

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**T.C.P. NO.08 OF 2014**

**Mr. Ajay Tajpuriya & Anr.  
...Petitioners**

**Vs.**

**Goel Ganga Infrastructure & Real Estate  
Pvt. Ltd. & Ors.  
...Respondents**

*Order delivered on: 22.05.2024*

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

***Appearances:***

For the Petitioner : Mr. Nausher Kohli, Advocate

For the Respondent : Mr. Sumukh Valimbe, Advocate

**ORDER**

***Per : V.G. Bisht, Member (Judicial)***

1. This company petition TCP 08 of 2014 was filed by the petitioners Mr. Ajay R Tajpuriya and Manoj R. Tajpuriya (Petitioners) seeking relief in terms of section 397, 398, 399, 402, 403 and 406 of the Companies Act,

1956 in the matter of M/s Goel Ganga Infrastructure and Real Estate Pvt. Ltd. This petition was originally filed before the Company Law Tribunal Board, Mumabai later came to be transfer to this Tribunal after creation of the National Company Law Tribunal The Petitioners have sought the following reliefs:

- a) *for appropriate orders, reliefs and directions under Section 397, 398, 402 and 403 of the Companies Act, 1956, to bring an end to the aforesaid acts of oppression and mismanagement perpetrated by Respondents and for necessary orders and reliefs in respect thereto, including as prayed for herein;*
- b) *that this Hon'ble Board be pleased to pass appropriate orders under Sections 397, 398, 402 and 403 of the Companies Act, 1956 for appropriate management of the Company and for that purpose to appoint such appropriate and fit person as this Hon'ble Board may deem fit and proper as Administrator, and/or appoint an Independent Committee of management for managing the affairs of the Company for such time and on such terms and conditions as this Hon'ble Board may deem fit and proper,*
- c) *that this Hon'ble Board be pleased to appoint any suitable person as Special Commissioner or Officer for the special purpose of initialling all such records, documents, vouchers, agreements and other papers with regard to the affairs of the Company, so that future controversy in this regard is limited;*
- d) *that this Hon'ble Board be pleased to appoint Chartered Accountants as Special Auditors for carrying out special audit of the Company as this Hon'ble Board deems fit and submit special audit report to this Hon'ble Board;*
- e) *that the Respondents, their respective servants, agents and assigns be ordered and directed to make a full, free and complete disclosure of records of the Company with regard to the affairs of the Company, the*

*contracts entered into between the Company and the loans given by the Company, as well as in respect of the documents sought for by the Petitioner, inter alia, being:*

- i) The audited profit and loss accounts, balance sheets accompanied by the auditor's reports of the Company since 1" April 2008 till the date on which provided;*
  - ii) Minutes of the Annual General Meeting and EOGMs of the Company since 1" April 2008 till date on which provided;*
  - iii) Minutes of Meetings of the Board of Directors of the Company since 1" April 2008 till date on which provided;*
  - iv) Detailed report of inflow and outflow of funds, and manner in which the same have been deployed/expended by the Company since 1 April 2008 till the date on which provided, together with supporting documents;*
  - v) Bank Statements of all bank accounts of the Company since 1" April 2008 till date on which provided; v)*
  - vi) Details of investments made and loans given by the Company since 1" April 2008 till date on which provided;*
  - vii) Details of financial arrangements entered into with Banks/Financial Institutions for availing loans by the Company since 1" April 2008 till date on which provided;*
- f) This Hon'ble Board be pleased to appoint such number of persons as may be deemed fit and proper to act as independent directors of the Company for such period as deemed fit by the Hon'ble Board, and on such terms and conditions as may be fixed by this Hon'ble Board;*
- g) This Hon'ble Board be pleased to pass a perpetual order of injunction restraining Respondent Nos.2 to 4 from in any manner whatsoever making any false and incorrect records in respect of the Company and/or filing any false and incorrect statutory records in respect of the Company with the Registrar of Companies, Maharashtra and/or*

