

Qvc Exports Pvt Ltd & Ors vs Cosmic Ferro Alloys Ltd & Ors on 14 September, 2020

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL (AT) NO.92/2020

(Arising out of order dated 11th June, 2020 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No. /KB/2020 in CP No.1836/KB/2019).

In the matter of :	Before NCLT	Before NCLAT
1. QVC Exports Pvt Ltd 6, Dr. Meghmad Saha Sarani (Southern Avenue), 2nd Floor, Kolkata 700 026	1st Petitioner	1st Appellant
2. Nilesh Sharma 25, Purna Chandra Mitra Lane, Kolkata 700033	2nd Petitioner	2nd Appellant
3. Priti Sharma 25 Purna Chandra Mitra Lane, Kolkata 700 033	3rd Petitioner	3rd Appellant
Vs		
1. Cosmic Ferro Alloys Ltd Trishul Apartments, Ground Floor, Unit Nos GA and G-D Premises No.35 Rowland Road, Kolkata 700020.	1st Respondent	1st Respondent
2. United Tradeco FZC P.O. Box 52258, E-100F-35, Hamriyah Free Zone, Sarjah UAE Constituted Attorney in India; Mr. Sanjay Aggarwal, 251/1, Nagendra Nath Road, Kolkata.	2nd Respondent	2nd Respondent
3. Srikrishna Agarwal, 1/1/25 Kailas Ghosh Road, Thakurpukur, Kolkata 700008	3rd Respondent	3rd Respondent

Company Appeal (AT) No.92 and 93 of 2020

- | | | |
|--|----------------|----------------|
| 4. Pramod Kumar Agarwal,
BL-3, Flat 6C, Avani Oxfod,
136 Jessore Road,
Kolkata 700055 | 4th Respondent | 4th Respondent |
| 5. Dilip Khetan
39 Jelias Para Lane,
Haora,
Howrah 711106 | 5th Respondent | 5th Respondent |
| 6. Akash Agarwal,
Flat 111,
317-Mankhool Premise Number 317131931,
Sharjah 52358 | 6th Respondent | 6th Respondent |
| 7. Priyanka AMishra
30/A/151
Dr. PT Laha Street,
Rishra
Hooghly 712248 | 7th Respondent | 7th Respondent |
| 8. Samindra Narayan Mitra
P/602/1
Block 0
New alipore
Kolkata 700053 | 8th Respondent | 8th Respondent |
| 9. Neha Singh Chauhan
9 Jadulal Mullick Street,
Kolkata 700006 | 4th Petitioner | 9th Respondent |

Ms Namrata Basu, Mr Abhijeet Sinha, Mr Aditya Shukla and Mr. Vishnu Chowdhury, Advocates for appellant.

Mr. Abhrajit Mitra, Sr. Advocate for R1,3,4,5,7.

Mr Joy Saha, Sr. Advocate for R2.

Mr. Naresh Balodia, Advocate for R6.

Mr Nipun Katyal, Advocate for R9

Ms Urmila Chakraborty, Advocate for R8

And

COMPANY APPEAL (AT) NO.93/2020

In the matter of :

