

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-12-2023 AT 10:30AM**

IA (CA) 44/2022 in CP No. 17/59/HDB/2021
u/s. 59 of Companies Act, 2013

IN THE MATTER OF:

Hyderabad Hi-Tech Textiles Park Members Welfare Society ...**Petitioner**

VS

Hyderabad Hi-Tech Textile Park Pvt Ltd & 7 others ...**Respondent**

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **the company petition is dismissed** as not maintainable.

IA(CA) 44/2022

This application **IA(CA) 44/2022 is dismissed.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

CP. No. 17/59/HDB/2021

*Under Rule 131 & 132 R/w. 11 of National Company Law
Tribunal Rules, 2016.*

**IN THE MATTER OF M/S. HYDERABAD HI-TECH
TEXTILES PARK PVT. LTD.**

BETWEEN:

M/s. Hyderabad Hi-Tech Textile Park Members Welfare Society
Represented by Chinta Mohan Rao,
Registered No. 1229 of 2012
Office at # 104, Om Shanti Nivas, Street No. 7,
Vidyanagar, Hyderabad – 500 004.

... Petitioner

AND

1. Hyderabad Hi-Tech Textile Park Pvt. Ltd.
Having CIN No. U18101TG2003NPL42259 situated at
Kothuru Mandal, R.R. District – 509 325.
2. Mr. Uppala Narasaiah,
Occ: Director, R/o. #15, MIGH,
Housing Board Colony, Bahadurpura,
Hyderabad – 500 064.
3. Mr. Ghanshyam Sarode,

S/o. Vittal Rao Sarode, Occ: Director,
R/o. 203, Nijaf Residency, Road No.7,
Banjara Hills, Hyderabad – 500 034.

4. Mr. Ragonda Manikyam,
S/o. Narasaiah, Occ: Director,
Aged 60 years, R/o. 201, Second Floor,
H.No. 2-2-186/18/8, Rose Garden Apartments,
Near Lal Bunglow, Bagh Amberpet,
Hyderabad – 500 013.
5. Mr. Raju Samaleti
S/o. Bhoomalingam, Occ: Director,
Aged 55 years, R/o. Flat No. 301,
Sai Prashanth Residency, Bharkatpura,
Hyderabad – 500 027.
6. Mr. Ragonda Markendaya
S/o. Laxmi Narasaiah,
Occ: Director, Aged 61 years,
R/o. 1-3-169/5, Vidyanagar,
Bhoingir Town, Nalgonda District.
7. M/s. Infrastructure Leasing & Financial
Services Limited (IL&FS), Represented by
Senior Vice President Neerav Kapasi
Plot No. C-22, G-Block, Bandra Kurla Complex,
Bandra East, Mumbai – 400051.
And also, at

Head Office at Core 4b, 4th Floor,
India Habitt Centre,
Lodhi Road, New Delhi – 110 003.

8. Registrar of Companies,
Telangana having registered address,
At II Floor, Corporate Bhavan, GSI Post,
Tattiannaram, Bandlaguda, Nagole,
Hyderabad, Telangana – 500 068.
9. Mr. Devdas Gaddam S/o. Mallaiah,
Occ: Director, R/o. H.No.1-10-48/A,
Flat No. 308, Ashoka Ornata, Apartments,
Street No.2, Ashoknagar, Hyderabad – 500 020.
10. Mr. Addagatla Purushotham,
S/o. Addagatla Vittal, Occ: District,
R/o. H.No. 1-3-1/C/1, Jayamansion,
1st Floor, Kavadiguda, Hyderabad – 500 080.
11. Mr. Chinnam Venkatramana,
S/o. Ch. Srisailam, Occ: Director,
R/o. H.No.13-6-433/109, Netaji Nagar,
Attapur Ring Road, Mehdipatnam,
Hyderabad – 500 028.

R/9 to 11 :
Added as per
order dated
24.08.2022 in
IA.No.99/2022

... Respondents

DATE OF ORDER: 22.12.2023

CORAM:-

**DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Appearance of Counsels:-

For the Petitioner : Smt. A.Sandhya Rani, Counsel

For the Respondents 1,2,4 & 5:

Shri P. Sri Raghu Ram, Ld. Sr.
Counsel for Shri. Anil Kumar &
Shri M.Venkateswar Rao, Counsels

For the Respondents 3 & 6: Shri P. Anil Mukherji, Counsel

For the Respondent 7: Ms. Aishwarya Chevuturi

For the Respondents 9,10 & 11:

Shri G S Rama Rao, Counsel

PER: BENCH

ORDER

1. This is a Petition filed under Rule 59 read with relevant provisions of Companies Act seeking the following directions to:

- a. Direct the Registrar of Companies to rectify the register of members by way of entering the names of the allottees as mentioned in the Share Subscription Agreement (SSA) and also in the Detailed Project Report (DPR) certified by the IL&FS as per the provisions of the Section 59 of the Companies Act, 2013.
- b. Direct the Registrar of Companies, Hyderabad to prosecute the Respondents 2,3,4,5,6,7 for violating the provisions of Companies Act, 2013.

2. Averments made in the Petition in brief are :

- 2.1 That the Respondent No.1 Company was incorporated under the provisions of Section 25 of the Companies Act, 1956 in the year 2003 with the name of “Hyderabad Hi-tech Textile Park” bearing CIN: U18101AP2003GAT42259 with main objectives: a) To setup the Integrated Textiles Parks, Industrial Estates, Industrial Parks, Textiles Hubs, Clusters, Special Economic Zones ranging from “Fiber to Fashion” including ginning, spinning, weaving, processing, apparels of every description. b) To assist the members to set up the manufacturing units and to provide them with all Infrastructure facilities, latest technologies, adequate

training to the man power and assist in the overall manufacturing of textiles of all kinds.

2.2 It is stated that the Company subsequently got converted into a Private Limited Company in the year 2010 with name of “Hyderabad Hi-tech Textile Park Private Limited” with the active support of more than 100 weavers and textile trader members as a Special Purpose Vehicle for establishment of an Integrated Textile Park near Cheguru Village, Kothur Mandal, Mahabubnagar District, Andhra Pradesh – 509228, under TCIDS (Textile Centre Infrastructure Development Scheme) announced by the Ministry of Textiles, Government of India and encouragement provided by the Central Government, Ministry of Textiles.

2.3 It is stated that the Respondent No.1 Company purchased about 142 acres private land and got the project approved first under TCIDS on 17th January, 2005 by Ministry of Textiles and the State Government. After the approval of the project, IL&FS (Infrastructure Leasing & Financial Services) approached the Company and offered their professional services to develop and implement the infrastructure requirements of Textile Park as they are the approached the Company and offered their professional

services to develop and implement the infrastructure requirements of Textile Park as they are approved by the Central Government to act as Nodal agency. Accordingly, the Company entered into a Memorandum of Agreement (MOA) with IL&FS, in the month of June, 2005.

2.4 It is stated that for the professional services, it was agreed to pay huge sum of consultancy fee of 4% of the project cost besides the fee of 1% fee payment by Ministry of Textiles to IL&FS as Project Management Consultants (PMC). It is stated that one of the important tasks of the PMC was to obtain Environmental clearance from the State Pollution Control Board which got delayed due to lack of interest by the PMC. Due to the delay, the Company was asked to move the application to Ministry of Environment, Forest and Climate change, New Delhi for the clearance. The damage caused by the PMC was time over run for more than two and a half years in completing the project and much more time was expected to complete the project.

2.5 It is stated that as a result of inordinate delay of the project, Ministry of Textiles re-sanctioned the project under the new SITP scheme (Scheme for Integrated Textile Park) on 1st January, 2006 with a condition to implement for project

before June, 2007. The new SITP scheme was launched in 2005 to provide the Industry with State-of-the-art world-class Infrastructure facilities for setting up their textile units.

- 2.6 It is stated that the Entrepreneur Associates (Chinta Mohana Rao and 98 others) and the Respondent Company have entered into a Share Subscription Agreement (SSA) on 2nd September, 2006 and they were also allotted the Shares. But the Entrepreneur Associates were neither delivered the share Certificates nor their names were entered in the Register of Members till date. The copy of the Registration certificate has been enclosed to the petition as Annexure-D.
- 2.7 It is stated that all the investors who have become members of the company by virtue of the Share Subscription Agreement (SSA) have formed a welfare society in the name of Hyderabad Hi-tech Textile Park Members Welfare Society in the year 2012 vide Registration No: 1229 of 2012 to fight collectively for the rights of the member against the company.
- 2.8 It is stated that due to the change of scheme from TCIDS to SITP, the consultants insisted on entering into a fresh agreement with reduced services and enhance fees. Even

after the second agreement, there was no improvement in the deliverables and milestone activities of the project and there has been delay of substantial number of years in completing the project and much more time is expected to complete the project. The Nodal agency and the Company have not initiated any efforts for starting the project and or permitting the members of the society to continue the project by way of not providing the necessary legal documents to proceed further.

2.9 It is stated that the Government of India has given a possession notice for the sold property dated 23rd May, 2012 in regards to the recovery of grants. The Supreme Court Judgement in this regard has been enclosed as Annexure-F. The Respondent Company paid the membership fee received from the Entrepreneur Associates as consideration amount towards purchase of land of 142 Acres and other allied development works. The Acknowledgement copy for receipt of money by the company from the subscribers (one model reference copy) has been provided as Annexure-G.

2.10 It is stated that there are nearly about 106 aspirants who wanted to become entrepreneurs and have fully paid the value for land and development. The list of all the

subscribers to the SSA has been enclosed to this Petition as Annexure-H.

2.11 It is stated that a suit of declaration and consequential injunction has been filed before the District Court of Mahaboobnagar restraining the Company from further transfer/sale of land. The copy of the same is annexed herewith as Annexure-I. The members have filed complaint on 03.09.2020, Police Nandigama, registered criminal case vide FIR No. 192/2020 under Section 403, 406, 420, 503, 506, 120b of Indian Penal Code against the Company and its Directors stating that the Company and its Directors have committed criminal breach of trust and fraudulently misused the funds and misappropriated the amounts obtained from the Government Authorities by way of Grants for the benefit of our members and have cheated our members and Government authorities by way of committing the fraud. The copy of the FIR has enclosed as Annexure-J.

2.12 It is stated that the Nodal agency has further certified that all the subscribers to the Share Subscription Agreement (SSA) as members/shareholders of the company in its letter to the Ministry of Textiles dated 11.09.2006. The Copy of the same has been provided as the Annexure-L.

2.13 It is further stated that the Ministry of Textiles upon receipt of the confirmation from the nodal Agency has circulated the same for the Project Approval Committee (PAC) for their approval and all the PAC has approved the same on 12.09.2006. The copy of the inter-ministerial approval has been attached as Annexure-M. The names of the members/shareholders have also been mentioned in the Detailed Project Report (DPR) which has been prepared based on the facts received from the company and verified and certified by the IL&FS (Nodal agency) and further approved by the Ministry of Textiles.

2.14 It is stated that as per the Share Subscription Agreement (SSA) which is annexed as Annexure-D, there is an intentional delay or omission in non-delivering the share certificates to the members who have been allotted shares through the Share Subscription Agreement (SSA) dated 02.09.2006 and also mentioned in the Detailed Project Report of 2006.

3. The Respondents 1 to 6 filed counters on 07.12.2021, inter-alia stating that:

- 3.1 It is stated that this Company Petition is liable to be dismissed in limini for the reason that the petitioner concealed all the material facts in the petition and has come before this Tribunal without clean hands and thus is not entitle for any relief as claimed in this petition.
- 3.2 It is stated that the present petition is filed by the Hyderabad Hi-Tech Textile Park Members Welfare Society represented by Mr. Chinta Mohana Rao as General Secretary of the society. The Bye-laws or such other authority given to Mr. Ch. Mohana Rao have not been filed before this Tribunal. Thus, the absence of the such document, it shall be presumed that, Sri. Ch. Mohana Rao has no authority and has no locus standi to represent the Petitioner Society and therefore the petition is liable to be dismissed.
- 3.3 It is stated that the Ministry of Textiles, Government of India announced the Scheme for Integrated Textile Park (SITP) and sanctioned Rs.40.0 Crore as grant for funding under SITP scheme out of Rs.106.14 Crore estimated project cost, vide Ref No. 19/11/2005-Export-I, dated 01, August, 2005 to complete within a period of 12 months. Grant was sanctioned to the HHTP to providing encouragement in setting up the textile parks to support the weavers and textile

trading members. That having learnt about the scheme and with a view to get the benefits of the scheme to many entrepreneurs who really deserve, the 2nd to 5th respondents got the 1st respondent company converted into a “Private Limited Company” from Section 25 of the Companies Act, 1956.

3.4 It is stated that the Petitioner (Chinta Mohana Rao) approached the 1st Respondent Company and submitted the Application No. 101 Dt. 31.03.2005 for Allotment of Land requesting the 1st respondent company to setup his weaving unit for manufacture of Fabric and requested to allot developed plot in an extent of 4000 Sq. Yards, containing the declaration that “the petitioner shall abide by all the rules and regulations framed by the Company from time to time, shall pay the amounts within the due date, start the unit as per the standards, otherwise the amounts within the due date, start the unit as per the standards, otherwise the amounts paid by the petitioner can be forfeited”. That vide the Receipt no. 69 Dt. 31.03.2005 of the 1st Respondent Company, the petitioner paid an amount of Rs.1,250/- toward the Application Fee. Further that vides receipt No. 848, Dt. 31.03.2005, the Receipt No. 673, Dt. 01.04.2005 and the Receipt No. 1007 Dt. 21.05.2005, the petitioner paid

towards the Land Deposit. That on 04.09.2005, Mr. Chinta Mohan Rao, claiming to be the Member/ General Secretary of the alleged Petitioner Society submitted an Undertaking that the land shall be used for shuttle less looms and machinery and technology, shall not transfer, lease, sublet, sell or convey the land allotted, shall abide by the manner and content mentioned in MOA and AOA of the 1st Respondent, abide by the decision taken by the 1st respondent with regard to the utilization of funds/ Govt Grants Etc., to pay expenditure incurred by the 1st Respondent Company with regard to the common infrastructure and cost of work-shed and shall abide by the rules & regulations framed and decisions taken by the 1st Respondent Company. Likewise, all other persons who intended to become the members of the 1st respondent undertook vide separate undertakings.

- 3.5 It is stated that the 1st Respondent Company entered into a Memorandum of Agreement (MOA) Dt. 15.06.2005 with IL&FS. In the said MOU, specific roles have been envisaged for compliance by the IL&FS as well the 1st Respondent Company. Further it was also agreed that to pay 2.5% of the project cost (includes cost of infrastructure and construction of building excluding land cost) towards its professional fee

for preparation of project designs, engineering, supervision of works, arrange finance, documentation, and get project permissions and compliances to Governments etc., on behalf of HHTP i.e., 1st Respondent Company.

3.6 It is stated that having understood the purpose for the constitution of the 1st Respondent Company, some of the entrepreneurs interested in setting up their textile manufacturing unit in the Textile Park approached the 1st Respondent Company for allotment of the plot, with workshed and other infrastructure facilities for setting up their textile manufacturing unit on lease and license basis. Thus the 1st Respondent Company entered upon a Share Subscription Agreement (SSA) with many of the intending entrepreneurs who desired of commencing the textile industry. One such desirous entrepreneur was Mr. Chinta Mohan Rao and that the Share Subscription Agreement (SSA) dated 02.09.2006 was executed by and between 1st Respondent Company and Mr. Chinta Mohan Rao.