*addressing any correspondence whatsoever for and on behalf of the Company.*

*h) That this Hon'ble Board be pleased to restrain the Respondents, their servants, agents and assigns, by an order and injunction of this Hon'ble Board from in any manner:*

- i. Increasing, issuing and/or allotting any further shares in any form or manner whatsoever in the Company;*
- ii. transferring, pledging, encumbering, alienating or creating any third party rights in respect of the shareholding of Respondent in the Company,*
- iii. investing, selling, disposing off, encumbering, alienating or creating any third party rights in respect of any property or assets of the Company;*
- iv. interfering with or disturbing the shareholding of the Petitioners in the Company;*
- v. creating any liability in the Company, giving loans or transfers in the Company;*
- vi. utilizing the funds of the Company for the purpose of the instant litigation in any manner whatsoever,*
- vii. in any manner acting upon or in pursuant to impugned notice dated 4th January 2014 (Exhibit 'A-31' hereto) and/or holding the EOGM scheduled on 30th January 2014 or otherwise taking any steps for removal of the Petitioners as directors of Respondent No.1 Company.*

*i) That this Hon'ble Board be pleased to declare that:*

- i. the allotment of 9,35,917 equity shares to Respondent Nos.2 to 4 on 24<sup>th</sup> and 30<sup>th</sup> October 2010, 9<sup>th</sup> August, 2011 and 9<sup>th</sup> June, 2012 are all non-est, null and void ab-initio, patently*

- illegal and has no effect whatsoever and not binding on the Company and the Petitioners; and*
- ii. *the impugned notices dated 26<sup>th</sup> and 30<sup>th</sup> November, 2013 and 4<sup>th</sup> January 2014 issued by Respondent No.1 Company (being Exhibits 'A-35' and 'A-31' hereto) are all non-est, null and void ab-initio, patently illegal and has no effect whatsoever and not binding on the Petitioners;*
- iii. *the allotment of: (a) 30,000 equity shares each to Respondent No.3 and Respondent No.4; (b) 1,87,485 equity shares to Goel Ganga Developers India Private Limited; (c) as well as all other allotments pursuant to the rights issue in May 2015 are illegal, improper, invalid and void and to accordingly set aside the same with immediate effects;*
- iv. *the impugned notices of the Board meetings held on 21<sup>st</sup> April, 2015 (Exhibit "AB-1"), 28<sup>th</sup> May, 2015 (Exhibit "AB-5") and 19<sup>th</sup> June, 2015 (Exhibit "AB-12") as well as the notice of the Extra- ordinary General Meeting held on 28<sup>th</sup> May, 2015 (Exhibit "AB-6") issued in relation to the rights issue in May 2015 are all non-est, null and void ab-initio, patently illegal and have no effect whatsoever and not binding on the Company and the Petitioners;"*
- ia. *That this Hon'ble Tribunal be pleased to declare that the meetings of the Board of Directors of the Company held on 28<sup>th</sup> May, 2015, 19<sup>th</sup> June, 2015, 17<sup>th</sup> August, 2015, 07<sup>th</sup> September, 2015, 25<sup>th</sup> December, 2015, 27<sup>th</sup> February, 2016 and 23<sup>rd</sup> June, 2016 are non-est, null and void-ab-initio;*
- ib. *That in the alternative to prayer (ia) above, this Hon'ble Tribunal be pleased to declare that the Petitioners have not vacated their office as directors of the Company;*

*ic. That in the alternative to prayers (ia) and (ib) above, this Hon'ble Tribunal be pleased to re-instate the Petitioners as Directors of the Company with immediate effect;*

*id. That in furtherance of prayer clauses (ib) and (ic) above, this Hon'ble Tribunal be pleased to strike out the noting of vacation of office of directorship by the Petitioners in the draft minutes of the Board Meeting dated 23<sup>rd</sup> June, 2016 and to direct the Company to withdraw Form No. DIR - 12 filed by it with the Registrar of Companies on 2<sup>nd</sup> August, 2016 (Exhibit "AB-15");"*

2. The captioned Company Petition is a composite petition filed by the Petitioners under the provisions of Sections 111, 397, 402 and 403 of the Companies Act, 1956 to bring an end to the acts of oppression and mismanagement perpetrated by Respondents in respect of Respondent No.1 Company and for necessary orders and reliefs.

