



2025:DHC:10855



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 16.10.2025*

*Judgment delivered on: 04.12.2025*

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**C.R.P. 10/2025, CAV 25/2025, CM APPL. 2464/2025 & CM APPL. 61625/2025**

**M/S KARYAN GLOBAL LLP**

..... Petitioner

versus

**VIVEK KUMAR MISHRA AND ORS**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner

: Mr. Mukul Rohtagi, Mr. Sandeep Sethi and Mr Rajesh Yadav, Senior Advocates with Mr. Preet Singh Oberoi, Adv.

For the Respondent

: Mr Ravi Shankar Prasad and Mr. Rajshekhar Rao, Senior Advocates with Mr. Shubhaankar A. Sengupta, Mr. Aarush Bhatia, Mr. Zahid Laiq Ahmed, Advocates for R-1.

Mr. Amit Prasad, Mr. Shubhaankar A. Sengupta and Mr. Aarush Bhatia, Advocates for R-2.

Mr. Shubhaankar A. Sengupta and Mr. Aarush Bhatia, Advocates for R-3.

Mr. Dhruv Pande, Advocate for R-4

**CORAM:**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

Signature Not Verified

Signed By: DEEPA ANSHU  
Signing Date: 04.12.2025  
22:24:26

**C.R.P. 10/2025**

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## JUDGMENT

1. The present revision petition is filed challenging the order dated 24.12.2024 (hereafter '**impugned order**'), passed by the learned District Judge, South East District, Saket Court, New Delhi in CS No. 3503/24.

2. Application filed by the petitioner (Defendant No.1) seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') was dismissed by the impugned order.

3. The brief facts of the case are as follows:

3.1. The subject suit, being CS No. 3503/2024, is filed by the plaintiffs/ Respondent Nos.1 to 3 seeking declaration of certain documents as *non est*, null and void claiming that the said documents bore the forged signatures of the plaintiffs. The plaintiffs also sought a decree of permanent injunction restraining the defendants (that is, the petitioner and Respondent Nos. 4 to 11) from acting upon the subject documents. The impugned documents, as mentioned in Clause A of the prayer in the suit, are as under:

- i. Document titled as "Shareholders Agreement" dated 30<sup>th</sup> July 2020;
- ii. Form No. SH-1 dated 20<sup>th</sup> July, 2020 which bears the forged signatures of Mr. Nitin Katiyar (Plaintiff No.3) & Mr. Vikash Kumar Mishra (Plaintiff No.2) [Distinctive Number 10001 to 36520 – Corresponding Certificate No. 11 and registered folio number 01];



- iii. *Form No. SH-4 dated 30<sup>th</sup> July, 2020 which bears the forged signatures of Mr. Nitin Katiyar & Mr. Vikash Kumar Mishra [Distinctive Number 10001 to 36520 – Corresponding Certificate No. 11 and registered folio number 01];*
- iv. *Form No. SH-1 dated 20th July, 2020 which bears the forged signatures of Mr. Vivek Kumar Mishra (Plaintiff No.1) & Mr. Vikash Kumar Mishra [Distinctive Number 11001 to 136520 – Corresponding Certificate No. 13 and registered folio number 02]*
- v. *Form No. SH-4 dated 30th July, 2020 which bears the forged signatures of Mr. Vivek Kumar Mishra & Mr. Vikash Kumar Mishra [Distinctive Number 11001 to 136520 – Corresponding Certificate No. 13 and registered folio number 02]*
- vi. *Form No. SH-1 dated 20th July, 2020 which bears the forged signatures of Mr. Vikash Kumar Mishra and Mr. Sujeet Jha [Distinctive Number 210001 to 269670 – Corresponding Certificate No. 15 and registered folio number 03]*
- vii. *Form No. SH-4 dated 30th July, 2020 which bears the forged signatures of Mr. Vikash Kumar Mishra and Mr. Sujeet Jha [Distinctive Number 210001 to 269670 – Corresponding Certificate No. 15 and registered folio number 03]*
- viii. *Form No. SH-1 dated 20th July, 2020 which bears the forged signatures of Mr. Vikash Kumar Mishra and Mr. Sujeet Jha [Distinctive Number 434401 to 454290 – Corresponding Certificate No. 17 and registered folio number 05]*
- ix. *Form No. SH-4 dated 30th July, 2020 which bears the forged signatures of Mr. Vikash Kumar Mishra and Mr. Sujeet Jha [Distinctive Number 434401 to 454290 – Corresponding Certificate No. 17 and registered folio number 05]*
- x. *Undated Receipts for consideration bearing forged signature of Mr. Vivek Kumar Mishra; Mr. Nitin Katiyar; Mr. Sujeet Jha and Mr. Vikash Kumar Mishra.*
- xi. *Board Resolution of the Raphe (Respondent No.4/ Defendant No.9) dated 03rd September, 2020 approving transfer of shares bearing forged signatures of Mr. Vikash Kumar Mishra and Mr. Sujeet Jha;*



- xii. *Board Resolution of the Raph dated 16<sup>th</sup> July, 2020 for approval of split of share certificate No. 04, 05, 09 and 10 bearing forged signatures of Mr. Vikash Kumar Mishra and Mr. Nitin Katiyar.*

3.2. It is the case of the plaintiffs that they are the founders of Respondent No.4 company (Defendant No. 9), which is a research-led, high-tech startup focused on designing, developing and manufacturing world class Unmanned Aerial Vehicle (UAV) for the defence forces of India. It is claimed that in the year 2019, Respondent No. 4 company was in dire need of funds for making the required products for the final phase of a competition, when Respondent Nos. 2 and 3 were introduced to Respondent No.5 (partner of the petitioner firm)/ Defendant No.2). Respondent No.5 agreed to extend loans for the aforesaid purpose and proposed to do the same from his and his wife's (Respondent No.6/ Defendant No.3) account.

3.3. It is claimed that two loan agreements were executed for the said purpose between Respondent No.4 company and Respondent Nos. 5 and 6 respectively. Two conditions were laid down for providing loans, that is, 26% of equity shares of Respondent No.4 company would be pledged to the petitioner firm, where Respondent Nos. 5 and 6 were the only two partners, and Respondent Nos. 5 and 6 would be made Directors in Respondent No.4 company to ensure that the extended loan is in compliance with the Companies Act, 2013. As per the plaintiffs, they were made to believe that the paperwork for the pledge will be done by Respondent No.9's (Defendant No.6/



Chartered Accountant) team and the same would be discharged after repayment of loan.

3.4. It is claimed that thereafter Respondent No.6 started getting involved in the work of Respondent No.4 company and Respondent No.5 regularly initiated discussions on his interest to acquire some equity in the said company by way of a secondary sale, however, the parties were unable to reach a consensus on the valuation of the company. Loans totalling to ₹12,70,73,000/- were received from the petitioner firm's account by Respondent No. 4 company.

3.5. It is claimed that on 07.01.2022, without the knowledge of the plaintiffs, Respondent No. 6 tendered her resignation and a fabricated Board resolution was issued to this effect under the forged letter head of Respondent No. 4 company under signatures of Respondent No.5. By way of the same forged and fabricated Board Resolution, Respondent No. 5 appointed one Sahil Sadhna as Additional Director of Respondent No.4 company with effect from 07.01.2022. The plaintiffs learnt of the fraudulent act on 16.02.2022, but due to loan liabilities, they were unable to take any action and had no choice but to reflect the changes in this regard in the Annual Report of Respondent No.4 company.

3.6. Although settlement of debt was delayed, the entire loan amount is claimed to have been repaid by 04.09.2024, and discussions were allegedly underway for calculation of interest. Soon after the same, the plaintiffs were served with a petition filed by the petitioner



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firm before the learned National Company Law Tribunal, Allahabad ('NCLT') for oppression and mismanagement in Respondent No.4 company, and an *ex-parte* order dated 07.11.2024 has been passed restraining Respondent No. 4 company from making any changes in constitution of board without leave of the learned Tribunal. It is claimed that upon perusal of the petition, it was found that the defendants had set out a fraudulent narrative around the loan transactions and falsely claimed that the loan amount was actually consideration for the shares of Respondent No. 4 company and a Shareholders Agreement dated 30.07.2020 (hereafter '**the Shareholders Agreement**') had been executed to this effect. Reliance was found to be placed on certain other documents purportedly signed by the plaintiffs whereby the transfer of shares was allegedly approved. It is claimed that the signatures of the plaintiffs on the documents in question are forged.

3.7. It is claimed that the defendants colluded to create *ante* dated and forged Shareholders Agreement as well as other documents like board resolutions and security transfer forms, which have been challenged in the suit, for the purpose of misusing the same to undermine the operations of Respondent No.4 company and create third party rights. A police complaint was also made by the plaintiffs to this effect.

3.8. The petitioner firm filed an application under Order VII Rule 11 of the CPC on the ground that the Court lacks subject matter



jurisdiction to entertain the plaint in view of the bar under Section 430 of the Companies Act, 2013 as the learned NCLT has already assumed jurisdiction over the matter; the plaintiff's are guilty of forum shopping as they are seeking reliefs that overlap with the matter pending before the learned NCLT and the suit is without any cause of action; the suit is barred by law; the plaintiffs have suppressed material facts; the plaint is grossly undervalued and the Court lacks pecuniary jurisdiction to entertain the plaint.

