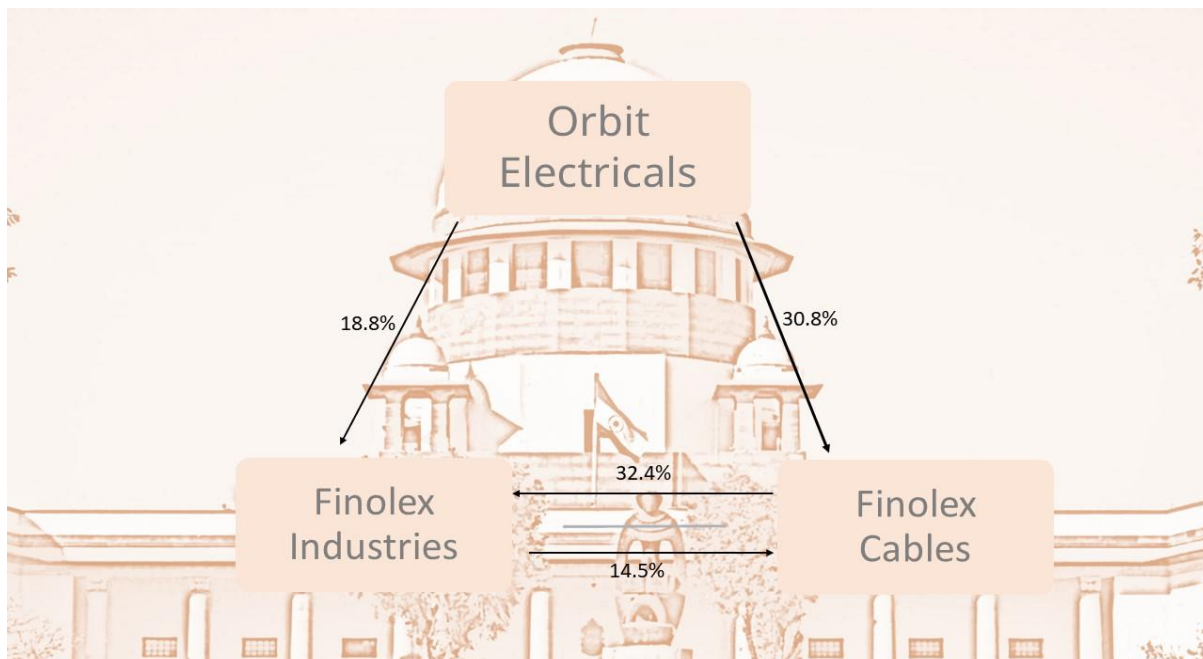


Finolex family feud: The beginning of the end

In an exchange filing last week, Finolex Cables Limited announced that Deepak Chhabria ceased to be whole-time director designated as Executive Chairman.



Source: Stock exchange filings; IiAS research

Finolex Cables Limited (FCL) and Finolex Industries Limited (FIL) form part of the Finolex group. The ownership of these companies is characterized by a byzantine web of crossholdings characteristic of the pre-liberalization era.

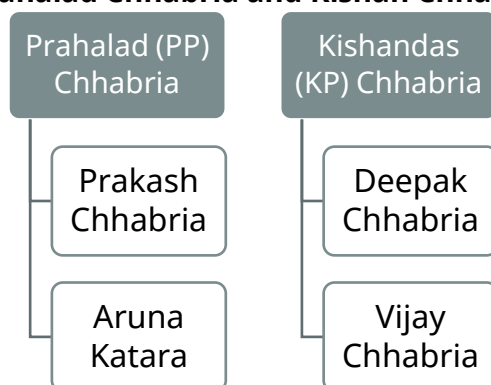
The *promoters* (Chhabria family) hold 35.92% in Finolex Cables, with Orbit Electricals Private Limited (Orbit) holding a bulk (30.75%) of the equity. In addition, Finolex Industries holds 14.51% of the equity - although it is classified as a public shareholder. The *promoters* hold 52.47% of the shares in Finolex Industries with 32.39% being held through Finolex Cables and 18.8% held through Orbit.

