

FCL:SEC:SE:23: 117

14<sup>th</sup> October 2023

Corporate Relations Department BSE Limited 1st Floor, New Trading Ring Rotunda Building, P J Towers Dalal Street, Fort Mumbai – 400 001	The Manager Listing Department National Stock Exchange of India Ltd 'Exchange Plaza', C-1, Block G, Bandra – Kurla Complex, Bandra (E), Mumbai – 400 051	Mr Tom Schmit Luxembourg Stock Exchange PO Box 165 L-2011 Luxembourg Grand-Duchy of Luxembourg EUROPE
Scrip Code: 500144	Scrip Code: FINCABLES	

**Sub: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Dear Sir/Madam,

In continuation to our earlier intimation dated 13<sup>th</sup> October 2023 in respect of declaring of voting results for item No. 4 i.e., pertaining to the Re-appointment of Mr. Deepak Chhabria as an Executive Chairman of the Company, we are herewith submitting the Orders passed by the Hon'ble Supreme Court and National Company Law Appellate Tribunal (NCLAT) dated 13<sup>th</sup> October 2023 in this regard which are self-explanatory.

Kindly take the same on your records.

Thanking you,

**For FINOLEX CABLES LIMITED**

  
**Gayatri Kulkarni**  
Assistant Company Secretary  
& Compliance Officer



Encl: As above

ITEM NO.13

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No. 1195/2023 in C.A. No. 6108/2023

ORBIT ELECTRICALS PRIVATE LIMITED

Petitioner(s)

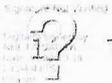
VERSUS

DEEPAK KISHAN CHHABRIA AND ANR &amp; ANR.

Respondent(s)

(FOR ADMISSION )

Date : 13-10-2023 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRAFor Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Neeraj Kishan Kaul, Sr. Adv.  
Mr. Abhinav Agrawal, AOR  
Mr. Shikhil Suri, Adv.For Respondent(s) Mr. Shyam Divan, Sr. Adv.  
Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Amit Jajoo, Adv.  
Mr. Malak Mnaish Bhatt, AOR  
Ms. Sushmita Gandhi, Adv.  
Ms. Vatsala Pant, Adv.  
Mr. Mandeep Singh, Adv.Dr. A.M. Singhvi, Sr. Adv.  
Mr. E.C. Agrawala, Adv.  
Mr. Mahesh Agrawal, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The order passed by this Court on 20 September 2023 sets aside the order

of the NCLAT to the extent that it directed the restoration of the status quo ante at a stage when the arguments were concluded and the matter was reserved for judgment. However, this Court observed that all actions which may be taken would abide by the final result of the proceedings before NCLAT.

- 2 We are *prima facie* of the view that the mandate of the order cannot be defeated by deferring the declaration of the result till a judgment is rendered by NCLAT.
- 3 We accordingly issue notice returnable on 30 October 2023.
- 4 Subject to such further directions as may be issued by this Court, personal presence of the contemnor(s) is presently dispensed with.
- 5 The scrutinizer shall, in compliance with the order of this Court proceed to declare the result of the Annual General Meeting which was held on 29 September 2023 forthwith.
- 6 The NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the Annual General Meeting has been declared.

(GULSHAN KUMAR ARORA)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
ASSISTANT REGISTRAR

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH**  
**NEW DELHI**

**Company Appeal (AT) No. 64 of 2020**

**IN THE MATTER OF:**

**Deepak Kishan Chhabria & Anr.**

**...Appellants**

**Versus**

**Orbit Electricals Pvt. Ltd. & Ors.**

**...Respondents**

**Present**

**For Appellants** : Mr. Ramji Srinivasan, Sr. Advocate with Mr. Amit Jajoo, Ms. Vatsala Pant, Ms. Eshna Kumar, Mr. Akshat Singh, Advocates

**For Respondents** : Mr. Kunal Mehta, Mr. Shikhil Suri, Madhu Suri, Ms. Vidushi Jain, Ms. Vidhi Kapoor, Advocates for R-1

Mr. K. Datta, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Ankur Saihgal, Ms. Geetika Sharma, Advocates for R-2

Mr. Sajan Poovayya, Sr. Advocate with Mr. Harsh Saxena, Advocate for R- 3 & 4

**JUDGMENT**

**(Date:13.10.2023)**

**[Per.: Dr. Alok Srivastava, Member (Technical)]**

In the present appeal, filed under Section 421 of the Companies Act, 2013 (in short "Companies Act"), the Appellants have challenged order dated 31.12.2019 (in short "Impugned Order") passed by National Company Law Tribunal, Mumbai (in short "NCLT") in MA No. 1449/2019 filed in Company Petition No. 47/2016.

2. In the Impugned Order, the Ld. NCLT has disposed of MA No. 1449/2019 holding that the Resolutions approved in the Extraordinary General Meeting ("EGM") held on 03.05.2019 were in accordance with law and therefore, no interference is required in the said decisions/resolutions.

3. In short, the facts of the case, as are relevant to this appeal, are that Pralhad P. Chhabria ("PPC") held majority shareholding in Orbit Electricals Pvt. Ltd. (Respondent No. 1, "R-1") and he, on account of old age and weak health, decided to create a trust by the name of Pralhad Chhabria Trust for the benefit of the beneficiaries namely Mrs. Aruna Katara (his daughter), Mr. Vijay Chhabria (his nephew), Mr. Deepak Chhabria (his nephew), and Mr. Prakash Chhabria (his son) who were all part of his extended family. On this basis, a Trust Deed was executed on 12.03.2012 whereby PPC, who held majority equity share capital in Orbit Electricals Pvt. Ltd., settled his shareholding in this trust which was to become effective after his death. He also named his daughter Aruna Katara and son Prakash Chhabria and nephew Deepak Chhabria as future Chairpersons of the trust, in that order, and also divided the income and trust fund of the trust to be distributed amongst the beneficiaries in a certain proportion as stated in clause 11 of the Trust Deed. In addition, he also put in *Company Appeal (AT) No. 64 of 2020*

place an arrangement through the trust deed so that at least one company of the Finolex Group of Companies would have each of the four beneficiaries of the trust to function as Chairman of one company each.

4. Using his position as a majority shareholder in R-1 and with the consent of other shareholders, PPC took action for effecting certain amendments in the Articles of Association (“AoA”), particularly in Articles 15A, 59 & 60 of the AoA to ensure that the business of different companies in the Finolex Group of Companies would pass on in a peaceful manner to the next generation of Chhabrias and each one of them would be entitled and empowered to run one company of the group.

5. With time, PPC got afflicted with some serious disease and before his demise in May, 2016, he made an indenture of gift (“Gift Deed”) dated 28.03.2016 by which he made a gift of 100,300 shares out of 116,919 equity shares which made up 82% of the paid up share capital of R-1 Company in favour of his son Prakash P. Chhabria.

6. The Gift Deed and the Securities Transfer Form (SH-4) were executed on 28.03.2016 by which the said 100,300 equity shares were transferred in the name of Prakash Pralhad Chhabria. Subsequently, the transfer of these shares was affected in the name of PC and the shares were entered in the name of PC by virtue of a Resolution of Board of Directors in its meeting held on 31.03.2016. In addition, PPC also resigned from the position of Chairman of R-1 Company due to his ill health and nominated Mr.

Prakash Pralhad Chhabria as Chairman of the Company during the Board Meeting held on 31.03.2016, and the Board of Directors in the same meeting approved a resolution regarding appointment of PC as Chairman of R-1 Company.

7. This Gift Deed dated 28.03.2016 and the proceedings of the Board meeting held on 31.03.2016 were challenged by Deepak Chhabria (“DC”) and Vini Chhabria (“VC”) in CP No. 47/2016 with prayers for final relief of declaring the meeting of Board of Directors dated 31.03.2016 as illegal and the resolutions passed in the alleged Board Meeting as null and void. Additionally, the petitioners also sought interim relief for inspection of the register of members and minute books of the Board of Directors meetings, committee meetings and shareholder meetings for a specified period and requested for staying the operation of the resolutions passed in Board Meeting dated 31.03.2016.

8. While CP No. 47/2016 was pending, PC & Orbit Electricals preferred MA No. 645/2017 challenging the maintainability of CP No. 47/2016 which was decided by the NCLT vide order dated 05.12.2018 by which CP No. 47/2016 filed by DC & VC was held to be maintainable. Thereafter, an appeal namely, CA (AT)No. 39/2019 was preferred against an order dated 05.12.2018 of NCLT which was disposed of by the NCLAT by order dated 13.03.2019. According to this order, the order of NCLT regarding maintainability of CP No. 47/2016 was upheld and further the NCLAT held that CP No. 47/2016 was pending since November, 2016, this petition may be disposed of without either parties asking for unnecessary adjournment.

9. The Company Petition CP No. 47/2016 has remained pending since then and in the meanwhile, DC & VC filed MA 1449/2019 which was disposed of by order dated 31.12.2019, whereby the NCLT held that the decision/resolutions approved in EGM dated 03.05.2019 were valid and there was no occasion to interfere with them. The Appellants DC & VC have preferred the present appeal assailing the impugned order dated 31.12.2019.

10. We heard the arguments advanced by Ld. Sr. Counsels for the rival parties and have perused the record with their able assistance.

11. Mr. Ramji Srinivasan, Ld. Sr. Counsel for the Appellant while initiating his arguments has taken us through the history of the establishment of Finolex Group of Companies by Mr. Pralhad P. Chhabria and his younger brother Mr. Kishan P. Chhabria and pointed out to the family relationship between the parties in the present appeal. He has further argued that in view of the illegal nature of the gift deed and the transfer of gift shares to PC as a result, DC along with his wife VC had filed CP No. 47/2016 challenging the legality of the Board of Directors Meeting dated 31.03.2016 where in the transfer of gift shares by PPC to his son PC was approved.

12. Mr. Srinivasan, Ld. Sr. Counsel has further argued that in view of the failing health of the family patriarch PPC, and his noble intention to affect a peaceful division of the assets and companies of the Finolex Group, he (PPC) formed a trust through trust deed

dated 12.03.2012, by which the assets and companies of Finolex Group were to vest in this trust which would become operative after the death of PPC. Further the trust deed provided that as various branches of the family may over a period of time get the powers of their own to intervene or vote in each other's companies directly, the next generation of Chhabria family would exercise their voting rights in the Finolex Group Companies i.e. Finolex Industries Ltd. (FIL), Finolex Cables Ltd. (FCL), Finolex Plasson Ltd. (FPL) and I2IT Pvt. Ltd. (I2IT) in such a manner that Orbit Electricals would support the management of Mr. Prakash Chhabria or his nominee successor in FIL, that of Mr. Deepak Chhabria or his nominee successor in FCL, that of Mr. Vijay Chhabria or his nominee successor in FPL and that of Mrs. Aruna Katara or her nominee successor in I2IT. He has argued that in this manner PPC ensured that the financial interest of each Member of the next generation would be properly looked after and the various Members of the family would ensure that the interest of other Members is well protected.

