangita Khemani

S. No.	Existing Shareholder (Transferor)	Shares	Incoming Shareholder (Transferee)
7	Mrs. Saroj Khemka	15	Ved Promoters Pvt. Ltd.
8	Dr Madhav Prasad Bajaj	5	CA Bal Kishan Bansal
9	Mrs. Pronti Talukdar	5	Mr. Sunil Agarwal
	Total	85	

(xi) On the same date (03.01.2018), the Board resolved to convene an EOGM on 24.01.2018 for considering the appointment of Mr. Sunil Agarwal, CA Bal Kishan Bansal and Mr. Anup Kumar Khemani as Directors of the Company. The notice dated 03.01.2018 for the convening of the EOGM on 24.01.2018 also contained a proposal for enhancement of the authorised share capital to ₹1,00,00,000 divided into 10,000 equity shares of ₹1,000 each.

(xii) Another notice dated 19.01.2018 was issued for convening a meeting of the Board of Directors on 24.01.2018 to confirm the proceedings of the Board of Directors meeting held on 03.01.2018 and for consideration of the transfer of shares.

(xiii) At the Board Meeting held on 24.01.2018, Mr. Balendra Choudhury objected to the proposed transfer of the shares held by the Trust. The Minutes of the meeting records his objection but states that *"after explanation to him, the following resolutions were adopted by the Board"*. It is noteworthy that the content of the explanation given to Mr. Balendra Choudhury was not recorded in the minutes of the meeting. The Board thereafter approved the transfer of the 117 shares held by the Trust, together with the shares held by Dr Rajendra Prasad Hansaria and Mr Sankar Hazarika, as set out below:

S. No.	Existing Shareholder (Transferor)	Shares	Incoming Shareholder (Transferee)
1	Dr Kali Charan Das Trust	40	Venkatesh Associates Pvt. Ltd.
2	Dr Kali Charan Das Trust	17	Landspaces Developers (P) Ltd.
3	Dr Kali Charan Das Trust	20	Ved Promoters Pvt. Ltd.
4	Dr Kali Charan Das Trust	30	Mr. Anup Kumar Khemani
5	Dr Kali Charan Das Trust	10	Mrs. Sangeeta Khemani
6	Dr Rajendra Prasad Hansaria	10	Mr. Anil Agarwal
7	Dr Rajendra Prasad Hansaria	10	Mrs. Kabita Agarwal
8	Dr Rajendra Prasad Hansaria	5	Ms. Nina Agarwal
9	Dr Rajendra Prasad Hansaria	20	Ved Promoters Pvt. Ltd.
10	Dr Rajendra Prasad Hansaria	5	Mrs. Sangeeta Khemani
11	Mr. Sankar Hazarika	2	Ms. Ekta Agarwal
	Total	169	

(xiv) An Extraordinary General Meeting (EOGM) of the Company was held on the same day. During the meeting, the shareholders approved the appointment of Mr. Sunil Agarwal, CA Bal Kishan Bansal and Mr. Anup Kumar Khemani as Directors of the Company. The proposals relating to the increase of the authorised share capital and alteration of the Capital Clause of the Memorandum of Association were, however, dropped. Lastly, the shareholders approved the substitution of Clause 5 of the Articles of Association relating to the authorised share capital.

(xv) On 16.03.2018, Mr. Choudhury and Mr. Baruah lodged a complaint with the Deputy Commissioner and the Sub-Registrar, Kamrup (Metro), requesting that no document relating to the Company be registered. Following this, the Company received requisitions from three members for convening an Extraordinary General Meeting to remove Mr. Balendra Choudhury from the directorship of the Company.

(xvi) Mr. Balendra Choudhury, by letter dated 12.04.2018 addressed to Chairman & Managing Director of AMC, raised objections as to the transfer of shares and stated that his objection and observations opposing transfer of shares were not recorded in the minutes of the meetings held on 03.01.2018 and 24.01.2018, and that he did not agree to the agenda of transfer of shares and the same was passed without noting his objection. He urged CMD, AMC not to approve the minutes.

(xvii) By a notice dated 17.04.2018, a meeting of the Board of Directors was convened for 19.04.2018, with an agenda comprising acceptance of the resignation tendered by Dr Rajendra Prasad Hansaria from the directorship of the Company; appointment of CA Saloni Bansal as director in his place; and approval of certain further share transfers lodged with the Company, including the transfer of 5 shares by Dr Rajendra Prasad Hansaria to Mrs. Aruna Bansal. The meeting was rescheduled for 03.05.2018 by a notice dated 23.04.2018.

