

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH COURT NO. II
KOLKATA**

**C.P NO. 218/KB/2017
A Petition under Section 241 of the Companies Act, 2013**

**IN THE MATTER OF
ARUN KUMAR AGARWAL**

... Petitioner

Versus

- 1. EURO STRIPS PRIVATE LIMITED, A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B/27, 3RD FLOOR, MAURYA LOK COMPLEX, BUDH MARG, PATNA-800001, BIHAR**
- 2. ANIL KUMAR AGARWAL**
- 3. SANJAY KUMAR AGARWAL**
- 4. JAYATI AGARWAL**
- 5. SUBODH GOEL & CO.**
- 6. SANJAY R. JAIN & CO.**
- 7. AXIS BANK**

... Respondents

And

COMPANY APPLICATION NO. 989/KB/2018

**IN THE MATTER OF
ARUN KUMAR AGARWAL**

... Petitioner

Versus

- 1. EURO STRIPS PRIVATE LIMITED, A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B/27, 3RD FLOOR, MAURYA LOK COMPLEX, BUDH MARG, PATNA-800001, BIHAR**
- 2. ANIL KUMAR AGARWAL**
- 3. SANJAY KUMAR AGARWAL**
- 4. JAYATI AGARWAL**

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- 5. SUBODH GOEL & CO.**
- 6. SANJAY R. JAIN & CO.**
- 7. AXIS BANK**

... Respondents

And

COMPANY APPLICATION NO. 386/KB/2020

IN THE MATTER OF:

ARUN KUMAR AGARWAL

... Petitioner

Versus

- 1. EURO STRIPS PRIVATE LIMITED, A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B/27, 3RD FLOOR, MAURYA LOK COMPLEX, BUDH MARG, PATNA-800001, BIHAR**
- 2. ANIL KUMAR AGARWAL**
- 3. SANJAY KUMAR AGARWAL**
- 4. JAYATI AGARWAL**
- 5. SUBODH GOEL & CO.**
- 6. SANJAY R. JAIN & CO.**
- 7. AXIS BANK**

And

COMPANY APPLICATION NO. 967/KB/2019

IN THE MATTER OF

- 1. MR. SUNIL KUMAR AGARWAL**
- 2. MRS. RASHMI AGARWAL**

... Petitioners

Versus

- 1. EURO STRIPS PRIVATE LIMITED, A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED**

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**OFFICE AT B/27, 3RD FLOOR, MAURYA LOK COMPLEX, BUDH
MARG, PATNA-800001, BIHAR**

- 2. ANIL KUMAR AGARWAL**
- 3. SANJAY KUMAR AGARWAL**
- 4. JAYATI AGARWAL**
- 5. SUBODH GOEL & CO.**
- 6. SANJAY R. JAIN & CO.**
- 7. AXIS BANK**

... Respondents

And

COMPANY APPLICATION NO. 146/KB/2018

IN THE MATTER OF:

- 1. EURO STRIPS PRIVATE LIMITED & ORS**
- 2. SANJAY KUMAR AGARWAL**
- 3. JAYANTI AGARWAL**
- 4. SANJAR R. JAIN & Co**

... Applicants

Versus

ARUN KUMAR AGARWAL

.... Respondent

Date of Pronouncement: 1st July, 2024

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D.ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE

FOR THE PETITIONER

**IN CP 218/KB/2017: Mr. Shaunak Mitra, Adv.
Mr. Dripto Majumdar, Adv.
Mr. Riyanshu Agarwal, Adv.**

**FOR THE PETITIONER: Ms. Madhuri Pandey, PCS
Mr. Ayan Dutta, Adv.
Mr. Basudeb Mukherjee, Adv.
Ms. Tanvi Luhariwala, Adv.**

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**Ms. Madhuja Barman, Adv.
Mr. Arun Agarwal, Adv.**

FOR THE PETITIONER IN

**COMP APPL/967(KB)2019: Mr. Arani Guha, Adv.
Mr. Binit Kumar, PCS
Ms. Madhuri Pandey, PCS
Mr. Yash Dalmia, Adv.**

FOR THE RESPONDENT: Mr. Anjan Kr. Roy, FCS [For R-1, R-3, R-4 & R-6 in CP 218/KB/2017 and for the Applicant in COMP.APPL/146(KB)2018 and COMP.APPL/386(KB)2020]

**Mr. Sandip Paul, PCS [For R-1,R-3, R-4, R-6]
Mr. Amit Pareek, Adv.**

COMMON ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court congregated through hybrid mode.
2. The Learned Counsels for both the parties were heard.
3. There are four connected Company Applications which are detailed hereunder:

(i) COMP APPL 146/KB/2018: Demurer application filed by the respondents in CP 218/KB/2017.

(ii) COMP APPL 989/KB/2018: Application by the petitioner seeking appointment of an administrator.

(iii) COMP APPL 967/KB/2019: Intervention application by Mr. Sunil Kumar Agarwal on the ground that the petitioner and respondent would settle the matter excluding him. Mr. Sunil

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Kumar Agarwal is neither a party to CP 218 nor has he initiated any other case in NCLT against the respondents.

(iv) COMP APPL 386/KB/2020: Filed by R6, the statutory auditor, seeking deletion of his name from the array of parties.