13. Mr. Ramji Srinivasan, Ld. Sr. Counsel has further pointed out that as per the intention of PPC and Memorandum of Understanding (MoU) dated 11.10.2011, which was executed between FCL & FIL, which also supported and cemented the business interests of the next generation family members that PPC had in mind. He has further submitted that in order to ensure that the AoA of Orbit Electricals would also be in consonance with his intention as ingrained in the trust deed and MoU, amendments in the relevant articles were also made so that the Board of Orbit

Electricals may not go against PPC's intention of providing a fair and just division of assets between his own children and nephews.

14. Mr. Srinivasan, Ld. Sr. Counsel has also argued that in the AoA of Orbit Electricals, Article 12 clearly states that the shares of Orbit Electricals shall be held exclusively by the PPC family and/or KPC family and/or by the trust formed by PPC for the exclusive benefit of PPC & KPC families. He has also pointed out that Articles 15A, 59 & 60 were amended to reflect the intention of PPC to affect a fair and just division of assets between the next generation of Chhabria family and, therefore, the intention of PPC was absolutely clear that the next generation members of Chhabria family should get their equitable share in the business of Companies in Finolex Group and the Chhabria family should continue to undertake their individual business interests and live in a peaceful manner.

15. Mr. Ramji Srinivasan, Ld. Sr. Counsel has also referred to Articles 22 and 23 of the AoA to further emphasize the fact that the AoA made it difficult for the members to transfer the shares to any person outside the realm of the PPC & KPC families, and hence Article 23 (A) required that the Members who intended to transfer shares had to give notice in writing to the Board of his/her intention to sell or transfer. He has further pointed out that the definition of "Transfer" is given in Article 18 where a "Transfer" shall mean and include a transfer effected with or without consideration in a voluntary or otherwise manner.

16. Mr. Srinivasan has argued that the transfer of shares is not limited to transfer by sale or shares, but in the event of a transfer by gift Article 23 (A) will be attracted. He has also expanded on the intention of PPC to ensure that the Finolex Group Companies may not go out of the control of Chhabria family members through insertion of Articles 59 and 60, and further a section titled “Shares held by Trust” was also introduced along with Article 31 so that upon the demise of PPC, all the shares in his name as sole/first holder shall stand automatically transmitted in the name of Pralhad Chhabria Trust.

17. Mr. Srinivasan, Ld. Sr. Counsel for the Appellant has pointed out that as on 15.10.2014 PPC held 82.07% shareholding in Orbit Electricals and the last will and testament of PPC executed on 05.05.2014 also encapsulated the intention of the family patriarch PPC to incorporate the management structure in FCL, FIL, FPL and I2IT in clause 8 A of the said final will. He has thus argued that it was the noble intention of PPC to ensure that the management of business shall transfer in a peaceful, fair & just manner to the next generation and therefore, he made elaborate provisions in the ‘AoA’, ‘Trust Deed’, his “Last and Final Will” to concretize his intention.

18. Mr. Srinivasan, Ld. Sr. Counsel for the Appellant has further argued that the ‘Gift Deed’, which was executed on 28.03.2016 in an extremely hasty manner, without any knowledge or information to the other branch of the family, is itself doubtful and under cloud of suspicion. In this connection he has pointed out to a glaring deficiency in the ‘Gift Deed’ and the ‘Securities

Transfer Form' for transfer of shares by submitting that while the 'Gift Deed' and the 'Transfer Form' of shares were both executed on 28.03.2016, there is no mention in the Gift Deed of the 'Trust Deed' or the "Last Will" of PPC. He has further pointed out that in the Securities Transfer form (Form No. SH-4) dated 28.3.2016 it is mentioned that stamp affixed is Rs. 3,60,00,000/- whereas in fact the stamp was purchased only on 30.03.2016, i.e. two days after the Securities Transfer Form was signed and a statement of the value of stamp affixed was made in the Securities Transfer Form.

19. Mr. Srinivasan has further argued that since the 'Gift Deed' and the Securities Transfer Form were both purportedly executed on the same day i.e. 28.3.2016, no proper valuation of the stamp duty could be done and therefore the value of stamp affixed was much less than the required stamp duty. To further strengthen his argument of the hasty nature of the entire action regarding 'Gift Deed', he has pointed to the signature of PPC on all the three pages of the 'Gift Deed' which are not only different from each other but also different from the actual signature of PPC as may be seen from his signature in the Trust Deed document and also in the notice along with explanatory statement issued for the EGM of Orbit Electricals which was held on 30.09.2014.

20. Mr. Srinivasan, Ld. Sr. Counsel for the Appellants has further pointed out that the Board of Directors meeting of 31.03.2016 was never held since PPC was not well and so he couldn't chair the meeting, as is evidenced from transcript of recording of his telephone conversation and Mrs. Meena D'sa, vice president of Orbit Electricals who was incharge of organizing the

board meeting, which conversation took place at the same time when the purported Board meeting is claimed to have taken place.

21. Mr. Srinivasan, Ld. Senior Counsel has also argued that both the resignation of PPC from the position of Chairman of Orbit Electricals and the matter of 'Gift Deed' for transfer of shares to PC were matters that required Special Notice but because of the surreptitious and secretive way in which the matter was being pushed, such a Special Notice as required under the Articles of Association (AoA) of Orbit Electricals was not given by the donee PPC to the company or the company Orbit Electricals to the invitees to the Board Meeting. He has argued that the issue of the transfer of shares and the purported Board of Directors meeting of 30.03.2016, which was actually not held, are issues that have been raised by the Appellants in CP No. 47/2016 and therefore, till the time these issues are decided by Ld. NCLT, no implementation of the resolutions passed in the EGM of 03.11.2019 should be allowed as such actions that have their origin in allegedly illegal transfer of gift shares to Prakash Chhabria.

22. Mr. Srinivasan, Ld. Sr. Counsel has also referred to the Articles 59 & 60 of the Articles of Association of Orbit Electricals which were amended/deleted by resolutions in the EGM dated 30.09.2014 where after form MGT-14 was filed. With regard to these articles being 'entrenched articles', he has pointed out that after the Companies Act, 2013 was enacted, an EGM dated 30.09.2014 was held to approve/revalidate the AoA including Articles 59 & 60. He has also claimed that notice for the EGM mentioned action under Section 14 and other provisions of the

Companies Act, 2013 and further, about the contention of the Respondent that explicit mention of approval under Section 5 was required in the notice, he has pointed out that a mention was made that action is being taken under Section 5 and other relevant provisions of the Companies Act, 2013. He has also pointed out that Section 184 of the Companies Act, 2013 stipulates that an 'interested party' should not vote in any matter where he has any interest but PC voted in the EGM held on 03.05.2019 in favour of the said resolutions.

23. Mr. Srinivasan, Ld. Sr. Counsel for the Appellants has also rebutted the arguments of the opposite party regarding the authenticity of the gift deed and transfer form of shares by stating that these are matters to be decided under the Companies Act, 2013 regarding which CP No. 47/2016 is still pending before the NCLT, Mumbai. He has argued that there is a prima facie case for grant of interim relief as prayed for in MA 1449/2019, particularly for the reason that the NCLT, Mumbai is still seized of the issue, and also the matters of balance of convenience and irreparable loss to the appellants makes it a fit case for grant of interim relief.

24. In reply on behalf of Respondents, Mr. Ratnanko Banerjee, Ld. Sr. Counsel for Respondent No. 1/Orbit Electricals has argued that the relief sought by the Appellant in CP No. 47/2016 only relates to the legality or otherwise of the Board meeting dated 31.03.2016 and the transfer of shares by way of gift deed is not challenged. He has further argued that after the transfer of shares due rectification in the Register of Members was also affected but the Appellants have not asked for amendment/rectification in the

Register of Members and hence the shareholding of PC is not questioned.

25. Mr. Ratnanko Banerjee, Ld. Sr. Counsel, has referred to Special Civil Suit No. 1418/2016 which is regarding declaration and injunction and argued that the issue of the authenticity and veracity of the gift deed has been settled in the said petition. Furthermore, he has argued that in the petition for interim relief filed under Civil Suit No. 1418/2016, the application was rejected vide order dated 02.12.2020 and, therefore, there is no case for granting interim relief regarding the resolutions passed in the EGM dated 03.05.2019.

26. On account of some personal difficulty of Mr. Ratnanko Banerjee, Ld. Sr. Counsel, to appear on the next date of hearing, this Bench, on a prayer made by Mr. Ratnanko Banerjee and also Mr. S. N. Mukherjee, Ld. Sr. Counsels, permitted Mr. S.N. Mukherjee, Ld. Sr. Counsel to continue the arguments on behalf of the Respondents on the next date.

27. Mr. Mukherjee, Ld. Sr. Counsel, has referred to the Trust Deed to argue that the Pralhad Chhabria Trust was formed only to ensure continuity in business and it is not a testamentary document. He has further referred to the Articles of Association of Orbit Electricals particularly Articles 15A, 23(a), 31, 59 & 60 as being relevant in the adjudication of this appeal. Regarding Article 15A, he has contended that written consent of PPC was necessary to change, alter, modify his shareholding as existing in the company's register of members, and so by executing the Gift Deed

and Securities Transfer Form, PPC has fulfilled the requirement of Article 15A. He has further pointed out that Article 15A (ii) comes into operation only upon the death of PPC when all the equity shares lying in his name shall devolve to the Pralhad Chhabria Trust but since the gift deed was executed before the death of PPC, Article 15A (ii) shall not come into play.

28. In his arguments, Mr. S.N. Mukherjee, Ld. Sr. Counsel has referred to a Civil Suit filed by Deepak Chhabria (DC) and Kishan Chhabria (KC) on 18.11.2016, and argued that as would be evident from the array of parties in the Civil Suit and the prayers made therein certain interim reliefs were prayed for and this application for interim relief was disposed of on 02.12.2020. An important interim relief sought was the exercise of voting rights in respect of disputed 100,300 shares and interfering or obstructing in the management of FCL, and amendment of AoA of Orbit Electricals (P) Ltd. He has further pointed out that these prayers were not acceded to by the Civil Court. He has therefore, claimed that this order operates as res-judicata with regard to the prayers for interim relief made in MA 1449/2019. He has further pointed out that the order of Joint Civil Judge (SD), Pune dated 02.12.2020 was appealed in the Hon'ble Bombay High Court and while it is still pending adjudication, no stay has been granted in the matter.

29. Mr. S.N. Mukherjee, Ld. Sr. Counsel, has cited the Judgment of Hon'ble Supreme Court in the matter of '**Vasudev Ramchandra Shelat vs. Pranlal Jayanand Thakar & Ors.'** (1974 (2) SCC 323) to contend that, in view of Section 123 of the Transfer of Property Act, 1882 whereby for the purpose of making

a gift of moveable property, the transfer may be affected either by a registered instrument or by delivery, in the present case even in the absence of registration of the 'Gift Deed', mere delivery of documents with a clear intention to donate would be enough to confer upon the donee a full and irrevocable right. He made this argument to rebut the argument of the Appellant regarding the illegality of the gift deed since it was unregistered.

30. Mr. S. N. Mukherjee, Ld. Sr. Counsel has also referred to the pleadings in MA 1449/2019 and averred to the prayers made in paragraph 61 of the application to reiterate that since the gift of shares was made by PPC in favour of PC is entirely legal, therefore the transfer of shares is also done in a legal manner, and hence there is no reason to restrain the Respondents from acting in furtherance of resolutions passed in EGM dated 03.05.2019 and the Board meeting held preceding the EGM.