(xviii) Mr. Balendra Choudhury, on 27.04.2018 objected to the calling of the Board Meeting without following the requirements of law, and requested that the meeting be postponed.

(xix) Item 4 of notice dated 23.04.2018 recorded that the Board was in receipt of a letter from shareholders namely, M/s. Ved Promoters Pvt. Ltd. (represented by CA Saloni Bansal), Mr. Shanky Agarwal, and M/s. Landspaces Developers Pvt. Ltd. (represented by Mr. Shanky Agarwal), requesting that an Extraordinary General Meeting be convened to remove Mr. Balendra Choudhury from the Board.

(xx) Mr. Balendra Choudhury, by a further letter dated 30.04.2018, objected specifically to Item 4 of the said agenda.

(xxi) The Board Meeting convened for 03.05.2018 was not concluded and stood adjourned, in the first instance to 05.05.2018 and thereafter to 17.05.2018. It was on 05.05.2018 that Mr. Sobhan Malla Buzar Baruah, through a letter of that date, noted the presence of "many new faces" at the Extraordinary General Meeting held on 24.01.2018, enquired whether shares had been issued or transferred to them, and stated that in both cases he was "willing to acquire more shares of the company as and when offered by the Board". Notices were thereafter issued for an Extraordinary General Meeting, first proposed for 01.06.2018 and subsequently for 11.06.2018, with an agenda for the appointment of CA Saloni Bansal and Mr. Shanky Agarwal as directors and the removal of Mr. Balendra Choudhury from the Board.

(xxii) Alleging that the transfer of shares had been effected in violation of Article 15 of the Articles of Association (hereinafter called the "AoA") and that the affairs of the Company were being conducted in a manner prejudicial to the interests of existing shareholders, Mr. Balendra Choudhury and S.M.B. Baruah instituted Company Petition No. 16/59/213/241/244/GB/2018 before the National Company Law Tribunal, Guwahati Bench (hereinafter called the "Ld. NCLT") in June 2018. The concerned Article 15 of the AoA reads as under:

> *"Article 15: notice of transfer—*
>
> *Every member or the legal representative of a deceased member who intends to transfer shares (hereinafter called the vendor) shall give in writing to the Board notice of his intention. That notice shall constitute the Board his agent for the sale of the said shares, in one or more lots at the discretion of the Board, to members of the Company at a price to be agreed upon by the vendor and the Board or in default of agreement at a price which the auditor of the Company for the time being shall certify by writing under his hand to be in his opinion, the fair selling value thereof as between a willing vendor and a willing purchaser."*

(xxiii) The Ld. NCLT, by its order dated 03.06.2020, held that the 117 shares belonging to the Trust could not be transferred in the same manner as transfer of shares of the ordinary shareholders and set aside the transfer of the said shares and consequential appointment of new shareholders as Directors, holding as under:

> *"56. Heard all the concerned parties and perused the record. The respondents No.1, 15 and 16 apart from addressing oral arguments also filed synopsis of their written arguments.*
>
> *57. The petitioners claimed interim reliefs covered by prayer clauses A- (1) to (XXXIX) and final reliefs covered by prayer clauses B-(1) to (XXXIII) of Para (V) in the petition.*
>
> *58. In so far as the relief of an order declaring the EOGM scheduled to be held on 01.06.2018 and the decisions taken therein are illegal and void covered by prayer clause III is concerned, the learned advocate appearing for the R1 Company clearly pleaded in their*

reply and also confirmed during the course of arguments that no such EOGM was held on 01.06.2018 and, therefore, the said relief has become Infructuous and no order needs to be passed in this regard.

59. The main grievance of the petitioners in the pleadings as well as at the time of argument is that the R1 Company has illegally-transferred its shares of the promoter Trust M/s. Kalicharan Das Trust to the respondents No.4, 6, 12, 13 and 14 in the minutes of meeting dated 24.01.2018 without considering his objections only with an intention to convert the land of the R1 for construction of real estate project against the aims and objects of the R1 Company It is the contention of the petitioners that the transfer of 117 shares of M/s. Kalicharan Das Trust is contrary to Article 15 of the Articles of Association of the R1 Company.

It is the submission of the petitioners that the R1 Company was Initially started as a small Nursing Home by his late uncle Mr. Kalicharan Das with an object of providing free medical services to the poor and needy people of the city of Guwahati and subsequently, the same was converted into a Limited Company with the help of other like-minded professionals of his uncle Late Dr. Kalicharan Das. The P1 further submits that his uncle Late Dr. Kalicharan Das transferred his shares in the R1 Company to M/s. Kalicharan Das Trust by executing a Deed of Trust and also appointed trustees and, therefore, those shares cannot be transferred to other than the people in Health Care Sector, especially not to Real Estate Companies. Except the grievance of transfer-of. shares of M/s. Kalicharan Das Trust, the advocate appearing for the petitioners did not press for any other reliefs.

