

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 605 of 2024

(Arising out of the Order dated 07.02.2023 passed by the National Company Law Tribunal, Mumbai Bench -IV in I.A. No. 1579 of 2023 in C.P.(IB) No. 923/MB/2020)

IN THE MATTER OF:

Growfitter Private Limited

Having its registered office at:

B/104, 1st Floor, Shree Sainath Society,
CHS Anand Nagar, Vakola Police Lane,
Santacruz East, Mumbai- 400055.

...Appellant

Versus

Gajesh Labhchand Jain,

The Liquidator of Talwalkars Healthclubs Limited.

Having office at:-

C-602, Remi Biz Court,
Off Veera Desai Road, Azad Nagar,
Andheri West, Mumbai- 400053.

...Respondent

Present

For Appellant:

Mr Aditya Ajgaonkar, Mr. Gaurangi Patil,
Mr. Gaurav Changrani, Advocates. & Mr. Nikhil
Mhatre, Advocates.

For Respondents:

Mr. Aayush Mitruka, Mr. Mohit Rohtagi &
Mr. Ashwini Kumar Tak, Liquidator.

J U D G E M E N T

(21.08.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Growfitter Private Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code')

against the Impugned Order dated 07.02.2023 passed by the National Company Law Tribunal, Mumbai Bench-IV (**‘Adjudicating Authority’**), in I.A. No. 1579 of 2023 in C.P.(IB) No. 923(MB)/2020.

2. Gajesh Labhchand Jain, who is the liquidator of Talwalkars Healthclubs Limited, is the Respondent herein.

3. The Appellant submitted that it is a service provider engaged in the business of offering financial technology services, specifically by operating as a payment gateway and entered into an arrangement with *Talwalkars Better Value Fitness Limited* ("**TBVFL**") for the provision of such services in relation to TBVFL's diverse health and wellness offerings. The Appellant submitted that TBVFL's business activities, prior to the demerger, were not confined merely to gym operations but encompassed a broader spectrum of wellness-related services. The Appellant's role was however limited to facilitating payments for their entire services and the Appellant did not form part of the core gym business of TBVFL.

4. The Appellant submitted that, the Adjudicating Authority vide order dated 21.12.2017, approved a scheme of demerger whereby only the gym business of TBVFL was transferred to the resulting company i.e. Talwalkars Lifestyles Limited (**TLL**) (subsequently renamed Talwalkars Healthclubs Limited (**THL**), the Respondent/Corporate Debtor). The Appellant submitted that, pursuant to the said scheme, the health and fitness activities including aerobics, Zumba, yoga, spa, massage, and other such businesses were expressly retained by TBVFL, as set out in the demerger scheme.

5. The Appellant submitted that on 27.12.2017, the Appellant, through its Promoters, entered into a Share Subscription and Shareholders Agreement ("SHA") with TBVFL, which was executed prior to the demerger. Following the demerger, TBVFL continued to exist as a sister concern of the Corporate Debtor, which has since been placed under liquidation pursuant to the order dated 28.04.2022, passed by the Adjudicating Authority.

6. The Appellant stated that it was in need of additional funds to support its expansion plans and TBVFL expressed its intent to invest in the Appellant company. Pursuant thereto, TBVFL agreed to subscribe to 9,598 freshly issued equity shares of the Appellant for a total consideration of ₹5 crores. The Appellant further submitted that the SHA also contains Clause 1.1.1, which defines the term 'non-fulfilment' with reference to the conditions set out in Clause 2.2 of the SHA. As per the said clause, in the event of non-fulfilment of the obligations under Clause 2.2 for any reason whatsoever, the Appellant company was entitled to buy back the equity shares that were issued to the Investor.

