

Date: 18th May 2024

BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street, Fort
Mumbai 400 001

Scrip Code: 500192

Sub: Disclosure under Regulation 30 of the SEBI (LODR) Regulations, 2015 – Case filed by 3A Capital Private Limited against the company

Further to our letter dated May 23, 2022 and pursuant to the provisions of Regulation 30 read with Schedule III of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended (“SEBI Listing Regulations”), we wish to inform you that the Hon’ble National Company Law Appellate Tribunal (NCLAT) Principal Bench, New Delhi has passed an order dated May 16, 2024 (“Order”), setting aside CA (AT) No. 133 of 2022 filed by 3A Capital is hereby dismissed though without any order as to costs.

The earlier order passed by the National Company Law Tribunal, Guwahati Bench, Guwahati, in the matter of 3A Capital Private Limited whereby the Company was directed to pay sum of Rs 5,79,97,128/- along with a penalty of Rs 5,00,000 to MCA within 45 days from the order is now set aside by the NCLAT.

A copy of the Order, as uploaded by the Hon’ble NCLAT on its website, is enclosed herewith which is self-explanatory. The Company is in the process of obtaining the Certified True Copy of the said Order.

We request you to take the above on record and the same be treated as compliance under the applicable provisions of the SEBI Listing Regulations.

Thanking you
For PRAG BOSIMI SYNTHETICS LIMITED

Madhu Dharewa
Company Secretary
A31733

Encl: As above

IN THE MATTER OF:**3A Capital Pvt. Ltd.****...Appellant****Versus****Prag Bosimi Synthetics Ltd. & Ors.****...Respondents****Present:****For Appellant :-** Mr. Rajeev K. Panday and Mr. Rajeev M. Roy, Advocates.**For Respondents :-** Ms. Aarohi Bhalla and Mr. Sagar Ghogre, Advocates**J U D G M E N T****Per: Justice Rakesh Kumar Jain:**

This order shall dispose of three appeals bearing CA (AT) No. 115 of 2022 titled as 'Devang Hemant Vyas & 5 Ors. Vs. 3A Capital Pvt. Ltd. & Anr.', CA (AT) No. 116 of 2022 titled as 'Prag Bosimi Synthetics Ltd. Vs. 3A Capital Pvt. Ltd. & 6 Ors.' and CA (AT) No. 133 of 2022 titled as '3A Capital Pvt. Ltd. Vs. Prag Bosimi Synthetics Limited & 8 Ors.', because all have been filed under Section 421 of the Companies Act, 2013 (in short 'Act') against the order dated 12.05.2022 passed by the National Company Law Tribunal, Guwahati Bench, Guwahati (in short 'the Tribunal') on a contempt petition no. 3 of 2018 filed in CP No. 89 of 2021.

2. The Contempt Application No. 3 of 2018 was filed by 3A Capital against Prag Bosimi Synthetics Limited (Company) and Respondent No. 1 to 9 (arrayed as such in that contempt application). Hemant Bhanushankar Vyas was impleaded as

Respondent No. 2 in the contempt application as the managing director but since he has expired, therefore, his name was dropped from the array of parties. The Respondent No. 3 to 9 in the said contempt application are the directors of the Company.

3. The contempt application has been disposed of on 12.05.2022 by the Tribunal with the following directions:-

“23. Directions to the Respondent Company to pay to the Petitioner:

23.1Rs 2,99,55,000.00 as payable to the Petitioner in the same proportion for those 30 lacs shares as paid to all the other 15Lenders/Shareholders under CDR approved restructuring package envisaging One Time Settlement (OTS),

23.2Rs 2,60,42,128.00 as interest on Rs 2,99,55,000.00for the period from 14/05/2010 till 11/05/2022. The simple interest is calculated average at 7.5 % and 7% for the period 14th May 2010 to March 2016 and from 1st April 2016 till 11/05/2022 respectively which includes the benefit of the approximate amount of quarterly compound interest payable on the amount for the entire period.

23.3Rs 20,00,000.00 towards the Legal expenses incurred by the Petitioner for the last 12 years in the cases filed before the Hon'ble CLB, Hon'ble High Court, Hon'ble Supreme Court and this Bench from 2010 onwards.

23.4Hence the Respondent Company is to pay a total of Rs.5,79,97,128.00 (Rupees Five Crores Seventy-Nine Lakhs Ninety-Seven Thousand and One Hundred Twenty-Eight Only) to the Petitioner.

24. Another Rs. 5,00,000.00 (Rupees Five Lakhs Only) is to be paid to the MCA for not adhering to the principles of Corporate Governance in registering the transfer of the shares on receipt of it from the petitioner Company. The Respondent has gone on arguing the matter for years with filing another Company Application No. 05 of 2021 even after their Special Leave Petition before the Hon'ble Supreme Court was dismissed on 02.02.2018. The Respondent Company is at liberty to recover this amount (Rs. 5,00,000.00), after making payment to the MCA, from the officials responsible for not registering the transfer of the shares on receipt from the Petitioner Company.

25. The Respondent Company is hereby directed to pay the said amount in the respective accounts of the Petitioner Company and the MCA, within 45 days from the date, this order is uploaded on the E-portal.

26. The Petitioner is also directed to provide the details of its account immediately to the Respondent Company for their remittance. The Petitioner Company is also to comply with the provisions of Interest Tax and Capital Gain, if any.