The other grievance of petitioners is that the respondents being directors are conducting the day to day affairs of the R1 Company detrimental to the interests of the petitioners as well as to the aims and objects of the Company by committing certain financial irregularities.

60. All the respondents, in one voice, seriously objected to the maintainability of the above petition contending that neither M/s. Kalicharan Das Trust nor its Trustees are parties to the present petition and, therefore, the present petition is not maintainable for non-joinder of necessary parties. The advocate appearing for the R1 and 15 invited attention of this Tribunal to several reliefs claimed by the petitioners in the above petition and contended that all the above relies claimed by the petitioners are basing on mere suspicion without any evidence whatsoever placed before this Tribunal and if all the reliefs claimed by the petitioners are granted, *it will virtually stop functioning of the R1 Company and its directors and will also prejudice the R1 Company and Its directors in taking any decisions with regard to running of the R1 Company. The advocate appearing for the transferees adopted the arguments of the respondents No.1, 15 and 16. Thus the counsels appearing for all the parties made very brief submissions. In the light of the above background, the issues that fall for consideration are:-*

1) Whether the transfer of 117 shares of M/s. Kalicharan-Das-Trust in Board Meeting held on 24.01.2018 is legal and In accordance with the AOA?

(2) Whether the petitioners are entitled for numerous relies claimed in the petition?

(3) To what relief?

61. In order to answer the above issue No.1, it Is important to read Article 15 of the Articles of Association and also the Minutes of the Meeting dated 24.01.2018, which are extracted hereunder for ready reference as follows:

"Article 15: notice of transfer-

15. Every member or the legal representative of a deceased member who intends to transfer shares (hereinafter called 'the vendor') shall give in writing to the Board notice of his intention. That notice shall constitute the Board his agent for the sale of the said shares, in one or more lots at the discretion of the Board, to mernbers of the Company at a price to be agreed upon by the vendor and the Board or in default of agreement at a price which the auditor of the Company for the time being shall certify by writing under his hand to be in his opinion, the fair selling value thereof as between a willing vendor and a willing purchaser."

The Minutes of the Meeting of the Board Meeting held on 24.01.2018 reads as follows:-

"MINUTES OF THE BOARD OF DIRECTORS MEETING HELD ON 24/1/2018 AT THE REGISTERED OFFICE OF ASSAM MEDICAL CORPORATION PVT. LTD., GUWAHATI-16

DIRECTORS PRESENT:

1) DR. R. P. HANSARIA
2) DR. S. C. KUMAR
3) DR. A. NEOG
4) SRI BALENDRA CHOUDHURY
5) Mr. BAL KIISHAN BANSAL
6) MR. ANUP KUMAR KHEMANI
7) MR. SUNIL AGARWAL

SPECIAL INVITEE:

1) MRS. NEELAM HANSARIA

Dr. R. P. Hansaria proposed the name of Dr. S. C. Kumar to preside over the meeting. Sri Balendra Choudhury seconded the proposal.

Dr. S. C. Kumar accepted and look the chair.

Dr. R. P. Hansaria read out the minutes of the last Board Meeting held on 03/01/2018 and the same was approved.

The Board received the share transfer deeds lodged with the Company, Sri Balendra Choudhury raised an objection on the transfer of shares of Kali Charan Das Trust, after explanation to him, the following resolutions were adopted by the Board:

"RESOLVED THAT the transfer of following shares are be and hereby approved by the Board of Directors:

Sl. No.	Transferor	No. of shares	Transferee
1.	Dr. Rajendra Prasad Hansaria	10	Mr. Anil Agarwal
2.	Dr. Rajendra Prasad Hansaria	10	Mr. Kabita Agarwal
3.	Dr. Rajendra Prasad Hansaria	05	Mrs. Nima Agarwal
4.	Dr. Rajendra Prasad Hansaria	20	Ved Promoters Pvt. Ltd.
5.	Dr. Rajendra Prasad Hansaria	05	Mrs. Sangita Khemani
6.	Kali Charan Das Trust	40	Venkatesh Associates Pvt. Ltd.
7.	Kali Charan Das Trust	17	Landspaces Developers P. L
8.	Kali Charan Das Trust	20	Ved Promoters Pvt. Ltd.
9.	Kali Charan Das Trust	30	Mr. Anup Kumar Khemani
10.	Kali Charan Das Trust	10	Mrs. Sangeeta Khemani
11.	Sankar Hazarika	02	Mrs. Ekta Agarwal

The meeting ended with a vote of thanks to the Chair."