3.7 It is stated that some of the clauses from the Share Subscription Agreement (SSA) have been extracted hereunder: That at paragraph B of page no.2 of the Share Subscription Agreement, it was agreed that the Textile Park

is aimed at providing the developed plot along with workshed and other infrastructure, administrative facilities and providing facility for common pre & post weaving and common market facility for the benefit of member weaving units in the Textile Park cluster with a target to produce export quality fabrics and garments, therein for setting up textile manufacturing units on leave and license basis, at page no.4 of the Agreement it is explained that “Leave and License” means the Agreement to be entered into between the 1st Respondent Company and the Subscriber by virtue of which the Subscriber acquires a license to use the plot or plot with shed for setting up textile factory/ unit on the terms and conditions, “Licensees” mean the subscriber in whose favour the 1st Respondent Company execute “Leave and License” agreement, Clause 1.2 (ii) at Page 5 of the Agreement it is envisaged that the headings and sub-headings used in the Agreement are inserted only for reference to the provisions herein and shall not affect the construction of such provisions, Clause 2.1 at page 6 of the Agreement envisages that the 1st Respondent Company intends to develop common infrastructure facilities and the plot along with the shed on leave and license basis to the licensees, by expectation.

- 3.8 It is stated that the subscriber paid a sum of Rs.1,60,000/- as advance towards the subscription of the shares to the 1st respondent company. But the fact remains that at the time of execution of the Agreement, Mr. Mohan Rao made believe the representatives of the 1st respondent company that he would pay at a later date and got executed the Agreement in his favour and somehow, for the best reasons best known to him, subsequently, he did not pay Rs.1,60,000/- towards the shares. As contemplated in clause 7.1 (e) at page 11 of the Agreement, it is envisaged that Mr. Mohan Rao paid proportionate margin money towards tentative land deposit for purchase, development and maintenance of the project. That all the receipts filed by Mr. Chinta Mohan Rao before this court indicates that the amounts paid thereunder were towards the land deposit, but not towards the purchase of the shares. No separate receipt is filed by Mr. Mohan Rao in proof of the payment being made towards purchase of the shares.
- 3.9 It is stated that the 1st respondent company being registered under Section 25 of the Companies Act, 1956 and the nature of the Alleged Share Subscription Agreement and the clauses therein, virtually the intended persons shall pay the

amount for allotment of shares, after the payment of the money towards allotment of the shares, the company shall allot the shares, then, once the shares are allotted, then such share holder shall become the member of the company, that upon becoming the member, the 1st respondent company shall allot the plot or plot with work-shed to such member that too on leave and license basis. In this case, none of the persons or entitles have paid amounts to the 1st respondent company for allotment of the shares (no proof of payment of money towards allotment of the shares is forth coming), therefore no shares have been allotted to any person/entity.

3.10 It is further stated that even assuming that the members are entitle for allotment of the plots or the plots with shed, since it is the agreed and covenanted in the Alleged Share Subscription Agreement that the allotment of the plot shall be on Leave and License basis and thus by virtue of the alleged Share Subscription Agreement also, no right for title shall accrue in favour of the alleged members of the company.

3.11 It is stated that the 1st respondent company executed the Share Subscription Agreements (2nd September, 2006 pertains to Mr. Ch. Mohan Rao) on different dates, but it is

absolutely false to state that they were allotted the shares. That since no entrepreneur paid the money towards the allotment of the shares, no shares were issued to them and therefore none of the Entrepreneurs were delivered the share certificates and their names were entered in the Register of Members.

3.12 It is stated that in all fairness and *bona fides*, that no person shall lose their good monies, the 1st respondent company called for all those entrepreneurs and repaid their money with the Company and voluntarily submitted their NOC cum surrender letters to the 1st respondent company. Majority of the entrepreneurs have taken the amounts from the 1st respondent and withdrew their rights in favour of the 1st respondent company. Likewise, Mr. Chinta Mohan Rao and other persons were also offered to collect their amounts with Company. That Mr. Chinta Mohan Rao and his accomplices demanded exorbitantly and refused to take the money as was paid to the others. When this respondent expressed its inability to pay such huge amounts, Mr. Chinta Mohan Rao and his co-conspirators/ abettors conspired and connived together and designed this petition. There is no covenant that all the holders of the Share Subscription Agreement shall form a society and therefore to say that pursuant to the Share

Subscription Agreement, the society is formed. This petition merits no consideration. The registration of the alleged petitioner society bears no binding on this respondent.

3.13 It is stated that the GOI, Ministry of Textiles vide its note File no. 19/23/2006-SITP Cell endorsed that all the conditions have been completed and that IL&FS certified that they have verified all the documents submitted by the SPV in support of release of the first installment of grant and has accordingly recommended for release of 1st part of 1st installment of the Government share. That the delay in commencement of the project was due to the delayed/ non-payment of the money by the entrepreneur's contribution of 20% of project cost or Rs.23.0 Crores members equity contribution in addition to the grant of Rs.40.0 Crore provides by GoI and Term Loan about Rs.100 Crore from the financial institutions. Lack of members' contribution towards the scheme within the time frame given by GoI and false allegation made against the project to the different departments and financial institutions by the wrong doing members. Since, the 1st respondent made several efforts to convince GoI, the scheme was continued upto 2011. As there was no contribution from the members, Loan tie-up to the project the Central Government gave notices and sufficient

4-5 years more time for implementation and lastly withdrew the scheme for the 1st respondent company, the delay was beyond the control of the 1st respondent company.

3.14 It is stated that the 1st respondent company issued number of Circular letters/ notices Dt. 15.10.2005, 20.12.2005, 20.02.2006, 03.04.2006, 18.07.2006, 18.11.2006 and 22.12.2006 to all the entrepreneurs who applied for shares and plots of the company calling upon them to pay the Non-Refundable Deposit amount. Finally, the 1st respondent company also held a board meeting Dt. 29.08.2007 and decided to allot the shares and the plots to its members, provided they pay the Non-Refundable Deposit Amount and called upon the members to pay at least 1st installment of the Non-Refundable Deposit amount. That pursuant to the board meeting, the 1st respondent company issued Demand Notice, vide HHTP/Circulars/263 Dt. 13.10.2007 to Chinta Mohan Rao calling upon him to pay of Non-Refundable deposit amount/ Equity from all the alleged members, so also to identify the type of looms, no. of looms, width of the looms, speed of the looms etc., likewise, the 1st respondent company also issued notices to all other entrepreneurs calling upon them to submit about machinery identified and required statutory permissions for his unit from the

concerned departments to show their interest and make payment of the Non-Refundable Deposit amount/ Equity communicated time to time to all the alleged members. There hasn't been either payment of the Non-Refundable Deposit amount/Equity from all the alleged members or any reply from any of the alleged members.

3.15 It is stated that the 1st respondent company issued a letter no. HTTP/Circulars/286, Dt. 13.11.2007 to all its alleged members informing that the project of the 1st respondent company has been approved by the Environmental clearance (EC) by the Ministry of Environment & Forest (MoE&F), New Delhi and also shortly expecting the consent from the AP Pollution Control Board and the progress of the 1st respondent company's project was reviewed by the MoT, GoI, New Delhi in its meeting 06.11.2007 and that the MoT, GoI warned the 1st respondent company that the project would be cancelled if not implemented within 3 months thereof and that in order to understand the implications of the observations of the Ministry and to implement the project without any delay, the 1st respondent company convened a meeting on 19.11.2007 at its office premises. Accordingly issued notices to all the alleged members (notice Dt. 13.11.2007) issued to Chinta Mohan Rao is herewith

filed). That the 1st respondent convened the meeting with one of its agenda to mobilize 20% of the project cost from members in terms of sanction from GoI towards Non-Refundable Deposit (NRD)/ Equity from all the members. The 1st respondent company also issued a letter no. HTP/Circulars/296 Dt.07.12.2007 to all its members informing the decision taken at the board meeting Dt. 06.12.2007 to the members to cooperate by complying the decisions taken at the meeting Dt. 06.12.2007.

3.16 It is stated that the 1st respondent company issued Provisional Allotment letter vide its letter No. HTP/member-Allotment/321/A-31 Dt.01.02.2008 in favour of Mr. Chinta Mohan Rao (M/s. Fabro Dynamics) allotting the plot no. 31-A, "A" Category, admeasuring 3,750 Sq. Yards. The said provisional letter also contained that the said member shall be subject to the terms and conditions of the Scheme, Share Subscription Agreement, Leave & License Agreement and other terms and conditions as may be prescribed by the company from time to time and reserving the right to cancel the provisional allotment if such member fails to comply the terms and conditions enumerated in the said letter i.e., non-payment of the balance amounts (any deposits/ amounts towards equity shares Etc.), Non-Execution of the relevant

documents/ undertakings, Non-compliance of the statutory requirements of the State and the Central i.e., obtaining necessary permissions, sanctions and licenses. Further in the said letter, all the members were made to understand that any such member shall not claim the ownership on the allotted plot/premises as the said plot or the premises vest with the 1st respondent company/ SPV/ HHTP and the said plot/ premises shall not be transferred or conveyed or leased or sub-let. The said Provisional Allotment letter also contains that a separate final allotment letter confirming the allotment in their favour shall be issued only after strict compliance of the terms and conditions under the provisional allotment letter.

3.17 It is stated that the 1st respondent company issued letter HHTP/ Members/ 345 Dt. 25.04.2008 (similar notices were issued to all the members) calling upon the members to pay the balance NRD. That Mr. Chinta Mohan Rao submitted letter Dt. 08.05.2008 to the 1st respondent containing that he received the letter Dt. 25.04.2008 and understood the subject therein, that the terms and conditions contained in the letter Dt. 25.04.2008 are contrary to the decision taken on 21.04.2008, the contents of the letter Dt. 25.04.2008 not acceptable to him, further that “since the textile business is

not feasible, he proposed the company to wait for some more time and till the favorable time comes, shall not do anything without collective awareness”. The sum and substance of the letter is that he expressed his dissent for making payment to the 1st respondent company.

3.18 It is stated that in the Board Meeting held on 18.06.2008 resolved that in respect of all those members who issued the similar letter to the letter dt. 08.05.2008 issued by Chinta Mohan Rao and have not paid the Non-Refundable Deposit as per the terms and conditions of SITP Scheme, Share Subscription Agreement and other documents, their membership in the Scheme and their Provisional Allotment of the plots be cancelled with immediate effect. This board meeting was held under the supervision of responsible senior IAS officer, Ministry of Textiles, GoI.

3.19 It is stated that in accordance with the resolution of the Board meeting Dt. 18.06.2008, all the members have been informed since some of the members who have not complied with the terms and conditions of the agreements and not paid the Non-Refundable Deposit payable towards the members contribution and also expressing non-viability of the project and requiring the company not to carry any work in the

project, expressing their disinterest of such member to continue in the project and is trying to cause deliberate hurdles on implementing the project and therefore, their Membership as well their provisional allotment of the plot are cancelled. Letter No. HHTP/ Member/ Cancellation/ 363/A-31 Dt. 20.06.2008 stand proof of the cancellation of the Membership as well the provisional allotment letter.

3.20 It is stated that all the members whose membership and the allotment were cancelled, submitted a representation Dt. 07.09.2009 for reconsideration of the membership that they were misled and as they could not be completely informed and therefore, they could not pay the NRD and that unfortunately the Board misunderstood their intentions and cancelled the membership. One of the persons signed the representation was Mr. Chinta Mohan Rao.

3.21 It is stated that having received the common representation from the member, the board of the 1st respondent company convened a board meeting on 26.11.2009 and resolved that the entrepreneurs whose membership is cancelled shall deposit the Non-Refundable Deposit, they shall get the statutory requirement complied, execute Leave and License agreement and that if the

members do not comply the terms and condition within 15 days, their membership and the allotment of the plot shall automatically cancelled and no more representation would be entertained. The resolution of the Board of the 1st respondent company was also informed through letter. One such letter to Chinta Mohan Rao is HHTP/ SITO-Member/552/A-31 Dt.30.11.2009.

3.22 It is stated that in another Board meeting it was resolved to allot shares to the project members as per the scheme being finalized separately, meanwhile one more chance shall be given to take effective steps to comply with the above terms and conditions and to make payment of NRD within 15 days therefrom.

3.23 It is stated that availing the opportunities given by the 1st respondent company from time to time, and pay the NRD to the company, some of the members with ulterior motives and ill intentions to cause hindrance to the progress of the setting up of the project so as to cause wrongful loss to the company and wrongful gain for themselves and having connived with about three or four persons with ill intention probably formed the Petitioner society. The formation or registration of the petitioner society is not known to the 1st

respondent company or its directors. Except likeminded few persons, the other members of the 1st respondent company are not the members of the alleged petitioner society.

3.24 It is stated that showing their ill intentions, though the petitioner or its members have any right, title of interest in the project or its land and having no locus standi, the alleged Petitioner society filed OS.No. 155 of 2019 on the file of the Prl. District Judge, Mahboobnagar seeking the Judgement and decree against the 1st respondent company and its directors with all unfounded and false concocted allegations for declaration that the members of the petitioner society herein are the owners and possessors of the land and consequential injunction. The petitioner society could not get any relief from the Prl. District Court because the suit lacks merit.

3.25 It is stated that Mr. Chinta Mohan Rao lodged a complaint in Cr. No. 192/2020 Dt. 03.09.2020 under Section 403, 406, 420, 503, 506, 120B IPC making all false and frivolous allegations that the 1st respondent company committed breach of trust and fraudulently misused the funds without developing the project and the lands and threatening the members with dire consequences. That in spite of receiving

the repeated notices from the police, Mr. Chinta Mohan Rao could not furnish any evidence and also present those other members making same allegations, thus the police filed their final report Dt. 18.02.2021 before the Prl. JFCM, Shadnagar for the reason “lack of Evidence”.

3.26 It is stated that some of the members also submitted complaint no. J00052583 Dt. 22.07.2020 to Registrar of Companies, Hyderabad by Mr. Chinta Mohan Rao against the 1st respondent. That the said complaint was closed by the Registrar of Companies, Hyderabad and informed the 1st respondent vide its email Dt. 15.02.2021. Likewise, the complaints of the likeminded also have been closed. It is stated that the Government of India, Ministry of Textiles in its file no. 19/23/2006-SITP Dt. 22.02.2021 reiterating that the project is cancelled and demanded the 1st respondent company to pay Rs. 12.00 Crores with interest and that the 1st respondent expressed the Ministry of Textiles that the amount shall be repaid in the near future.

3.27 It is stated though the 1st respondent is not responsible for the cancelation of the project and that one of the main reason being non-payment of the NRD, non-cooperation by the members to comply the terms and conditions given by GoI

with all good intention that no member shall be put to loss called upon the members and offered them to take refund of the amounts paid to the 1st respondent company plus some reparation. That many of them members received the total payment in full and final settlement of all their claims and rights whatsoever in the company or its properties. As many as 29 members' membership and allotment of the plot stood cancelled. Even those members whose membership stand cancelled, the 1st respondent company and its directors undertake to refund all such amounts to them. It is only few members who demanded the 1st respondent company to pay exorbitant amounts and when the 1st respondent company expressed its inability, they started all exasperating litigation making all unfounded allegations contrary to the facts.

