

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.401

C.P.-5(ND)/2022

IN THE MATTER OF:

M/s. Surinder Singh & Ors.

.... **APPLICANT/PETITIONER**

Vs.

M/s. Achintya Healthcare Pvt Ltd.

.... **RESPONDENT**

SECTION

U/s 241-242 of the Companies Act, 2013

Order pronounced on 16.10.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open court vide separate sheets.

C.P.-5(ND)/2022 stands **dismissed**. All the pending Interlocutory Applications in the present Company Petition **stand closed**.

Interim orders, if any, also stand vacated.

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

CP-5/ND/2022

IN THE MATTER OF:-

M/s. Surinder Singh &Ors.

..... Petitioner

Versus

M/s. Achintya Healthcare Pvt Ltd.

.....Respondent

Pronounced on 16.10.2023

CORAM:-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

**SHRI BACHUVENKATBALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant

:Ms. Anju Jain, Mr. Hitesh Sachar, Advocates

For the Respondent

:Mr. MayankWadhwa, Ms. Muskan Gupta, Advocates

ORDER

PER: SH. BACHU VENKAT BALARAM DAS, MEMBER (J)

PER: DR. BINOD KUMAR SINHA, MEMBER (T)

1. The present petition has been filed under Section 241-242 read with Section 244 of the Companies Act, 2013 on the allegations of various acts of oppression and Mismanagement committed by the Respondents, namely: (i) M/s. Achintya Healthcare Private Limited ('Respondent No.1'), (ii) Mrs. Ritu Nigam Paul ('Respondent No.2'), (iii)Mr. Shyam Sharma ('Respondent No.3') and (iv) Mr. Arvind Kumar ('Respondent No.4').

Petitioner's case:-

2. According to the Petitioners, the Petitioner No. 1, Shri Surinder Singh Chaudhary S/o Shri Mahender Singh, the Petitioner No. 2 Shri Anubhav Chaudhary S/o Shri Ved Prakash Chaudhary, the Petitioner No. 3 Shri Ravinder Singh S/o Shri Mahender Singh and the Petitioner No. 4 Shri

CP-5/ND/2022

Date of Order: 16.10.2023

Shailender Kumar S/o Shri Ratan Singh are the shareholders of the Respondent Company, M/s Achintya Health Care Private Limited, a company incorporated under the Companies Act, 2013. The four Petitioners taken together hold about 25% of the shares of the Company. The details of the shareholding of the Petitioners is given in the table below:

Name	Number of equity Shares of Rs.10/- each	% of Share holding
Surinder Singh Chaudhary (Petitioner No.1)	2,82,500	3.53%
Anubhav Chaudhary (Petitioner No. 2)	3,65,200	4.57%
Ravinder Singh (Petitioner No. 3)	13,50,000	16.88%
Shailender Kumar (Petitioner No. 4)	2,000	0.025%

3. The Petitioner No. 1 was appointed as a Director of the Company on 01.04.2020 and continuing as such. However, the Respondent No. 2 to 4, all of a sudden, stopped sharing any details with respect to the working of the Company in the year 2021 with him.
4. The Petitioner wrote a letter dated 31.12.2021 asking for details of all expenses incurred, reconciliation of all vendors, schedules of all Secured and Unsecured loans, details of financial statements, all interest details of loan accounts etc., and also showed the willingness to participate in the meetings of the Company.
5. The Petitioner No. 1 received a notice on 06.01.2022 for attending a Board meeting to be held on 12.01.2022. The Petitioner sent a representation on 06.01.2022 stating his inability to attend the meeting, since he was suffering from Covid-19. However, the Petitioner No. 1 received another notice for holding an extra ordinary general meeting on 05.02.2022 to be held in Meerut at plant site to discuss the following agenda:

1. To Consider appointment of new auditor and RoC filing for extension of AGM.
2. To Consider removal of Shri Surinder Singh from the Board of Directors.
3. Regularization of Arvind Kumar as a Director of Company.

