(2015) 12 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : E.P. No. 36/2011 In C.P. No. 76/2005

O.R.E. Holdings Ltd APPELLANT

Vs

Cheran Enterprises Pvt. Ltd. and Ors RESPONDENT

Date of Decision : 31-12-2015

Acts Referred:

Code Of Civil Procedure, 1908 — Section 2(2), 36, Order 21 Rule 11(2), Order 21 Rule 64

Companies Act, 1956 — Section 10F, 397, 398, 402, 403, 408, 634A

Citation : (2015) 12 IPAB CK 0002

Hon'ble Judges : Kanthi Narahari, J

Bench : Single Bench

Advocate : A.R.L. Suadareshan, Adithya Vikram Bhat

Final Decision : Allowed

Judgement

Kanthi Narahari, J

1 . The present Execution Petition is filed under Section 634A of the Companies Act 1956 seeking execution of the common order dated 13.08.2008 passed by this Bench in C.P. No. 65 of 2005 and C.P. No. 76 of 2005 ("Common Order").

2 . Shri A.R.L. Sundareshan, learned senior counsel appeared for the petitioner submitted that the petitioner will rely on the text of the common order to explain the background thereto and the findings of this Hon'ble Board therein. In essence, the common order was passed following findings of oppression, mismanagement and breach of contract with respect to the affairs of 1st respondent ("Company"). The petitioner holds 45% of the equity share capital of the company. The operative portion of the common order is extracted hereunder for ready reference of this Hon'ble Board:

17. In view of the foregoing conclusions and in exercise of the powers under sections 397 & 398 read with section 402 and with a view to bringing to an end the grievances of C.G. Holdings, KCP, ORE and Athappan, the following order is

passed:

CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of repayment within a period of 12 months in one or more instalments, commencing from 01.11.2008. While making the payment CEPL, C.G. Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter, CEPL., C.G. Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with SBI Erode Main Branch, free of any liens or encumbrances towards refund of the investments of ORE and Athapan. VML shall not alienate or sell any of its immoveable properties till full payment is made to ORE, in terms of this order. In the event of any failure to make the repayment within the specified time. CEPL, CG Holdings. KCP and VML will duly convey the immoveable properties of VML, namely 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws, as consideration for reduction of capital and surrender of the share of ORE and Athappan, upon which ORE as well as Athappan will deliver the share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries, if any, in favour of C.G. Holdings and KCP. CEPL is consequently authorized to reduce its share capital and in the meantime, operation of the impugned agreements is suspended, to expedite and ensure due completion of the modalities of exit by ORE and Athappan, thereby, bringing to an end the acts complained of in the present proceedings. CEPL shall ensure necessary statutory compliances till the whole process, in accordance with the aforesaid directions, is properly completed, the parties are at liberty to apply in the event of any difficulty in implementation of the smooth exit of ORE and Athappan from CEPL.

3 . The Ld. Senior Counsel submitted that no appeal was filed against the common order. The common order has become final. Under the common order, the petitioner was entitled to receive from the company a sum of Rs. 75 crores along with interest thereon stipulated by the common order. The payment was to be made within a period of 12 months in one or more installments commencing on 01.11.2008. Upon any failure in making this payment, the petitioner is entitled to receive, free from all encumbrances, conveyance of 17.15 acres from out of the land belonging to respondent No. 5 and more fully described in Schedule 1 hereto ("VML Land"). The petitioner has not received any money from the company even upto date. The petitioner is thus entitled to receive, free from all encumbrances, conveyance of the VML land and the company, and respondents 2, 3 & 5 are required to duly convey the VML land to the petitioner. These persons have taken no steps to convey the VML land in favour of the petitioner. The petitioner had thereafter filed company application No. 155 of 2008 seeking certain clarifications from this Hon'ble Board to aid in the implementation of the common order. In essence, the petitioner sought directions for the removal of certain encumbrances on the VML land as well as permission to receive conveyance of the VML land through a nominee. The

Respondents 2 & 3 filed company application No. 154 of 2008 and respondents 6 & 7 filed company application No. 10 of 2009 seeking certain directions with respect to the common order.

4. It is submitted that all three of the company applications described above came to be disposed of by an order passed by this Hon'ble Board dated 03.08.2009 ("2009 order"). It is important to note that, while the 2009 order modified certain aspects of the common order, the entitlement of the petitioner to receive the amount of Rs. 75 crores together with interest thereon and, upon any failure in the payment of the said amount the right of the petitioner to receive the VML land, was not varied at all by this Hon'ble Board in the 2009 order. The 2009 order, however, permitted the petitioner to receive conveyance of the VML land through a nominee. The operative portion of the 2009 order is exacted below:

"9. In view of my foregoing conclusions and with a view to facilitate the smooth exit of ORE and N. Athappan from CEPL in terms of the common order dated 13.08.2008 and to ensure the paramount interest of CEPL, it is ordered as under:

(1) SBI is authorized to release 50% of maturity proceeds of the fixed deposit No. 759413 held in the name of CEPL, in favour of ORE and N. Athappan in the ratio of 75:4 and the remaining 50% of the proceeds in favour of C.G. Holdings and KCP enabling them to deal with the same, namely, 50% of maturity proceeds without any interference from the respondents 2 to 6 in C.A. No. 154 of 2008, provided that CG Holdings and KCP shall by way of an affidavit to be filed with the Bench Officer within 30 days, undertake-

(a) to tender all necessary co-operation and executed and/or procure the executions of documents required to facilitate remittance of the investment of ORE in accordance with the CLB order;

(b) to take appropriate action for raising the order of attachment made by EPFO over VML properties within a period of 90 days; and

(c) deposit with the Bench Officer within 30 days, the share certificates together with signed share transfer forms in respect of their holdings in CEPL.

(ii) None of the nominees of ORE as well as N. Athappan will exercise their rights as director of CEPL until further orders.

(iii) C.G. Holdings and KCP will induct two additional directors on the board of CEPL and shall carry on the affairs of CEPL in accordance with the provisions of the Act, without intervention of ORE and N. Athappan or their nominees;

(iv) The properties of VML, namely 17.15 acres of land will be conveyed in favour of ORE or its nominee, in the event of any remote need, which may arise in future, on account of non-compliance with the order dated 13.08.2008 by CEPL, C.G. Holdings and KCP;

(v) ORE and N. Athappan will deposit the share certificates together with signed transfer forms in respect of their holdings in CEPL with the Bench Officer within 30 days;

(vi) C.G. Holdings and KCP, in case fail to file an affidavit as stipulated in the proviso to para 9(i) here above. SBI will release the entire maturity proceeds of the fixed deposit No. 759413 held in the name of CEPL in favour of ORE and N. Athappan in the ratio of 75:4 without reference to any of the parties to the present proceedings; and

(vii) All other terms and conditions of the common order dated 13.08.2008 shall remain unchanged.

5. It is submitted that the petitioner filed company appeals No. 21 and No. 29 of 2009 impugning certain aspects of the 2009 order. Specifically, the petitioner was aggrieved by the fact that the 2009 order sought to give respondents 2 & 3 control over the company and over certain funds belonging to the company, when respondents 2 & 3 had been found to have oppressed the petitioner and mismanaged the company and had not demonstrated any intention to comply with the common order in the year after it had been passed by this Hon'ble Board. Respondents 2, 3, 6 and 7 also filed company appeals Nos. 25, 26 and No. 27 of 2009 impugning certain aspects of the 2009 order. These company appeals were heard by a Division Bench of the Madras High Court. The Madras High Court, by its judgment and order dated 05.08.2011 ("High Court Order") has disposed of all the company appeals. In terms of the High Court order, the company appeals filed by the petitioner have been allowed in their entirety and the rights of the petitioner in the company have been protected until the petitioner receives its decretal entitlement under the common order. Further the entitlement of the petitioner to receive conveyance of the VML land through a nominee and subject to compliance with applicable laws, pursuant to the common order and the 2009 order, has not been disturbed by the High Court Order. The relevant portions of the High Court Order are extracted below for ready reference:

135. Given the sequence of events if KCP is placed in position to manage CEPL, KCP would again try to divert the amount to innumerable subsidiary companies floated by him. In the light of factual situation emerging, the learned Company Law Board was not justified in directing ORE and N. Ahtappan to deposit the share certificates with the Bench Officer. Having found that KCP had not discharged his statutory duties and that he was not prudent in managing CEPL, Company Law Board was not justified in directing payment of 50 percent of the deposit lying, with the State Bank of India, Erode.