3.28 It is further stated that Mr. Chinta Mohan Rao lodged a Complaint in Cr. No. 192/2020 Dt. 03.09.2020 under Section 403, 406, 420, 503, 506, 120B of IPC making all false and frivolous allegations that the 1st respondent company committed breach of trust and fraudulently misused the funds without developing the project and the lands and threatening the members with dire consequences. That in spite of receiving the repeated notices from the police, Mr. Chinta Mohan Rao could not furnish any

evidence and also present those other members making same allegations, thus the police filed their final report Dt. 18.02.2021 before the Hon'ble Prl. JFCM, Shadnagar for the reason "lack of Evidence".

3.29 It is stated that some of the members also submitted complaint no. J00052583 Dt. 22.07.2020 to Registrar of Companies, Hyderabad by Mr. Chinta Mohan Rao against the 1st respondent. That the said complaint was closed by the Registrar of Companies, Hyderabad and informed the 1st respondent vide its email Dt. 15.02.2021. Likewise, the complaints of the likeminded also have been closed.

3.30 It is stated that the Government of India, Ministry of Textiles in its file no. 19/23/2006-SITP Dt.22.02.2021 reiterating that the project is cancelled and demanded the 1st respondent company to pay Rs.12.00 Crores with interest and that the 1st respondent expressed the Ministry of Textiles that the amount shall be repaid in the near future.

3.31 It is stated that though the 1st respondent is not responsible for the cancellation of the project and that one of the main reasons being non-payment of the NRD, non-cooperation by the members to comply the terms and conditions given by

GoI with all good intention that no member shall be put to loss called upon the members and offered them to take refund of the amounts paid to the 1st respondent company plus some reparation. That many of them members received the total payment in full and final settlement of all their claims and rights whatsoever in the company or its properties. As many as 29 members' membership and allotment of the plots stood cancelled. Even those members whose membership stand cancelled, the 1st respondent company and its directors undertake to refund all such amounts to them. It is only few members who demanded the 1st respondent company to pay exorbitant amounts and when the 1st respondent company expressed its inability, they started all exasperating litigation making all unfounded allegations contrary to the facts.

3.32 It is stated that the petitioner society has no locus-standi to file or prosecute for the members of the 1st respondent company in the absence of any brevity of any contract or the consent from the 1st respondent company. Further that the agreement between the members of the society and the 1st respondent company is in Arbitration Agreement containing the provision to settle any such dispute by arbitration and that the petitioner society without invoking the arbitration

clause is approaching different forums with a sole intention to obtain an order behind its back to deprive the 1st respondent company. Furthermore, that the petitioner society concealed all the material facts before this Tribunal and misled this Tribunal by making false, concocted and unfounded allegations against the 1st respondent. Thus, the petitioner society having come to this Tribunal without clean hands, they are not entitled for any relief as claimed in the petition.

3.33 It is stated that Section 59 of the Companies Act, 2013 applies to those cases where the shares are allotted, share certificate is issued and their names are either not entered in the register of shares or any new name is entered without holding the shares or that there is delay in entering the names of the shareholders, then such aggrieved person may approach the tribunal. Firstly, the petitioner society is neither the shareholder nor has paid any amount for allotment of the shares, therefore the petition is not maintainable for the reason that the society has no locus standi. Secondly, in the present case, it is the case of the petitioner that admittedly neither shares have been allotted nor the share certificates have been issued nor have been entered in the register. That per letter Dt. 07.09.2007 submitted by the alleged members

to the 1st respondent company, as on that date the shares have not been issued and therefore the question of entering in the register or omitting to register the names of the society nor rectification of the register shall not arise. Thus, the petitioner stating that under Section 59 of the Companies Act, this petition is maintainable is untenable.

3.34 It is stated that it is the petitioner society concealed the very material fact as to how the society has the locus standi to file the present case is not stated in the petition. That mere execution of the Share Subscription Agreement would not entitle the society or its members for allotment of the shares or the plots and that as envisaged in the said agreement, the other terms and conditions shall mandatorily be complied and noncompliance of any of the terms and conditions shall disentitle the members from issuance of the shares in their favour and that in spite of repeated reminders also, since the members of the society have not paid the amounts and not executed the required consequent agreements. Therefore, to say that they are entitled for the allotment of the shares, entering their names in the register and omitted to enter their names in the register etc., are all untenable. In the absence of the share certificate being issued allotting the shares, no

letter would suffice to hold that they are the shareholders of the company.

4. The Respondents No.1, 2, 4 & 5 filed additional counter, inter-alia stating that:

4.1 It is stated that the petitioner filed I.A. (CA). No. 62 of 2023 seeking this Tribunal to receive the documents enclosed to IA. (CA). No. 62 of 2023 in the main CP on to its record in the interest of justice. Pursuant to the orders in IA (CA) no. 62/ 2023, this additional counter is filed in reply to the documents filed along with IA (CA) no. 62/ 2023. That since there are no amendments to the pleadings in the main Company Petition being sought, except seeking indulgence of this tribunal to receive the additional documents enclosed to the petition in IA (CA) No. 62 of 2023, therefore, these respondents are traversing with the relevancy and veracity of the documents sought to be received.

4.2 It is stated that the share certificate is prima facie evidence of title to the shares in the possession of shareholders. The members of the petitioner society are claiming the issuance of the shares in their favour during 2003 to 2006, mainly basing on Article no. 5 of the AOA, whereas the Authorized

Share Capital was Rs. 1,00,000/- only, till the year 2011. The Authorized Share Capital is the maximum amount of capital that a company is authorized to raise by the issuance of shares. Therefore, it would not suffice to prove that either the shares are allotted or share certificates being issued. Now that the Paid-up / Issued Share Capital is the amount of capital that is raised through the actual allotment and issuance of shares. The amount of authorized share capital shall be specified in the Articles of Association and Certificate of Incorporation, which are the legal documents relating to the formation of a company. However, admittedly the authorized share capital is enhanced to Rs. 9,00,00,000/- in the year 2011 (Page 269 of the Add-on documents) divided into 90,00,000 shares of Rs. 10/- each.

- 4.3 It is stated that it is also an admitted fact that out of the said 10,000 shares, the 2nd and 3rd respondents held 5,000 shares each from the incorporation of the company as its founder directors and that the 2nd respondent transferred one share each to 4, 5 and 9 respondents. That initially, as per Articles No. 5 of the of the Articles of Association and also the Annual Reports for 2020-2021 & 2021-22 and the letter sent by the 1st respondent company to the MOT, GOI, the authorized share capital has been enhanced Rs.

9,00,00,000/- in the year 2011 and the Paid-up share capital as on this date also is Rs. 1,00,000/-. The Annual return (Form no. MGT-7) (page 364) from the period 01-04-2020 to 31-03-2021 specifies the paid-up capital as Rs. 1,00,000/-

4.4 It is stated that most of the members much particularly Mr. Chinta Mohana Rao (the Secretary of the petitioner society) individually have already filed complaints (Page no. 150, 140, 164 and 174 of the documents of the 1st respondent company) before the 8th Respondent agitating the very same allegations made in this petition and that vide orders Dt. 15-02-2021 (page no.162, 172 & 184 of the 1st respondent company's documents) passed by the 8th respondent closed the complaints. Further that no appeals being filed by the members of the petitioner society against the orders of 8th respondents, the orders of the 8th respondent became final and binding on the said alleged members of the petitioner society. That circumventing the orders of the 8th respondent, the alleged members malafidely approached this Tribunal wrongfully and designedly forming the petitioner society for the same allegations and seeking the very same reliefs and that the present petitioner before this Tribunal is hit by the principle of Res judicata.

4.5 It is stated that the alleged Minutes of Meeting Dt. 04-03-2020 pertains to the resolution passed by the Petitioner Association authorising Mr. Chinta Mohana Rao to sign, file criminal Complaints, Suits, Plaints, Appeal/s, Petition/s, Sworn/ verified affidavits, counter, documents Etc., against the 1st respondent company. There is no resolution to passed to file this company petition. Further that if the petitioner society so desires to agitate the alleged grievances of its members, this Hon'ble Tribunal is not the proper forum and that ought to have been filed before the appropriate forum. For this reason, the company petition no. 17/ 2021 need be dismissed in limini.

4.6 The Memorandum of Association Dt. 12-12-2006 (Page no. 17 of the Petition documents) and Articles of Association Di. 12-12-2006 (Page no. 25 of the Petition documents) as filed by the petitioner society is advantageous to these respondents, wherein contained at Art. No. 5 (page No. 27 of the Petition documents) of the AOA, the authorised share capital of the 1st respondent company shall be Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. All through from the day one of incorporation of the 1st respondent company, till date, the paid-up capital is only Rs. 1,00,000/-. That, neither in the MOA nor the AOA, there is

any mention that the shares/ share certificates **being issued** to the alleged members of the alleged petitioner society as against the enhanced authorised share capital. The authorised share capital was enhanced for future issuance only. Further Art. No. 16, 17 & 18 of AOA contemplate **Transfer & Transmission of Shares**. That the 1 respondent company shall act in strict adherence to the above articles in dealing with the allotment of the shares. Therefore, the MOA or AOA as filed would not suffice the contentions of the petitioner society that the shares have been either allotted or issued to the alleged members of the petitioner society and on the contra, the same proves adverse that the shares have not been issued and only that only the authorised share capital is enhanced.

- 4.7 With regard to the extracts of the Journal Registers (Page no. 22 to 57 of add-on documents) as filed pertains to the period from 01-04-2004 to 31- 12-2004, the extracts of the Ledger Accounts (Page No. 58 to 119 of add-on documents) pertains to the period from 01-04-2003 to 31-03-2006 and the ledger account (page no. 68 of add-on documents) belonging to the signatory of the petitioner society pertains to period from 01-04-2003 to 31-12-2008. Firstly, none of

the extracts of either the ledgers or journal registers or ledger accounts as filed are not the authenticated documents issued by the 1st respondent company. Further that the last date of the transactions (either payments by the alleged members or receipts of the amounts by the 1st respondent company) as could be gathered from the documents (Page no. 22 to 57) has been 31-03- 2006, that means all the alleged payments have been made before 31-03-2006. For this simple reason the claim of the alleged members/ shareholders allegedly represented by the petitioner society is absolutely/ hopelessly barred by limitation. If really the Article/ clause no. 16, 17, 18 of the AOA are not complied with, the alleged members ought to have approached the appropriate forum for issuance of the shares. That there is no such complaint before any forum, since 2006 to 2020. Also, that no notice is issued during 2006 to 2020. All the transaction is relating to the period from 2004 to 2006. Also, for this reason, the claim is hopelessly barred by limitation and in violation of Section 110 of the Companies Act, 1956.

- 4.8 It is stated that as per the letter Dated 24-08-2011 (page no. 218 to 220) being filed by the petitioner society (@page 219), there is a mention that membership as on 24-08-2011

was 100 and out of which, 9 members have been withdrawn their applications and amounts refunded and 11 members have subsequently merged and thus they entered Share Subscription Agreement. Further (at Page 220), the 1st respondent company precisely stated that the alleged members are not showing interest/ inclination to establish their units in the park issued by the company but wanted the shares to be allotted in their favour, that a decision (the 3rd respondent herein also present in the said board meeting Dated 06-12-2010) was taken by the board, the shares shall not be issued. Also in the said letter, it was indicated that the resentful elements created replica email ID of the company, sent letters, mails and representations to the banks and financial institutions of both State and Central Government Departments, print and electronic media, spreading all false and concocted complaints of irregularities that the chairman has absconded with Rs. 5.00 Crores to Rs. 6.00 Crores and also with all possible filthy language and even threatened physical harm, derailing the project implementation and progress.

4.9 It is stated that the 1st respondent company called for all the entrepreneurs and proposed to take return of the amounts

paid by them to the company under any head of account and for full and finally settling their respective accounts. Except few who declined and the whereabouts of some of the entrepreneurs being not known, about 75 members (majority) settled their accounts and received the amounts in full and final settlement and thereby surrendered their rights in the I respondent company and left the company. That those entrepreneurs who have dissented from the settlement and though they are not entitled, made a demand of unfounded and abnormally huge returns and receive the refund from the company. Only such begrudged entrepreneurs malafidely and premeditatedly constituted the petitioner society represented by Mr. Chinta Mohana Rao, as its secretary and got filed this company petition with all false and concocted allegations.

4.10 It is submitted that as per the alleged mandate of the members of the alleged society though without locus standi, the present Company Petition Under Section 59 of the Companies Act, 2013 was filed in C.P. No. 17/59 of 2021 on the file of this Hon'ble tribunal praying this Hon'ble Tribunal to direct the Registrar of Companies to rectify the Register of Members by entering the names of allottees and also in the detailed project report, to direct the Registrar of

Companies to prosecute the Directors for violating the provisions of Companies Act and such other order.

4.11 It is submitted that Section 59 of the Act, 2013 contemplates that if the name of any person is, without sufficient cause, entered in the register or without sufficient cause omitted therefrom or if a default is made or unnecessary delay takes place in entering in the register, the person aggrieved or any member of the company or the company may appeal to the Tribunal for rectification of the register. It is stated that neither the alleged members nor the society filed the share certificates (not even one share certificate) standing in favour of the alleged members of the company or at least, any such letter issued by the company to such alleged members allotting/issuing the shares. Fact remains, except some letters that too given to some authorities for sanction of the grant for the project (source of receipt of the such letters by them being not disclosed), there is no letter either admitting the allotment of shares/ issuing the share certificates in favour of any of the alleged members and the mode of receipt of the payment for issuance of such shares. Therefore, to say that the company issued shares to the alleged entrepreneurs is absolutely false and unfounded and concocted for the purpose of making false claims.

4.12 It is stated that some of the alleged members of the society filed a suit being renumbered as OS No. 391/ 2022 on the file of the III ADJ, RR District Courts at LB. Nagar (old O.S.No.155 of 2019 on the file of the PDJ, Mahabubnagar) seeking the decree against the company and its Directors declaring that the Society as the owner and possessor of the land and Consequential Injunction. The very filing of the suit would establish the mens rea/ criminal intention of the members of the alleged society filed the suit designed for malafidely usurping the land without any right or interest. The accused along with other directors signed the written statement Dt. 20-11-2019 and filed the same denying the contents of the plaint and also narrated the real facts of the case.

4.13 It is submitted that the alleged society also attempted to file a Complaint in **Crime No. 192 of 2020** Dt. 03.09.2020 on the file of P.S. Nandigama under Sec. 403, 406, 420, 503, 506, 120-B alleging that the Company committed breach of trust, fraudulently misused the funds without developing the project and threatening the Members with dire consequences. That in spite of the repeated notices from Police, none of the members of the alleged society furnished

any evidence, more so, even they did not appear before the police. In the circumstances the police, Cyberabad Commissionerate filed their **Final Report** Dt. 18.02.2021 seeking the court to close the crime for the reasons "Lack of evidence".

4.14 It is stated that the filing of the Suit and the police complaint, the alleged members of the society including Mr. Chinta Mohana Rao filed complaints before the Registrar of Companies complaining that the company did not register the names of all the members. The complaint No. MCA/ROC - Hyderabad/RC404/J00052583/L2000066861 Dt. 05-10-2020 filed by Mr. Chinta Mohana Rao, complaint No. MCA/ RoC- Hyderabad/ RC404/ J00053828/L2000066915 Dt. 05-10-2020 filed by the 9th respondent, complaint No. MCA/RoC Hyderabad/RC404/ J00053564/L2000066910, Dt. 05-10-2020 filed by the 10th respondent and the complaint No. MCA/ROC - Hyderabad/RC404/J00053833 /L2000066913 Dated 05-10-2020 filed by the 11th respondent. The complaints are filed at Page 174, 140, 164 & 150 of the respondents documents. That the 1st respondent company filed its common reply Dt. 19-10-2020 (Page 180 of the respondents' documents). That the 8th respondent passed its common orders Dt. 15-02-2021

closing the above complaints of the Petitioner, 9th, 10th & 11th respondents (Page 184, 172 & 162 of the respondents documents filed along with this Addl. Counter) and all other complaints filed by other members for the reason that there is **no evidence** placed before ROC.