6. The Petitioner No. 1 gave a reply to the said notice on 18.01.2022. The instant Company Petition under Section 241, 242 and 244 came to be filed on 28.01.2022.

7. Consequently, the notice of holding the said extra ordinary general meeting was withdrawn. The Petitioners submit that the issuance of notice of EGM and its withdrawal itself constituted an act of oppression and mismanagement.
8. The Petitioners have made several allegations of acts of oppression and mismanagement committed by the Respondent Nos. 2 to 4 which are broadly mentioned hereunder:

(a) The Petitioners have been deliberately kept away from the affairs of the Respondent No. 1 Company by not sharing any information and financials of the Company.

(b) The Respondent No. 2 to 4 have not held Annual General Meeting in the year ending 31.03.2021 till date nor have sought any extension in this regard. Further, the Accounts of the Company have not been audited till date.

(c) Unjustified calling of Board Meeting to change the Bank Signatories of Respondent No. 1-Company and the affairs of the Respondent No. 1-Company are being conducted as a sole proprietorship /Partnership by Respondent No. 2 and 4. (Note-Page No. 19 to 24 to be seen).

(d) The Petitioner has pointed out certain discrepancies in form, MGT-7 for the Annual General Meeting dated 10.08.2020 for the Financial Year 2019-2020, wherein it is alleged that the investments of the Petitioners towards capital are not reflected.

(e) The Petitioner has also made several allegations about the illegitimate transfer of shareholding to the Third parties by Respondent No. 2 to 4, misuse of goodwill and expertise of the Petitioners etc.

Breach of the Doctrine of Legitimate Expectation:

9. The Petitioners contended that at the time of joining of the Company, the Petitioner No. 1 was made an Additional Director with the assurance that his appointment shall be regularized on the conclusion of next ensuing Annual General Meeting. However, the Petitioner No. 1 was not regularized and was shown as an Additional Director in the MCA portal. The Petitioners were inducted because of expertise in the business of Milk Processing and Packaging and the Petitioner No. 1 also has given his personal guarantees to the tune of Rs. 15 crores towards the credit facilities advanced to Respondent Company by the Banks/Financial Institutions.
10. The Petitioner No. 1, therefore, has contended that he had a legitimate expectation that the Respondent No. 2 and 4 will perform their obligation and the Petitioner No. 1 will remain as a Director of the Respondent Company.
11. The Petitioners on the aforesaid allegations have made various prayers which includes to pass an order of investigation into the affairs of the Respondent Company, to take action against the Respondent No. 2 and 4 over defrauding the Respondent company and other shareholders of the Company, to appoint an administrator to carry on the business of the Respondent Company etc.
12. The Petitioners have submitted that Respondent No. 2, Ms. Ritu Nigam Paul, Respondent No. 3, Shri Shyam Sharma and Respondent No. 4 Shri Arvind Kumar were also appointed as Additional Director/Directors in the Respondent Company.
13. As per the records of MCA portal and as per MGT-7 the Respondent No. 2 Ms. Ritu Nigam Paul was appointed as a Director vide resolution dated 13.08.2019.

However, no Board of Directors meeting was conducted on 13.08.2019 as per MGT-7. Similarly as per the records of the Company available in MCA portal, Mr. Shyam Sharma, Respondent No. 3 was appointed as a Director in the Board meeting held on 20.09.2019. Further, his appointment was not regularized.

14. It is also contended that Shri Arvind Kumar, Respondent No. 4 was inducted as Additional Director in the Respondent Company on 01.04.2020. He was removed from directorship in a meeting held on 15.02.2022 by the Respondents. The Petitioner has therefore contended that the Respondent No. 2 to 4 have been appointed illegally.

15. The Petitioner also has filed several Interlocutory Applications during the pendency of the Company Petition which were also heard alongwith the main matter CA-51/2022 has been filed by the Petitioners on 14.02.2022 on the allegations of various wrong actions taken by the Respondents such as shifting of Registered Office, the appointment of Shri Arvind Kumar without holding any Board meeting etc.