136. The direction of the Company Law Board (in its order dated 03.08.2009) directing that ORE and Athappan nominees shall not intervene in the business of CEPL contradicts in its own order dated 13.08.2008, wherein CLB clearly stated that ORE and Athappan would exit after receiving return of their investments or transfer of VML property. In its previous order. Company Law Board has

maintained status quo regarding contract of CEPL until ORE and Athappan are repaid their investments. The subsequent order dated

3. 08.2009 is to give control of CEPL to KCP. If the control of CEPL is given back to KCP, certainly KCP would divert the money as well as the properties and ORE 3rd Athappan would never be paid their investments. The second order of Company Law Board dated 03.08.2009 to the extent permitting KCP to withdraw 50% of the money completely reverses the position and therefore it cannot be said to be "removal of any difficulty in the implementation of smooth exit of ORE and Athappan from CEPL". On the contrary, the subsequent order dated 03.08.2009 considerably alters the manner of exit of ORE and Athappan. While passing the order dated 03.08.2009, the Company Law Board failed to note that KCP had not paid any instalment from 1. 11.2008. Without paying the money, KCP only wants to have control of CEPL. To have control over CEPL. KCP should have taken efforts to comply with the earlier order dated 13.08.2008. The Company Law Board has not kept in view the failure on the part of KCP to comply with the earlier order dated 11. 08.2008. The subsequent order of the Company Law Board dated 3. 08.2009 gives a go bye to its earlier order dated 13.08.2008.

137. Jurisdiction of the High Court in an appeal under section 10-F of the Act is expressly confined to the determination of any question of law. Finding of a question of fact may also result in a question of law if the Tribunal's finding is without evidence or based on irrelevant material. In our considered view, the order of Company Law Board dated 03.08.2009 modifying its earlier order is so perverse or unreasonable that no person acting judicially could have arrived at such a conclusion and therefore we are constrained to interfere with the impugned order of Company Law Board dated 03.08.2009. We are of the view, in the order dated 08.2009, findings of the Company Law Board are not only perverse, but passed in an arbitrary manner The direction permitting KCP and C.G. Holdings to withdraw 50 percent of the amount and direction to ORE and Athappanto to deposit their share certificates is not supported by any reasons, evidence or materials. The order dated 03.08.2009 virtually nullifies the earlier order. The Company Law Board did not keep in view the conduct of KCP and other proved mismanagement. Without first complying with the order of returning the money of Rs. 75 crores and Rs. 4 crores with interest at 8 percent, the Company Law Board was not justified in directing ORE and N. Athappan to deposit the share certificates in the Bench. Order of Company Law Board dated 03.08.2009 ignores the conduct of KCP in mismanaging CEPL and siphoning of money and properties either to KCP or to subsidiary companies. Therefore, Company Appeal Nos. 21 and 29 preferred by ORE and Company Appeal Nos. 25 and 26 preferred by N. Athappan and R. Athappanare to be allowed and the impugned order dated 03.08.2009 in so far as permitting KCP to deal with 50% of the amount lying in SBI Erode Branch is liable to be set aside.

145. As per order of Company Law Board, amount invested by ORE has to be

refunded, which of course, must be in accordance with applicable laws; be it compliance with FEMA or other Regulations. ORE, being a foreign investor - an entity of foreign origin, as per FEMA, cannot own immovable property in India. Compliance of FEMA or other applicable regulations cannot be bypassed. By the order dated 03.08.2009, Company Law Board modified its earlier order directing VML to execute the sale deed, conveying immovable properties of 17.15 acres to the nominee of ORE and thereby modified its earlier order. The order of the Company Law Board modifying its earlier order directing VML, to convey the properties to 'nominee of ORE' is to be modified to the effect that any such conveyance should be subject to applicable laws and regulations and with required approval/permission to be obtained by ORE from the competent authorities. The order of the Company Law Board in CA No. 155 of 2008 is to be modified to that extent.

146. In the result, Company Appeal Nos. 21 and 29 of 2009 preferred by ORE and Company Appeal Nos. 25 and 26 of 2009 preferred by N. Athappan and R. Athappan are allowed. Company Appeal No. 27 of 2009 is disposed of modifying the order of Company Law Board dated 03.08.2009 in CA No. 155 of 2008 to the effect that the conveyance of immovable properties to nominee of ORE is subject to all applicable laws and regulations and if need be, with necessary approval/ permission to be obtained by ORK from the competent authorities.

6. It is submitted that the petitioner has not received a single rupee from its decretal entitlement. It is also clear from the conduct of respondents 2 & 3 that they are acting to defeat the common order. This conduct, in fact, files in the face of and constitutes contempt of the High Court Order as well. The petitioner is simultaneously filing an interlocutory application describing this oppressive and contumacious conduct of respondents 2 & 3 and is seeking certain interim relief to secure its rights under the common order. The common order has become final and is capable of execution. This Hon'ble Board is completely competent to execute its own order. The registered office of the company and respondents 2 & 5 are within the jurisdiction of this Hon'ble Board. All of these respondents have been heard before this Hon'ble Board and before the Hon'ble Madras High Court. The nominee of the petitioner is entitled to receive conveyance of the VML land in accordance with applicable laws. Since respondents 2, 3 & 5 are not likely to cooperate with the conveyance, it is just and essential that this Hon'ble Board pass an order vesting the VML land in favour of the petitioner. The petitioner undertakes to comply with applicable law in this regard. Wherefore the petitioner most humbly prays that this Hon'ble Board;

(a) Grant an order in execution of the common order dated 13.08.2008 passed in CP Nos. 76 of 2005 and 65 of 2005, directing the vesting of 17.14 acres of VML land more fully described in Schedule 1 hereto in favour of the nominee of the petitioner;

(b) Direct the jurisdictional registrar to register the said vesting order in favour of the nominee of the petitioner and grant the petitioner such other and further relief as the facts and circumstances of the case may warrant.

7 . In support of the case the Ld. Senior Counsel relied upon the following judgment on various points.

(A) On the powers of the CLB under Section 397/398 relied upon the following judgment;

(i) In the matter of Cosmo Steels Pvt. Ltd. & Ors. Vs. Jairam Das Gupta reported 1978 (1) SCC page 215.

(ii) In the matter of State Bank of India Vs. P. Narayanasamy & Ors. reported in 2013 (5) LW 333.

(iii) In the matter of Piyush Kanti Guha Vs. West Bengal Pharmaceuticals & Ors. reported in AIR 1982 Cal 94

(B) On the point of default

(i) In the matter of Dhanrajmal Gobindram Vs. Shamji Kalidas & Ors. reported in 1961 (3) SCR 1020.

(ii) In the matter of Eurometal Ltd. Vs. Aluminium Cables & Conductors reported in 1983 (53) Company Cases 744 (Cal)

(iii) In the matter of Associated Forest Products (Private Limited) Vs. K.T.S. (Singapore) reported in 1993 (1) Cal LT 383

(C) On the point of illegal order and order without jurisdiction.

(i) In the matter of Rafique Bibi through L.R. Vs. Saiyad Waliuddin through L.R. reported in AIR 2003 SC 3789.

(ii) In the matter of Balwani Biswamitra Vs. Vadav Sadashiv Muley reported in AIR 2004 SC 4377.

(iii) Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman & Ors. reported in 1971 (1) SCR 66.

(iv) In the matter of Mathai Vs. Varkey & Anr. reported in AIR 1964 SC 907.

(v) In the matter of Neelakantam Pillai Vs. Vadivelu Achari & Ors. reported in 1964 ILR (1) Mad. 422.

(D) On the point that executing Court cannot go behind the decree.

(i) In the matter of Manish Mohan Sharma & Ors. Vs. Ram Bahadur Thakur Ltd. & Ors. reported in AIR 2006 SC 1690.

(ii) In the matter of Oil & Natural Gas Corporation Ltd. Vs. Modern Construction &. Company reported in 2014 1 SCC 648.

(E) On the point of Miscellaneous

(i) In the matter of Ajit Prasad Jain Vs. N.K. Vidhani reported in AIR 1990 Delhi 42.

(ii) In the matter of Hardeodas Agarwalla Trust Vs. Vijay Singh Choraria (1998) 232 ITR 812 (Cal).