4.15 It is submitted that the minutes (at page no. 124 of the Add-on Documents) is forged and fabricated the signature of the Chairman of the Company. If the signature of the Chairman of the 1st respondent company on the Minutes (at page no. 124) is different to that of the signature of the Chairman of the 1st respondent company on the receipt (page no. 132) which would amply prove that the signature on the minutes is forged and fabricated and the same cannot be considered.

4.16 It is submitted that the allegation with regard to the lands of the 1st respondent company is concerned, in the company petition and the suit in OS no. 181/ 2022, the petitioner society stated that the lands are assigned by the Government. That in reply, the 1st respondent company submits that the land are purchased by the 1st respondent company and that the said lands are not the assigned lands of the government.

4.17 It is submitted that the respondent society filed the correspondence between Government of India and the 1st respondent vide letter No.16(25)/2003/PDC/55 (Page No.224 of Add-on Documents) which is the sanction letter of the limits by the Ministry of Textiles, GOI. The Respondent Society also filed yet another letter dt.30.11.2011 (Page No.226 of Add-on Documents) issued by the Deputy Director, Office of the Regional Office of the Textile Commissioner, Bengaluru to the SRO, Kothur Mandal, that due to lack of progress in the implementation of the project, the Government of India vide its letter Dt. 11.8.2011 cancelled the Project and requested the 1st respondent company to refund the grant of Rs.12,00,00,000/- paid to them. Also that the petitioner society filed yet another letter dt.16.9.2016 (Page No.237 of Add-on Documents), vide this letter the Regional Office of the Textile Commissioner objected for the proposal of M/s. YFW. Corporation Private Limited to take over the 1st respondent Company with its assets. The letter dt.24.11.2013 (Page No.239 of Add-on Documents) demanding the repayment of Rs.12,00,00,000/- to GOI and Rs.1,10,00,000/- to the State Government along with 10% interest on or before 10.12.2014, failing which the landed

property will be brought to sale in due course of law. The Public notice dt.13.9.2014 (Page No.240 of Add-on Documents) issued by the Counsel for the YFW Corporation Private Limited calling for general public that any person having any claim in respect of the above maintenance, inheritance, possession, lease, tenancy, sub-treasury shall contact the undersigned therein. The 1st respondent company filed a letter dt.14.9.2016 (Page No.241 of Add-on Documents) issued by the Tahsildar, Kothur to Sri J. Soma Sundaram, Advocate, wherein it is stated that adverting to the Public Notice issued by J. Soma Sundaram, it is stated that the Government has cancelled the project and instructed to recover the advances together with 10% interest under Revenue Recovery Act and till the dues are cleared by the I respondent company, the taking over of the company would not be allowed. The petitioner society also filed another letter dt.25.9.2016 (Page No.242 of Add-on Documents), which is also similar letter to the above document. The petitioner society also got filed a Memorandum of understanding dt.30.12.2015 executed by and between M/s. YFW Corporation Private Limited and Regonda Manikyam, Samuleti Raju and Narsaiah Uppala.

4.18 It is stated that none of the documents mentioned in this paragraph as filed by the petitioner society are relevant to the point in subject in the main Company Petition and are nothing to do with the issuance of the shares in favour of the alleged members of the petitioner society or that of the alleged default committed by the 1st respondent company in registering the names of the alleged members of the 1st petitioner society as shareholders. Therefore, the said documents from page Nos.224 to 226, 237 to 258, 276 to 293 of Add-on documents deserves no consideration.

4.19 Insofar as the copy of the Affidavit and the petition Writ petition filed in W.P. No. 10611 of 2016 also deserves no consideration as the same is irrelevant for the reliefs claimed by the petitioner society as the same filed by M/s. YFW Corporation Private Limited against the Union of India and others to declare the notice dt.16.9.2016 issued by the Government of India. However, vide orders dt. 24.3.2017 (Page No.297 and 298 of Add-on Documents) the Writ petition in W.P. No. 10641 of 2017 was dismissed as withdrawn by the petitioner. By virtue of the orders Dt. 24.3.2017 in W.P. No. 10641 of 2017, the Agreement between M/s. YFW Corporation Private Limited and the 1st respondent company became infructuous. In the affidavit or

the petition in the Writ petition also, there is no mention with regard to the allotment of the shares or the issuance of the shares in favour of the alleged members of the 1st respondent company. These documents are filed with a malafide intention to mislead this Hon'ble Tribunal and protract the proceedings of the case.

4.20 It is stated that the fact remained that the members of the petitioner society have not paid any amount for purchasing the shares from the 1st respondent company, and that the documents much less the ledger extract and the extracts of the Journals (vide Add-on documents), the receipts filed by the petitioner society pertaining to Mr. Chinta Mohana Rao would amply prove that the amounts have been paid to the 1st respondent company were towards the cost of the land to be provided to the alleged members under Leave and License Agreement and that there is no receipt filed being issued by the 1st respondent company in favour of any of the alleged members of the petitioner society. Therefore, the petitioner society utterly failed to establish the payment of the money by the alleged members of the society towards subscription of the shares and on the contra, the 1st respondent company could amply establish that the shares have not been issued. In the absence of the issuance of the

shares, the rectification of the register of the members by way of entering the names of the alleged allottees is not possible. It is therefore prayed that this Hon'ble Court may be pleased to dismiss the Company Petition No.17 of 2021 on the file of this Hon'ble Court with exemplary costs.

5. The Respondents No.3 & 6 filed Counter, inter-alia stating that:

5.1 It is stated that this answering respondent herein i.e., Respondent No. 3 and 6 are the Directors of Respondent No.1 and they were fraudulently removed as directors by Respondent No.2, 4 and 5. It is stated that, before reverting to the Petition answering respondents would like bring one of the fact to the notice of this Tribunal that the Respondent No.1, 2, 4 and 5 have filed their counter in the petition, Respondent No.2 have signed on behalf of Respondent No.1 company claiming that he was authorized to sign the counter and vakalth on behalf of Respondent No. 1 Company basing on the board resolution passed in the board meeting which never took place and answering respondents were never received any notices relating to the said alleged board meeting hence the counter filed by Respondent No.1

company is not maintainable and the contents of the said counter is not binding on this answering respondents and the Respondents 2, 4 and 5 are solely responsible for the same.

5.2 It is stated that the Respondent No2 and answering respondent no.3 have initially incorporated the Respondent No. 1 Company as section 25 company under companies act 1956 subsequently the Respondent No.1 Company converted as a Private Limited Company and increased its authorized share capital from Rs.1,00,000/- and subsequently the authorized capital of the Respondent No.1 have been increased from Rs.1,00,000/- to Rs.5,00,000/- and Rs.5,00,000/- to Rs.9.00,000/- to allot the equity shares to its members.

5.3 It is stated that the present Petition was filed by the welfare society seeking certain directions against Respondent No.8 specifically to rectify the register of members by way of entering the name of allottees as mentioned in the Share Subscription Agreement (SSA) and also in the detailed project report certified by the Respondent No. 7 and further sought Respondent No.2,3,4,5,6,7 for violating the provisions of the companies Act.

5.4 It is stated that the Respondent No.3 herein is the promoter Director and the Shareholder along with Respondent No.2 herein, initially at the time of incorporation of Company, the Respondent No. 2 and 3 have been allotted 1000 equity shares each at the time of incorporation. Subsequently 4000 thousand shares were allotted to Respondent No. 2 and 3 and further as per representation, warranties and compliance report submitted to Respondent No. 7 herein and the Ministry of Textiles the Respondent No. 3 was allotted with 16000 equity shares of Rs.10/- each in addition to his previous equity shares of 5000 as such the Respondent No. 3 is altogether holding 21,000 equity shares of Rs.10/- each in Respondent No.1 Company.

5.5 It is stated that one Mr. K. Raj Gopal Reddy, without having the locus, filed an implead petition basing on the alleged share transfer from Respondent No.3, the said implead petition was numbered as CA No. 71/2022 is pending before this Tribunal and the Respondent No.3 reserves his right to file a counter for the same if the said implead petition is admitted, further the Respondent No.3 and 6 were fraudulently removed as a directors of the company, for said act both the Respondents No. 3 and 6 are reserves their right to file a counter to the said memo and applications and

further both the Respondents No. 3 and 6 are initiating the legal action by filing appropriate Petitions before this Tribunal and reserves the right.

5.6 It is stated that the Respondent No.3 is the Director on Board in Respondent No.1 Company and as per representation, warranties and compliance report submitted to Respondent No. 7 the Respondent No. 3 and 6 were allotted with 16000 equity shares of Rs.10/- each in Respondent No.1 Company. However, the share certificates of Respondent No. 3 and 6 in respect of 16000 equity shares are in the possession of Respondent No. 2, 4 and 5 illegally. The Board vide its meeting dated 4th May, 2006 acknowledged the remittance of funds of Rs.1,63,48,400/- by the share subscribers also resolved to allocate 1634840 equity shares at Rs.10/- each. Copy of the Board meeting dated 4th May 2006 is annexed as **Annexure 3**.

5.7 It is stated that the Respondent No. 2, 4 and 5 are only persons handling the day-to-day affairs of the Respondent No.1 Company including the Bank transactions, correspondence to the ministry and Registrar of Companies, in fact the Respondent No.3 and 6 are the person continuously questioning the acts of the Respondent No. 2,

4 and 5 and they use to take majority decisions without passing proper Board resolutions. In fact the last board meeting of Respondent No.1 Company was conducted in the year 2012, despite many requests made by these answering Respondents, no board meetings were conducted thereafter to the best knowledge of these answering Respondents.

5.8 It is stated that the Respondent No. 2, 4 and 5 being involved in the day to day affairs of the Company used to liaison with various government department as a part of that they use to collect the signed non-judicial stamp papers and blank signed papers to submit the representations and making affidavits to the various departments, believing them the Respondent No. 3 and 6 have given the blank signed non-judicial stamp papers and blank signed papers which misused at various places, it may hard to say that Respondent No. 3 and 6 are unaware where exactly the said signed non-judicial stamp papers and blank signed papers have been used.

5.9 It is stated that the Respondent No.1 Company in compliance with its objects over a period of time 106 entrepreneurs was registered as its members. Clause 10 of Articles of Association reads that each member of Company

construed to be shareholder and entitled to receive one share certificate for the shares registered in his/her name in Respondent No.1 Company.

5.10 It is stated that the Respondent No. 1 represented by Respondent No.2 herein filed a WP No.24774 of 2011 for various reliefs and stated and admitted in its affidavit that the Company received Rs.7.9 Crores as a contribution from its members and the Company has entered into Share Subscription Agreement (SSA) with all its members. From the subscription amounts the Respondent No. 1 Company from 2003 to 2005 have acquired huge agricultural land admeasuring Acres 141.24 guntas in various survey numbers situated Narasappaguda village, Cheguru Village, Kottur Mandal. Mahaboob Nagar District (presently Nandigama Mandal, Ranga Reddy District), Telangana from its vendors on the name of the Respondent No.1 Company under registered sale deed and subsequently, the Respondent No.1 Company to allot equity shares to all its members increased its authorized share capital from Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each to Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each and Respondent No.1 has converted the land from Agriculture to Non-Agriculture to set-up Integrated Textile

Park with all infrastructure facilities. But still original share certificates have not been handed over to its members illegally kept by Respondent no.2, 4 and 5 herein. Copy of the Share Subscription Agreement (SSA) of Respondent No.3 and the statement of the writ affidavit filed as **Annexure 4 and 5.**

5.11 It is further stated that, the Govt. of India to encourage the textile industries pronounced a scheme for integrated textile parks (SITP), upon knowing about the scheme the Respondent No. 2, 4 and 5 apprised all its advantages of the scheme to the members of the Respondent No.1 Company and submitted a project report with regard to establishment of the textile park at Kothuru, Andhra Pradesh (presently in Telangana) basing on the said project report submitted by the Respondent No.1 Company believing the same as true, the Ministry of Textiles, Government of India vide its letter dated 17-01-2005 enclosed minutes passed by Project Appraisal and Approval Committee (PAAC) in principle considered the project proposed to set up Textile Park at Kothur, Andhra Pradesh (at present in Telangana) and approved Rs.892.16 lakh under GWSS with a GOI share of Rs. 223.04 lakh and Rs.1924 lakh under TCIDS with a GOI

share of Rs. 1625.08 lakh. Thus the total sanction project cost was Rs. 2818.16 lakhs with Government of India share of Rs 1848.92 lakhs". Copy of the letter issued by GOI is attached hereto as **Annexure-6**.

5.12 It is stated that the Ministry of Textiles, Government of India after careful examination of the project report submitted by Respondent No. 7 who is a Project Management consultant appointed by Govt. of India for speedy execution of the project informed to Respondent No.1 Company" the undersigned is direct to say that the proposal for sanction of Hyderabad Hi-Tech Weaving Park, Andhra Pradesh under the Scheme for Integrated Textile Park(SITP) was considered and approved by the Project Approval Committee in its meeting held on 01.07.2006. The estimated project cost eligible for funding under the SITP is Rs. 106 Crores of which the Government of India under SITP would be Rs. 40.00 Crore. The SPV is to complete the project within a period of 12 months from July, 2007. Further it is stated that you are requested take appropriate action and submit claim for release of 1st part payment of 1st instalment of Government of India grant through the Project Management Consultant viz. M/s Infrastructure Leasing & Financial Services Limited (IL & FS) and after careful

examination of the same, the IL&FS in March, 2006 submitted project report to Ministry of Textiles, Government of India. Pertinent to mention here that the scheme was based on Public-Private Partnership (PPP) and the main purpose of project is to provide world class infrastructure facilities to members of Textile Park and consequently to provide employment to rural youth. Copy of the list of members enclosed to DPR is attached hereto as **Annexure-7**.

5.13 It is stated that the Ministry of Textiles, Government of India after examining the project report carefully, vide its correspondence dated 11th August, 2006 informed to Respondent No.1 Company "the undersigned is direct to say that the proposal for sanction of Hyderabad Hi-Tech Weaving Park, Andhra Pradesh under the Scheme for Integrated Textile Park (SITP) was considered and approved by the Project Approval Committee in its meeting held on 01.07.2006. The estimated project cost eligible for funding under the SITP is Rs. 106 Crores of which the Government of India under SITP would be Rs. 40.00 Crore. The SPV is to complete the project within a period of 12 months from July, 2007. Further it is stated that you are requested take appropriate action and submit claim for release of 1st part

payment of 1st instalment of Government of India grant through the Project Management Consultant viz. IL & FS. Copy of the said correspondence is attached hereto as **Annexure-8.**

5.14 It is stated that, the Respondent No.1 Company represented by Respondent No. 2 stated that it has complied through its letter dated 5th of September 2006 addressed to Respondent No.7 requested to release of first instalment grant under the Scheme for Integrated Textile Park (SITP). Whereunder the Respondent No.2, 4 and 5 that the land is under the control of SPV and the Respondent No.7 have verified the Sale Deeds. Further, the Respondent No. 2 admitted that Shares have been allocated to 99 persons. Certified true copy of the resolution of the Board of Directors, list of share allocates with number of shares issued, value, distinctive numbers are enclosed. Certified true copy of an issued share certificate enclosed and certified true copies of all the issued share certificates would be submitted to the IL&FS separately. Copy of the Same is attached hereto as **Annexure- 9.**

5.15 It is stated that the Respondent No. 7 i.e., IL & FS (project Management Consultant) after receiving compliance report from the Respondent No.1 Company, while recommending

to release 1" installment grant in its correspondence dated 11 September. 2006 at Sl. No. 4 stated "*SPV in compliance with fixed conditions allotted the shares to the members of the Park and a copy of the typical share certificate is enclosed thereto*" Copy of the Same is attached hereto as **Annexure-10**.