31. Mr. Mukherjee, Ld. Sr. Counsel has shown us the special notice and requisition issued on 18.03.2019 wherein the items for amendment and deletion of Articles 59 & 60 respectively were clearly mentioned and argued that there is no infirmity in the said notice. He has further argued that in pursuance of this special notice the Board meeting was convened on 27.03.2019 and the minutes of the meeting very clearly show that Prakash Chhabria requested Sunil Pathak to chair the said meeting and therefore there was no infringement of Section 184 of the Companies Act, 2013.

32. Mr. Mukherjee, Ld. Sr. Counsel has referred to the pleadings in the Civil Suit to show that there was no family arrangement and therefore, while PPC may have had some intention of dividing the assets in reality he never did so. This absence of any family arrangement, he has claimed, is evidenced by the reply of Orbit Electricals in MA No. 1449/2019 filed before the NCLT, Mumbai and, therefore, the Appellants cannot claim their right on the basis of some non-existent family arrangement.

33. Mr. Mukherjee, Ld. Sr. Counsel has also brought to our attention order dated 21.09.2018 in Civil Application (ST.) No. 27067 of 2018 to contend that the Hon'ble High Court in the appeal on the order of the lower court declined to grant any interim relief and therefore the appellants are now trying their luck in the present case to get interim relief which is not lawful.

34. Mr. Mukherjee, Ld. Sr. Counsel has also adverted to the Civil Suit No. 1372/2017 filed by Vijay Kishan Chhabria on 24.10.2017 wherein similar prayers, as made in MA 1449/2019, were made and since he could not get required relief, his brother DC later filed an application asking for the same relief.

35. Mr. Mukherjee, Ld. Sr. Counsel, has also brought to our attention the MoU dated 11.10.2011 executed between FIL & FCL and contended that since both the parties are not before this Tribunal, this MoU does not have any relevance in so far as MA 1449/2019 is concerned and any reliance placed by the Appellants regarding their rights in management of FCL should be disregarded.

36. Mr. Mukherjee, Ld. Senior Counsel has also pointed out that Article 23(a) of the AoA comes into play when a transfer of shares is to take place on account of sale, whereas in the present case since the transfer is on account of gift deed no notice in writing was required to be given to the Board of PPC's intention to transfer by way of a Gift Deed to his son PC. Mr. Mukherjee has further argued that Article 31 relates to 'Share Held By Trust' whereas in the present case the shares were transferred legally through a gift deed and share transfer form and so this article would also not be applicable. He has further pointed to Articles 59 & 60, both of which were included in the AoA prior to the amendment in the Companies Act, 2013 and submitted that these articles are not in the nature of 'entrenched articles' since no such stipulation has ever been made, and therefore they can be amended without any reference to section 5 of the Companies Act, 2013 requiring agreement by all the members of the Company for their amendment/deletion.

37. Mr. Mukherjee, Ld. Sr. Counsel has referred to Company Petition CP 47/2016 & the prayers made therein to point out that only the holding of Board meeting dated 31.03.2016 was challenged in this company petition and there is no relief prayed for regarding the declaration of the gift deed and the transfer of shares as illegal and even in the interim relief sought there is no relief sought regarding holding the gift deed and consequent transfer of shares as illegal. He has further pointed out that by an order dated 18.11.2016 in CP No. 47/2016 the EGM dated 21.11.2016 was allowed to be held and there was no appeal

against this order, and therefore after this order refusing interim relief no parties can ask for any further interim relief.

38. In the background of facts of this case, Mr. Mukherjee, Ld. Sr. Counsel has submitted that MA 1449/2019 was filed on 12.04.2019, wherein the prayers made related to restraining the Respondents from acting in furtherance to the requisition notice dated 18.03.2019, the Board resolution passed on 03.04.2019 and the notice dated 09.04.2019 calling for EGM of Orbit Electricals. In the alternate, a prayer was made that in case the EGM takes place on 03.05.2019, then the implementation of resolutions passed in the EGM may be stayed and further Prakash Chhabria be restrained from exercising voting rights in respect of 100,300 disputed shares in the Company Orbit Electricals, and certain other reliefs.

39. Mr. Mukherjee, Ld. Sr. Counsel has argued that the Board meeting of Orbit Electricals took place on 27.03.2019 & 03.04.2019 when it was decided to convene the EGM to consider the resolutions relating to amendment/deletion of Articles 59 & 60 of the AoA and further that the notice for EGM dated 03.05.2019 included Items no. 1 & 2 in 'Special Business' relating to the amendment/deletion of Articles 59 & 60.

40. Mr. Mukherjee, Ld. Sr. Counsel has rebutted the contention of the appellants that Articles 59 & 60 were 'entrenched articles' and, therefore, such resolutions were approved in the EGM. He has further rebutted the argument of the Appellants that in view of Section 184 of the Companies Act, 2013, Prakash

Chhabria could not have chaired the EGM by pointing out that Section 184 only applies to a Board meeting and not EGM, and moreover this provision would not apply to a private/family company. He has adverted to notification dated 05.06.2015 of the Ministry of Corporate Affairs, Government of India where it is clearly indicated that Chapter XII, Sub-Section (2) of Section 184 would not apply to a private company like Orbit Electricals. He has cited the Judgment of Hon'ble Delhi High Court in the matter of '**Ravi Raj Gupta & Ors. Vs. Hans Raj Gupta & Ors.**' (2009) **SCC Online DEL 381** in support of his contention.

41. Mr. Mukherjee, Ld. Sr. Counsel has adverted to Section 14 of the Companies Act, 2013 to point out that a power has been given to a Company to alter its articles by a special resolution in the EGM. He has also claimed that there is no mention in the Articles of Association that Articles 59 & 60 are 'entrenched articles' and after introduction of concept of 'entrenchment' in Companies Act, 2013, such a clear statement was required to be made in the AoA that Articles 59 & 60 are entrenched articles, which was not done. He has further argued that while Deepak Chhabria is claiming a right with regard to management in FCL, he cannot claim oppression against Orbit Electricals since he is not having the requisite shareholding in Orbit Electricals to maintain a petition regarding 'oppression and mismanagement'.

42. In support he has cited the Judgment of Hon'ble Supreme Court in the matter of **LIC vs. Escorts [(1986) 1 SCC 264]**. He has further cited the Judgment in the matter of **SP Jain vs. Kalinga Tubes [1965 (2) SCR 720]**, that the matter should be of a

proprietary right of a shareholder of a company which in this case is Orbit Electricals but Deepak Chhabria is claiming his right in Finolex Cables Ltd.

43. Mr. Mukherjee, Ld. Sr. Counsel has argued that Deepak Chhabria was required to vote in the EGM of Orbit Electricals as an Authorized Representative/Nominee (“AR”) of Orbit Electricals and while he votes as Orbit Electricals AR duly instructed by its Board when voting for discontinuation of his father Kishan Chhabria’s services as advisor in the Company, he votes in total contravention of the direction given by the Board of Orbit Electricals when his own case to continue as MD of FCL comes up for voting, which is evident from the resolutions voted upon through e-voting held between 25.09.2017 to 27.09.2017. He has further argued that the reason that Deepak Chhabria has given for voting against the instructions received from the Board of Orbit Electricals that he voted in accordance with the call of his conscience, is not tenable because as AR he was required to vote in accordance with the instructions of the Board of Directors.

44. Mr. Povvayya, Ld. Sr. Counsel has argued that PPC was in full control of his senses when he made the gift deed on 28.03.2016 as he was signing cheques and authorizing payments at that time. He has further pointed out that earlier when the AoA were amended on 30.09.2014, only four out of thirteen members attended and the resolution was carried through and so there is no requirement of all the members to agree with the special resolution. He has further argued that since there is a valid gift deed executed by PPC in favour of his son PC, the transfer of

shares has to be effected by a procedural process which is defined in law, which is what has happened. Mr. Povvayya, Ld. Sr. Counsel has further argued with regard to the holding of Board meeting dated 31.03.2016, it may be pointed out that DC signed the attendance register and accepted the sitting fee, and furthermore in the same Board meeting FCL was paid about Rs. 9.15 Crores for sale of 61,00,000 shares of I2IT Pvt. Ltd. which was accepted by DC on behalf of FCL. In such a situation, he has argued, DC cannot now turn around to say that the Board meeting on 31.03.2016 did not take place. He has further argued that the prayer in CP 47/2016 filed by DC is confined to the issue whether the Board meeting on 31.03.2016 was held or not and that no challenge to the transfer of shares is made and, therefore, the EGM which is the subject matter of the present MA 1449/2017 which is about the shareholding of PC as a result of transfer of shares is a different matter is dependent. The shareholding of PC which should be allowed to take place and the resolutions should be implemented. He has further claimed that in the Special Civil Suit No. 1418 of 2016 which is a petition filed by Vijay Chhabria, the contentions were tested right up to the Hon'ble Supreme Court and therefore, no question can now be raised about the transfer of shares.

45. Mr. Krishnendu Datta, Ld. Sr. Counsel for Prakash Chhabria (PC) has referred to the list of dates in the document diary no. 26871 to aver that there was a scheme of amalgamation dated 29.07.2011 in which the petitioners and Kishan Chhabria were consenting partners and in accordance with scheme of amalgamation PPC's family came to hold 88.1% of 'Orbit

Electricals' shareholding whereas Kishan Chhabria's branch of family came to hold about 7% of 'Orbit Electricals' total equity shares. He has further submitted that the arguments raised by the Appellant that there was an oral family arrangement has been rebutted by PPC which is clearly recorded in the reply of Prakash Chhabria. Furthermore, he has argued, that the Trust Deed, even though it was executed in the year 2012, was never acted upon. In support of his argument he has referred to a gift of 4274 shares each of Orbit Electricals to his son PC and his daughter Aruna Katara which was never contested or disputed by the Appellant, and at that time only 10 shares of Orbit Electricals were transferred to the Prakash Chhabria Trust.

46. Mr. Krishnendu Datta, Ld. Sr. Counsel has argued that in the Civil Suit before Pune District Court his prayer for ad-interim relief was rejected which order was upheld by Hon'ble Supreme Court of India by order dated 20.01.2020. Mr. Datta, Ld. Sr. Counsel has thus pointed out that in the Special Civil Suit/Civil Suit filed by both Vijay Chhabria and Deepak K Chhabria in the District Courts they have been unable to obtain any relief in terms of the transfer of shares by PPC to PPC by the gift deed and therefore, they have only tried to get similar relief here through MA 1449/2017.

47. Furthermore, he has argued that the Board of Directors meeting of Orbit Electricals noted this transfer of a total of 8548 shares in favour of PC and Aruna Katara and another ten shares transferred to PC trust in its meeting dated 15.03.2012 in which DC was present and he voted in favour of these transfers. Mr.

Krishnendu Datta, Ld. Sr. Counsel has further pointed to the section "Said Shares" in the trust deed in Definitions Clause 4(c) to claim that the shares of Orbit Electricals were to be 'settled, donated or gifted by the settlor or by any other trustee or by any other person to the trust in the future' and therefore, the shares would have to accrue to the trust only in the future by way of settling, donating or gifting.

