



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 1**  
**CP No. 58/245/PB/2024**

**IN THE MATTER OF:**

Ankit Jain & Ors

.... Petitioner

Vs

Jindal Poly Films Limited & Ors

.... Respondent

**Order under Section 245**

**Order delivered on 05.02.2026**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SHRI RAVINDRA CHATURVEDI**  
**HON'BLE MEMBER (TECHNICAL)**

**HYBRID HEARING (PHYSICAL & VC)**

**PRESENT:**

|                    |   |                                                                                            |
|--------------------|---|--------------------------------------------------------------------------------------------|
| For the Petitioner | : | Adv. Vaibhav Kakkar, Adv. Abhishek Swaroop, Adv. Anupam Prakash                            |
| For the Respondent | : | Adv. Biswajit Dubey, Adv. Divyam Agarwal, Adv. Aniket Aggarwal, Adv. Priya Chauhan for R-1 |

**ORDER**

**Ivn. P 05/2024, Ivn. P 07/2024**

The main case i.e. CP No. 58/245/PB/2024 for admission was reserved for orders. Due to paucity of time, infrastructure issues and administrative issues, there is some delay. However, the same will be passed at the earliest. At request and by consent, list these two applications alongwith main case on **02.04.2026.**

-Sd/-

**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

-Sd/-

**(RAVINDRA CHATURVEDI)**  
**MEMBER (TECHNICAL)**

05.02.2026  
Lalit



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**IA(CA)-132/2024**  
**IN**  
**CP No. 58/245/PB/2024**

**IN THE MATTER OF:**

|                                  |                 |
|----------------------------------|-----------------|
| Ankit Jain & Ors                 | .... Petitioner |
| Vs                               |                 |
| Jindal Poly Films Limited & Ors. | .... Respondent |

**IN THE MATTER OF:**

|                                 |                 |
|---------------------------------|-----------------|
| Jindal Poly Films Limited & Ors | .... Petitioner |
| Vs                              |                 |
| Ankit Jain & Ors                | .... Respondent |

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. RAVINDRA CHATURVEDI**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

|                    |                                                                                                                                                                                                                                                                                                                          |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner | : Mr. Abhinav Vashisht, Senior Advocate along with Mr. Vaibhav Kakkar, Mr. Abhishek Swaroop, Mr. Anupam Prakash, Ms. Akshita Sachdeva and Ms. Kirti Talreja, Advocates                                                                                                                                                   |
| For the Respondent | : Mr. U.K.Chaudhary, Senior Advocate along with Mr. Divyam Agarwal, Mr. NPS Chawla, Mr. Ankit Aggarwal, Ms. Priya Chauhan, Ms. Nishtha Khurana and Mr. Asher Revi Job, Advocate for R-1/ Jindal Poly<br>Mr. Biswajit Dubey, Advocate for R-2 & 4<br>Mr. Sunil Fernandes, Senior Advocate along with Ms. Shankari Mishra, |



Advocate for R-14 in CP-58/2024 and  
for R-16 in IA-132/2024

For the Interveners : Mr. Anant Merathia, Advocate along  
with Ms. Priyanka Varma, Advocate

**Order Pronounced on : 05.02.2026**

**ORDER**

1. This class action Company Petition is filed by the shareholders holding 4.99% of the share capital of the Respondent No. 1 / Jindal Poly Films Limited, invoking Section 245 of the Companies Act, 2013 (**the Companies Act**) read with Rules 84 to 87 of National Company Law Tribunal Rules, 2016 (**NCLT Rules**), on 14.03.3024 seeking following reliefs:

- a) *Declare the sale of OCPS and RPS to SSJ Trust (through its trustees Respondent No. 2 and Respondent No. 3) and Respondent No.16 / Jindal Poly Investment as being null and void, and reverse the said transactions in the books of the Respondent No. 1; or in the alternative*
- b) *Direct the Respondents to compensate Respondent No. 1 with respect to loss on sale of OCPS amounting to INR 2268.03 crores and proportionately to the Petitioners;*
- c) *Direct the Respondents to compensate Respondent No. 1 with respect to loss on sale of RPS i.e., INR 250.42 crores and proportionately to the Petitioners;*
- d) *Direct the Respondents to compensate Respondent No. 1 for the loss caused due to the advancement of loan to*



*Jindal Thermal / Respondent No. 15 i.e., INR 127.96 crores and proportionately to the Petitioners;*

*e) Direct the Respondents to compensate Respondent No. 1 / Jindal Poly on the loss caused due to undervalued sale of equity shares of Jindal Thermal / Respondent No. 15 to Champak Niketan by Jindal Films being the wholly owned subsidiary of Respondent No. 1 i.e., INR 135.34 crores and proportionately to the Petitioners;*

*f) Restrain the Respondents from dealing with the OCPS and RPS or any other securities of Jindal Powertech / Respondent No. 14 and Jindal Thermal / Respondent No. 15, directly or indirectly, in any manner whatsoever, including without limitation, transfer, sale, redemption, disposal in any manner or creation of encumbrance.*

*g) Direct the Respondents to compensate the Respondent No. 1 Company and the Petitioners in proportion to its shareholding (as mentioned in paragraph 8) with respect to the abovementioned transactions referred in para (b) to (e) along with the interest at the rate of 12% per annum compounding from the date of respective loss, as may be determined by this Hon'ble Tribunal;*

*h) Direct disciplinary action against Independent Valuer of the Company for allegedly valuing the shares of Jindal Powertech I Respondent No. 14 without considering the one-time settlement executed between the Jindal Powertech / Respondent No. 14 and its lenders and therefore advised incorrect or misleading statement to Respondent No. 1;*

*i) Restrain the Respondents from taking any steps which would result in the diminishing of value in the Respondent No. 1 and its public shareholders;*

*j) Further, the Petitioners crave leave of this Hon'ble Tribunal to add to or amend the petition at a later stage, if the circumstances so warrant.*

*k) Pass appropriate orders, reliefs, directions under section 245 of the Act to bring to an end the aforesaid acts which are prejudicial to the interest of the Company and its*



*shareholders and for necessary orders and reliefs in respect thereto, including as prayed for herein; and*

*l) Pass such other and/or further orders as the Hon'ble Tribunal may deem fit and proper.*

2. At the time of hearing based on prior notice as required respondents some of whom are represented by Counsel objected to the issuance of notice and sought time to file their objection on maintainability of the class action proceedings. An application bearing IA(CA)/132/2024 has been filed by the Respondent No. 1 seeking dismissal of the main petition. The prayer made in **IA-132 of 2024** reads as follows.

*a) Allow the present application and pass an order dismissing the captioned petition bearing CP No. 58 of 2024 titled as 'Ankit Jain and Ors v. Jindal Poly Film Ltd & Ors.' as being non-maintainable; and / or*

*b) Pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

3. Notice of the Application bearing IA(CA)/132/2024 on the maintainability of the Company Petition was issued on 09.04.2024 and in the course of further hearing, hardcopies of the IAs, issue-wise chart, list containing provision of law and judgment compilation cited by the parties, qua maintainability of the main Petition has been filed. On various dates, the objection raised by the Respondent on the



maintainability of the petition, were heard. Papers in volumes were filed by each side are taken on record.

4. While it is the stand of Mr. UK Chaudhary, Ld. Sr. Counsel appearing for the Respondent in the main case and the applicant in IA-132 of 2024, that the main company petition is not maintainable for various reasons stated in that application, it is the stand of Mr. Abhinav Vashisht, Ld. Sr. Counsel appearing for the Petitioner in the main case that all the necessary ingredients for invoking Section 245 of the Companies Act, 2013 are satisfied and hence, notice should be issued pronto.
5. The Petitioner in the main company petition while invoking Section 245 of Companies Act, 2013 primarily contended that they are of the opinion that the management or conduct of the affairs of the R-1 company i.e. Jindal Poly films Limited, are being conducted in a manner prejudicial to the company and its members. As a result of such opinion, to maintain this application in terms of Rule 84 (3) (ii) (b) of NCLT Rules, 2016, they need to have a minimum 2% of the issued share capital of the listed R-1 company. The Petitioner satisfied the criteria



in the present case. These are the two main ingredients to initiate proceedings and they qualify.

6. On the opinion of the Petitioner to maintain the class action petition, various factual issues which are raised in the petition and primarily not controverted are as follows:-

| S.No | Date                   | Particulars                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Reference                                   |
|------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 1.   | 09.09.74               | Jindal Poly Films Limited (“Company” or “Respondent No. 1” or “JPFL”) was incorporated under the name of Hindustan Pipe Udyog Limited. Thereafter, the name of the Company was changed to its present name on 19.04.2004                                                                                                                                                                                                                                                               | <i>Para 3.1 at Pg 16 of the petition</i>    |
| 2.   | 16.05.13<br>(Demerger) | Jindal Poly, under the control of Respondent No. 2-6, initiated a demerger of its investment division into Jindal Poly Investment / Respondent No. 16 with stated objective of enabling JPFL to focus its core business, i.e., manufacturing. The demerger was also aimed at creating a focused investment / holding company.<br><br>The scheme was approved by the High Court, Allahabad. Entire equity stake (48.71%) of Jindal Powertech was transferred to Jindal Poly Investment. | <i>Para 7.9 at Pg 27-28 of the petition</i> |