27. We have heard in details from both the sides and we don't find any point leftover in the matter to be heard further. If the above amount is not paid by the Respondent within the above stipulated period for any reason, liberty is given to the Petitioner to file an application before this bench, after that stipulated period, so that a special officer may be appointed by this bench for a short period to ensure the payment of the above amount by the Respondent Company to the Petitioner.

28. On the other hand, if the Petitioner Company does not accept the above amount for any reason, the

Respondent Company is at liberty to file a petition before this bench so that the Respondent Company shall be advised to deposit the said amount in an account to be decided by the Tribunal for the discharge of all the Respondents from the case.

29. The Respondent Company shall file an affidavit with the Registry within 15 days from the date of payments of the above amount and thereafter all the Respondents (R1, R3, R4, R 6 to R9) shall be discharged automatically from the matter.

30. Hence, the Contempt Application No. 03 of 2018 in C.P. No. 89 of 2011 stands disposed of with above Observations and Directions. In view of this order, all other related IAs- IA No. 52 of 2019, IA No. 53 of 2019, IA No. 54 of 2019 and the Company Application No. 05 of 2021 have become infructuous.

4. CA (AT) No. 115 of 2022 is filed by Devang Hemant Vyas, Girindra Mohan Das, Rohit Parmananddas Doshi, Hemanga Kishore Sharma, Deepali Rajneesh Pathak, Mukund Pradyumanrai Trivedi (all directors of the company) against 3A Capital arrayed as Contesting Respondent No. 1 and Prag Bosimi Synthetics Ltd. arrayed as Performa Respondent No. 2 in which the following prayers have been made:-

“a. Set aside the impugned order dated 12.05.2022 passed by the Tribunal in Cont. Appl. No. 03 of 2018 in CA No. 89 of 2011.

b. This Tribunal may be pleased to stay the operation of the impugned order dated 12.05.2022 passed by the Tribunal in Cont. Appl. No. 03 of 2018 in CP No. 89 of 2022 during pendency of the appeal

c. The Appellate Tribunal may be pleased to pass such further or other order(s) as may deem fit and proper in the facts and circumstances of the case”

5. CA (AT) No. 116 of 2022 has been filed by Prag Bosimi Synthetics Ltd. (Company) against 3A Capital arrayed as contesting Respondent No. 1 and Devang Hemant Vyas, Girindra Mohan Das, Rohit Parmananddas Doshi, Hemanga Kishore Sharma, Deepali Rajneesh Pathak, Mukund Pradyumanrai Trivedi (all directors of the company) arrayed as performa Respondents. In this appeal, the following prayers have been made:-

“a. Set aside the impugned order dated 12.05.2022 passed by the Tribunal in Cont. Appl. No. 03 of 2018 in CA No. 89 of 2011.

b. This Tribunal may be pleased to stay the operation of the impugned order dated 12.05.2022 passed by the Tribunal in Cont. Appl. No. 03 of 2018 in CP No. 89 of 2022 during pendency of the appeal

c. The Appellate Tribunal may be pleased to pass such further or other order(s) as may deem fit and proper in the facts and circumstances of the case”

6. CA (AT) No. 133 of 2022 is filed by 3A Capital against Prag Bosimi Synthetics Ltd. (Company), Hemant Bhanushakar Vyas, Devang Hemant Vyas, Girindra Mohan Das, Mrinal Kanti Das, Rohit Parmananddas Doshi, Hemanga Kishore Sharma, Deepali Rajneesh Pathak & Mukund Pradyumanrai Trivedi as Respondents in which the following prayers have been made:-

“a. Allow the present Appeal and set aside the order dated 12.05.2022 passed by the Ld. Adjudicating Authority;

b. This Hon'ble Appellate Tribunal be pleased to allow Contempt Application 03 of 2018 and pass an order holding that the Respondents have committed the contempt of Court for willful refusal to obey the order dated 27.05.2016 passed by the Hon'ble Company Law Board, Kolkata bench in Company petition No.89/2011;

c. Be pleased to direct and order the Respondents to register and transfer the 30,00,000 preference shares plus unpaid dividend on the said 30,00,000 preference shares, of Respondent No.1, from the date of default of paying unpaid dividend, till date;

d. Pending the hearing and final disposal of the present Appeal, be pleased to direct the Respondents to disclose on oath their respective personal properties (movable/immovable) and upon such disclosure, attach the same and thereafter sell the same in satisfaction of the claim of the Appellant, valued at 30,00,00,000/- (Rs. Thirty Crores Only) towards face value of preference shares plus unpaid dividend on the said 30,00,000 preference shares from the date of default of paying unpaid dividend, till date.

e. Pending the hearing and final disposal of the above Appeal, the Respondents and their servants, agents and

assignees be restrained by an order of injunction of this Hon'ble Appeal Tribunal, from disturbing/changing the capital structure of the Respondent No. 1 and/or to change the constitution / composition of RespondentNo.1;

f. Pending the hearing and final disposal of the above Appeal, the Respondents and their servants, agents and assignees be restrained by an order of injunction of this Hon'ble Appeal Tribunal, from declaring/disturbing/distributing the dividend of the Respondent No. 1, creating third party rights in respect of properties (movable /immovable) of Respondent No. 1,;

g. Ad-interim order in term of prayer clause (d) to (f) above;

h. such other and/or further order/orders be passed as to this Hon'ble Tribunal may deem fit and proper;

i. costs”

7. Brief facts of this case are that Prag Bosimi Synthetics Ltd. (Company) was involved in a joint sector project of the Government of Assam alongwith private participation in Northeast India and for setting up a new factory for manufacturing polyester yarn. The company availed project finance from 14 financial institution and the total economic cost of the project was reported around 18800 Lacs.