48. On the issue of Articles 59 and 60 being 'entrenched articles', Mr. Krishnendu Datta, Ld. Sr. Counsel has pointed out that on 30.09.2014 the AoA of Orbit Electricals were amended and at that time only four of the thirteen members attended. He has made this argument in connection with the argument of the Appellant that all the members of R-1 Company Orbit Electricals should have voted for Amending articles 59 and 60 since they were 'entrenched articles'.

49. Mr. Krishnendu Datta, Ld. Sr. Counsel has further reiterated the argument that Deepak Chhabria has signed the attendance register for the BOD meeting held on 31.03.2016 and accepted the sitting fee along with accepting Rs. 9.15 Crores for sale of 61,00,000 shares of I2IT Pvt. Ltd. to FCL which were all connected with the holding of Board meeting on 31.03.2016. He has further pointed out that the minutes of this Board meeting were confirmed on 21.06.2016 and it was after a lapse of almost five months that DC challenged the holding of Board meeting on 31.03.2016 in CP No. 47/2016, which was an afterthought.

50. Mr. Sajan Poovayya, Ld. Sr. Counsel appearing for R-3 & R-4 has argued that the Articles of Association of Orbit Electricals in Articles 39 lays down that Mr. Sanjay Asher and Dr. Sunil Pathak shall continue to be Independent Directors of the Board of Directors of the Orbit Electricals and they shall have the right to nominate their existing male lineal descendant as successor on the Board of the Company after their resignation, death or incapacitation. He has further argued that on the allegation made by the appellant that the Board meeting did not take place on 31.03.2016, the NCLT has refused to give any interim relief, and now when a requisition is made for holding EGM to consider amendment of Articles 59 & 60 there was no reason to grant a stay for summoning the EGM.

51. Mr. Sajan Poovayya, Ld. Sr. Counsel has argued that Section 14 of the Companies Act, 2013 stipulates that articles can be altered by a Special Resolution in a general meeting which was done in the present case and since the EGM was requisitioned on the basis of a proper requisition, the Independent Directors whom he represents had no view beyond what law laid down and therefore, the Independent Directors and the general meeting went for external, expert advice. He has further argued that the legal opinion was provided according to which the Board was obliged to convene the Extraordinary General Meeting. The EGM went on to resolve in favour of alteration of Articles 59 and 60. He has further referred to the legal opinion obtained from a former Chief Justice of Hon'ble Delhi High Court wherein it was clearly opined that the Company may have to convene the extra ordinary general meeting and is bound under law to do the same. He has also opined that if

there is any overreach of the AoA and any detriment to the interests of the shareholders, it would be considered and decided by the shareholders in the extraordinary general meeting.

52. Mr. Poovayya, Ld. Sr. Counsel has further pointed out that in the criminal complaint filed much later in 2020, of an event that took place in 2016 with EOW, Pimpri, the matter went up to the Hon'ble Supreme Court, and by an order in SLP (Cr) No. 6814 of 2023 Hon'ble Supreme Court has also not shown any inclination that the criminal complaint be pursued further.

53. In rejoinder, Mr. Ramji Srinivasan, Ld. Sr. Counsel for Appellant has rebutted the argument of Ld. Sr. Counsels for Respondents that since the Appellants have failed to obtain any interim relief from the Ld. Civil Court in Pune, they are trying to get a similar relief in the company court proceedings by arguing that the reliefs sought in the civil proceedings were very different from those prayed for in the company court proceedings. The fact is that in the company court proceedings the appellants have raised the issue that the Board meeting dated 31.03.2016 did not take place, and on that basis, prayed that the actions taken in that purported meeting be declared as null and void. He has further argued that, in MA 1449/2017, the issue is regarding the holding of EGM on 03.05.2017 and the resolutions approved therein, and therefore such a relief cannot be denied on the basis of any judgment/ order of Ld. Civil Court.

54. Mr. Ramji Srinivasan, Ld. Sr. Counsel has also rebutted the argument that by signing the attendance register for BOD meeting

dated 31.03.2016, DC has accepted that the said meeting did actually take place. He has submitted that the attendance register was signed by DC in anticipation that the meeting may be held but in fact the meeting did not take place. Further, he has argued, that he was not aware that two important resolutions regarding the resignation of PPC as Chairman of Orbit Electricals and transfer of shares 100,300 of Orbit Electricals by way of gift deed from PPC to PC would be approved in the same meeting since he was not given any prior information regarding such business by the company which was controlled by PPC. He has further alleged that the stipulation in Article 15A of the AoA has to be read in conjunction with the MoU executed between FCL and FIL as well as the Trust Deed since the intent of PPC very clearly expressed in all the three documents are the same, and hence transfer of shares by PPC to PC should have been notified by the company Orbit Electricals to all the existing members, as transfer of shares is defined in the AoA.

55. He has also claimed that in the notice dated 25.03.2016 issued for the proposed Board meeting on 31.03.2016 no agenda item was mentioned regarding resignation of PPC from the position of Chairman of Orbit Electricals nor the Gift Deed or transfer of shares as a result thereof from PPC to PC and, therefore, the information about the Gift Deed and Transfer Deed were carefully kept secret from the invitees to the meeting since they were added a very late stage after issue of notice, and to also preclude any opposition by any family member which may have come naturally. He has also claimed that the sitting fee was transferred by Mrs. Meena D'sa in the account of DC without his knowledge or

acceptance through online transaction and it should not mean that the Board meeting did actually take place.

56. Regarding the doubt about the authenticity of Gift Deed and whether it was actually executed with affixation of requisite stamp duty on 28.3.2016, Mr. Srinivasan, Ld. Sr. Counsel has pointed out that it is claimed that stamp duty amounting to Rs. 3.60 crores was affixed on the Securities Transfer Form on 28.03.2016 when the Gift Deed was executed, even though the date of purchase of the stamp paper shows it as 30.3.2016ed only on 30.03.2016 i.e. two days after a mention regarding affixing of stamp on the transfer form was made in the Securities Transfer Form. He has thus argued that Gift Deed as well as the Securities Transfer Form were executed in suspicious circumstances and further reinforces that the fact that they were approved in a purported Board meeting on 31.03.2016 whose purpose was to approve these sham documents, and the meeting actually did not take place. He has also argued that it was possible for a short notice to be issued regarding the items of resignation of PPC as Chairman of Orbit Electricals and approval of the Gift Deed but it was not done.

57. Mr. Ramji Srinivasan, Ld. Sr. Counsel has also pointed out that Articles 59 & 60 are 'entrenched articles' by the very nature of is contained in them and, therefore, in accordance with sub-sections 3 & 4 of Section 5 all the members present and voting in the general meeting should pass the resolutions for the amendment of these articles. He has stated that the appellant Deepak Chhabria dissented on the related resolution in the

General Meeting held on 03.05.2019, and thus the amendment to these 'entrenched articles' was not lawfully carried out.

58. We have carefully considered the pleadings and oral arguments of the rival parties in the appeal and given them due consideration.

59. This judgment would be limited to MA 1449/2019 and the prayers made therein for the purpose of deciding this appeal. It would, therefore, be necessary and appropriate to say that a number of oral arguments were presented by the Ld. Sr. Counsels for all the parties regarding the authenticity and veracity of the Trust Deed, Gift Deed, Securities Transfer Form and the Memorandum of Understanding (between FCL & FIL) which are germane and relevant to the adjudication of the Company Petition CP No. 47/2016 are not being considered and those issues relating to the prayers in CP 47/2016 are left for consideration of the Ld. NCLT for adjudication.

60. The main issue in this appeal is whether the Appellants were able to make out a case in their favour for interim order regarding the EGM dated 3.5.2019, and since the EGM took place on 3.5.2019, for granting stay order on the implementation of the resolutions approved in the EGM.

61. We first notice the relevant portion in the prayers made in MA 1449/2019 which is reproduced below:

*“(a) That this Hon'ble Tribunal be pleased to pass necessary orders or direction to restrain the Company Appeal (AT) No. 64 of 2020*

*Respondents from acting in furtherance to the Requisition Notice dated 18<sup>th</sup> March 2019 issued by Respondent No. 2, the illegal Board Resolution passed on 3<sup>rd</sup> April 2019 and the Notice dated 9<sup>th</sup> April, 2019 calling for Extra-ordinary General Meeting of Respondent No. 1.*

*(b) That this Hon'ble Tribunal be pleased to pass necessary orders or directions deferring the date of the Extra-ordinary General Meeting proposed to be held on 3<sup>rd</sup> May 2019 or pass necessary orders restraining Respondents from holding the Extra-ordinary General Meeting till the final hearing and disposal of the captioned petition.*

*(c) In the alternate to prayers (a) and (b), this Hon'ble Court be pleased to pass necessary orders or directions **staying the implementation of resolution(s) passed in the Extra-ordinary General Meeting proposed to be held on 3<sup>rd</sup> May 2019**, till the final hearing and disposal of the present petition.*

*(d) That this Hon'ble Tribunal be pleased to restrain Respondent No. 2 from exercising any rights, voting rights or otherwise, in respect of 100,300 disputed shares of Respondent No. 1 Company, the transfer of which is under challenge before this Hon'ble Tribunal.*

*(e) That this Hon'ble Tribunal be pleased to direct the Board of Respondent No. 1 not to hold any meeting till transfer of 16,619 undisputed shares lying in PPC's name to the Pralhad Chhabria Trust”.*

62. We also reproduce the prayers made in CP 47/2016 to appreciate the context in which MA 1449/2019 was filed. The relevant prayers are reproduced as here under:-

*“In view of the facts mentioned hereinabove, the Petitioners pray for the following reliefs:*

*a) That this Hon'ble Tribunal be pleased to declare that there was no meeting of the Board of Directors on 31st March 2016 and in view thereof, be also pleased to declare that all the resolutions allegedly passed at such meeting are null and void;*

*b) That this Hon'ble Tribunal be pleased to declare that the Resolutions passed during the alleged Board Meeting on 31st March 2016 is illegal and contrary to the provisions of the Companies Act, 1956 and Articles of Association;*

*c) That this Hon'ble Tribunal be pleased to declare that all the resolutions allegedly passed at the meetings held on 21st June 2016, 24th September 2016 and 28th October 2016 are null and void contrary to the provisions of the Companies Act, 1956 and Articles of Association;*

*d) That the Respondent Nos. 3 and 4 be removed from the Board of Directors of the Company;*

*e) That an Administrator(s) and/or Special Officer(s) and/or Independent Committee of Management be appointed to carry on the business of and to manage the affairs of Respondent No.1 for such period and on such terms and conditions as this Hon'ble Tribunal may deem fit;*

*f) That Independent Auditors be appointed to make an investigation into the affairs of Respondent No.1 and make a report to this Hon'ble Tribunal;*

*g) That appropriate orders be passed as this Hon'ble Tribunal thinks fit and proper to put an end to the oppression of the rights and interests of the Petitioners in Respondent No.1 Company;*

***INTERIM RELIEFS:***

*To ensure complete and effective adjudication of the instant proceedings by reason of the statements made hereinabove, the Petitioners seek the following interim reliefs pending the final hearing and disposal of this Petition:*