CP/218(KB)2017

1. The application has been preferred by **Arun Kumar Agarwal** praying for the following reliefs interalia:

- (a)** *An order of cancellation of the purported appointment of Respondent No.4 as a Director and/or Additional Director in the Respondent No.1 company and cancellation of her DIN in this regard;*
- (b)** *Declaration that the purported resolution dated 16th January, 2016 for removal of the Petitioner from the designation of Whole Time Director is bad and not maintainable;*
- (c)** *An order directing the purported Form DIR 11 and 12 and any other Form filed in pursuance of the alleged resignation of the Petitioner is bad and should be cancelled;*
- (d)** *The Board of Directors be superseded and an Administrator or a special officer be appointed to take charge over the management and affairs of the company.*
- (e)** *Alternatively, a committee be constituted by this Tribunal consisting of representative of the Petitioner to function as administrator/special officer for the management and control of the affairs of the company on such terms and conditions as this Tribunal may deem fit and proper;*
- (f)** *An independent Auditor be appointed to audit the entire accounts of the Respondent No.1 company for the last five years;*

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- (g)** *An order of mandatory injunction restraining the board of the Respondent No.1 company in holding any board meeting or annual general meeting in respect of the affairs of the Respondent No.1 company;*
- (h)** *An order of investigative audit in respect of the affairs of the Respondent No.1 company in the financial year 2016-17 submit a report before this learned Tribunal;*
- (i)** *An order declaring that the transfer of the 1,30,800 equity shares from the name of the Petitioner to the name of the Respondent No.4 is bad and not maintainable;*
- (j)** *An order for rectification of the register of members of the Respondent No.1 company and cancel the entries by which the shareholding of the petitioner has been cancelled and his name be included;*
- (k)** *Declaration that the appointment of Respondent No.4 is bad and not made in consonance with the Companies Act, 2013;*
- (l)** *Declaration that any board meeting held after 16th January, 2016 should be set aside;*
- (m)** *An order of mandatory injunction restraining the Respondent Nos.2, 3 and 4 from interfering with the management and administration of the assets of the Respondent No.1 company;*
- (n)** *An order of mandatory injunction restraining the Respondent Nos.2, 3 and 4 from taking any step or further step to the detriment or to the prejudice of the Petitioner;*
- (o)** *A scheme of management be framed for proper administration and affairs of the Respondent No.1 company;*
- (p)** *An order of status quo to be maintained with respect to the shareholding in the Respondent No.1 company;*
- (q)** *An order directing investigation into the affairs of the RespondentNo.1 company under Section 213 of the Companies Ac, 2013;*

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- (r)** *An order directing the Respondent No.1 company to get the personal properties used as a collateral and the personal guarantee provided by the Petitioner for the sanction and enhancement of the bank guarantee released from the State Bank of India;*
- (s)** *Costs of and incidental to this petition be paid by the Respondents;*
- (t)** *Such further or other orders be passed and direction be given as to this learned Tribunal may deem fit and proper;*

2. Interim Reliefs prayed for interalia are the following:

- (a)** *An order of injunction of the purported appointment for the Respondent No.4 as a Director and/or Additional Director of the Respondent No.1 company and from acting in this capacity;*
- (b)** *A special officer be appointed to take charge over the management and affairs of the company*
- (c)** *An order of injunction restraining the Respondent Nos.3 and 4 to operate any existing bank account or the bank account that may be opened by the administrator/special officer in this regard;*
- (d)** *An order directing the Respondent No.1 company to supply periodic accounts to the petitioner;*
- (e)** *Appointment of an independent Auditor to audit the entire accounts of the Respondent No.1 company for the last five years;*
- (f)** *An order of injunction restraining the board of the Respondent No.1 company in holding any Board Meeting or Annual General Meeting in respect of the affairs of the Respondent No.1 company;*
- (g)** *An order of investigative audit in respect of the affairs of the Respondent No.1 company in the Financial Year 2016-17 submit a report before this Tribunal;*

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- (h)** *An order of status quo to be maintained with respect to the shareholding in the Respondent No.1 company;*
- (i)** *An order of injunction restraining the Respondent Nos.2, 3 and 4 from interfering with the management and administration of the assets of the Respondent No.1 company;*
- (j)** *An order of injunction restraining the Respondent No.2, 3 and 4 from taking any step or further step to the detriment or to the prejudice of the Petitioner;*
- (k)** *An interim scheme of management to be framed for proper administration and affairs of the Respondent No.1 company.*

3. FACTS PLEADED

- 3.1** The Respondent No.1 viz., Euro Strips Private Limited (hereinafter referred to as “the said company”) was incorporated on 22nd August, 1994 under the provisions of the Companies Act, 1956.
- 3.2** The Company has an authorized share capital of 7,50,000 shares of ₹ 10/- each. The issued, subscribed and paid up share capital of the said company of ₹ 74,97,000/- divided into 7,49,700 equity shares of ₹ 10/- each.
- 3.3** The registered office of the said company at all material time was situated at B/27, 3rd Floor, Maurya Lok Complex, Budh Marg, Patna- 800001, Bihar and its corporate office at 503, Ashoka Raheja Township Malad East, Mumbai- 400097. A copy of Form No.18 is annexed hereto and marked with the letter “A”.
- 3.4** The Petitioner has 17.45% shareholding in the company amounting to ₹ 1,30,800/- number of ordinary equity shares of ₹ 10/- each.