5.16 It is stated that the Ministry of Textile after receiving the recommendation from Respondent No.7 for released 1st part of the 1st instalment and 2nd part of the first instalments vide proceedings bearing File No. 19/23/2006-SITP Cell dated 12.09.2006 released Rs. 4,00,00,000/- Copy of said correspondence is attached hereto as **Annexure-11** but without submitting the status report the Respondent No.2 have asked for the grant of 2nd part of the first instalment i.e., Rs.8,00,00,000/- and the same have been forwarded to Ministry of Textile by Respondent No.7. As things stood thus the MOT, GOI vide its letter No. D.O.No. 19/11/2005-SITP Cell dated 19th December, 2007 directed the Respondent No.1 Company to submit the status report on the progress of project. In compliance of the same the Respondent No.1 under the signature of Respondent No.2 submitted a detailed status report in Part-FC (Financial Closure) at SL. No. 26 (Equity Share Capital) stated that

"completely contributed by all the members". At SL No. 29 (SITP Grant MOT, Government of India) it is stated that claim for second installment of Rs. 800 lakh has been made. At SL. No. 30 (State Government Grant) Already Rs. 110 lacs has been received which is being incurred for part funding the infrastructure cost of the project. Subsequent claim upto Rs. 200 lacs is being submitted. In part H (Documentation) at clause No.36 (Execution of SSA) completed for all the members. At clause No. 37 (Execution of LLA) is under progress and the same will be completed by March, 2008. Copy of the same is attached hereto as **Annexure-12.**

5.17 It is stated that the Government of India (Ministry of Textiles) Issued guidelines of Scheme for integrated Textile Parks (SITP) and as per the guidelines the issuance of share by SPV to members is in proportion of area allocable to them. Accordingly, the Respondent No.1 Company prepared the statement showing details of Share Application Money and shares allocated to its members. Copy of said statement is attached hereto as **Annexure-13.** The Government of India after receiving recommendation from Respondent No. 7 released 2nd part of the 1" instalment of

Grant Rs. 8,00,00,000/- to Respondent No.1 Company in 2008, thus the Government of India released part amounts of 12,00,00,000/- under grant of Rs. 40.00 crores to Respondent No.1 for developing infrastructure facilities. The Government of Andhra Pradesh released 110 lacs as grant for development of infrastructures facilities. As stated supra, the Respondent No. 1, 2, 4 and 5 have collected 7.9 crores from its members to acquire land in the name of SPV and share application money. Further received amounts from members as non-refundable deposit and no justification is given by Respondent No. 2, 4 and 5 the purpose for collecting said amounts, there was a serious altercation between the Respondent No. 2, 4 and 5 with Respondent No.3 but the Respondents No.2, 4 and 5 have not satisfied the Respondent No. 3 on the same.

5.18 It is stated that in the year 2010 the Respondent company have changed to a private limited company and to meet additional capital it increased authorized share capital from Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each to 9,00,00,000/-divided into 90,00,000 equity shares of Rs. 10/- each. The Respondent No. 2, 4 and 5 herein appraised to its members the increased authorized

share capital will be allocated proportionately to the members as per SITP guidelines i.e, basing on their holding of land. It is stated that, as utter failure in execution of the project by Respondent No. 2, 4 and 5 as per timelines and guidelines of SITP, the Government of India, Ministry of Textiles vide its Letter No. 19/11/2005-SITP Cell dated 11th August, 2011 informed that in 23rd Pac meeting held on 6th June, 2011 sought the refund of the released amount i.e., Rs.12 Crores with in fifteen days. Copy of the said letter is attached hereto as **Annexure-14**.

5.19 It is stated that the Respondent No.2, 4 and 5 with an to defraud the members and these answering Respondents illegally holding the Share Certificates allocated to members despite of continuous requests the Respondents 2, 4 and 5 have holding for the reasons best known to them and further the Respondent No. 2, 4 and 5 in active connivance with each other depriving the legitimate rights of all the members including this answering respondent, the said Respondents No.2. 4 and 5 by misusing their powers have misappropriated the funds and committed the various illegal acts and wrongfully possess the share certificates of the members for a wrongful gains. The said Respondents No.2, 4 and 5 have entered into an MOU in a manner of agreement

of sale with YFW corporation in 2015 to alienate the asset of Respondent No.1 Company and the said act is nothing but deviating from the core objects of the Respondent No.1 Company. Further the Respondent 1 and 2 filed the MGT 7 and AOC a statutory document uploaded under the digital signature of Respondent No.2 which confirms shareholdings and directorships of Respondent No. 3 and 6 herein (Copy of the agreement of Sale annexed as **Annexure 15, 16 and 17**).

5.20 It is stated that though the shares were allocated to the members and the names of the said members have not been reflected in the registrar of members as a shareholder hence it is required to modify the registrar of members with the details of the exact members and their holdings. Further submitted that most of the averments of the captioned company petition are true. In the light of the above facts, it is therefore most humbly prayed that this Tribunal may direct the Respondent No.8 to reflect the names of the registered members as a shareholder including the answering respondents and pass such other orders as this Tribunal may deem fit.

6. The Respondent No.7 filed counter, inter-alia stating that:

6.1 It is stated that the Respondent No 7 i.e., IL&FS, had entered into a Memorandum of Agreement (MoA) dated 09.11.2006, for the purpose of development of a modern integrated textile park and for supporting infrastructure on commercial format. It is stated that the role of IL&FS is limited to the extent as mentioned in Clause 4 of the MoA, wherein, IL&FS is merely involved in tasks for Professional Services. Pursuant to fulfilling the conditions of the MoA, the Respondent No. 7 had recommended for release of First Instalment of grant under Scheme for Integrated Textile Parks (SITP) i.e., Rs. 4.00 Crores (Rupees Four Crores Only), 10% of the total grant amount. Further, it is stated that for the professional services, IL&FS was compensated by the Respondent No. 1 with a sum as agreed to between the parties.

6.2 It is stated that the role of the Respondent no. 7 is limited to the extent as mentioned in Clause 4 (ii) of the MoA. It is vehemently denied that the Respondent No. 7 had delayed in acquiring the environmental clearance from the State Pollution Control Board. It is stated that the Respondent No.

7's role is limited to assist and liaison with Respondent No. 1 in its meeting and interactions with the Government agencies and not to acquire clearances from the Government departments. It is vehemently denied that the Respondent no. 7 had caused any damage in completing the project within in timelines.

6.3 It is stated that the respondent vehemently denies that the Nodal Agency i.e., IL&FS have neither initiated any efforts for starting the project nor permitted the members of the society to continue the projects by way of not providing the necessary legal documents to proceed further. It is stated that as mentioned above, IL&FS has facilitated the SPV i.e., Respondent No. 1, in fulfilling the conditions for the release of 10% of the total grant amount i.e., the First Instalment under Scheme for Integrated Textile Parks ("SITP") i.e., Rs. 4.00 Crores (Rupees Four Crores Only).

6.4 It is stated that the Union of India acting through the Ministry of Corporate Affairs, had initiated proceedings against Infrastructure Leasing & Financial Services Limited and its group companies under Section 241(2)(k) of the Companies Act, 2013. Pursuant to the said proceedings, the Hon'ble National Company Law Tribunal, Mumbai Bench

(NCLT) suspended the erstwhile board of directors of IL&FS and appointed new directors as recommended by the Union of India on the board of IL&FS. Further, in the same matter, the Hon'ble NCLAT, Delhi Bench, in the matter of *Union of India v. Infrastructure Leasing and Financial Services Ltd* vide its Order dated 15.10.2018 had passed a moratorium order categorically stating that there shall be a stay on the institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/ Tribunal/Arbitration Panel or Arbitration Authority. Therefore, it is submitted that the instant Petition is not maintainable against this answering Respondent. It is further stated that the certification of all the subscribers to the Share Subscription Agreement (SSA) by IL & FS is irrelevant to determine the maintainability of the instant Petition.

6.5 Respondent no.7/ M/s Infrastructure Leasing & Financial Services Limited (IL&FS) in its Counter dated 13.10.2022 role of R/7 is limited to the extent as mentioned in Clause 4 of the Memorandum of Association (MoA), wherein R/7 is

involved in the task of professional services. While refuting the allegations and assertions as made in the Petition, R/7 contended that:

“12. Union of India acting through the Ministry of Corporate Affairs, had initiated proceedings against Infrastructure Leasing & Financial Services Limited and its group companies under Section 241(2)(k) of the Companies Act, 2013. Pursuant to the said proceedings, the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") suspended the erstwhile board of directors of IL&FS and appointed new directors as recommended by the Union of India on the board of IL&FS. Further, in the same matter, the Hon'ble NCLAT, Delhi Bench, in the matter of Union of India v. Infrastructure Leasing and Financial Services Ltd vide its Order dated 15.10.2018 had passed a moratorium order categorically stating that there shall be a stay on the institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/ Tribunal/ Arbitration Panel or Arbitration Authority. Therefore, it is submitted that the instant Petition is not maintainable against this answering Respondent. A copy of the NCLAT Order dated 15.10.2018 is annexed herewith as Annexure 3 for the kind perusal of this Hon'ble Tribunal.”

7. The Respondents No.9, 10 and 11 filed their counter, inter-alia stating that:

7.1 It is stated that the IA No.99 of 2022 was filed to implead the answering respondents in the Company Petition and this Tribunal after hearing the same, vide its order dated 24.08.2022 was allowed the IA and directed the petitioner to carry amendment in cause title of Company Petition by making these answering respondents as respondent Nos.9,10 and 11.

7.2 It is stated that the answering respondents after taking into account the several material statements, averments and contentions made in the Company Petition by the petitioner in details, the following is submitted:

7.2.1. The answering Respondents are Directors and deemed Shareholders of the Respondent No.1 Company. To the best knowledge and belief of these answering Respondents, the Board Resolution enclosed along with Vakalat filed on behalf of Respondent No.1 Company is purported one in nature and no such board meeting was held to pass such resolution authorizing either Respondent No.2, 4 or 5 to represent Respondent No.1 Company in Company Petition. As such the pleadings of the Respondent No.1 Company in its counter filed in Company Petition are not binding on these answering

Respondents and the Respondent No. 2, 4 and 5 are solely responsible for the same, As the said pleadings were brought on record of this Tribunal without the consent and approval of these answering Respondents/Directors. It is also averred by the Respondents that the Registry refused to provide a certified copy of Board Resolution and vakalat on their request for the reasons best known to them. (**Annexure. No.1** – page 16 of the statement of the respondents).

7.2.2. It is stated that the Respondent No. 2, 4 and 5 are involved in day-to-day affairs of the Company and in the absence of Board Resolution they have taken majority decisions. In fact, the Respondent No.1 Company conducted Board meeting last in 2012 and thereafter these respondents received board meeting notices once in 2019. These Respondents requested many times to conduct board meetings as per Act and however, the Respondent No. 2, 4 and 5 did not conduct any meeting or any board meetings were conducted since 2012 regularly as contemplated under Act.

7.2.3. It is stated that the Respondent No.1 Company was incorporated under Section 25 of Companies Act, 1956

in the year 2003 having CIN No. U18101AP2003GAT42259 with an authorized share capital of Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. The paid-up share capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each. The Respondent No. 2 and 3 are the 1st Directors, promoters and shareholders of Respondent No.1 Company. In 2006, the Respondent No.1 Company in order to allot equity shares to members amended the Memorandum of Association and Articles of Association and thereby increased the Authorized Share Capital of the Company from 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each to 5,00,00,000/- to divided into 50,00,000 equity shares of Rs.10/- each.

- 7.2.4. **It is stated that** the Respondent No.1 Company in 2010 amended its Memorandum and Articles of Association and thereby altered the Company from Section 25 of Companies Act, 1956 to Private Limited Company and thereby increased authorized share capital from Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each to 9,00,00,000/- divided into 90,00,000 equity shares of Rs. 10/- each. The key managerial

persons, i.e., Respondent No. 2, 4 and 5 herein appraised to its members in addition to their previous shareholder the increased authorized share capital shall be allocated proportionately to the members as per SITP guidelines. As per the Annual Returns uploaded by Respondent No. 1 Company for the F.Y 2020-21, whereunder it has been shown that the Respondent No. 2, 3, 4, 5 and 9 are holding 4997, 5000, 1, 1 and 1 equity shares of Rs.10/- each respectively. Copy of Annual Return for the F.Y 2020- 21. (Annexure-II – page Nos.17-75 of the statement of the respondents).

7.2.5. It is stated by the respondent that to meet the aims and objects of the Company, the Respondent No.1 Company over a period of time enrolled 106 entrepreneurs as its members. Clause 10 of Articles of Association reads that each member of the Company shall be construed to as shareholder and entitled to receive one share certificate for the shares registered in his/her name in Respondent No.1 Company. It is an admitted fact of the Respondent No. 2, 4 and 5 that the Respondent No.1 Company so far approximately collected Rs. 7.9 crores from its members towards purchase of land in

Respondent No.1 Company, Share Application Money and Non-refundable deposit.

7.2.6. It is stated that the answering Respondents further submits that with the money collected from its members, the Respondent No.1 Company from 2003 to 2005 purchased agricultural land admeasuring Acres 141.24 guntas in different survey numbers situated Narasappaguda village, Cheguru Village, Kottur Mandal. Mahaboobnagar District, Telangana (presently falling under Nandigama Mandal, Ranga Reddy District) from its vendors and converted the same from Agriculture to Non- Agriculture land to set-up Integrated Textile Park with all infrastructure facilities.

7.2.7. The Government of India, Ministry of Textiles came up with a scheme giving grants to Textile Parks which are constituted under Act as Special Purpose Vehicles (SPV) under the scheme of Textile Centres Infrastructure Development Scheme (TCIDC). Having coming to know that the scheme introduced by Government of India is beneficial, the Respondent No.1 appraised to its members about the advantage of the scheme and consequently the Board of Directors passed

a resolution to submit proposal along with detailed project report to Ministry of Textiles, Government of India to avail benefits under scheme. The Respondent No.2 in the capacity of Chairman of Respondent No.1 Company submitted proposal along with detailed project report to Government of India and forwarded a copy of the same to Joint Director (Apparel) O/o Director Handlooms & Textiles, Government of Andhra Pradesh.

7.2.8. It is further submitted that after examining project report submitted by the Company, the Ministry of Textiles, Government of India vide its letter dated 17-01-2005 enclosing minutes passed by Project Appraisal and Approval Committee (PAAC) in principle considered the project proposed to set up Textile Park at Kothur, Andhra Pradesh (at present in Telangana) where under it is stated that" the Committee approved Rs.892.16 lakh under GWSS with a GOI share of Rs. 223.04 lakh and Rs.1924 lakh under TCIDS with a GOI share of Rs. 1625.08 lakh. Thus the total sanctioned project cost was Rs. 2818.16 lakhs with Government of India's share of Rs 1848.92 lakhs". (Copy of the letter

issued by GOI is attached hereto as Annexure-III – page Nos.76-81- of the statement of the respondents).