| 3.                    | FY 2013 – 2014<br>to<br>FY 2016 – 2017<br><br>(Investments) | JPFL made multiple investments in Jindal Powertech / Respondent No.14 in the form of Optionally Convertible Preference Shares (“OCPS”) and Redeemable Preference Shares (“RPS”) that cumulated to <b>INR 703.79 crores.</b><br><table><tr><th>Amounts in INR Crores</th><th>FY 2013-14</th><th>FY 2014-15</th><th>FY 2015-16</th><th>FY 2016-17</th><th>Total</th></tr><tr><td>0% RPS</td><td>167.00</td><td>38.50</td><td>39.29</td><td>18.80</td><td>263.59</td></tr><tr><td>0% OCPS</td><td>-</td><td>191.20</td><td>249.00</td><td>-</td><td>440.20</td></tr><tr><td><b>Total</b></td><td><b>167.00</b></td><td><b>229.70</b></td><td><b>288.29</b></td><td><b>18.80</b></td><td><b>703.79</b></td></tr></table> | Amounts in INR Crores                   | FY 2013-14   | FY 2014-15    | FY 2015-16 | FY 2016-17 | Total | 0% RPS | 167.00 | 38.50 | 39.29 | 18.80 | 263.59 | 0% OCPS | - | 191.20 | 249.00 | - | 440.20 | <b>Total</b> | <b>167.00</b> | <b>229.70</b> | <b>288.29</b> | <b>18.80</b> | <b>703.79</b> | Para 7.15 at Pg 30 of the petition |
|-----------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------|---------------|------------|------------|-------|--------|--------|-------|-------|-------|--------|---------|---|--------|--------|---|--------|--------------|---------------|---------------|---------------|--------------|---------------|------------------------------------|
| Amounts in INR Crores | FY 2013-14                                                  | FY 2014-15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | FY 2015-16                              | FY 2016-17   | Total         |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| 0% RPS                | 167.00                                                      | 38.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 39.29                                   | 18.80        | 263.59        |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| 0% OCPS               | -                                                           | 191.20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 249.00                                  | -            | 440.20        |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| <b>Total</b>          | <b>167.00</b>                                               | <b>229.70</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>288.29</b>                           | <b>18.80</b> | <b>703.79</b> |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| 4.                    | 07.06.2014<br><br>(Terms of RPS)                            | The board of directors of Jindal Powertech / Respondent No.14 vide a resolution resolved that the number of shares given as <b><u>RPS would carry 0% dividend</u></b> and were <b><u>redeemable within 15 years at a premium of 10%.</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Para 7.14 at Pg 29 - 30 of the petition |              |               |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| 5.                    | 24.06.2015<br><br>(Terms of OCPS)                           | The board of directors in another Extra-ordinary General Meeting of Jindal Powertech / Respondent No.14 resolved that the number of shares given as OCPS <b><u>shall be converted at par into equity shares of INR 10/- each, fully paid up</u></b> and the <b><u>option for conversion will be given between 57 to 60 months of allotment</u></b> by Jindal Powertech / Respondent No.14 to the OCPS holders.                                                                                                                                                                                                                                                                                                       | Para 7.14 at Pg 29 - 30 of the petition |              |               |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |
| 6.                    | FY 2016-2017                                                | Jindal Films India Limited (Wholly owned subsidiary of JPFL) acquired 11.4% stake in Jindal India Thermal Power Limited / Respondent No.15 (Majority owned by Jindal Powertech) comprising 6.93 crore equity shares for INR 31.18 crores.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Para 7.59 at Pg 56 of the petition      |              |               |            |            |       |        |        |       |       |       |        |         |   |        |        |   |        |              |               |               |               |              |               |                                    |

|     |                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                         |
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| 7.  | 31.12.2016<br>NPA                                             | The accounts of <b>Jindal Powertech / Respondent No.14</b> with IFCI became NPA. During the same year, the account of <b>Jindal Thermal / Respondent No.15</b> also became NPA.                                                                                                                                                                                                                                                                                                                                                                                                                                 | Para 7.21 & 7.23 at Pg 34 - 35 of the petition                          |
| 8.  | FY 2016-2017<br>(JPFL gives loan to Jindal Thermal)           | JPFL advanced sum of INR 83.85 crores to Jindal Thermal / Respondent No.15 as per the terms of power purchase agreement (“PPA”). However, the said agreement was cancelled and the advanced amount was converted into a loan without stipulation of schedule of repayment of principal amount (INR 83.85 crores) and interest (INR 7.64 crores), totaling to INR 91.49 crores. Later <b><u>the loan is written off by JPFL in FY 2018-2019.</u></b>                                                                                                                                                             | Para 7.55 & 7.56 at Pg 54 of the petition                               |
| 9.  | 2017-2018<br>(Petitioner)                                     | Mr. Ankit Jain, Petitioner No.1 became a shareholder of Jindal Poly / Respondent No.1.<br><br>Note: Till June 2019, the shares were purchased in a Trust whose beneficiary was Mr. Ankit Jain.                                                                                                                                                                                                                                                                                                                                                                                                                  | Para 2.1 at Pg 14 of the petition.<br><br>Para 7 of the reply at Pg 12. |
| 10. | FY 2018-2019<br>Investments written off by JPFL in its books. | JPFL writes off the entire investment of INR 703 crores (INR 263.59 crores in RPS + INR 440.20 crores in OCPS) in Jindal Powertech / Respondent No.14 on the ground that Jindal Powertech had a ‘negative’ net worth and had continuous cash losses.<br><br><b>Note:</b> Writing off is an <b><u>accounting treatment</u></b> in the books of Company to reduce the value of an asset (such as unpaid receivable), while simultaneously debiting an expense account, in the books of the company. Legal character of the debt does not change, and the Company continues to have the right to recover the same. | Para 7.17 at Pg 31 - 32 of the petition                                 |



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| 11. | FY 2019-2020                                                                        | Mr. Ruchi Jain, Petitioner No.3 became a shareholder of JPFL. More stake acquired in FY 2021-2022.                                                                                                                                                                                | Para 2.3 at Pg 15 of the petition  |
| 12. | FY 2019-2020<br>(Terms of OCPS modified)                                            | The terms of the OCPS allotted to JPFL by Jindal Powertech / Respondent No.14 were modified: <b><u>the option for conversion changed from 57-60 months to 10 years.</u></b>                                                                                                       | Para 7.20 at Pg 33 of the petition |
| 13. | FY 2020-2021<br><b>Loan - 1 given by JPFL to Jindal Thermal for debt repayment.</b> | JPFL grants a fresh loan to Jindal Thermal of <b><u>INR 150 crores</u></b> to enable Jindal Thermal to make the upfront deposit with its financial lenders under the then proposed terms of debt settlement plan of Jindal Thermal / Respondent No.15 submitted with the lenders. | Para 7.24 at Pg 36 of the petition |

|     |                                                            |                                                                                                                                                                                                                                                                                                                                                                       |                                       |
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| 14. | FY 2020-2021                                               | Mr. Rina Jain Petitioner No.2 became a shareholder of JPFL / Respondent No.1. More stake acquired in FY 2021-2022.                                                                                                                                                                                                                                                    | Para 2.2 at Pg 15 of the petition     |
| 15. | 23.02.2021<br><b>Jindal Thermal share value increases.</b> | IBBI registered valuer submitted a report on the value of equity shares of Jindal Thermal (for the purpose of merger of several promoter companies into Concatenate Advest Advisory Private Limited / Respondent No. 6, and valued the shares of Jindal Thermal / Respondent No.15 at INR 1243 crores (i.e. <b><u>INR 20.53 per share</u></b> ) as of March 31, 2021. | Para 7.40 at Pg 47-48 of the petition |
| 16. | FY 2020-2021                                               | The shares of Jindal Thermal / Respondent No.15 owned by Jindal Films (comprising 6.93 crore equity shares for INR 31.18 crores) were sold to a related                                                                                                                                                                                                               | Para 7.59 at Pg 56-57 of the petition |



|     |                                                                                 |                                                                                                                                                                                                                                                                                                                              |                                    |
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|     |                                                                                 | party Champak Niketan Pvt Ltd at INR 1 per share, for a total sum of INR 6.93 crores.                                                                                                                                                                                                                                        |                                    |
| 17. | FY 2021-2022<br>Another loan by JPFL to Jindal Powertech. Converted into OCRPS. | JPFL provided a <u>loan of INR 106.5</u> crores to Jindal Powertech / Respondent No.14 which was subsequently converted into an investment in the form of 0% Optionally Convertible Redeemable Preference Shares (“OCRPS”) at <u>9% premium and 0% dividend of amount INR 108.77 crores (including interest on loan).</u>    | Para 7.22 at Pg 35 of the petition |
| 18. | FY 2021-2022<br>Loan - 2 given by JPFL to Jindal Thermal for debt repayment.    | JPFL gives fresh loan to Jindal Thermal / Respondent No.15 of <u>INR 260</u> crores to make a security deposit with its financial lenders as upfront payment under the terms of settlement plan of Jindal Thermal / Respondent No.15 submitted with the lenders.<br><u>Total loan for debt repayment now INR 410 crores.</u> | Para 7.24 at Pg 36 of the petition |
| 19. | 29.05.2021<br>Jindal Thermal MRA                                                | Jindal Thermal / Respondent No.15 signed a Master Resolution Agreement (“MRA”). Outstanding debt of <u>INR 9431.49 crores is settled for INR 2,540 crores</u> (payable in tranches) – relief of INR 6,981.49 crores.                                                                                                         | Para 7.23 at Pg 35 of the petition |
| 20. | 11.06.2021<br>Jindal Powertech OTS                                              | Jindal Powertech enters into an One-Time Settlement (“OTS”) with IFCI. Debt of <u>INR 428 crores approx. is settled for INR 103 crores</u> – relief of INR 325.33 crores (principal of INR 122 crores and interest of INR 203.33 crores).                                                                                    | Para 7.21 at Pg 34 of the petition |