RESPONDENT'S CASE:

16. The Respondent No. 1, 2 & 4 have filed a common reply affidavit to the present petition. The Respondent No. 7 to 12 have filed a separate reply affidavit in response to the present petition.

Reply on behalf of Respondent No. 1, 2 & 4:

17. The Respondent No. 1 is the Company and Respondent No. 2 to 3 are the Directors and Respondent No. 4 is Additional Director of the Company.

18. The Respondents have submitted that originally a Company by name Ishan Healthcare Private Limited was incorporated which was subsequently changed

to Achintya Health Care Private Limited by way of a fresh certificate of incorporation, who is now the Respondent No. 1 in this case.

19. The Respondent No. 1 Company, is involved in Food Processing Sector having established business and goodwill in the market and was on the lookout for investment for scaling up of the business and meeting the capital requirement. The Respondent No. 1 Company was a supplier for Milk and Packaging and was leading market player in the Dairy Sector like Mother Dairy.
20. The Petitioner group held upto 25% shares in the Respondent No. 1 Company and against such equity an investment of Rs. 8 Crores was expected from the Petitioners which was never made good. The Petitioner No. 1 was appointed as an Additional Director on 01.04.2020 till the date of the next AGM which was held on 10.08.2020.
21. However, the Petitioner No. 1 was not confirmed/regularized as a Director by the shareholders in the AGM held on 10.08.2020. Hence, the Petitioner No. 1 ceased to be a Director as per the provisions under Section 161(1) of the Companies Act, 2013.
22. It is contended that as per the provisions of Section 161 (1) of the Companies Act 2013, an Additional Director can hold office up to the date of the AGM of the Company held or upto the last date on which AGM is required to be held, after the Board Meeting in which such Director was appointed, and that if in that AGM such persons are not reappointed as Directors of the Company or AGM is not held for whatever reasons then their office as director stands vacated on the date of such AGM. Section 161(1) of the Companies Act, 2013 is reproduced below for reference:

"(1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office

up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier."

23. The Respondent No. 1 Company took a legal opinion of a retired judge of the Hon'ble High Court regarding the status of the Directorship of Petitioner No. 1 in view of Section 161 of the Companies Act, 2013.
24. The Hon'ble Judge opined that in the light of Section 161(1) of the Companies Act, 2013 and in view of the judgments of the Hon'ble Courts, the Petitioner No. 1 is not a Director of Respondent No. 1 Company w.e.f. 10.08.2020. Since, the Petitioner No. 1 was not re-appointed as the Director, he ceased to be a Director by operation of law in terms of provisions of Section 161(1) of the Companies Act, 2013 and therefore the present petition cannot be held to be maintainable.
25. It is submitted that the Petitioner No. 1 was a guarantor to the loans availed by Respondent No. 1 Company from Karnataka Bank and he issued a letter on 22.11.2021 addressed to the Bank seeking to withdraw his guarantee. This Act of the Petitioner No. 1 is prejudicial to the interest of the Company and its shareholders.
26. With regard to the allegations of acts of oppression and mismanagement made by the Petitioners, the answering Respondents have submitted that the allegations made by the Petitioners that the Respondents stopped sharing any information of the Company with the Petitioners from last two months is not supported by any iota of evidence and the Petitioner No. 1 having ceased to be a Director of the Company cannot claim access to the records of the Company. The Petitioner No. 1 has also failed to produce any document or evidence which forced him to revoke his personal guarantees to the Respondent No. 5 Bank.