7. The Appellant further submitted that the demerger was never fully implemented by the ex-management of the Respondent Corporate Debtor, resulting in ambiguity with respect to the segregation of assets between the Corporate Debtor and TBVFL. The Appellant contended that, as per the Respondent's own stand, while the order dated 21.12.2017 allegedly contemplated that investments of TBVFL were to be transferred in the name of the Corporate Debtor, it is a matter of record and admitted by the Respondent/

Corporate Debtor that such transfer was neither reflected in the books of the Corporate Debtor post commencement of CIRP nor was any intimation in this regard found in the Corporate Debtor's records.

8. The Appellant submitted that, following TBVFL's failure to fulfil the requirements set forth in Clause 2.2 of the SHA dated 27.12.2016, the Appellant convened a meeting of its Board of Directors (BOD) on 05.03.2020 and the BOD approved the exercise of the Appellant's rights under the SHA to repurchase the shares from TBVFL at par value or, where applicable, at the lower of fair market value. The Appellant further submitted that, in view of TBVFL's failure to fulfil the requirements under Clause 2.2 of the SHA, the Appellant called upon TBVFL, vide email dated 09.05.2020, to surrender its shares to the Appellant. Accordingly, on 09.06.2020, the shares held by TBVFL were duly transferred to the Appellant, and this transaction is properly reflected in the Appellant's accounts. The Appellant submitted that, by virtue of this transaction, all rights of TBVFL and any alleged rights of the Corporate Debtor arising from a mistaken interpretation of the demerger stood extinguished in respect of these shares.

9. The Appellant submitted that the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was initiated vide order dated 09.03.2021, and submitted that the extinguishment of TBVFL's interest in the shares took place well prior to the commencement of CIRP. The Appellant elaborated that the transaction audit report dated 24.12.2021, as relied upon by the Respondent, has erroneously recorded that the Corporate Debtor holds

approximately 19% equity share capital of the Appellant of face value Rs. 10 each. The Appellant contended that the shares have already been transferred back to the Appellant and that Form No. SH-4, as mandated under the Companies Act, 2013, was duly executed and signed by the director of TBVFL. The Appellant clarified that, owing to restrictions imposed by the Covid-19 pandemic, the Appellant was unable to deliver the hard copy of Form No. SH-4 to the Registrar of Companies.

10. The Appellant submitted that the Respondent initially filed Form MGT-7A for the financial year 2020-21 on the Ministry of Corporate Affairs' portal, which incorrectly reflected TBVFL as a shareholder of the Respondent as on 19.01.2022. However, the Respondent subsequently revised this Form MGT-7A and re-submitted the audited reports for the same financial year on 28.02.2022, rectifying the earlier error. Furthermore, the Respondent, by its email dated 22.10.2022, acknowledged that neither TBVFL nor Corporate Debtor held any shares in the Appellant Company owing to non-fulfilment of the conditions stipulated under investor Clause 2.2 of the SHA. Subsequently, through its email dated 02.11.2022, the Respondent shared a revised shareholders' list confirming the transfer of shares from TBVFL to the Appellant, thereby extinguishing TBVFL's rights in respect of such shares as of June 2020.

11. The Appellant submitted that the Adjudicating Authority in its order dated 07.02.2024, erred in holding that there was no provision in the SHA for extinguishing the shareholder rights in the shares held by the Respondent and that

the physical share certificates were in the custody of the Applicant Liquidator, while in reality, only digital share certificates were with him and the physical share certificates have remained with the Appellant. The Appellant stated that the Adjudicating Authority further erroneously concluded that the equity shares issued by the Appellant form part of the asset pool of the Corporate Debtor and are consequently included in its liquidation estate, and that the extinguishment of shareholder rights was in contravention of Section 68 of the Companies Act, 2013.

12. The Appellant reiterated that the shares in question were issued to TBVFL and not to the Corporate Debtor, pursuant to the SHA dated 27.12.2016. It is the case of the Appellant that TBVFL, a sister concern of the Corporate Debtor, subscribed to these shares, and the entire consideration for the issuance was paid to TBVFL. The physical share certificates were in the possession of TBVFL and were later taken by the Liquidator of the Corporate Debtor in his capacity as the Liquidator of TBVFL, not the Corporate Debtor. Consequently, the Appellant contended that these shares do not form part of the liquidation estate of the Corporate Debtor under Section 36 of the Code.