|     |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                              |
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| 21. | FY 2021-2022                      | Jindal Powertech / Respondent No.14 held 93.9 Crore RPS in Jindal Thermal / Respondent No.15, each amounting to INR 10 per share. Post Jindal Powertech OTS and Jindal Thermal MRA, the repayment terms of the said RPS were revised from a one-time premium of 10% to 9.5% per annum till FY 2021-2022.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Para 7.27 at Pg 37-38 of the petition                                        |
| 22. | 16.03.2022                        | Despite having liquid assets worth INR 1250 crores, the Board of Directors informed that JPFL has sold <u>44.02 crores number of 0% OCPS</u> of Jindal Powertech / Respondent No.14 worth INR 440.20 crores to SSJ Trust for a <u>paltry sum of INR 66.03</u> crores, along with <u>26,35,90,000 number of 0% RPS</u> of Jindal Powertech / Respondent No.14 worth INR 263.59 crores to Jindal Poly Investment / Respondent No.16 for a <u>mere sum of INR 39.53 crores.</u><br><br><u>Note:</u> The said transactions were grossly undervalued which were <u>purposefully structured in a manner to bypass the statutory obligations</u> under Rule 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI (LODR) Regulations”) that make it mandatory to seek approval of all the shareholders, including the minority shareholders (which in the given case, also includes the Petitioners). Notably, no approval (minority public) shareholders were ever taken. <u>Had said transactions been undertaken at its actual value, the same would have exceeded the minimum threshold requiring seeking the approval of minority shareholders.</u> | Para 7.32 – 7.33 at Pg 41 of the petition<br><br>Para 6(vi) of reply at Pg 8 |
| 23. | 16.06.2022<br>Email by Petitioner | An email was sent by Petitioner No. 1 requesting Company Secretary of JPFL to explain the rationale for the investments made by JPFL. Petitioner No. 1 also sought,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Para 7.34 at Pg 42 of the petition                                           |



|     |                                                                                                                       |                                                                                                                                                                                                                                                                     |                                       |
|-----|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
|     |                                                                                                                       | through this email, the disclosure of certain information and documents pertaining to the investments made by JPFL.                                                                                                                                                 |                                       |
| 24. | 03.11.2022 and<br>10.11.2022<br><br>Emails by<br>Petitioner                                                           | Emails were sent by Petitioner No. 1 to JPFL to provide a copy of the valuation report (basis which the sale value of OCPS and RPS was arrived at). No response received till date..                                                                                | Para 7.34 at Pg 42<br>of the petition |
| 25. | 23.06.2022<br><br>Refusal by JPFL<br>to share any<br>information.                                                     | An email was received by Petitioner no. 1 from the Company Secretary of JPFL, wherein the latter refused to share any documents or information with Petitioner no. 1. The email also held that any queries can be raised at the time of the Annual General Meeting. | Para 7.34 at Pg 42<br>of the petition |
| 26. | FY 2022-2023<br><br>Jindal Powertech<br>issues shares of Rs<br>10 with premium<br>of Rs 120.                          | Jindal Powertech / Respondent No.14 issued <b>81,53,846 number of fresh equity shares of INR 10/- each at a premium of INR 120/- per share</b> to the promoter entity of JPFL, that is, Concatenate Advest Advisory Private Limited / Respondent No. 6.             | Para 7.41 at Pg 48<br>of the petition |
| 27. | 10.06.2022<br><br>JPFL conceals to<br>disclose the sale of<br>OCPS and RPS to<br>NSE as related<br>party transactions | <b><u>JPFL writes letter to NSE seeking to inform about related party transactions. However the sale of OCPS and RPS to SSJ Trust and Jindal Poly Investment (its promoter and a related party) respectively are concealed and not disclosed.</u></b>               | Para 6(vi) of reply<br>at Pg 8        |
| 28. | 30.06.2022<br><br>Belated disclosure<br>after objections<br>raised                                                    | After lot of hue and cry, inter alia, by the Petitioners, a <b><u>revised letter</u></b> was filed by JPFL before NSE after including the reference of both impugned transactions, with the explain that the same was an <b><u>"oversight"</u></b> .                | Para 6(vi) of reply<br>at Pg 8        |
| 29. | 20.09.2023                                                                                                            | Email sent by Petitioner No.1 to Jindal Poly for necessary information on the transactions. No response received.                                                                                                                                                   | Para 14 of reply at<br>Pg 16-27       |
| 30. | <br><br>FTI Report                                                                                                    | The entire series of transactions are examined and evaluated by FTI Consulting, a globally reputed audit firm. They submit a report that there has been gross undervaluation of transactions resulting in losses in excess of INR 2500 crores.                      | Para 7.44 at pg 49<br>of the petition |
| 31. | 27.02.2024                                                                                                            | Petition filed.                                                                                                                                                                                                                                                     |                                       |



7. The Petitioners inter alia contend and state as in terms of issues in Para 6 above is the foundation for the formation of the opinion that the management or affairs of R-1 company are prejudicial to the interests of the company and its members. The full extent of the issues raised are contained in the main company petition and will be gone into after completion of pleadings.
8. The fact that the Petitioners satisfy the requirement of section 245 (3) read with rule 84 (3) (ii) (b) of NCLT Rules, 2016 is not disputed by the Respondent and that is an admitted fact. Details of the shareholding of the Petitioners in the Respondent No. 1 Company is tabulated below:

| Name of the Shareholder | Shareholding acquired in Financial Year | Number of Shares held | Shares held (in % ge) to total Paid up capital of the Company |
|-------------------------|-----------------------------------------|-----------------------|---------------------------------------------------------------|
| Ankit Jain              | 2017-18                                 | 13,40,000             | 3.06                                                          |
| Rina Virendra Jain      | 2020-21                                 | 4,12,400              | 0.94                                                          |
| Ruchi Jain Hanasoge     | 2020-21                                 | 4,32,521              | 0.99                                                          |
| Total                   |                                         | 21,84,921             | <b>4.99</b>                                                   |



Therefore, the primary issue is whether there is a case for invoking section 245 pleadings.

9. We heard Ld. Senior Counsels for either side and perused the documents on record. The contention of the Respondents to determine the main Company Petition primarily revolves around the plea that on the facts as pleaded in this case, the Petitioners have chosen a wrong provision and filed the petition under Section 245 of the Companies Act. The entire pleading on facts and cause of action as stated in the petition, it would fall for a case under Section 241 of the Companies Act.
10. Ld. Sr. Counsel appearing for the Respondent has submitted that the petition in essence is a derivative action as opposed to a class action. To buttress his arguments, it has been argued at length that the nature of relief sought by the Petitioner cannot be termed as a class action as they are seeking remedy for the company and no relief /remedy directly in favor of Petitioners against the company. The number of reliefs/prayers in the petition are only for the grant of relief to R-1 Company which is not the intent of a class action



proceedings. It does not satisfy the parameters of class action under Section 245 of the Companies Act 2013 on the contrary the facts and the nature of relief will bring it as a derivative action. He referred to various prayers and the nature of relief sought in the petition. The plea in the Petition is for compensating the Respondent No.1 company for various loss caused to R-1. Such relief on behalf of the R-1 company cannot be sought for and granted in a class action proceeding i.e. reiterating this view on the basis of the decision of US Court in ***Patrick Tooley and Kevin Lewis Vs. Donaldson Lufkin & Jenrette Inc.*** 845 A.2d 1031. The Petition as such appears to be a case for disgorgement, which cannot be granted.

11. Further, going by the nature of the pleading and the relief claimed, it appears that the compensation at least is solely for the Petitioners and not for the class of shareholders, which is prerequisite for maintaining a class action.

Assuming without admitting the case of Petitioners as true, the remedy if granted, any amount to be recovered will come back only to R-1 Company and not to the Petitioners directly.

Therefore, the petition by nature is a case of derivative action,



which would fall under Section 241-242 of the Companies Act, 2013, however, it has been dressed up as a class action petition.

12. It is submitted by the Ld. Sr. Counsel appearing for the Respondent, that the Petitioners, to escape the threshold limit for filing an Oppression and Mismanagement case under Section 241-242 of the Companies Act, and to circumvent the process, have filed the petition as a class action. An action brought by the shareholders to recover damages or compensation to the company is a derivative action. On this preliminary plea he sought for dismissal of the main Company Petition.

13. Learned Sr. Counsel appearing for the Respondent, also relied upon the following decisions:-

Decision passed by Madras High Court in the case of ***Valluvar Kuzhumam Pvt. Ltd Vs. APC Drilling & Construction Pvt. Ltd. and Ors.***, CRD (NPD) No. 2044/2022 and CMP Nos. 10516 and 10518 of 2022. The relevant portion of the same reads as follows:-

....

*57. A derivative action is an action taken in the interest of the company by any shareholder, either by himself or*



*along with other such shareholders by impleading the company also as a defendant. As it is stated already, it is an exception to the general rule that the plaintiff should be the one who is affected or against whom a wrong is done. Since the Company should be represented through its Directors or other stake holders, it may not be possible for the company to file a suit for itself because of the obvious indifference of the Directors, who alone are the wrong doers. Even though the Company has not filed the suit by being a plaintiff, the member of the company who files the suit will be presumed as the Company, whose interest is affected. The derivative action is an exception to the general procedure. Even though the affected company is arrayed as defendant, it is construed as the plaintiff only. In class action, it is not the interest of the company but it is the interest of the group of individuals that is sought to be protected. The plaintiff in class action will have their remedy against the company and its management. So the 'class action' is altogether is a different genre.*

*58. Mr. P.S. Raman, learned senior counsel for the respondents 1 to 4 and 6, submitted that the National Company Law Tribunal has got exclusive jurisdiction under Sections 241 & 430 of the Companies Act which completely excludes the jurisdiction of the Civil Courts. It is further submitted that the plaintiff who has filed the suit for winding up before the Supreme Court of Mauritius has suppressed the same and filed a suit by calling it as a derivative suit; the plaintiff states that being the majority shareholder, the defendants 2 and 3 along with the sixth defendant as Directors took advantage of their majority in the board and did acts prejudicial to the interest of the minority shareholders; the petitioner who holds 11.63% of share in the APC India, can very well maintain an application under Section 241 of the Companies Act; since he has got 1/10th of the issued share capital of the Company, he cannot suffer from any*



*ineligibility to maintain an application under Section 241 of the Companies Act; Section 241 of the Companies Act also covers complaints prejudicial to the interest of the company and on minority members; the National Company Law Tribunal has got power to grant all reliefs under Section 242 (2) of the Companies Act; hence in whatsoever manner the plaintiff is aggrieved, he can maintain an application before the National Company Law Tribunal itself without filing a civil suit.*

**Decision of Hon'ble Supreme Court of Delaware passed in Patrick Tooley and Kevin Lewis Vs. Donaldson Lufkin & Jenrette Inc., 845 A.2d 1031.** The relevant portion of the judgment reads as follows:-

*[9] Thus, two confusing propositions have encumbered our caselaw governing the direct/derivative distinction. The “special injury” concept, applied in cases such as Lipton, can be confusing in identifying the nature of the action. The same is true of the proposition that stems from Bokar—that an action cannot be direct if all stockholders are equally affected or unless the \*1039 stockholder’s injury is separate and distinct from that suffered by other stockholders. The proper analysis has been and should remain that stated in Grimes-, Kramer and Parnes. That is, a court should look to the nature of the wrong and to whom the relief should go. The stockholder’s claimed direct injury must be independent of any alleged injury to the corporation. The stockholder must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.*

Decision of Hon'ble High Court of Delhi passed in **Rajeev Saumitra Vs. Neetu Singh and Ors. 2016 SCC online Del 512.** The relevant portion of the judgment reads as follows:-

....