8. The IDBI, leading institution, issued the sanction letter dated 12.05.1989 and all the lenders contributed the funds according to the proportion of their share agreed by all financial lenders but the IDBI being the principal lead institution had a first charge over the assets of the Company and others had pari-passu charge.

9. The Loan agreement dated 15.12.1989 was signed by the IDBI on behalf of all other institutions. The agreement provided that the original term loan was 19.35 Cr. and there was the participation of the IDBI, IFCI and ICICI for foreign currency loans for financing equipment for the project.

10. Further, loan agreement dated 01.06.1992 for foreign currency was executed between the Company and the IDBI in which original project cost was revised from 18800 Lac. to Rs. 32700 lac. The project was finally completed in September, 2000 and the total project cost was Rs. 77,700 Lac.

11. The ICICI offered financial assistance in the project by issuing 19.5% Non-Convertible Debentures (NCD) of the aggregate amount of Rs. 2973 Lac. to fund the interest during construction accruing till March 31, 1995. 19.5% Redeemable Cumulative Convertible Preference Shares (RCCPS) not exceeding Rs. 867 Lac. The ICICI also offered to provide conversion of over dues of interest accrued between April 1, 1995 and March 31, 1996 aggregating to Rs. 2058 Lacs into 19.5% RCCPS. The loan was payable in 28 instalments commencing from October 15, 1998 till July 15, 2003.

12. The Company in its meeting passed a resolution of availing financial assistance from the ICICI in the form of subscription by them of 19.5% RCCPS of the aggregate face value of Rs. 867 Lac. and 19.5% Redeemable Cumulative value of Rs. 867 Lac., 19.5% RCCPS of the aggregate face value of Rs. 2058 Lac. and 19.5% Secured Redeemable Non-Convertible Debentures of Rs. 100 each of the aggregate value of Rs. 2973 Lac. by private placement.

13. The company, by its letter dated 08.04.1996, accepted the offer of the ICICI and allotted 10,00,000 numbers of 19.5% RCCPS of Rs. 100 each aggregate face of Rs. 1000 Lac. to the ICICI and the company in its board meeting held on 07.12.1996 decided that as per the subscription agreement signed by the Company, ICICI, IDBI signed on 08.04.1997 and 17.04.1996 for the reliefs, assistance granted by the Company it was necessary to allot 19.5% RCCPS for which share certificate was issued by the Appellant on 07.12.1996 and allotted 867000 number of 19.5% RCCPS of Rs. 100 each of the aggregate face value of Rs. 867 Lac. to the ICICI and thus, the ICICI was allotted 75,000 CCP shares against project finance as according to the subscription agreement.

14. In order to avail further project finance, an agreement dated 17.04.1996 for subscription of 19.5% Cumulative Convertible Preference Shares (CCPS) was executed between the Appellant and the IDBI for self and on behalf of all other consortium lenders. According to consortium, the Appellant was to issue

RCCPS of Rs. 28.70 Cr. and CCP shares of Rs. 10 Cr. totalling to Rs. 38.70 Cr. due to cost overrun.

15. An agreement dated 18.10.1998 was entered into between the Company and the IDBI for subscription of 19.5% privately placed NCD of the Company to the extent of maximum Rs. 5.70 Cr. This was done because the project was not completed and there was a gap of project financing. For others project lenders Companies issued in total 81,46,250 shares, out of which 30 Lac. shares were issued to the ICICI as a security against the project finance availed by the Company from the ICICI. These shares were issued partly for contribution and partly for converted interest for securing the project finance and these shares were to be either converted into equity shares or redeemable at par by 30.06.1997.

16. The Company's unit remained completely dysfunctional for a period of five years till 1996 and the Company could not repay the amount to the consortium lenders. Non-availability of funds, inter alia, led to non-payment of interest and principal on time and therefore, the company was declared as Non-Performing Asset (NPA).

17. The IDBI, being the primary lender, took up the NPA account under the Corporate Debt Restructuring (CDR) mechanism. The CDR proposal dated 15.06.2004 and 21.07.2004 provided for waiver of all accrued interest by the ICICI. The Company, vide its letter dated 18.12.2004, addressed to the ICICI set out the entire credit facilities totalling Rs. 69.90 Cr. for CDR settlement to which the ICICI decided to accept a

sum of Rs. 32.50 Cr. During the pendency of CDR settlement proceedings, the ICICI assigned/transferred its entire debt due against the company to Standard Chartered Bank (SCB) which was confirmed by SCB to the Company in the letter dated 31.03.2006 and the Company was not informed regarding such arrangement between the ICICI and the SCB.

18. As per the CDR Letter dated 06.08.2009, the Company contended that the total principal claim of Rs. 69.90 Cr. of the SCB is settled, therefore, the ICICI has no right to the said RCCPS/CCPS much less to sell to Respondent (3A Capital and Ors.)

19. The Company in its AGM held on 16.12.2010 passed special resolution under Section 100 of the Companies Act, 1956 (in short 'Act, 1956') for the cancellation of total 81,46,250 RCCPS and CCPS including 30 Lac. shares issued to the ICICI and to file Company Petition No. 7 of 2011 before the Guwahati High Court for approval of cancellation/reduction of capital in relation to all the aforesaid 81,46,250 RCCPS. The Petition was allowed by Guwahati High Court on 18.12.2012. In these proceedings, 3A Capital filed an application to intervene by filing an impleadment application but it was dismissed on 17.08.2012 because its name was not appearing in the list of the shareholders of the Company and as such it had no right to intervene.