13. The Appellant submitted that the demerger scheme defined the gym business under Clause 2.1.5, which included only assets exclusively related to the gym business. The investment in the Appellant was not exclusively related to the gym business, as TBVFL's operations encompassed fitness centers and lifestyle services. The Appellant contended that the Respondent's business, as per the

Marketing Agreement, has no direct correlation with TBVFL's gym business, and thus, the shares cannot be deemed to have been transferred to the Corporate Debtor.

14. The Appellant submitted that the Transaction Audit Report explicitly highlights manipulation in the Respondent's books of accounts, with the erstwhile management inflating the value of the investment in the Appellant through adjustments to present a healthier balance sheet. The Appellant relied on the Doctrine of Indoor Management, as established in ***MRF Ltd. v. Manohar Parrikar*** [(2010) 11 SCC 374], to assert that the internal affairs of TBVFL, including the share transfer, were conducted validly. The Appellant submits that the transfer of shares to TBVFL on 09.06. 2020, was lawful and does not involve the Appellant or its promoters in any subsequent transfers, rendering such considerations irrelevant to this appeal.

15. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and to allow his appeal.

16. Per contra, the Respondent denied all averments made by the Appellant as misleading and baseless.

17. The Respondent submitted that the Corporate Debtor, a listed public company, was incorporated on 23.04.2016, under the Companies Act, 2013, as part of the Talwalkars group. The Respondent further submitted that the Appellant, GrowFitter Private Limited, was incorporated on 19.05.2016, with its registered office in Mumbai, Maharashtra.

18. The Respondent submitted that on 27.12.2016, the Appellant entered into a SHA with TBVFL, a Talwalkars group entity. The Respondent contended that, under the SHA, TBVFL invested Rs. 5 cr. in the Appellant in exchange for 9,598 equity shares (“Subject Shares”), representing approximately 19% of the Appellant’s shareholding. The Respondent asserted that key clauses of the SHA, including Recital D, Recital E, Clause 2.1, and Clause 3.6, confirm TBVFL’s subscription to the Subject Shares, with payment remitted on 31.03.2017, and physical share certificates issued on 01.04.2017.

19. The Respondent submitted that on 21.12.2017, the Adjudicating Authority approved a scheme of arrangement vide order in CSP No. 450/2017 (“Scheme Approval Order”), transferring TBVFL’s “Gym Business,” including its investments, to the Corporate Debtor. The Respondent submitted that Clause 5.1 of the Scheme stipulates that the transfer occurred automatically without further act or deed, vesting all rights, title, and interest in the Corporate Debtor. The Respondent asserted that the Subject Shares, being part of TBVFL’s gym business investments (per Clause 2.2(c) of the SHA), were transferred to the Corporate Debtor.

20. The Respondent submitted that TBVFL was admitted into CIRP on 11.01.2021, vide order in CP (IB) No. 1566/2020, and later liquidation proceedings commenced on 28.04.2022.

21. The Respondent submitted that, while discharging its duties as Liquidator, he noted that the physical share certificates for the Subject Shares remained in

TBVFL's name, despite their transfer to the Corporate Debtor under the Scheme Approval Order. The Respondent contended that the Appellant's annual return (e-form MGT-7) for FY 2020-21 listed TBVFL as the holder of the Subject Shares, while the Corporate Debtor's financial statements for FY 2018-19 and the Transaction Audit Report dated 24.12.2021, confirmed the Corporate Debtor's ownership.

22. The Respondent submitted that on 27.09.2022, he issued a letter to the Appellant, requesting an update of its books to reflect the Corporate Debtor's ownership of the Subject Shares in light of the Scheme Approval Order. The Respondent contended that the Appellant, vide email dated 22.10.2022, denied the Corporate Debtor's rights, claiming they were "extinguished" due to TBVFL's alleged non-fulfilment of Clause 2.2 of the SHA.