Neha Singh Chauhan

9 Jadulal Mullick Street,

Kolkata 700006

4th Petitioner

1st Appellant

Company Appeal (AT) No.92 and 93 of 2020

Vs

1. Cosmic Ferro Alloys Ltd
Trishul Apartments,
Ground Floor, Unit Nos GA and G-D
Premises No.35 Rowland Road,
Kolkata 700020. 1st Respondent 1st Respondent
2. United Tradeco FZC
P.O. Box 52258, E-100F-35, Hamriyah Free Zone,
Sarjah
UAE 2nd Respondent 2nd Respondent
Constituted Attorney in India;
Mr. Sanjay Aggarwal,
251/1, Nagendra Nath Road,
Kolkata.
3. Srikrishna Agarwal,
1/1/25 Kailas Ghosh Road,
Thakurpukur, Kolkata 700008 3rd Respondent 3rd Respondent
4. Pramod Kumar Agarwal,
BL-3, Flat 6C, Avani Oxfod,
136 Jessore Road,
Kolkata 700055 4th Respondent 4th Respondent
5. Dilip Khetan
39 Jelias Para Lane,
Haora,
Howrah 711106 5th Respondent 5th Respondent
6. Akash Agarwal,
Flat 111,
317-Mankhool Premise Number 317131931,
Sharjah 52358 6th Respondent 6th Respondent
7. Priyanka AMishra
30/A/151
Dr. PT Laha Street,
Rishra
Hooghly 712248 7th Respondent 7th Respondent
8. Samindra Narayan Mitra
P/602/1
Company Appeal (AT) No.92 and 93 of 2020

New alipore
Kolkatga 700053

8th Respondent

8th Respondent

9. QVC Exports Pvt Ltd
6, Dr. Meghmad Saha Sarani (Southern Avenue),
2nd Floor,
Kolkata 700 026

10. Nilesch Sharma
25, Purna Chandra Mitra Lane,
Kolkata 700033

11. Priti Sharma
25 Purna Chandra Mitra Lane,
Kolkata 700 033

Respondents

Mr. Vishnu Chowdhury and Mr Nipun Katyal, Advocates for appellant.
Ms Namrat Basu and Mr Abhijeet Sinha, Advocates for R9,10,11.
Mr Abhrajit Mitra, Sr. Advocate for R1,3,4,5,7.
Mr Joy Saha, Sr. Advocate for R2.
Ms Urmila Chakraborty, Advocate for R8
Mr. Naresh Balodia, Advocate for R1 to 5 and 7.

JUDGEMENT

(14th September, 2020) Mr. Balvinder Singh, Member (Technical) The appellants have filed these two appeal (Company Appeal (AT) No.92 and 93 of 2020) under Section 421 of the Companies Act, 2013 against the impugned order dated 11th June, 2020 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in an unnumbered urgent Application being IA No. Nil of 2020 in CP No.1836/KB/2019.

The brief facts of the case are that the original Petitioners filed Company Petition under Section 241, 242 and 244 of the Companies Act, 1956 against the Respondents which is still pending. During the pendency of the company Company Appeal (AT) No.92 and 93 of 2020 petition the appellants filed an application being IA No. Nil of 2020 in CP No.1836/KB/2019 seeking the following relief:

- a) The interim reliefs as prayed for in CP No.1836/KB/2019 filed by the Petitioners be granted by this Hon'ble Tribunal by directing the respondents to maintain status quo in respect of the shareholding and constitution of Board of the respondent No.1 company.
- b) Declaration that the purported decisions taken in the meeting of the Board of Directors of the company allegedly held on February 08, 2020 and the resolutions passed therein and the business transacted thereat are illegal and void and no effect should be given to such purported decisions.
- c) Declaration that the purported notice dated May 26, 2020 convening the Board

Meeting on June 02, 2020 to call Extraordinary General Meeting of the Company is illegal, null and void and not binding upon the company, its shareholders and all concerned as there is no valid requisition.

d) The Respondent No.1 to 7 and/or their men and agents be directed to adjourn the Board Meeting on June 02, 2020 without transacting any business;

e) Declaration that the purported decision, if any taken in the meeting of the Board of Directors of the company on June 02, 2020 and the resolutions passed therein and the business transacted thereat be illegal and void and no effect should be given to such purported decision.

Company Appeal (AT) No.92 and 93 of 2020

f) An order of mandatory injunction order be passed directing the respondents to permit the Petitioners to jointly execute the terms of the approved resolution plan dated August 10, 2018 and to enable the Petitioners to discharge their obligations under the said plan by enabling the Petitioners to participate in the daily affairs of the respondent No.1 company.

g) An order of mandatory injunction order be passed directing the respondents to permit the Petitioner No.4 the Director of the Respondent No.1 company to discharge their obligations as a Director so as to enable the Petitioner No.4 to participate in the daily affairs of the respondent No.1 company alongwith the signing of cheques;

h) Ad-interim orders in terms of prayers above;

i) Such further order or orders be passed as this Hon'ble Tribunal may deem fit and proper.