3.9. By the impugned order, the learned Trial Court rejected the grounds agitated by the petitioner firm and found that the objections could be considered at the time of framing of issues. It was observed that as the plaintiffs' claim is primarily in relation to the issue of forgery of signatures and not for enforcement of any right or obligation, the dispute cannot qualify as a commercial dispute and the same falls under the jurisdiction of the Civil Court. It was further observed that as the suit essentially pertains to a dispute about the validity of documents, the same was not hit by the bar under Section 430 of the Companies Act, 2013 as learned NCLT has no jurisdiction to declare documents as forged and only Civil Court has jurisdiction to decide issues of fraud. It was observed that not seeking cancellation of documents was not fatal to the maintainability of the suit as the plaintiffs had not admitted to the execution of the documents. The objections to maintainability on account of Section 41(b) of the Specific Relief Act, 1963 as well as forum shopping were also found to be unmerited. It was found that the plaint appeared to be properly



valued and the objections in relation to suppression of fact as well as limitation could not be adjudicated while adjudicating the application under Order VII Rule 11 of the CPC.

3.10. Aggrieved by the impugned order, the petitioner has filed the present petition.

4. Extensive arguments were heard on behalf of the petitioner firm as well as the contesting respondents. Written submissions as well as compilations of relied upon judgments were also handed over in Court to endorse the submissions.

4.1. The matter was reserved for orders on 25.04.2025, whereafter, an application was filed on behalf of the petitioner seeking consideration of the judgment passed by the Hon'ble Apex Court in the case of *Shailja Krishna v. Satori Global Ltd. : 2025 SCC OnLine SC 1889*, which apparently had a direct bearing on the issues involved in the present case. Pursuant to the same, the matter was taken up for arguments again on 24.09.2025, 26.09.2025, 09.10.2025 and 16.10.2025, when it was reserved again.

5. The learned Senior Counsel for the petitioner submitted that the impugned order is bad in law as the objections raised by the petitioner have been summarily dismissed without proper application of mind which is against the principles of natural justice.

6. They submitted that the learned District Judge has committed a grave error in observing that the contention of the plaintiffs in relation



to forgery cannot be adjudicated by the learned NCLT, completely ignoring the specialized jurisdiction and wide powers conferred upon the learned NCLT.

7. They relied upon Rules 39, 43 and 70 of the NCLT Rules, 2016 to contend that the NCLT is empowered to examine the issue of forgery and fabrication of documents. They submitted that the fact that the proceedings are pending before the learned NCLT and the plaintiffs are participating in the proceedings without jurisdictional objection makes the bar under Section 430 of the Companies Act, 2013 absolute. They submitted that mere allegation of forgery cannot divest the learned NCLT of its jurisdiction and placed reliance on the following judgments to endorse that the learned NCLT is empowered to look into the issue of forgery:

- i. ***Chalasan Udaya Shankar v. Lexus Technologies (P) Ltd.* : (2024) 10 SCC 303;**
- ii. ***Kavita Arora v. Leptons Designtek (P) Ltd.* : (2024) 247 Comp Cas 167;**
- iii. ***SAS Hospitality (P) Ltd. v. Surya Constructions* : (2019) 212 Comp Cas 102; and**
- iv. ***Channel Foods (P) Ltd. v. A.K. Nowshad* : 2022 SCC OnLine NCLAT 4443.**

8. They further submitted that the subject suit is filed on identical grounds which have been raised by the plaintiffs before the learned NCLT, and the plaintiffs have also filed a criminal complaint which amounts to abuse of process of law.



9. They submitted that it is settled law that the proper valuation of a plaint goes to the root of the matter and the documentary evidence and the pleadings clearly show the transaction value of ₹20 crores against the artificial valuation of ₹13.26 lakhs. They submitted that the valuation of the suit is arbitrary and the same does not reflect the real value of the relief sought by the plaintiffs. They submitted that despite the same, the learned District Judge has relegated the matter to trial even though the matter is clearly beyond the pecuniary jurisdiction of the Court.

10. They further submitted that even otherwise, the present dispute is manifestly commercial in nature and the learned District Judge has erred in interpreting the scope of the Commercial Courts Act, 2015 by observing that the dispute must primarily relate to commercial transactions rather than questions of validity of commercial documents to qualify as commercial in nature. They submitted that merely because forgery is alleged, the same cannot take the dispute outside the purview of Commercial Courts when the underlying transactions are commercial in nature. Reliance was placed on the following judgments:

- i. ***Renusagar Power Co. Ltd. v. General Electric Co. : (1984) 4 SCC 679;***
- ii. ***TV Today Network Ltd. v. News Laundry Media (P) Ltd. : (2022) 5 HCC (Del) 6;***
- iii. ***Modi Stratford Enterprise Management (P) Ltd. v. Punjab & Sind Bank : 2024 SCC OnLine Del 1441;*** and



iv. ***Amanpreet Kohli v. Pankaj Dayal : 2023 SCC OnLine Del 1808***

11. *Per contra*, the learned counsel for the plaintiffs contested that the present petition is liable to be dismissed as the learned District Judge committed no error of jurisdiction or material irregularity so as to warrant interference in revisional jurisdiction.

12. They submitted that the issue of forgery cannot be adjudicated by the learned NCLT or any other forum which exercises summary jurisdiction and the jurisdiction to decide complex issues of facts and law as well as allegations of fraud and forgery continue to remain with the Civil Court. They submitted that certain documents annexed with the plaint, including the Forensic Examination Report dated 26.11.2024, will have to be examined through a thorough trial. They submitted that there is no provision under the Companies Act, 2013 which vests the learned NCLT with the jurisdiction to grant the relief as prayed for in the subject suit. They further submitted that the draft of the Shareholders Agreement was shared with the defendants through email *after* the purported execution of the said agreement which clearly shows that the agreement is forged and the dispute in relation to veracity of the same cannot be looked into by the learned NCLT. They relied upon the following judgments in this regard:

- i. ***Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. : (1998) 7 SCC 105;***
- ii. ***Jai Mahal Hotels (P) Ltd. v. Devraj Singh : (2016) 1 SCC 423;***



- iii. ***Sita Chaudhry v. Verinder Singh : 2022 SCC OnLine Del 2235;***
- iv. ***Shazia Rehman v. Anwar Elahi : 2023 SCC OnLine Del 4807;***
- v. ***Morgan Securities and Credits Pvt. Ltd. v. BPL Limited & Ors. : 2023 SCC OnLine Del 119.***

13. They submitted that the reliance on Rule 43 of the NCLT Rules, 2016 is misplaced as the same pertains to power of the Tribunal to call for further information or evidence in relation to fabrication of any *statutory* records. They submitted that the forged documents in the present case have not become part of the statutory records of Respondent No.4 company.

14. They submitted that the plaintiffs have availed their remedies in accordance with law and institution of the civil suit as well as lodging of the criminal complaint cannot be construed to be forum shopping.

15. They submitted that the valuation of the suit is based on Recital H of the Shareholders Agreement and as the suit does not relate to performance or non-performance of the said agreement but rather relates to the validity of the same, the valuation is reasonable and adequate. They further submitted that there is no prayer in regard to the prior loan transaction and the cause of action is the forgery done by the petitioner firm in connivance with the other defendants, whereby the prior transaction's value is of no relevance to evaluate the valuation of the suit.



16. They submitted that as the existence of the Shareholders Agreement itself has been denied and since the plaintiffs are not seeking any relief out of the said agreement, the dispute cannot be assessed to be a “commercial dispute” in terms of the Commercial Courts Act, 2015. They submitted that the nature of the dispute can only be ascertained after the adjudication on the validity of agreement. Reliance was placed on the following judgment in the case of *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*: (2020) 15 SCC 585 and *Lord Grih Nirman Pvt. Ltd. v. Merlin Projects* : APOT 225/2024 (Division Bench of Calcutta High Court).

17. They further relied upon the judgment in the case of *IHHR Hospitality (Andhra) (P) Ltd. v. Seema Swami* : 2022 SCC OnLine Del 3636 to contend that for a dispute to qualify as a commercial dispute, the same has to be in the *ordinary course* of business by the named class of persons. They submitted that even if the Shareholders Agreement is considered to be validly executed, considering that neither the petitioner firm nor the defendants are in the business of providing loans, the dispute arising from the agreement cannot be classified as a “commercial dispute”.

18. They submitted that the objective of the Commercial Courts Act, 2015 cannot be achieved if commercial courts are saddled with the task of ascertaining the very existence of a document which forms the basis of the dispute. They submitted that even if it is found that the dispute is commercial in nature, the same cannot lead to rejection of



plaint and the plaint will need to be returned in such circumstances.

19. The learned counsel for Respondent No.4 company supported the arguments advanced on behalf the plaintiffs.

### ***ANALYSIS***

20. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity.

### **LAW IN RELATION TO ORDER VII Rule 11 OF THE CPC**

21. The law in relation to rejection of plaint under Order VII Rule 11 of the CPC is well settled. The said Rule provides for summary dismissal of a suit at the threshold, before the parties have led their evidence, if one of the grounds stipulated therein is made out. The purpose of the said provision is to stifle sham civil actions and quell bogus and meaningless suits at the outset when the said suits *ex facie* appear to be an abuse of the process of law, without further wasting judicial time.