2.1. The Petitioners are shareholders and erstwhile directors of Respondent No.1 Company. Originally, the Petitioners together held 2,00,500 shares of Rs.100/- each equating to **50%** of the paid-up capital of Respondent No. 1 Company. However, owing to certain unlawful allotment of shares by the Respondents (all of which are challenged in this Company Petition), the Petitioners' shareholding was reduced to **15%** of the paid-up capital of Respondent No. 1 Company (at the time of filing of this Petition); and further reduced to **6.71%** of the paid-up capital of Respondent No. 1 Company (during the pendency of this Petition).

2.2. At the time of filing the present Company Petition, the Petitioners held 15% of the total issued share capital of Respondent No. 1 Company. As such, the present Company Petition is ex-facie maintainable at the instance of the Petitioners in view of the fact that the Petitioners shareholding at the time of filing the Petition was in

excess of the minimum requirement of 10% of the issued share capital as prescribed under Section 397 of Companies Act, 1956. During the pendency of the present Petition, the shareholding of the Petitioners came to be diluted to 6.71%, of the issued share capital by a further issue of shares. The validity of the said further issue of shares has been called in to question in the present Company Petition (pursuant to an amendment of the present Company Petition). It is well settled that a Composite Petition in which the shareholding of a petitioning shareholder was reduced to below 10% on account of further issue of shares is in fact maintainable if such further issue of shares is challenged in the Petition itself. That being the case in the present Company Petition, this Petition is maintainable at the instance of the present Petitioners. *See: (a) Gulabrai Kalidas Naik vs. Laxmidas Lallubhai Patel & Ors. (1977) 47 Comp Cas 151 (Guj), (b) Kishan Khariwal vs. Ganganagar Industries Limited (2004) 50 SCL 567 (CLB), (c) Ajit Singh Deogan vs. Satlej Chit Fund & Financier Private Limited (2009) 148 Comp Cas 18 CLB, (d) Rajratna Metal Industries Limited vs. K&S Consulting Group Private Limited (2009) 148 Comp Cas 756 CLB.*

- 2.3. Accordingly, we hold that the Petitioners are entitled to file this Petition and the same is maintainable at their instance.
- 2.4. The Petitioners were appointed as directors of Respondent No.1 Company at the time of its incorporation; and continued as directors until June 2016 at which time the Respondents allege that the Petitioners are deemed to have vacated their office.
- 2.5. The Petitioners and Respondent Nos.2 to 4 are related to each other (Petitioner No.1's sister-in-law is married to Respondent No.3). The Petitioners are constituents of the Tajpuriya family (based in Nagpur) and Respondent Nos 2 to 4 are constituents of the Goel family (based in Pune).

2.6. Respondent No.1 is a private limited company incorporated on July 1, 2005 with the primary object of setting up a mall in Nagpur. Presently, its authorised capital is Rs. 40,00,00,000/- and its issued, subscribed and paid- up capital is Rs.29,86,91,200/- The registered office of the Respondent No.1 is in Pune. Respondent No.1 Company is engaged in the business of builders, constructors, and land developers.

2.7. Pertinently, during the pendency of this Petition, the shareholding of Respondent Nos.2, 3 and 4 (along with their group entity, namely Goel Ganga Developers (India) Pvt. Ltd.) has been increased to 93.39% of the paid-up capital of Respondent No. 1 Company. Of this:

- a) Respondent No.2 held **11.25%** of the paid-up capital of Respondent No. 1 Company as on 31.3.2016';
- b) Respondent No.3 held **16.08%** of the paid-up capital of Respondent No.1 Company as on 31.3.2016;
- c) Respondent No.4 held **16.08%** of the paid-up capital of Respondent No.1 Company as on 31.3.2016; and
- d) Goel Ganga India Private Limited (viz. a group concern of Respondent Nos. 2 to 4) held the balance 47.87% of the paid-up capital of Respondent No. 1 Company as on 31.3.2016.
- e) During the pendency of the present Company Petition, the inter-se shareholding among the Respondents/their group has undergone various changes. This Petition has not been amended to reflect such changes in the inter-se shareholding of the Respondents/their groups entities.