Arguments advanced were heard by the NCLT, Kolkatta and after hearing the parties, the Tribunal held that "I am of the opinion that this is not a fit case to allow the interim relief asked for on the side of the petitioner. Accordingly, the application requires no consideration. It is liable to be dismissed. In the result, IA No. /KB/2020 in CP No.1836/KB/2019 is dismissed. No order as to cost."

Being aggrieved by the said impugned order dated 11th June, 2020 the appellants (original 1st to 3rd Petitioners) have filed Company Appeal (AT) Company Appeal (AT) No.92 and 93 of 2020 No.92 of 2020 and the appellant (original 4th Petitioner) have filed Company Appeal (AT) No.93/2020 seeking the relief amongst others that the impugned order dated 11.6.2020 passed in IA__of 2020 in CP No.1836/KB/2019 be set aside and also stay the operation of the impugned order till the disposal of the instant appeal.

Appellant stated that 1st appellant and 2nd respondent jointly entered into a Consortium Agreement and agreed to form a partnership to submit a Resolution Plan to take over 1st respondent. Resolution plan submitted was approved by the COC and thereafter ratified by NCLT Kolkata under

Section 31 of Insolvency & Bankruptcy Code, 2016. As per the Resolution Plan, appellants are 34% shareholders and the 2nd Respondent is 51% shareholder. The remaining 15% shares are yet to be issued to the Employees' Trust and in effect the appellants are holding 40% and 2nd respondent is holding 60% shares of 1st respondent.

Appellant stated that as per mutual understanding two directors of appellant No.1 and one director of 2nd respondent was appointed. Appellant stated that several disputes arose between 1st appellant and 2nd respondent and 2nd respondent kept trying to oust the 1st appellant from the business. Appellant stated that the integrity and character of the nominee director was questioned as well as oppression by 2nd to 7th Respondent had commenced. Appellant stated that his shareholding was reduced through the IBC proceeding and when they failed upto Supreme Court, clear oppression to remove the appellants nominee director was adopted. Appellant stated that his nominee director was harassed, she was humiliated, her character was Company Appeal (AT) No.92 and 93 of 2020 tarnished, she was asked to leave the Directors chamber and sit next to the toilet or reception, police was brought in to remove the nominee director and forced her to shift outside the chamber. Appellant stated that notice was issued to hold meeting on 8.2.2020 but no agenda was circulated; meeting was held and the resolution was passed to remove the nominee director from directorship thereby ousting the joint resolution applicant and one of the partners of the consortium. Another notice dated 26.5.2020 was issued to hold meeting on 2.6.2020 to remove the nominee of the applicant as the director; this time the same was accompanied by a requisition under Section 169 by 2nd Respondent. Appellant stated as 8th Respondent is not taking part in the affairs of the company and has intimated the same to the Board vide an email dated 13.2.2020 so no other nominee of appellant is remaining on the board. Appellant stated that in the Meeting dated 2.6.2020 it was resolved to remove the nominee of the appellant in an EOGM to be held on 29.6.2020 without giving a fair opportunity to give her representation. Appellant stated that an application was filed to seek protection against such removal before NCLT Kolkata which was dismissed on 11.6.2020.

Reply on behalf of 2nd Respondent has been filed. 2nd Respondent stated that it invested Rs.111.60 crores in 1st Respondent company and 1st appellant invest Rs.3.40 crores. 2nd respondent stated that out of invest of Rs.3.40 crores, 1st appellant embezzled Rs.2.51 crores from 1st Respondent for which 1st respondent filed Money suit 35/2019 which is pending. 2nd respondent stated in fact 1st appellant have practically no stakes in 1st respondent.