22. Considering that the power to terminate the action without even allowing the claimant to lead evidence and establish its case is a



drastic one, the Court is required to limit itself to discerning whether the plaint *prima facie* discloses a cause of action by perusing the substance of the averments, without paying any heed to the pleas taken in the written statement. While the Court is not precluded from intervening when the litigation is manifestly vexatious, at the same time, if a *prima facie* case is made out, it is not open to the Court to conduct an enquiry into the merit or trustworthiness of the allegations. The Hon'ble Apex Court in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366*** has succinctly discussed the law in relation to Order VII Rule 11 of the CPC. The relevant portion of the same is reproduced hereunder:

*“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*

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***23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.***

***23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.***



**23.4.** *In Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court....*

**23.5.** *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

**23.6.** *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

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**23.9.** *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

**23.10.** *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

**23.11.** *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed...*



**23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941].**

**23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.**

**23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.**

**23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”**

(emphasis supplied)



23. The maintainability of suits such as this one, which are filed in Civil Courts (under the Specific Relief Act, 1963 or the CPC) seeking declaratory relief on the aspect of forgery or invalidity of documents (e.g., share transfers, agreements, or company records), in response to ongoing or related NCLT proceedings under Companies Act, 2013 (such as for oppression and mismanagement under Sections 241-242 of the Companies Act, 2013), are to be thus tested at the threshold under Order VII Rule 11(d) of the CPC. This provision allows rejection of the plaint if it appears “barred by law”, including, by invoking the clauses pertaining to ouster of subject matter jurisdiction.

24. Although the petitioner had agitated a number of grounds in its application under Order VII Rule 11 of the CPC, the impugned order has been assailed before this Court on essentially three grounds— the suit could not be entertained by a Civil Court on account of the bar under Section 430 of the Companies Act, 2013; even if the suit is found to be maintainable, the same pertains to a commercial dispute in terms of the Commercial Courts Act, 2015; and the plaint is miserably undervalued.

### **BAR UNDER SECTION 430 OF THE COMPANIES ACT, 2013**

25. This Court deems it apposite to first consider the issue of the bar under Section 430 of the Companies Act, 2013 as the same goes to the very root of the jurisdiction of the Civil Court.



26. As noted above, the petitioner has initiated a petition before the learned NCLT alleging oppression and mismanagement against Respondent No.4 company and others (including the plaintiffs) under Sections 59, 241 and 242 of the Companies Act, 2013 (“**Companies Act**”). It was only thereafter that Respondent Nos. 1 to 3 filed the civil suit for declaration of the share title documentation, including the Shareholders Agreement dated 30.07.2020 as well as the securities transfer forms and certain Board Resolutions, as *non-est*, null and void on account of the same bearing their forged signatures.

27. It is argued that the present dispute fundamentally arises from a corporate transaction involving share transfers, board appointments and related corporate actions which squarely fall within the jurisdiction of the learned NCLT, and without awaiting the determination on the said issues in the petition instituted by the petitioner firm, the subject suit has been filed which amounts to forum shopping. It is further argued that the same is in teeth of the bar stipulated under Section 430 of the Companies Act, 2013 which bars the jurisdiction of civil court to entertain any suit or proceeding in respect of any matter which the Tribunal is empowered to determine.

28. It is the case of the plaintiffs that the allegations in the present case cannot be adjudicated by NCLT or any forum which exercises summary jurisdiction as the same relates to complex issues of fact, and it has been rightly held by the learned Trial Court that matters of fraud can only be determined by a Civil Court. The said assertion is



contested on behalf of the petitioner and it is asserted that such issues of fabrication and forgery squarely lie within the jurisdiction of NCLT.

### ***Relevant statutory provisions and Rules***

29. Before delving into the facts of the case to adjudicate the said objection, it is pertinent to first take note of certain provisions of the Companies Act, 2013 which are relevant for deciding the issue at hand. The same are set out below:

***“241. Application to Tribunal for relief in cases of oppression, etc.—(1) Any member of a company who complains that—***

*(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*

*(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,*

*may apply to the Tribunal, provided such member has a right to apply under Section 244, for an order under this Chapter.*

*(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.*



*Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.*

*(3) Where in the opinion of the Central Government there exist circumstances suggesting that—*

*(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith **guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;***

*(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;*

*(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or*

*(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,*

*the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the **Tribunal may inquire into the case and record a decision** as to whether or not such person 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.*

*(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.*

*(5) Every application under sub-section (3)—*



(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.

**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.

(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;

(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;*

**(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 sub-section (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.

(4-A) 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 fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.



**430. Civil court not to have jurisdiction.**—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.*”

30. The petitioner has also placed reliance on certain rules to endorse its contention that NCLT is empowered to adjudicate such issues of fraud, whereby this Court considers it apposite to also take note of the relevant rules in NCLT Rules, 2016 which stipulate the powers of the Tribunal. The same are set out below:

**“11. Inherent Powers.**—*Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

**39. Production of Evidence by Affidavit.**—(1) *The Tribunal may direct the parties to give evidence, if any, by affidavit.*

(2) *Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary in the interest of natural justice, it may order cross-examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by the Tribunal, on an application moved by any party.*

(3) *Every affidavit to be filed before the Tribunal shall be in Form No. NCLT. 7.*

**40. Production of additional evidence before the Bench.**—(1) *Notwithstanding anything contained in Rule 39, the parties to the proceedings shall not be entitled to produce before the Bench*



*additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector, appointed by the Central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Act, but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be produced.*

*(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.*

*(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.*

*(4) Additional evidence or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.*

**43. Power of the Bench to call for further information or evidence.**—(1) *The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary—*

*(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or*

*(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.*

*(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form*



*including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.*

*(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.*

**52. Summoning of witnesses and recording Evidence.**—*(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.*

*(2) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.*

**146. Disposal of Cases.**—*On receipt of an application, petition, appeal etc, the Tribunal, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:*

*Provided that the Tribunal, after considering an appeal, may summarily dismiss the same, for reasons to be recorded, if the Tribunal is of opinion that there are no sufficient grounds for proceedings therewith.”*



31. From a bare perusal of the aforesaid provisions, it is apparent that Section 430 of the Companies Act, 2013 imposes an absolute bar on the jurisdiction of civil courts to entertain any suit or proceeding in respect of “*any matter*” which the Tribunal or the Appellate Tribunal is “*empowered to determine*” by or under the Companies Act or any other law for the time being in force. Moreover, Section 242 of the Companies Act, 2013 confers a broad and remedial jurisdiction on the Tribunal to pass such an order as it thinks fit to bring to an end the matters complained of.

32. It is also pertinent to note that Rule 11 of NCLT Rules, 2016 specifically provide that the Tribunal is vested with the *inherent power* to make such orders as may be necessary for meeting the ends of justice. Apart from the same, the Tribunal is vested with the power to call the parties to give evidence by way of affidavit and order cross-examination of deponent, if so required. The Tribunal can also call for production of additional evidence as well as further information, and summon witnesses for recording evidence. Rule 43 of the NCLT Rules, 2016 specifically provides that where in a case of oppression and mismanagement, either of the parties raise the issue of forgery or fabrication of *any statutory records*, the Tribunal can send the disputed records for opinion of CFSL for the purpose of satisfying itself as to the truth of the allegations.

33. A conjoint reading of Sections 430, 241 and 242 of the Companies Act, 2013 along with the NCLT Rules (as set out above)



makes it apparent that the NCLT is empowered to adjudicate upon matters of the widest possible amplitude as far as company matters are concerned.

### ***Relevant Judicial precedents***

34. Both the sides have relied upon a catena of judgments in support of their contentions. This Court considers it apposite to also discuss the relevant precedents to render a determination of the issue at hand.

34.1. In the case of ***Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. (supra)***, the Hon'ble Apex Court was met with a case where the appellant company, which had been in liquidation since the year 1962, had invested in 50% stake of the respondent company in 1977. Purportedly, the investment was made due to familial ties between the beneficiary of the appellant company with the Managing Director of the respondent company. Disputes erupted after the death of the Managing Director of the respondent company, with his brothers denying the investment entirely and contesting that the claim of the appellant company, if any, was time-barred loan. Various documents relied upon by the appellant company were also denied as forged. The dispute led to the appellant company filing a composite petition under Sections 397 (Application to Company Law Board for relief in cases of oppression), 398 (Application to Company Law Board for relief in cases of mismanagement) and 155 (rectification) of the Companies Act, 1956,



which was dismissed in the year 1994 by the company judge holding that the summary jurisdiction of the company court is unsuitable for complex fraud/evidence issues, directing filing of a civil suit with leave under Section 446(2) of the Companies Act, 1956. The order of the company judge was affirmed by the Division Bench of the High Court. The Hon'ble Supreme Court allowed the appeal against the same, holding that Section 155 of the Companies Act, 1956 confers summary and exclusive jurisdiction for register rectification, and Company Court has wide exclusive discretion to adjudicate fraud disputes itself, if such disputes are within the peripheral field of rectification, or send the party to seek his relief before a Civil Court for adjudication of some facts falling outside the purview of rectification. It was noted that the deletion of proviso to Section 38 of the Indian Companies Act, 1913 (which empowered the Company Court to direct an issue to be tried in which any question of law may be raised) in the subsequent act does not enable a party to lay claim of many contentious issues for adjudication under the garb of rectification. The matter was remitted for fresh consideration to the High Court as it was felt that it would be appropriate for the Court to assess as to whether the documents which were alleged to be forged, were said to be so only to exclude the jurisdiction of the Court. The relevant portion of the judgment is as under:

*“25. Now we proceed to examine the power of the court to rectify the Register of Members of a company under Section 155. The question raised for the appellant is that the court under this Act cannot direct an applicant to seek his remedy by way of suit but the*



