

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY APPLICATION NO. 359 OF 2023
IN
COMPANY PETITION NO. 159 OF 2023

IN THE MATTER OF:

MRS. NEELAM MALIK
W/o Late Mr. Harish Chandra Malik
Having her address at: B-31 Ashok Nagar Ghaziabad,
UP - 201001 Phone No.: 9910193892

... PETITIONER

VERSUS

- 1. RAMAN INSTRUMENTS PRIVATE LIMITED**
Flat No.7, Kashi Kunj, First Floor, Waterfield Road,
Bandra West Mumbai - 400050
- 2. Mr. Narendra Ratnakar Shenoy**
S/o Mr. Ratnakar Murlidhar Shenoy
Flat No.7, Kashi Kunj, First Floor,
Waterfield Road, Bandra West Mumbai – 400050
- 3. Mr. Vijay Bhatia**
Compact Capital Limited/Sun Automation Limited
103 Gateway Plaza Hiranandani Garden, Powai
Mumbai - 400076
- 4. Mr. Sanjay Vichare**
B-304, Sarvoday Orchid, Nandivali Road,
Near Sarvoday Park,
Dombivli (East) Mumbai – 421201
- 5. Registrar of Companies, Delhi**
4th Floor, IFCI Tower, 61,
Nehru Place, New Delhi- 110019

...RESPONDENTS

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Ajay Shukla, Mr. Ankit Sethi, Advs.

For the Respondent : Mr. Eshna Kumar, Mr. Shubham Jaiswal,
Advs. Respondent no. 1 & 2

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present petition has been filed by the Petitioner under Rule 11 of NCLT Rules, 2016 with applicable provisions of the Companies Act, 2013 seeking interim relief in relation to affairs of the Respondent No. 1 Company:-
 - a. Direct Respondent No. 2 to produce original records of the Respondent No. 1 Company, which inter alia include secretarial records, books of accounts, ledgers, register of members, annual returns and grant inspection of the same to the Petitioner and reinstate the said records in the registered office of the Company;

- b. Appoint an observer to attend any future board meetings and appoint professionals to record the discussions in board meetings and general meetings;
 - c. Appoint an independent director of the Respondent No.1 Company till the final adjudication of Company Petition 159/ ND/ 2023.
 - d. Direct an investigation into the conduct of Respondent Nos. 2 to 4, and suspend Respondent No.2 from directorship of the Respondent No.1 Company till the pendency of Company Petition 159/ ND/ 2023;
 - e. Direct a change of the statutory auditor of the Respondent No. 1 Company by invoking powers under Section 140 (5) of the Companies Act, 2013;
 - f. Direct a forensic audit of the accounts and secretarial records of the Respondent No. 1 Company; and
 - g. Pass such order or further order/s as this Hon'ble Tribunal may deem fit under the facts and circumstances of the case.
2. The Petitioner has made the following submissions in the petition: -
- a. It is submitted that since past three financial years, the Respondents not holding of statutory board meetings and annual general meetings of the Respondent No.1 Company and acts of mismanagement including giving of loans by Respondent No.2 in contravention with Section 186 of the Companies Act, 2013 and misusing the Petitioner's copied signatures on various documents

pertaining to statutory records and filings of the Respondent No.1 Company.

- b. It is pertinent to mention that the Petitioner holds 40.04% of the paid-up capital of the Respondent No. 1 Company and has been a founder director ever since the Respondent No.1 Company was founded in the year 1989.
- c. The Respondent No. 2 has blatantly ignored repeated requests of the Petitioner to conduct statutory board meetings of the Respondent No.1 Company and has not provided details pertaining to bank accounts, loans and advances, cash book, books of accounts, documentation with respect to transmission of shares held by the deceased husband of the Petitioner and other. Respondent Nos. 3 and 4 are working in collusion and connivance with Respondent No. 2 to cause detriment to the interests of the Petitioner.
- d. After the filing of the company petition by the Petitioner before this Tribunal and the receipt of its advance notice by the Respondents, Respondent No.2 wrote an email to the Petitioner about filing an application with the Registrar of Companies for seeking extension for holding the annual general meeting. It is pertinent to mention that this email was sent by Respondent No.2 on 14.09.2023 which shows violation of the rule regarding statutory advance notice of the annual general meeting, which should have been given at least 21 clear days in advance to the meeting, which was to be conducted

latest by 30.09.2023. A copy of the email is annexed herewith and marked as ANNEXURE P-1 (Colly).

- e. A sudden board meeting was called by Respondent No. 2 on 29.09.2023 for approval and adoption of financial statements and directors' report pertaining to Financial Year 2022-23 and other agendas. Respondent No. 2 shrewdly skipped attaching the annexures to financial statements, nor was the directors' report attached in the email dated 18.09.2023 through which the notice of the said board meeting was served upon the Petitioner.
- f. In an email dated 29.09 .2023 addressed to the Petitioner pursuant to the holding of the aforementioned board meeting which Respondent No. 4 failed to attend, Respondent No. 2 sent the directors' report for Financial Year 2022-23, with a mention of compliance with respect to holding of statutory number of board meetings during the said financial year. It is pertinent to mention that it is averred by the Petitioner in her company petition that no such board meeting was held during the said financial year. A copy of the said email is annexed herewith and marked as ANNEXURE P-3 (Colly).
- g. The Respondent Nos. 2 and 3 are now coercing the Petitioner to sign various documents that need to be filed with statutory authorities, however, the Petitioner has serious suspicions about the accuracy of details contained in these documents. It is also pertinent to

mention that Respondent No. 3 has no role in any capacity whatsoever in the conduct of the affairs of the Respondent No. 1 Company, however, he has been acting as the actual statutory auditor under the tutelage of Respondent No. 2 and 4.