Company Appeal (AT) No.92 and 93 of 2020 2nd respondent stated 1st appellant took USD 47.00 lakhs from 2nd respondent out of which USD 22.50 lakhs has been refunded and USD 24.50 (Rs.18,42,40,000/-) is still pending and/or due to be paid for which CIRP process of 1st appellant is in final stage of hearing.

2nd respondent stated that 1st appellant has claimed that such sum was received for purchasing shares of 1st respondent. Thus even Rs.3.40 crores paid by 1st appellant for purchasing shares of 1st respondent is from the money of 2nd respondent and that the entire shares of 1st respondent which have been purchased by 1st appellant should have been actually purchased in the name of 2nd respondent only, but instead thereof the said 1st appellant has wrongfully purchased shares of 1st respondent in its own name from the money provided by 2nd respondent for such purpose which is

a clear breach of trust.

2nd respondent stated that 9th Respondent (original 4th petitioner) is also Director of 1st appellant's group company (Master Mercantile Pvt Ltd) who by mis-utilising her position as Director of 1st respondent has done related party transaction with the said Master Mercantile Pvt Ltd for a sum exceeding Rs.18 crores in the last financial year 2019-20 and has siphoned out huge sum.

2nd respondent stated that 1st respondent is never a partnership of quasi partnership of 2nd respondent and 1st appellant. 2nd Respondent stated that the original petitioners are seeking to paralyze the functioning of 1st respondent. 2nd respondent stated that as per Section 169 of the Companies Company Appeal (AT) No.92 and 93 of 2020 Act, 2013, 2nd respondent can seek removal of 9th respondent from directorship.

2nd Respondent stated that even after receipt of Special Notice from 2nd Respondent dated 21.5.2020, Notice for Board Meeting dated 26.5.2020, appellant did not attend the EGM on 7.7.2020. 2nd Respondent stated that the appeal may be dismissed with costs.

Rejoinder has been filed by the appellant reiterating the statements made in the appeal.

COMPANY APPEAL (AT) NO.93 OF 2020 Appellant is a nominee Director in the Board of the 1st respondent of 9th respondent. Appellant stated that 1st Respondent is a quasi partnership company where the 9th Respondent is the 40% partner and the 2nd Respondent is the 60% partner, such quasi partnership structure of the 1st respondent would be evident since the shareholding of 1st respondent is distributed between members of the two groups of shareholders, in accordingly with a resolution plan sanctioned by Adjudicating Authority, NCLT, Kolkata.

Appellant stated that in a qauasi partnership company or closely held company, a nominee director of the two partners cannot be removed, that too without any reason.

Appellant stated that it is not permissible for the 2nd respondent to remove the appellant during the course of the Resolution Plan.

Company Appeal (AT) No.92 and 93 of 2020 Appellant stated there is no representation of 9th respondent in the Board of 1st respondent despite there being the partner to be in control of the day to day affairs of company.

Appellant stated that by reason of the act and conduct of the respondent No.2 to 7 the 9th respondent is being deprived the opportunity to execute and implements the Approved Resolution Plan dated 10th August, 2018 in absence of any representation in the Board.

Reply on behalf of 2nd Respondent has been filed. 2nd Respondent stated that it invested Rs.111.60 crores in 1st Respondent company and 1st appellant invest Rs.3.40 crores. 2nd respondent stated that out of invest of Rs.3.40 crores, 1st appellant embezzled Rs.2.51 crores from 1st Respondent for

which 1st respondent filed Money suit 35/2019 which is pending. 2nd respondent stated in fact 1st appellant have practically no stakes in 1st respondent.

2nd respondent stated 1st appellant took USD 47.00 lakhs from 2nd respondent out of which USD 22.50 lakhs has been refunded and USD 24.50 (Rs.18,42,40,000/-) is still pending and/or due to be paid for which CIRP process of 1st appellant is in final stage of hearing.