*court under the Act having exclusive jurisdiction should decide itself. In support, strong reliance is placed on the deletion of the proviso to Section 38 of the 1913 Act. Section 38 of the old Act is quoted hereunder:*

**“38. Power of the court to rectify Register.—**

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*Provided that the court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908 (5 of 1908), on the grounds mentioned in Section 100 of that Code.”*

*26. The proviso gave discretion to the court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the Register including the law and not to send one to the civil court. **There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction.** However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. **Thus in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification...***

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*31...There is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the*



**“court” as defined under the Act exercising its powers under various sections where it has been invested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred.** We have already held above **the jurisdiction of the “court” under Section 155, to the extent it has is exclusive, the jurisdiction of the civil court is impliedly barred.** For what is not covered as aforesaid the civil court would have jurisdiction. Similarly we find even under Section 446(1), its words itself indicate the jurisdiction of the civil court is not excluded. This sub-section states, “... no suit or legal proceedings shall be commenced ... or proceeded with ... except by leave of the court”. The words “except by leave of the court” itself indicate on leave being given the civil court would have jurisdiction to adjudicate one's right. Of course discretion to exercise such power is with the “court”. Similarly under Section 446(2), “court” is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it **by virtue of the language therein excludes the jurisdiction of the civil court.** So we conclude that the **principle of law as decided by the High Court that the jurisdiction of the court under Section 155 is summary in nature cannot be faulted.** Reverting to the second limb of submission by learned counsel for the appellant that the Court should not have directed for seeking permission to file a suit only because a party for dispute's sake states that the dispute raised is a complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is a complicated question or not. **Even dispute of fraud, if by a bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated.** Further on the other hand learned counsel for the respondent totally denies any share having been purchased by the appellant-Company or any amount paid to it. No transfer of any such share was ever approved by the Board of Directors. It is urged that the money even if advanced to Shri V.K. Bhargava by the appellant-Company, if at all, was a private transaction between the two with which the respondent-Company has no concern. So we find there is total denial by the respondent.

32. We have gone through the judgment of the High Court. It has rightly held the law pertaining to the jurisdiction of the “court” under Section 155 and even referred to some of the documents of



*the appellant but concluded that since they are disputed and said to be forged hence it directed for seeking leave if advised for suit. We feel it would have been appropriate if the Court would have seen for itself whether these documents are disputed and if any document is alleged to be forged, whether it is said to be so only to exclude the jurisdiction of the Court or it is genuinely so. Similarly we feel appropriate that while deciding this the Court should take into consideration the submissions for the respondents, whether it would come within the scope of rectification or not in the light of what we have said above.”*

(emphasis supplied)

34.2. The dispute in ***Shashi Prakash Khemka v. NEPC Micon : (2019) 18 SCC 569*** arose from the proceedings under Section 111A of the Companies Act, 1956 (which provided for rectification of register on transfer) regarding the validity of share transfers, where the Hon’ble High Court of Madras reversed the Company Law Board’s favourable ruling for the appellants, effectively relegating them to a civil suit remedy without invoking Order VII Rule 11(d) of the CPC or explicitly applying Section 430 of the Companies Act, 2013 (the cause of action in that case had arisen prior to this enactment). The appellants argued that Section 59 of the Companies Act, 2013 (which provides for rectification of registers) and Section 430 of the Companies Act, 2013 bar civil jurisdiction in matters for which power has been conferred upon NCLT. The Hon’ble Apex Court found that the appropriate course of action would be to relegate the parties to the remedy before NCLT rather than Civil Court. It was held that:

*“5...The effect of the aforesaid provision is that in matters in respect of which power has been conferred on NCLT, the jurisdiction of the civil court is completely barred.*



6. *It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 59 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded.*

7. *We are thus of the opinion that in view of the subsequent developments, the **appropriate course of action would be to relegate the appellants to remedy before NCLT under the Companies Act, 2013.** In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today.”*

(emphasis supplied)

34.3. In the case of ***Chalasani Udaya Shankar and Ors. v. Lexus Technologies Pvt. Ltd. and Ors. : (2024) 10 SCC 303***, the appellants therein had approached the NCLT by way of a company petition seeking rectification of the register of members and to initiate action for oppression and mismanagement, apart from criminal proceedings for committing fraud. Shares were acquired by one of the respondents *via* a share purchase agreement, pursuant to which, it was claimed that the appellants acquired the said equity shares by way of securities transfer deeds. It was claimed that share certificates were issued to the appellants and consideration was paid towards acquisition of shares. The petition for rectification was filed after the appellants found that annual returns and financial statements were filed with false information, erasing the shareholding of the appellants. The respondent company denied the transfer of shares, as claimed by the



appellants, and it was alleged that the appellants had forged certain signatures on the share certificates. NCLT rejected the contentions of the appellants and observed that it had no jurisdiction to try the petition as it involved issues of fraud, *etcetera*. The appeal against the order passed by NCLT was dismissed by NCLAT.

The Hon'ble Supreme Court restored the petition and observed that both NCLT and NCLAT had erred in not examining as to whether the issues raised by the respondents were mere moonshine. Relying on a catena of judgments, including *Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. (supra)* and *Jai Mahal Hotels (P) Ltd. v. Devraj Singh : (2016) 1 SCC 423*, it was observed that if an open and shut case of fraud is made out involving issues truly relating to “rectification”, NCLT/ Company Law Board would be entitled to examine the same, and it is only complex questions of title which would fall outside its jurisdiction. The relevant portion of the judgment is reproduced hereunder:

**“33. In *Jai Mahal Hotels (P) Ltd. v. Devraj Singh [Jai Mahal Hotels (P) Ltd. v. Devraj Singh, (2016) 1 SCC 423 : (2016) 1 SCC (Civ) 354]*, this Court again held that issues which truly relate to “rectification” of the Register fall within the summary jurisdiction of the Company Law Board and only complex questions of title fall outside its jurisdiction. It was observed that there is a thin line in appreciating the scope of jurisdiction of the Company Court and the jurisdiction is exclusive, if the matter truly relates to “rectification”, but if the issue is alien to “rectification”, such matter may not be within the exclusive jurisdiction of the Company Court.**

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**41. In the present case, proper verification of the assertions made by the parties was a sine qua non. The Acting President of NCLT, by failing to carry out the said exercise, failed to discharge the mandate of law. Exercise of power under Section 59 of the 2013 Act is to be undertaken in right earnest by examining the material, evidence, and the facts on record. This has not been done. Rather, a narrow view was taken without calling upon Respondent 2 to prove the veracity of the contrary story put forth by him, despite receiving monies from the appellants. The facts, material, and evidence had to be examined in the context of the underlying facts, which would have included the receipt of monies, the signatures on the transfer deeds, etc. Needless to state, questions of fact must be decided on the principle of preponderance of probabilities, giving due weight to the specific facts, as found, so as to draw the conclusion that a reasonable person, acquainted with the relevant field, would draw on the basis of the same facts. (See High Court of Bombay v. Udaysingh [High Court of Bombay v. Udaysingh, (1997) 5 SCC 129 : 1997 SCC (L&S) 1132].)**

**42. Neither the Acting President of NCLT nor Nclat examined, with any seriousness, the issues raised before them to come to a cogent conclusion as to whether the disputes raised by the respondents were mere moonshine. Notably, in Ammonia Supplies Corpn. [Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd., (1998) 7 SCC 105], this Court held to that effect in the context of Section 155 of the Companies Act, 1956. Thereafter, in Adesh Kaur [Adesh Kaur v. Eicher Motors Ltd., (2018) 7 SCC 709] also, this Court affirmed that if, on facts, an open-and-shut case of fraud is made out in favour of the person seeking rectification, the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the 2013 Act. Therefore, verification of this aspect was essential but NCLT failed to discharge this mandate.”**

(emphasis supplied)

34.4. Recently, the Hon’ble Apex Court in the case of *Shailja Krishna v. Satori Global Ltd.* (*supra*) held that NCLT has wide jurisdiction to examine allegations of fraud, manipulation, coercion as well as fabrication of documents (like gift deeds) in oppression and



mismanagement cases, which are incidental and integral to resolving the complaint. This power stems from the need to “bring an end to the matters complained of” [as expounded in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.* : (2021) 9 SCC 449], specific to any specific legislative bar restricting the power of NCLT in this respect.

In *Mrs. Shailja Krishna vs. Satori Global Limited & Ors* (*supra*), the appellant (majority shareholder and director in the respondent company) alleged oppression and mismanagement through fraudulent acts, including a forged gift deed on the strength of which the appellant’s shares were transferred, invalid board resolutions whereby the appellant’s alleged resignation was accepted and one of the respondents was inducted as an additional director, and fabricated resignation records. The NCLT ruled in favour of the appellant and declared the transfer of the appellant’s shares by way of the gift deed to be null and void. The appellant was also restored to her position as an executive director. Subsequently, NCLAT reversed the decision, holding the issues of fraud, forgery or coercion to be beyond NCLT’s summary jurisdiction.

The Hon’ble Supreme Court decided in favour of the appellant. It was observed that the circumstances surrounding the gift deed were seriously questionable and the board meetings had been conducted in a *mala fide* manner, which show that the affairs of the company in question were being conducted in a manner prejudicially affecting the



appellant. The order of NCLAT was set aside and the NCLT's decision was restored, whereby the gift deed and share transfer forms were declared as invalid and set aside, emphasising NCLT's role in providing holistic remedies.