23. The Respondent submitted that on 02.11.2022, he issued a legal notice to the Appellant, demanding recognition of the Corporate Debtor's ownership of the Subject Shares. The Respondent contended that the Appellant, in its email dated 02.11.2022, reiterated its position, citing non-fulfilment of SHA conditions and sharing a revised e-form MGT-7, which the Respondent asserts was an afterthought to manufacture a defence.

24. The Respondent submitted that, due to the Appellant's refusal, he filed IA No. 1579/MB/2023 on 05.01.2023, under Sections 35(1) and 60(5) of the code r/w Rule 11 of the NCLT Rules, 2016, before the Adjudicating Authority, seeking adjudication of the ownership over the Subject Shares. The Respondent submitted

that the Appellant, in its reply dated 18.07.2023, claimed the Subject Shares were “bought back” in June 2020. The Respondent contended that, in an unauthorized Additional Affidavit dated 18.08.2023, the Appellant further claimed the shares were transferred to Mr. Sanmati Pandey on 09.06.2020, producing an email dated 09.05.2020, a share transfer form (SH-4), and a board resolution dated 01.06.2020, purportedly signed by Mr. Harsha Bhatkal. The Respondent asserted that it responded to these claims in a Supplementary Affidavit dated 02.09.2023.

25. The Respondent submitted that on 07.02.2024, the Adjudicating Authority passed the Impugned Order, directing the Appellant to issue fresh share certificates for the Subject Shares in favour of the Corporate Debtor within seven days (by 14.02.2024). The Respondent contended that the order was well-reasoned, considering the Scheme Approval Order, the SHA, and the unreliable nature of the Appellant’s documents. The Respondent submitted that, due to the Appellant’s failure to comply with the Impugned Order by 14.02.2024, he filed a Contempt Application (Cont. A/15/2024). The Respondent contended that the Adjudicating Authority, vide order dated 14.05.2024, issued a show-cause notice to the Appellant.

26. The Respondent submitted that this Appellate Tribunal, vide order dated 09.07.2024, directed the Appellant to comply with the Impugned Order dated 14.02.2024 of the Adjudicating Authority within 30 days to avoid further contempt proceedings. The Respondent contended that the Appellant, vide email dated 10.07.2024 to the Respondent No.1, and affidavit dated 12.07.2024 filed

before the Adjudicating Authority, expressed its willingness to comply the order of the Adjudicating Authority, leading to the disposal of the Contempt Application on 15.07.2024. The Respondent submitted that, despite its emails dated 23.07.2024, and 14.08.2024, outlining compliance modalities, the Appellant has failed to issue the share certificates, remaining in non-compliance with this Appellate Tribunal's order.

27. The Respondent submitted that the Appellant's persistent failure to comply with the Impugned Order and the Appellate Tribunal's directive of 09.07.2024, constitutes contempt and justifies dismissal of the Appeal. The Respondent contended that the Appellant's inaction, despite assurances, reflects bad faith.

28. The Respondent submitted that the Appellant's shifting positions—extinguishment (22.10.2022), buy-back (18.07.2023), and transfer to Mr. Sanmati Pandey (18.08.2023)—undermine its credibility. The Respondent contended that such inconsistencies, as held in ***S.P. Chengalvaraya Naidu v. Jagannath*** [(1994) 1 SCC 1], disentitle the Appellant from relief due to suppression of facts and fabrication of evidence.

29. The Respondent submitted that the Appellant's documents supporting the alleged 09.06.2020, transfer are dubious:

- The e-form MGT-7 for FY 2020-21 lists TBVFL as the shareholder as of 31.03.2021, contradicting the transfer claim.

- The share certificate produced by the Appellant differs from TBVFL's original, as filed in the Respondent's Supplementary Affidavit.
- The board resolution dated 01.06.2020, is absent from TBVFL's records and is tainted by allegations of forgery by the Gawande Group, including Mr. Harsha Bhatkal, as stated in IA No. 419/2022 and IA No. 401/2022.
- The share transfer form (SH-4) is insufficiently stamped and lacks proof of payment.