2nd respondent stated that 1st appellant has claimed that such sum was received for purchasing shares of 1st respondent. Thus even Rs.3.40 crores paid by 1st appellant for purchasing shares of 1st respondent is from the money of 2nd respondent and that the entire shares of 1st respondent which have been purchased by 1st appellant should have been actually purchased in the name of 2nd respondent only, but instead thereof the said 1st appellant Company Appeal (AT) No.92 and 93 of 2020 has wrongfully purchased shares of 1st respondent in its own name from the money provided by 2nd respondent for such purpose which is a clear breach of trust.

2nd respondent stated that 9th Respondent (original 4th petitioner) is also Director of 1st appellant's group company (Master Mercantile Pvt Ltd) who by mis-utilising her position as Director of 1st respondent has done related party transaction with the said Master Mercantile Pvt Ltd for a sum exceeding Rs.18 crores in the last financial year 2019-20 and has siphoned out huge sum.

2nd respondent stated that 1st respondent is never a partnership of quasi partnership of 2nd respondent and 1st appellant. 2nd Respondent stated that the original petitioners are seeking to paralyze the functioning of 1st respondent. 2nd respondent stated that as per Section 169 of the Companies Act, 2013, 2nd respondent can seek removal of 9th respondent from directorship.

2nd Respondent stated that even after receipt of Special Notice from 2nd Respondent dated 21.5.2020, Notice for Board Meeting dated 26.5.2020, appellant did not attend the EGM on 7.7.2020. 2nd Respondent stated that the appeal may be dismissed with costs.

Rejoinder has been filed by the appellant reiterating the statements made in the appeal.

Arguments:

Learned counsel for the Appellant argued that 1st appellant and 2nd respondent jointly entered into a Consortium Agreement and agreed to form Company Appeal (AT) No.92 and 93 of 2020 a partnership to submit a Resolution Plan to take over 1st respondent. Resolution plan submitted was approved by the COC and also ratified by NCLT Kolkata. Learned counsel further argued that as per mutual understanding two directors of appellant No.1 and one director of 2nd respondent was appointed. Learned counsel for Appellant argued that due to certain disputes arose between 1st appellant and 2nd respondent, therefore, 2nd respondent bent upon to oust the 1st appellant from the business. Learned counsel for the Appellant argued that the integrity and character of the nominee director was questioned as well as oppression

by 2nd to 7th Respondent had commenced. Learned counsel for the Appellant stated that his nominee director was harassed, she was humiliated, her character was tarnished, she was asked to leave the Directors chamber and sit next to the toilet or reception, police was brought in to remove the nominee director and forced her to shift outside the chamber. Learned counsel for the Appellant argued notice was issued to hold meeting on 8.2.2020 but no agenda was circulated; meeting was held and the resolution was passed to remove the nominee director from directorship thereby ousting the joint resolution applicant and one of the partners of the consortium. Learned counsel for the Appellant argued that another notice dated 26.5.2020 was issued to hold meeting on 2.6.2020 to remove the nominee of the applicant as the director; this time the same was accompanied by a requisition under Section 169 by 2nd Respondent. Learned counsel for the Appellant argued as 8th Respondent is not taking part in the affairs of the company and has intimated the same to the Board vide an email dated 13.2.2020 so no other nominee of appellant Company Appeal (AT) No.92 and 93 of 2020 is remaining on the board. Learned counsel for the Appellant argued that in the Meeting dated 2.6.2020 it was resolved to remove the nominee of the appellant in an EOGM to be held on 29.6.2020 without giving a fair opportunity to give her representation.

Learned counsel appearing on behalf of 1st, 3rd, 4th, 5th and 7th respondent argued that there is shareholders agreement or the likes between 1st appellant and 2nd respondent. Learned counsel further argued that in the Resolution Plan there is no mention of involvement right or involvement of either 1st appellant or 2nd respondent in the running of 1st respondent. Learned counsel further argued that the appellant has presented no irregularity of whatsoever nature in the convening of the EGM of 1st respondent on 29th June, 2020 (adjourned to 07.07.2020 due to lack of quorum) and the resolution that was passed for removal of one of the two nominee directors of 1st appellant. Learned counsel further argued that the appellant in Company Appeal (AT) No.93/2020 duly received the notice dated 26.5.2020 under Section 169(3) and also did not make any representation against the resolution, therefore, she has no grievance with the resolution.