- h. The Respondent No. 3 has suddenly been shown as responsible for preparation of financial statements of the Respondent No. 1 Company, for which a huge sum of money has been paid to him by the Respondent No. 1 Company during Financial Year 4022-23.
- i. The Respondent Nos. 2 to 4 are causing detriment to the financial health of the Respondent No.1 Company by giving loans in contravention with Section 186 of the Companies Act, 2013, diverting funds of the Respondent No. 1 Company to Respondent No.3 under the garb of professional charges, not claiming overdue commission from the Respondent No.1 Company's principal, giving a free hand to some employees that are not reporting to the Delhi office and other means as enumerated in the company petition filed by the Petitioner.
- j. In view of the aforementioned wrongful acts and conduct of Respondent Nos. 2 to 4, the Petitioner has genuine and bona fide belief that Respondent Nos. 2 to 4 are acting in collusion with one another and in a manner that is prejudicial to the interests of the Respondent No.1 Company and its shareholders and therefore the Petitioner is filing this present application.

**3. WRITTEN SUBMISSIONS OF THE RESPONDENT NO. 1 AND 2
COLLECTIVELY REFERRED TO AS RESPONDENTS**

- a. The Respondents submits that after H.C. Malik's demise, the Petitioner and Respondent No. 2 jointly signed financial documents for the Company's fiscal years 2020-21 and 2021-22, with the Petitioner voluntarily signing the balance sheets and P&L Statement for 2021-22. The Petitioner, having received the auditors' report and subsequent financial documents for 2022-23, requested specific details during a Board of Directors meeting, which were promptly provided. The Respondent No. 2 contends that such requests, considering the Petitioner's prior acceptance and signature, are deemed frivolous and intentionally disruptive to the timely filing of the Respondent No. 1 Company's returns.
- b. The Respondent No. 1 is a small company and it cannot afford an Independent Observer and an Independent Director. The Petitioner can be present and ensure daily presence. Moreover, the Company has been exhibiting consistent profitability since thirty years, with financials being signed by Respondent No. 2, late Mr. H.C. Malik, and the Petitioner. The Petitioner has not raised any specific inquiries or concerns regarding the financial well-being of the Company with Respondent No. 1 up to the initiation of this petition.

Consequently, Respondent No. 1 Company perceives no justification for the change of the Statutory Auditor.

- c. The Petitioner has been jointly signing financial documents for the Company so she cannot pray for a direction for an investigation into the conduct of Respondent No. 2 to 4. It is evident that the Petitioner, despite of being a Director in the Company, lacks comprehension of the intricate aspects of business operations and possesses no affiliations with the Company's Principals in the UK and Germany.
 - d. The prayer presented by the Petitioner suggests an inclination towards the cessation of company operations, thereby causing distress to approximately 22 families or 85-90 individuals. The suspension of Respondent No. 2 further worsens the situation, jeopardizing the company's distributorship with foreign Principals and potentially leading to its windup.
4. We have heard the submissions of both the parties and have gone through the documents on record filed by both the parties. Counsel and perused the material available on record. The Respondents has raised the issue of maintainability can be decided as a preliminary issue.
 5. As per the decision in the case of **Archer Power System Private Limited Vs Cascade Energy Private Limited and Others (2020)**, the Hon'ble **NCLAT** held that *"the question of maintainability need not be decided as preliminary issue which can be decided along with main petition. It further*

held that maintainability is a mixed question of law and facts and conducting a forensic audit could produce the important facts that may be required by the National Company Law Tribunal to decide the preliminary issue.”

6. We are of the considered view that the decision in the case of Archer Power System (Supra) rendered by the Hon'ble Three Member Bench of NCLAT is more relevant in the present case where it held that the question of maintainability need not be decided as preliminary issue which can be decided along with main petition. This Bench is also inclined to follow this decision in view of the reasons stated therein that examination of facts in the Company Petition may assist in deciding the preliminary issue itself.
7. In the wake, the main petition i.e., Company Petition No. 159 OF 2023 is taken up for final hearing on 20.08.2024 in the meantime we are allowing the prayer (a) in the present petition with the directions that the next board meeting qua the Respondent No. 1 Company would be held in the presence of Mr. S. Shiva, Advocate (D/1832/2012), Mobile: 9899537348, email id: - s.shiva89@gmail.com and fee of the observer is to be paid by the Applicant. A sum of Rs. 50,000/- is fixed as Observer's fee in this matter. The Petitioners and the Respondents would extend all required co-operation regarding statutory, financial, managerial and all other affairs of the Respondent No. 1 Company and any further decision would be taken in the presence of Mr. S. Shiva, Advocate. The Observer has to submit his

observations report within ten days and all the parties are directed to extend full cooperation to the observer in performing his duties as observer.

8. Accordingly, the present application i.e., **CA/359/ND/2023 stands partly allowed** and other prayers will be heard along with the main petition.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)