30. The Respondent submitted that TBVFL lacked title to transfer the Subject Shares on 09.06.2020, as they were vested in the Corporate Debtor under the Scheme Approval Order of 2017. The Respondent contended that any purported transfer is void ab initio.

31. The Respondent submitted that the Appellant's reliance on Clause 2.2 of the SHA is misplaced. The Respondent submitted that Clause 2.2 imposes best-efforts obligations (e.g., "endeavour to" provide revenue), with no provision for share transfer upon non-fulfilment. The Respondent asserted that the "Non-Fulfilment" clause, allowing buy-back of unvested shares within 60 days, is inapplicable, as the alleged transfer to Mr. Sanmati Pandey was not a buy-back, and by June 2020, all shares were vested per the "Investment Period" definition. The Respondent submitted that Clause 11.2 of the SHA requires TBVFL's

consent for changes in capital structure, which the Appellant failed to obtain, rendering the transfer impermissible.

32. The Respondent submitted that the Scheme Approval Order, passed under Sections 391–394 of the Companies Act, 1956, is binding, as held in *Hindustan Lever Ltd. v. State of Maharashtra* (2004) 9 SCC 438. The Respondent contended that Clause 5.1 of the Scheme transferred the Subject Shares to the Corporate Debtor, corroborated by the Corporate Debtor’s financial statements and the Audit Report.

33. The Respondent submitted that, under Section 35(1)(d) of the Code, he has the authority and obligation to protect the Corporate Debtor’s assets, including the Subject Shares, justifying the filing of IA No. 1579/MB/2023.

34. Concluding his arguments, the Respondent requested this Appellate Tribunal to dismiss the appeal with cost.

Findings

35. Streamlined for clarity, the appeal is confined to limited issue regarding the ownership of 9598 shares of the Appellant Company held by the Corporate Debtor and return of the same by the Appellant to the Respondent i.e., liquidator of Corporate Debtor. We have already noted that the Appellant, who, in need of money, issued the said shares to TBVFL for a consideration of Rs. 5 Crores, which the Appellant had received from TBVFL on 31.03.2017 and the Appellant issued share certificates in the name of TBVFL on 01.04.2017.

36. It is noted that TBVFL was restructured after NCLT approved the scheme vide “Scheme Approval Order” dated 21.12.2017 passed in CSP No. 405 of 2017 in CSA No. 242 of 2012, under which the gym business of TBVFL was transferred to the Corporate Debtor and, investment pertaining to the concerned business was also transferred to the Corporate Debtor.

37. We have gone through and examined the relevant portion of “scheme approval order” dated 21.12.2017 and SHA dated 27.12.2016.

38. From the relevant clauses of the Scheme Approval Order dated 21.12.2017, we note that the gym business has been defined as “gym business” of demerged companies, comprising inter-alia the assets and liabilities including movable assets owned by demerged company i.e., TBVFL. The movable assets of the Corporate Debtor include the shares held in the Appellant’s company. Further, we note that, in terms of Clause 1.3, Talwalkars Lifestyles Limited which was later re-named as Talwalkars Healthclubs Limited (“gym business”) was categorised as “resulting company” or TLL engaging business of owning, managing and franchising gym fitness centres and health clubs.

39. We refer to clause 5.1 of the Scheme Transfer Order, pursuant to which, upon the scheme becoming effective, the entire gym business shall, without any further act, instrument or deed, stand transferred to and vest in, or be deemed to have been transferred to and vested in, the Resulting Company as a going concern, together, with all rights, title, and interest of the Demerged Company therein, subject to existing charges and pledges, if any.

40. According to the scheme approval order, the Resulting Company, which is the Corporate Debtor under liquidation i.e., the Respondent herein, got right over the gym business and on movable assets which included the shares held in the Appellant's Company.

41. We have noted the contentions of the Appellant that the scheme approval order was never fully implemented and further stated that in terms of SHA, since, the Corporate Debtor could not perform its part and could not meet the laid down criteria as stipulated in the SHA, the shares got extinguished.