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- 3.5** The Petitioner states that the share certificates of the petitioner were never handed over by the company to the Petitioner and till 2011-12, there was no animosity between any shareholders and in particular the Respondent Nos.2 and 3 the question of demanding the original share certificates by the Petitioner from the records of the company which are kept in the registered office did not arise at all.
- 3.6** However, when the petitioner finally demanded the share certificates, the Petitioner was denied any opportunity to take necessary inspection of the said share certificates. As such, the question of giving such share certificates to the Petitioner did not even arise. Copies of the admitted annual returns for the years 2011-12, 2012-13, 2013-14 and 2014-15, duly uploaded by the Respondent Company in the website of the Registrar of Companies are annexed in support and marked with the letter "C".
- 3.7** The Petitioner was removed from the directorship in the company by fraudulent means and conspiracy by forging resignation letter dated 15th January, 2016 and the resolution to remove him from the designation of a Director was taken on 16th January, 2016. The shares of the Petitioner were also illegally transferred from his account.
- 3.8** That the Respondent Company was promoted by the Petitioner and the Respondent No.2 and almost all the family members of the Agarwal's family were the shareholders in the Respondent company right from the inception.

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- 3.9** That the Respondent No.1 was a closely held family company of the Agarwals with all the family members holding and some other shareholders of the Respondent No.1 used to hold the shares at the dictates of the Agarwal's and for their benefits.
- 3.10** The Respondent Company along with Niharika holding Pvt. Ltd., which was also a closely held family company of Agarwals, were really in the nature of quasi-partnership between four brothers of the Agarwals, namely, the Petitioner, the Respondent No.2, the Respondent No.3 and Sunil Agarwal.
- 3.11** During the lifetime of the father of the Petitioner and the Respondents, namely, Ramavatar Agarwal, since deceased, was also the shareholder in these two companies and used to partake in the affairs of the Respondent No.1 as a partner thereof. A detailed chart of an admitted shareholding pattern of the Respondent No.1 Company as on 31st March, 2015, as would reflect from the admitted annual return for that year is given as follows:

Name of Shareholder	No. of Shares	Percentage of shareholding
Arun Kumar Agarwal	1,30,800	17.45
Anil Kumar Agarwal	1,30,300	17.38
Ramavatar Agarwal	1,11,600	14.89
Sanjay Kumar Agarwal	1,75,000	23.34
Sunil Kumar Agarwal	46,000	6.14
Rashmi Agarwal	83,500	11.14
Durga Prasad Singhania	47,500	6.34

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- 3.12** The Respondent No.2 and the Petitioner were the promoter directors of the said company since incorporation of the same. A copy of the Form No.32 filed on 18th August, 1994 showing the same is annexed and marked with letter “F”.
- 3.13** That even after 2005, the relationship of the petitioner and the Respondent No.2 was extremely cordial and the same worked together, hand in hand, for promoting the welfare of the Respondent Company which participated and discharged its functions under the several ongoing projects of SAIL.
- 3.14** That on or about November, 2009 onwards, till May, 2011, certain drastic development took place in the personal life of the Petitioner which had a rippling effect on his health, and his ability to attend office and the affairs of the company regularly.
- 3.15** On or about May, 2010, by the time the Petitioner’s knee problems had somehow been solved to a certain extent, the Petitioner was further crippled, at least physically, with several other major health problems including but not limited to serious heart conditions and was admitted at Cumbala Heart Institute, Lilabati Hospital.
- 3.16** On or about 16th July, 2010, as per the advice of Dr. Chatterjee, a renowned Cardiologist in Patna, the petitioner had to immediately rush to Mumbai to seek treatment under the guidance of Dr. Saurabh Goyal of Cumbala Heart Institute, Mumbai to perform Angiography on 19th July, 2010 on the Petitioner
- 3.17** The Respondent No.2 sought to bring in the Respondent No.3, the youngest brother of the Petitioner, into the affairs of the company

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by appointing him as an Additional Director in the Company by way of Board Resolution on 31st October, 2011 but no notice was served upon the Petitioner to attend the concerned board meeting. The Resolution was passed by forging the signature of the petitioner. The Digital Signature Certificate of the Petitioner expired on 11th November, 2012 and no further application was made for renewal of same. However, all the annual returns signed thereafter and other statutory compliances of the Respondent Company including Form No.MGT- 7 filed on 29th September, 2015 was electronically filed using the Digital Signature Certificate of the Respondent No.3.

3.18 During the entire period from 2011 end till about 2015, the petitioner was made to understand that the affairs of the Company was being well managed and administered by the Respondent Nos.2 and 3 and that the Petitioner need not worry about the affairs of the Company. However, on or about February, 2016, the Petitioner was shocked and surprised to discover for the first time certain events and developments in the Company. The Respondent No.4, wife of Respondent No. 3 was appointed as an Additional Director on the basis of forged documents on 17th October, 2015. The petitioner was not intimated of the meeting by which the purported Board Resolution was passed to appoint Respondent No.4 as the Additional Director, and the same was filed with the Registrar of Companies website using forged signature of the Petitioner. The quorum for the same was not met. Further no General Meeting of the Company was called and no notice was given to the shareholders of the company of such appointment.