53 Now, I shall deal with the next submissions addressed on behalf of defendants No.1 and 2 that the suit filed by the plaintiff as derivative action is not maintainable. It is submitted on behalf of the plaintiff that the plaintiff has instituted the present action for and on behalf of defendant No.3 as derivative action because defendant No.3 is unable to from instituting the present action in its own name. It is alleged in the plaint by the plaintiff that the inability has attached to defendant No.3 as plaintiff and defendant No.1 are equal share-holders in defendant No.3 and since disputes have arisen between them, defendant No.3 is prevented from passing any resolution to institute any suit in its own name. The plaintiff has also instituted the present suit in his own capacity as a share-holder having 50% share-holding in defendant No.3, for violation of his individual membership rights that arises from a contract between himself and defendant No.3 by virtue of its Memorandum of Association (MOA) as also under the common law.

(i) In the case of *Starlite Real Estate (ASCOT) Mauritius Limited and Ors. v. Jagrati Trade Services Private Limited and Ors.*, decided on 14th May, 2015 by the High Court of Calcutta in G.A. No.2437/2014 and CS No.284/2014, paras 30 to 34 & 39, it was observed as under:-

"30. There is a clear distinction between individual and corporate membership rights of shareholders. A member can always sue for wrongs done to himself in his capacity as a member. The individual rights of a member arise in part from the general law. Under the contract emanating from his memberships, he is entitled to have his name entered and kept on the register of members, to vote at meetings of members, to receive dividends which have been duly declared, to exercise pre-emption rights conferred by the articles, and to have his capital returned in proper order of priority on a winding up or on a properly authorized reduction of capital. Under the general law he is entitled to restrain the company from doing acts which are ultra vires, to have a



*reasonable opportunity to speak at meetings of members and to move amendments to resolutions proposed at such meetings to transfer his shares; not to have his financial obligations to the company increased without his consent; and to exercise the many rights conferred on him by the Companies Act, such as his right to inspect various documents and registers kept by the Company. The dividing line between personal and corporate rights is not always very easy to draw. The Courts, however, incline to treat a provision in the memorandum or articles as conferring a personal right on a member, if he has a special interest in its observance distinct from the general interest which every member has in the company adhering to the terms of its constitution. In an action for violation of personal rights a single shareholder suing alone and not even on behalf of other shareholders may make the company a defendant and obtain his reliefs. Where a wrong has been done to the company and an action is brought to restrain its continuance or to recover the company's property or damages or compensation due to it, it is a derivative action. Here the company is the only true plaintiff. The dispute is not an internal one between those who constitute the membership of the company but one between the company on the one hand and third parties on the other. It makes no difference in principle that the third parties may accidentally happen to be the directors or controlling shareholders of the company. *Foss v. Harbottle* itself is an illustration of such an action. Where such an action is allowed the member is not really suing on his own behalf nor on behalf of the members generally but on behalf of the company itself. In a derivative action, in the framing of the suit for the purpose of compliance of the formalities the plaintiff had to describe himself as a representative suing*



*for and on behalf of all the members other than the wrong-doers. In a true derivative action the plaintiff shareholder is not acting as a representative of the other shareholders but is really acting as a representative of the company. The expression "derivative action" was basically borrowed from the United States, but has in recent years also been in use in the United Kingdom.*

*31. In a derivative action, the company would be the only party entitled to sue for redressal of any wrong done to it. However, since a company is an artificial person, it must act through its directors. Where the wrong is being done to the company by the directors in control, the company obviously cannot take action on its own behalf. It is in these circumstances that the derivative action by some shareholders (even if they are in a minority) becomes necessary to protect the interest of the company. The minority shareholders sue on behalf of themselves and all other shareholders except those who are defendants, and may join the company as a defendant. The directors are usually defendants. This action is brought instead of an action in the name of the company. The form of the action is always: 'A.B. (a minority shareholder) on behalf of himself and all other shareholders of the company against the wrongdoing directors and the company: (per Lord Denning M.R. in *Wallersteiner v. Moir* (No. 2), (1975) QB 373 at 390 (CA). It is a "procedural device for enabling the Court to do justice to a company controlled by miscreant directors or shareholders." (Per Lawton in *Nurcomba v. Nurcomba*; 1985 (1) WLR 370 at Page 376).*

*32. As a general rule, the courts will not interfere in matters of internal administration. It is for the majority of shareholders to decide the manner in which the affairs of the company are to be conducted. This principle*



*was laid down in the celebrated case of Foss v. Harbottle. The court held that in the case of an injury to the corporation, it is for the corporation to sue in its own name and individual shareholders cannot assume to themselves the right of suing in the name of corporation. The effect of the rule is that the majority shareholders cannot complain of any irregular act which the majority are entitled to do regularly. The circumstances in which minority shareholders' actions are allowable constitute the exceptions to the rule in Foss v. Harbottle. Such an action is filed by the shareholder in his own name but is for the benefit and advantage of the company. The person filing a derivative claim has to show that the company has a right to sue but being indulgent in the matter is not likely to sue and, therefore, he gets a derivative authority to sue. (Birch v. Sullivan; 1958 (1) All ER 56].*

Decision of Hon'ble High Court of Gujarat passed in  
**Mohanlal Ganpatram and Anr. Vs. Shri Savaji Jubilee  
Cotton and Jute Mills Co. Ltd., 1964 SCC Online Guj 66.**

**The relevant portion of the judgment reads as follows:-**

*26. Turning to Sections 397 and 398, I find that the language of these Sections also far from conferring any power on the Court to set aside or interfere with past and concluded transactions between a Company and third parties which are no longer continuing wrongs, confines the power of the Court to making an order for the purpose of putting an end to oppression or mismanagement on the part of controlling share-holders, it is undoubtedly true that the power of the Court under Sections 397 and 398 is very wide - it is conferred in terms of the widest amplitude - and the Court can make such order as it thinks fit, but this power is conditioned by the purpose for which it can be exercised, namely, "with a view to bringing to end the matters complained of"*



*in a case under Section 397 and " with a view to bringing to an end or preventing the matters complained of or apprehended" in a case under Section 398. These words indicate the confines within which the power of the Court under Sections 397 and 398 must operate. Now what are these confines? The answer is clear from the language of Sections 397 and 398. The remedy under Section 397 can be invoked only when the affairs of the Company are being conducted in a manner oppressive to a shareholder or shareholders and similarly the remedy under S. 398 can be invoked only when the affairs of the Company are being conducted in a manner prejudicial to the Interests of the Company of course when I say this I am referring only to the first part of Section 398 and leaving out of consideration the second part to which I shall refer a little later. Sections 397 and 398 thus clearly postulate that there must be at the date of the application a continuing course of conduct of the affairs of the Company which is oppressive to any share-holder or share-holders or prejudicial to the interests of the Company and it is this course of oppressive or prejudicial conduct which would form the subject-matter of the complaint in the application. Now the purpose for which an order can be made under Sections 397 and 398 being to bring to an end the matters complained of and the matters complained of in an application under these Sections being a course of conduct on the part of controlling shareholders in the management of the affairs of the Company which is oppressive to any shareholder or shareholders or prejudicial to the interests of the Company it is clear that an order can be made under these Sections only for the purpose of bringing to an end such course of oppressive or prejudicial conduct, that is, for the purpose of putting an end to oppression or mismanagement on the part of controlling shareholders so that there may not be in future such oppression or mismanagement..... The remedy is not intended to enable the aggrieved shareholders to set at naught*



*what has already been done by controlling shareholders in the management of the affairs of the Company. If such were the intention of the Legislature, which as I will presently show it could never have been, the language of Sections 397 and 398 would have been different and the Legislature would not have confined the power of the Court by limiting the purpose for which it can be exercised under the Sections. That the remedy provided by Sections 397 and 398 is essentially preventive in character is also borne out by the second part of Section 398 which applies when a material change has taken place in the management or control of a Company and by reason of such change it is likely that the affairs, of the Company would be conducted in a manner prejudicial to the interests of the Company and empowers the Court in such a case to make an order with a view to preventing the matters apprehended, namely, the prejudicial conduct of the affairs of the Company, so that such prejudicial conduct may not at all result from such change and may be totally prevented.*

*27. ... The heading read with the sub-heading clearly shows that Sections 397 and 398 deal with powers of Court for prevention of oppression and mismanagement in the affairs of the Company and that the remedy given by these Sections is, therefore, of a preventive nature intended to prevent occurrence or continuance of oppression or mismanagement in the affairs of the Company and is not intended to set at naught what has already been done by, controlling shareholders in the course of such oppression or mismanagement which is past and concluded and no longer a continuing wrong.*

*28.... a past and concluded transaction between a Company and a third party cannot be set aside on an application under Section 397 or 398.*

*34.... the general principle manifest from the language of Sections 397 and 398 that the power of the Court under both the Sections is confined only to making an order for the purpose of putting an end to oppressive or prejudicial conduct and the Court*



*cannot make an order setting aside or interfering with past and concluded transactions which are no longer continuing wrongs or giving compensation to the Company or the aggrieved share-holders in respect of such transactions.*

Decision of Hon'ble High Court of Supreme Court of India passed in **Tata Consultancy Services Ltd. Vs. Cyrus Investments Pvt. Ltd. and Ors., (2021) SCC Online SC 272. The relevant portion of the judgment reads as follows:-**

87. From the table given above, it could be seen that the changes brought about in India in course of time, were material. These changes can be summarised as follows:

87.1. While the conduct of the company's affairs in a manner that warrant interference, should be "*present and continuing*", under the 1913 Act and the 1956 Act, as seen from the usage of the words "are being", the conduct could even be "*past or present and continuous*" under the 2013 Act as seen from the usage of the words "have been or are being" (but the conduct cannot be of a distant past).