Relying on the cases of *M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja* : (2008) 6 SCC 750 and *Kamal Kumar Dutta & Another. v. Ruby General Hospital Ltd. & Others.* : (2006) 7 SCC 613, where the power of the CLB/NCLT to grant diverse reliefs was broadly interpreted, the Hon'ble Supreme Court held as under:

*“30. The aforesaid decisions confirm the view that the National Company Law Tribunal/Company Law Board possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative enactment specifically debarring the National Company Law Tribunal/Company Law Board from exercising its powers in this respect.*

*31. In the instant case, it is an admitted fact that the determination of whether the gift deed is valid or not is central to the decision herein and, therefore, the National Company Law Tribunal did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the Companies Act, 1956 and/or internal regulations of the company, including but not limited to the articles of association and the memorandum of association.*

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*42. Applying the tests laid down in the aforesaid authorities, we have come to the conclusion that the appellant was the victim of oppression and mismanagement in the instant case for two reasons : first, that the circumstances surrounding the gift deed and the subsequent transfer of shares are seriously questionable and must be declared invalid and secondly, the board meetings have been conducted in a mala fide manner and against both the statutory requirements of the Companies Act, 1956 and the internal*



*regulations of the company. Both of these instances show that the affairs of the company were being conducted in a manner prejudicially affecting the appellant.”*

(emphasis supplied)

34.5. In the case of *SAS Hospitality (P) Ltd. & Anr. v. Surya Constructions Pvt. Ltd. & Anr. : 2018:DHC:6778*, the plaintiff appellant–SAS Hospitality P. Ltd. filed a commercial suit seeking declaration that the allotment of shares of the defendant company in favour of Defendants 5 to 9 in the year 2013 was null and void. The plaintiff also sought decree of injunctions restraining defendants from giving effect to the allotment or exercising any voting rights or creating any third-party rights. The defendants moved an application under Order VII Rule 11 of the CPC to reject the plaint as barred by Section 430 of the Companies Act, 2013. Taking note of the change in legislative scheme, this Court held as under:

**“10...The NCLT has been vested with powers that are far reaching in respect of management and administration of companies. The said powers of the NCLT include powers as broad as “regulation of conduct of affairs of the company” under Section 242(2)(a), as also various other specific powers. NCLT is a tribunal which has been constituted to have exclusive jurisdiction in the conduct of affairs of a company and its powers can be contrasted with that of the CLB under the unamended Companies Act, 1956.**

11. In the 2013 Act, Sections 407 onwards deal with the constitution of the Tribunal. Section 420 has vested the Tribunal with powers to ‘pass such orders thereon as it thinks fit’. The Tribunal is also vested with the power of review. Under Section 424 of the Companies Act, 2013, the Tribunal also has the same powers and functions as are vested with a Civil Court. In addition to the above, the Tribunal also has the power to punish for



*contempt which was hitherto not available with the CLB. In various ways, the NCLT is not merely exercising the jurisdiction of a Company Court under the new Act, but is also vested with inherent powers and powers to punish for contempt. It is in this background that the court has to decide the issue of jurisdiction, which has been raised by the Defendant.*

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*15. The bar contained in Section 430 of the 2013 Act is in respect of entertaining “any suit”, or “any proceedings” which the NCLT is “empowered to determine”. The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos.5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos.5 to 9 ought to exercise any voting rights. **The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No.1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.***

*16. The allegations in the present case relate to non-compliance of the stipulations in Section 62 of the 2013 Act. The non-compliance of any conditions contained in Section 62 of the 2013 Act also constitutes mismanagement of the company, inasmuch as under Section 241 of the 2013 Act, the conduct of affairs of the company “in a manner prejudicial” to any member or “in a manner prejudicial to the interest of the company”, would be governed by the same. **The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass “such order as it thinks fit”, including providing for “regulation of conduct of affairs of the company in future”. These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed***



**by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.**

17. Moreover, the powers of the NCLT being broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 CPC. **The NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies.** As observed by the Supreme Court in *Union of India v. R. Gandhi* (2010) 11 SCC 1 (hereinafter, 'R. Gandhi') and thereafter, in *Madras Bar Association v. Union of India* (2015) 8 SCC 583 (hereinafter, 'Madras Bar Association') the NCLT has been created by a specific amendment in the law. The constitution of the NCLT has been upheld...

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19. **The bar under Section 430 of the 2013 Act being absolute in nature, this Court is of the view that the jurisdiction to adjudicate the disputes raised in the present case vests with the NCLT.**

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26. **The bar under Section 430 of the 2013 Act has, therefore, to be strictly construed and there can be no doubt about that. The Division Bench also considered Dhulabai v. State of M.P. AIR 1969 SC 78 (hereinafter, 'Dhulabai'), and held as under:**

**"101. As, perhaps, the most authoritative pronouncement on the issue, the Constitution Bench of the Supreme Court, in *Dhulabhai v State of M.P.*, AIR 1969 SC 78, set out the following 7 clear principles (of which only the first and last are really relevant to the present case), to be applied for deciding whether a suit was barred under Section 9 of the CPC:**

**"(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.**



(2) *Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.*

(3) *Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*

(4) *When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.*

(5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.*

(6) *Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.*



(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

(Emphasis supplied)

27. The Division Bench in **Jai Kumar Arya (supra)**, after applying **Dhulabai (supra)**, lays down the following test:

**"102 From the above authorities, the primary indicia, which would govern determination of the question of whether the jurisdiction of civil courts is, in any particular case, ousted, or not, would appear to be (i) whether the decision of the tribunal, on which jurisdiction is conferred, is also attributed finality by the statute, and (ii) whether such tribunal can do what the civil court would be able to do and is, therefore, an efficacious alternative to the civil court. Even when these two indicia stand satisfied, the jurisdiction of the civil court would continue to exist where the action, complained against, violates the statute.**

28. If these two tests are applied i.e., as to whether the Tribunal's order is attributed finality and as to whether the Tribunal would be able to do what a Civil Court could do, it is clear that an order under Section 59 of the 2013 Act has specific consequences for non-compliance. The order is appealable to the appellate tribunal. The Tribunal has to apply the principles of natural justice. **Under Section 242(2)(d) of the 2013 Act, the Tribunal can impose restrictions on the transfer or allotment of the shares of the company. It can also pass an interim order under Section 242(4) of the 2013 Act. Consequences for non-compliance have also been provided under Section 242(4) of the 2013 Act.** The Plaintiffs have a right to apply Section 242 of the 2013 Act as they own 99.96% shareholding which has been diluted to 21.44%. Any member with more than 1/10th of the issued share capital can approach the Tribunal. Thus, even as per **Jai Kumar Arya (supra)**, the order being one, which can be passed under Section 242 of the 2013 Act, the NCLT has the jurisdiction. In **Jai Kumar Arya (supra)**, the Court was concerned with the power of removal of directors, which is distinct from the disputes involved in the present case. However, by applying the tests laid down therein, it is clear in the facts of this case that **involving issues relating to allotment of share capital, alteration and rectification of the register of**



*members, the NCLT is 'empowered to decide' –leading to the conclusion that this Court has no jurisdiction."*

(emphasis supplied)

34.6. In the case of ***Rajashree Devi vs. Bonai Industrial Company Ltd. & Ors. : R.S.A. No. 206 of 2022***, the Hon'ble High Court of Orissa held that the plaintiff's grievance of illegal omission of his name as a Director of the Company without consent and inclusion of defendants in the Register of Members falls squarely within Section 59 of the Companies Act, 2013, which is cognizable exclusively by NCLT. It was further held that Section 430 of the Companies Act, 2013 ousts civil court jurisdiction for such matters and there is no triable issue warranting plenary adjudication. It was thus opined that the Trial Court and First Appellate Court were respectively justified in rejecting the plaint under Order VII Rule 11 of the CPC, and the second appeal was dismissed with no interference. The Hon'ble High Court, relying upon the cases of ***SAS Hospitality (P) Ltd. & Anr. v. Surya Constructions Pvt. Ltd. & Anr. (supra)*** and ***Shashi Prakash Khemka v. NEPC Micon (supra)***, held as follows:

*"42. The grievance of the Plaintiff in the suit as culled out from the averments made in the plaint is that the name of Kumar Harishchandra has been omitted without his knowledge and consent and that has been substituted by the names of the contesting Defendants, and they have been illegally included / entered in the Register of the Members of the Company. These are now sought to be rectified and the Plaintiff with others claim their inclusion/ entry in the Register of the Members of the Company.*

**Thus, such grievance squarely comes within the ambit of Section 59 of the Companies Act, 2013 and as such is cognizable by the Forms prescribed under the Companies Act, 2013 and therefore,**



**in view of the provisions contained in section-430 of the Companies Act, 2013, the jurisdiction of the Civil Court stands ousted.**

*The aforesaid discussion and reasons, accordingly, provide the answers to the substantial questions of law for holding that the Trial Court as well as the First Appellate Court **are justified in rejecting the plaint under Order-7 Rule-11 of the Code**, which runs to confirm the impugned judgments of rejection of the plaint.”*

(emphasis supplied)