42. The Appellant further clarified to us that to safeguard its interest, the board resolution dated 01.06.2020 was passed by TBVFL duly signed, sealed and stamped by the Chairman of TBVFL Mr. Madhukar Talwalkar and authorized Mr. Harsha Bhatkal to execute form SH-4 and complete the transfer of the said shares back to the Appellant. The Appellant further pleaded that in terms of clause 2.2 of SHA r/w definition of non-fulfilment given in SHA, entitled the Appellant to buy-back shares which it did by making suitable payment back to the Respondent.

43. The Appellant also rebutted the Transaction Auditors Report which suggested that the investment in the Appellant was property of the Corporate Debtor and pleaded that the Appellant was not party in such Transaction Audit.

44. The Appellant also argued that the aspect of extinguishing of shares or buy-back by the Appellant or by the promoters purchasing his shares is irrelevant as

for the purpose of Appellant has transferred all shares qua TBVFL and not the Corporate Debtor.

45. We note that Appellant has consistently been changing its stand regarding ownership and repossession of shares. The stand of the Appellant on 22.10.2022 was that shares got extinguished. The stand of the Appellant on 18.07.2023 was that it exercised buy-back of shares. The Appellant again shifted its position on 18.08.2023 that these shares have been transferred to Mr. Sanmati Pandey. This shifting position by the Appellant does not inspire confidence about its ownership and legal repossession of the said shares.

46. We find many contradictions in the pleadings of the Appellant made before the Adjudicating Authority as well as this Appellate Tribunal in the present appeal. Such shifting stands taken by the Appellant reflects that the Appellant has not been forthcoming with correct facts. We are not in position to accept the pleading of the Appellant made before us that the aspects of extinguishment of share v/s buy-back of shares v/s transfer of shares to one of its ex-promoters Mr. Sumanti Pandey are irrelevant for the purpose of this appeal. We do not find any logic in the contention of the Appellant and reject the same. On this aspect, we find logic in the pleadings of the Respondent. We note that in Para 24 of Impugned Order of the Adjudicating Authority dated 07.02.2023, which categorically ordered the Appellant to return back the said shares to the Corporate Debtor.

47. At this stage, we reproduce the para 24 of the Impugned Order which reads as under: -

“24. I.A. No. 1579/MB/2023: the I.A. is Allowed and the Respondent herein viz. Growfitter Private Limited is directed to issue fresh share certificates as against the corresponding 9598 equity shares in favour of Talwalkars Healthclubs Limited forthwith within a period of 07 (seven) days from the date of pronouncement of this Order.”

(Emphasis Supplied)

48. We further observe that since the said transfer was not carried out by the Appellant, a contempt proceeding was initiated by the Corporate Debtor before the Adjudicating Authority. During hearing before us, this aspect was also dealt, and detailed order was passed by us on 09.07.2024 which is reproduced as under:-

“Issue notice. By the impugned order the Adjudicating Authority has allowed the application filed by the Liquidator and issued direction in Para 24 to the following effect:

“24. I.A. No. 1579/MB/2023: The I.A. is Allowed and the Respondent herein viz. Growfitter Private Limited is directed to issue fresh share certificates as against the corresponding 9598 equity shares in favour of Talwalkars Healthclubs Limited forthwith within a period of 07 (seven) days from the date of pronouncement of this Order.”

Learned counsel for the Appellant submits that a Contempt Proceeding has been initiated against the Appellant. Subject to Appellant complying the said direction within 30 days from

today, contempt may not proceed any 2 Company Appeal (AT) (Insolvency) No.605 of 2024 further. However, any action taken in pursuance of the impugned order shall abide by the result of the appeal.

Issue notice. Let Reply be filed by the Respondent within three weeks. Two weeks' time is allowed to file Rejoinder.

List this Appeal on 22.08.2024."