Decision of Hon'ble High Court of Supreme Court of India passed in **Chatterjee Petrochem (India) Pvt. Ltd. Vs. Haldia Petrochemicals Ltd. And Ors. (2011) 10 466 SCC. The relevant portion of the judgment reads as follows:-**

139. *In Shanti Prasad Jain case [AIR 1965 SC 1535 : (1965) 2 SCR 720], referred to hereinabove, in a similar situation, it was observed by this Court as follows: (AIR p. 1543, para 19)*

*"19. ... it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the*



*affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.”*

**140.** *It will be evident that in order to pass orders under Section 397 of the Companies Act, 1956, the CLB has to be satisfied that the Company's affairs are being conducted in a manner oppressive to any member or members and that the facts would justify the making of a winding-up order on the just and equitable principle, but that such an order would unfairly prejudice the applicant before the CLB.*

Decision of Hon'ble High Court of Supreme Court of India passed in **Sangramsinh P. Gaekwad and Ors. Vs. Shantadevi P. Gaekwad (dead) and Ors., (2005) SCC Online SC 144. The relevant portion of the judgment reads as follows:-**

**183.** *The remedy under Section 397 of the Companies Act is not an ordinary one. The acts of oppression must be harsh and wrongful. An isolated incident may not be enough for grant of relief and continuous course of oppressive conduct on the part of the majority shareholders is, thus, necessary to be proved. The acts complained of may either be designed to secure pecuniary advantage to the detriment of the oppressed or be a wrongful usurpation of authority.*



14. The Ld. Sr. Counsel for Respondent basis the above decision pleaded that the past and concluded transaction, which is the subject matter of present proceedings cannot be sustained because the very language of Section 245 of Companies Act, 2013 is “***the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or depositors***” whereas in contradiction, Section 241 of Companies Act, 2013 provides that oppression and mismanagement Proceedings can be initiated before the courts if “***the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company.***”

In the present case what is being raised and alleged by Petitioners are past and concluded transactions. The class action proceedings should be in the nature of preventive relief, and the petition filed under Section 245 should be in respect of such conduct present and continuing. Hence, no relief can be granted in respect of past and concluded transaction as is the case here. According to the Respondents, this is evident from various factual aspects of the pleadings of the petition



itself. Ld. Sr. Counsel for the Respondent also pleaded that relief sought for cannot be granted, being barred by the principle of “reflective loss”.

The petition has not been filed to enforce the interests of a class and rather the Petitioners have approached the Tribunal with unclean hands. He prayed for dismissal of the main petition and notice should not be issued.

15. Ld. Senior Counsel, Abhinav Vashisht appearing for the Petitioners submitted on Petitioners’ eligibility to institute a case under Section 245. Ld. Senior Counsel submitted that such number of member or members or any class of them, as the case may be, as are may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members can file an application. Further, Rule 84(3)(ii)(b) of NCLT Rules prescribe the threshold to initiate a proceedings i.e. the member or members must hold a minimum of 2% of the issued share capital of a listed company. A cumulative reading of both the provision makes it clear that a members holding 2% shareholding in a listed company can institute a cause under Section 245 if it is of



their opinion, the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members (including the petitioner). If the above criteria is met, the said member(s) (herein the Petitioner(s), who are holding cumulatively 4.99% shareholding in Respondent No. 1) are perfectly eligible and entitled to institute the Section 245 petition. Any objection in relation thereto is untenable. The plea for dismissing the case without notice is unjustified.

16. On the contention of Applicant/Respondents, in the main Company Petition, that Section 245 is only preventive in nature in presenti and as such does not cover past and concluded transactions, Ld. Senior Counsel, Abhinav Vashisht has submitted that this contention is wrong because Section 245(1)(g) states that the Petitioners filing an application under Section 245 is at the liberty to claim damages or compensation or demand any other suitable action from or against the company. Further, Section 245(1)(h) states that the Petitioner may also seek any other remedy as the Tribunal may deem fit against such acts. The usage of the term 'compensation', 'damages', 'any other suitable action' or 'any other remedy' as



the Tribunal may deem fit confers wide amplitude and rights to the eligible petitioner(s) to seek the prayers as sought in the present Petition and that this Tribunal has the power while exercising jurisdiction under Section 245 to grant the same. This will certainly include past, concluded and the continuing transactions. Further, right to seek compensation or damages itself implies the jurisdiction to deal with on any such past and concluded transaction and the present as well. This right to seek compensation or damages explicitly provided under section 245 endorses and presupposes the view that the provision does not only provide for preventive relief, but compensation and damage. Further, in Section 245(1)(g)(iii) the term 'unlawful or wrongful act or conduct or any likely act or conduct on his part' makes it evident that the transactions which can be impugned are not limited to present and continuing acts but will also include the transactions already concluded. Section 245 therefore in no manner, limits or circumscribes the rights and / or powers with the date of occurrence of the transaction. It is a beneficial legislation to protect shareholders, depositors specifically tailor made for benefit of such class.



17. Ld. Senior Counsel, Mr. Vashisht appearing for the Petitioners in the main Company Petition submitted on maintainability stating that prayer (a) the Company Petition is directly in relation to the actions of the management of the Company vide which the Petitioners have prayed that the sale of OCPS and RPS, inter alia, to the Promoter Trust (SSJ Trust) and Jindal Poly Investment be declared as null and void and entire transaction be rescinded / reversed. Seeking restrains on the company from doing anything which is not in compliance with applicable laws, strictly falls within the contours of ‘class action’ under Section 245 of the 2013 Act. Similar are the other reliefs as per the provision of Section 245.

18. On submission of Respondents, relying upon reflective loss theory being the concept of derivative action, which is different from class action, Ld. Senior Counsel, Mr. Vashist submitted that prayer “b” has been sought inter alia against directors of Respondent No.1. Perusal of Section 245(1)(g)(i) makes it evident that compensation or damage may be claimed from or against the company or directors or any other person for any fraudulent, unlawful or wrongful act or conduct. Hence, it is incorrect to allege that a class action under Section 245 shall



only survive if relief has been sought against the Company. Further, it has been highlighted that derivative action and class action has not been defined under the scheme of the Companies Act 2013. The two Sections 241-242 and 245 of the Companies Act, 2013 have to be understood on its own terms. Derivative Action is a distinct remedy provided under the American Jurisprudence, under the Indian jurisprudence, derivative action is a diluted concept and has not been distinctively codified under the Companies Act to be pursued as a remedy against the mismanagement in the conduct of the affairs of a company.

19. It has been further submitted on behalf of Petitioners that given the comprehensive statutory framework in India (Section 245 of the Companies Act, 2013 ('Companies Act') read with Rules 84, 85, 86, and 87 of the National Company Law Tribunal Rules, 2016) this Tribunal may not be required to refer to or rely upon foreign laws, including those of United States on class action and derivative action as relied upon heavily by the Respondents. To support the same, Ld. Senior Counsel have relied upon judgment from Hon'ble Supreme Court in the case of ***Hind Overseas (P) Ltd. v. Raghunath***



**Prasad Jhunjhunwalla** [(1976) 3 SCC 259] and relevant part of the judgment is extracted below:

32. Although the Indian Companies Act is modelled on the English Companies Act, the **Indian law is developing on its own lines**. Our law is also making significant progress of its own as and when necessary. Where the words used in both the Acts are identical, the English decisions may throw good light and reasons may be persuasive. But as the Privy Council observed long ago in *Ramanandi Kuer v. Kalawati Kuer*

*“it has often been pointed out by this Board that where there is a positive enactment of the Indian legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning — uninfluenced by any considerations derived from the previous state of the law or of the English law upon which it may have been founded”.*

*If it was true in the twenties it is more apposite **now that the background, conditions and circumstances of the Indian society, the needs and requirements of our country call for a somewhat different treatment. We will have to adjust and adapt, limit or extend, the principles derived** from English decisions, entitled as they are to great respect, suiting the conditions of our society and the country in general, always, however, with **one primary consideration in view that the general interests of the shareholders may not be readily sacrificed at the altar of squabbles of directors of powerful groups for power to manage the Company.***

**(Emphasis Supplied)**



20. Another decision relied upon is ***Satyabrata Ghose v. Mugneeram Bangur & Co.*** [(1953) 2 SCC 437] wherein the Hon'ble Supreme Court reiterated the above position that when an Indian statute deals with a particular subject, it is exhaustive upon the same then it is not permissible to import the principles of English law dehors statutory provisions. The Hon'ble Court noted that the decisions of the courts in English law only possess a persuasive value.
21. The distinction between class action and derivative action in the laws of the United States has been developed in a different legal context and cannot be mechanically applied to the Indian legal framework under Section 245 of the Companies Act.
22. It has been submitted on behalf of the Petitioners that the Application of the Tooley test in ***Valluvar Kuzhumam*** (Supra) demonstrates that the direct derivative distinction as is being relied upon by Ld. Counsel for the Respondents as maybe applicable in the context of United States, is not rigid but requires careful analysis of the specific harms alleged and the remedies sought. It further shows that even within the United States legal framework, courts apply the Tooley test in a



context-specific manner, that can lead to different outcomes depending on the particular circumstances of each case.