3.19 It has been portrayed that the Petitioner allegedly tendered his resignation letter dated 15th January, 2016 at the registered office

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of the said company, inter alia, stating that he resigned “due to personal and unavoidable personal circumstances”. According to the purported extract of the minutes of the meeting of Board of Directors of the said Company conducted on 16th January, 2016, it has been stated, inter alia, that the alleged resignation of the Petitioner from the directorship was accepted.

3.20 That the purported acceptance of resignation letter sent to the Patna address of the petitioner shows the extent of malice and illegality perpetrated by the Respondent and in particular the respondent No.3 in trying to oust the Petitioner. It would be evident that even in June, 2011, the Respondent No.3 used to send official documents to the official address of the Petitioner in Mumbai, the question of the petitioner sending the purported acceptance of resignation to his Patna address did not and could not arise. Thus tendering resignation and that the information of acceptance of the same was communicated to the petitioner by feigning service on the Petitioner at his Niharika Chowk, Patna- 800008 although the petitioner was residing in Mumbai since 1994.

3.21 In the aforesaid background the Petitioner has strongly denied having tendered any resignation as sought to be made out in the purported letter dated 16th January, 2016 or receipt of any notice convening board meeting or the Board of Directors on 16th January, 2016. As such, the Petitioner prays for immediate investigation of the purported letter of 16th January, 2016 and appointment of a hand writing expert to compare the specimen hand writing and the signature of the Petitioner with that of the purported letter of 16th January, 2016.

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I.A NO. 989/KB/2018

1. This petition has been preferred by **Arun Kumar Agarwal** (**hereinafter referred to as the “petitioner”**) to seek the following reliefs:

- (a) A special officer/administrator be appointed to take charge over the management and affairs of the company and books, paper, records and documents of the company as well as its assets and properties and accordingly make an inventory and file a report accordingly.
- (b) Such further or other order or orders be passed and direction be given as to this Adjudicating Authority may deem fit and proper.

2. FACTS ALLUDED IN THE PETITION:

- 2.1** The respondent no.1 viz. **Euro Strips Private Limited** (hereinafter referred to as **“the said company or Euro Strips”**) was incorporated on 22nd August, 1994 under the provisions of the Companies Act, 1956.
- 2.2** The petitioner is a promoter director in the said company from the time of its incorporation.
- 2.3** The petitioner has 17.45% shareholding in the company amounting to 1,30,800 number of ordinary equity shares of Rs 10/- each.
- 2.4** Under the leadership of the Petitioner and the respondent no.2, the company participated in a tender floated by Steel Authority of India

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(hereinafter referred to as SAIL) and as such a bank guarantee of Rs. 2,80,00,000/- was issued by the State Bank of India, Dak Bungalow Road branch to the said company which was required to be provided for the consignment agency at Patna with SAIL on behalf of the said company.

2.5 On 11th January, 2003 the above referred bank guarantee was enhanced by Rs. 1,75,00,000/- which was required to be provided for the same purpose at Guwahati. SBI enhanced the aforesaid bank guarantee keeping in collaterals of the directors namely, respondent no.2 and the petitioner. Even after 2005 the relationship of the petitioner and the respondent no.2 was cordial and in a letter dated 9th July 2007 issued by SBI for renewal of the credit facilities obtained for the SAIL Consignment Agency contract, the petitioner not only kept his property as collateral but also provided personal guarantee for the same.

2.6 It is contended that from November, 2009 onwards till May, 2011 certain drastic developments took place in the personal life of the petitioner which had a rippling effect on his health, and his ability to attend office and the affairs of the company regularly.

2.7 Taking advantage of the same the petitioner was removed from the directorship in the company by fraudulent means and the conspiracy of the respondents by forging a resignation letter dated 15th January, 2016 and the resolution to remove him from the designation of a director was taken on 16th January, 2016. The shares of the petitioner were also illegally transferred from his account.

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3. SUBMISSIONS ON BEHALF OF THE PETITIONER

- 3.1** It is contended that respondent no.3 , the youngest brother of the petitioner was appointed as an additional director in the company by way of Board Resolution on 31st October, 2011. Respondent no. 2 resigned from being a Director of the respondent company by the same board meeting. It is contended that the appointment of the respondent no. 3 was never approved in any general meeting of the company.
- 3.2** It is contended that the petitioner had no knowledge of the appointment of respondent no. 3 as an additional director since no notice was ever served upon the petitioner to attend the concerned board meeting.
- 3.3** It is contended that since the Digital Signature Certificate of the petitioner expired on 11th November, 2012, all the annual returns and statutory compliances signed thereafter was electronically filed using the Digital Signature Certificate of the respondent no. 3. It is further contended that a forged Digital Signature Certificate was created on 10th February, 2016 for filing the resignation of the petitioner dated 15th January, 2016.
- 3.4** It came to the knowledge of the petitioner that respondent no. 4 was appointed as the additional director on the basis of the forged documents and the same was filed in RoC website using the forged signature of the petitioner. The petitioner was not present at the Board meeting by which the purported board passed the resolution to appoint respondent no. 4 as the additional director.