8. The Respondent 2 & 3 have filed their Counter statement. The Ld. Counsel appeared for the respondents 2 & 3 submitted that present execution petition filed by the petitioner is infructuous and is liable to be dismissed in limine. The prayers in the present execution petition are misconceived and despite there being an accord and satisfaction of the amount due to the petitioner in accordance with the law applicable, the petitioner is persisting with the present petition. The whole objective of the petitioner seems to be grab the land described in the Schedule to the petition which is a prime and valuable property by hook or crook in violation of the laws applicable in India. It is submitted that the present petition is filed to execute the order dated

13. 08.2008 and as modified by order dated 03.08.2009 by Hon'ble Company Law Board and subsequently modified to a limited extent by order dated 05.08.2011 by the Hon'ble High Court Madras. It is humbly submitted that an execution petition can be filed before this Hon'ble Board only under the provisions of Section 634A of the Companies Act, 1956, and in such a case this Hon'ble Board would be guided by the provisions of Civil Procedure Code (CPC) and the provisions relating to execution as provided in CPC. This Hon'ble Board would have to relegate parties to the appropriate civil court for deciding all questions arising in the execution. Therefore exercise of wide powers to regulate the affair, of the company as per the provisions of Section 403 by way of interim relief's or granting of relief's to resolve the inter se disputes between the panics by exercise of powers under Part VI of the Companies Act. 1956 under Chapter VI of the Companies Act, 1956 would not be applicable. This Hon'ble Board had by its order dated 13.08.2008 directed the company CEPL to purchase the shares of ORE Holdings Ltd., Mauritius & N. Athappan within a period of time in accordance with all applicable laws. The respondents were granted an option to purchase their shares. The issues pertaining to "applicable laws"' is now settled in view of the order dated 03.08.2009 or this Hon'ble Board and the order of the Division Bench of the Hon'ble Madras High Court dated 05.08.2011. It is now settled that so far as the company is concerned, there can be purchase of the shares only in accordance with FEMA, 1999. It is humbly submitted that this Hon'ble Board does not have jurisdiction to interpret the Foreign Policy of the Government of India and pass an order contrary to the same, neither does it have jurisdiction to adjudicate on the valuation issues based on which payments have been effected to the petitioner in accordance with FEMA, 1999. It is therefore humbly submitted that if the petitioner has any grievances regarding the valuation or payment made to it by the company in full and final settlement of the shares as part of the reduction process as permitted by this Hon'ble Board, the petitioner has to work out its rights elsewhere and not in this execution

petition. On this short ground, the petition is liable to be dismissed.

9 . The Ld. Counsel for the respondents raised a Preliminary objection regarding presentation of the petition. It is submitted that under Order 21 Rule 11(2) of CPC an application for execution of decree shall be signed and verified by the appellant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. In the affidavit verifying the petition for execution it has been categorically stated that the present petition is filed on instructions given to Mr. R. Ravichandran by the petitioner. Therefore it is not every case. It is for this reason submitted that the petition needs to be dismissed in limine for having failed to comply with the provisions of Order 21 Rule 11(2) of CPC. It is further submitted that the Petitioner not entitled to any claim against the Cheran Enterprises Pvt. Ltd. or the land in the Schedule Property for the reason that the Nandakumar Athappan and ORE Holdings Ltd. are non-residents. Though the Nandakumar Athappan was the shareholder in the R1 Company, it is Ramasamy Athappan, father of the Nandakumar Athappan, the man operating behind the scene who is calling shots for Nandakumar Athappan herein. It was Ramasamy Athappan with whom the 3rd respondent was associated with and it was on Ramasamy Athappan's false assurance of bringing in funds to the tune of Rs. 300 crores for development of valuable piece of immoveable property held by the company and its subsidiaries that the 2nd respondent entered into Joint Venture Agreement with ORE Holdings Ltd. Mauritius. The petitioners having created liability by initiating the acquisition of Data Access India Ltd. and having exposed the company to numerous civil and criminal litigations which has caused the company's assets standing attached with the Delhi Court in C.P. No. 292 of 2004 cannot now seek to escape from it. The petitioners having admittedly acknowledged that the R1 Company is a dormant company and does not have immediately foreseeable business, is now training the guns on the lands held by Vasantha Mills Ltd. to forcibly grab the lands of Vasamha Mills Ltd. The 2nd respondent admittedly introduced immoveable properties of Rs. 132 crores in the 1st respondent joint venture for which he was entitled to 12,41,419 shares of Rs. 100/- each in the R1 Company. Nandakumar Athappan had introduced only a sum of Rs. 2.75 crores in the Company for which he was allotted 275,871 shares of Rs. 100/- each. Subsequently as his investment in the company was not in accordance with the FEMA Regulations and FDI norms, Reserve Bank of India reduced shareholding of the petitioner to 45,663 shares of Rs. 100/- each which was never challenged by the petitioner herein, further the petitioner has before the Income Tax Appellate Tribunal affirmed that his holding in the Joint Venture Company is limited to 45,663 shares of Rs. 100/- each representing 1.66% of the shareholding in the company. The amount due to the petitioner after valuing the shares in accordance with the FEMA Regulations has been repaid to the petitioner. The petitioner has no right whatsoever with reference to the R1 Company and consequently the 5th respondent's land stands validly discharged. The Hon'ble Company Law Board by its order dated 13.08.2008 passed the order directing the petitioner and ORE Holdings Ltd. to exit the R1 Company as their

entitlement to money was determined. The operative portion of the order is given below for ready reference-

"CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% p.a. from the date of investment till the date of repayment within a period of 12 months in one or more instalments commencing from 01.11.2008. While making the payment CEPL, C.G. Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter. CEPL, CG Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with SBI, Erode Main Branch free of any liens or encumbrances towards refund of the investments of ORE and Athappan. VML shall not alienate or sell any of its immoveable properties till full payment is made to ORE in terms of this order. In event of failure to make the repayment within the specified time, CEPL, CG Holdings. KCP and VML will dully convey the immoveable properties of VML namely 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws as consideration for reduction of capital and surrender of shares of ORE and Athappan upon which ORE as well as Athappan will deliver share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries in favour of C.G. Holdings and KCP. CEPL is consequently authorised to reduce the share capital and in the meantime operation of impugned agreements is suspended to expedite and ensure due completion of the modalities to exit of ORE and Athappan thereby bringing an end to the acts complained of in the present proceedings CEPL shall ensure necessary statutory compliances till the whole process in accordance with the aforesaid directions is properly completed. The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exit of ORE and Athappan from CEPL".

10. Therefore it is the R1 Company which needs to take effective steps to return the funds in accordance with the applicable law to the petitioner and ORE Holdings Ltd., Mauritius herein. For the sake of brevity, events post passing of order dated 13. 08.2008 are given below in form of table for case of reference. The sequence of events given below demonstrates that Ramasamy Athappan and Chandran Ratnaswami who were acting at the instance of petitioner and ORE Holdings Ltd. respectively never took steps to comply with the order dated 13.08.2008 and instead did everything possible to interfere in the compliance of order dated 13.08.2008

1. On 13.08.2008 - Order of the Company Law Board directing the petitioner and ORE Holdings Ltd. Mauritius to exit from the company.

2 . On 19.11.2008 - Since the R1 Company was never allowed to act in accordance with the order dated 13.08.2008, CA No. 154 of 2008 was filed by the respondents for following relief's-

a. Declare that the Board meeting of CEPL, called for and allegedly held by respondents 3 & 4 (Chandran Ratnaswami and R. Athappan) on 23.10.2008 or any other date and any decisions taken therein to be illegal and not binding of CEPL.

b. Injunct the respondents 2 to 6, agents, servant or persons claiming through or for them from in any was interfering with the day to day management of the CEPL including by way of writing communication to third parties, banks, authorities or representing CEPL before Courts and/or Tribunal or by calling for Board meetings of CEPL.

C. Permit the applicants to deal with the fixed deposit TDR No. 759713 dated 14.10.2005 with SBI, Erode Branch for and on behalf of CEPL without any interference from respondents 2 to 6 or their men, agents or servants or persons claiming through or for them.

d. Permit the applicants to induct 2 additional directors on the Board of CEPL and to carry on the affairs of CEPL in accordance with the provisions of the Companies Act 1956 without reference to the exiling shareholders (ORE & Athappan)

3 . On 11.12.2008 - ORE Holdings filed C.A. No. 115 of 2008 claiming the following relief's-

a. Direct SBI, Erode Branch to release the amount lying in the fixed deposits held by it on behalf of CEPL in favour of ORE Holdings by was of Demand Draft in the equivalent amount of United States Dollars.

b. Direct CG Holdings and KCP to tender all necessary co-operation and to execute and/or procure the execution of documents required to facilitate remittance of the investment of the ORE Holdings in accordance with the order.

Alternatively

Appoint and authorize any officer of this Hon'ble Board to sign, execute and tender all documents on behalf of CG Holdings. KCP that may be necessary under applicable law including without limitation to the Companies Act, 1956. Foreign Exchange Management Act, 1999 to facilitate repayment of the investment of ORE Holdings in accordance with the order.

c. Direct KCP and VML to take necessary action without a period of 4 weeks to clear the liabilities of VML in respect of its contributions to Employees Provident funds and cause the attachment on the property of VML to be vacated.