23. It has been submitted on behalf of the Petitioners in the main case that Section 245(1) of the Indian Companies Act permits a class action suit to be filed if “the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors”. A bare perusal of the aforesaid provision clearly demonstrates that the Parliament did not intend to limit class action suits in India only to actions that affect the shareholders but extend them to even actions affecting the company. In fact, Section 245 of the Companies Act explicitly contemplates class action suits being filed for actions which are prejudicial to the interests of not only the members but also the company, the direct vs. derivative test adopted in Tooley holds no relevance in the Indian context. Therefore, any interpretation of Section 245 of the Companies Act that is inspired by US law jurisprudence (especially, the Tooley test) on class action suits which purports to limit the reach of and jurisdiction under Section 245 of the Companies Act would not be appropriate.



24. In the meanwhile, two intervention petitions bearing IVN.P/5(PB)2024 and IVN.P/7(PB)2024 have been filed on 04.07.2024 and 25.07.2024 respectively.

25. IVN.P/5(PB)2024 has been filed under Section 424 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016 by Dinesh Kumar Jain and his HUF against the Respondents seeking following relief:

- a. Allow the present application;*
- b. Allow intervention of the Applicants in Company Petition 58(PB)/2024;*
- c. Allow the Applicants to file an Affidavit to Company Petition 58(PB) / 2024;*
- d. Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

Applicant No. 1 and 2 in this intervention application are stated to be holding 12829 equity shares and 31951 equity shares respectively as on 31.03.2024 of the Respondent No.1 Company to the extent of 0.10% (approximately) and therefore are minority public shareholders of R-1 Company. The Applicants plead that they are necessary and proper parties in the proceedings.



26. IVN.P/7(PB)2024 has been filed under Section 424 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016 by Ms. Seetha Kumari against the Respondents seeking following relief:

- a. Permit the Applicant to intervene in the captioned Petition, being Company Petition No. 58 of 2024;*
- b. Permit the Applicant to file affidavits /' written submissions / additional pleadings in the captioned Petition, and to address oral submissions before this Hon'ble Tribunal, before passing any further orders in the captioned Petition.*
- c. pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

Applicant in this intervention application is stated to be holding 21,66,052 equity shares i.e., 4.95% (approximately) in the Respondent No.1 Company and therefore comes under minority public shareholders of R-1 Company. The Applicant is directly and substantially affected from actions stated in the Petition. The intervener has submitted that issues raised in the Petition are bona fide based on publicly available record. It has been added that the Applicant has on various occasions



raised objections regarding the conduct of R-1 Company *inter alia* as to low-dividend payout, loans given to R-14.

27. It has been submitted that the main petitioners are acting on behalf of all minority shareholders and thus the interveners have chosen not to pursue a separate legal action to avoid multiplicity of lawsuits.

28. In reply by Respondents, to the interventions, the Respondents have submitted that the interventions are not contemplated in the statutory scheme of Section 245 of the 2013 Act. Scheme of Classe Action under section 245 read with relevant rules in itself encompasses a service of public notice upon admission of Petition, which is issued to all members of class and class member who receives notice is deemed to be member of the class unless he expressly opts out of the proceedings under Rule 86 of the NCLT Rules.

29. Notably, in the two intervention applications that have been filed supporting the petition and the applicants collectively represent approximately 5.05% of the total shareholding.



30. We have considered the above issue on the pleadings of the respective senior counsels. At present, we are on the threshold of the petition filed under Section 245 of the Companies Act, 2013. The core issue that arises for consideration of this Tribunal is whether the petitioners have made a *prima-facie* case for initiating proceeding under a class action in line with the provisions of law and on the basis of facts pleaded and notice be issued. What is relevant for consideration and for taking up the cause for adjudication by issuing notice is whether the number of member or members as in the present case, shareholders as prescribed under Rule 84(3)(ii)(b) have filed the case. In this case, the answer is in affirmative. The Petitioners have satisfied the threshold prescribed and the same has also not been disputed by the Respondents.

31. The next issue is whether the allegations *prima-facie* establish that in the opinion of the members/shareholders who have filed the class action, the management and conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members. If such an opinion is formed and pleaded in the petition based on transaction stated therein, they are entitled to file an



application before the Tribunal on behalf of the members seeking various remedies. It is a case of the Ld. Sr. Counsel for the petitioners in the main case that the pleadings in the petition more fully extracted, demonstrates that there is a direct loss to the Petitioners because of the fraudulent action undertaken by the Respondents and the same (appendix 2 to note filed on 27.11.2024 filed by the petitioners) is reproduced below:

## APPENDIX - 2

### Extracts from the Company Petition

| S. No.                                                                                                     | Extracts from the Company Petition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Reference from the Company Petition |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <b>Reliefs should be sought against the company – the primary relief “a” is against the Company itself</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                     |
| 1.                                                                                                         | <i>Declare the <u>sale of OCPS and RPS to SSJ Trust</u> (through its trustees Respondent No. 2 and Respondent No. 3) and Respondent No.16 / Jindal Poly Investment as being null and void, and reverse the said transactions in the books of the Respondent No.1; or in the alternative – The said prayer is directly in relation to the actions of the management of the Company vide which the Petitioners have prayed that the sale of OCPS and RPS, <i>inter alia</i>, to the Promoter Trust (SSJ Trust) and Jindal Poly Investment be declared as null and void and entire transaction be rescinded / reversed. Hence, the said relief is “against” the Company and the other reliefs are in the alternative.</i>                                                    | Para 10.1 (a) / Pg. 68              |
| 2.                                                                                                         | <i>Direct the Respondents to compensate the Respondent No.1 Company and the Petitioners in proportion to its shareholding (as mentioned in paragraph 8) with respect to the abovementioned transactions referred in para (b) to (e) along with the interest at the rate of 12% per annum compounding from the date of respective loss, as may be determined by this Hon'ble Tribunal – The said prayer has been sought <i>inter alia</i> against directors of Respondent No.1. A perusal of Section 245(1)(g)(i) makes it evident that compensation or damage may be claimed from or against the company or directors or any other person. The usage of the term “or” makes it clear that for maintainability of a Company Petition under Section 245, the relief may</i> | Para 10.1(b) / Pg. 68               |



|                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
|                                                                        | even be sought from the directors. Hence, it is incorrect to allege for a Company Petition filed under Section 245, the relief must be sought against the company.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                         |
| <b>Direct loss caused to the entire class of minority shareholders</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
| 3.                                                                     | The Respondent No. 2, Mr. Shyam Sundar Jindal along with Mrs. Subhadra Jindal, i.e., Respondent No. 3, are the trustees of SSJ Trust, which is a promoter group trust. <i>The said trust is instrumental to the irregular transactions undertaken by the Respondents for the wrongful gains and to the prejudice of the public shareholders of Respondent No. 1, including the Petitioners.</i> SSJ Trust holds control over most of the promoter group entities of the Respondents, including the Respondent No. 1, Jindal Powertech ( <i>defined hereunder</i> ) and Jindal Thermal ( <i>defined hereunder</i> ), which are involved in most of the malevolent transactions carried out by the Respondents as alleged hereunder.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Para 3.2 / Pg. 16       |
| 4.                                                                     | The Respondent No.14, Jindal India Powertech Limited (“ <b>Jindal Powertech</b> ”) is a company registered under the Companies Act, 1956 and is majority owned and promoted by Jindal Poly Investments & Finance Company Limited ( <i>i.e., Respondent No. 16, described below</i> ). It is pertinent to mention that Respondent No. 14 is also the holding company of Respondent No. 15, i.e., Jindal India Thermal Power Limited. Between the financial years (“FY”) 2013-2014 till 2016-2017, the Respondent No. 1 company invested an aggregate amount of INR 703.79 crores in certain financial instruments ( <i>discussed in detail below</i> ) of Jindal Powertech. Further, as it now emerges, various irregular transactions were undertaken by the Respondent No. 1 during FY 2013-2014 till FY 2021-2022 in relation to such financial instruments, which have resulted in immense losses to the Respondent No. 1 and its public shareholders. These irregular transactions eventually culminated in the sale of such financial instruments to promoter group entities of the Respondent No. 1, namely, (i) Respondent No. 16 (Jindal Poly Investment); and (ii) SSJ Trust (of which the trustees are Respondents No. 2 and 3, i.e., Mr. Shyam Sundar Jindal and Subhadra Jindal respectively), at a grossly undervalued valuation. | Para 3.14 / Pg. 18 & 19 |
| 5.                                                                     | The Respondent No.15, Jindal India Thermal Power Limited (“ <b>Jindal Thermal</b> ”) is a company registered under the Companies Act, 1956 and is majority owned and promoted by Jindal Powertech i.e., Respondent No.14. Respondent No. 1 has provided large amounts of monies as loans to Jindal Thermal, which was eventually written off purposefully to the detriment of Respondent No. 1 and its public shareholders.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Para 3.15 / Pg. 19      |
| 6.                                                                     | Bearing in mind the above holding structure of promoter group companies of the Respondents (especially the indirect control held by SSJ Trust over the entities most closely involved in the wrongdoings alleged under the present Petition), the Petitioners shall now discuss in detail, a complex web of transactions devised systematically by the Respondents to make wrongful gains to themselves – <i>and cause wrongful losses to the Respondent No. 1 and its minority shareholders.</i> These transactions can be divided into the following broad categories, which are discussed in greater detail below: (i) sale of financial instruments held by Respondent No. 1 in Jindal Powertech / Respondent No. 14, at squat valuations; and (ii) write-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Para 7.6 / Pg. 25       |