Learned counsel further argued that relations between Neha Singh Chauhan, nominee director, on the one hand and the others directors as well as officers of 1st respondent were completely broken down and reached at such a level that the nominee director was regularly making complaint in writing to various local authorities including police Learned counsel for 6th Respondent argued that there is no bar for removal of nominee minority shareholder under the Companies Act, 2013.

Company Appeal (AT) No.92 and 93 of 2020 Learned counsel for the 6th respondent further argued that under Section 163 of Companies Act, a company may provide in the Article for appoint of 2/3rd majority or more of total number of directors in accordance with proportional representation. Learned counsel further argued that is no such provision in the Article of Association of 1st respondent. Learned counsel further argued that the EGM was held on 7.7.2020 and inspite of notice no shareholders from 1st to 3rd appellant were present and thus they did not raise any

objection to passing of the resolution for removal of 9th respondent in Company Appeal (AT) 92/2020 and appellant in Company Appeal (AT) No.93/2020. Learned counsel further argued that the removal of nominee director has already been approved by the Registrar of Companies. Learned counsel further argued that it has been wrongly submitted by the appellants that upon acquiring 1st respondent, it was agreed that 2nd respondent would be financing partner and 1st appellant would be the operative partner with responsibility of management of 1st respondent for its revival. Learned counsel argued that no such agreement is there and frivolous claim and no document produced for the same.

Learned counsel for the 2nd respondent argued that they have the majority shareholding in the 1st respondent. Learned counsel for the 2nd Respondent argued that not a single allegation has made by the appellant with regard to any irregularity or illegalities in the process by which EGM was held on 7.7.2020 and the resolution to remove 9th respondent and appellant in Company Appeal (AT) No.93/2020 was passed. Learned counsel argued that the Resolution Plan has been fully implemented and all the nominee Company Appeal (AT) No.92 and 93 of 2020 directors of 2nd respondents are Indian and situated within the jurisdiction of Adjudicating Authority. Learned counsel argued that the continuous presence of Neha Singh Chauhan in the Board of Directors of 1st respondent is totally counterproductive to the interest and functioning of 1st Respondent as she has levelled vague allegations against the directors of the company and filed false complaints before the various local authorities. Learned counsel further argued that Neha Singh Chauhan is Director in one of Matashree Mercantile Pvt Ltd which is a competitor of the 1st respondent. 1st respondent has engaged in diverse related party transactions with the said Matashree Mercantile Pvt Ltd and by such means has siphoned off a sum of Rs.18 crores in the FY 2018-19. Learned counsel for 2nd Respondent further argued that appellant and its nominee director has no relation or family ties with 2nd respondent and the principle of quasi-partnership is usually invoked in family companies. Learned counsel further argued that the dispute in the present case do not involve members of the same family, the principles of quasi- partnership out not to be invoked.

Learned counsel for 8th Respondent argued that he is not being allowed to act and is not acting as a director in 1st respondent as the affairs of the Company is grossly mismanaged by the 3rd to 7th Respondent. Learned counsel further argued that his salary has not been paid Learned counsel for the appellant in Company Appeal (AT) No.93/2020 argued that R1 to R7 have oppressed the appellant and mismanaged the 1st respondent. Learned counsel for the appellant argued that this is the quasi partnership is evident since formation of R1's shareholders is by the Company Appeal (AT) No.92 and 93 of 2020 resolution plan which shows that the shareholding is in the nature of a quasi partnership. Learned counsel argued that it is closely held companies where there are few shareholdres are known to be quasi partnership and such principle is not just restricted to family members or family companies. Learned counsel further argued that there are only two groups of shareholders and it is definitely a quasi partnership. Learned counsel further argued that the suggestion that the principle of qauasi partnership only apply to family companies is absurd. Learned counsel for the appellant argued that the nominee director was not given an opportunity to speak even a word at the time the meeting was conducted.