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- 3.5** It has been portrayed that the petitioner allegedly tendered his resignation letter dated 15th January, 2016 at the registered office of the said company, inter alia, stating that he resigned “due to personal and unavoidable personal circumstances”.
- 3.6** The alleged resignation of the petitioner has been stated to be accepted according to the minutes of the meeting of the Board of Directors. It is contended that the purported acceptance of the resignation letter has been sent to the Patna address of the petitioner which shows the extent of malice and illegality perpetrated by the respondents.
- 3.7** It is contended that the petitioner never tendered any resignation sought to be made out in the purported letter dated 16th January, 2016 and neither received any notice convening any board meeting or the Board of Directors on 16th January, 2016.
- 3.8** It is contended that the petitioner never gave any application to any agency for the issuance of Digital Signature Certificate after the expiry of the same in 2012 and Form No. DIR-11 and Form 12 were filed with new Illegal Digital Signature Certificate which the petitioner had never applied for.
- 3.9** It is contended that a sum of Rs.29,57,700/- was deposited to the petitioner’s account in Dena Bank on and from 3rd March 2015 to 14th March, 2015 and also a sum of Rs.13,08,000/- was also deposited on 21st March, 2016 by way of transfer. The petitioner then found out that the said sum represented the exact value of his entire shareholding in the respondent company.

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3.10 The petitioner received a letter dated 15.09.2016 from Dena Bank which mentioned about the activation of the petitioner's dormant account . The petitioner contended that upon knowing the activation of his dormant account on the basis of false KYC, a letter was addressed to the Branch Manager of Dena Bank questioning the allowance of debit and deposits without the petitioner's signature and on the basis of the forged and fabricated signatures and also asked to reverse illegal deposits from the aforesaid mentioned account immediately.

3.11 It is further contended by the petitioner that respondent had uploaded a form MGT-7 in the website of the Ministry of Corporate Affairs on 4th November, 2016 whereby the sum of Rs. 13,08,000/- have been transferred to respondent no. 4 namely, Jayanti Agarwal.

3.12 The petitioner further contended that such illegal and fraudulent conduct of the respondent has denuded the petitioner of his legitimate and admitted shareholding in the respondent company and hence a forensic investigation is to be done immediately in this regard.

4. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

4.1 Per Contra the respondent would contend that the COMP APPL 989/KB/2018 has been preferred by the petitioner with the sole objective of seeking an interim relief which the applicant earlier failed to obtain as interim relief in **CP 218/2017** and so the act of the applicant is a gross abuse of law and harassment for the respondent.

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- 4.2** The respondent contended that the nature of allegation made in COMP APPL 989 as read with the allegations made in CP 218/2017 indicates that the subject matter is under the Code of Criminal procedure, 1973, which cannot be decided by National Company Law Tribunal though the R1 company falls within the jurisdiction of the said Adjudicating Authority.
- 4.3** It is contended that the COMP APPL 989/KB/2018 AND CP 218/2017 are in violation of the applicable law of limitation and hence not maintainable.
- 4.4** It is contended that the petitioner never brought it to the notice of the company regarding his incapacitance as claimed and the petitioner himself has relinquished his directorship as well as his shareholding and later on tried to invent a case of oppression and mismanagement under the provisions of the Companies Act, 2013.
- 4.5** The respondent would contend that the appointment of respondent no.3 on 31.10.2011 cannot be challenged or disputed, as the same is time barred under the provisions of law of limitation. It is further contended that the board meeting dated 31.10.2011 was not only attended by the petitioner but also signed by the petitioner himself as the chairman of the Board which would appear from the copy of the minutes attached as **EXHIBIT "D"** and the said appointment was also made a public notice by filling the relevant Form 32 with the Ministry of Corporate Affairs dated 12/11/2011, a copy whereof is attached as **EXHIBIT "E"**.
- 4.6** The respondent has denied that the resolution was passed by the forged signature as would be evident from the documents attached as **EXHIBIT "F"**.

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- 4.7** The respondent further contended that the allegation of the petitioner that he had no knowledge of the appointment of R3 and on the other hand the admission of the fact that he has not been involved in the affairs of the R1 company from 2009 onwards, contradict each other as the R1 company with one functioning director cannot continue or survive but R1 company has successfully survived. It is contended that petitioner resigned as part of an understanding between the brothers and gave the reign of the R1 company into the hands of the respondents.
- 4.8** It is contended that all the annual returns and other statutory compliances have been done by R3 with the consent of the petitioner and that no forged signature was created on 10/02/2016 for filing the resignation of petitioner dated 15/01/2016 and the Digital Signature Certificate of the petitioner was also a genuine digital signature.
- 4.9** It is contended that the petitioner was not only present in the Board meeting held on 17/10/2015 but also chaired the meeting and thereafter filed a relevant form DIR-12 with the Ministry of Corporate Affairs in respect of appointment of respondent no.4 , together with the extract of the minutes duly signed by the petitioner attached as **EXHIBIT “G”** and also her appointment as a director at the Annual General Meeting of the R1 company held on 30/09/2016 attached as **EXHIBIT “H”**.
- 4.10** It is contended that at no point did the petitioner inform the R1 company that communication should not be done at Patna address hence the acceptance of resignation which was sent to the Patna address of the petitioner cannot be said to be done with any intention to create a mere “paper trail”.