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|     | off of loans provided by Respondent No. 1 to Jindal Thermal / Respondent No. 15 resulting in diminution of value of the securities of Respondent No. 1 and (iii) sale of shares held by Jindal Films India Limited (a wholly owned subsidiary of Respondent No. 1) (" <b>Jindal Films</b> ") in Jindal Thermal / Respondent No. 15 to Champak Niketan Pvt. Ltd. (" <b>Champak Niketan</b> "), a promoter group entity, in which majority shares are owned by a trust belonging to the promoter group of the Respondent No. 1, i.e., Gunjan Trust. <b><u>The Petitioner shall thereafter make submissions in respect of losses caused to the Respondent No. 1 (and resultantly, its public shareholders including the Petitioners) due to each of the aforementioned three categories of transactions.</u></b> That said, the Petitioners humbly submit that the wrongdoings alleged under the present Petition are limited to the extent that they have been uncovered, assessed and ascertained by the Petitioners basis the limited publicly available information available to them.... |                    |
| 7.  | It is submitted that the Respondent No. 1 has undertaken certain transactions in relation to its investments in Jindal Powertech / Respondent No. 14, in the nature of 0% optionally convertible preference shares (" <b>OCPS</b> ") and 0% redeemable preference shares (" <b>RPS</b> "). As would be evident, these transactions were designed to cause prejudice to Respondent No. 1 and <b><u>its public shareholders</u></b> and result in wrongful gains to the promoters, viz. Respondent No. 2 and Respondent No. 3, i.e., the trustees of SSJ Trust.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Para 7.7 / Pg. 26  |
| 8.  | However, this purported reasoning was clearly an eyewash and a ruse as Jindal Powertech / Respondent No. 14 was incurring losses even at the time when the Respondent No. 1 was making the investments in the OCPS and RPS. The notes in the Respondent No. 1's financial statements fail to provide any justification for the revised understanding in respect of the negative net worth of Jindal Powertech / Respondent No. 14, or the necessity to write the investments off on that account, or at that particular stage. As it now emerges, this was clearly a part of a larger fraud which was being planned and played upon Respondent No. 1 and its minority members.                                                                                                                                                                                                                                                                                                                                                                                                             | Para 7.19 / Pg. 32 |
| 9.  | The Respondents' <b><u>refusal to cooperate and share information in respect of the irregular transactions</u></b> further buttresses the Petitioners' assertion that the transactions in question have been carried out purposely and in a mala fide manner, in order to siphon away assets/investments of Respondent No. 1 into group entities of the parties and to give undue benefit to the promoters and <b><u>cause losses to the Respondent No. 1 and minority shareholders of the Respondent No. 1.</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Para 7.35 / Pg. 43 |
| 10. | By the aforesaid illegal, wrongful acts undertaken by and at the behalf of the promoters, the offending Respondents have caused Respondent No. 1 and its subsidiaries to undertake acts which <b><u>have caused loss to Respondent No. 1 and its minority shareholders and wrongful gains to the promoter entities.</u></b> A conservative estimate of the losses so suffered is detailed below.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Para 7.45 / Pg. 49 |
| 11. | Moreover, once the OCPS allegedly 'sold' to SSJ Trust is matured, SSJ Trust will become the majority shareholder of the Jindal Powertech / Respondent No. 14. It is reiterated that SSJ Trust is a promoter trust who has acquired OCPS of Jindal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Para 7.49 / Pg. 51 |



|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                   |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|     | <p>Powertech / Respondent No. 14 from Respondent No.1 at a grossly undervalued valuation, which has caused huge losses to the shareholders of the Respondent No.1 Company. When the OCPS was issued, it was at a point in time when Jindal Powertech / Respondent No. 14 was in a financial crisis. On the exercise of these OCPS, Respondent No. 1 would have gotten 58.33 % equity shares on a fully diluted basis on their maturity. As demonstrated, 58.33% equity in Jindal Powertech / Respondent No. 14 has huge valuation, apart from giving Respondent No. 1 majority control. <b><i>Clearly, to prevent this dilution and deprive Respondent No. 1 and its minority public shareholders, the benefit of this value and to ensure continued control ownership</i></b> of Jindal Powertech / Respondent No. 14, the promoters of Respondent No. 1 caused this oppressive act whereby the most valuable investment has been siphoned out for paltry amounts.</p> |                   |
| 12. | <p>The Respondents have indulged / have been indulging in the management or conduct of the affairs of the company that are being conducted in a manner prejudicial to the interests of the company and its members which have been demonstrated above. The Respondents have been managing the affairs of the Respondent No. 1 as per their own whims and fancies to cause loss to Respondent No. 1 by diminishing its the value <b><i>and thereby resulting in the loss to minority / non-promoter / public shareholders.</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                   | Para 8.2 / Pg. 65 |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                    |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 13. | <p>The Respondents have failed <b><i>to ensure transparency in the affairs of the Respondent No. 1 wherein the crucial decisions of the Respondent No. 1 i.e., sale of OCPS and RPS are being taken over the personal benefits of the Respondents. Thus, causing a direct loss to the public/ non-promoter shareholders of the Respondent No.1</i></b> Company by way of valuation while the promoters have secured that benefit.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Para 8.3 / Pg. 65  |
| 14. | <p>That from the above facts and circumstances, <b><i>it is clear that the Respondents are adversely affecting the rights and interests of the Petitioners and acting in a manner which is highly oppressive of the Petitioners as a shareholder and the Respondent No. 1 is being managed in a manner that is oppressive and prejudicial to the non-promoter/public shareholders.</i></b> It is humbly submitted that the actions of the Respondents are in clear departure from fair dealing and probity and discharging their fiduciary responsibility in the conduct of the affairs of the Respondent No. 1. The business of Respondent No. 1 is being conducted and managed by Respondents Nos. 7-17 in connivance with Respondents Nos. 2-6 with intent to cause losses to its members in a manner prejudicial to the public interest. Clearly, grounds exist for winding up Respondent No. 1, but such winding up would be prejudicial to the Petitioner and their similarly situated public/minority shareholders.</p> | Para 8.7 / Pg. 66  |
| 15. | <p>That the Petitioners state and submit that this petition <b><i>has been made bona fide and in the interest of justice for securing the rights of the minority shareholders including the Petitioners.</i></b> The Petitioners are acting in good faith in making the present petition for seeking an order.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Para 8.10 / Pg. 67 |



These transactions are not denied by Respondent albeit the alleged loss. These we hold are *prima facie* opinion to initiate the proceedings. It is always open to the Respondents to deny the allegation and refute the charge.

32. On the plea that there is no restriction or limitation under Section 245 of the Companies Act to deal with past and concluded transactions, the date of knowledge is relevant for the purpose of initiating the proceeding in any event, we allow the plea of Petitioner as recorded in para 23 above. The Petitioners also seek a remedy in terms of Section 245 (1) (h), 245 (1) (g) (iii) and for various other reliefs as prayed for in the petition. It is also pleaded that the scope of Section 245 of the Companies Act, 2013 is not limited to seeking relief against the company alone. While prayer “a” is sought against the company, there are other reliefs sought against various persons of the company for fraudulent, wrongful and unlawful acts. A counter argument has been placed as to the scope and ambit of derivative action versus class action under the provisions of the Companies Act, which reads as follows:-

**Section 241 (1) (a)**

....



*(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*

## **Section 242 of the Companies Act, 2013**

### **Section 242. Powers of Tribunal**

*(1) If, on any application made under section 241, the Tribunal is of the opinion—*

*(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and*

*(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.(Effective from September 9,2016)*

*(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—*

*(a) the regulation of conduct of affairs of the company in future;*

*(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*

*(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;(Effective from September 9,2016)*

*(d) restrictions on the transfer or allotment of the shares of the company;*



(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;(Effective from September 9,2016)

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under subsection (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for



*regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.*

*(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.*

*(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.*

*(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.*

*(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.*

*(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees one lakh rupees, or with both.*

33. In contrast, a class action under Section 245 of the Companies Act, 2013, reads as follows:-

#### **Section 245. Class action**

*(1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are*



being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

- (a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members;
- (g) to claim damages or compensation or demand any other suitable action from or against—
  - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
  - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
  - (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to seek any other remedy as the Tribunal may deem fit.

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



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

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

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

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

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

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

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

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

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

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

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



- (ii) ratified by the company after it occurs;
- (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.
- (5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—
- (a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
  - (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
  - (c) two class action applications for the same cause of action shall not be allowed;
  - (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
- (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
- (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
- (9) Nothing contained in this section shall apply to a banking company.



34. The distinction as is evident in this case, is that the proceeding under Section 241-242 has a wider amplitude to cover several issues that may be raised while invoking power under Section 241-242 of the Companies Act, 2013, in relation to the affairs of the company in question. In contrast, class action gives the member namely, shareholder, depositor, or any class of them in terms of Sub-Section 3 of Section 245 of the Companies Act, 2013 to file an application before this Tribunal to seek various remedies if in their opinion, the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or depositors. The condition precedent, being the formation of an opinion, which *prima-facie* should state that the affairs of the company are not conducted in a just manner and which are against the interest of the company or against the interest of the members/shareholders. It is relative to each category. The petition filed, we find *prima facie* satisfies the requirement of Section 245. It is another matter that Respondents deny the allegations but not the transactions.



35. The reading of Section 245 of the Companies Act, 2013 also provides that while present and future actions can be a cause for invocation, it is not restrictive as alleged by Respondents in the main company petition; there is scope of remedy and compensation and for suitable actions, in respect of and in relation to past and concluded actions. The right to initiate actions against third parties like experts and advisers for any incorrect, misleading statements or any fraudulent, unlawful or wrongful act, makes it clear that the conduct of affairs of the company past, present and continuing actions also can be impeached when and if it is conducted in a manner prejudicial to the company and its members or depositors. The provisions of Section 245 (h) provide for seeking any other remedy as the Tribunal may deem fit make its amplitude wide. This is wide enough to cover all kinds of transaction in relation of any of the provision of the Act, Rules etc. This is a special enactment to class of shareholders, depositors and the like.