27. With respect to the allegations that no AGM was held on 30.09.2021 or thereafter, the Respondents have submitted that the said AGM could not be held because of disruptions and non-cooperation of the Petitioner No. 1 and also due to Covid-19 Pandemic.
28. The answering Respondent have denied the allegation made by the Petitioners that the Petitioner No. 1 has a vested right to be a signatory to Bank Accounts of Respondent No. 1 Company, since he ceased to be a director w.e.f. 10.08.2020. The Respondents have also submitted that the holding of the AGM in Meerut was necessitated because of the prevailing circumstances and further there are no restriction or prohibition prescribed under the Companies Act, 2013 for holding the Board Meeting of a Company at a venue other than its registered office and therefore holding of board meeting in Meerut is not illegal.
29. Further, the holding of the board meeting was necessary for the signing of balance sheets of the Company as the accounts of the Company could not be finalized due to the sudden resignation of the auditor and because of the delay in holding the AGM of the Company due to the disputes created by Petitioner No. 1.
30. With respect to the contentions raised by the Petitioner that there was a breach of Doctrine of legitimate expectation, the Respondents have submitted that there is no such breach because the Petitioner ceased to be a Director of the Company by force of law.
31. With respect to the allegations raised by the Petitioner that there were certain discrepancies in the e- form MGT-7 for the Financial Year 2019-2020 filed with Respondent No. 6, it is submitted that the Petitioner No. 1 himself had filed the

said e-form with his digital signature on 26.02.2021, even though he was not required to file the same as he ceased to be a Director.

32. With regard to the withdrawal of the notice dated 12.01.2022 to convene EGM of the Respondent Company, it is submitted by the Respondents that no prejudice is caused to the Petitioner No. 1, since he ceased to be a Director of the Company w.e.f., 10.08.2020 itself. The Respondents therefore have prayed that the present petition has been filed on frivolous grounds and ought to be rejected.
33. The Respondent No. 7 to 12 have also filed a reply affidavit denying the allegations raised by the Petitioners in the Company Petitions and supporting the stand taken by Respondent No. 1, 2 & 4. The Respondent No. 5 has also filed a short reply affidavit wherein it has been stated that the Respondent No. 1 Company approached the Respondent No. 5 Bank for sanction of credit facilities vide loan application dated 28.08.2020. The Respondent No. 5 Bank vide sanctioned letter dated 09.10.2020 sanctioned term loan to the tune of Rs. 9 Crores and over draft limit to the tune of Rs. 6 Crores.
34. The said credit facilities were sanctioned upon the personal guarantee of the Directors/additional Directors i.e., Ms. Ritu Nigam Pal, Mr. Arvind Kumar and Mr. Surinder Singh. It is also stated that the credit facilities were secured by equitable mortgaged of certain properties.
35. Heard the submissions of Ld. Counsels for both sides and perused the records. The main grievance of the Petitioners is that the Petitioner No. 1 who was appointed as an Additional Director of the Company on 01.04.2020 was sought to be removed from the directorship of the Respondent Company. The case of the Petitioners is that the Respondent Company was declared NPA and therefore the Respondent No. 2 to 4 approached the Petitioners to pull it out

from being defaulters. The Petitioners therefore infused capital to the tune of Rs. 18 crores(Note- to check) for reviving the Company since the Petitioners were doing similar business and had the expertise. In lieu of the above, the Petitioner No. 1 was offered a seat on the Board, signing authority and access of all data and accounts. Further, the Petitioner No. 1 stood as a personal guarantor to the facility taken by the Respondent No. 1-Company from Respondent No. 5. The Petitioner No. 1 was inducted as a Additional Director of the Respondent-Company alongwith Respondent No. 4 upon buying shares of the Respondent-Company on 01.04.2020. Consequently, the Petitioner No. 1 was also made the authorized signatory of the Company's Bank Accounts and he had access to all financial statements and was involved in the day-to-day activities of Respondent-Company. The Petitioner No. 1 also stood as a guarantor to the Bank accounts where Respondent-Company had availed a facility to the tune of Rs. 15 Crores from Respondent No. 5.

36. Further, the Petitioner No. 1 invested about Rs. 1 Crore 5 Lakhs in the Respondent-Company from M/s. Mahendera Dairy Private Limited, (where the Petitioner No. 1 and 3 are also shareholders) during the Year 2020-2021.