Just before his demise, Prahalad 'PP' Chhabria gifted his son, Prakash Chhabria 100,300 of the 116,919 shares that he held in Orbit. These gifted shares represented 70.5% of Orbit's shareholding. Orbit's shareholding on 31 March 2022, as filed with the Ministry of Corporate Affairs (MCA) is shown in Annex 1.

After PP's death in 2016, his younger brother Kishandas 'KP' Chhabria and Deepak Chhabria (KP's son), challenged the gifting of shares. They contended that under a '*family agreement*' Orbit's shares were to be divided *equally* between the PP and KP factions and have cited the family 'uncle-nephew' arrangement from PP's time to bolster their claim. When PP was alive, he ran Finolex Cables with Deepak (KP's son) supporting him while Finolex Industries was managed by KP with Prakash (PP's son) by his side.

Today there are multiple matters linked to the dispute that are being contested in various fora. These are listed in Annex 2¹.

Exhibit 1: Prahalad Chhabria and Kishan Chhabria families



Source: IiAS Research

Current developments

Under the Articles of Association (AoA) of Orbit Electricals, Deepak Chhabria was the 'authorized representative' regarding matters related to Finolex Cables, while Prakash Chhabria was given unfettered rights over the affairs of Finolex Industries. These rights related not just of the management, but also voting Orbit's shares.

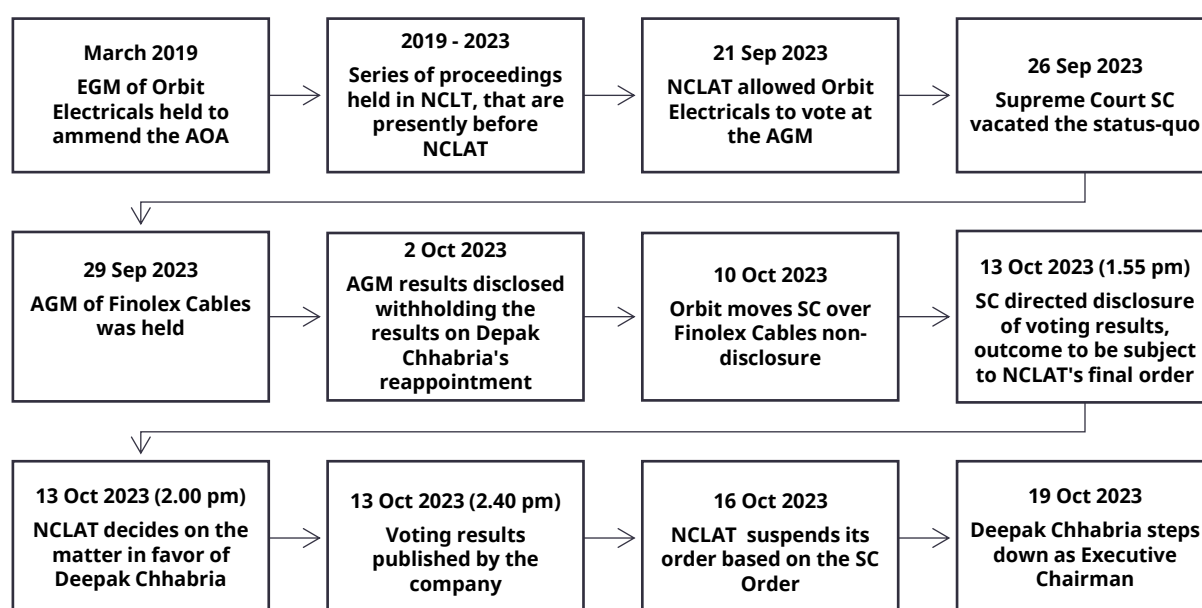
This AoA was amended in an EGM held in 2019, and these special rights to Deepak Chhabria and Prakash Chhabria were revoked.