*a) That pending the hearing this Hon'ble Tribunal may be pleased to order and direct the Respondents to grant to the Petitioner No.1 inspection and provide*

*copies of the Register of Members and the Minutes Books of all the Director Meetings, Committee Meetings and Shareholder Meetings of the Company from 1st April, 2015 till date especially the Minutes of Meeting of the Directors held on 31st March 2016 and 21st June 2016 and the transfer forms and documents pursuant to which shares of Mr. Pralhad P. Chhabria were transferred to the name of the Respondent No.2;*

*b) That this Hon'ble Tribunal be pleased to stay the operation and effect of the resolutions passed in the Board Meeting dated 31st March 2016 and also stay the operation of the Minutes passed in the Meeting dated 21st June 2016 approving the Minutes of Board Meeting held on 31st March 2016;*

*c) That this Hon'ble Tribunal be pleased to stay the operation and effect of the resolutions passed on 28th October 2016, approving the Notice of the AGM dated 29th October 2016 and the Directors Report and the Annual Report of the Respondent No.1 for the financial year 2015-2016, passed at the Board Meeting held on 28th October 2016;*

*d) That this Hon'ble Tribunal may be pleased to stay the Annual General Meeting to be held on 21st November 2016.*

*e) That Respondent Nos. 2-4, through themselves and/or through their agents, servants or any other officer of Respondent No. 1 be restrained by an order of injunction to directly and/or indirectly deal with transfer, alienate, encumber and/or dispose off the assets, both movable and immovable of Respondent No.1 to any person/entity whatsoever.*

*f) That an Administrator(s) and/or Special Officer(s) and/or Independent Committee of Management be appointed to carry on the business of and to manage the affairs of the Respondent No.1 for such period and on such terms and conditions as this Hon'ble Tribunal may deem fit;"*

63. On the basis of the above-extracted prayers, we note that the appellants Deepak K Chhabria and Vini Deepak Chhabria have prayed for restraining the Respondents from acting in furtherance to the Requisition Notice dated 18<sup>th</sup> March 2019 issued by Respondent No. 2, the illegal Board Resolution passed on 3<sup>rd</sup> April 2019 and the Notice dated 9<sup>th</sup> April, 2019 calling for Extra-ordinary General Meeting of Respondent No. 1. We further note that, in the alternate, the appellants have prayed in MA 1449/2019 to stay the implementation of the resolutions passed in the EGM held on 03.05.2019, in case the EGM takes place, till the final hearing and disposal of the present petition and also restrain Prakash Pralhad Chhabria from exercising any voting rights in respect of 100,300 disputed shares of Orbit Electricals Company.

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64. We also note that the Impugned order has not granted the interim order on the prayer for restraining the respondents from holding the Extraordinary General Meeting on 03.05.2019 since the impugned order was pronounced on 31.12.2019, by which time the EGM had taken place, and further the Ld. NCLT has also not stayed the implementation of the resolutions passed in the EGM. The relevant portion of the impugned order is reproduced as hereunder:-

*“17. To conclude, it is pertinent to place a finding on record that the main Petition i.e. C.P. 47/241-242/NCLT/MB/2016 is yet to be decided. Thus, this Application has a limited scope of adjudication so that the merits of the main petition must not be influenced or in any manner may cause prejudice to either of the litigants. While deciding this Misc. Application we have taken due care and hereby clarify that the bone of contention as per this Application was pertaining to a Meeting held on 03.05.2019, which according to us deserves to be approved and at this stage no interference is required.*

*18. As a result this Misc. Application is hereby **Dismissed**”.*

65. The reliefs sought by the Appellants in CP No. 47/2016 relate to declaration of the Board of Directors meeting dated 31.03.2016 of Orbit Electricals as null and void, and to also declare that the resolutions passed in the *Company Appeal (AT) No. 64 of 2020*

said Board meeting are illegal and contrary to the provisions of The Companies Act, 1956 and the AoA of Orbit Electricals. The other reliefs sought relate to the removal of Mr. Sanjay Asher and Dr. Sunil Pathak from the Board of Directors and appointment of Administrator/Special Officer to carry on the business and manage the affairs of Respondent No.1 Company i.e. Orbit Electricals.

66. We also note that the Ld. NCLT considered the prayers for interim relief in CP 47/2016 and by order dated 18.11.2016 the following orders in the nature of ad-interim injunction till the next date of hearing were given. The relevant interim order is as given below:-

*“6. Heard both the sides, at length and carefully perused the Compilation filed in the light of the provisions of the Companies Act and the precedents cited. The case- laws cited supra have been studied, however, keeping brevity in mind and the urgency, legal points are not discussed in detail. After due consideration of the pleadings of both the sides, I am of the considered opinion that the urgency with which this Petition is mentioned today is justifiable because the AGM is called on 21<sup>st</sup> November, 2016 i.e. on coming Monday. In this forthcoming Meeting, certain major decisions are listed in the Agenda. Before an Order is pronounced, it is worth mentioning at this juncture that the arguments related to the Meetings held in the past of Respondent No.1 Company or the conduct of the Respondents, being a subject matter of Company Appeal (AT) No. 64 of 2020*

*the main Petition, it is not justifiable to take any decision or comment in any manner unless and until the pleadings are completed. As a result, the decision on the Interim Injunction shall confine to the reliefs now shortlisted during the proceedings. The Interim Order follows as under:*

*i) Keeping in mind the consent given by the Respondent No. 1 and other Respondents, an inspection can be granted to the Petitioner No.1 on or before 30th November, 2016 at the place of business of the Respondent No.1 Company during working hours any day barring holidays. Inspection shall be conducted in an amicable manner and the Petitioner as well as the Respondents are expected to maintain the peace and harmony among themselves. The Petitioner No.1 shall also be provided copy of the "Register of Members", Minutes Book of Meetings (Shareholders Meetings Minutes and Board of Directors Meetings Minutes), Transfer Form, if any, pursuant to which shares of Late Mr. Pralhad P. Chhabria alleged to have been transferred, for the period w.e.f. January, 2016 to 16<sup>th</sup> November, 2016, the period under dispute as alleged in the impugned Petition;*

*ii) It is hereby ordered that the AGM shall be conducted on 21<sup>st</sup> November, 2016 to discuss the ordinary business of the Respondent No. 1 Company and to take necessary steps connected with the*

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*statutory compliances, if any, required to be made urgently,*

*iii) In respect of an Interim Injunction related to the assets, I am of the view that the Petitioner has moved for the Interim Injunction in respect of the assets - both moveable and immovable-of the Respondent No.1 Company not to be disturbed by the Respondents. Resultantly, the Respondent No.1 Company and other Respondents are hereby restrained not to alienate the moveable assets as enlisted in the Agenda of the AOM scheduled to be held on 21<sup>st</sup> November, 2016 now placed before this Tribunal. This restrain is imposed especially in respect of the proposed special business through, which a sum of Rs.12 crores is to be alienated to an institution. Further a sum of Rs.9.90 crores not to be written off, ICD holding of the Respondent No.1 Company. This Restraining Order is passed to prevent any loss which may be irreparable and prejudicial to the interest of the Petitioner.*

*7. This ad-interim injunction shall remain in operation till the next date of hearing.”*

67. It is clear from the ad-interim injunction given by NCLT vide order dated 18.11.2016 that EGM dated 21.11.2016 was allowed to be conducted to discuss only the ordinary business of Orbit Company Appeal (AT) No. 64 of 2020

Electricals and to only take necessary steps connected with statutory compliances required to be made urgently. Further, Orbit Electricals and other Respondents were restrained from not alienating the moveable assets as listed in the agenda of EGM scheduled to be held on 21.11.2016. The essence of this ad-interim injunction, even though granted only till the next date of hearing, is that Ld. NCLT, after considering and noticing relevant facts and arguments of the parties, allowed the EGM dated 21.11.2016 to be conducted to only discuss the 'ordinary business' and take necessary approvals connected with the filing of the statutory compliances. The ad-interim injunction also restrained the Respondents from alienating the moveable assets to those that were enlisted in the agenda of the EGM to be held on 21.11.2016. All this points to the fact that the NCLT, while granting ad-interim injunction did not, prima facie, consider the case of the petitioners strong enough to give them a free hand in holding the Board meeting to discuss various issues including alienation of movable properties.

68. At this stage, it is also worth mentioning that a Miscellaneous Application MA 645/2017 was filed by Orbit Electricals and Prakash Pralhad Chhabria in CP 47/2016 primarily challenging the maintainability of CP 47/2016. In the order dated 05.12.2018 in the said MA 645/2017 the Ld. NCLT held the following regarding maintainability of the said petition CP 47/2016:-

*“6.7. On the question of maintainability of a  
"Maintainability Application" so far law pronounced  
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*by several Hon'ble Courts is unambiguous and universally acceptable that where a decision on an issue of law depends upon a decision of facts, it cannot be tried as a preliminary issue in Maintainability Application. A vexed question of legality cropped up on the footing of mixed issue of law and fact cannot be treated as a preliminary issue. Therefore, in some decisions as cited from the side of the Respondent of this Application (Petitioner-1) a legal proposition has been laid down that Legislature confers no jurisdiction on a Court to try a Suit on mixed issue of Law and Facts as preliminary issue and not to be tried as preliminary issue. The stage for examination of such matter shall be when a Petition is listed for hearing for adjudication on facts as well as on law. At the preliminary stage a decision on 'maintainability' would not advance the cause of 'Equity' and 'Justice'. It is also a settled law that a Litigant must not be threw out of litigation at the very threshold without providing an adequate opportunity of hearing, unless and until the Suit by itself is void and non-maintainable ab initio.*

*The decisions cited from the side of the Applicant have also been perused. On careful reading it is noticed that due to the peculiar situation of this case the case law cited are very much distinguishable on facts. The main Petition is neither granting title to any of the party nor going to establish the genuineness of a Will but shall attempt to address the allegation of*

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*Oppression and Mismanagement. In one of the decisions relied upon from the side of the Applicant it has been laid down that a dispute as regards right of inheritance between the parties is eminently a Civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders or mismanagement. In the present scenario this apprehension is ill-founded because the “main Petition is not about a Civil dispute to settle right of inheritance among the Chhabria brothers. Rather, the relief is confining to one aspect i.e. demanding an adjudication on the validity of the Board meeting of 31.03.2016. The decisions cited on behalf of the Applicant are far from the facts of this case, hence needs no elaborate discussion in this Judgment.*

*8. In the light of the detailed discussion and on due consideration of the case laws discussed in foregoing paragraphs, this Bench is of the conscientious view that the Petition CP 47/241, 242, 243(b), 244/(MB)/2016 is maintainable for due adjudication under the provisions of Companies Act, 2013, hence listed for hearing on 27.03.2019. This Miscellaneous Application is, in the result, 'dismissed'. A cost of 25,000/- Imposed on the Applicants to be paid to the other side”.*

69. The above order of Ld. NCLT was challenged by Prakash Pralhad Chhabria and Orbit Electricals before NCLAT in CA (AT) Company Appeal (AT) No. 64 of 2020

No. 39/2019 wherein the following was observed and held in the NCLAT order dated 13.03.2019.