37. It is further contended that the Petitioner No. 1 continued to be a Director but suddenly in mid of Year 2021, the Respondent No. 2 to 4 stopped sharing any details with respect to the working of the Company. Subsequently, the notice to hold Extra Ordinary General Meeting on 05.02.2022 was issued wherein one of the agenda was to consider removal of Petitioner No. 1 from the Board of Directors. The saidnotice to hold Extra Ordinary General Meeting was withdrawn by the Respondent No. 2 to 4. Thereafter, the Respondent No. 2 to 4 have neither held any Annual General Meeting nor have sought any extension for holding the AGM. The Respondents contended that the Petitioner No. 1, who was appointed as an Additional Director of the Company was not regularized as a Director in the AGM held on 10.08.2020 and therefore as per

the provisions contained in Section 161(1) of the Companies Act, 2013, the Petitioner No. 1 ceased to be a Director by force of law.

38. Mr. Dutta, Ld. Sr. Counsel appearing on behalf of Respondent No. 1 Company has submitted that the AGM of Respondent No. 1 Company was held on 10.08.2020 as per MGT-7 and the said MGT-7 for the Financial Year 2019-2020 was signed by Petitioner No. 1 himself. However, there was no resolution put up for confirmation/regularization of Petitioner No. 1 as well as Respondent No. 4 as Director of the Company.

39. Mr. Dutta has also submitted that it is the settled position of law that if an Additional Director is not regularized or confirmed as a Director in the ensuing AGM, he /she ceases to be the Director from the date of ensuing AGM or the date when the said AGM was supposed to be held. Mr. Dutta, relied upon the following in support of his contentions:

- (a) ***Dushyant D. Anjara V M/S Wall Street Finance Ltd 2001 (1) Mh. L.J.] Paras 9-13***
- (b) ***KrishnaprasadJwaladuttPilani V Golaba Land and Mills Co. Ltd 1958 SCCOnLineBom 40 Paras 10, 13-15***
- (c) ***A.AnanthalakshmiAmmal and another v the Indian Trades and Investments Ltd and Anr 1952 SCCOnLine Mad 104; (1953) 66 LW 71(Mad) (DB) internal Pgs. 74-75***

40. Mr. Dutta has submitted that the Petitioner cannot take shelter of the Principle of Legitimate Expectation of being continued as a Director of the Respondent No. 1-Company only because of the fact that he had signed certain documents and resolutions as Director of the Company even after the AGM held on 10.08.2020.

41. In this regard, Mr. Dutta relied upon the provisions contained in Section 176 of the Companies Act which reads as follows:

“176. Defects in appointment of directors not to invalidate actions taken.—

No act done by a person as a director shall be deemed to be invalid,

notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated."

42. The Ld. Senior Counsel Mr. Dutta therefore, contended that all the documents, forms and the board meetings/ resolution attended/ signed by Petitioner No.1 get saved under Section 176, but the same cannot act as an aid to assume or presume Petitioner No.1 to still be a director in the face of provisions of the Section 161(1) of the Companies Act, 2013, the law settled for over 100 years and legal opinion which records and opines the same.

43. Having given our anxious consideration to the said submissions, we find force in the contentions raised by Mr. Dutta and hold that the Petitioner No. 1 ceased to be a Director of the Company by operation of law. Further, the Petitioner No. 1 also cannot claim to have any legitimate expectation for being continued as a Director of the Company in the absence of any written agreement to that effect.

44. Having come to a finding that the Petitioner No. 1 could not continue to be a Director of the Respondent No. 1 Company after his removal by operation of law, we may further add that as per the settled principles of law as decided by Hon'ble Supreme Court of India on 26.03.2021 in Civil Appeal No. 440/441/2020 in the case of Tata Consultancy Services Ltd. V Cyrus Investment Pvt. Ltd. and ors., wherein it has been held that a petition under Section 241,242 cannot be maintained merely on the ground of removal of Director of the Company. In the said judgement the Hon'ble Supreme Court held:

"16.28 An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.