35. In *Shazia Rehman v. Anwar Elahi* (*supra*), the case involved a plaintiff who filed a commercial suit seeking relief of declaration with regard to 4556 shares in the defendant company, which were claimed to be fraudulently transferred by Defendant No. 1 without consent or consideration, reducing her shareholding from 12.77% to 1.39%. The suit was filed in response to issues raised in a prior NCLT petition (CP 91/2016) where the plaintiff was a respondent and the reduced shareholding was highlighted. The forged transfer were central to the petition. The defendant’s application under Order VII Rule 11 of the CPC (and Rule 10) for rejection of plaint was dismissed by this Court. It was held that the suit was maintainable as commercial suit under Commercial Courts Act, 2015, as it involved complex issues of title, fraud and individual membership rights beyond NCLT's summary jurisdiction under Section 59 of the Companies Act, 2013. The Court distinguished from cases where relief was purely rectification without fraud and held that Section 430 of the Companies Act, 2013 does not bar jurisdiction for standalone declaratory relief on individual rights, as NCLT cannot grant such declaratory/injunctive relief pertaining to



individual rights of the plaintiff. The relevant portion of the judgment is as under:

**“13. The membership of share holder of a company has two kinds of rights viz. individual membership rights and the corporate membership rights. The individual members/shareholder of a company are entitled to sue in civil court in order to protect their individual rights. Individual membership/ownership rights are a rights of a member/shareholder to maintain himself (or herself) in full membership/ownership with all the rights and privileges appertaining thereto. The shareholding of the plaintiff in defendant No. 2 Company was illegally and fraudulently transferred/reduced by Defendant No. 1 from 5002 to 547 shares, bringing it down from 12.77% of the issued share capital to 1.39% of the issued share capital of the Company. As Transferred Shares, belonging to the plaintiff, were transferred fraudulently and illegally by defendant No. 1, the plaintiff was constrained to file the present suit seeking prayers of declaration, mandatory injunction and permanent injunction in order to assert her individual rights in respect of the Transferred Shares, in opposition to the individual rights asserted by defendant No. 1 qua the Transferred Shares.**

XXX

***15. In the present case, prior to rectification of the register of members, inter alia, (a) the fraudulent execution of the share transfer forms would be required to set aside and declared void ab initio; and (b) the question of title of the Plaintiff in relation to the Transferred Shares would be required to be adjudicated; (c) the question whether Plaintiff was paid the consideration for the so called transfer shares be required to be examined; and (d) the Plaintiff would be required to be declared as the owner of the Transferred Shares.***

**16. In terms section 59 of the Companies Act, 2013, the learned NCLT is not empowered to decide and/or grant reliefs of the above nature, predominantly pertaining to individual rights, but only empowered to direct the company to rectify its register of members, if it finds merit in the case of the person aggrieved. Additionally, in terms section 59 of the Companies Act, 2013, aided by Rule 70 of the NCLT Rules, 2016, in a case where the provisions of Section 59 are applicable, the NCLT is only empowered to**



superficially examine the title of person aggrieved, in respect of the shares of which he/she is seeking rectification (based on the documents on record), but **not to decide the complex question of a seriously disputed title or grant of declaratory/injunctive reliefs, again which predominantly pertain to individual rights of the Plaintiff.**

17. Therefore, from the conspectus of the aforesaid, **in case of individual rights of a member of a company, such as in the present case, there is no remedy under the Companies Act, 2013, the said right can be enforced in the civil court.** In *Naresh Dayal v. The Delhi Gymkhana Club Ltd.*, 2021 SCC OnLine Del 91 the Court held **Individual members of a company can sue in a civil court to protect their individual rights. Ld. NCLT has no jurisdiction to decide cause of action over which it has no power under Companies Act.**

18. Even otherwise, the case in hand cannot be adjudicated by the learned NCLT as the subject matter of the suit pertains to fraudulent transfer of the Transferred Shares, as elaborated hereinabove. **The Plaintiff has pointed out the fraudulent act of the Defendant No. 1 in the Plaint. The Section 59 of the Companies Act, 2013 does not envisage an adjudication by the Ld. NCLT in relation to the frauds committed by the company or individuals.** In the present case, the specific averments in the Plaint point towards fraud committed by the Defendants No. 1 and 2. **The allegations of fraud are to be adjudicated upon only by the civil court through the detailed and meticulous process of trial before it.** In *Mukesh Jaiswal v. Phool Chand Gupta*, 2022 SCC OnLine Cal 3957 the Court held the Ld. NCLT cannot decide the question of fraud as the Plaintiff has taken specific ground of fraud.

19. Per section 430 of Companies Act, 2013 civil court's jurisdiction is diminished only to an extent the Ld. NCLT has been correspondingly empowered. **A bare reading of section 430 of the Companies Act, 2013, makes it clear the extent of the ouster of the jurisdiction of the civil court is directly proportionate to the extent of conferment of jurisdiction on the Ld. NCLT. Further, it is settled law the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.** There is a thin line in appreciating the scope of jurisdiction of Ld. NCLT. In the present case, the jurisdiction of the Ld. NCLT would have been exclusive if



*the matter truly pertained to rectification of register of members. However, if the issue is alien to rectification of register of members such matter would not be within the exclusive jurisdiction of the Ld. NCLT.*

**21. Thus, in the present matter, the question relates to disputed title and fraudulent transfer of the Transferred Shares. Therefore, learned NCLT, being a summary jurisdiction, is not empowered to decide such questions and said questions can only be decided by a civil courts i.e. this Hon'ble Court. Accordingly, the jurisdiction of this Hon'ble Court is not barred.**

**22. In Sita Chaudhry v. Verinder Singh, 2022 SCC OnLine Del 2235 the Court held rectification of register would only be a subsequent step after the question of title and ownership of share is decided. The exclusive jurisdiction vested with the erstwhile Company Law Board/NCLT is only in respect of rectification of the register. However, the right, title and interest in shares can only be determined in a civil suit. In Bakshi Faiz Ahmad v. Bakshi Farooq Ahmad, 2018 SCC OnLine J&K 249 the Court held qua applicability of provisions of Companies Act, 2013, the Tribunal has no power to decide the title of the shares in summary proceedings. The Tribunal has a power only to decide the issue of rectification of register of members and has no power to decide the issue of title. The word 'title' has not been included in section 58 of the Companies Act, 2013. In Jai Mahal Hotels Pvt. Ltd. v. Devraj Singh, (2016) 1 SCC 423 the Court held the rectification jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/Company Law Board. If a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was more the appropriate remedy for investigation and adjudication of such seriously disputed question of title. In Standard Chartered Bank v. Andhra Bank Financial Services, (2006) 6 SCC 94 the Court held the jurisdiction exercised by the Company Court in relation to rectification of register of member is somewhat summary in nature and if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was more the appropriate remedy for investigation and adjudication of such seriously disputed question of title. In Ammonia Supplies Corporation v. Modern Plastic Containers, (1998) 7 SCC 105 the Court held the Company Court under it has discretion to find**



whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. If it truly is rectification, all matters raised in that connection should be decided by the Company Court and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. In *N. Ramji v. Ashwath Narayan Ramji*, 2017 SCC OnLine Mad 37591 the court held it is relevant to note as per Section 111A of the Companies Act, 1956, the Company Law Board was empowered to decide the issue of title also. The word 'title' was not included in Section 58 of the Companies Act, 2013. Even while considering the Section 111A, it was held by the Hon'ble Apex Court a seriously disputed question of title cannot be decided by the Company Court or Company Law Board. This conclusion was arrived by the Hon'ble Apex Court by taking into consideration of the jurisdiction of the Company Law board is summary in nature. The procedure in National Company Law Tribunal constituted under the Companies Act, 2013 is also summary in nature.

23. I have also gone through the judgments relied upon by the learned counsel for defendants. In *Shahi Prakash Khemka (supra)* the observations of the Hon'ble Supreme Court were not in the context of disputed title to the shares. In the said case the dispute was not amongst the members in relation to title of shares or with regard to the individual rights of the members. However, the same was inter se the Company and its member/shareholder purely in relation to rectification of register of members. In fact, the observations of the Hon'ble Supreme Court of India the learned NCLT would have exclusive jurisdiction was only in the context of Section 59 of the Companies Act, 2013 whereas in the present matter, as, the Plaintiff is alleging the fraud on the part of the Defendant No. 1 and asserting her individual rights of title (and other rights and interest) qua the Transferred Shares, and not rectification of register of members. Therefore, the said judgment would not be applicable in the facts and circumstances of the present case

24. *SAS Hospitality Pvt Ltd (supra)* is also not applicable to the facts of the case as in this decision the challenge before the Court was in respect of allotment of shares by the Company in favour of certain defendants. The allegations in the matter pertain to the actions of the company perse with regards to its affairs in relation to the illegal allotment of shares by the company, thus, it was not a dispute wherein the individual rights interse the



***members/shareholders of the Company were being asserted.*** In the present matter, as, the Plaintiff is alleging fraud on the part of Defendant No. 1 and asserting her individual rights of title (and other rights and interest) qua the Transferred Shares, and not rectification of register of members, therefore, the said judgment would not be applicable in the facts and circumstances of the present case. The judgment rendered in *Sita Chaudhary v. Verinder Singh*, 2022 SCC OnLine Del 2235 distinguishes the applicability of the ratio in *SAS Hospitality* in the context of disputes in relation to title of shares, and holds in the context of disputes of title of shares the ratio of *SAS Hospitality* would not be applicable as the same was rendered in the context of internal affairs of the company, inter alia, in relation to allotment of shares.