*“3. Learned counsel appearing on behalf of the respondents (appellants herein) referred different pleading to suggest that it is a family dispute and do not relate to oppression and mismanagement. However, as the question of oppression and mismanagement is pending before the Tribunal, we are not inclined to deliberate on such issues which are required to be determined by the Tribunal on the basis of the pleadings and other evidences on record. Therefore, we are not inclined to interfere with the impugned order dated 5.12.2018.*

*4. However, taking into consideration the fact that the company petition is pending since November, 2016 and more than 2 years have passed, we direct the parties to appear before the Tribunal for early hearing of CP No.47/2016 on 27th March, 2019 and pursue their claim without asking for unnecessary adjournment. The Tribunal while considering the main petition will pass order uninfluenced by impugned order dated 5.12.2018 and observations made therein. It will be open to the respondents (appellants herein) to re-agitate the issue that no case of oppression and mismanagement has been made out and thus a family dispute.*

*5. At this stage learned counsel for the petitioners (respondents herein) submitted that the impugned order is a detailed order. However, if that be so then we have to set aside the impugned order. However, as we have not interfered with the impugned order, we have directed the Tribunal to decide the case on merit uninfluenced by impugned order dated 5.12.2018.*

*6. All contentions raised by the parties including contentions raised by respondents are left open for determination by the Tribunal. However, as cost of Rs.25000/-imposed was uncalled for the said part of the impugned order dated 5.12.2018 in so far as the imposition of cost is set aside. The appeal stands disposed off with the aforesaid observations and directions. No costs”.*

70. It is noted from the order dated 05.12.2018 passed by NCLT in MA 645/2017 that the Ld. NCLT considered that the relief sought in CP 47/2016 was regarding the validity of Board meeting dated 31.03.2016 and not about a civil dispute to settle the right of inheritance among the Chhabria brothers. Further in the order in appeal dated 31.03.2019 it was again clearly held that the question of oppression and mismanagement was pending before NCLT and the NCLAT declined to deliberate on issues raised in CP 47/2016 and directed the parties to appear before the Tribunal for early hearing of CP 47/2016 while, inter-alia upholding the impugned order dated 05.12.2018 and holding that the said Company Petition was maintainable.

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71. It is clear from the above order of this Tribunal that the petition CP No. 47/2016 was held maintainable and further the parties were asked to cooperate in hearings for early settlement of the issues raised in the company petition. It, therefore, would have been in the interest of both the parties and the company that the petition would have been adjudicated but unfortunately that could not happen till now. Therefore, if the respondents in this appeal, taking advantage of the pendency of the CP No. 47/2016, start effecting some very basic and fundamental changes in the AoA of the company Orbit Electricals, moreso when the proposed changes are not aligned with the intention of the family patriarch PPC in how the entire family business may be managed as exhibited in documents like the Trust Deed, MoU, it would result in making permanent changes in the management of the family – run companies, to the complete and permanent detriment and disadvantage of the appellants. Thus the crucial thing would be early adjudication of CP No. 47/2016 which would settle the issues of contention allowing the company Orbit Electricals. Thus, we are of the view that till orders in CP No. 1449/2019 are issued, prima facie, the case in MA 1449/2019 would lie in favour of the appellants.

72. Additionally, in order to look at the issue whether, prima facie, the case of the appellants in obtaining an interim stay order on the holding of EGM dated 3.5.2019 and implementation of resolutions passed therein if it was held we also peruse the other orders that have a direct bearing on the matter. In the background of all the above mentioned orders and judgments, all *Company Appeal (AT) No. 64 of 2020*

of which have bearing on CP 47/2016, we proceed to consider the impugned order in the light of the prayers made in MA 1449/2019. The issue noted by us in this regard is that the appellants had challenged the holding of EGM on 03.05.2019 which was as per the decision in the Board meeting held earlier, and in case such a meeting was allowed to be held, then restraining the Respondents from acting towards implementation of the resolutions passed in the EGM dated 03.05.2019. We note that the Ld. NCLT allowed for holding of the EGM on 03.05.2019 without interfering at that stage for the holding of the said EGM. We also note that in MA 1449/2019, an alternate relief had been prayed that if the EGM dated 03.05.2019 thus take place, then the resolutions passed in the EGM may be stayed for implementation. On this prayer we note that the impugned order is silent even though it was given much after the holding of the EGM on 03.05.2019 therefore, this appeal against the impugned order is regarding all the prayers made in MA 1449/2019.

73. At this stage, we want to make it clear that this judgment is confined only to the prayers made in MA 1449/2019 and the impugned order of Ld. NCLT on this Miscellaneous Application. We therefore steer clear for either adjudicating or making any comments or expressing any views or opinion on the veracity /authenticity or the legality of the 'gift deed, securities transfer form, Articles of Association and the trust deed' and they would be mentioned in our Judgment only to the extent they are relevant to the context of the judgment.

74. We note that MA 1449/2019 was basically with prayers to restrain the Company Orbit Electricals(R-1) from acting on the *Company Appeal (AT) No. 64 of 2020*

requisition notice dated 18.03.2019 and restraining the Company Orbit Electricals(R-1) from acting on the Board resolution passed on 03.04.2019 and also the notice dated 09.04.2019 calling for EGM of Orbit Electricals. It is correct that on the basis of notice dated 09.04.2019 the EGM was actually held on 03.05.2019 in which resolutions mainly relating to amendment and deletion of articles 59 & 60 respectively of the AoA of Orbit Electricals were approved. These articles 59 and 60 have been claimed by the Appellant to be 'entrenched articles' in accordance with Section 5 of the Companies Act, 2013 Section 5 of The Companies Act, 2013 is reproduced below:-

**“5. Articles.—** (1) *The articles of a company shall contain the regulations for management of the company.*

(2) *The articles shall also contain such matters, as may be prescribed:*

*Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.*

(3) *The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.*

*(4) The provisions for entrenchment referred to in subsection (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.*

*(5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.*

*(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.*

*(7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.*

*(8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if*

*they were contained in the duly registered articles of the company.*

*(9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act”.*

*“59. Authority to represent the Company at any and all General/Court Convened Meetings of the Shareholders and Meetings of the Debenture holders of respective Bodies Corporate (including adjournment(s) thereof, if any) whose shares and Debentures are held and/or would be held by the Company and any other matters pertaining to the respective companies shall always vest with Mr. Pralhad P. Chhabria and only upon Mr. Pralhad P. Chhabria either failing to attend any such meetings and exercising the said rights vested in him under this Article or upon his failing to appoint some other individual of his choice to act as Proxy to so attend and represent the Company at any such meeting(s) in respect of any such Bodies Corporate or upon his ceasing to be Director and Chairman of the Company for any reason whatsoever, the said authority shall, in such event, be as mentioned below, and such authority shall remain in force till the liquidation or winding up of the Company.*

Name of Company		Authorised Representative
Finolex Cables Ltd.	-	Mr. Deepak K. Chhabria
Finolex Industries Ltd.	-	Mr. Prakash P. Chhabria
Finolex Plasson (India) Ltd.	-	Mr. K.P. Chhabria
I2IT Pvt. Ltd.	-	Mrs. Aruna M. Katara.
Finolex Infrastructure Ltd.	-	Mr. Pralhad P. Chhabria or Mr. Kishan P. Chhabria
Finprop Advisory Services Ltd.	-	Mr. Pralhad P. Chhabria or his nominee
Magnum Machine Technologies Ltd.	-	Mr. Pralhad P. Chhabria or his nominee
Any other Company		Mr. Pralhad P. Chhabria or his nominee

*60. This Memorandum of Association and Articles of Association of Orbit Electricals Pvt. Ltd. approved by the Company in its General Meeting held on September 8, 2012 and as altered and amended in Company Appeal (AT) No. 64 of 2020*

*general meeting held on November 23, 2013 and as finally altered and amended in general meeting held on September 30, 2014, shall hereinafter not be amended through alteration, addition or deletion of any clauses herein, during the life of 60 years of the Pralhad Chhabria Trust or any further extension of 60 years or such longer period as may be permitted under the laws then prevailing in the country.*

*For this purpose, the present Chairman of the Company, Mr. Pralhad Parsram Chhabria, has deposited copy of the Memorandum of Association and Articles of Association duly signed/initialed by him in original and as updated from time to time, for identification with four members of the Company i.e. Mr. Prakash P. Chhabria, Mr. Deepak K. Chhabria, Mr. Vijay K. Chhabria and Mrs. Aruna M. Katara”.*

75. It is evident from the above extracted articles that they include the names of Mr. Deepak K Chhabria as Authorized Representative of Finolex Cables, Mr. Prakash P Chhabria as AR of Finolex Industries FIL, Mr. KP Chhabria as AR of Finolex Plasson (India) Ltd. and Mrs. Aruna M Katara as AR of I2IT Pvt. Ltd. Article 60 makes it clear that the Memorandum of Understanding and Articles of Association of Orbit Electricals which have been approved by the Company and its general meeting held on 08.09.2012 and alter an amendment in general meeting held on 30.09.2014 shall not be amended through alteration, addition or deletion of any clauses here in the Articles of Association during the life of 60 years of the Pralhad Chhabria Trust or any further

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extension of 60 years or such longer period as may be permitted under the laws then prevailing in the Country.

76. A point has been raised by the Learned Senior Counsel for Appellants that Articles 59 and 60 are entrenched articles and therefore, they could not have been amended and deleted respectively without the positive vote of all the members present and voting in the EGM dated 3.5.2019. On the other hand, the Learned Senior Counsels for Respondents have claimed that for an article to be considered as ‘entrenched article’, it is necessary under the Companies Act, 2013 that such a stipulation is made under section 5 of the Companies Act, 2013. It is noted by us that the concept of ‘entrenched articles’ was not present in the erstwhile Companies Act, 1956 and only through section 5(3) the concept of ‘entrenched articles’ has been introduced in Companies Act, 2013. The relevant sub-sections (3), (4) and (5) of Section 5 are as follows:-

**“5. Articles**

xx xx xx xx

*(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.*

*(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by*

*an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.*

*(5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.”*

77. We further note that Articles 59 and 60 were re-approved after enactment of the Companies Act, 2013 by a unanimous vote of all the members present and voting in a General Meeting.

78. The Learned Senior Counsel for Respondents has argued that the Articles 59 and 60 were not designated as ‘entrenched articles’ as neither a specific notice under section 5(5) was given and moreover, only four out of thirteen members attended the EGM of Orbit Electricals Pvt. Ltd. held on 30.9.2014, which does not fulfil the requirement of section 5(4). On the other hand, the Learned Senior Counsel for Appellants has stated that an article similar to the present Article 60 was first introduced in the year 2012 and when the Articles were amended on 30.9.2014 in the AGM of Orbit Electricals Pvt. Ltd., section 5 of the Companies Act, 2013 had already come into being and notice for amendment of article 60 was given under section 14 and other provisions of the Companies Act, 2013 which includes section 5 also. He has further contended that in the AGM dated 30.9.2014, the resolution to amend the articles was passed unanimously by all the members present and voting in the said meeting and therefore, the requirement of sub-sections (3) and (4) of Section 5 is fully

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satisfied in that it was a unanimous resolution of the members present and voting. He has further, claimed that the Company is required to intimate the Registrar of Companies in the prescribed form MGT-14 under section 5(5) of the Companies Act, 2013 and Rule 10 of the Companies (Incorporation) Rules, 2014, which was done as is evidenced by the reply of Respondent 2 at pp.930-932, Vol. V.