20. The order dated 17.08.2012 was challenged by 3A Capital before the Hon'ble Supreme Court by way of SLP No. 28115 of 2012 in which no stay was granted against the further proceedings in the petition filed by the Company bearing CP

No. 7 of 2011. The order which was ultimately passed in the CP No. 7 of 2011 on 18.12.2012 was also challenged by 3A Capital before the Hon'ble Supreme Court by way of SLP No. 7459 of 2013 in which no stay was granted and only a notice was issued.

21. Apropos the order dated 18.12.2012, the Company filed Form 21 before the Registrar of Companies (ROC) for giving effect to the said order for reduction of the shares, which was approved by the ROC and then reduction of share capital was conveyed to the Company by the RoC's vide email dated 12.01.2013.

22. In the meantime, 3A Capital approached the Company, claiming that it has bought 30 lac. RCCP and CCP shares from the ICICI in the sum of Rs. 3,90,00,000/- at the price of Rs. 0.13 per share and asked the Company to transfer the said 30 Lac. preference shares in its name.

23. 3A Capital filed a Company Petition No. 89 of 2011 under Section 111A of the Act 1956 before the Company Law Board (CLB) against the Company, seeking a direction to transfer the sum of Rs. 30,00,000/-. The said petition was disposed of on 27.05.2016 with a direction that "therefore, in the interest of justice, I hereby direct the Petitioner Company to resubmit the duly executed transfer deeds alongwith share certificates with the Respondent No. 1 Company within four weeks and on receipt of the same, the Respondent No. 1 Company is hereby directed to register the transfer of preference shares in favour of the petitioner company within 10 days from the date of receipt of the request for the transfer of preference shares".

24. The Company challenged the order dated 27.05.2016 by way of an appeal, filed under Section 10F of the Act, 1956, before the Guwahati High Court bearing CA No. 2 of 2016. The said appeal was dismissed vide its order dated 12.07.2017.

25. The Company challenged the order dated 12.07.2017 before the Hon'ble Supreme Court by way of SLP No. 32880 of 2017 which was dismissed on 02.02.2018.

26. 3A Capital filed the Contempt Application no. 3 of 2018 in CP No. 89 of 2011 before the Tribunal for initiation of proceeding of contempt against the Company and its directors for the wilful alleged disobedience of the order dated 27.05.2016 passed by the CLB in CP No. 89 of 2011. In this contempt application, the following prayers have been made:-

“a) That this Hon'ble Tribunal be pleased to pass an order holding the Respondents/Contemnors in alleged contempt of court for wilful refusal to obey the Order of the Hon'ble Company Law Board, Kolkata Bench in this matter abovementioned, particulars in the contempt of order dated 27th May,2016 in Company petition No. 89/2011 and for an order punishing them with imprisonment and/or fine in accordance with law,

b) Direct the Respondents to disclose on oath the properties (Immovable/Movables) and upon such disclosure attach the same and thereafter sell the same in satisfaction of the claim of the Applicant, which the Applicant valued to Rs. 30,00,00,000/- (Rupees Thirty Crores only) towards face value of preference shares plus unpaid dividend on 30,00,000 preference shares from the date of default of paying unpaid, till date.;

c) Pending the hearing and final disposal of the present Application, pass an Order of injunction of this Hon'ble tribunal inter-alia restraining them, their servants, agents and assigns from creating any third party rights of the said preferential shares;

d) Pending the hearing and final disposal of the present application, the Respondents, their servants, agents and relatives be restrained from creating third party rights with respect of their immovable properties.

e) Pending the hearing and final disposal of this Application, this Hon'ble Bench may be pleased to restrain the Respondents from dealing with the equity share capital of the Respondent No.1, including but not limited, by way of reduction of share capital, issuance of any securities in the form of Rights issue, Bonus Shares or private placement or avail any loan borrowing for any purpose whatsoever.

f) Ad-interim in terms of prayer clause (c) and (d) above:

g) For such order and further orders, as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;

h) Costs.”

27. This contempt application was contested by the Respondents therein by filing their replies and the Tribunal, vide its impugned order, disposed of the said contempt application with further directions which we have already reproduced in the earlier part of this order.

28. Thus, the resume of the facts are that 3A Capital purchased 30 Lac. RCCPS of the Company from the ICICI. The Company filed a petition under Section 100 of the Act, 1956 bearing no. 7

of 2011 for sanction of its proposed reduction of share capital. In this petition, 3A Capital filed an application bearing I.A No. 963 of 2012 for impleadment which was dismissed on 17.08.2012. The order dated 17.08.2012 was challenged by 3A Capital before the Hon'ble Supreme Court in which notice was issued but the proceedings in CP No. 7 of 2011 was not stayed. CP No. 7 of 2011 was ultimately allowed on 18.12.2012 recording the following findings which read as under:-

“13. It is seen from the CDR Empowered Group proceedings dated 17.03.08, 18.03.09 and 23.03.09 that OTS of Rs.65.57 crores has been approved by the CDR Empowered Group as per guidelines framed by the RBI. In terms of the approved CDR scheme, the lenders, i.e., the secured creditors have agreed that 81,46,250 preference shares of Rs.100 each totalling to Rs.81,46,25,000/- (Rupees Eighty one crores forty six lakhs and twenty five thousands only) issued by the petitioner company are to be waived /cancelled as per Section 100 of the Act. This court has noticed that the company adopted a special resolution in the aforesaid regard in the AGM held on 16.12.2010 towards reduction of its share capital. This court has also noticed that the petitioner company has obtained individual sanction/no objection from all the financial institutions and the banks/secured creditors confirming the CDR decision. Furthermore, majority of the unsecured creditors who are promoters and directors of the company collectively approached the CDR forum and accepted the final settlement. Though there are unsecured creditors aggregating to Rs. 237.44 lakhs but the total assets of the company as may be noticed from paragraph 20 of the company petition being Rs. 2,50,39,75,112/-, it is sufficient to take care the interest of such unsecured creditors.