(Emphasis Supplied)

49. It is pertinent to note that the Appellant has fairly conceded that he is willing to comply with para 24 of the Impugned Order and has sent an e-mail to the Respondent vide e-mail dated 10.07.2024 which is reproduced as under :-

From: Bhavesh Joshi <bhavesh@gpandassociates.in>
Sent: Wednesday, July 10, 2024 7:17 PM
To: Shivam Sharan <Shivam.Sharan@trilegal.com>; Ravin Kapur <Ravin.Kapur@trilegal.com>; gajeshjain@gmail.com <gajeshjain@gmail.com>
Cc: GAURANGI PATIL <gaurangi@gpandassociates.in>; Admin Account <admin@gpandassociates.in>
Subject: [EXT] Growfitters Private Limited v/s Gajesh Labchand Jain

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COMPANY APPEAL(AT) (INS) NO.605 OF 2024**

IN THE MATTER OF:-

GROWFITTER PRIVATE LIMITED

...Appellants

Versus

GAJESH LABCHAND JAIN

(The Liquidator of Talwalkars Health Club Ltd) ...Respondents

Dear Sir,

We are concerned for our clients, **Growfitter Private Limited**, the Appellant in the above captioned matter.

As you are aware that the captioned matter was last listed on 9th July 2024 before

Hon'ble NCLAT, Delhi wherein Adv Aditya Ajgaonkar, a/w Adv Bhavesh Joshi i/b GP AND ASSOCIATES, appeared on behalf of the Appellant.

The Hon'ble NCLAT, Delhi provided us a time frame of 30 days from the date of order dated 9th July, 2024 to transfer/convey the shares in the name of your clients. As per instructions, our Clients are ready to comply with the directions, please inform us about the modalities of effecting the same in the name of your clients as per mutual convenience of both the parties.

For, GP & Associates

Advocate for Appellants

Yours Sincerely,

Bhavesh Joshi



For, ☐

1st Floor, 108, Vikas Building,

NGN Vaidya Marg,

11, Banks Street Road,

Fort, Mumbai - 400001.

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50. We further take into consideration the affidavit filed by the Appellant before the Adjudicating Authority in Contempt Petition (IBC) No. 15 of 2024 in Interlocutory Application No. 1579 of 2023 in Company Petition (IB) No. 923 of 2020 which reproduced as under: -

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI
CONTEMPT PETITION (IBC) NO.15 OF 2024
IN
INTERLOCUTORY APPLICATION NO. 1579 OF 2023
IN
COMPANY PETITION (IB) NO. 923 OF 2020

GAJESH LABHCHAND JAIN

(Liquidator of Talwalkars Healthclubs Limited)
Versus

...Applicants

GROWFITTER PRIVATE LIMITED

...Respondents

IN THE MATTER OF:-

AXIS BANK LIMITED

...Financial Creditor

Versus

TALWALKARS HEALTHCLUB LIMITED

...Corporate Debtor



AFFIDAVIT ON BEHALF OF RESPONDENTS ABOVE NAMED:-

I, Sanmati Pande, Director of the Respondents having my office at B/104, 1st Floor, Shree Sainath Society, CHS Anand Nagar, Vakola Police Lane, Santacruz East, Mumbai – 400 055, do hereby state on solemn affirmation as under:-

1. I have perused the Order dated May 14, 2024, passed by this Hon'ble Court, which takes strict cognizance of my non-compliance with the directions contained in the Impugned Order dated February 07, 2024. Consequently, a Show Cause notice has been issued under the provisions of the Companies Act, 2013.
2. At the outset, I extend my unconditional apology to this Hon'ble Court for my absence on the aforementioned date. I assert that my failure to appear was neither intentional nor deliberate. Due to an extreme personal emergency in my family, I was unable to attend, contact my Advocates, or provide them with sufficient instructions in the matter.
3. I respectfully inform this Hon'ble Court that I have preferred a Company Appeal (AT) (Insolvency) No. 605 of 2024 on March 13, 2024, challenging the Impugned Order dated February 07, 2024. Further, the Applicants have duly entered their appearance in the said Appeal and have consistently attended every scheduled hearing without fail.
4. I state that the Appeal was most recently listed on July 09, 2024, before the Hon'ble NCLAT, New Delhi. After hearing both the parties, the Hon'ble NCLAT issued a notice. Additionally, the Hon'ble NCLAT directed the Appellants to comply with the instructions detailed in Paragraph 24 of the Impugned Order within 30 days from the date of the order, July 09, 2024.