79. We are, therefore, satisfied after considering the arguments and averments that Articles 59 and 60 can in a 'prima facie' manner be considered as 'entrenched articles' and therefore, their amendment/deletion in the EGM dated 3.5.2019 could have been done, after satisfaction of the provisions of sub-sections (3) and (4) of section 5 of the Companies Act, 2013. In particular, sub-section (4) of section 5 of the Companies Act, 2013 makes it necessary that an amendment in the Articles should be agreed to by all the members of the company, in the case of a private company. In view of the fact that Orbit Electricals Pvt. Ltd. is a private company, we note that since the Appellant Deepak Kishan Chhabria did not agree to the amendment/deletion of articles 59 and 60 in the EGM dated 3.5.2019, such amendment/deletion cannot be considered as legal since "all" members of the company present and voting did not vote in favour of the amendment/deletion.

80. The Learned Senior Counsels for Respondents have raised the issue of Civil Suit No. 1418/2016 (Kishan P. Chhabria & Anr. vs. Prakash P. Chhabria & Ors.), which is regarding enforcement and specific performance of the family arrangement and also, inter alia, challenging the validity of the gift deed dated 28.3.2016. The *Company Appeal (AT) No. 64 of 2020*

Learned Senior Counsels for Appellants have raised the issue of Civil Suit No. 1312 of 2017, which is relating to the shares held by Prakash P Chhabria i.e. 116922 shares which were transferred on 13.2.2012 in favour of Prakash P. Chhabria Trust, where Vijay Chhabria is one of the beneficiaries. Regarding the Civil Suit No. 1418/2016, we are of the view that it is a suit involving a civil dispute including the validity of gift deed dated 28.3.2016. In our view, the present appeal is regarding interim order in connection with holding of the EGM dated 3.5.2019 and therefore, we do not think that the judgments in the Civil Suit No. 1418/2016 will have any bearing in the present case. The Civil Suit No. 1312/2017 also relates to an incident and event of transfer of 116922 shares on 13.2.2013, much before the board meeting dated 31.3.2016 held, and therefore, any adjudication in the Civil Suit will not have any bearing on the application for Interim Relief in connection with EGM dated 3.5.2019 wherein the basic issue of shareholding of Prakash P. Chhabria in Orbit Electricals is an important.

81. Further, we note that, in the Special Civil Suit No. 1372/2017 it has been held that the merits of the Appellant's case pending before NCLT, Mumbai (which is CP NO. 47/2016) and District Court, Pune in Special Civil Suit 1418/2016 agitate different causes of actions and therefore, they shall be decided on their own merit. We are, therefore, of the view that the case of Appellants in the Special Civil Suit is different from that of the Appellant before Hon'ble NCLT in CP 47/2016 and therefore, civil proceedings which either seek to challenge the validity of the gift deed or transfer of 116922 shares on 13.2.2013 in favour of Pralhad Chhabria Trust are issues different from the one which is the subject of MA 1499/2019 and also CP 47/2016.

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82. We also note that MA 1499/2019 is an application for interim order in CP 47/2016, when this company petition is still pending. The issue whether board meeting on 31.3.2016 was actually held is the subject matter of CP No. 47/2016. Therefore, we are of the view that the judgments in the civil suits that arose from different causes of action, will not have any bearing on the adjudication of MA 1499/2019 which is only about grant of interim stay.

83. Now, we consider the EGM dated 3.5.2019, wherein the said Articles 59 and 60 were amended. The notice dated 9.4.2019 for requisitioning the EGM on 3.5.2019 is attached at pp. 208-217 of Convenience Compilation filed by the Appellant. A perusal of the notice for requisitioning of the EGM shows that item 1 relates to amendment of Article 59 and item 2 relates to deletion of Article 60.

84. Further, the statement pursuant to section 102 of the Companies Act, 2013 regarding “Special Business” gives details of Articles 59 and 60 and the proposal for amendment/deletion to be considered in the EGM. Further, we note that the resolutions for amendment/deletion of Articles 59 and 60 were approved in the EGM dated 3.5.2019 and the same fact has been noted in paragraph 6 of the Impugned Order.

85. It is understood that the special resolutions, by which articles 59 and 60 were amended and deleted respectively, were not carried out through unanimous resolution as Deepak Chhabria did not vote in favour of the resolutions. Therefore, it is clear that the requirement of section 5(4) of the Companies Act, *Company Appeal (AT) No. 64 of 2020*

2013 was not met where it is laid down that the amendment in the said articles should be agreed to by all the members of the company in the case of a private company. Thus, prima facie we are of the view that articles 59 and 60 are in the nature of 'entrenched articles' and therefore the resolutions regarding their amendment/deletion in the manner they were approved in EGM dated 3.5.2019 do not satisfy the requirement of section 5(4) of the Companies Act, 2013.

86. The Learned Senior Counsels for Respondents have cited the judgment of Hon'ble Apex Court in the matter of **Life Insurance Corporation of India v. Escort Ltd. and Others [1986 (1) SCC 264]**, wherein it is held that only shareholders of the company can maintain a case regarding their proprietary rights in relation to oppression and mismanagement. We note that in the present case, the maintainability of CP 47/2016 has been held by Learned NCLT by its order dated 5.12.2018, which has been further upheld by Hon'ble NCLAT vide order dated 13.3.2019. In such a situation, we do not think it is necessary to get into the issue of whether an AR of a company can exercise proprietary rights as a shareholder as against the rights of the company, which may be a shareholder since CP 47/2016 has been held to be maintainable.

87. The Learned Senior Counsel for Appellants has cited the judgment of Hon'ble Supreme Court in the matter of **S.P. Jain v. Kalinga Tubes Ltd (supra)**. wherein also it is held that the right to member of the company to comply with the conditions of the erstwhile Companies Act, 1956 in section 399 for applying to the court for relief under the Companies Act, 2013 as may be appropriate in the circumstances of the case. We are of the view *Company Appeal (AT) No. 64 of 2020*

that since Hon'ble NCLT in CA 39 of 2019 was upheld by the order dated 5.12.2018 in MA 645/2017 that the present application by the Appellants is maintainable, the judgment in the matter of **S.P. Jain v. Kalinga Tubes Ltd. (supra)** may be noted.

88. The Learned Senior Counsel for Respondents has referred to the judgment of Hon'ble Supreme Court in the matter of **Vasudev Ramchandra Shelat versus Pranol Jayanand Thakar and Others [(1974) 2 Supreme Court Cases 323]** in support of his claim that in the absence of registration of the gift deed, the delivery of the documents to the donee with the clear intention to donate, would be enough to confer upon the donee a complete and irrevocable right. We are of the view that since the existence or authenticity or otherwise of the gift deed is not being tested in MA 1499/2017, we do not think that this judgment will be relevant in the MA 1449/2019.

89. The Learned Senior Counsel for Respondents has also brought to our attention judgment of Hon'ble Delhi High Court in the matter of **Ravi Raj Gupta and Others Versus Hans Raj Gupta & Co. (P) Ltd. and Others [2009 SCC OnLine Del 381]** in support of his claim that the Appellants and the Respondents belong to the same family and therefore, knew each other interests and hence, the dispute is primarily a family dispute. The Learned Counsel for Appellants has rebutted the application of this judgment by stating that in the present case, the dispute is relating to non-holding of Board meeting dated 31.3.2016 and therefore, the question that both the parties are primarily from the same family, does not have any on the issue that is raised in the present matter.

90. We have made every effort not to express any final opinion regarding the veracity or otherwise of the Gift Deed and Securities Transfer Form and also the dispute in relation to the Trust Deed, MoU (between FCL and FIL), Will of Pralhad P. Chhabria and the Articles of Association of the company Orbit Electricals Pvt. Ltd. as well as the question whether Board Meeting dated 31.3.2016 was actually held. We have only adverted to the Articles of Association of Orbit Electricals Pvt. Ltd. since the issue of holding of EGM on 3.5.2019 and the resolutions passed therein are of significance insofar as MA 1499/2019 was concerned. We also would like to state that any views or opinion expressed by us even inadvertently regarding the merits of the case in relation to CP 47/2016 may not be taken into consideration as a final view while adjudicating CP 47/2016.

91. In order to consider whether a 'prima facie' case has been made out in favour of the Appellants regarding the EGM dated 3.5.2019 and the implementation of the Resolutions passed in this EGM, we also look at the voting share of members present and voting in the EGM. It is noted that the shareholding of Prakash Pralhad Chhabria in R-1 company became 70.1% resulting in his having achieved majority shareholding in R-1 Company, was due to the fact that a Gift Deed was executed in his favour by his father Pralhad P. Chhabria on 28.3.2019, and subsequently, the Securities Transfer Form was also signed and executed on the same date i.e. 28.3.2019.

92. Further, the gift of shares by PPC to PC and the share transfer on account of the Gift Deed and the Securities Transfer Form were approved in the Board meeting dated 31.3.2019, *Company Appeal (AT) No. 64 of 2020*

whereafter Prakash P. Chhabria became 70.1% shareholder in Orbit Electricals Pvt. Ltd. The Learned Senior Counsel for Appellants has pointed to some grave and serious deficiencies in the execution of the Gift Deed and the Securities Transfer Form, and the manner in which these were approved to argue they were highly suspicious documents, and only in order to give effect to the gift deed and the share transfer the said Board meeting was held on paper but it actually did not take place on 31.3.2019.

93. The Learned Senior Counsel for Appellants has brought to our attention transcript of telephone conversation between Deepak Kishan Chhabria and Mrs. Meena D'sa (attached at pp. 98-106 of the Convenience Compilation of Appellants) which goes to show that at the time the purported board meeting was supposed to be taking place, Mrs. Meena D'sa was engaging with Deepak Kishan Chhabria in a long telephone conversation, wherein the issue of inability of Pralhad P. Chhabria to attend and chair the said board meeting also came up which clearly meant that the said meeting did not take place. We find force in this argument of the Ld. Senior Counsel for Appellants.

94. We further note that the items relating to the resignation of Pralhad P. Chhabria from the chairmanship of Orbit Electricals Pvt. Ltd. and the transfer of 100,300 gift shares from Pralhad P. Chhabria to his son Prakash P. Chhabria on account of the Securities Transfer Form no. "SH-4" were not notified by the transferor to the company as is required under Article 23(A) of the Articles of Association or by the company Orbit Electricals Pvt. Ltd. to the invitees of the Board meeting well before the Board meeting. These acts, he has argued, make the existence of the Board

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meeting highly suspect. These actions raise serious doubt about the holding of the said Board meeting as some very serious business transacted in the said Board meeting without prior notice to the members of the Board of Directors. The actual holding or otherwise of the board meeting on 31.3.2019 is to be examined while adjudicating C.P. No. 47 of 2016. We are only expressing doubt about the existence of this meeting in a prima facie manner.