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- 4.11** It is contended that the Adjudicating Authority never passed any interim order of injunction or status quo which would appear a copy of order dated 31.08.2017 attached as **Exhibit “B”**. It is contended by the respondents that the facts and the circumstances of CP 218/2017 and COMP APPL 989/KB/2018 prove that there is no requirement for appointment of an administrator and that the applicant/petitioner does not have any interest in the respondent no.1 company.
- 4.12** It is settled law that directorial complaints cannot be considered as a ground of Oppression and Mismanagement under section 397/398 of the Companies Act, 1956 or under section 241/242 of the Companies Act, 2013, unless the company is a quasi-partnership. Reference is made to **Reivera Builders Pvt. Ltd. Vs Vijay Kumar Sekhri & Ors.- para 1(IX) page 2** reported in **2012 SCC Online Del 3356**. The petitioner has failed to show that the R1 company is a quasi-partnership.
- 4.13** It is contended that there are outside shareholders in the company who holds shares at the dictate of the petitioner which means that the petitioner also holds Benami Shares in the respondent company. It is evident that there is no equality of shareholding amongst four brothers. Admittedly only two out of four brothers were directors of the R1 company at any given point of time and other brothers did not have any representation in the Board of Directors or in the management. The Articles of Association does not convey any condition for equal representation on the Board.
- 4.14** It is contended that the petitioner has relied on a forensic report to deny his signature on his letter of resignation. The said forensic report attached to CP 218 as Exhibit-AH mentions in para V (4) of page 5 that *“The disputed signatures have been executed on different date*

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extends from 1995 to present 2016 on the other hand the admitted signatures extends from 2003 to present 2016". The petitioner has neither brought on record any document nor has alleged that the documents have been forged in the company by forging his signature from 1995 onwards, which also means that he admits having full knowledge and awareness about all activities in the R1 company till 2009 and there is a history of mismatch of petitioner's signature and the petitioner has never raised any objection and has never tried to correct the said mismatch in the signature. Whereas the petitioner admits in para 2.2 of CP 218 that there was no animosity between shareholders upto the year 2010-2011.

- 4.15** A letter of acceptance of the aforesaid resignation letter was also sent by the R1 company to the petitioner and the same was received by the petitioner as admitted in para 6.26 of CP 218. The petitioner has never disputed his signature.
- 4.16** To contend that in a case under Section 241/242 the court would not see whether the removal of a director from the Board of Directors of a company is legal or illegal but would see whether the removal is oppressive to some members of the company or not. Reference is made to **Tata Consultancy Services Limited Vs Cyrus Investment Private Limited and Ors.** reported in **(2021) 9 SCC 449.**
- 4.17** The petitioner has admitted in Para 6.10 to para 6.22 of CP that he was not participating in the operation of the company from November 2009 onwards and as such he has admitted that the respondent company was operating without his support from the year 2009 onwards. Law is settled that if the company was able to carry on without the support of the petitioner/appellant then due to his removal no case is made out for action on the ground that the affairs of the company would be conducted in a manner prejudicial to the

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interest of the company or is likely to be conducted in a manner prejudicial to the interest of the company. Reference is made to **paras 33 and 34** of **Shanti Prasad Jain Vs Kalinga Tubes Limited**, reported in **1965 SCC Online SC 15**.

4.18 Further reliance is placed upon the judgement in **R Ramesh Vs Devi Polymer and Ors.**, reported in **(2017) SCC Online Mad 37885** to claim that the removal of the petitioner from the Board of Directors would bring a situation which would be just and equitable to wind up the company is uncalled for, the facts being entirely different on the following grounds:

- (i) In Devi Polymer Pvt. Ltd, (hereinafter referred to as **“Devi”**) had equal shareholding in the company whereas in Euro Strips Private Limited (hereinafter referred to as **“Euro”**) shareholding among the 4 brothers are unequal.
- (ii) Devi was incorporated as a company by converting a partnership firm into a company whereas Euro was never a partnership.
- (iii) In Devi each branch of the family had representation on the Board of Directors whereas in Euro only two out of four brothers were promoters.
- (iv) In Devi all members belonged to the same family, whereas in Euro there were outside members as admitted in para 3.2 of CP 218.
- (v) Devi is quasi partnership in all respect whereas Euro is not a quasi partnership from any angle.
- (vi) In Devi the removal of the Director Mr. R Ramesh was under challenge whereas in Euro, the petitioner in 2016 ceased to be the director.

4.19 Regarding the allegation that the shares of the petitioner have illegally been transferred, the respondents would contend that;

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(a) Admittedly the petitioner in CP 218 was one of the two promoter directors of the R1 company and the shares have been shown in the names of the respective holders in R1 company without actual issue of share certificates which has been the accepted norm duly accepted by the petitioner as well.