7.2.9. It is stated that the Ministry of Textiles, Government of India has appointed Infrastructure Leasing & Financial Services (IL & FS) as its Project Management Consultant (PMC) to supervise, for speedy and effective implementation of the project. The Respondent No.1 Company being a Special Purpose Vehicle (SPV) submitted detailed project report with all such particulars of land acquired in its name, list of members/background of entrepreneurs, along with enhancing project cost to PMC Le. IL & FS. The PMC after careful examination of project report in March, 2006 submitted report to Ministry of Textiles, Government of India. Pertinent to mention here that the scheme was based on Public-Private Partnership (PPP) and the main purpose of project is to provide world class infrastructure facilities to members of Textile Park and consequently to provide employment to rural youth. Copy of the list of members enclosed to DPR is attached hereto as **Annexure-IV**.

7.2.10. It is averred by the respondent that the Ministry of Textiles, Government of India after examining the project report carefully, vide its correspondence dated 1 August, 2006 informed Respondent No.1 Company "the undersigned is direct to say that the proposal for sanction of Hyderabad Hi-Tech Weaving Park, Andhra Pradesh under the Scheme for Integrated Textile Park (SITP) was considered and approved by the Project Approval Committee in its meeting held on 01.07.2006. The estimated project cost eligible for funding under the SITP is Rs. 106 Crores of which the Government of India under SITP would be Rs.40.00 Crore. The SPV is to complete the project within a period of 12 months from July, 2007. Further it is stated that request to take appropriate action and submit claim for release of 1st part payment of 1st instalment of Government of India grant through the Project Management Consultant viz., IL & FS. Copy of the said correspondence is attached hereto as **Annexure -V**.

7.2.11. Pursuant to the above, the Ministry of Textiles, Government of India issued guidelines of Scheme for Integrated Textile Parks (SITP) whereunder clause No. 5.4 the authorities promulgated schedule to follow for

release of Government funds as grant in Four (4) instalments in a phased manner (1st, 2nd and 3rd instalment 30% each and 4th instalment 10%). It is stated that the Respondent No.1 Company conducted Board meeting on 4th May, 2006 whereunder, the Board of Directors admitted that

"Board was apprised that the members of the project and investors have remitted funds to the tune of Rs.1,63,48,400/- for which the Company would allot equity shares to the members and the investors against the monies remitted by them to the Company supporting the required equity amount for the project." Consequent to same the Board of Directors has passed a resolution on 4th May, 2006 stating that :

"accordingly it was them RESOLVED THAT the Company do allocate 16,34,840 equity shares of Rs.10/- each aggregating to Rs.1,63,48,400/- as per the details enclosed hereto as Annexure-I for subsequently allotting to the members and the investors of the project."

Copy of the Board Resolution is attached hereto as **Annexure-VII** -page Nos.97-98 of the statement of the respondents.

The Respondent No.1 Company to comply with the SITP guidelines issued by Ministry of Textiles, Government of India and also to execute the resolution passed by the Board on 4.5.2006 decision, the

Respondent No. 1 Company has entered into Share Subscription Agreement with all its members including these answering Respondent in 2006. (Copy of Share Subscription Agreement is attached hereto as Annexure-VIII – page Nos.99-117 of the statement of the respondents).

7.2.12. It is stated that the authorized signatory of Respondent No. 1 Company i.e., Respondent No.2 in his letter dated 05-09-2006 communicated to PMC, i.e., IL&FS undertakes that it has complied with the conditions of SITP guidelines and thereby requested to forward satisfaction report to Ministry of Textiles, Government of India for release of first instalment grant under the scheme for Integrated Textile Park (SITP). Whereunder the Respondent No.2 at Serial No. 3 and 4 admitted that the land is under the control of SPV and the Project Management Consultant has verified the Sale Deeds. Further, the Respondent No. 2 admitted that Shares have been allocated to 99 persons. Certified true copy of the resolution of the Board of Directors, list of share allocates with number of shares issued, value, distinctive numbers are enclosed. Certified true copy of an issued share certificate enclosed and certified true

copies of all the issued share certificates would be submitted to the IL&FS separately. Copy of the Same is attached hereto as **Annexure-IX** – page Nos 118-120 of the statement of the respondents.

7.2.13. It is stated that the Respondent No. 7 i.e., IL & FS (project Management Consultant) after verifying the compliance report submitted by the Respondent No.1 Company, vide its letter dated 11th September, 2006 communicated to Ministry of Textiles, Government of India at Serial. No. 4 stated that *"SPV in compliance with fixed conditions allotted the shares to the members of the Park and a copy of the typical share certificate is enclosed thereto"* and thereby recommended to release 1st instalment grant under scheme to Respondent No.1 Company. Copy of the Same is attached hereto as **Annexure-X** page Nos.121-123 of the statement of the respondents).

7.2.14. It is averred that pursuant to recommendation received from Project Management Consultancy, i.e., Respondent No.7 for release of 1st instalment grant, the Ministry of Textiles, Government of India believing that the representations and warranties made by

Respondent No. 1 and 2 as true issued proceedings No.19/23/2006-SITP Cell dated 12.09.2006, thereby released and credited Rs.4,00,00,000/- (Rupees Four Crores) as 1st instalment of grant to the Escrow A/c of the Hyderabad Hi-Tech Park Limited. Copy of said proceedings is attached hereto as **Annexure-XI** page Nos124-125 of the statement of the respondents. Further, the Respondent No.1 Company submitted its compliance report to Respondent No.7 requesting for release of 2nd instalment of grant Rs. 8,00,00,000/- (Rupees Eight Crores) and after receiving compliance report from Respondent No.7. the Ministry of Textiles, Government of India released 2nd instalment of Grant under 1st phase.

7.2.15. It is stated that after receiving 1st instalment amount Rs. 12,00,00,000/- from Government of India the Respondent No.1 did not submit progress report of the project to Government, as such the Ministry of Textiles, vide its letter No. D.O.No. 19/11/2005-SITP Cell dated 19th December, 2007 directed the Respondent No.1 Company to submit the status report on the progress of project. In compliance of the same the Respondent No.2 as authorized signature of Respondent No.1 submitted

status report with detailed implement schedule dated 12.01.2008 whereunder in Part-F (Financial Closure) at SL. No. 26 (Equity Share Capital) stated that "completely contributed by all the members". At Serial. No. 29 (SITP Grant MOT, Government of India) it is stated that claim for second instalment of Rs.800 lakh has been made. At Serial. No. 30 (State Government Grant) Already Rs. 110 lacs has been received which is being incurred for part funding the infrastructure cost of the project. Subsequent claim upto Rs. 200 lakhs is being submitted. In part H (Documentation) at serial No.36 (Execution of SSA) completed for all the members. At serial No. 37(Execution of LLA) is under progress and the same will be completed by March, 2008. (Copy of the same is attached hereto as **Annexure-XII** – page Nos.132-135 of the statement of the respondents).

7.2.16. As stated supra, the Government of India (Ministry of Textiles) issued guidelines of Scheme for Integrated Textile Parks (SITP) and as per the guidelines the issuance of shares by SPV to members is in proportion of area allocable to them. Accordingly, the Respondent

No.1 Company prepared the statement showing details of Share Application Money received from the members including these answering Respondents correspondingly shares allocated to its members. As per compliance report and representations and warranties made by the Respondent No.1, 2, 4 and 5 to Respondent No. 7 and Government of India, Ministry of Textiles these Respondents were allotted with 16,000 equity shares of Rs. 10/- each and share certificates with distinctive numbers were executed and however, the Respondent No.1, 2, 4 and 5 are holding Share Certificates of the Petitioner association members and these answering Respondents illegally in their possession. Copy of said statement is attached hereto as **Annexure-XIII** – page Nos.132-135 of the statement of the respondents).

7.2.17. The Government of India after taking into account of the Representation, warranties that the shares were allotted to members and Share Certificates with distinctive numbers were issued to Members proportionate to land allotment released 2nd part of 1st instalment Rs. 8,00,00,000/- (Rupees Eight Crores) to Respondent No.1 Company in 2008, thus the

Government of India released 1st instalment of 30% equivalent to Rs. 12,00,00,000/- (Rupees Twelve Crores) out of 40.00 crores to Respondent No.1. The then Government of Andhra Pradesh released 110 lacs (Rupees One Crore Ten Lakhs) as grant for development of infrastructures facilities. As stated supra, the Respondent No. I collected 7.9 crores from its members to acquire land in the name of SPV and share application money. Further collected amounts from members as non-refundable deposit and no justification is given as to why the Respondent No. 1, 2, 4 and 5 insisted to pay the non-refundable deposits by members.

7.2.18. It is submitted that since, the Respondent No.1 company failed to complete the project as per timelines and guidelines of SITP, the Government of India, Ministry of Textiles vide its Letter No. 19/11/2005-SITP Cell dated 11th August, 2011 informed that in 23rd Pac meeting held on 6th June, 2011" the SPV was given time till 7th July, 2011 to show progress in the park. The case reviewed by Joint Secretary on 11th July, 2011 where the SPV had assured that the term loans will be tied up with 20- 30 days. In the PAC meeting held on

2nd August, 2011 the SPV could not satisfy the PAC that their internal problems had been solved. The PAC also noted that the bank loans had also not been tied up so far. The PMC did not give a positive recommendation for continuation of the park. In view of the above, it has been decided that the project stands cancelled, you are requested to refund the grant of Rs.12.00 crore released by the Ministry within 15 days of receipt of this notice." (Copy of the said letter is attached hereto as **Annexure-XIV** – page No.136 of the statement of the respondents).

7.2.19. It is submitted that the Respondent No.1 Company is supposed to be used the Grant released by Government of India to develop infrastructure facilities, however, the Respondent No. 2, 4 and 5 diverted the same to construct 10 sheds in Respondent No.1 Company premises and appointed their own personnel's as contractors to erect the sheds. On lifting of corporate veil, it can be understood that the Respondent No. 2, 4 and 5 for the purpose of making wrongful gains given work contracts to their own people.

7.2.20. Being aggrieved by the cancellation of project by Government, the Respondent No.1 Company filed W.P.No. 24474 of 2011 and filed material papers along with Affidavit, whereunder the Respondent No.1 Company has admitted all the above said facts in their pleadings and correspondence submitted to the Secretary, MoT whereunder it is admitted that the Company has collected Rs.7.9 Crores as contribution from its members. (Copy of the Writ Petition along with enclosures is attached hereto as **Annexure XV** – page Nos.137-198 of the statement of the respondents).

7.2.21. It is submitted that the Respondent No. 2, 4 and 5 with ill intention and to defraud members/shareholders including these answering Respondents illegally holding Share Certificates, members in their possession since 2006. These answering Respondents on many occasions requested the key managerial persons of the company i.e., Respondent No. 2, 4 and 5 to handover the share certificates to respective members and also bring all the shareholders name in register of members, however, all the efforts made by this answering Respondents turned futile.

7.2.22. The Respondent Nos. 2, 4 and 5 in active connivance with each other and to deprive the legitimate rights of all members/shareholders including these answering Respondents indulged in various illegals acts and on the back of these answering Respondents misused their position in the Company and misappropriated company funds. The Respondent No. 2, 4 and 5 being Directors and Key Managerial persons of the Company misused their position and in the absence of Board resolution and consent from members/shareholders the respective Respondents entered into Agreement of Sale with the YFW Corporation in 2015 to alienate the Company assets. Selling of Company assets to third parties are nothing but the Company is deviating from its aims and objects under MoA. The Company without serving Board notices to these answering Respondents arrayed in the Annual returns that these answering Respondents were called absent to board meetings. The Respondent No. 2, 4 and 5 may be put to strict proof showing that they have served notice of board meetings to us since 2012 and proof of service. The Annual returns filed with the Registrar of Companies by the Respondent No.1 under the signature of Respondent No. 2, 4 and 5

are/were prepared at their instructions by the Statutory Auditor. These answering Respondents reserving their right to take appropriate legal steps against the Respondent No. 2, 4 and 5 for creating false statements and records, making wrongful representation to statutory authorities of RoC and also for their oppressive acts towards legitimate shareholders and for mismanaging the affairs of the Company.

7.2.23. It is not wrong to say that the Share Certificates of all the shareholders/members of Respondent No.1 Company are in the possession of Respondent No.2 and the Respondent No. 4 and 5 are actively supporting the stand of Respondent. The Respondent No. 2, 4 and 5 deliberately are not affecting the Petitioner society members name including these answering Respondent Name in the register of members of Respondent No.1 Company as shareholders. These answering Respondents are transposing with the Petitioners in the present Company Petition. Hence this Statement.

7.2.24. In view of the above, the majority averments of Company Petition are true and the relief(s) sought by Petitioner to register their names in the register of

members as shareholders, including those answering respondents is just and necessary in the interest of justice and in the circumstances of the case, society members and the same are liable.

8. The Counsel for the Petitioner filed written arguments, additional written arguments by reiterating the contents put forth in the petition.

8.1 It is stated that the Respondents No. 1, 2, 4 and 5 with an afterthought are trying to establish that there are disputed and contested facts involved in present case, hence, the ratio laid down by *Hon'ble Apex Court in IFB Agro Industries Limited (Versus) SICGIL India Limited And Others* will apply to facts in present case and the said respondents are attempting to create an impression that there are contested facts, therefore the ratio of IFB Agro Industries Limited (Versus) SICGIL India Limited And Others is applicable.

10. In the light of the contest as above, the following Points are framed for our consideration:

Points.

- (1) Whether a Society registered under AP Societies Act, can *maintain* a petition for *rectification* of the share register of the members of a Company?, if so, in the *absence of any resolution authorising* the person who *signed and verified the present company petition* to do so, is the company petition maintainable?
- (2) Whether the present company petition is barred by *limitation*?
- (3) Whether in the light of the *pleadings and contest* put forth by the parties herein, can this Tribunal exercise its *rectificatory jurisdiction* and direct the Registrar of Companies, to rectify the register of members of the 1st respondent by entering the names mentioned in the Share Subscription Agreement (SSA) and also in the Detailed Project Report (DPR) certified by the IL&FS?

11. We have heard Smt. A. Sandhya Rani, learned counsel for the petitioner, Shri P. Sri Raghuram, learned Senior Counsel for Shri M. Anil Kumar and Shri M. Venkateswar Rao, learned counsels for respondents 1, 2, 4 & 5, Shri P. Anil Mukherji, learned counsel for respondents 3 & 6; and Shri G.S. Rama Rao, learned counsel for respondents 9, 10 & 11. Perused the record and the written submissions.

Point (1)

Whether a Society registered under AP Societies Act, can maintain a petition for rectification of the share register of the members of a Company? If so, in the absence of any resolution authorising the person who signed and verified the present company petition to do so, is the company petition maintainable?

The submissions

12. Smt. A. Sandhya Rani, learned Counsel for the Petitioner would submit that, all the investors who became the members of the 1st respondent Company by virtue of the Share Subscription Agreement (SSA), in order to fight collectively for the rights of the members of the 1st respondent company, have in the year 2012, formed in to a welfare Society in the name of ‘Hyderabad Hi-tech Textile Park Members Welfare Society’ and the same was Registered vide, Registration No: 1229 of 2012, a copy of which also has been filed along with this petition as Annexure-E.