14. Having heard the petitioner and also having considered the materials placed on records, this court is satisfied that the petitioner company has been able to make out a case for invoking Section 100 of the Act to confirm the proposed reduction of the share capital of the petitioner company. It is ordered accordingly.”

29. The order dated 18.12.2012 was challenged by 3A Capital by way of SLP No. 7459 of 2013 in which notice was issued.

30. After the order dated 18.12.2012 of reduction of share capital, a petition no. 89 of 2011, filed under Section 111A of the Act, 1956 by 3A Capital before the CLB was allowed vide its order dated 27.05.2016. This order dated 27.05.2016 was challenged in appeal CA No. 2 of 2016 under Section 10F of the Act, 1956 which was upheld by the Hon'ble Guwahati High Court vide its order dated 12.07.2017 and the order dated 12.07.2017 was challenged before the Hon'ble Supreme Court by way of SLP No. 32880 of 2017 which was dismissed on 02.02.2018 and the contempt application no. 3 of 2018 was filed thereafter.

31. It is pertinent to note that in the impugned order the Tribunal has recorded a categorical finding that “the prayer made by the Petitioner here to direct the Respondent Company at this stage to revive/issue those 3000000 shares already cancelled 9 years back are found to be not justified and tenable. Hence, the submission of the Petitioner to revive/issue those shares in their favour is hereby rejected”. However, it has ordered that the Petitioner (3A Capital) is entitled to receive Rs. 2,99,55,000.00 in the same proportion for these 30 Lac. shares as paid to all the other 15 lenders/shareholders under CDR approved

restructuring package envisaging One Time Settlement (OTS) and has also ordered that a sum of Rs. 2,60,42,128.00 as interest on Rs. 2,99,55,000.00 for the period from 14.05.2010 till 11.05.2022 calculated at simple interest and Rs. 20,00,000.00 towards the legal expenses incurred by 3A Capital and thus, the total amount of Rs. 5,79,97,128.00 has been directed to be paid. Besides this amount, the Tribunal has also ordered for another Rs. 5,00,000.00 to the MCA for not adhering to the Principles of Corporate Governance in registering the transfer of the shares on receipt of it from 3A Capital.

32. Opening his arguments in CA (AT) No. 116 of 2022, Counsel for the Company has submitted that various issues raised by the Appellant about the maintainability of the contempt application before the Tribunal have though been mentioned in Para 4 of the impugned order but were not dealt with in Para 15 of the impugned order and thus committed a grave irregularity and illegality causing miscarriage of justice. The first argument of Counsel for the Company is that the contempt petition no. 3 of 2018 filed by 3A capital on 22.06.2018 for the alleged violation of the order dated 27.05.2016 passed by the CLB is not maintainable because the CLB had no power of contempt and the Tribunal can exercise the power of contempt under Section 425 of the Act for the disobedience of its own orders and not the orders passed by the CLB. In this regard, he has referred to Section 425 of the Act which read as under:-

“Section 425: Power to punish for contempt.

***425.** The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.”

33. It is contended that the Tribunal and the Appellate Tribunal has been given the jurisdiction, power and authority in respect of a contempt of themselves which means that it pertains to the order passed by the Tribunal or Appellate Tribunal and not the order passed by the CLB. In this regard, he has also referred to a decision of the Andhra Pradesh High Court given in the case of Venkata Swamy Naidu Vs. M/s Sri Surya Teja Construction Pvt. Ltd. (2007) 140 Comp. Cas. 412.

34. It is next argued that since no contempt proceedings was filed before the CLB, therefore, it is not a case of transfer of the pending application in terms of Section 434 of the Act. Section 434 of the Act is reproduced as under:-

“Section 434. Transfer of certain pending proceedings

¹[434. Transfer of certain pending proceedings.--(1)

On such date as may be notified by the Central Government in this behalf,--

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

²[Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal

³]Provided also that]--

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

⁴[Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.]”

35. It is further submitted that even the order dated 27.05.2016 passed by the CLB which has been upheld by the Hon'ble High Court of Guwahati vide its order dated 12.07.2017, had merged in the order of the High Court, therefore, it was the order of the High Court dated 12.07.2017 which could have been, at the

most, for the sake of argument, enforced and in this regard, reliance has been placed upon two judgements of the Hon'ble Supreme court in the case of Shanti Vs. T.D. Vishwanathan & Ors. 2018 SCC OnLine 2196 and Chandi Pd. And Ors. Vs. Jagdish Pd. & Ors., (2004) 8 SCC 724 in which it has been held that doctrine of merger would apply irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court.

36. It is further submitted that the provisions of contempt under Section 425 of the Act cannot be used as an alternative remedy to execution proceedings because executing court will go into question of executability including impossibility of performance etc. and in this regard reliance has been placed upon the decisions of the Hon'ble Supreme Court in the cases of R.N Dey and Ors. Vs. Bhagyabati Pramanik & Ors., (2000) 4 SCC 400 and Kapildeo Pd. Sah & Ors. Vs. State of Bihar & Ors. (1999) 7 SCC 569.