Modify the order of CLB dated 13.08.2008 to clarify that upon any failure to pay the funds owed to ORE Holdings in terms of the order, the property belonging to VML be conveyed pursuant to sale to a willing buyer nominated by ORE Holdings and permit ORE Holdings to receive the proceeds of the sale thereof.

4. On 14.02.2009 - N. Athappan and R. Athappan filed CA No. 10 of 2009 for following order:

a. Order directing SBI Erode Branch to forthwith release funds contained in the fixed deposit maintained in name of CEPL to N. Athappan and ORE Holdings Ltd. in proportion stated in the order dated 13.08.2008 in C.P. No. 65 of 2005 and C.P. No. 76 of 2005.

The order dated 13.08.2008 did not state the proportion in which repayment was to be made by CEPL to N. Athappan and ORI: Holdings.

5 . On 03.08.2009 - The Hon'ble Company Law Board passed the following order:

i. SBI is authorized to release 50% of maturity proceeds of the fixed deposit No. 759413 held in the name of CEPL, in favour of ORE and N. Athappan in the ratio of 75:4 and the remaining 50% of the proceeds in favour of C.G. Holdings and KCP enabling them to deal with the same, namely 50% of maturity proceeds, without any interference from the respondents 2 to 3 in C.A. No. 154 of 2008 provided that CG Holdings and KCP shall by way of an affidavit to be filed with the Bench Officer within 30 days undertake

a. To tender all necessary Co-operation and execute and/or procure the executions of documents required to facilitate remittance of the investment of ORE in accordance with the CLB order.

b. To take appropriate action for raising the order of attachment made by EPPO over VML properties within a period of 90 days.

c. Deposit with the Bench Officer within 30 days, the share certificates together with signed share transfer forms in respect of their holdings in CEPL.

ii. None of the nominees of ORE as well as N Athappan will exercise their rights as director of CEPL until further orders.

iii. CG Holdings and KCP will induct two additional directors on the Board of CEPL and shall carry on the affairs of CEPL in accordance with the provisions of the Act, without intervention of ORE and N. Athappan or their nominees.

iv. The properties of VML, namely 17.15 acres of land will be conveyed to favour of ORE or its nominee in the event of any remote need which may arise in the future on account of noncompliance of the order dated 13.08.2008 by CEPL, C.G. Holdings and KCP.

v. ORE and N. Athappan will deposit the share certificates together with signed transfer forms in respect of their holdings in CEPL with the Bench Officer within 30 days.

vi. C.G. Holdings and KCP in case fail to file affidavit as stipulated in the proviso to para 9(i) hereabove, SBI will release the entire maturity proceeds of the fixed deposit No. 749413 held in the name of CEPL in favour of ORE and N. Athappan in the ratio of 75:4 without reference to any of the parties to the present proceedings; and all other terms and conditions of the common order dated 13.08.2008 shall remain unchanged.

Therefore the order of the Company Law Board dated 13.08.2008 could not he complied with on account of the conduct of Chandran Ramaswami and Ramasamy Athappan who have despite being majority in directors of the company have taken no effective steps to repay the amount due to them for the shares held in the company in accordance with the applicable law.

6. On 07.08.2009 - Company Appeal No. 21 of 2009 moved by ORE Holdings Ltd. again represented by R. Ravichandran is filed before the Hon'ble High Court Madras for following interim relief's-

a. To grant an order of injunction restraining the 2nd and 3rd respondent from taking control of the R1 Company representing the 1st respondent in any proceedings, appointing additional directors or dealing with the affairs of the R1 Company until disposal of the appeal and pass such further or other orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

b. To grant an order of injunction restraining the 8th respondent from releasing the funds from the fixed deposit of the R1 to the respondents 2 & 3 as provided in order dated 03.08.2009 in CA No. 155 of 2008 in CP No. 76 of 2005 until disposal of appeal and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case. By order dated 07.08.2009, the aforementioned interim relief was granted which was in force till 05.08.2011. Therefore once again ORE Holdings Ltd. and petitioner acting concert ensured that R1 Company does not fulfill the order dated 13.08.2008 in following manner

a. The 3rd respondent is restrained by way of interim relief from representing the company.

b. The R1 therefore has only Ramasamy Athappan and Chandran Ratnaswami on the Board of the company who in complete conflict do not take any steps to repay the amounts to the petitioner and ORE Holdings Ltd.

Therefore since 13.08.2008 till 05.08.2011. Ramasamy Athappan and Chandran Ratnaswami have prevented the R1 Company from complying with the order dated 13.08.2008.

7. On 05.08.2011 - Company Appeal No. 21, 25, 27 & 29 of 2009 disposed off with the order dated 03.08.2009 being modified to a limited extent.

"Therefore, Company Appeal No. 21 & 29 preferred by ORE and Company Appeal Nos. 25 & 26 preferred by N. Athappan and R. Athappan are to be allowed and the impugned order dated 03.08.2009 in so far as permitting KCP to deal with 50% of the amount lying in SBI, Erode Branch is liable to be set aside."

Therefore rest of the directions as issued by the Hon'ble Company Law Board in order dated 03.08.2009 continue to remain in force. As a result the direction passed in order dated 03.08.2009 remains in force and that it prevents N. Athappan and ORE Holdings Ltd. or their nominees from acting as directors of R1 Company.

Order further states that the petitioner and ORE Holdings shall exit immediately after receipt of their funds.

8 . On 29.08.2011 Requisition was sent by 2nd respondent to inter alia give effect to the order dated 13.08.2008, 03.08.2009 and 05.08.2011. The 3rd Respondent as managing director of the company and the interim relief standing modified by virtue of final order in exercise of his duty-called for meeting of Board of director of the company on 07.09.2011 to inter alia consider the requisition received from 2 respondent.

9 . On 27.09.2011 - The 3rd respondent in compliance with the order dated 13.08.2008 and in accordance with FFMA regulations remitted Rs. 45,663 - being Rs. 1 per share for 45,663 shares and Rs. 12,41,419 for ORE Holdings Ltd. being the fair value of shares as per FEMA Regulations. On payment of the amount due, capital held by petitioner and ORE Holdings Ltd. stands cancelled and that nominees of petitioner Mr. Ramasamy Athappan and Chandran Ratnaswami of ORE Holdings Ltd. automatically cease to be directors of the company by virtue of order of Company Law Board dated 13.08.2008.

11. The above sequence of events would show that the petitioner and ORE Holdings Ltd. through their nominees Ramasamy Athappan and Chandran Ratnaswami are having conflicting interest On the one hand they are in majority in the Board and never acted to repay the capital to themselves and on the other hand prevented the 3rd respondent from representing and taking care of the interest of the R1 Company. The 3rd respondent immediately on being permitted to act as the managing director of the company has taken effective steps to repay the capital to the petitioner and has given effect to the order dated 13.08.2008. Respondents have therefore acted in accordance with the orders of the Hon'ble Company Law Board dated 13.08.2008, 03.08.2009 and the order of the Hon'ble High Court dated 05.08.2011. The capital of the petitioners stands returned in accordance with FEMA Regulations and that the 2nd respondent now holds 99% of the paid up capital of the R1 Company. Since the petitioner's capital has been repaid and has been duly discharged by the R1 Company, the present petition filed by the petitioner is infructuous. The respondents further submitted that the petitioners are trying to grab the land held by 5th respondent despite there being a valid discharge by the 1st respondent. It is pertinent to mention that return of the capital as contemplated by the order dated 13.08.2008 has to be carried out in exercise of the laws applicable in India. The respondents humbly submit that the amount stated to be returned by the R1 Company is the maximum liability that has been fixed on the 1st respondent by the Hon'ble Company Law Board in order dated 13.08.2008 subject to fair value as determined under FEMA Regulations. It is pertinent to mention that in order dated 03.08.2009 and 05.08.2011 the Company Law Board and the Hon'ble High Court were conscious of the applicability of FEMA regulations as the petitioner and ORE Holdings Ltd. were non-residents and have categorically stated that repatriation of funds by ORE or the petitioner shall be in observance of all

applicable laws of the country. It is at this point necessary to mention that CLB categorically held that ORE and Athappan will therefore get back the investments with interest either in cash or in the form of properties, however, after due compliance with all the legal formalities in this behalf. The Ld. Counsel for the Respondents relied upon the following judgments on the following points:

A) Scope of review of an Execution Petition

i) In the matter of Official Trustee Vs. Sachindra Nath Chatterjee reported in 1969 (3) SCR page 92.

ii) In the matter of Chandrika Misir Vs. Bhaiyalal & Anr. reported in 1973 (2) SCC Page 474.

iii) In the matter of Jaipur Development Authority Vs. Radhey Shyam & Ors. reported in 1994 41 SCC 370.

iv) In the matter of Amrit Bhikaji Kale Vs. Kashinath Janardhan Trade & Anr. reported in 1983 (3) SCC 437.