13. Ld. Counsel would further contend that aggrieved by the *intentional delay* in delivering the share certificates to the members who have been allotted shares through the Share Subscription Agreement (SSA) dated 02.09.2006 and whose names are also mentioned in the Detailed Project Report of for the Year 2006, the present petition is filed seeking for rectification of the share register of the 1st respondent company by incorporating their names.

14. Shri. P. Sri Raghuram, Ld. Sr. Counsel, for the respondents 1, 2, 4 & 5, would contend that, resolution if any passed by the so-called members of the petitioner society authorising the signatory of this petition to file this company petition is neither traced in the Petition nor even filed, hence on this score alone the present petition is liable to be dismissed. Learned Senior Counsel further submitted that there is no privity of contract between the petitioner society and 1st respondent Company or the respondents 2, 4 and 5, or the petitioner society is a 'shareholder' or 'member'

of the 1st respondent company, as such the petitioner has no *locus standi*, to espouse the so-called grievance of the members of the 1st respondent Company, hence the present Company Petition is liable to be dismissed in *limine*. Ld. Sr. Counsel also contended that a Society registered under A P Societies Registration Act 2001, cannot maintain a petition for rectification of the Share Register of the members of a Company registered under the Companies Act.

Our finding

15. Before we proceed to decide the point, we usefully refer to Section 59 of the Companies Act, 2013 which is as below:

“59. Rectification of register of members.—(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of

foreign members or debenture holders residing outside India, for rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five 49 lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one

lakh rupees but which may extend to three lakh rupees, or with both.”

16. It is thus, clear from the above provision that, if the name of any **person** is, *without sufficient cause entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company,* may appeal in such form as may be prescribed, to the Tribunal, for rectification of the register.

It is therefore, *essential* to establish that the petitioner herein, is ‘the person aggrieved’, a ‘member’ or the ‘Company’, lest the *locus standi*, of the Petitioner society to maintain the present company petition will be at stake. Though a photo copy of the certificate of registration of the petitioner society dated 28/12/2012, has been filed, its Memorandum, Articles, and bylaws or even the list of its members is not filed. Needless to

say that in the absence of any record as to the members of the petitioner/ society, it cannot be said whether the purported subscribers of the Share Subscription Agreement (SSA) are the members of the petitioner/ society or not. However, in the petition it is stated that, the *object* of the petitioner society is to *fight for the rights of its members* against the Company

Indisputably, the definition of member contained in *subsection (55)* and Company in *subsection (20)* of Section 2 of the Company Act 2013, which are as below, expressly exclude the petitioner Society from the category of ‘Member’ and also from ‘Company’, for the purpose of Section 59 of the Act.

Section 2(55):

2(55) “member, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;”

Section 2(20):

2(20): “*company* means a company incorporated under this Act or under any previous company law;”

Moreover, it is well known that there exists certain salient differences between society registered under the Societies Registration Act, on the one hand, and a company corporate, on the other. The principle amongst which is that a *Company is a juristic person* by virtue of it being a body corporate, whereas the society, even when it is registered, is not possessed of these characteristics. A Society registered under the Societies Registration Act is not a body corporate as is the case of a Company registered under the Companies Act.

17. Having said so, we, therefore, now proceed to find whether *the petitioner society* can be considered as ‘the person aggrieved’, for the purpose of section 59 of the Companies Act.

The phrase ‘Person’ for the purpose of section 59 of the Companies Act, is not defined in the Act. However, the phrases such as ‘**other person**’ and ‘**any other person**’ are referred to in some of the provisions of the Companies Act 2013, namely, Section 147(3) of the companies Act, which deals with liability of the Auditor for contravening the provisions of the Act, and Section 213(b)(i) of the Companies Act, which provides for investigation into the affairs of a company. The phrase ‘any other person’ used supra *expressly denotes* the *nexus* between the ‘Person’ referred in the above sections *with the affairs of a Company*. Therefore, it can be said that a ‘person’ who is a *stranger to the affairs of the Company cannot fit in* the phrase ‘any other person’ for the purpose of section 59 of the Companies Act 2013. This is so, because of the *Latin maxim*, ‘*Ejusdem Generis*’, a rule normally followed to interpret, where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the *same kind of persons* or things specifically listed.

18. The phrase ‘other person’ also came up for consideration before the Hon’ble Apex Court in *The Mysore Electricity Board v. Bangalore Woollen, Cotton and Silk Mills Ltd., & Ors.*, 1963 AIR 1128, wherein the word ‘*other person*’ as appearing in Section 76 of the Electricity Act, 1948, was interpreted. The said Section provides that all questions arising between the State Government or the Board and a *licensee or other person* shall be determined by arbitration. Therefore, the question was whether “such other person” includes a ‘consumer’ or not. It is observed that the term ‘other person’ as used in the Act, refers to persons who generate and supply electrical energy and *not those who consume it.*

19. Hon’ble Supreme Court in *Ishwar Singh Bagga & Ors., v. State of Rajasthan* [1987] 1 SCC 101, had the occasion to interpret the phrase ‘*other person authorized in this behalf by the State Government*’ as provided under Section 129A of the Motor Vehicles Act, 1939, wherein it was held that the said phrase

require to be interpreted in line with the term it succeeds, that is ‘*any police officer authorized in this behalf*’, and therefore the phrase ‘other person’ be read with the expression ‘any police officer’.

Thus, the *nexus* between the specific classes of persons or things and persons and things in general is the essential feature in interpreting the words in a given context. In the case on hand, the *nexus* if any between the *affairs* of the 1st respondent Company and the petitioner herein, which is a Society, not even *pleaded*. That apart, the list of its members, memorandum and its articles are not filed. Therefore, in our considered view, the petitioner/society cannot fall under the category of ‘*person*’ for the purpose of Section 59 of the Companies Act 2013, hence cannot be an *aggrieved person*.

20. Moreover, even assuming that, the petitioner society herein can be construed as ‘the person aggrieved’ for the purpose of Section 59 of the Companies Act, 2013, yet in terms of rule 19

of the AP Societies Act, any Society registered under the AP Societies Act 2001, is entitled to initiate legal proceeding *touching or concerning any property or any right or claim of the society* and not beyond. Indisputably, Section 59 of the Companies Act 2013, deals with the rights of the *person* relating to the statutory *Register of Members* of a Company. So much so, the present legal action by the Petitioner Society, for *rectification of the share register of the members of the 1st respondent Company, ultra vires*, section 19 of the AP Societies Act, hence this Company Petition is not maintainable.

21. There is yet another significant *legal embargo* to the maintainability of the present Company Petition, also in terms of Section 19 of the AP Societies Act, which is as below.

Section 19.

Legal Proceedings –

“(1) The Committee or any officer of the society authorised in this behalf by its bye-laws, may bring or defend any

action or other legal proceeding touching or concerning any property or any right or claim of the society and may sue and be sued in its name.

(2) Any action or legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any member of the society after the commencement of the proceeding.”

22. A bare perusal of the above provision clearly states that, the condition precedent for *initiation* or to *defend* the legal proceedings by or against the Society, is that the Committee or any Officer of the society shall be **authorised in this behalf by its bye-laws,** besides, any **such** action or other legal proceeding shall be touching or concerning any property or any right or claim of the society.

Hon’ble Supreme Court of India, in *P Nazeer Etc v Salafi Trust & Anr* CA 3132/2016, 2022 Live Law (SC) 334, held that,

“A society registered under the Societies Registration Act is entitled to sue and be sued, only in terms of its byelaws. The byelaws may authorise the President or Secretary or any other office bearer to institute or defend a suit for and on behalf of the society. Under section 6 of the Societies Registration Act, 1860, “every society registered under the Act may sue or be sued in the name of President, Chairman,

or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion”.

“Therefore, unless the plaintiff in a suit which claims to be a society, demonstrates that it is a registered entity and that the person who signed and verified the pleadings was authorised by the byelaws to do so, the suit cannot be entertained. The fact that the plaintiff in a suit happens to be a local unit or a Sakha unit of a registered society is of no consequence, unless the byelaws support the institution”. (Emphasis is ours)

23. Admittedly, the petitioner society failed to demonstrate that Chinta Mohan Rao, the person who signed and verified the pleadings in this case was authorised by the byelaws of the society to do so, or under any resolution. Therefore, the present petition cannot be entertained under law.

The point is answered accordingly.

Point (2):

Whether the present company petition is barred by limitation?

24. Needless to say, that whether or not the opposite party raises the plea of limitation, it is for the Petitioner to establish that the petition filed is within the prescribed period of limitation and the *burden* to prove the same lies on the petitioner.

The submissions

25. Ld. Counsel for the petitioner would contend that aggrieved by the *intentional delay* on the part of the 1st respondent and its Board, in rectifying the share register of the members of the 1st respondent Company who have been allotted shares through the Share Subscription Agreement (SSA) dated 02.09.2006 and whose names are also mentioned in the Detailed Project Report of 2006, the present petition seeking for rectification of the share register of the 1st respondent company by incorporating the names of the members of the petitioner Society has been filed.

According to the Ld. Counsel Section 59 of the Companies Act, has not prescribed any period of limitation for seeking

rectification of the Share Register of its members, as such the question of the present petition being barred by limitation does not even arise.

26. *Per contra*, Ld. Sr. Counsel, for the respondents 1,2,4&5, vehemently contended that the relief sought for in the present petition is hopelessly barred by limitation. According to the Ld. Sr. Counsel, issue of application of the provisions of limitation Act 1963, to a Petition filed for *rectification of the share register of the members of a Company*, is no more *res integra*, in view of the ruling of Hon'ble Supreme Court of India, in Kerala State Electricity Board v. T.P. Kumhaliumma - AIR 1977 SC 282, and insertion of Section 433 in the Companies Act 2013.

Ld. Sr. Counsel further contends that the sole Share Subscription Agreement (SSA) filed by the petitioner being dated 02/09/2006 and under the said Agreement the share subscription money since required to be paid within 12 months from 2nd September 2006, the right to have the name of the subscriber entered in the share

register of the 1st respondent has accrued in favour of the subscriber by September 2007 (assuming that the entire share subscription money has been paid) and therefore in terms of Article 137 of the Limitation Act, 1963, the petition for rectification of share register shall be filed within *three years* therefrom. However present Petition since filed on 04.11.2020 is hopelessly barred by limitation.

Our finding

27. Having heard the Ld. Counsels for both sides, it is to be stated that, as rightly submitted by the Ld. Sr. Counsel, the issue of application of Section 5 of limitation Act, to a petition filed for rectification of the share register of the members of the Company, is no more *res integra*, as Section 433 which has been inserted in Companies Act 2013, clearly states that;

“The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.”

28. That apart, in A. Devarajan Vs. N.S. Nemura Consultancy India Pvt. Ltd. Vs A. Panneerselvam the Chennai, a Bench of the *erstwhile* Company Law Board, placing reliance on the ruling of Hon'ble Apex Court, in Kerala State Electricity Board Judgment, held that,

*“Before dealing with the matter on merits, it would be appropriate to deal with the objection of the respondents regarding limitation. By way of preliminary objection, Shri Venkatavaradhan argued that the shares were transferred in December, 1995 and the present company petition was filed in July, 2003, after a delay of 8 years. The petition has been filed under Section 111 of the Act and the prayer is for rectification of the register of members. A petition under Section 111 may lie under Sub-section (2) or Sub-section (4). Whereas Sub-section (2) deals with an Appeal or a refusal by the board of directors, subsection (4) deals with an application for rectification of the register of members. In the latter case, there is no limitation of time and there is no precondition of a refusal by the board of directors. Thus, there is no limitation period provided for making an application for rectification of register of members, under Sub-section (4). Against this background the decision in Punjab Machinery Works (P) Ltd. (supra) assumes importance, wherein the CLB relying upon the decision of the apex court in the case reported as **Kerala State Electricity Board v. T.P. Kumhaliumma - AIR 1977 SC 282** held that article 137 of the Limitation Act, 1963 will apply to any petition for rectification of the share*

register, which prescribes a period of three years of the transfer of shares”. (Emphasis is ours)

29. Since it is held that Article 137 of the Limitation Act, 1963 which says,

*“Any other application for which no period of limitation is provided elsewhere in this Division, **three years**, when the right to apply accrues,”*

is the Article 137 of the Limitation Act, 1963 applicable in respect of rectification of Share Register, it is essential to find when the “right to apply” has ‘accrued’ to the petitioner herein, for initiating the action for rectification of the share register, in order to find whether or not the present petitioner is within the prescribed period of limitation.

30. As per the petition averments, on 2nd September, 2006 the signatory to this petition Chinta Mohan Rao and 98 others, have entered into a Share Subscription Agreement, with the 1st respondent company and pursuant thereto all of them were

allotted Shares in the 1st respondent Company, however subscribers were neither delivered the Share Certificates nor their names were entered in the Register of Members till date. A photocopy of the said SSA dated 02.09.2006 entered by 1st respondent with Chinta Mohan Rao the signatory of this Company Petition, a photocopy of the Cash Receipt dated 31.03.2005 for Rs.1250/-, a photocopy of the Application Form for allotment of land in the name of Chinta Mohan Rao and a photocopy of Receipts dated 31.03.2005 and 21.05.2005 towards deposit of Rs.10,000/- and for cheque payment of Rs.2,40,000/- alone have been filed by the petitioner.

In the Company Petition, under the column, “limitation”, the petitioner has stated that:

“The petitioner further declares that the petition is within the limitation laid down in sections 59 and 88 of the Companies Act, 2013.”

A bare perusal of the Share Subscription Agreement (SSA) dated 02.09.2006 entered by the 1st respondent with Chinta Mohan Rao, discloses that the subscriber has paid advance share subscription money and the balance share subscription money shall be paid in **12 months** from the date of the said SSA. Needless to say that only upon payment of the entire share subscription amount, the subscriber is entitled for issue of share certificate and for entering his name in the share register of the Company whose shares he subscribed.

31. Admittedly no record is placed by the petitioner evidencing payment of the entire share subscription amount by Chinta Mohan Rao or by the other subscribers. Be it as it may, even assuming that the entire share subscription amount has been paid within the stipulated period of 12 months, and the shares were also allotted to all the subscribers including Chinta Mohan Rao, then *the right to have the names of the said subscribers entered in the share register of the 1st respondent has accrued by*

September 2007 itself. As such three-year period of limitation in Article 137 of the Limitation Act, 1963 commenced in September 2007. Therefore, the Petition for rectification of the share register of the members of the 1st respondent Company, in the instant case ought to have been filed within three years from September 2007. However, the present petition since filed on 04.11.2020, i.e., after lapse of 13 years, is clearly barred by limitation.

32. In fact, even by the date of formation and registration of the petitioner/ society, the right, if any of the subscribers of the Share Subscription Agreement (SSA), who are claimed to be members of the petitioner/ society, stood barred by limitation.

The point is answered accordingly.

Point (3)

Whether in the light of the *pleadings and contest* put forth by the parties herein, can this Tribunal exercise its *rectificatory jurisdiction* and direct the Registrar of Companies, to rectify the Register of members of the 1st respondent by entering the names mentioned in the Share

Subscription Agreement (SSA) and also in the Detailed Project Report (DPR) certified by the IL&FS?