62. In order to decide the above Issue No.1, it is important to look at the reply filed by the R1 Company. The R1 Company in their reply stated that the shares were transferred in a valid and legal manner and Dr. R. P. Hansaria, Sri Binod Hansaria and Dr. Madhab Prasad Bajaj voluntarily stepped_down_as_directors and Mr. Sunil Agarwal, CA Bal Kishan Bansal and Mr. Anup Kumar Khemani were appointed as directors in the Board Meeting held on 24.01.2018. It is very clear from Article 15 of the AOA that a procedure for transfer of shares is provided. under the AOA. The R1 Company except making the above statement in their reply did not place any evidence before this Tribunal regarding the procedure adopted by them in transferring the shares of the Trust. It is interesting to note that in the minutes dated 24.01.2018, the R1 Company having recorded the objections of the petitioners with regard to transfer of 117 shares of the Trust, miserably failed to record the explanation under which the petitioner was satisfied about his objections. It is very hard to believe that the petitioners *having satisfied, filed the present petition in the absence of the recording of the explanations in the minutes nor evidence to that effect.*

As rightly contended by the petitioners, those 117 shares were held by M/s. Kalicharan Das Trust and they cannot be transferred in a routine manner like transfer of shares of other members, as the sold shares belongs to a Trust created by the Founder Member of the R1 Company Late Dr. Kali Charan Das. The burden of proof with regard to the legal and valid mode of transfer of those shares is upon the respondents and they have miserably failed to discharge their burden. As rightly contended by the petitioners, the R1 Company has to observe all the legal formalities for transfer of shares of a trust, be it private or public.

Therefore, it is very clear from the conduct of the respondents that those shares were transferred in a routine manner, taking advantage of the majority in the Board. The mere undertaking of the transferees not to transfer their shares will not cure the Illegality. Since, the petitioners are questioning the actions of the R1 Company, non-joinder of the Trust nor its Trustees as parties is not fatal and this Tribunal has every power to conduct legal scrutiny. Even otherwise, the provisions of Civil Procedure Code are not applicable except to the extent provided under the Companies Act to the proceedings before this Tribunal. Therefore, the objection of the respondents with regard to non-joinder of parties is not legally sustainable and is rejected.

63. So far as the transfer of shares of other members in the Board Meeting dated 03.01.2018 is concerned, those shares were held by other individual members who have every right to deal in their own right and, therefore, this Tribunal Is not inclined to interfere.

64. Next issue is with regard to appointment of Mr. Sunil Agarwal, CA Bal Kishan Bansal, Mr. Anup Kumar Khemani and CA Saloni Bansal. Since Mr. Anup Kumar Khemani purchased the shares of M/s. Kalicharan Das Trust, his directorship automatically gets cancelled in view of setting aside the transfer of shares of M/s. Kalicharan Das Trust by this Tribunal unless he possesses some other shares other than the shares of M/s. Kalicharan Das Trust.

In so far as appointment of Mr. Sunil Agarwal, CA Bal Kishan Bansal and CA Saloni Bansal is concerned, the appointment of directors and auditors is the exclusive domain of the Board and this Tribunal shall not interfere unless serious prejudice to the public interest of to the affairs of the company is shown.

65. As rightly contended by the respondents, the petitioners claimed numerous reliefs and all the reliefs, if granted, will virtually halt up the smooth functioning of the R1 Company and cannot be granted. Even otherwise, the petitioners have not placed any substantial evidence before this Tribunal warranting grant of those reliefs nor pressed those reliefs at the time of submissions.

66. In the light of the above facts and circumstances and observations, this Tribunal is of the considered opinion that the petitioners are not entitled for all the reliefs claimed in the petition except to the extent of setting aside the transfer of 117 shares of M/s. Kalicharan Das Trust and accordingly, this Tribunal pass the following orders:-

(i) It is hereby declared that the transfer of 117 shares of M/s. Kalicharan Das Trust in the Board Meeting dated 24.01.2018 is not in accordance with law and is hereby set aside and consequently, the R1 Company is directed to undo the said transfer in all the relevant registers and shall also communicate the same to the concerned statutory authorities.

(ii) Mr. Anup Kumar Khemani is ceased to be the director of the R1 Company from the date of communication of this order unless he possess some other shares other than the 30 shares of M/s. Kallcharan Das Trust.