2.8. It is a case of Petitioner that submission No.1, Respondent No. 1 company is a family company and is in the nature of a quasi-

partnership company. The main terms of the initial understanding arrived at between Respondent Nos.2 and 3 and the Petitioners were as under;

- a. The respondent No. 1 Company was to be equally owned and managed by the Petitioners and Respondent No. 2 and 3, with both the families holding 50% shares due to the nature of quasi partnership between the Tajpuriya and Goel families and parity between the families as equal shareholders;
  - b. The Petitioners and Respondent No. 2 and 3 may bring in the additional funds, which would be required for the project either by themselves or through their friends/relatives by way of unsecured loans. Such unsecured loans need not be brought in, in the same proportion as the shareholding and the lenders would be entitled to interest at the agreed rate; and
  - c. Further, there was also a mutual understanding between the Goel and Tajpuriya families that if there arises a further requirement of capital over and above the funds contributed vide the core capital of Rs. 12,01,00,000/- (Rupees Twelve Crores One Lakh Only) and the amount brought in by way of unsecured loans as stated above, the requirement shall be satisfied by way of project loan from banks/financial institutions. It was also agreed upon that a portion of the project may be sold before completion if a dire need for funds arises.
- 2.9. The Respondent No. 1 Company entered into development agreement 02<sup>nd</sup> August, 2006 with Buty Family construction of a commercial mall. For this purpose Company availed a loan of Rs. 68 Crore from HUDCO. However, despite availability of line of credit, which stated have been prematurely terminated, close Respondent Company failed to payment to the Buty Family. The Respondent Company continued to remain equally owned,

managed, and or controlled by the Respondent No. 2 and 3, however, in September, 2008 the Respondent Family sought to increase share holding to 75% and appoint an Additional Director on the Board of the Company. Between 2007 and December, 2008 the company development activities were on going, and in view of the HUDCO landing, the Company was sufficiently funded to execute the construction project. However, by December, 2008 the Buty Family stated complaining that they were not receiving the payments in accordance with development agreements and the company was in breach of its obligation under the development agreement.

2.10. The Petitioners have submitted that details/breakup of the amount of project work in progress upto 31<sup>st</sup> March, 2008 are not disclosed in the balance sheet and therefore, it is not possible to understand where the loan money was diverted. The Respondent has failed to produce any evidence to support their contention that the loan amount was in fact repaid as no no-dues certificate is produced and the Respondents have also failed to provide any coherent reason for closure of HUDCO loan account.

2.11. It is indeed surprising to note that on several occasions, and sometimes with a period of few days, of having received such funds from HUDCO, Respondent No. 1 Company has made on account payments, to Respondent No. 2 and Respondent No. 3. Till date the Respondents have failed to provide inspection of any statements/reports which would establish how the loan advanced by HUDCO have in fact being utilized.

2.12. The petitioners has also raised an issue of Illegal dilution of the shareholding of the petitioners constituting oppression and mismanagement

3. On 23rd October, 2010, an Independent meeting was held in Pune between: (i) Petitioner No.1; (ii) Respondent No.2; (iii) Respondent No.4; (iv) Mr. Vinod Tajpuriya, brother of the Petitioners; and (v) one Mr. Kishan Agarwal. Pertinently, this was not a Board meeting. During this meeting, it was allegedly inter alia agreed that:

3.1. The Goel family would infuse Rs.7,75,00,000/- (Rupees Seven Crores and Seventy Five Lakhs only) in Respondent No. 1 Company by way of additional capital in order to meet project expenses;