33. Hon'ble Supreme Court of India, in IFB Agro Industries Limited Vs. SICGIL India Limited and Others, Civil Appeal No. 2030 of 2019, dated 04.01.2023, while specifically dealing with the scope of the rectificatory jurisdiction of the National Company Law Tribunal, under Section 59 of the Companies Act, 2013, held that,

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

for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word “rectification” itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company.

27. In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the company has to be stated to have been complied with by the applicant.... The Court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2 (11) and Section 10, it is the Company Court alone has exclusive jurisdiction...But this does not mean by interpreting such “court having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak”.

We therefore, in the light of the ruling, *supra*, proceed to decide whether or not the present case is based on, *seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim the right to seek*

rectification of the share register of the 1st respondent, in order to exercise our *rectificatory* jurisdiction under section 59 of the Companies Act 2013, which is summary.

The submissions

34. According to the Ld. Counsel for the petitioner, one Chinta Mohan Rao and 98 others have been allotted shares in 1st respondent company under a Share Subscription Agreement (SSA) dated 02.09.2006 and the said fact of allotment of shares has been admitted categorically by the authorized representative of 1st respondent company and their agents in their correspondence with Government of India, regarding setting up a Textile Park for the benefit of the members of the petitioner society. Learned Counsel further submits that 1st respondent Company and its officials upon firmly asserting that shares in 1st respondent company were allotted to Chinta Mohan Rao and 98 other shareholders in their representations to the Government of India, drew huge amounts meant for the purpose of setting up

Textile Park. According to the Id. Counsel, the 1st respondent company failed to deliver copies of Share Certificates to the allottees of the petitioner society or enter their names in the Share Register of 1st respondent/ company despite being demanded.

35. Ld. Counsel further submitted that due to the change of scheme from TCIDS to SITP, the consultants of IL & FS Limited insisted on entering into a *fresh agreement* with reduced services and enhanced fees and even after the second agreement, there was no improvement in the deliverables and milestone activities of the project and there has been delay of substantial number of years in completing the project and much more time was expected to complete the project. Ld. Counsel states that the Nodal agency and the Company have not made any efforts for starting the project or permitted the members of the society to continue the project by not providing the necessary legal documents to proceed further.

36. Ld. Counsel, further submits that, on 23rd May, 2012 Government of India has given a possession notice for the property and also for recovery of grants already released and under those circumstances a civil suit for declaration and consequential relief of injunction restraining the 1st respondent Company from further transfer/sale of land has been filed by the petitioner society, before the District Court, Mahaboobnagar, and the same is pending. Ld. Counsel also submitted that the members of the petitioner society on 03.09.2020 have filed a criminal complaint, before Nandigama Police Station, stating that the 1st respondent Company and its Directors have committed *criminal breach of trust and fraudulently misused the funds and misappropriated the amounts obtained from the Government Authorities by way of Grants and have cheated the members and Government authorities*, and pursuant thereto, the Police have registered as case vide FIR No. 192/2020 under Section 403, 406, 420, 503, 506, 120b of Indian Penal Code, against the 1st respondent Company and its Directors and the

same is also pending. Thus, submitting learned counsel prayed to grant the relief as prayed in the petition.

37. Shri. Anil Mukherjee, the Ld. Counsel for the Respondents No.3 & 6 while sailing with the submissions of the petitioner's counsel, submitted that, the Respondent No. 3 and 6 are the Directors of 1st Respondent and they were fraudulently removed as directors by Respondent No.2, 4 and 5. According to the Ld. Counsel, the 2nd Respondent signed the Vakalath and Counter on behalf of 1st Respondent claiming that basing on the board resolution which board meeting never took place and answering respondents never received any notices relating to the alleged board meeting hence the counter filed by Respondent No.1 company is not maintainable and the contents of the said counter is not binding on this answering respondents and the Respondents 2, 4 and 5 are solely responsible for the same.

38. According to the Ld. Counsel, the 1st Respondent represented by Respondent No.2 herein filed a WP No.24774 of 2011 for various reliefs and stated and admitted in its affidavit that the Company received Rs.7.9 Crores as a contribution from its members and the Company has entered into Share Subscription Agreement (SSA) with all its members. From the subscription amounts the Respondent No. 1 Company from 2003 to 2005 have acquired huge agricultural land admeasuring Acres 141.24 guntas in various survey numbers situated Narasappaguda village, Cheguru Village, Kottur Mandal. Mahaboob Nagar District (presently Nandigama Mandal, Ranga Reddy District), Telangana from its vendors on the name of the Respondent No.1 Company under registered sale deed and subsequently, the Respondent No.1 Company to allot equity shares to all its members increased its authorized share capital from Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each to Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each and Respondent No.1 has converted the land from

Agriculture to Non-Agriculture to set-up Integrated Textile Park with all infrastructure facilities. But still original share certificates have not been handed over to its members illegally kept by Respondent no.2, 4 and 5 herein.

39. Ms. Aishwarya Chevuturi, learned Counsel for 7th respondent, while refuting the allegations and assertions as made in the Petition, has contended that in Counter dated 13.10.2022 as under:

“12. Union of India acting through the Ministry of Corporate Affairs, had initiated proceedings against Infrastructure Leasing & Financial Services Limited and its group companies under Section 241(2)(k) of the Companies Act, 2013. Pursuant to the said proceedings, the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") suspended the erstwhile board of directors of IL&FS and appointed new directors as recommended by the Union of India on the board of IL&FS. Further, in the same matter, the Hon'ble NCLAT, Delhi Bench, in the matter of Union of India v. Infrastructure Leasing and Financial Services Ltd vide its Order dated 15.10.2018 had passed a moratorium order categorically stating that there shall be a stay on the institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its

348 group companies in any Court of Law/ Tribunal/ Arbitration Panel or Arbitration Authority. Therefore, it is submitted that the instant Petition is not maintainable against this answering Respondent. A copy of the NCLAT Order dated 15.10.2018 is annexed herewith as Annexure 3 for the kind perusal of this Hon'ble Tribunal.”

40. Shri. G.S. Rama Rao, Ld. Counsel for the Respondents No.9, 10 and 11, also sailed with the submissions made by the Ld. Counsel for the Petitioner and contended that, 1st Respondent in 2010 amended its Memorandum and Articles of Association and thereby altered the Company from Section 25 of Companies Act, 1956 to Private Limited Company and thereby increased authorized share capital from Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each to 9,00,00,000/- divided into 90,00,000 equity shares of Rs. 10/- each.

Ld. Counsel further contended that the 1st Respondent Company conducted Board meeting on 4th May, 2006 whereunder, it was stated that,

"Board was apprised that the members of the project and investors have remitted funds to the tune of Rs.1,63,48,400/- for which the Company would allot equity shares to the members and the investors against the monies remitted by them to the Company supporting the required equity amount for the project." Consequent to same the Board of Directors has passed a resolution on 4th May, 2006 stating that :

"accordingly, it was them RESOLVED THAT the Company do allocate 16,34,840 equity shares of Rs.10/- each aggregating to Rs.1,63,48,400/- as per the details enclosed hereto as Annexure-I for subsequently allotting to the members and the investors of the project."

According to the Ld. Counsel, the 1st Respondent Company in order to comply the SITP guidelines issued by Ministry of Textiles, Government of India and the resolution passed by the Board on 4.5.2006 has entered into Share Subscription Agreement with all its members including these answering Respondent in the year 2006. Ld. Counsel states that the 1st Respondent vide its letter dated 11th September, 2006, has communicated to Ministry of Textiles, Government of India,

stating that *"SPV in compliance with fixed conditions allotted the shares to the members of the Park and a copy of the typical share certificate is enclosed thereto"* and prepared the statement showing details of Share Application Money received from the members and the shares allocated to its members including these answering Respondents. As per compliance report and representations and warranties made by the Respondent No.1, 2, 4 and 5 to Respondent No. 7 and Government of India, Ministry of Textiles these Respondents were allotted with 16,000 equity shares of Rs. 10/- each and share certificates with distinctive numbers were executed and however, the Respondent No.1, 2, 4 and 5 are holding Share Certificates of the Petitioner association members and these answering Respondents illegally in their possession.

Ld. Counsel further submitted that, the 1st Respondent failed to complete the project as per timelines and guidelines of SITP, hence the Ministry of Textiles vide its Letter No. 19/11/2005-

SITP Cell dated 11th August, 2011 wanted the 1st respondent to show progress in the park and given time till 7th July, 2011. The case reviewed by Joint Secretary on 11th July, 2011 where the SPV had assured that the term loans will be tied up with 20- 30 days. In the PAC meeting held on 2nd August, 2011 the SPV could not satisfy the PAC that their internal problems had been solved. The PAC also noted that the bank loans had also not been tied up so far. The PMC did not give a positive recommendation for continuation of the park. In view of the above, it has been decided that the project stands cancelled, refund of the grant of Rs.12.00 crore has been demanded.

41. *Per contra*, the learned Senior Counsel for respondents 1, 2, 4 and 5 contended that, the Authorized Share Capital of the 1st respondent as per Article 3 of Articles of Association shall be Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each and admittedly out of the said 10,000 shares, the 2nd and 3rd respondents held 5,000 shares each since the incorporation of the

1st respondent company and that the 2nd respondent transferred one share each to respondents 4, 5 and 9. Ld. Sr. Counsel further submits that as per the Annual Reports for 2020-21 and 2021-22 and the letter sent by the 1st respondent company to the MOT, GOI the Authorised Share Capital was enhanced to Rs.9,00,00,000/- in the year 2011 and the paid-up share capital as on this date also is Rs.1,00,000.

In so far as the contention that during the period 2006-2007 a resolution has been passed by the Board of Directors of the respondents for enhancing the authorized share capital to Rs. 5 crores, Ld. Sr. Counsel submits that, as per Section 25 of the Companies Act, 1956 or as per Section 8 of the Companies Act, 2013, even if the Board of Directors of the Company passed Resolution for increasing Authorised Share Capital, prior permission from the Central Government to alter its Memorandum and Articles of Association is required and no such permission was obtained or any special resolution has been

passed to alter the Memorandum or Articles of Association of the 1st respondent or to enhance its Authorized Share Capital during the period 2006-07. Therefore, the Authorised Share Capital of the 1st respondent remained Rs.1 lac, as such the plea of allotment of shares to the Members of the petitioner/ Society under the share purchase agreement *supra*, shall invariably fail.

42. Ld. Sr. Counsel further contended that the subject Textile Project itself since cancelled by Govt of India, vide letter dated 11/08/2011, the issue of allotment of shares in the 1st respondent company became redundant and infructuous.

43. Ld. Sr. Counsel also submitted that, the 1st respondent company after having issued number of Circular letters/ notices Dt. 15-10-2005, 20-12-2005, 20-02-2006, 03-04- 2006, 18-07-2006, 18-11-2006 and 22-12-2006 to all the entrepreneurs who applied for shares and plots of the company calling upon them to pay the Non-Refundable Deposit amount on 29-08-2007 held a

board meeting where in it was decided to allot the shares and the plots to its members, *provided* they pay the Non-Refundable Deposit Amount and called upon the members to pay at least 1st installment of the Non-Refundable Deposit amount. Accordingly, the 1st respondent company issued Demand Notice, vide HHTP/Circulars/263 Dt. 13-10-2007 to Chinta Mohan Rao and others calling upon them to pay of Non-Refundable deposit besides to identify the type of looms, no. of looms, width of the looms, speed of the looms Etc., Likewise, the 1st respondent company also issued notices to all other entrepreneurs calling upon them to submit about machinery identified and required statutory permissions for his unit from the concerned departments to show their interest and make payment of the Non-Refundable Deposit amount/ Equity communicated time to time to all the alleged members. According to the Ld. Sr. Counsel, there hasn't been either payment of the Non-Refundable Deposit amount/ Equity from all the alleged members or any

reply from any of the alleged members. Thus submitting the learned Senior Counsel prayed for dismissal of the Petition.

Our finding

44. Having carefully perused the pleadings and upon considering the submissions as above stated, we are of the firm view that the same are based on *seriously contested facts and disputed questions pf law and facts*. For instance, the contention of the petitioner (as per the FIR lodged by the petitioner) that the directors of the 1st respondent by making a false claim of allotment of shares to the members of the petitioner/ society before the Government Authorities have withdrawn huge amounts, if established, may falsify the very “plea of the petitioners that they were allotted equity shares under the Share Subscription Agreement (SSA)”. Likewise, the enhancement of the Authorised share capital of the 1st respondent, from rupees one lack to rupees five crores in the year 2006, enabling allotment of shares to the members of the petitioner society

which in fact is the foundation to claim a right to be a member is also seriously, disputed and thus contentious. More over the as per the letter dates 11/08/2011, which is reproduced hereunder:

*“Government of India
Ministry of Textiles*

*Udyog Bhavan
New Delhi*

August 11, 2011

*To
Chairman
Hyderabad Hi-Tech Textile Park Chogur Village,
Kothur Mandal,
Mahaboobnagar District
Andhra Pradesh*

*Subject: Hyderabad Hi-Tech Textile Park Pvt.
Limited-reg.*

Sir.

I am directed to say that the project of Hyderabad Hi-Tech Textile Park Pvt. Limited was sanctioned on 1st July 2006 at a project cost of Rs.106.14 crore and Government of India liability of Rs.40 crores. The grant of Rs.4 crores was released to this Park on 3rd October, 2006 and Rs.8 crores on 18th February, 2008. The Project Cost was subsequently revised to Rs.58 crores in December 2008 with Government of India liability of Rs.23.20 crores.

Despite receipt of Rs.12 crores being more than 50% of revised cost and a passage of more than 3 years from the release of instalment, progress commensurate with the grant released and time taken has not been made. Issues relating to conflict within, the management have not been solved, despite several meetings with the Ministry officials and PMC including one Chaired by Joint Secretary (SITP) in the Ministry.

In the 23rd PAG Meeting held on 6th June 2011, the SPV was given time till 7th July 2011 to show progress in the Park. The case was reviewed by Joint Secretary on 11th July, 2011 where the SPV, had assured that the term loans will be tied up within 20-30 days. In the PAC meeting held on 2nd August, 2011 the SPV could not satisfy the PAC, that their Internal problems had been solved. The PAC also noted that the bank loans had also not been tied up so far. The PMC also did not give a positive recommendation for continuation of the Park.

In view of above, it has been decided that the project stands cancelled. You are requested to refund the grant of Rs.12 crore released by the Ministry within 15 days of receipt of this letter.

Yours faithfully

SD/ -

Under Secretary to the Government of India”

Government of India, has admittedly cancelled the project itself even by 2011, thus making very project dissolved and 1st respondent defunct.

Moreover, re, IFB Agro (*supra*), it was categorically held that,

“The word “rectification” itself connotes some error which has crept in requiring correction. ‘Error’ would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company”.

In the case on hand, as already stated *supra*, the very foundation to allotment of shares to the Members of the petitioner/ society, namely, enhancement of Authorised Share Capital of the 1st respondent in the year 2006, enabling allotment of shares to the members of the petitioner society itself is seriously disputed, besides as per the letter of the Government of India dated 11/08/2011 the Textile Park Project itself has been shelved. Therefore, in the above backdrop of seriously disputed facts and contentions, we are of the firm view that this is not a fit case to

exercise the *rectificatory* jurisdiction of this Tribunal, which is summary.

The point is answered accordingly.

Therefore, in the light of our discussion on the Points above we are of the considered view that the present Company petition is not maintainable and the same is liable to be dismissed, Accordingly, we here by dismiss the same, however without costs.

In the result this Company Petition is dismissed. No Costs.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

Sridher/ karim