(iii) The appointment of Mr. Sunil Agarwal, CA Bal Kishan Bansal and CA Saloni Bansal as directors-is-hereby confirmed.

(iv) The rest of the reliefs claimed by the petitioners are rejected.

(v) Both the parties shall bear their own cost."

(xxiv) Aggrieved by different portions of the order dated 03.06.2020, the Company, Mr. Anup Kumar Khemani and other incoming shareholders, the Trust, and Mr. Balendra Choudhury, along with Mr. S.M.B. Baruah, have separately preferred Company Appeal (AT) Nos. 103 of 2020, 102 of 2020, 104 of 2020 and 113 of 2020, respectively, before this Tribunal, thereby giving rise to the present batch of connected appeals.

4. The original petitioners before Ld. NCLT, namely, Mr. Balendra Choudhury and Mr. S.M.B. Baruah are Respondents No. 1 and 2 in the first three appeals (CA (AT) Nos. 102, 103 and 104 of 2020) and Appellant in the fourth appeal (CA (AT) No. 113 of 2020). Their oral and written submissions are as under:

i. The shares of Assam Medical Corporation Pvt. Ltd. (AMC) have been transferred without following the procedure prescribed in Article 15 of Articles of Association and without observing the legal formalities for transfer of shares specified therein. There can be no exception against law.

ii. Section 2(68) of the Companies Act 2013, and the Articles of Association of the AMC contain restrictions on the right of existing shareholders to transfer their shares. Article 15 gives pre-emptive right to the existing shareholders, without exercise of which there cannot be permission to sell the shares to outsiders.

iii. Mr. Balendra Choudhury and Mr. S.M.B. Baruah, had vehemently opposed the violation of Articles of Association and had expressed their willingness to exercise their pre-emptive right under Articles of Association.

iv. The Hon'ble Supreme Court in the case of *Claude-Lila Parulekar (Smt.) v. Sakal Papers (P) Ltd. (*2005) 11 SCC 773 has held that board of directors are strictly bound by the Articles of Association and that board of directions have no power to act contrary to Articles of Association.

v. Non-joinder of the Trust in their petition before Ld. NCLT is not fatal, as no relief was claim against the Trust and only conduct/action of the company AMC were under challenge. They had never challenged the ownership of 117 shares held by the Trust. Further in any case, the managing trustee of the Trust was also one of the Respondent. The Ld. NCLT has rightly dealt with the objections and has held that non-joinder of Trust is not fatal to this proceeding.

vi. Objections in the board meetings were not properly recorded, and this fact was brought to the notice of the chairman and managing director of AMC by Mr. Choudhury vide letter dated 12.04.2018, which is scanned below:

Date: 12/04/2018

To,
Chairman & Managing Director
Assam Medical Corporation (P) Ltd.
Guwahati

Sir,

I have received the copy of minutes for the board meeting dated 24/01/2018 on 07/04/2018 on the 14th day of the meeting.

I have various observations and objections to the content of the minutes, and I strongly object to the various resolution noted and shown as passed in the minutes.

Regarding the agenda for confirmation of the last board meeting (03/01/2018) minutes. I have raised objection to the transfer of shares of the existing members of the company in that meeting,but my objection and observations and various other discussions regarding presence of equal number of invitee without any special agenda related to them were not recorded and disclosed in the minutes dated 24/01/2018 and the minutes simply approved the same without noting my observations and objections.

Further regarding the Agenda for transfer of shares on 24/01/2018, I vehemently opposed the transfer of shares of the trust and Dr. R.P. Hansaria, citing that the shares of trust cannotr be tranferred and I never agreed to this Agenda of transfer of shares. Thus I totally and strongly object the way the minutes including all previous minutes where share transfer is discussed and record the clear and real pictures of the happenings of board meeting.

And also the documents connected with the Share Transfer was never placed before the meeting so the share transfer cannot be approved.

Thus you are requested not to approve the said minutes and I opposed and object to each and every resolution of the minutes dated 03/01/2018 and 24/01/2018 and its content in totality.

Thanking You,

12/4/2018

For The Assam Medical Corp...

12/4/18

Mg. Director

vii. Mr. Baruah, vide letter dated 05.05.2018 had offered to acquire more shares of the company. The said letter is scanned below:

ANNEXURE A-6

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Dtd: 05-05-2018.

To,
The Chairman & Managing Director,
M/s. Assam Medical Corporation (P) Ltd.,
Katapahar, Gopinath Nagar,
Guwahati-781016

Sub : Willingness to Purchase Shares of the company.