Learned counsel for the Respondents reiterated their arguments which are discussed above.

Our observations/Conclusion We have heard the parties and perused the record. We have noted that the appellants earlier filed Company Appeal (AT) No.331/2019 which was disposed off on 18.11.2019 by this Appellate Tribunal with the following order:-

"If any application is preferred by the Appellant for interim order, which is essential to be noticed and taken up, the Appellant will bring the same to the notice of the National Company Law Tribunal, Kolkata Bench, Kolkata who will pass an appropriate order on such interim application on an early date, preferably by 27th November, 2019 for protecting Shareholder, i.e. the date next fixed in the Company Petition."

Company Appeal (AT) No.92 and 93 of 2020 Appellant preferred an unnumbered IA for urgent hearing seeking interim relief. The said IA was heard and was disposed off rejecting the interim relief. Being aggrieved by that order dated 11.6.2020 the appellants (original petitioners) have preferred two separate appeals. We note that the Company Petition was filed by the original petitioners and the unnumbered IA was also filed by the original petitioners jointly, we wonder why the original petitioner No.4 has filed separate appeal when the relief sought is similar.

The petition was filed by the original petitioners under Section 241, 242 and 244 under the Companies Act, 2013 and the petition has not been decided as yet. Therefore, we will not give our observation/conclusion with regard to the Company Petition and the same will be decided by the NCLT, Kolkata.

We will only decide the issue with regard to removal of original Petitioner No.4 from the directorship of 1st Respondent.

It is not in dispute that the 2nd Respondent is the majority shareholder in 1st respondent company. We have perused page No.124 of Appeal Paper Book under hearing "Management and control of the business of the Corporate Debtor during resolution term" and find no mention of involvement right or involvement of either 1st appellant or 2nd respondent in the running of the 1st respondent company in future. It only mentions that new Promoters to appoint 3 directors to take over the management for better operations. We note that Special Notice dated 21.5.2020 (Page 1801 of appeal paper book) pursuant to Section 169 of the Companies Act, 2013 was given Company Appeal (AT) No.92 and 93 of 2020 to remove original petitioner No.4 (Ms Neha Singh Chauhan). Section 169(3) of the Companies Act, 2013 provides as under:-

"169. Removal of directors-

(1) XXX (2) XXX (3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting."

(4) Xxx (5) Xxx (6) Xxx (7) Xxx (8) Xxx"

We note that it was decided to convene the said Meeting on 29.6.2020 and the same was duly served upon original petitioner No.4. The intimation for the same was given to original petitioner No.4 vide dated 26th May, 2020 (Page 1799 of appeal). The meeting was ultimately held on 7.7.2020 and the original petitioner No.4 was removed. We observe that proper notice was issued to convene EGM and the same was received by the appellants including the nominee director but they did not make any representation and the EGM voted for removal of nominee director with majority. We also note that 8th Company Appeal (AT) No.92 and 93 of 2020 Respondent is also nominee director of 1st appellant in 1st respondent company. We find no illegality in this process.

We further observe that two separate appeals have been filed by appellants when they were the original petitioners in the Company Petition and the unnumbered IA.

We have gone through the Judgement in Company Appeal (AT) No.55 of 2020 passed by this Appellate Tribunal and note that the facts of the case of that appeal and this appeal are different.

In view of the foregoing discussions and observations we find no merit to interfere in the impugned order. The appeal is accordingly dismissed. No order as to costs. Interim order passed, if any, shall stand vacated.

(Justice Jarat Kumar Jain) Member (Judicial) (Mr Balvinder Singh) Member (Technical) (Dr. Ashok Kumar Mishra) Member (Technical) New Delhi bm Company Appeal (AT) No.92 and 93 of 2020