This revocation was contested by Deepak Chhabria in the National Company Law Tribunal (NCLT), which found no merit in his application. Deepak Chhabria then appealed this decision in NCLAT. The NCLAT found merit in the appeal, admitted the case.

¹ <https://www.bseindia.com/xml-data/corpfiling/AttachHis/81f7afc3-c3ec-4208-b556-824fe4a208f4.pdf>

Fast forward to the 29 September 2023 AGM called by Finolex Cables². One of the resolutions proposed via the notice dated 5 September 2023 was the re-appointment of Deepak Chhabria as Executive Chairperson. Deepak Chhabria requested NCLAT that pending final adjudication, status quo be maintained (- basically, that he be allowed to vote Orbit Electricals shares in Finolex Cables). On 21 September 2023, NCLAT gave an interim ruling allowing Orbit Electricals to vote and status quo to be maintained (- until the validity of the AOA amendments was decided).

Annexure 2: Timeline of events



Source: IiAS Research

The Supreme Court, however, on 26 September 2023³, in an application made by Orbit, vacated this status quo and stated that any action on the mentioned resolution would be subject to the outcome of the appeal pending before the NCLAT.

After the AGM, the company disclosed the outcome of the various resolutions, but held back disclosing the outcome for Deepak Chhabria re-appointment. The scrutinizer cited an opinion he had taken from an (unnamed) former Chief Justice of India that since status quo was to be maintained the result was being withheld.

² <https://www.bseindia.com/xml-data/corpfiling/AttachHis/f83b1dee-ce6b-4cc0-88e8-a2bddd2c43a.pdf>

³ https://main.sci.gov.in/supremecourt/2023/39401/39401_2023_1_10_47217_Order_26-Sep-2023.pdf

Orbit Electricals approached the Supreme Court again asking that the voting results for Deepak Chhabria's re-appointment be declared⁴.

Following the Supreme Court order, on 13 October 2023, the NCLAT passed its final order relating to the 2019 Orbit EGM, where the NCLAT held that the amendments to the AoA were invalid. This was before the outcome of the Finolex Cables 2023 AGM regarding Deepak Chhabria's appointment was declared.

This incensed the Supreme Court, which faulted the NCLAT and the scrutinizer. The Supreme Court was scathing in its order dated 18 October 2023⁵ (direction issued on 13 October 2023⁶) stating:

- The manner in which the NCLAT has passed the directions is unbecoming of a tribunal.
- Enquiry to be conducted by the Chairperson of the NCLAT after due verification of the facts from the Judges who constituted the Bench of the Appellate Tribunal.
- Action against the scrutinizer for non-disclosure of voting results

Following this denouncement, NCLAT suspended its order dated 13 October 2023. Finolex Cables declared the voting results on 13 October 2023, which showed Deepak Chhabria did not garner the necessary votes (Annex 3). As per stock exchange filing dated 19 October 2023⁷, the company has stated that Deepak Chhabria has ceased to be Whole-time Director designated as "Executive Chairman" of the Company with effect from 16 October 2023. However, the announcement was silent on whether he had stepped down from the board or merely relinquished his responsibilities as Executive Chairperson. The company must clarify if Deepak Chhabria will continue on the board in a non-executive capacity.

Typically, companies appoint persons as Managing Directors/Whole-Time directors, and seek shareholder approval through two resolutions – one for appointment of such persons as a director and the second for appointment and designation of such directors as Managing Director (MD) or Whole-time Director (WTD) (- along with terms and conditions for their appointment). These are under separate sections of the Companies Act. Therefore, even if the resolution for designating such appointed directors as WTD/MD is rejected by the

⁴ https://main.sci.gov.in/supremecourt/2023/40891/40891_2023_1_13_47622_Order_13-Oct-2023.pdf

⁵ <https://www.bseindia.com/xml-data/corpfiling/AttachLive/038e301b-e465-452c-87b6-e12ac7704d53.pdf>

⁶ https://main.sci.gov.in/supremecourt/2023/40891/40891_2023_1_13_47622_Order_13-Oct-2023.pdf

⁷ <https://www.bseindia.com/xml-data/corpfiling/AttachLive/d745bba5-bfb8-4a32-9391-9b247b891a49.pdf>

shareholders, the ordinary resolution for appointment as director still holds and the director continues on the board in a non-executive capacity.