37. It is next argued that the order of CLB became incapable of execution, because subject matter ceased to exist, in this regard, he has referred to an order passed in CP No. 7 of 2011 in which order dated 18.12.2012 for reduction of capital which included the subject shares has been passed. This order was upheld in appeal and attained finality. It is further submitted that if the share ceased to exist and do not form part of the register of members/shareholders, the company, in law, cannot register transfer of such shares and the court cannot force the company

to implement the order in the face of legal impossibility and genuine inability.

38. It is next argued that the invalidity of order passed for lack of jurisdiction can be set up in collateral proceedings to challenge it as a nullity. Counsel for the Company has also referred to a decision in the case of Niaz Mohammad & Ors. Vs. State of Haryana, (1994) 6 SCC 332 and Mohd. Iqbal Khanday Vs. Abdul Majid Rather, (1994) 4 SCC 34 on the point that in case it is not possible for the contemnor to comply with the order then the court may not punish the alleged contemnor.

39. It is argued that all these arguments have though been raised before the Tribunal and noticed by it in para 4 but these arguments have been rejected by the Tribunal in para 15.1 of the impugned order observing that these aspects were looked into at the time of issuance of notice in contempt application on 05.03.2019 and has also noticed in Para 15.2 that the order has become incapable of execution because subject matter has ceased to exist which has been accepted by the Tribunal that the company cannot be directed to revive / issue those shares which have already been cancelled nine years back and the said contention has been found to be genuine, appropriate, justified and tenable but still in para 16 of the impugned order it held that the company is liable to pay the money in lieu of those shares and then issued the impugned direction out of which some of the directions have been issued which were not even prayed for, like the award of Rs. 20 Lac. towards legal expenses

and award of Rs. 5 Lac. which has been ordered to be paid to the MCA.

40. Counsel arguing CA No. 115 of 2016, filed at the instance of the directors, has submitted that the Appellant No. 1 was non-executive director and was not involved in the day to day activities of the Company. The Appellant No. 2 and Appellant No. 6 were independent director non-executive directors and were not involved in the day-to-day activities of the Company. The Appellant No. 3 was independent non-executive director. The Appellant No. 4 was an independent non-executive director. He was the nominee director nominated by AIDC in the board of directors of the Company. The Appellant No. 5 was an independent non-executive director. It is alleged that all the directors has been arrayed as parties but are not involved in the day to day activities of the Company and firmly believed that all actions of the company were in accordance with law. It is further submitted that there are no pleadings, no evidence against the Appellants and no specific averments which attract the provisions of Section 12(5) of the Contempt of Court Act, 1971 against them. It is submitted that it is recorded in Para 17 of the impugned order that these directors have also given unconditional apology but it has been accepted subject to the condition of the payment to be made of the dues of 3A Capital stipulated by the Tribunal in its order. Counsel for the Appellant has submitted that Section 12(5) of the Contempt Act is based on the principle of vicarious liability which is pari materia to Section 141 of the Negotiable Instruments Act and has referred to the decisions of the Hon'ble Supreme Court in the case of National

Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal, (2010) 3 SCC 330 and Pooja Ravinder Devidasani Vs. State of Maharashtra & Anr. (2014) 16 SCC 1 and Lalan kumar Singh & Ors. Vs. State of Maharashtra, 2022 SCC OnLine 1383 to contend that it was for the contempt petitioner to allege in clear terms as to how the Appellants were responsible for the conduct of business and were liable for the alleged act of contempt especially when the independent and/or non-executive director are never in charge of the affairs of the company.

41. Although, it is strange but 3A Capital has also filed its appeal no. 133 of 2022 against the impugned order despite the fact that the impugned order has been passed in its favour but strangely enough it has prayed that “(a) allow the present appeal and set aside the order dated 12.05.2022 passed by the Tribunal”. Perhaps, the appeal has been filed for the purpose of challenging the finding recorded by the Tribunal wherein it has rejected the prayer made by the Appellant (3A Capital) for a direction to the Company to revive/issue the shares which had already been cancelled 9 years back. In this regard, it is submitted that the Appellant had purchased the RCCPS from the ICICI and when the said share were not transferred, filed a petition before the CLB which was allowed on 27.05.2016, the appeal filed against the order dated 27.05.2016 has been dismissed on 12.07.2017 and the order dated 12.07.2017 challenged before the Hon’ble Supreme Court which has been upheld because the appeal has been dismissed on 02.02.2018 and hence, the order dated 27.05.2016 has attained finality. He has submitted that in petition no. 7 of 2011, filed by the

Company under Section 100 of the Act of 1956 for reduction of share capital, an application was filed by 3A Capital for the purpose of impleadment but the said application was dismissed on the ground that his right over the shares in question has not been crystallised at this stage. The rights was ultimately crystallised in the order passed on 27.05.2016, therefore, instead of compensation, the share should have been transferred.

42. In reply to the other appeals no. 115 and 116 of 2022, it is submitted that if the appeal no. 133 of 2022 is dismissed, there is no error in the direction issued in the impugned order for compensating 3A Capital in regard to the shares which have already been transferred.

43. While replying to this appeal, Counsel for the Company and the directors have submitted that once the share capital has been reduced in CP No. 7 of 2011 and the order has become final, the shares ceased to exist and the company cannot register transfer of such shares to 3A Capital.