B) Order to direct transfer of properly is beyond the scope of what is contemplated under order 21 Rule 64.

i) In the matter of S. Mariyappa & Ors. Vs. Siddappa & Anr. 2005 10 SCD 235).

ii) In the matter of Balakrishnan Vs. Malaiyandikonar 2006 3 SCC 49).

iii) In the matter of Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma & Ors. 1977 3 SCC 337).

iv) Ambati Narasayya Vs. Subba Rao & Anr. 1989 Supp. 2 SCC 693)

C) Sale of Property by Court within whose jurisdiction the property is located - Administrative Convenience.

i) In the matter of L. Balu Vs. Periasami & OrsAIR 1988 Mad. 114).

ii) In the matter of Citibank Vs. Indo American Electricals Ltd. (AIR 1981 Delhi 27).

iii) In the matter of Ambika Ranjan Majumder Vs. Manikganj Loan Office Ltd. AIR 1929 Cal 818)

iv) In the matter of Uma Kanoria Vs. Pradip Kumar Daga reported in AIR 2003 Cal 162.

D) When there are two ways of interpreting a decree, it is to be interpreted in a manner such that it is in consonance with the law.

i) In the matter of Baker Sajjad Vs. Udit Narayan Singh reported in MANU/ UP/0043/1899.

ii) In the matter of Lachmi Narain & Ors. Vs. Amlok Ram & Anr. reported in

MANU/UP/0124/1896.

E) Powers or Tribunals.

i) In the matter of Dr. Aloys Wobben Vs. Intellectual Property Board reported in MANU/TN/1925/2013.

F) Principles of the Code of Civil Procedure - applicable

i) In the matter of ICICI Bank Ltd. Vs. Klen & Marshalls Manufacturers

& Exporters Ltd. reported in 2003 113 Company Cases 480 (CLB).

G) Transfer of Execution Petition under Section 634A of the Companies Act, 1956

i) In the matter of Edpunganti Bapanaiah Vs. Nagarjuna Finance Ltd. reported in 2002 114 Company Cases 496.

12. The 5th Respondent filed a Counter Affidavit. Shri S.R. Rajagopal, Ld. Counsel appeared for the 5th Respondent submitted that the present application under the color of execution petition and the application seeking for attachment of 5th Respondent i.e. VML land pending the application for execution is not maintainable either on facts or on law and as such deserves to be thrashed at the threshold. This is more so because for the relief sought for by the petitioner in this petition, the matter has to be sent to the regular civil court under whose jurisdiction the property lies. The same cannot be done straight. Further, an application under section 634A cannot be clubbed with an application under section 397. Such a procedure is unknown to law. They stoutly object to the maintainability of the above application seeking attachment of the properties of this respondent pending the application to execute the order of the Board. Per se, attachment, pending execution is an alien to Order XXI of Code of Civil Procedure 1908. This respondent states that final relief claimed in the application is sale of property to petitioner. As per the orders of the Division Bench of the Madras High Court, the same cannot be done without compliance with the provisions of FEMA and other applicable laws. From the arguments placed by the other respondents, it is clear that the plea is of discharge. In case of a discharge, no relief can be granted much less the totally unconnected interim relief claims of attachment. This is because the Madras High Court was very clear that the property of M/s. VML is only a security in case of default. When the plea is that the amounts have been discharged, the security too stands nullified. The respondent states that the above application came to be filed, on the strength of the order of this Board made in CP 65 & 75 of 2005 dated 13.08.2008 as confirmed by the Hon'ble High Court in Compare Appeals 21, 25, 26, 27 & 29 of 2009 dated 05.08.2011. No doubt this Board has passed orders wherein the 1st respondent herein was directed to repay a sum of Rs. 4 crores to the applicant and a sum of Rs. 75 crores to the ORE Holdings Ltd. respectively together with interest at the rate of 8% per annum. This order was not interfered by the High Court in exercise of its appellate jurisdiction. The applicant had conveniently suppressed the restraint clause and observations made by the High Court and

the Writ Petition (the affidavit of which was produced before the court on 24.12.2010) presented at the instance of petition for the same relief as sought for in the execution implication. This respondent states that the question of attachment is necessary only if the petitioner is not otherwise protected. It is not the case of the petitioner that this respondent is contravening the orders of the High Court. By virtue of the orders passed by this Board on 13.08.2008, 03.08.2009 (not all portions of the order having been challenged by the petitioner or by respondents 2 & 3) and that of the High Court, the interim relief sought for is not maintainable, further, this Board being an executing court cannot grant an interim relief pending execution as its powers are the same as that of a civil court in execution. The petitioner cannot claim property without sanction of the RBI and other authorities and at the same time claim that it is in control and management of CEPL. If there is a prime example for contradiction in terms, this is it. The respondent states that the above application came to be filed in the form of execution application seeking to recover the money from the 1st respondent. Strangely the reliefs were sought as against the 5 respondent and its properties, which is per se, impermissible. The scope of the application is for recovery and for execution simpliciter to enforce the 2008 order of this Board regarding repayment alone. When such is the case, it is not known as to how the applicant can seek the relief by invoking sections 397, 398, 402 and 408 of the Companies Act, 1956. It is write that a court in execution cannot go behind the decree. What cannot be done directly cannot be done indirectly. The application is for execution to recover the money and money only matters, under such circumstances, the applicant cannot seek for reliefs pertaining to the management of the company in the execution petition. The order of conveyance was modified by High court by holding that any such conveyance shall be in accordance with the lays of the land. When the financial laws of land debars the petitioner from holding immovable properties the petitioner cannot seek to hold the properties under the guise of order of an Tribunal, which is per se illegal, void and warrants penal action.

13. The Ld. Counsel further submitted that a bare reading of the application would reveal that absolutely there is no allegation of encumbrance being done by this respondent on its properties. Furthermore, a bare reading of the 2008 order of this Board would reveal that the petitioner cannot straight away deal with the properties of VML, the 5th respondent herein. The High Court by its order in Company Appeal had modified the 2009 order of the Board, whereby it was specifically ordered that the petitioner being the non-resident cannot hold immovable properties in India and as such the petitioner should get approval from the concerned authorities prior to seeking right over the properties. It is clear that the permission from the concerned authorities is condition precedent to have the claim over the properties of VML. For the sake of convenience the relevant portions of the 2009 order of this Board as well as the order of the High Court are extracted herewith 2009 order of this Board "iv. The properties of VML, namely 17.15 acres of land will be conveyed in favour of ORE or its nominees, in

the event of any remote need, which may arise in future on account of non-compliance with the order dated 13.08.2008 by CEPL, CG Holdings and KCP"

Order of High Court at Para

"144. ORE, being a non-resident company, is not permitted to hold immovable property in India. In the first limb, the properties of VML are kept as security and only in the event of remote need the properties of VML i.e. 17.15 acres are to be conveyed to ORE and 7.8 acres to Athappan. ORE, being a non-resident company, is not permitted to hold immovable properties in India, however, subject to approval/permission to be obtained by ORE from the competent authority.

145. As per order of Company Law Board, amount invested by ORE has to be refunded, which of course, must be in accordance with applicable laws: be it compliance with FEMA or other regulations. ORE, being a foreign investor and entity of foreign origin as per FEMA, cannot own immovable property in India. Compliance of FEMA or other applicable regulations cannot be bypassed. By the order dated 03.08.2009, Company Law Board modified its earlier order directing VML to execute the safe deed, conveying immovable properties of

17. 15 acres to the nominee of ORE and thereby modified its earlier order. The order of the Company Law Board modifying its earlier order directing VML to convey the properties to nominee of ORE is to be modified to the effect that any such conveyance should be subject to applicable laws and regulations and with required approval/permission to be obtained by ORE from the competent authorities. The order of the Company Law Board in CA No. 155 of 2008 is to be modified to that extent."