(b) The petitioner has admitted in para 6.31, 6.32 and 6.33 that the petitioner received a sum of Rs. 13,08,000/- (Thirteen Lakhs Eight Thousand) in his bank account and he knew that the same was consideration against his shares. The petitioner has also admitted that the aforesaid sum of Rs. 13,08,000/- (Thirteen Lakhs Eight Thousand) has subsequently been kept in Fixed deposit account in his name in HDFC Bank. There is nothing on record to show that the petitioner has objected to the aforesaid receipt of sum of Rs. 13,08,000/- (Thirteen Lakhs Eight Thousand) or has tried to return the said amount to the sender. Instead, it is an admitted fact that the petitioner kept the said sum of Rs. 13,08,000/- (Thirteen Lakhs Eight Thousand) in fixed deposit in his name and is enjoying the benefit. It is an established law that “When one knowingly accepts the benefit of a contract or conveyance or order he is estopped from denying the validity of or binding effect of such contract or conveyance or order upon himself” as decided in **Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond & Gem Development Corporation Limited and Anr**, *para 15 of page 11* as reported in **(2013) 5 SCC 470**.

4.20 That the CP is not maintainable as has been filed only under section 241 of the Companies Act, 2013. Section 242 has not been invoked. Even though the petitioner is disputing transfer of his shares, he has failed to seek relief under section 59 of the Companies Act, 2013, which is a specific section for seeking relief in such disputes and the

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petitioner has not paid the statutory fees applicable to a Section 59 application.

4.21 It is an established law that if there are alternate remedy available the the Tribunal may refuse grant remedy on the basis that it is just and equitable to wind up the company as provided in Section 273 (2) of the Companies Act, 2013. Reference is made to the judgement of **Raghunath Swaroop Mathur and Ors Vs. Har Swaroop Mathur and Ors**, para 9 and 11 reported in **1969 SCC Online All 292**.

4.22 It is an established law that in order to seek relief under Section 241 and 242 of the Companies Act, 2013, one has to be a member of the company. Either the petitioner must first get his name restored in the register of members by seeking a relief under Section 59 of the said act or atleast seek the said relief by invoking Section 59 along with Sections 241 and 242 by making a composite petition. Reference is made to **Gulabrai Kalidas Naik & Ors Vs. Lakshmidas Lallubhai Patel & Ors 1975 SCC Online Guj**, para 11 and 12.

I.A. NO. 386/KB/2020

1. The application has been preferred by the Respondent No.6 in CP/218(KB)2017, praying for the following reliefs:
 - (a) *Declare that the Applicant is neither a proper party nor necessary party in CP/218(KB)2017 and the name of the Applicant should be deleted from the list of parties to CP/218(KB)2017;*
 - (b) *Issue a direction/ order for deletion of the name of the Applicant as the Respondent in CP/218(KB)2017;*

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(c) To pass such other order or direction as the Hon'ble national Company law Tribunal may deem fit.

2. The Applicant was appointed as the Statutory Auditor of Respondent No.1 Company on September 7, 2016, after the resignation of M/s. Subodh Goyal & Co., on August 14, 2016.
3. The CP/218(KB)2017 has been filed by Mr. Arun Kumar Agarwal, an Ex-Director and Erstwhile Shareholder of the Respondent No.1 Company in CP/218(KB)2017, to seek relief against oppression and mismanagement mainly against Respondent Nos.1, 2, 3 and 4. However no material allegation against the present Application who is Respondent No. 6 in CP/218 (KB)2017, has been made.
4. It is urged that, the Respondent No.5 had preferred an I.A. being IA(I.B.C)/391(KB)2017 seeking deletion of its name from the list of Respondents in CP/218(KB)2017, on the ground that the Respondent No.5 was neither the proper party nor the necessary party in CP/218(KB)2017. The application was allowed. The operative part of the aforesaid order is reproduced hereinbelow:

“It is alleged by the Petitioner in paragraph no.6.28 that respondent no.3 and 4 in collusion with the respondent no.5 (applicant) committed act of forgery etc. In Petition no specific claim is made as against the respondent no.5. It appears to me that presence of respondent no.5 in this Petition as one of the party to this proceeding absolutely unwarranted. If at all the Petitioner succeeds in proving allegations of fraud against the respondent

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no.5, still this Tribunal cannot initiate any proceeding against him. The Petitioner has to approach the proper disciplinary authority against the respondent no.5. I am supported in my views by order of Hon'ble NCLAT in case of Shanta Prasad Chakravarty Vs. M/s. Bochapathar Tea Estate Pvt. Ltd. (Company Appeal (AT) No.297 of 2017) and order of Hon'ble NCLT, Guwahati Bench in case of Shanta Prasad Chakravarty Vs. M/s. Bochapathar Tea Estate Pvt. Ltd. (IA No.07 of 2017). In view of above facts I hold that respondent no.5 is not a necessary party or even the proper party in this proceeding. Hence, his name stands deleted. The Petitioner is to correct the Cause Title of the Petition."

- 5.** The Applicant claims that it would appear from the CP/218(KB)2017 that the Applicant was appointed on September 07, 2016 and CP/218(KB)2017 was notarized on March 07, 2017, that is about 6 months after his appointment. Most of the allegations in CP/218(KB)2017 pertain to period prior to his appointment and a careful reading the CP would also show that the Applicant did not have any role to play in the alleged acts of oppression and mismanagement and in fact no material allegation has also been made against the Applicant.