95. We also note that the Securities Transfer Form (attached at pp.523-525 of the Convenience Compilation of the Appellant) and the Gift Deed dated 28.3.2016 (attached at pp.91-94 of the Convenience Compilation) were all executed on the same date i.e. 28.3.2016, and perhaps before the purported Board meeting took place at 10.30 am on the day. We further note from the Securities Transfer Form that the value of stamp affixed was Rs. 3.60 crores, and while the Securities Transfer Form signed and executed on 28.3.2016 shows that this stamp was affixed on the same date, the stamp paper (attached at pg. 25-97 of the Convenience Compilation of Appellant) shows that it was purchased on 30.3.2016. Thus, apparently the stamp paper was purchased two days later but in a seemingly haste the Transfer Form for shares was signed on 28.3.2016.

96. It is not clear as to why there was such secrecy about the Gift Deed and Transfer Form approval being taken up in the Board meeting and further why incorrect mention regarding affixing of stamp duty was made in the Transfer Form. We further note that the amount of stamp duty required to be paid for the said transfer of shares was in the range of Rs. 30 crores which is evidenced by a later Interlocutory Application filed before NCLT regarding the *Company Appeal (AT) No. 64 of 2020*

deficient value of stamp duty affixed on the Securities Transfer Form. These facts too, raise doubt whether the Board meeting actually took place or just the papers to show the Board meeting were created to transfer shares in the name of Prakash P. Chhabria as is alleged by the Appellants.

97. In such a scenario, as discussed in detail above, we hold the prima facie view that the Gift Deed, Securities Transfer Form and the holding of Board meeting on 31.3.2016 are all under a cloud of suspicion, especially since they sought to override the stated view and intention of PPC to apportion the business of the Finolex Group companies between his own children and nephews. Of course, the non-holding of Board Meeting on 31.3.2016 will be decided by the NCLT in CP 47/2016 which is pending.

98. We find that the voting in the EGM dated 3.5.2019 took place on the basis of the fact that Prakash P. Chhabria came to hold 70.1% of the total shareholding of the Orbit Electricals Pvt. Ltd. As discussed in detail above, if the transfer of shares in favour of the Prakash P. Chhabria itself is not legally established as there is doubt whether the Board meeting did actually take place on 31.3.2019, we are of the view that the Appellants have been able to make out a prima facie case for not implementing the resolutions passed in the EGM dated 3.5.2019 in their favour which were approved assuming the shareholding of PC as 70.1% by virtue of approvals in Board meeting on 31.3.2016.

99. On the parameter of balance of convenience, we note that in accordance with the Articles of Association, as they existed prior to the EGM dated 3.5.2019, Deepak Kishan Chhabria was the

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Authorised Representative (“AR”) of Orbit Electricals in the Board of Finolex Cables Ltd. and he continued to be so till the time this article was amended. After the amendment of Article 59 and deletion of Article 60, the Board of Orbit Electricals will, in all likelihood, change the AR in FCL as PC will use his majority shareholding in Orbit Electricals to effect the change of AR. Therefore, the holding of EGM on 3.5.2019 and the decisions taken therein will upset the balance to the disadvantage of Deepak Chhabria. Therefore, the balance of convenience lies in favour of Deepak Chhabria, the appellant who by virtue of being AR of Orbit Electricals in FCL has been able to continue as Chairman of FCL.

100. With regard to the issue whether irreparable loss would accrue to the Appellant, we note that while Deepak Kishan Chhabria may continue as Chairman of Finolex Cables Ltd. on account of the Articles of Association as they existed prior to EGM dated 3.5.2019, Trust Deed and the MoU entered into between FCL and FIL. Amendment and deletion of articles 59 and 60 respectively would not only tilt the balance of convenience against Deepak Chhabria but it may also cause irreparable loss to him upon his removal as Chairman of FCL. Thus the amended Articles of Association of Orbit Electricals Ltd. have the potential to change the entire scenario by pushing him out from the management of Finolex Cables Ltd.

101. In the light of detailed discussion in the aforementioned paragraphs, we are of the clear opinion that the Learned NCLT has not been able to appreciate the facts insofar as they relate to the reliefs claimed in MA 1449/2019, and therefore, have arrived at

an incorrect conclusion by allowing the holding of EGM dated 3.5.2019 resulting in the decisions taken therein.

102. We are, therefore inclined to pass an order in favour of the Appellants by directing that, since EGM dated 3.5.2019 has taken place, the resolutions passed in the said EGM may not be acted upon and such an interim order should continue till the time CP No. 47/2016 is finally decided.

103. We also want to mention that while reserving this judgment after conclusion of arguments of all the parties, this bench gave the following order on 21.09.2023:-

**“O R D E R**

*Hearing resumed. Mr. Ramji Srinivasan, learned senior counsel appearing for the appellant resumed his argument in rejoinder and concluded the same. It is noted that hearing in the present appeal has taken place continuously on number of days and considering the voluminous nature of the appeal and detailed arguments advanced by learned senior counsel from all the side it is difficult to immediately deliver judgment and as such judgement is reserved, delivery in which may take sometime. However, considering the submission advanced by learned senior counsel for the appellant that e-voting for AGM is scheduled to commence from 26th September, 2023 wherein authorized representative of Orbit Electricals Pvt Ltd/Respondent No.1 may participate as well as the fact that decision taken in the EOGM of Orbit Electricals Pvt Ltd held on 3rd May, 2019 is subject 2 matter of the present appeal, we propose to direct the parties to maintain Status Quo as was available prior to EOGM dated 03.05.2019 till the judgement is delivered by this Tribunal. Normally after admission of appeal and at the time of hearing such order is not required to be passed but for the ends of justice once we are reserving judgement and delivery of judgement may take some reasonable time, we feel it is necessary to pass the*

*aforesaid interim order while reserving the judgement. Judgement is reserved.*

*Learned counsels for all the parties are granted liberty to file Notes of Written Submissions with citations, if any, within a period of 10 days. We expect that written submission on behalf of all the Respondents may be filed in consolidated form.”*

104. The party Orbit Electricals Pvt. Ltd. preferred Civil Appeal No. 6108 of 2023 with Civil Appeal No. 6176 of 2023 against the order dated 21.9.2023 which is extracted above, on which Hon’ble Supreme Court was pleased to pass the following order:-

“O R D E R

- 1. The National Company Law Tribunal dismissed the application filed by the first respondent for the grant of interim relief by an order dated 31 December 2019. The first respondent is in appeal before the National Company Law Appellate Tribunal. Admittedly, no interim relief operated in favour of the first respondent during the pendency of the appeal.*
- 2. The appeal has been heard and orders were reserved by the NCLAT on 21 September 2023. However, while reserving orders, the NCLAT has directed the parties “to maintain status quo as was available prior to EOGM dated 03.05.2019” till the judgement is delivered. No reasons have been indicated by the NCLAT even prima facie for issuing the interim order, particularly in the context of the fact that there was no interim relief operating since the dismissal of the application for interim relief on 31 December 2019. It is admitted that no relief was obtained by the first respondent in the proceedings before the Bombay High Court, as well.*
- 3. In the circumstances, we vacate the interim direction as noted above. The Annual General Meeting (AGM) of the*

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*company, Finolex Cables Limited is to take place on 29 September 2023. Any action which is taken on proposed resolution No 4 pertaining to the appointment of the Executive Chairperson shall be subject to the outcome of the appeal which is pending before the NCLAT.*

*4. Subject to the aforesaid modifications, the appeals are allowed and the impugned order is set aside to the aforesaid extent.*

*5. Pending applications, if any, stand disposed of.”*

105. The above order of Hon’ble Supreme Court was noted by us.

106. On the basis of discussion relating to Company Appeal (AT) No. 64 of 2020 as detailed in aforementioned paragraphs, we thus set aside the Impugned Order and dispose of this appeal accordingly.

107. There is no order as to costs.

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

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi**

**13<sup>th</sup> October, 2023**

Sr

*Company Appeal (AT) No. 64 of 2020*

ITEM NO.13

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No.1195/2023 In C.A. No.6108/2023

ORBIT ELECTRICALS PRIVATE LIMITED

Petitioner(s)

VERSUS

DEEPAK KISHAN CHHABRIA AND ANR & ANR.

Respondent(s)

Date : 13-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Neeraj Kishan Kaul, Sr. Adv.  
Mr. Abhinav Agrawal, AOR  
Mr. Shikhil Suri, Adv.  
Mr. Ankur Saigal, Adv.

For Respondent(s) Dr. Abhishek Manu Singhvi, Sr. Adv.  
Mr. E.C. Agrawala, AOR

UPON hearing the counsel the Court made the following  
O R D E R

- 1 In the course of the morning session today, the following order was passed by this Court:

"1 The order passed by this Court on 20 September 2023 sets aside the order of the NCLAT to the extent that it directed the restoration of the status quo ante at a stage

Signature valid

Digitally signed by  
Chaitan Kumar  
Date: 2023.10.13  
16:52:31 +05'30  
Reason:

when the arguments were concluded and the matter was reserved for judgment. However, this Court observed that all actions which may be taken would abide by the final result of the proceedings before NCLAT.

- 2 We are prima facie of the view that the mandate of the order cannot be defeated by deferring the declaration of the result till a judgment is rendered by NCLAT.
  - 3 We accordingly issue notice returnable on 30 October 2023.
  - 4 Subject to such further directions as may be issued by this Court, personal presence of the contemnor(s) is presently dispensed with.
  - 5 The scrutinizer shall, in compliance with the order of this Court proceed to declare the result of the Annual General Meeting which was held on 29 September 2023 forthwith.
  - 6 The NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the Annual General Meeting has been declared.”
- 2 The above order of this Court was uploaded at 1.55 pm this afternoon.
  - 3 Mr Neeraj Kishan Kaul and Dr Abhishek Manu Singhvi, senior counsel and Mr Shikhil Suri, counsel joined in stating that counsel, Mr Ankur Saigal (who is personally present before this Court) produced the order of this Court before the National Company Law Appellate Tribunal (NCLAT) at 2 pm with a request that the judgment should not be delivered until report of the scrutinizer is made available.
  - 4 The Court has been apprised of the fact that the Bench of the NCLAT consisting of Mr Rakesh Kumar and Dr Alok Srivastava proceeded to deliver the order. If what is stated is correct, this will clearly constitute the defiance

of the order of this Court by the NCLAT.

- 5 At this stage we are not commenting on the merits of the submissions which have been made.
- 6 The Court is apprised that the scrutinizer report was uploaded at 2.40 pm.
- 7 We direct that an enquiry shall be conducted on the above allegations by the Chairperson of the NCLAT. A report shall be submitted before this Court by 5 pm on 16 October 2023 after specifically verifying the facts from the Judges who constituted the Bench of the NCLAT.
- 8 The Chairperson of the NCLAT shall specifically verify:
  - (i) That the order of this Court dated 13 October 2023 passed in the morning session was drawn to the attention of the two Judges;
  - (ii) If that is so, the circumstances in which the Judges proceeded to pronounce the judgment despite the clear mandate of the order of this Court which was passed in the morning session.
- 9 We are passing this order in extraordinary circumstances, upon an urgent mentioning being made in that regard.
- 10 List the Contempt Petition on 17 October 2023.

**(CHETAN KUMAR)**  
A.R. -cum-P.S.

**(SAROJ KUMARI GAUR)**  
Assistant Registrar