The respondent states that the order of the High Court would reveal that the order of the Board to the effect of conveying the properties of VML to petitioner was modified stating that any such alienation is subject to the approval of the concerned authorities. In the case or hand, the averments made in application are silent so as to that of the approval from the authorities. It is the petitioner who has to avail the leave of the authorities to have claim against the immovable properties in India. In the absence of leave the petitioner being a non-resident Indian cannot sustain the claim. The respondent reiterates that the High Court had made it clear that the conveyance shall be subject to approval of the concerned authorities. To the knowledge of this respondent the petitioner had not availed any clearance till date and as such he cannot seek claim over the immovable properties. It is made clear that only in the remote need the properties of VML to be conveyed to the petitioner subject to clearance. Without attempting to execute the order as against the respondent seeking the properties of VML is impermissible. The respondents are advised to state that the Board had already granted injunction restraining the encumbrance over the properties of VML. The order ensure to the benefit of the petitioner. When the order injunction is in force any alienation pendente lite is hit by doctrine of lis pendens and such there is no necessity to seek for attachment, that too pending execution petition. On the aforesaid facts and circumstances it is prayed that this Hon'ble Board be pleased to dismiss the above execution petition as well as the connected company application with exemplary and penal costs and pass such further or other orders as this court deem fit and proper under the circumstances and render justice.

14. Heard the Learned Senior Counsel and the Counsels appeared for the respective parties elaborately and perused the pleadings/documents filed by them. After analysing the pleadings the only issue felt for consideration is whether the Petitioner has made out any case seeking enforcing/executing of the order of this Bench dated 13/08/2008 passed in CP No. 65/2005 and CP No. 76/2005?

15. Now I deal with the issue:

The present Execution Petition has been filed by the Petitioner before this Bench by invoking the jurisdiction of this Bench under Section 634A of the Companies Act 1956 praying this Bench to grant an order in execution of the common order dated 13/08/2008 passed in CP Nos. 76/2005 and 65/2005. The grievance of the Petitioner is that the Respondents have not complied with the directions of this Bench dated 13/08/2008 which was confirmed by the Hon'ble High Court of Madras vide its order dated 05/08/2011. It is submitted that the order of this Bench dated 13/08/2008 attained finality and the Respondents are duty bound to comply with the directions of this Bench. This Bench passed a common order dated 13/08/2008 in two Company Petitioners being CP Nos. 65/2005 and 76/2005. The operative portion of the order is extracted hereunder for easy reference:

1 7 . In view of the foregoing conclusions and in exercise of the powers under sections 397 & 398 read with section 402 and with a view to bringing to an end the grievances of CG Holdings, KCP, ORE and Athappan, the following order is passed:

CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of repayment within a period of 12 months in one or more instalments, commencing from 01.11.2008. While making the payment CEPL, CG Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter, CEPL, CG Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with SBI Erode Main Branch, free of any liens or encumbrances towards refund of the investments of ORE and Athappan. VML shall not alienate or sell any of its immoveable properties till full payment is made to ORE, in terms of this order. In the event of any failure to make the repayment within the specified time, CEPL, CG Holdings, KCP and VML will duly convey the immoveable properties of VML, namely 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws, as consideration for reduction of capital and surrender of the share of ORE and Athappan, upon which ORE as well as Athappan will deliver the share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries, if any, in favour of CG Holdings and KCP, CEPL is consequently authorized to reduce its share capital and in the meantime, operation of the impugned agreements is suspended, to expedite and ensure due completion of the modalities of exit by ORE and Athappan, thereby, bringing to an end the acts complained of in the present proceedings CEPL shall ensure necessary statutory compliances till the whole process, in accordance with the aforesaid directions, is properly completed. The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exit of ORE and Athappan from CEPL.

16. From the above order it is clear that the CLB has passed the directions which can be divided in to three limbs which shall be complied with by the Respondents,

a) The 1st limb of the direction is that the R-1 company shall return a sum of Rs. 75 crores and Rs. 4 cores invested by the Petitioner i.e. ORE and Athappan, who is Petitioner in EP 35/2011 respectively together with simple interest @ 8% p.a. from the date of investment till the date repayment within a period of 12 months in one or more instalments, commencing from 01/11/2008.

b) The 2nd limb of direction is that the 5th Respondent herein i.e., VML shall not alienate or sell any of its immovable properties till full payment is made to ORE in terms of this order.

c) The 3rd limb of direction is that in the event of any failure to make the repayment within the specified time i.e. within a period of 12 months from 01/14/2008 to 1/11/2009, the R-1 company, CG Holdings, KCP and VML i.e. the 5th Respondent herein will duly convey the immovable property of the VML namely 17.15 acres of land in favour of ORE (the Petitioner in EP36/2011) and 7.80 acres of land in favour of Petitioner in EP 35/2011 by executing and registering necessary deeds of conveyance of strict compliance with all applicable laws.

17. The Respondents have not complied with the direction of this Bench. While so the Respondents have filed application before this Bench being CA 154/2008 and the Petitioners also filed applications being CA 155/2008, 10/2009. The Bench after hearing the parties passed the order on 03/08/2009. However the CLB has not modified the above directions of this Bench but certainly gave further clarification to para (c) supra of the order dated 13/08/2008. The said clarification and further direction of the CLB vide its order dated 03/08/2009 at para (iv) is extracted hereunder:

"The properties of VML viz., 17.15 acres of land will be conveyed in favour of ORE or its nominees in the event of any remote need, which may arise in future on account of non-compliance with the order dated 13/08/2008 by the CEPL, CG Holdings and KCP". The Bench vide its earlier order dated 13/08/2008 directed the Respondents to convey the immovable property of the VML in favour of ORE and Mr. Athappan. However, in its later order the CLB directed the Respondents to convey the land in favour of ORE or its nominee. The only difference between the two orders is directing the Respondents to convey the land in favour of ORE or its nominee for the reason that the ORE being a foreign entity cannot hold immovable properties in India.

18 . Aggrieved by the order dated 03/08/2009 of the CLB the Petitioners and the Respondents filed Appeals before the Hon'ble High Court of Madras and the Hon'ble High Court vide its order dated 05/08/2011 passed a detailed order upholding the directions of the CLB dated 03/08/2009 in respect of conveyance of land in favour of ORE and Athappan. However, the Hon'ble High Court had made clear that the ORE being a non-resident company is not permitted to hold immovable properties in India. The relevant paras of the Hon'ble High Court is extracted hereunder:

137. Jurisdiction of the High Court in an appeal under section 10-F of the Act is expressly confined to the determination of any question of law. Finding of a question of fact may also result in a question of law if the Tribunal's finding is without evidence or based on irrelevant material. In our considered view, the order of Company Law Board dated 03.08.2009 modifying its earlier order is so perverse or unreasonable that no person acting judicially could have arrived at such a conclusion and therefore we are constrained to interfere with the impugned order of Company Law Board dated 03.08.2009. We are of the view, in the order dated 03.08.2009 findings of the Company Law Board are not only perverse but passed in an arbitrary manner. The direction permitting KCP and C.G. Holdings to withdraw 50 percent of the amount and direction to ORE and Athappan to deposit their share certificates is not supported by any reasons, evidence or materials. The order dated 03.08.2009 virtually nullifies the earlier order. The Company Law Board did not keep in view the conduct of KCP and other proved mismanagement. Without first complying with the order of returning the money of Rs. 75 crores and Rs. 4 crores with interest at 8 percent, the Company Law Board was not justified in directing ORE and N. Athappan to deposit the share certificates in the Bench. Order of Company Law Board dated 03.08.2009 ignores the conduct of KCP in mismanaging CEPL and siphoning of money and properties either to KCP or to subsidiary companies. Therefore, Company Appeal Nos. 21 and 29 preferred by ORE and Company Appeal Nos. 25 and 26 preferred by N. Athappan and R. Athappan are to be allowed and the impugned order dated 03.08.2009 in so far as permitting KCP to deal with 50% of the amount lying in SBI, Erode Branch is liable to be set aside.

144. ORE, being a non-resident company, is not permitted to hold immovable property in India. In the first limb, the properties of VML, are kept as security and only in the event of remote need, the properties of VML i.e. 17.15 acres are to be conveyed to ORE and 7.80 acres to Athappan. ORE being a non-resident company, is not permitted to hold immovable properties in India, however

subject to approval permission to be obtained by ORE from the competent authority.

145. As per order of Company Law Board, amount invested by ORE has to be refunded, which of course, must be in accordance with applicable laws: be it compliance with FEMA or other Regulations. ORE, being a foreign investor an entity of foreign origin, as per FEMA, cannot own immovable property in India. Compliance of FEMA or other applicable regulations cannot be bypassed. By the order dated 03.08.2009, Company Law Board modified its earlier order directing VML to execute the sale deed, conveying immovable properties of 17.15 acres to the nominee of ORE and thereby modified its earlier order. The order of the Company Law Board modifying its earlier order directing VML to convey the properties to "nominee of ORE" is to be modified to the effect that any such conveyance should be subject to applicable laws and regulations and with required approval permission to be obtained by ORE from the competent authorities. The order of the Company Law Board in CA No. 155 of 2008 is to be modified to that extent.