3.2. Further, the Goel family would infuse additional funds to repay the HUDCO loan;

3.3. In consideration for the above, the Goel family's shareholding would be increased to 85%;

3.4. Consequently, the Tajpuriya family's shareholding would reduce to 15%; and

3.5. Respondent No.1 Company would issue 4,90,000 preferential shares at par to the Goel family.

4. The Petitioner No.1 and Mr. Vinod Tajpuriya did not in fact agree to the aforesaid proposal. However, they were forced / coerced in to signing the minutes of this Independent meeting which are annexed at Annexure 'R-7' of the Reply at page 209. Further, out of 5 attendees, only 2 were directors of Respondent No. 1 Company. It is therefore, apparent that this was not a board meeting. (See paragraph 25 at page 14 of the Rejoinder)

4.1. The Petitioners state that while Petitioner No.2 was not present at the meeting, Petitioner No.1 had not consented to the change in the shareholding pattern of the said Company. As such the minutes of this meeting as set-out in Annexure 'R-7' of the Reply are incorrect and false.

4.2. Further, assuming without admitting that the minutes are accurate, point no. 12 of the said minutes of this meeting records that 4,90,000

preferential equity shares were to be issued to the Goel family against 'money invested" and the balance is to be issued within 1 (one) month. Till date no additional amount has in fact been invested by the Goel family though shares have been issued in their favour. However, the loans advanced by the Goel family to the Company have been converted into share application money, thereby wrongfully doing away with the requirement of infusing additional money into the Company. As such the Company has been deprived of further investments and the Goel family has wrongly been issued additional shares.

4.3. It is alleged that a Board meeting & EOGM both dated 23.10.2010 was merely a paper meeting. The Respondent has failed to produced/place on record a copy of the notice calling for such meetings and / or the agenda for such meeting. The shares were offered on private placement basis without the necessary permission and authority to do so. Further, the allottee – Respondent nos. 2 to 4 have not paid the full price of the shares. From the Bank statement of Respondent No. 1 Company's Bank Account No. 050020110000166 in the Bank of India for the month of October, 2010, it appears that the funds infused by Respondent Nos. 3 and 4 (Rs. 1,15,00,000/-) (Rupees One Crore Fifteen Lakhs Only) and Rs. (Rs. 1,55,00,000/-) (Rupees One Crore Fifty Five Lakhs Only) being received on 27<sup>th</sup> October, 2010) had in fact, within 3 (three) days, been siphoned out of the Respondent No. 1 Company and paid to Respondent No. 2 and the Respondent's group concerns on 30<sup>th</sup> October, 2010.

4.4. It is also been submitted that on the strength of the dominant position acquired by the Goel family (as explained in Notes I and II), a Board Resolution dated 13<sup>th</sup> February, 2012 was passed by Respondent No. 1 Company's Board appointing Respondent No. 4 appoint as a

Director (appointment was subsequently confirmed at a shareholder's meeting held on 26.03.2012). Further, Respondent Nos. 2 and 3 made a unilateral decision to withdraw the Power of Attorney granted to Petitioner No. 1 by the Buty family to act as nominee of Respondent No. 1 Company under the Irrevocable General Power of Attorney dated 2<sup>nd</sup> August, 2006 with immediate effect.

- 4.5. The Respondent made attempt removed to the petitioners from the Board of Company and also shifted the registered officer of the Respondent Company from Mumbai to Poona further the Respondents refused to provide video conferencing/audio visual arrangement for Board Meeting and shareholders meetings of the Respondent Company. On at least two occasions, Respondents Nos. 2 to 4 attempted to remove the Petitioners as directors by requisitioning for the same. Both these attempts failed. It was in this background that Respondent's No. 2 to 4 devised a plan to cause the Petitioners to vacate their office. Integral to that plan was the act of changing the registered office of the Respondent No. 1 Company from Mumbai (an otherwise neutral venue to Poona), the backyard of Respondents Nos. 2 to 4). The threats of violence, false complaint to the police, unlawful detention of the Petitioners and other tactics adopted by Respondents Nos. 2 to 4 were all part of the modus operandi. The culmination of the plan was the steadfast refusal by Respondent Nos. 2 to 4 to arrange video conferencing/audio visual facilities.
5. The Petitioners paid / invested the money in the said Company lastly and thereafter, till the date they have not put in any amount in the said Company. The Petitioners have miserably failed to put or give any amount to the said Company after the said date. The Respondents are

continuously putting the funds in the Company in the interest of the Company.