Sir,

With reference to the above mentioned subject, I have noted many new faces in the Extra Ordinary General Meeting of the company which held in 24.01.2018. I want to enquire if the company has issued share to them or there is any transfer of shares to them.

In both the cases I am willing to acquire more shares of the company as and when offered by the Board. Thus you are request to intimate me as any offer comes.

Thanking You,

Sobhan Malla Buzar Baruah.
K.R.B.Road, Bharalumukh,
Guwahati-781009.

*****

Guwahati-781008.

viii. The real estate company had taken over control of AMC with a view to shutdown the Nursing Home and use it for commercial motive.

ix. In CA (AT) No. 113 of 2020 Mr. Choudhury and Mr. Baruah had challenged the order of Ld. NCLT stating that there is no difference in the shares of Kalicharan Das Trust and the shares held by the individuals and they should not have been treated separately. The transfer of shares held by individuals is also in violation of Article 15 of the Articles of Association.

x. It is submitted that the appellants Mr. Balendra Choudhury and Mr. S.M.B. Baruah, were not personally present in the hearing before the Ld. NCLT and they had not authorised their advocate to give up substantial legal right that is, to forego other reliefs prayed for by them. They rely on the judgment of the Hon'ble Supreme Court in the Case of *Himalayan Coop. Group Housing Society v. Balwan Singh (2015) 7 SCC 373,* in this regard.

xi. The Ld. NCLT has erred in confirming the transfer of shares by individual members to third party, since transfer of shares by individual shareholders to outsiders also violates Article 15 of Articles of Association.

5. The company Assam Medical Corporation Pvt. Ltd. (AMC) had challenged the impugned order in Company Appeal (AT) No. 103 of 2020. It is Respondent in all the other three appeals. The submissions of AMC are as under:

i. The right of pre-emption as provided under Article 15 of Articles of Association was waived by Mr. Balendra Choudhury and Mr. S.M.B. Baruah through their conduct and acquiescence, and consequentially share transfers made on 03.01.2018 and 24.01.2018 were legal.

ii. Mr. Choudhury had attended the board meeting on 03.01.2018 and the resolution for sale of shares by individual shareholders to outsiders was passed unanimously, as also the proposal to appoint the incoming shareholders as directors.

iii. Similarly, in the EOGM held on 24.01.2018, the appointment of three directors, namely, Mr. Sunil Agarwal, Mr. Anup Kumar Khemani and CA Bal Krishan Bansal (new shareholders) was approved. It was only through their letter dated 12.04.2018 that Mr. Choudhury had objected to the said transfer of shares recorded in meeting dated 03.01.2018 and 24.01.2018, and it was only on 05.05.2018 that Mr. Baruah expressed willingness to purchase shares if offered in future.

iv. For a case of oppression and mismanagement, there should be a clear bona fide offer to purchase the shares which was disregarded/refused by the board. There was no clear offer from Mr. Choudhury or Mr. Baruah or any other shareholder, and thus there is no case for oppression and mismanagement.

v. The conduct fulfils all the requirements of waiver as has been held by the Hon'ble Supreme Court in *M/s Motilal Padampat Sugar Mills v. State of Uttar Pradesh and Ors. (1979) 2 SCC 409,* wherein in para 6 it is held as under:

> *"6.....Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be "an intentional act with knowledge". Per Lord Chelmsford, L.C. in Earl of Darnley v. London, Chatham and Dover Rly. Co. [1867] L.R. 2 H.L. 43 There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. It is pointed out in Halsbury's Laws of England (4 d) Volume 16 in paragraph 1472 at page 994 that for a "waiver to be effectual it is essential that the person granting it should be fully informed as to his rights"......"*

vi. The sale of shares to outsiders without following Article 15 was not void but only voidable. The reliance has been placed on the judgment of *Radhabari Tea Co. v. Mridul Kumar Bhattarcharjee (2009) SCC Online Gau.88).*

vii. Mr. Choudhury and Mr. Baruah conceded and restricted their case only with respect to the transfer of trust shares to the third parties and gave up all other reliefs and are estopped from seeking these reliefs before this Tribunal.

viii. Grave errors have been committed in the impugned order by applying different yardsticks to the sale of shares by individuals and sale of trust shares. The statute does not provide for different procedure to be applied while dealing with shares or transfer thereof held by individuals or company or trust. Articles of Association cannot be applied selectively to the shares held by the trust and not to the shares held by the individuals. The Ld. NCLT has raised no objection to shares transferred by individual shareholders while simultaneously setting aside the transfer of shares by the trust.

ix. In any case, whether a trust could have or could not have sold its shares was a matter to be adjudicated in the civil suit and the Ld. NCLT had no jurisdiction.