25. In view of the above, the I.A.1143/2020 under Order VII Rule 10 CPC read with Section 151 CPC is dismissed.”

(emphasis supplied)

***Appraisal of the facts of the present case in light of the law as discussed above***

36. In the impugned order, the learned District Judge has dismissed the objection of the petitioner in relation to bar under Section 430 of the Companies Act, 2013 on essentially two counts– *firstly*, that the learned NCLT does not have the jurisdiction to decide the dispute involved in the suit as the same pertains to declaration of certain documents as forged, which is primarily a civil dispute; and *secondly*, that the primary relief in the suit is in relation to declaration of certain documents as forged and the learned NCLT has no jurisdiction to declare documents as such, due to which, the suit is not hit by the bar under Section 430 of the Companies Act, 2013.

37. *Firstly*, insofar as the NCLT’s jurisdiction to decide the issue of forgery is concerned, the plaintiffs allege that the basis on which the



company petition is filed is itself under serious question as the documents on the basis of which the petitioner claims to be a shareholder are forged. Undisputably, the said defence has been agitated by the plaintiffs before the learned NCLT as well.

38. It is apparent from the aforesaid judgments that there is nothing in the Companies Act, 2013 which estops the NCLT from rendering a finding that the documents in question are forged, even under summary procedure, and the learned Trial Court has erred in holding that *only* the Civil Court is empowered to decide matters pertaining to fraud.

39. NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of companies and Sub-clause 3 of Section 241 of the Companies Act, 2013 specifically provides that if there are circumstances which suggest that “*any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud*”, the Central Government may initiate a case against such person and refer the same to the Tribunal, whereby NCLT has the power to “*inquire into the case and record a decision*”. Thus, the questions pertaining to fraud are not alien to the NCLT as a Tribunal and as per the statute itself, it is apparent that the NCLT is capable to take a decision on the same. The fact that the jurisdiction under sub-section 3 of Section 241 the Companies Act, 2013 can be invoked only by the Central Government would not dilute the jurisdiction of the NCLT to take



cognizance of the matters concerning fraud, *etcetera* and to pass appropriate orders.

40. Having found that NCLT is not entirely barred from adjudicating issues of fraud and that the learned Trial Court had erred on the said fundamental aspect by holding that only Civil Courts have the jurisdiction to adjudicate such issues, it is now to be determined as to whether the issues as agitated in the present case in relation to forgery are such which cannot be looked into by NCLT.

41. Mere plea of forgery or fraud is not sufficient, by itself, to overcome the bar under Section 430 of the Companies Act, 2013 and the jurisdiction of the Tribunal can only be ousted when the issue involved is not “within the peripheral field of rectification” and pertains to extensively complex questions.

42. Even if it is to be assumed that the forgery is so complex that it cannot be untangled by NCLT under a summary procedure, this Court is of the opinion that such pleas *qua* fraud or forgery cannot confer the jurisdiction upon the Civil Court to pre-empt adjudication of issues, which are already pending determination, before the learned NCLT has a chance to assess the material on record and arrive at such a conclusion, especially when NCLT *prima facie* seems empowered to look into the said issue. Concluding otherwise would result in pleas of fraud being agitated solely to oust the jurisdiction of the NCLT. As held in *Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd.* (*supra*), even where allegations of fraud are



made, it is incumbent that the learned NCLT determine as to whether such contentions are raised merely to oust its jurisdiction.

43. During the course of arguments, the petitioner had relied upon the case of *Kavita Arora v. Leptons Designtek (P) Ltd.* (*supra*), where a Coordinate Bench of this Court had found that the Tribunal has the requisite jurisdiction to adjudicate the allegations of forgery and fabrication by placing reliance upon Rule 43 of the NCLT Rules, 2016, to contend that the NCLT is vested with sufficient powers to determine issues of fraud. The plaintiffs have contested the said assertion by arguing that the said Rule has limited applicability *qua* statutory records alone, however, the documents in the present case, including the Shareholders Agreement *et al.*, have not been made part of the statutory records of the company.

44. While it may be correct that the documents in question are not part of the statutory record of Respondent No. 4 company, even otherwise, the Tribunal has wide powers to test the cogency of non-statutory documents as is evident from the Companies Act, 2013 as well as the NCLT Rules, 2016.

45. In the impugned order, the learned Trial Court has observed that the suit pertains to validity of documents and “not necessarily” a matter under the Companies Act, 2013. Law laid down by the Hon’ble Apex Court in cases such as *Shailja Krishna v. Satori Global Ltd.* (*supra*) and *Chalasan Udaya Shankar and Ors. v. Lexus*



*Technologies Pvt. Ltd. and Ors.* (*supra*) has established NCLT's expanding role in fraud, coercion or forgery adjudication.

46. The observation made by the learned Trial Court is therefore unmerited. In the opinion of this Court, the issue of fraud and fabrication as agitated by the plaintiffs is incidental and integral to the complaint alleging oppression and mismanagement filed by the petitioner, and the same thus falls within the remit of the learned NCLT.

47. In the present case, the plaint indicates that it is the case of the plaintiffs themselves that the fabrication of the main Shareholders Agreement dated 30.07.2020 is *prima facie* evident from a number of ancillary circumstances—two of the plaintiffs who had allegedly signed the agreement were not in Delhi or Uttar Pradesh on the concerned date; the agreement resembles a *draft agreement* shared subsequently; the signatures on the document being forged as apparently confirmed by forensic examination by government laboratory; the terms of the agreement being gross; the agreement not giving correct data pertaining to Respondent No.4 company on the concerned date; etc. Furthermore, the Securities Transfer forms and undated receipts for consideration are alleged to be similarly forged as they were never signed or executed by the plaintiffs, and some of the said documents allegedly contradict equity discussions. Similarly, the Board Resolutions are alleged to bear forged signatures of one of the



concerned plaintiffs and the same are allegedly also printed on the old letterhead.

48. Although there is some dispute as to the title of the shares of Respondent No.4 company, however, the test to oust the jurisdiction of the learned NCLT is to raise such seriously disputed questions of title and fraud, which are so complex, that they cannot be determined by the learned NCLT.

49. *Prima facie*, it does not seem that the facts are so complex or convoluted that the aforesaid issues cannot be determined by the Tribunal in exercise of its wide powers as encompassed in the Companies Act, 2013 and NCLT Rules, 2016.

50. *Secondly*, as far as the issue in relation to NCLT not having the jurisdiction to grant the reliefs that are sought is concerned, pertinently, Section 242 of the Companies Act, 2013 clearly empowers the NCLT to nullify the legal effect of such documents. In fact, where the *lis* concerns oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013, the statute permits restrictions on transfer or allotment of shares; permits termination, setting aside or modification of agreements with directors, managers and with any other person, and concludes with a residuary head that the Tribunal may provide for any other matter for which it is just and equitable that provision should be made.



51. Reliance is placed by the plaintiffs on the case *Shazia Rehman v. Anwar Elahi* (*supra*) to contend that the power of the learned NCLT to grant reliefs is severely limited. As discussed above, in the said case, a Coordinate Bench of this Court was pleased to reject the argument raised by the defendant in relation to ouster of jurisdiction of Civil Court under Section 430 of the Companies Act, 2013 as the plaint therein pertained to rectification of shares. While dismissing the application for rejection of plaint, the Coordinate Bench was particularly weighed by the judgment in *Sita Chaudhry v. Verinder Singh* : 2022 SCC OnLine Del 2235 (also relied upon by the plaintiffs), where it was held that rectification is only a subsequent step after question of title and ownership of shares is decided, and the exclusive jurisdiction vested with the Company Court is only in relation to rectification of register. It was also noted in that case that the right or title in shares can only be determined in a Civil Suit. The civil suit appears to have been filed after institution of proceedings before the learned NCLT in that case as well.

52. In *Shazia Rehman v. Anwar Elahi* (*supra*), reliance was also placed on the case of *Naresh Dayal and Ors. v. The Delhi Gymkhana Club Ltd. and Ors.* : (2021) SCC OnLine Del 91 to observe that NCLT is not empowered to decide and/or grant reliefs which predominantly pertain to individual rights, and that in case of individual rights of a member of a company, there is no remedy under the Companies Act, 2013. In that case, the suit was filed by seven permanent members of the defendant club. The club contested



maintainability, claiming ouster under Section 430 of the Companies Act, 2013, as the dispute fell under NCLT's jurisdiction for oppression/mismanagement (Section 242 of the Companies Act, 2013). The court held the suit to be maintainable and held that Section 242 of the Companies Act, 2013 empowers NCLT in cases of winding up and where the company's affairs are being conducted in a manner prejudicial to such members. It was noted that the plaintiffs' basis for instituting the suit was the manner in which Articles of Association was interpreted, which was purportedly creating irrational and illegal classification. It was noted that the same does not invoke "oppression" or require winding up. It was thus held that the NCLT lacks power to determine such standalone civil rights enforcement and the jurisdiction of the Civil Court under Section 9 of the CPC is not ousted. The relevant portion is as under:

*"23. Section 242 of the Companies Act which provides for the power of the Tribunal contemplates an action relating to the affairs of the company which is being conducted in a manner prejudicial or oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members, but the facts justify the makings of a winding up order, the power of the NCLT can be invoked. However, in the present suit the plaintiffs do not claim winding up of the defendant No.1 Club which is a company by guarantee. As noted above, the cause of action pleaded by the plaintiff in this suit is the manner in which Article 13(3)(b) of the Articles of Association of the defendant company is being interpreted thereby creating irrational and illegal classification. NCLT not being empowered to determine the said cause of action, this Court is of the opinion that the plea of the defendant that the present suit is not maintainable and only a petition before the NCLT is maintainable, is liable to be rejected. Thus, issue No.1 is decided in favour of the plaintiffs and against the defendant No.1."*



53. It cannot be disputed that a Civil court's jurisdiction is ousted only to the extent the statutory forum is expressly and correspondingly empowered, and such exclusion is not to be lightly inferred. However, as already discussed, it has since been settled by the Hon'ble Apex Court that the NCLT possesses a wide jurisdiction to decide such issues which are integral to the subject complaint.