- 5.1. Understanding arrived at between the parties and board meeting as well as EOGM were held on the said dates and the resolutions for issue of shares by private placement and increase in authorized capital were passed.
  - 5.2. The Petitioners voted in favour of the resolutions in the said EOGM held on 23/10/2010 and also in the Board Meeting on 23/10/2010 and 30/10/2010.
  - 5.3. The allotments have been made in the Board meetings held on 24/10/2010 and 30/10/2010 in furtherance of resolution passed in EOGM held on 23/10/2010 for private placement, and both the Petitioners were present in the said meetings and at the relevant time, both the Petitioners and the Respondent Nos. 2 and 3 were the Directors of the said Company and resolution for allotment has been passed by unanimous votes in the said meeting.
6. The Petitioners have not filed or submitted any documents / letter showing that, they protested or taken any action for recording their objection or protest raised to the said Company about the allotments after the meetings held on 23/10/2010, 24/10/2010 and 30/10/2010 till the date of Petition i.e. almost for 38 months.
- 6.1. The Board meeting dated 09/08/2011 was attended by both the Petitioners and Respondent No.3 only and the resolution passed in the Board meeting unanimously. Form No.2 submitted for the allotment of shares in the Board meeting held on 09/08/2011 has been digitally and physically signed by the Petitioner No. 1 and the copy of the resolution and details of allotment attached to the said form have been physically signed by the Petitioner No.2 also. The

Petitioners were not only aware of the said allotment but actively participated and consented to the said allotment.

- 6.2. Allotment of 240 shares in the capital of the said Company was made in the Board Meeting held on 09/06/2012. The Petitioners were fully aware of the Board meeting and the allotment made therein and
- 6.3. The Petitioners were having and are having in their custody various documents about the project of the said Company in Nagpur including the documents executed with the tenants in the said property, which they did not provide despite of request to them.
- 6.4. The Petitioners have executed the Promissory Note/Hundi in favour of one Mr. Kisan Agarwal who is close associate / relative of the Petitioners. The Petitioners have admitted the same of in the Board Meeting held on 04/10/2012. The Petitioners have unilaterally and without consent of the Respondents, executed the documents with the tenants at discriminating rates.
- 6.5. Annual Returns filed as on the dates of AGM in the years 2008 to 2013 have been signed by the Petitioners and the copies of the said Annual Returns. The Annual Returns as on 26/09/2012 and of 28/09/2013 have been signed by the Petitioners, which Annual Returns reflects the name of Respondent No.4 as Director of the said Company.
- 6.6. The Petitioners have refused to sign as guarantors in order to stall the project and exploit the Respondents to accept their demand submitted for restructuring by their fax dated 18/03/2013 submitted by them, which is at Page No.258 in the Petition.
- 6.7. Board Meetings held wherein the statements made by the Petitioners that, they will not stand as guarantor to the loan proposed to be availed by the said Company were recorded.
- 6.8. It is pertinent to note that, the Petitioners have after signing various documents including the Annual Accounts and Annual Returns for

almost 7 (seven) years are making baseless allegations and accepted that, they refused to infuse the funds or give guarantee, then in such circumstances it is in the interest of the Company that, the Petitioners shall be removed as the Directors of the Company.

7. The Petitioner also file an affidavit dated 9<sup>th</sup> February, 2024 response to the quarries posed by this Tribunal vide its order dated 06<sup>th</sup> December, 2023.