36. In the present case the contention of the Respondent that past and concluded transaction should not be allowed to be raised may not be justified. The threshold argument that no petition under Section 245 of the Companies Act, 2013 can be filed is



not tenable. The petition *prima facie* does contain the opinion of the requisite number of members, namely, shareholders, who, in their opinion on the various transactions alleged to be wrong in law as stated above, have filed this petition, stating that the management or conduct of the affair of the company have been and are conducted in a manner prejudicial, not only to the interest of the company, but to its members also. This two-prong requirement *prima facie* is good enough to justify the issuance of notice. They plead belated knowledge which is a point in issue to be adjudicated.

37. The Section 245 of the Companies Act, 2013 gives a right in both contingencies, namely, prejudicial to the interest of the company and prejudicial to the interest of the members. This distinction and the concept under Section 245 has been introduced in the Companies Act 2013 and *prima-facie* appears to be different from the law in US Jurisdiction.

38. We have considered the decision of ***Patrick Tooley and Kevin Lewis Vs. Donaldson Lufkin & Jenrette Inc.***, which has been usefully extracted in the Hon'ble High Court of Madras decision in ***Valluvar Kuzhumam Pvt. Ltd Vs. APC Drilling***



**& Construction Pvt. Ltd. and Ors.** The Hon'ble Madras High Court only reiterated the view of the *Patrick Tooley and Kevin Lewis Vs. Donaldson Lufkin & Jenrette Inc.*. But that view, we *prima-facie* hold would not stand in the way of this petition being filed under Section 245 of the Companies Act, 2013.

39. The case of Patrick Tooley and Kevin Lewis Vs. Donaldson Lufkin & Jenrette Inc. which has been considered and the principle laid in that case has been extracted by the Hon'ble High Court of Madras in the case of in the case of Valluvar Kuzhumam Pvt. Ltd Vs. APC Drilling & Construction Pvt. Ltd. and Ors., CRD (NPD) No. 2044/2022 and CMP Nos. 10516 and 10518 of 2022. We have perused the judgment rendered by the Hon'ble Madras High Court and we are of the view that this judgment may not apply to the facts of the present case because the case did not deal with the class action suit as envisaged under Section 245 under the Companies Act 2013. It only extracted the proportion on issue of Class action v. derivative action in the context of American Law.

40. We are conscious of the fact that section 245 has been differently drafted in Indian Context different from American Law. The impact of Section 245 under the Companies Act,



2013 was not the subject matter of the case before the Hon'ble Madras High Court.

41. Section 245 of Companies Act 2013, we find provides for various kind of relief given the backdrop of Indian Corporates and investors. Section 245 is a benevolent legislation to shareholders, depositors against the company and to the company for various reliefs stated therein and for other relief(s) past, present and future. This should be seen in contradiction to a case filed by a third party or a public authority or a person who has no direct cause or relation with the company.

The provisions of Section 245 enables Petitioners, stock holders to initiate proceedings for the benefit of the company also. Merely because there is another option available under Section 241-242 that cannot dis-credit a case under 245 if the parameters for initiating the proceedings under Section 245 is met by the Petitioners. All that is required is shareholding of 2% of total share capital as per Rule 84(3)(ii)(b) of the NCLT Rules 2016 and a justifiable *prima facie* opinion which we observe there is. The Respondent are at liberty to refute each and every allegation on merits.



42. We refrain from giving an opinion on this issue at present, as we do not want to pre-judge the legal argument on the factual aspects. The Respondents may have a valid defence. For the purpose of *prima-facie* case to issue notice, we are of the opinion that the ingredients of Section 245 of the Companies Act, 2013 having been satisfied in this case, there is no necessity to go into various factual aspects of the case, as pleaded by the Respondents to come to a conclusion that there is no case under Section 245 of the Companies Act, 2013. This will amount to prejudging the issues.

43. Section 245(4) is a provision which enables the Tribunal to decide the issues raised by the parties after the Petition is admitted. These are pointers which enable the Tribunal to adjudicate the case on merits.

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

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

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

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

*(d) any evidence before it as to the views of the members or depositors of the company who have no personal*



*interest, direct or indirect, in the matter being proceeded under this section;*

*(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be— (i) authorised by the company before it occurs; or (ii) ratified by the company after it occurs;*

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

The same cannot be used to stall or stop the admission of a case denying the petitioners any rights given to them under Section 245 by rejecting them at the threshold. This is not a case of no cause of action. Only, when there is an objection on the threshold limit under Section 245 (3) read with Rule 84 (3) (ii) of NCLT Rules and necessary *prima facie* opinion to file a case is not satisfied, then we can consider an issue on maintainability. In the present case we are not convinced on the issue on maintainability raised on behalf of the Respondents. We reject the plea on maintainability.

44. The comparison with the American Law may not be appropriate because the Indian Parliament was quite conscious of the fact that the class action can be initiated by depositors, members of the company to enforce certain action against the company itself. The law framed under Indian



Companies Act 2013 carves a distinct right to the shareholders to enforce certain rights by way of class action. The rights given under section 245 in Companies Act, 2013 has a larger scope on specific intent than what could be considered as class action in US jurisdiction. Therefore, in the Indian context, a right of shareholders or class of them, to seek relief against the Company or in favour of the Company are preserved. Thus, we *prima facie* hold that under the Indian Jurisprudence, the Parliament in its wisdom gives a right more defined, than a derivative action, in respect of shareholders in a public limited company. This provision seeks to address the issue where there are numerous or large number of shareholders and joinder of all of them is impracticable, where the question of law in relation to such fact is common to the class. The representative parties will fairly and adequately protect the interest of the class. The inconsistency or multiple adjudication can be avoided in a class action, which is not the case in derivative action. Therefore, this Tribunal under Section 245 has the power to grant relief to shareholders or depositors or class of them, and that can include to the benefit of the Company. We *prima facie* hold in favour of petitioners for issuance of notice.



45. It is another argument of the respondent that the in case of Class Action, shareholders file petition against the Company, its directors, officers etc. seeking relief in respect of acts in *presnti* or act likely to occur. The interest of a particular 'class' of individuals that is sought to be protected and the remedy lies against the company and its governance / management. Damages / compensation is payable to such class of shareholders. whereas in the present case, the petitioner seeks relief in favour of Respondent No.1 company. This distinction in Indian law is evident from reading of Section 245. Section 245 (1) clearly states that the conduct of the affairs of the company, if in the opinion of the members, justifies the filing of the petition as a class action, then necessarily notice should follow. Under Indian law more particularly Section 245 of the Companies Act, the class action envisages a process of safeguarding the interest of depositors/ shareholders in relation to the conduct of affairs of the company.

46. The present stage of consideration is largely focused on the maintainability of the petition. The petitioners' concerns that the management or conduct of the company's affairs are prejudicial to the interests of the company or its members are



covered by the wide language of Section 245 of the Companies Act, 2013. This Court is satisfied that the petitioners meet the threshold provided under Rule 84 of the NCLT Rules 2016 and the issues to be adjudicated fall within the contours of Section 245. Given the specific and express language of Section 245, which is tailor-made for Indian investors, there is no reason to be influenced by US Jurisprudence. Section 245 provides only for a class action that is capable of encompassing some traits of derivative action as seen in the US. We are of the view that section 245, is equipped to encompass concerns and questions raised by the Petitioners with respect to affairs of Respondent No.1 Company. Nevertheless, it is made clear that these questions raised are yet to be adjudicated on merits and the same shall be independent from the observation raised herein. The Respondents are entitled to deny and defend all the allegations on its merits. We do not rule anything on facts for the present.

47. The contention of the Respondent that past actions are not amenable to class action proceedings is not tenable on a reading of Section 245. At the threshold, it will be unfair to hold that on a Petition by the members, who based on a *prima*



*facie* opinion, should be denied a cause to initiate a proceeding as the details of the transactions in issue is not in dispute in its entirety. To hold that there is no case made out for issuance of notice, will defeat the object of the laws.

48. At this stage we are not going into the factual details as the same will amount to pre-judging the petition on the merits of the allegations, even before it is taken up for hearing on merits. We say so because this notice should not cause any prejudice to the Respondents.

49. Accordingly, we reject the contention of the Respondents on its plea of maintainability that the Petitioners are non-suited to filed a case under Section 245 of the Companies Act, 2013 and we cause the issuance of notice.

50. Accordingly, Application on maintainability being **IA(CA)-132/2024** is **Dismissed**. The Petition being CP No. 58/245/PB/2024 is Admitted to an extent of issuance of Notice. Notice is issued in terms below.

51. As per Rule 87 of the NCLT Rules 2016, public notice of the Petition has to be issued upon admission. The rule is extracted below:



87. Publication of notice.—

(1) For the purposes of clause (a) of sub section (5) of section 245 of the Act, on the admission of an application filed under sub-section (1) of section 245 of the Act, a **public notice shall be issued by the Tribunal as per Form No. NCLT-13 to all the members of the class** by-

(a) publishing the same **within seven days of admission** of the Application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

(b) **requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a):**

Provided that such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the Tribunal.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) **The public notice shall, inter alia, contain the following-**

(a) **name of the lead applicant;**

(b) **brief particulars of the grounds of application;**

(c) **relief sought by such application;**

(d) **statement to the effect that application has been made by the requisite number of members/depositors;**

(e) **statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;**

(f) **date and time of the hearing of the said application;**

(g) **time within which any representation may be filed with the Tribunal on the application;**

(h) **the details of the admission of the application and the date by which the form of opt out has to be**



***completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure-B, and such other particulars as the Tribunal thinks fit.***

*(4) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.*

52. We direct the Petitioners to undertake publication on behalf of the tribunal in terms of the rule above and publish a notice also on website of the Respondent No. 1 Company.

53. Issue notice of this petition to the Respondent(s) by all modes, and non-applicants in terms above returnable by 02.04.2026.

List the matter on **02.04.2026**.

**-Sd/-  
(RAMALINGAM SUDHAKAR)  
PRESIDENT**

**-Sd/-  
RAVINDRA CHATURVEDI  
MEMBER (TECHNICAL)**

**05.02.2026  
Lalit**