5. The Hon'ble NCLAT, New Delhi further stipulated in its order that, provided the Appellants comply with the aforementioned direction, contempt proceedings may not advance. The Bench explicitly stated that any actions taken pursuant to the Impugned Order will be contingent on the outcome of the present Appeal. Consequently, the matter has been adjourned to August 22, 2024. Attached hereto and marked as Exhibit "A" is a copy of the Order dated July 09, 2024.
6. I state that I have sent an email dated July 10, 2024 to the Applicants' Advocate, expressing my willingness to comply with the order dated July 09, 2024, in accordance with the directions of the Hon'ble NCLAT. Attached hereto and marked as Exhibit "B" is a copy of the email dated July 10, 2024.
7. In light of the aforementioned circumstances, it is most respectfully submitted that the Contempt Proceedings be held in abeyance until the order dated July 09, 2024, is complied with.

For GROWFITTER PRIVATE LIMITED

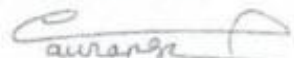
Solemnly affirmed at Mumbai)
Dated 22 day of July, 2024)


Authorised Signatory
Director

Growfitter Private Limited

Identified by me,

For, GP & Associates


Advocate for Respondents



51. However, the Respondent has brought to our notice in their Written Submission that the Appellant, despite the Appellant's confirmation before this Appellate Tribunal as well as before the Adjudicating Authority in the affidavit, the Appellant has not issued shares to the Corporate Debtor.

52. If this is the case, law will take its own course and the Respondent will be well within his right to take immediate legal action in accordance with the law, if he so chooses.

53. We further note that, as per list of equity shareholders of the Appellant filed along with e-form MGT-7 for financial year 2020-2021, the RoC clearly stated that TBVFL to be the holder of the subject shares as on 31.03.2021, whereas in the appeal, the Appellant has contended that the subject shares were transferred on 09.06.2020. We also take into consideration the pleadings of the Respondent that the purported share certificate placed by the Appellant is not same/ identical as the original share certificate filed before the NCLT which was found by the Liquidator in the records of TBVFL. The Respondent had brought out all these documents in its supplementary affidavit dated 02.09.2023 filed before the Adjudicating Authority and these documents had been taken into consideration, while passing the Impugned Order. We also take into consideration the fact that the purported board resolution dated 01.06.2020 as pleaded by the Appellant before us, has not yet been found in the record of TBVFL by the liquidator. Incidentally, the Respondent is the liquidator of TBVFL as well as the Corporate Debtor. We also take into consideration that forensic audit for the Corporate Debtor was done and according to which, the subject shares were held to be the assets of the Corporate Debtor.

54. The Appellant has taken the plea that subsequent to board resolution dated 01.06.2020, it has purchased back the shares and made the payment of Rs. 5 Crores to the Respondent. In fact, he had filed an affidavit in rejoinder before us, wherein he has attached exhibit 'A' as the copy of the bank statement of Appellant claiming the payment made by him towards said transfer. However, the

Appellant has not pointed out specific dates and entries which he has referred regarding payment back to the Respondent. We also tried to identify such payment entries from the bank statement filed by the Appellant before us in the affidavit in the rejoinder but could not find any specific entries of Rs. 5 Crores that the Appellant claimed to have paid to the Respondent. We have also taken into consideration the statement of the Respondent that he did not find any such entries in the records of the Corporate Debtor and as such we are unable to accept the arguments by the Appellant that he has paid back Rs. 5 crores while repossession of shares.

55. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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