54. Pertinently, one of the issues involved in *Shailja Krishna v. Satori Global Ltd.* (*supra*) was that of transfer of title by way of a purportedly forged gift deed, and it was found that NCLT had full jurisdiction to determine the validity of the gift deed and to declare the transfer of shares as invalid. In *Chalasani Udaya Shankar and Ors. v. Lexus Technologies Pvt. Ltd. and Ors.* (*supra*), where the respondents had raised a similar defence *qua* title before NCLT and denied any transfer of shares to the party which had instituted the petition, the Hon'ble Apex Court had overturned the decision of NCLT, which had found that it had no jurisdiction to try the petition, and held that NCLT had erred in not examining as to whether the issues raised before them were mere moonshine. The said judgments make it clear that merely agitating issues of fraud or forgery will not dilute the bar under Section 430 of the Companies Act, 2013 and it is for the Tribunal to make an assessment as to whether there is any cogency in such allegations and if the dispute is so complex that it cannot be decided by the Tribunal. The thin line is that if the dispute truly, in pith and substance, concerns rectification simpliciter or statutory oppression and mismanagement or matters falling under the



broad Companies Act regime, the specialised Tribunal is vested with exclusive jurisdiction to determine the same along with any other ancillary issues that are *integral* to determine the issue at hand. If such an argument is accepted, parties will agitate issues of fraud and coercion to simply cause ouster of NCLT's jurisdiction. This makes it important that once a case is instituted before NCLT involving such issues as well, no such case as the present one be instituted which involves the same issues, before NCLT itself makes a determination in regard to the cogency and complexity of the dispute.

55. Undisputably, where the plaintiff asserts public rights or raises seriously disputed questions of title that require declaratory and injunctive relief after evidence and trial, the remedy lies in the civil court. However, as noted above, in the present case, the issues sought to be agitated in the suit are such which are integral to the petition already filed by the petitioner before the learned NCLT.

56. Moreover, in the opinion of this Court, the words "any matter" in Section 430 of the Companies Act, 2013 are to be understood in contradistinction of "any reliefs" which the Tribunal is empowered to grant. The ouster of jurisdiction of Civil Court is not limited to or conditional on the ability of the Tribunal to grant a relief of a particular nature and is rather hedged upon the wider phrase – "any matter", which the Tribunal is empowered to determine. Thus, the learned Trial Court has erred gravely in limiting the applicability of the ouster in Section 430 of the Companies Act, 2013 on the basis of



the apparent inability of the NCLT to grant a particular relief. Though a party cannot approach the Tribunal for solely seeking declarations *qua* title, the NCLT is empowered to determine such an issue if the same is integral to the complaint instituted before it and to nullify the effect of the subject documents in pursuance of a just and equitable resolution.

57. In the present case, at the cost of repetition, it is also imperative to emphasise that the learned NCLT has not yet made any such determination *qua* the cogency of such assertions or the complexity of the dispute. If the suit is allowed to continue, the same would also lead to multiplicity of proceedings which could lead to conflicting opinions on the same issues of fact and law.

***Principle of judicial comity and conundrum of parallel proceedings***

58. At this juncture, it is imperative to take note of the principle of judicial comity. The Hon'ble Apex Court in *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. : (2022) 2 SCC 573* has held that mere allegations of fraud in the plaint will not overcome the bar under Section 34 of the SARFAESI Act.

Pertinently, the provisions in relation to power of Debt Recovery Tribunal and the exclusion of Civil Court in regard to disputes under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') are somewhat similarly worded. Akin to Section 430 of the Companies



Act, 2013, Section 34 of the SARFAESI Act provides that a Civil Court shall have no jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or Appellate Tribunal is empowered by or under the SARFAESI Act to determine.

The said case involved an assignment deed, whereunder, proceedings were initiated against the plaintiff, who had stood as a guarantor, under Section 13(2) of the SARFAESI Act and notice was issued to the plaintiff. The plaintiff claimed the assignment deed to be fraudulent and filed a suit before the Hon'ble High Court of Madras, which was dismissed as being barred by Section 34 of the SARFAESI Act.

This case is crucial as the same was hinged on the fact that there were only allegations of fraud in the plaint without anything further. If there is something more than mere allegations of fraud, certainly, the Civil Court's jurisdiction will not be ousted, however, in that case it was found that the plaint was cleverly moulded to overcome the bar under Section 34 of the SARFAESI Act. The relevant paragraphs of the judgment are as under:

**“9. Having considered the pleadings and averments in the suit more particularly the use of word “fraud” even considering the case on behalf of the plaintiff, we find that the allegations of “fraud” are made without any particulars and only with a view to get out of the bar under Section 34 of the Sarfaesi Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the Sarfaesi Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the**



**approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be “fraudulent”.**

**10. The aforesaid cannot be accepted. By that itself the assignment deed cannot be said to be “fraudulent”. In any case, whether there shall be legally enforceable debt so far as the plaintiff-appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the Sarfaesi Act.**

**11. It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff-appellant herein by way of application under Section 17 of the Sarfaesi Act before the DRT on whatever the legally available defences which may be available to it. We are of the firm opinion that the suit filed by the plaintiff-appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the Sarfaesi Act. **Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the Sarfaesi Act.****

(emphasis supplied)

59. Section 430 of the Companies Act, 2013 must be applied on the same first principles that animate in Section 34 of the SARFAESI Act.

60. As discussed above, the bar on the jurisdiction of the Civil Court is coextensive with the aspects which the special forum is empowered to determine, and not greater. The test is substance, not form. If the core controversy is one which the NCLT is empowered to decide by or under the Companies Act, the Civil Court’s jurisdiction stands excluded to that extent and no injunction should be granted in



respect of any action taken or to be taken under the Act. In *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.* (*supra*), the Hon'ble Apex Court has read Section 34 of the SARFAESI Act in this very manner, and warned that clever drafting or bare allegations of fraud cannot be used to evade a jurisdictional bar.

61. Similarly, clever drafting or crafty legal strategies must not be allowed to frustrate the process of law before the learned NCLT. In contradistinction to the SARFAESI Act, the Companies Act, 2013 confers broad remedial powers on the Tribunal and under Section 430 of the Companies Act, 2013, the exception is narrow because the NCLT's just and equitable powers under Section 242 of the Companies Act, 2013 are intentionally wide. Disputes about the affairs of the company, its organs, its share capital, or its internal and managerial contracts belong to the NCLT, even if parties invoke labels such as declaration, injunction or fraud. Only claims that are genuinely external to company law, for example— a pure third-party property or tort claim unconnected with corporate affairs and for which the Companies Act, 2013 furnishes no forum or remedy, would escape Section 430 of the Companies Act, 2013.

62. In every case, where the controversy is anchored in the company's affairs and the issue is one which the Tribunal or the Appellate Tribunal is empowered to determine the matter in question, Section 430 of the Companies Act, 2013 bars parallel civil suits and



compels recourse to the NCLT and, in appeal, to the NCLAT, strengthening the case for regaling such disputes to the NCLT.

63. Even if the case of the plaintiffs is taken at the highest, the doctrine of judicial comity emphasises mutual respect and deference among courts to avoid conflicting decisions and to promote judicial harmony and may be invoked in challenges under Order VII Rule 11(d) of the CPC (rejection of plaint as “barred by any law” due to statutory ouster or parallel proceedings). While comity is discretionary and often overlaps with statutory bars, it serves as an underlying principle to interpret these provisions, particularly in cases of concurrent jurisdiction or multiplicity of proceedings.

64. Courts ought to apply the said doctrine to restrain proceedings where another forum’s authority is established, enduring efficiency without absolute ouster. In challenges under Order VII Rule 11(d) of the CPC, comity may be used to interpret “barred by law” broadly, including deference to foreign/prior forums, leading to rejection of plaint.

65. Once the issues as raised in the plaint have already been agitated in the company petition filed by the petitioner and the learned NCLT is seized of the said integral issues, the Civil Court cannot assume jurisdiction to adjudicate the same, unless it is so found at a subsequent stage while determining the issues at hand that the matter requires detailed and extensive trial into the allegations which cannot be undertaken by the learned NCLT.



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66. Needless to say, if the Tribunal later finds the scope of dispute to be outside its jurisdiction, the plaintiffs would be at liberty to agitate the said issues in a civil proceeding thereafter.

## CONCLUSION

67. In view of the aforesaid discussion, the impugned order is set aside. Consequently, the plaint of the respondent plaintiffs is rejected under Order VII Rule 11 of the CPC on account of the same being barred under Section 430 of the Companies Act, 2013.

68. Having found that the suit is not maintainable at this juncture as being barred by Section 430 of the Companies Act, 2013, this Court does not deem it apposite to delve into the remaining issues in relation to pecuniary jurisdiction or the dispute in the suit being manifestly commercial in nature, the same being academic in nature at this stage.

69. The present petition is allowed in the aforesaid terms. Pending applications stand disposed of.

**AMIT MAHAJAN, J**

**DECEMBER 4, 2025/ 'KDK'**