146. In the result, Company Appeal Nos. 21 and 29 of 2009 preferred by ORE and Company Appeal Nos. 25 and 26 of 2009 preferred by N. Athappan and R. Athappan are allowed. Company Appeal No. 27 of 2009 is disposed of modifying the order of Company Law Board dated 03.08.2009 in CA No. 155 of 2008 to the effect that the conveyance of immovable properties to nominee of ORE is subject to all applicable laws and regulations and if need be, with necessary approval permission to be obtained by ORE from the competent authorities.

The Hon'ble High Court at para 137 gave a clear finding that the Respondents did not comply with the directions of this Bench dated 13/08/2006 in returning the money i.e. Rs. 75 crores and Rs. 4 crores to the ORE and N. Athappan with interest @ 8%. Thus it is clear that the Respondents have not returned the money to the ORE and Athappan as per the directions of this Bench dated 13/08/2008 which was upheld by the Hon'ble High Court of Madras. I am of the opinion that the Respondents have not complied with the directions of this Bench in returning the money to the ORE and Athappan. Further the Hon'ble High Court modified the order of this Bench dated 03/08/2009 to the effect that any such conveyance to the nominee of ORE should be subject to the applicable laws and regulations and with required approval/permissions to be obtained by ORE from the competent authorities. Except the modification with regard to the approvals to be obtained by the ORE the Hon'ble High Court has not modified the order of the Bench in conveyance of land to the ORE and Athappan. Further the Hon'ble High Court upheld the order of this Bench dated 13/08/2009 and 03/08/2009 with certain modifications as stated supra. The order of this Bench dated 13/08/2008 has three limbs of directions to be complied with by the Respondents. The 1st limb of the order i.e. returning the money to the ORE and the Athappan has not been complied with by the Respondents. The 2nd limb of the direction is with respect to not to alienate or sell the immovable property of the VML is Concerned the Respondents have implemented the direction. The Respondents have completely failed in complying with the 1st limb of direction of this Bench dated 13/08/2008. As per the direction of this Bench if the Respondents fail to return the money to the ORE and Athappan the next direction i.e. the 3rd limb of direction is to convey the immovable property of the VML viz. 17.15 acres in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws.

19. In seeking execution of the order of this Bench dated 13/08/2008, the Petitioners have to comply with the directions of the Hon'ble High Court of Madras dated 05/08/2011 i.e. the ORE which is a non-resident company need to obtain approval permission from the competent authorities i.e. from RBI. It is also to be noted that the ORE cannot hold immovable property in India therefore the ORE shall nominate any of the persons to hold the immovable property in India on behalf of ORE. This Bench vide its order dated 03/08/2009 had made clear at para (iv) that the properties of VML viz.

17. 15 acres of land will be conveyed in favour of ORE or its nominee. The conveyance of land in respect of Athappan there is no modification and the Hon'ble High Court has also upheld the direction of this Bench. Therefore, I am of the view that there is no legal embargo in conveying the land to the extent of 7.80 acres in favour of Athappan who is the Petitioner in EP 35/2011. The Learned Senior Counsel for the Petitioner contended that there is no legal embargo in conveying the land even in favour of ORE to the extent of 17.15 acres since the ORE nominated a person to hold the immovable property on its behalf and also obtained necessary permissions/approvals from the RBI dated 08/06/2015.

20. It is relevant to mention herein that the Hon'ble Supreme Court has taken note of the fact in its order dated 09/05/2013 in CA No. 4540 of 2013 with Criminal Appeal Nos. 736-737 of 2013, Criminal Appeal No. 731-733 of 2013, CA Nos. 4537-4538 of 2013, Criminal Appeal Nos. 734-735 of 2013 and Contempt Petition (Civil No. 166 of 2013), that the ORE invested Rs. 75 crores and got 45% in CEPL and Athappan invested Rs. 4 crores and got 10%. Further at para 45 of the order the Hon'ble Supreme Court held that "Both the parties moved the Madras High Court by filing appeals and those company appeals were finally disposed of on 05/08/2011 and the order passed by the CLB was confirmed. The Division Bench of the Madras High Court while confirming the view taken by the CLB held that both parties cannot jointly run the business and, therefore, to unsure smooth exit of ORE and Athappan the CLB passed the order. The said order of the Division Bench passed in appeals however was not challenged by the Respondent 1 K.C. Palanisamy". Further at para 47 of the order the Hon'ble Supreme Court observed that "instead of complying with the order of the CLB and the directions and observations made by the Madras High Court in the aforementioned Company Appeals. Respondent I started filing several criminal

complaints against the appellant". Further at para 50 the Hon'ble Supreme Court observed that "in a nutshell, the dispute arising out of joint venture agreement has been fully and finally settled by the CLB and also the High Court and several directions were issued for compliance including the return of the amount by the R1 to the appellant and to become the sole owner of those companies".

21. Thus the Hon'ble Supreme Court has clearly observed the following points in its order to say:

a) The ORE and Athappan have invested Rs. 75 crores and Rs. 4 crores respectively and got 45% and 10% shares in CEPL.

b) The order passed by this Bench was confirmed by the Hon'ble High Court vide its order dated 05/08/2011.

c) The K.C. Palanisamy has not challenged the order of the Hon'ble High Court.

d) The Respondents have not complied with the directions of this Bench dated 13/08/2008 instead filed several complaints.

e) The disputes arising out of JVA has been fully and finally settled by the CLB and the Hon'ble High Court and several directions were issued for compliance including the return of the amount to the appellants.

22. It is unequivocal that the Respondents have not complied with directions of this Bench neither returning the money to the ORE and Athappan nor conveyed the land as directed by the CLB. The Respondents have unnecessarily prolix the issue in implementing the order of the CLB. I am of the view that the Respondents willfully disobeying the orders of this Bench by taking one or the other plea only with an intention to avoid the implementation of the order of this Bench. It is to say that though the Bench after hearing the parties elaborately passed a detailed order on 13/08/2008 which was continued by the Hon'ble High Court on 05/08/2011, the Petitioners in EP 36/2005 and EP 35/2005 have not got the fruits of the order though seven years have lapsed still the Petitioners moving around the Courts seeking implementation of the order. Though the Petitioners got justice but it confined to only in a form of judgment/orders but have not got the real fruits out of the judgment which they are legally entitled to. The orders passed by the CLB were upheld by the Hon'ble High Court of Madras which has become final and the Respondents have not filed any appeals against the orders of the Hon'ble High Court. Having party to the proceedings at all stages, the Respondents willfully not inclined to comply with the orders of this Bench. This Bench under Section 634A of the Companies Act, 1956 has ample power to enforce its orders. The legislature has given such power to the CLB. In such a situation the CLB shall exercise its powers as contemplated under the Act. In this regard it is apt to mention Section 634A of the Companies Act, 1956 for easy reference.

[Enforcement of orders of Company Law Board A. Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the court within the local limits of whose jurisdiction:-

(a) In the case of an order against a company, the Registered office of the Company is situated, or

(b) In the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.]

23 . A plain reading of the above provision of law clearly indicates that the said provision has two limbs i.e.

(i) Any order of the CLB may be enforced by the same Bench in the same manner as if it were a decree made by a court in a suit pending therein.

(ii) The other limb of the provision is that in case the CLB expresses its inability to execute such order, the same shall be sent to the court within the local limits of that jurisdiction. In the present case the CLB has every power to execute its order in exercise of powers under Section 634A. The CLB need not send the case to the Civil Court for execution.

The Legislature has given ample power for enforcing its order in the same manner if it were a decree in a suit. Once the CLB passes the order then it becomes a decree for enforcement of that order. The word decree has been defined in Sub-section (2) of Section 2 of the Civil Procedure Code 1908. The decree means a formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights or the parties with regard to all or any of the matter in controversy in the suit and may be either preliminary or final. The CLB after adjudication of the matter under Section 397/398 and other applicable provisions of law has passed final order on 13/08/2008. For the purpose of execution enforcement the order of the CLB shall be treated as a decree as defined under the Civil Procedure Code. The Hon'ble Supreme Court in the matter of Cosmosteels Pvt. Ltd. (A) (i) supra held that the scheme of Section 397 and 406 appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia lifting the ban on company purchasing its shares under courts' direction is conferred on the court. Therefore the CLB in exercise of power under Section 397/398 while dealing with the acts of oppression and mismanagement has widest powers under Section 402 to pass orders to put an end to the disputes arising between the parties. In the present case the Bench has passed an order and the Hon'ble Supreme Court also observed that the disputes arising out of joint venture agreement has been fully and finally settled by the CLB and the Hon'ble High Court.