6. The Ld. Counsel for incoming shareholders of Agrawal and Khemani groups, who had filed Company Appeal (AT) No. 102 of 2020 and are Respondents in other appeals, have argued as under:

i. They are the bona fide purchasers of the shares. The AMC was in need of urgent funds and discussions took place between major shareholders of AMC and incoming shareholders. The funds were required to be infused to improve financial health of the company. It was resolved that the company would raise funds by way of a rights issue and for the same valuation of market value of the shares was to be undertaken.

ii. The Ld. NCLT has wrongly applied different yardsticks while dealing with the transfer of shares held by the individual shareholders and that the legal status of a trust as a shareholder is same as that of any other shareholder in a company and the Ld. NCLT erred in declaring the transfer of shares of the trust as null and void while approving the transfer of shares by other shareholders.

7. We have heard the Ld. Counsels and have perused the records with their able assistance.

7.2 We note that company AMC was incorporated as a Pvt. Ltd. Company on 18.12.1961. The Articles of Association and the Memorandum of Association was drawn under the prevailing Companies Act, 1956. The relevant provision of Companies Act, 1956 in Section 3 is as under:

> *"3 ....*
>
> *(iii) "private company" [means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles].*
>
> *(a) restricts the right to transfer its shares, if any;*
>
> *........."*

7.3 The corresponding provision in Companies Act, 2013 Act is Section 2(68), the relevant portion of which reads as under:

> *"2(68) "private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—*
>
> *(i) restricts the right to transfer its shares;*
>
> *........*
>
> *(iii) prohibits any invitation to the public to subscribe for any securities of the company;"*

7.4 From a plain reading of aforesaid Section it is apparent that a private limited company has a right to restrict the 'right to transfer' of its shares through its Articles of Association.

7.5 Applying the right to restrict transfer of its shares, as prescribed in the Section 3(iii) of Companies Act, 1956, the AMC had adopted the following Article 15:

> *"Article 15: notice of transfer—*
>
> *Every member or the legal representative of a deceased member who intends to transfer shares (hereinafter called the vendor) shall give in writing to the Board notice of his intention. That notice shall constitute the Board his agent for the sale of the said shares, in one or more lots at the discretion of the Board, to members of the Company at a price to be agreed upon by the vendor and the Board or in default of agreement at a price which the auditor of the Company for the time being shall certify by writing under his hand to be in his opinion, the fair selling value thereof as between a willing vendor and a willing purchaser."*

7.6 A bare perusal of the said Article 15 shows that the proper procedure for sale of shares of AMC is that the member (or the legal representative of the deceased member) who intends to transfer the shares has to give a notice of his intention to sell in writing to the board. The board will then act as an agent for the sale of said shares, which can be sold in one or more lots, to members of the company at the agreed price (between the seller and the board) or a price determined by the auditor of the company if no such agreement is reached. Article 28 of the Articles of Association specifies the exceptions in which Article 15, along with Articles 13, 14 and 16 are not applicable in case of transfer by a member to his wife, any other member of his HUF or new trustee etc. This Article 28 containing exceptions is not applicable to the share transfers which are subject matter of the impugned order.

7.7 Article 28 of Articles of Association reads as under:

> *"28. Exceptions*
>
> *Articles 13, 14, 15 and 16 hereof shall not apply to a transfer to a person who is already a member of the Company nor to transfer by a member to the name of his wife or issue or any other members of his and undivided Hindu family nor to a transfer nearly for the purpose of effectuating the appointment of new trustees nor to a transfer by executors or administrators to a legatee under the will of or to a husband, wife or next of kin of a deceased member nor to a transfer by a trustee to a beneficiary PROVIDED THAT it is proved to the satisfaction of the Board that the transfer bona-fide falls within one of these exceptions."*

7.8 Separating wheat from chaff, in essence this case is whether compliance to Article 15 of the Articles of Association of the company has been made in transfer of shares of individuals and the Trust held in the company AMC to rank outsiders. The company has not followed Article 15 of Articles of Association "in toto" from the very beginning of these transfers. The sellers have not given any notice to the Board, the Board was neither asked nor performed as agent of the selling shareholders. The Board also did not determine the 'agreed' price of shares neither the auditor discovered price of subject shares, as required under Article 15.

7.9 We now look at judicial guidance on the pre-eminence and overriding impact of Articles restricting transfer of shares in a Private Limited company.