Broader issues

- **Scrutinizing the scrutiniser:** The role of the scrutiniser as provided in the Companies Act is to scrutinize the e-voting process in a fair and transparent manner. Secretarial Standard-2 issued by ICSI further explains that scrutiny of votes cast envisages detailed examination of the relevant records and calls for comprehensive knowledge and competence to deal with the intricacies and technicalities involved. These matters require professional knowledge, efficiency, fairness and transparency.

In 2018, when Finolex Cables had proposed reappointing Deepak Chhabria as a Whole Time Director, designated as Executive Chairperson for five years commencing from 1 July 2018, there were discrepancies in the voting outcome disclosed by the by the company and that of the scrutinizer. This is shown in Annex 4.

In the current instance, the Supreme Court affirmed that the scrutinizer's withholding of the voting results was incorrect. The scrutinizer's actions could be interpreted as them taking a side in a family dispute.

It will be beneficial to have a set of guiding principles defining the duties and setting accountability of a scrutiniser, including regulatory oversight. This will provide guidance and clarity to scrutinizers in situations of such conflicts. Further the scrutinisers' role must be re-examined considering the shift to e-voting, and their powers be transferred to the depositories.

- **Timeline for reappointing executives to the board, including managing director:** Deepak Chhabria's previous term as Executive Chairman ended on 30 June 2023. The re-appointment of Deepak Chhabria was proposed for a period of five years from 1 July 2023 to 31 July 2028 at the AGM of the company scheduled to be held on 29 September 2023. Following the voting outcome, he has ceased to be Executive Chairman w.e.f 16 October 2023.

The decisions by Deepak Chhabria from 1 July 2023 to 16 October 2023 have been legitimized by the Section 196 of the Companies Act 2013 through its provision which states that all decisions taken by any executive director even if his/her appointment is subsequently not approved by shareholders, will be valid.

However, it will be more prudent for companies to appoint executive directors before the cessation of their term in office.

SEBI has already begun tightening this timeline. It has amended its regulations. Effective 1 January 2022, it requires companies to seek shareholder approval for (re)appointment of directors including whole-time directors/managing directors within 3-months of the date of appointment by the board. Given the nature of the duties, the responsibilities and privileges bestowed upon executive directors and the legitimacy accorded to their decisions even if they do not enjoy the support of the shareholders suggests that regulators must insist on prior shareholder approval while reappointing the executive directors.

This will also be consistent with existing regulatory provisions that if the reappointment has been rejected by shareholders, the position lies vacant till shareholders approve the appointment.

Protecting minority investors: Family feuds and court cases tend to drag on for years, diverting attention from the business. Many of these stem from special rights embedded in the company's charter documents.

Therefore, IiAS recommends having clean charter documents, without special rights to members of the family. While it will not isolate the company from the family, it will ensure some added distance between the operating business and family ownership.

During this period, it is important that companies appoint strong boards that can counsel the family members and as we have argued, ensure that the interest of the company are paramount.

On the matter of Finolex Cables, the final resolution is yet to take place. The NCLAT had admitted Deepak Chhabria's appeal against the NCLT order. This still needs to be heard and disposed. As the past is a reasonable guide to future behavior, a decision in favour of one is likely challenged by the other: the final resolution may still be years ahead.

In a battle between elephants, the ants get squashed, and in a battle between promoters, it is the non-family investors that are flattened. A quicker resolution in the courts is the optimum solution. The next best is building guardrails – be it through cleaner charter documents, the role of the scrutinizer in such skirmishes and stronger boards. Protecting companies from family feuds must be a priority.