7.1. The price at which each allotment took place was not the fair value of the shares so allotted. The allotments made to Respondent Nos. 2 to 4 on 24<sup>th</sup> October, 2010 and 30<sup>th</sup> October, 2010 were so made at face value i.e. Rs. 100 each as opposed to their market value/fair value of the shares. Pertinently, the book value of the shares on 31<sup>st</sup> March, 2010 was Rs. 299.86/-

7.2. The conversion of loans into equity shares was to in accordance with the provisions of the Companies Act. No approval for conversion of loans into equity shares was obtained. A perusal of Form 2 of Respondent No. 1 Company submitted with the Registrar of Companies reveals that the allotment is done under the head "Shares Allotted Payable in Cash", thus evincing that shares were allotted against the receipt of Share Application Money. Neither the Form 2 nor the Resolutions passed in the meetings of Respondent No. 1 Company mention any conversion of loan into equity shares or allotment of any shares in lieu of loans. However, the financial statements show that no share application money has been received during the year Financial Year 2010-11.

7.3. The Petitioners had not cast their vote on any special resolution for making any preferential allotment.

### **Findings**

8. Heard learned Counsel and perused the material on record.
9. We note that the Principle grievance of the petitioner is dilution of share holdings by the Respondents by making further allotments to themselves which resulted into their holding rising from 50% to 93.39% and consequently dilution of the petitioner share holding from 50% to 6.61%. The dilution in share holding has been challenged contending that Respondent company was formed as a quasi-partnership and dilution as altered the structure of said partnership to the detriment of petitioners.
10. Per contra, the Respondents have contended that the share allotment to themselves was made after following the due procedure contemplated under Companies Act and was necessitated on account of fresh infusion of Capital by the Respondents in Respondent Company by way of share contribution and unsecured loans from time to time, and the petitioners have decline to contribute to the business requirement any further. It is also respondents case that petitioners have also declined to stay as guarantor when asked to do so. The Respondents have also contended that the petitioner had participated in all the proceedings pertaining to share allotment and cannot plead ignorance.
11. We find that the allotment of the shares to the respondents took place on the face value of Rs. 100/- in 2010-11, while the book value of the Respondent Company share was Rs. 299.86. We note that Companies Act, 2013 provides for allotment of shares on private placement basis at a value which is not less than the fair market value of the shares of the Company at the time of making such offer. The Respondents have not placed before us any valuation report justifying the face value of Rs. 100 as the fair market value of the shares. Rule 14 of Companies (Prospectus & Allotment of Shares) Rules, 2014 clearly provides that the Company must provide basis or justification for the price (including premium, if

any) at which the offer or invitation is being made. As regards, conversion of the loan into the equity shares, the allotment is stated to have been made on similar terms. The Respondents have denied having voted on any special resolution for making a such allotment on private placement/preferential allotment.

12. The allotment of the share value at a face value, which is less than its book value is itself is not in accordance with provision of Section 42 and Regulation made their under. Further, the allotment of the shares at a concessional price is a certainly as oppressive act qua existing members to whom no such allotment has been made. We are of considered view that the Respondents have taken advantage of Petitioners unwillingness to further contribute to the share capital of the Respondent Company. Since the Respondent Company has real Estate Projects and exposure to the lenders it shall not be appropriate to pass an order of winding up in the facts and the circumstances of the case as such order shall be prejudicial to the interest of Respondent Company and other stake holders. Accordingly, we direct the Respondents to compensate the Respondent Company for the difference in fair value of the share and amount actually paid on allotment at relevant dates of allotment along with interest @ 12% P.A. from the date of allotment till the date payment. The Respondent shall make payment within 30 days.
13. The Respondent Company shall get valuation of its shares and buy back the share holding of the Petitioners at the rate determined by the valuer as fair value of its shares after taking into account the amount of difference receivable from the Respondents in terms of proceedings para. This exercise by back of shares held by the petitioners shall be completed within 90 days from the date of this order.

14. The respondent No. 1 company shall file affidavit of compliance by way of miscellaneous application within 120 days of the order.

15. In view of the above, the Company petition no. TCP 08/2014 is partly allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)