7.9.1 It has been held in *Lyle & Scott Ltd. v. Scott's Trustees, 1959 AC 763* that there can be restrictive rights on transfer of shares in favour of strangers if the existing members of the company are willing to buy them. Such restrictions imposed by the Articles were held to be valid.

7.9.2 It has been held in the case of *V.B. Rangaraj v. V.B. Gopalkrishnan (1992) 73 Comp. Case 201 SC* that the restriction on transferability of shares as provided in the Articles of private company shall be binding and any additional rights to transfer contrary to the Article shall not be binding on the company.

7.9.3 The Hon'ble Supreme Court in the case of *Claude-Lila Parulekar (Smt.) v. Sakal Papers (P) Ltd. & Ors. (2005) 11 SCC 73* in para 25 held as under:

> *"25. Section 36 of the Companies Act, 1956 makes the memorandum and articles of the company, when registered, binding not only on the company but also the members inter se to the same extent as if they had been signed by the company and by each member and covenanted to by the company and each shareholder to observe all the provisions of the memorandum and of the articles. The articles of association constitute a contract not merely between the shareholders and the company but between the individual shareholders also. The articles are a source of power of the Directors who can as a result exercise only those powers conferred by the articles in accordance therewith. Any action referable to the articles and contrary thereto would be ultra vires."*
>
> (Emphasis supplied)

7.9.4 The Hon'ble Supreme Court in the case of *Sangramsinh P Gaekwad v. Shanta Devi Gaekwad (2005) 11 SCC 314* has held in paras 167 and 174, as under:

> *"167. In any event, when a notice to the company by a member is vitiated, the same can be withdrawn in law. Furthermore, a transfer in violation of the articles is void (see Palmer's Company Law, 23rd Edn., 22.14).*
>
> *174. It has further to be borne in mind that a pre-emptive right is granted in favour of a member of a private company so that his right of control is not taken away. Exercise of such pre-emptive rights is particularly needed in relation to those private companies which are essentially incorporated partnerships. (See Gower and Davies' Principles of Modern Company Law, 7th Edn., p. 635.)"*

(Emphasis supplied)

7.10 From the submissions of the company, the trust, incoming shareholders and the original petitioners it is clear that the procedure prescribed in Article 15 was not followed. No notice was given by the selling shareholders to the board of directors, the board was not made an agent in the sale and no offer for sale has been made to the existing members of the company. Thus, the entire procedure and manner of sale is contrary to the Articles and ultra vires. A transfer in complete violation of the Articles is void.

7.11 All the sides are in agreement that there is no difference in the law and regulations relating to shares held by individual shareholders and those held by the Trust regarding sale of shares and the Ld. NCLT grossly erred in treating individual shareholders and Trust on different yardsticks.

7.12 We also note that Mr. Balendra Choudhury and Mr. S.M.B. Baruah had objected to the sale of shares to strangers. Mr. Choudhury had stated in his letter dated 12.04.2018 that he has objected to the sale of shares in the meetings held on 03.01.2018 and 24.01.2018, though objections were not fully or correctly recorded. Mr. Baruah in letter dated 05.05.2018 had offered to buy the shares from the outgoing shareholders. In any case, we find that procedure given in Article 15 was not adopted.

7.13 It is nobody's case that sale of shares made in 2018 were in anyway covered by the exceptions given in Article 28. The contention the Article 15 was not followed as there was acquiescence of the shareholders in the said transfer also does not hold good. The company was required to follow the procedure as prescribed in Article 15. Since the procedure prescribed in Article 15 has not been followed and pre-emptive rights of existing shareholders have been totally ignored, we cannot hold that the shareholders have consciously elected to waive their rights and are estopped by their conduct. In the facts of this case, we hold that the transfer of shares by the individual shareholders as well as by the Trust is not in accordance with law, and we hereby set aside the said transfer of shares. The company shall be at liberty to revisit the sale and transfer of shares by following the procedure prescribed in Article 15 of Articles of Association respecting existing shareholders' pre-emptive rights to buy these shares. The order of Ld. NCLT is modified to the above extent. The company Assam Medical Corporation Pvt. Ltd. is directed to undo the said transfer and rectify the registers and make consequential statutory declarations. The directors appointed on the basis of shareholding acquired through the aforesaid transfers, now cancelled by us, shall cease to be directors unless they possess some other shares. Rest of the reliefs have not been pressed and also have become infructuous.

7.14 The aforesaid four appeals are disposed of in terms of above directions. No order as to costs. Pending application(s), if any, are closed.

[Justice Yogesh Khanna]
Officiating Chairperson

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 05.08.2026
Ram N.