24. Further the execution procedure is contained in order XXI of the CPC. However it is to note that though the proceedings before the CLB are not governed by the provisions of the CPC as held in Kshounish Choudhury Vs. Kero

Rajendra Monolethies (1998) 98 Company Cases 114. Nevertheless the underlying principles of the CPC are being followed by the CLB. It is also apt to note that applications under Section 397/398 are only in the nature of complaints about oppression and mismanagement. The power conferred under Section 397/398 are for making such order as the court thinks fit. Therefore it is not necessary for the CLB to confine itself to the reliefs prayed for. It is to reiterate that the powers of the CLB to pass orders under Section 402 of the Companies Act, 1956 and the said order has to be complied with unless and until the same is set aside reversed or modified. In the present case the order of the CLB admittedly attained finality.

25. The Learned Counsel for the Respondents contended that the 3rd limb of the order pertaining to transfer of VML land is in-executable for the reason that in case the Respondents failed to make payment the Petitioners were entitled to the immovable property of VML. He submitted that the order no longer exists in the same form. The Learned Counsel also submitted that CLB has no jurisdiction. In support of his stand he relied upon several decisions. The stand of the Respondents that the 3rd limb of the order cannot be enforced is not acceptable for the reason that the Respondents have failed to comply with even the 1st limb of the directions of this Bench dated 13/08/2008. Therefore the CLB and the Hon'ble High Court have categorically held that if the Respondent fail to comply with the directions of this Bench the Respondents have to convey the land to the ORE and Athappan. Further the Hon'ble High Court while upholding the order of the Bench dated 05/08/2011 directed the ORE to obtain necessary permissions. Accordingly the ORE has obtained the permission from the Reserve Bank of India on 08/06/2015. Further the ORE has nominated an entity as a nominee of the ORE i.e. ORE Trust, a private trust registered under the Indian Trust Act, 1882, having its address at No. 9, Norton 2nd Street, Mandavelipakkam, Chennai, Tamil Nadu-600028. Further the Petitioners have enclosed a copy of the PAN Card and letter dated 02/05/2015 issued by NSDL e-Governance Infrastructure Ltd. to the ORE Trust allotting a Tax Deduction Account Number (TAN). Thus the Petitioners have complied with the directions of the Hon'ble High Court in obtaining the permissions/approvals from the competent authorises and now there is no embargo in conveying the land to the ORE Trust and Athappan. In so far as jurisdiction is concerned the CLB, Chennai Bench, has jurisdiction to pass orders under Section 634A of enforcing executing its orders under its jurisdiction. As per the CLB regulations the Chennai Bench has jurisdiction of all the five States i.e. Tamil Nadu, Karnataka, Andhra Pradesh, Telengana and Kerala and Two Union Territories i.e. Puducherry and Andaman & Nicobar. The citations relied upon by the Learned Counsel for the Respondents are not helpful to the facts of the present case.

26. The Petitioner i.e. the ORE has requisite permission from the relevant authority being the RBI to receive the VML land through its nominee i.e. the ORE Trust. Further the RBI vide its letter dated 08/06/2015 has given no objection to the conveyance of the VML land to the ORE's nominee i.e. ORE Trust. Further

there is no approval required for the Petitioner in EP 35/2011 i.e. N. Athappan. Both the Petitioners have legally entitled to receive the VML land through conveyance.

27. The Respondents themselves failed to comply with the 1st limb of the direction and the Hon'ble Supreme Court in the matter of Dhanrajmal Gobindram has held that it is an elementary principle that nobody can take advantage of his own default. In the present case the Respondents themselves failed to comply with the directions of this Bench as stated supra. The Hon'ble Supreme Court in the matter of Manish Mohan Sharma discussed the limited scope of proceedings under Section 634A of the Companies Act, 1956 holding that "since the Company Law Board when it deals with an application under Section 634A sits as an executing court it is subject to all the limitations to which a court executing a decree is subject. It is well settled that an executing court cannot go behind the decree unless the decree sought to be executed is a nullity for a lack of inherent jurisdiction". Further the Hon'ble Supreme Court held that 'the effort of the executing court must be to see that the parties are given the fruits of the decree'.

28. The Hon'ble Supreme Court in the matter of Haryana Vidyut Prasaran Nigam Ltd. Vs. Gulshan Lal reported in 2009 13 SCC held that "if on a fai interpretation of the judgment, order and decree passed by a court having appropriate jurisdiction in that behalf the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the executing court shall deprive him from obtaining the fruits of the decree". Further the Hon'ble Supreme Court set out the width of the powers of an executing court in the matter of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman reported in AIR 1970 held that "A court executing a decree cannot go behind the decree, between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between parties." In the present case there is no such plea taken by the contesting Respondents that this Bench and the Hon'ble High Court of Madras do not have the jurisdiction to pass orders. As stated supra the order of this Bench has attained finality. The Respondents failed to comply with the directions of this Bench as upheld by the Hon'ble High Court. Failing to implement the orders by the Respondents, the CLB has the power to enforce/ execute its order dated 13/08/2008. Further the registered office of the company and the Respondents 2 & 5 are within the jurisdiction of this Bench. The Respondents cannot take the advantage of the irrelevant pleas in implementing the orders of this Bench on the pretext of lack of jurisdiction and contending that the order is in-executable. It is reiterated that the Hon'ble Supreme Court in the matter of Manish Mohan Sharma supra categorically held that the CLB when it deals with an application under Section 634A sits as an executing court. Further as stated supra though the Petitioners got the order in their favour on 13/08/2008 however they could not get the fruits out of that order and the Petitioners have suffered grave hardship each continuing day from the date of

order. The Hon'ble Supreme Court in the matter of Manish Mohan Sharma supra while dealing with Section 634A has defined the said provision and its powers at para 22, 23 and 24 and the paras are extracted hereunder.

22. Under Section 634A which provides for enforcement of the orders of the Company Law Board.

'Any order made by the Company Law Board may be enforced by the Board in the same manner as if it were a decree made by a court in a suit pending therein'.

23. The words "any order" used in the opening of the section, indicate that all orders made by the Company Law Board on an application under Sections 397 and 398 are enforceable like decrees without any limit on the nature of the order passed by the Company Law Board.

24. A "decree" under the Code of Civil Procedure has been defined [in Section

2(2)] as meaning,

"the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all of any of the matters in controversy in the suit and may be either preliminary or final".

All the decrees whether preliminary or final are susceptible to execution (vide Section 36 of the Code of Civil Procedure).

As enunciated hereinabove, this Bench is bound by the judgment of the Hon'ble Supreme Court to show that all the decrees whether preliminary or final or susceptible to execution. The order of this Bench dated 13/08/2008 is a decree and is susceptible to execution by this Bench. For the aforesaid reasons and in exercise of powers conferred under Section 634A of the Companies Act, 1956. I hereby grant an order in execution of the common order 13/08/2908 passed in CP Nos. 76/2005 and 65/2005 as follows.

1. Thereby declare that the nominee of the Petitioner i.e. ORE Trust having its address at No. 9. Norton 2nd Street, Mandavelipakkam, Chennai, Tamil Nadu-600028 is the beneficial owner of the property to an extent of 17.15 acres of VML land out of survey No. 124, 125, 123/3B and Survey No. 113 located in the registration district in Coimbatore with immediate effect.

2 . Further I hereby direct the Respondents to convey the aforesaid extent of land in the name of ORE Trust by executing a registered Sale Deed in its favour immediately failing which the Jurisdictional Registrar to register duly vesting the said land i.e. 17.15 acres of VML land in the name of ORE Trust and release the registered documents in favour of ORE Trust. The ORE Trust shall bear the Registration Costs and other incidental expenditure for this purpose.

3 . I hereby permit the ORE trust to take possession of the above described land

and I hereby direct the Respondents to ensure in smooth handing over the peaceful possession of the above land and cooperate with the ORE Trust.

4. I hereby direct the concerned revenue authorities of that jurisdictional area to enter the name of the ORE Trust to an extent of 17.15 acres of land in its records as owner and Pattadar and issue the necessary documents to the ORE Trust.

5 . The Respondents shall comply with the above directions of this Bench forthwith.

6. The order of this Bench dated 13/08/2008 in respect of not to alienate or sell of its immovable properties is stand vacated enabling the Respondents to convey the land to the ORE Trust and N. Athappan in respect of 17.15 acres and 7.80 acres.

With the above directions the CA 36/2011 in CP 76/2005 is allowed.