Annex 1: Shareholding of Orbit Electricals as on 31 March 2022

#	Name	FACTION	Number of shares	%
1	Prakash Prahlad Chhabria	PP	1,01,885	71.5%
2	Prahlad Parsram Chhabria	PP	16,619	11.7%
3	Ritu Prakash Chhabria	PP	5,000	3.5%
4	Aruna Mukesh Katara	PP	4,274	3.0%
5	Prakash Prahlad Chhabria Jt. With Ritu Prakash Chhabria	PP	4,274	3.0%
6	Prahlad Chhabria Trust	PP	10	0.0070%
7	Gayatri Prakash Chhabria	PP	1	0.0007%
8	Amrita Mukesh Katara	PP	1	0.0007%
9	Amit Mukesh Katara	PP	1	0.0007%
10	Sunita Kishan Chhabria	KP	3,641	2.6%
11	Vini Deepak Chhabria	KP	2,579	1.8%
12	Priya Vijay Chhabria	KP	2,577	1.8%
13	Kishandas Parashram Chhabria	KP	1,520	1.1%
14	Deepak Kishan Chhabria	KP	79	0.0555%
Total			1,42,461	

Source: Ministry of Corporate Affairs

Note: Faction based on lineage; PP: Prahalad Chhabria, KP: Kishandas Chhabria

Note: Comma separators are in lacs

Annex 2: Chhabria Family - List of legal disputes

Multiple matters linked to the dispute that are being contested in various fora are listed below. These have been sourced from a BSE Filing by Finolex Cables Limited⁸:

NCLT/NCLAT/Supreme Court

- Family arrangement and MoU
- The gifting of shares
- Clauses contained in the articles of association of Finolex Cables

District Court Pune

- Family arrangement and MoU

Bombay High Court

Forgery, cheating and criminal conspiracy (- with reference to the gifting of shares) with each faction accusing the other of misconduct.

8 See- <https://www.bseindia.com/xml-data/corpfiling/AttachHis/81f7afc3-c3ec-4208-b556-824fe4a208f4.pdf>

Annex 3: Voting outcome for re-appointment Deepak Chhabria as whole-time director designated as Executive Chairperson

	<i>Votes polled</i>	<i>Votes in favour</i>	<i>Votes against</i>	<i>No. of shares held</i>
Promoter and promoter group	99.99%	6.79%	93.21%	5,48,41,170
Institutional holders	87.45%	64.38%	35.62%	4,12,49,650
Others	57.36%	22.15%	77.85%	5,68,48,525
Total	80.76%	27.66%	72.34%	15,29,39,345

Source: iiasadrian.com

Annex 4: 2018 Discrepancy in voting outcomes

As per company (based on voting data from Karvy)							
Shareholder	Shares	Voted Polled	% Polled	Votes in Favour	% Favour	Votes Against	% Against
Promoter Group	5,48,41,170	5,48,41,070	100.0	5,06,77,520	92.4	41,63,550	7.6
Institutions	3,96,73,326	2,56,92,305	64.8	1,48,67,424	57.9	1,08,24,881	42.1
Non-Institutions	5,84,24,849	3,91,84,441	67.1	1,37,93,449	35.2	2,53,90,992	64.8
Total	15,29,39,345	11,97,17,816	78.3	7,93,38,393	66.3	4,03,79,423	33.7

As per Scrutinizer							
		Voted Polled	% Polled	Favour	% Favour	Against	% Against
Total		11,97,17,816		3,23,82,273	27.0	8,73,35,543	73.0

As per the company, the FOR votes aggregated to 7,93,38,393 shares. Based on the scrutinizer's report, the FOR votes were 3,23,82,273. The difference of 4,69,56,120 shares can be attributed to the [shareholding of Orbit](#). The data suggests that the Scrutinizer has assumed that the votes cast by Orbit were AGAINST the resolution, whereas the company has stated that those shares were voted FOR the resolution.

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