44. We have heard Counsel for the parties and perused the record.

45. We have already narrated the facts in detail and shall try to avoid repetition. However, suffice it to say that the contempt petition no. 3 of 2018 has been filed in CP No. 89 of 2011 by 3A Capital, invoking Section 425 of the Act, for the alleged wilful disobedience by the Company and Respondent No. 2 to 9 (directors) of the order dated 27.05.2016 passed by the CLB in CP No. 89 of 2011 on 22.06.2018 before the Tribunal in which the first prayer was made for punishing the alleged contemnors

with imprisonment and or fine in accordance with law, besides making other prayers therein. Notice in the contempt petition was issued on 05.03.2019 by the Tribunal under Rule 6(3) of Guwahati High Court Rules which was received by the Company on 10.03.2019.

46. The Company filed the detailed affidavit-reply to the contempt petition no. 3 of 2018 on 24.04.2019 raising preliminary objections in paragraph 3 of the said reply which are as under:-

“a) The present proceedings are barred by limitation. It is stated that cause of action if any to initiate the present contempt proceedings arose on 25.07.2017 when by notice dated 25.07.2017 the Applicant called upon Respondent No.1 Company to immediately comply with order dated 27.07.2016. Thus, contempt proceedings initiated pursuant to Show cause Notice dated 05.03.2019 (received on 10.03.2019) have been initiated after a lapse of one year from the date i.e 25.07.2017 on which the contempt is alleged to have been committed.

b) The Order dated 27.05.2016 is not in existence and has merged with the Order of the Hon'ble High Court dated 12.07.2017 passed in Company Appeal No. 2 of 2016. As such no proceedings can be initiated for alleged contempt of a non-existent order i.e order dated 27.05.2016.

c) The Hon'ble Tribunal has jurisdiction under section 425 to punish for contempt of its own orders and not for orders passed by erstwhile Company Law Board. It is submitted that section 425 of the Companies Act, 2013 is very clear on this aspect.

d) It is submitted that the said 30,00,000 RCCP and CCP shares are not in existence as they have been extinguished/cancelled in accordance with the order dated 18.12.2012 passed by the Hon'ble Guahati in Company Petition No.7 of 2011. The Order dated 18.12.2012 passed by the Guwahati High Court of reducing paid-up share capital of Respondent No. 1 Company acquired finality, it would lead to anomalous position if Applicant is to claim title to or property in the said 30,00,000 RCCP and CCP share.

e) By reason of the transfer, it would be alleged that the share capital of the Company stands increased which is contrary to the provisions of the Company Law and the Order passed by the High Court. Moreover, such an increase would also be without any infusion or subscription to the share capital. It is humbly submitted that in contempt jurisdiction no court or tribunal will seek to implement an order which is legally impermissible /impossible or pertains to non-existent subject matter or which will violate or circumvent existing provisions of laws. On this ground alone the present proceedings are liable to be dismissed.”

47. Rejoinder to the reply was filed by 3A Capital on 20.05.2019.

48. However, the preliminary objections raised by the Appellant, regarding the maintainability of the contempt petition, which goes to the root of the case, have been noticed by the Tribunal in its impugned order and rejected in Para 15.1 holding that these aspects have been looked into by the Bench when notice on 05.03.2019 was issued directing the present Appellant and others to attend the case of contempt petition filed by 3A Capital.

We have not found any discussion on these preliminary objections in the impugned order except for this finding and the order dated 05.03.2019 by which notice was initially issued is also not attached.

49. Be that as it may, the Company received the notice on 10.03.2019, filed its reply on 24.04.2019 in which all the preliminary objections have been raised for the first time. There is no other order on record or having any reference in the impugned order that these preliminary objections have been decided by the Tribunal before passing the impugned order because all that has been said in the impugned order is that the preliminary objections have been dealt with by the Tribunal when notice was issued on 05.03.2019 but at that time the present Appellant (Respondent therein) was not before the Tribunal to raise preliminary objections then on what basis the Tribunal had recorded this finding that all these objections have been considered.

50. Having said that, we shall now deal with the objections raised by the Appellant before us to contest the impugned order, firstly on the ground that the application for contempt in respect of the order dated 27.05.2016 passed by the CLB was not maintainable because the CLB, constituted under Section 10E of the Companies Act, 1956 had no power to punish for contempt of its order and as such no contempt petition was filed by 3A Capital before CLB as it lacked jurisdiction to punish for the disobedience of its order.

51. In this regard, we would refer to the decision of the Hon'ble Andhra Pradesh High Court rendering in the case of N Venkata Swamy Naidu (Supra) in which a question has been decided as to whether the CLB is a court under the Contempt of Courts Act? It is held that the CLB is a Court within the meaning of Section 10 of the Contempt of Courts Act. It was next decided it is a court subordinate to the High Court under Section 10 of the Contempt of Courts Act. A question was further raised in the same judgment that can the High Court exercise its jurisdiction under Section 10 of the Contempt of Courts Act even in the absence of a reference to it by the CLB?. In which it has been held that the High Court under Section 10 of the Contempt of Courts Act has the power to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for contempt of itself. Thus, it is clear that the CLB had no jurisdiction of issuing order of contempt because the power to punish for contempt has to be specifically provided for and conferred under the Act.

52. The second argument raised by the Appellant is that even if the application under Section 425 of the Act has been filed, it does not have the power to punish for the contempt of the order passed by the CLB.

53. In this regard, he has referred to the provisions of Section 425 of the Act in which the legislature has categorically used the words 'Contempt of themselves' which means that it can issue the rule for contempt of its own order like that of the High Court

but it does not have the power to issue rule for the alleged contempt of the order of CLB.