16.29 There may be cases where the removal of a Director might have been carried out perfectly in accordance with law and yet may be part of a larger design to oppress or prejudice the interests of some members. It is only in such cases that the Tribunal can grant a relief under Section 242. The Company Tribunal is not a labour Court or an administrative Tribunal to focus entirely on the manner of removal of a person from Directorship."

45. It is also held further that the Tribunal would have no power to reinstate a Director:

"17.17 It is significant that Sections 241 and 242 of the Companies Act, 2013 do not specifically confer the power of reinstatement, nor we would add that there is any scope for holding that such a power to reinstate can be implied or inferred from any of the powers specifically conferred.

17.18 The following words at the end of subsection (1) of 242 "the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit" cannot be interpreted as conferring on the Tribunal any implied power of directing reinstatement of a director or other officer of the company who has been removed from such office. These words can only be interpreted to mean as conferring the power to make such order as the Tribunal thinks fit, where the power to make such an order is not specifically conferred but is found necessary to remove any doubts and give effect to an order for which the power is specifically conferred. For instance, subsection (2) of Section 242 confers the power to make an order directing several actions. The words by which subsection (1) of Section 242 ends, supra can be held to mean the power to make such orders to bring an end, matters for which directions are given under subsection (2) of Section 242."

46. Now, coming to the adjudication of the other alleged acts of oppression and mismanagement as contended by the Petitioners in point No.VII of the petition, this Tribunal is of the view that what kind of oppression or prejudice or unfairness is caused in a given case will depend on the injury caused to the Petitioners by the Respondents as visualised in section 241 of the Companies Act, 2013.
47. As a matter of fact, neither the Companies Act, 2013 or the erstwhile Companies Act (s) do define an 'oppressive act'. Whether an act is oppressive one or not is fundamentally a question of fact. The law relating to 'oppression' is cemented on the principles of equity and fair play as against the strict compliance of law. The Petitioner, therefore, must demonstrate that the conduct of the respondents is unfair, lacking probity and prejudices the exercise of his legal/proprietary rights as a shareholder.
48. Besides hearing the Ld. counsel for the parties, we have also meticulously perused the material available on record. It is true that at the time of filing the present petition on 27.01.2022, the Respondent No.1 Company was in breach of conducting the Annual General Meeting of the Respondent No.1 Company for the year ending March, 2021 within the extended time period of conducting the Annual General Meeting. The Respondents in defence had submitted that the AGM of the Respondent No.1 Company could not be conducted in view of the disruptions caused due to the Covid-19 situation and non-cooperation by the statutory auditor of the Respondent No.1 Company.
49. Be that as it may, it is pertinent to note that not conducting the AGM of a Company within the statutory time or extended time is not a cognizable offence but only a procedural irregularity which can be corrected by payment of fine of Rs. 1 Lakh and additional amount of further fine calculated on the basis of days of delay as envisaged in Section 99 of the Companies Act, 2013. Further, Section 441 of the Act also allows compounding of the said fine by the Regional

Director or the Tribunal depending on their respective pecuniary jurisdiction. Furthermore, though at the time of filing the present petition on 27.01.2022, the Respondent No.1 Company was in breach of conducting the Annual General Meeting of the Respondent No.1 Company for the year ending March, 2021, at the time of final hearing of the present application, when we checked the master data of the Respondent No.1 Company i.e., M/s. Achintya Healthcare Private Limited as available on the MCA portal, we find that the MCA master data reflects that the Annual General Meeting of the Respondent No.1 Company is conducted till the financial year ended March 2022 which clearly indicates that the AGM of the Respondent Company No.1 for the financial year 2020-2021 must have been conducted with late fees/ fines withing the given framework of law. We are of the considered view that the delay in conduct of the AGM may be taken as an example of inefficiency on the part of the Board, but it cannot be termed as an example of oppression or mismanagement.