54. The next arguments of the Appellant is that Section 434 of the Act was made operative from 01.06.2016 by notification no. S.O. 1936(E) which provides that in exercise of the powers conferred by clause (a) of sub-section (1) of Section 434 of the Act, 2013 (18 of 2013), 'the Central Government hereby appoints the 1st day of June, 2016, on which all matters or proceedings or cases pending before the CLB shall stand transferred to the NCLT and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Act, 2013 or the Companies Act, 1956'.

55. Since, the CLB was not having the jurisdiction or power to issue contempt notice on the alleged disobedience of its order, therefore, 3A Capital rightly did not file any application before the CLB which was thus not pending as on 01.06.2016 when Section 434 of the Act was made operative. Even otherwise, Section 434(1)(a) of the Act categorically provides that all matters, proceedings or cases pending before the CLB, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act. It means that the proceedings, cases or matters which were pending as on 01.06.2016 before the CLB shall automatically be transferred to the Tribunal but if the proceedings are not pending on that date then it cannot be transferred automatically to the Tribunal.

56. In this case, the CLB passed the order on 27.05.2016, much before the date of notification i.e. 01.06.2016 and no contempt proceedings or even execution filed by 3A Capital was pending which could have been transferred to the Tribunal for the purpose of taking decision on it. Thus, it is afresh petition which has been filed by 3A Capital before the Tribunal for the alleged disobedience of the order dated 27.05.2016 and is not a case of transfer of petition.

57. The next objection has been taken by the Company is that the order of the CLB dated 27.05.2016 had merged with the order of the Guwahati High Court because the appeal was dismissed on 12.07.2017 and further appeal before the Hon'ble Apex Court was dismissed on 02.02.2018.

58. It is thus contended that the order of CLB dated 27.05.2016 merged with the order of the High Court dated 12.07.2017 and further in the order of the Apex Court dated 02.02.2018, therefore, the contempt petition of the order dated 27.05.2016 is not maintainable.

59. On the issue of merger, the Appellant has relied upon two decisions of the Supreme Court in the cases of Shanthi (Supra) and Chandi Pd. (Supra) in which it has been held that "when a higher forum entertains an appeal and passes an order of merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the Appellate Authority. The said

doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.”

60. In the matter of contempt, the Hon’ble Supreme Court has also held in the case of Dineshan K.K. Vs. R.K. Singh & Another, (2014) 16 SCC 88 that if the order of the High Court had merged in the order of the Apex Court then the contempt petition has to be filed on the order passed by the Appellate Court. However, in this case, the Hon’ble Supreme Court while exercising its power under Article 129, 136 and 142 of the Constitution of India, directed to the complainant to approach the High Court for the purpose of seeking direction against the contemnor, if any.

61. In view of this judgment, once the order of the CLB passed on 27.05.2016 merged with the order dated 12.07.2017 passed by the High Court and further merged in the order of Apex Court dated 02.02.2018, the contempt would only be of the order of the Apex Court and if the ratio of the order passed in Dineshan K.K (Supra) is applied then the contempt would lie against the order dated 12.07.2017 passed by the High Court but in no case the contempt would lie against the order dated 27.05.2016 passed by the CLB on which the entire proceedings have been initiated and the Tribunal in just one paragraph has brushed aside all the preliminary objections raised by the Appellant holding that these aspects have been looked into at the time when the notice was issued on 05.03.2019.

62. The Tribunal has further committed an error in issuing directions in the contempt petition for compensation or the

monetary relief though the Court cannot travel beyond the original judgment or direction and should not grant the direction which are not found in the original order because the Court is only concerned with the wilful or deliberate non-compliance of the direction in the original judgment.

63. In this aspect, regard may be had to two decisions of the Hon'ble Supreme Court in the cases of V. Senthur & Anr. Vs. M. Vijaya Kumar, IAS, Secretary, Tamil Nadu Public Service Commission & Anr., 2021 SCC OnLine Sc 846 and Dr. U.N. Bora, Ex-Chief Executive Officer & Ors. Vs. Assam Roller Flour Mills Association & Anr., (2022) 1 SCC 101.

64. It is also pertinent to mention that on the one hand the Tribunal has recorded a finding that by virtue of order passed by the Tribunal, RCCPS ceased to exist and already cancelled but on the other hand direction has been issued for the payment thereof.

65. We rather agree with the Company that had it been a case of execution, instead of a contempt filed by 3A Capital, the Company would have had an opportunity to raise objection about the impossibility of the execution of the order on the ground that RCCPS had already been cancelled 9 years back but knowing fully well that this kind of objection can be raised by the Company, 3A Capital rather chose to file a contempt petition for the purpose of arm twisting.

66. In so far as the appeal filed by the Directors are concerned, they have categorically said that they were non-executive director/nominee director and had no control over the affairs of the Company about which no contrary observations has been

made by the Tribunal but they have not been absolved only on the ground that till the payment is made by the Company to 3A Capital, they will remain bound by the order. Since, we are holding that the contempt petition itself, filed for the alleged disobedience of the order dated 27.05.2016 was not maintainable on various ground, discussed herein above, therefore, the direction issued in that petition against the Appellants in CA (AT) No. 115, 116 of 2022 are not sustainable.

67. Consequently, CA (AT) No. 115 and 116 of 2022 are hereby allowed, impugned order is set aside and CA (AT) No. 133 of 2022 filed by 3A Capital is hereby dismissed though without any order as to costs.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Ajai Das Mehrotra]
Member (Technical)**

**New Delhi
16th May, 2024**

Sheetal