50. The Hon'ble Apex Court in **Needle Industries (I) Ltd. v. Needle Industries Newey (I) Holding Ltd. (1981) 3 SCC 333**, had observed as follows: -

“an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give rise to a claim for relief under that section.”

51. In fact, it is a settled proposition of law that mere lack of confidence between shareholders is not sufficient for this Tribunal to act and exercise its powers as vested in Section 242 of the Companies Act, 2013, unless it springs from oppression of a minority or majority shareholder in the management of the company's affairs.

52. As regards the contention of the Petitioners that the conduct of the Board Meeting dated 12.01.2022 for the change of signatory of the Respondent No.1 Company is unjustified, this Tribunal is of the view that the decision as to

appointing or removing the signatory of the Respondent No.1's Bank Account is a matter of internal management and wisdom of the Directors of the Respondent No.1 Company. Effecting a change in the signatory of the Respondent No.1 Company's Bank Account by conducting the Board Meeting and following the due procedure of law cannot be deemed to constitute either as mismanagement of the Company or as oppression of the petitioners herein.

53. As to the contention of the Petitioners that there is a discrepancy in filing of E-Form MGT-7 for Financial Year 2019-2020 as the investment of Petitioners in the capital is not reflected, the Respondents had stated that the impugned E-Form MGT-7 is filed by Petitioner himself with his DSC affixed on the same. This fact is not controverted by the Petitioners. This Tribunal on the perusal of the Respondent No.1 Company's MCA Master data find that the paid up share capital of the Respondent No.1 Company is reflected as Rs.8,00,00,000/- which includes the Petitioners collective shareholding of 2,00,000 equity shares in the Respondent No.1 Company. Therefore, this contention also does not hold any water.
54. It appears to us that the Petitioners herein have referred to minor irregularities committed by the Respondents as alleged acts of oppression and mismanagement, following the Petitioner No.1's removal from directorship, which has happened due to operation of law. It is pertinent to note that minor acts of irregularities or mismanagement are not to be regarded as oppression and as far as possible, shareholders should try to resolve their differences by mutual readjustment.
55. The guiding principle governing the conduct of majority shareholders is equity and fairplay, without prejudicially affecting the rights of the minority shareholders. Any act of the majority shareholders which prejudicially affects the rights of the minority shareholders of a company must be continuous acts on the part of the majority shareholders, continuing up to the date of petition,

showing that the affairs of the company were being conducted in a manner oppressive to the minority shareholders.

56. In the case of **Foss v. Harbottle [(1843) 2 Hare 461**, it was held that, “the working of a company when it pertains to decision making always follows the Majority Rule. Any decisions to be taken are voted upon by members in the meetings and depending upon the subject matter, the decision is taken by a simple or special majority..”
57. This Tribunal cannot allow the special remedies as vested under Section 242 of the Companies Act, 2013 to become a source of litigation on the mere event of non-meeting of minds of the shareholders.
58. With regard to the other alleged acts of oppression and mismanagement such as (i) misuse of goodwill and expertise of petitioner (ii) transfer of shareholding to third parties, the petitioner had not placed on record any document before this Tribunal to corroborate the instance of the alleged mismanagement. Accordingly, this Tribunal is not inclined to adjudicate the allegations on mere averments of the Petitioner.
59. In the circumstances as illustrated above, this Tribunal is of the considered view that the present alleged acts of oppression and mismanagement as enumerated in clause VII of the present petition filed under section 241 & 242 of Companies Act 2013 are not sustainable.
60. In the wake of the above discussion, we are not satisfied that the respondents have conducted themselves in such an oppressive manner that would justify winding up of the Respondent No.1 Company, but such winding up shall be prejudicial to the interest of the members of the Company. Therefore no orders

in terms of Sections 242(1) read with 242(2) are necessary. Accordingly, the instant Petition being devoid of any merits is dismissed.

61. In view of the above said discussion and decision, all the pending Interlocutory Applications in the present Company Petition **stand closed. Interim orders, if any, also stand vacated.**

Let the copy of the order be served to the parties

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)