- 6.** The Applicant claims that in view of the aforesaid order dated July 30, 2019 in IA(I.B.C)/391(KB)2017 read with the order of National Company Law Appellate Tribunal in the matter of "*Shanta Prasad Chakravarty Vs. M/s. Bochapathar Tea Estate Pvt. Ltd. (Company Appeal (AT) No.297 of 2017) and order of Hon'ble National Company Law Tribunal, Guwahati Bench in case of Shanta Prasad Chakravarty Vs. M/s. Bochapathar Tea Estate Pvt. Ltd. (IA No.07 of 2017)* the Applicant being is neither a

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necessary party nor a proper party in CP/218(KB)2017, should be deleted from the array of respondents.

COMP APPL NO. 967/KB/2019

1. The application has been preferred under Section 241 of the Companies Act, 2013 to seek the following reliefs:
 - (a) *A scheme be framed for management and administration of the respondent company by appointment of a Special Officer/Director to carry on the activities of the R1 company along with the Petitioner to the exclusion of all sundries;*
 - (b) *Mandatory Injunction restraining the Respondents from dealing with or disposing of or alienating or creating any third party interests or changing the nature or character in any form or manner whatsoever in respect of the assets of the Respondent No.1 Company;*
 - (c) *Appropriate reliefs be made in accordance with Section 242 and other applicable provisions of the Companies Act, 2013;*
 - (d) *Costs of and incidental to this application be paid by the Respondents;*
 - (e) *Such further order or orders be passed and direction or directions be given as this Hon'ble Bench may deem fit and proper under the circumstances on the case for the sake of justice.*

2. The Petitioner has averred the following:
 - (i) That the Company was incorporated on 22nd August, 1994 under the Companies Act, 1956 and is having its registered office located at

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B/27, 3rd Floor, Mautya Lok Complex, Patna, Budh Marg, Patna-800001.

- (ii) That the Respondent Company is run by the Board of Directors consisting of (a) Mr. Sanjay Kumar Agarwal and (b) Mrs. Jayati Agarwal.
- (iii) That the Respondent Company has total 9 shareholders as per the List of Shareholders filed with filed in Annual Return of Company for the Financial Year 2017-18, among 2 promoters of the company and 7 other public shareholders. Photocopy of the List of Members dated 31st March, 2018 has been annexed and marked with Annexure C.
- (iv) That the Petitioners are the shareholders of the Company holding 1,29,500 shares constituting 17.27% of the shareholding in the Respondent Company.
- (v) That the Petitioners allege that they have been deprived of their rights as shareholders of the Company. The Respondent Nos.2 and 3 being the Directors of the company have the overall control of the company and despite holding a substantial value of shares, the Petitioners have neither been given a place in the Board of Company, nor involved in the affairs of the Company.
- (vi) That a dispute has been brewing between the present Directors and Mr. Arun Agarwal for quite some time, and in order to settle the dispute, a scheme is being proposed between the shareholders to the exclusion of the petitioners herein.

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- (vii) That such a scheme if implemented will lead to complete exclusion of the Petitioners with regard to the rights to profit and other benefits as shareholders of the family concern.
- (viii) That the fruits of the business at present are being enjoyed by the Respondents and any further delay in taking action on our part would lead to further bleeding of the Company to the detriment of the petitioner.
- (ix) It is urged that further violation has been committed by the Respondent Nos.1, 2 and 3 by not serving the mandatory 21 days' notice to the members for the Annual General Meeting as required under the Companies Act, 2013 to adopt the annual accounts. The non-compliance done from the end of the Company is to deprive the shareholders from raising their grievance at the only platform available to the shareholders.
- (x) It is alleged that the Petitioner/Shareholders have been continuously deprived of their right as a shareholder in the Company, by all the activities or affairs conducted by the Respondent Nos.2 and 3 are prejudicial to the interest of the Petitioner, which leads to the mismanagement of the Company as per Section 241 of the Companies Act, 2013.
- (xi) The Petitioner further declares that they had not previously filed any application under Sections 397 and 398 of the Companies Act, 1956 read with Section 241 of the Companies Act, 2013 before this Tribunal and that no writ petition or suit regarding the matter in respect of which the petition has been made is pending before any Court or law or any other authority or any other Bench or Board.

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(xii) That, the Petitioner is the Respondent No. 3 in CP/218 (KB) 2017 and as such aware of the entire matter related to CP/218(KB)2017 and is duly authorized to file the petition in Comp.appl/967(KB)2019.

3. Per Contra, the respondents would aver as under:

3.1 That the petitioner in COMP.APPL/967(KB)2019 lacks locus standi to maintain COMP.APPL/967(KB)2019 and that COMP.APPL/967(KB)2019 is liable to be dismissed at the preliminary stage for the following reasons:

(a) COMP.APPL/967(KB)2019 is neither in proper form nor has been verified by a proper affidavit as required under the provisions of law applicable for the time being;

(b) Applicants to COMP.APPL/967(KB)2019 are not parties to CP/218(KB)2017. They have neither sought to be impleaded as party to CP/218(KB)2017 nor have mentioned any urgency/reason for moving COMP.APPL/967(KB)2019.

(c) From the list of dates on page 10 of notice of motion, it would appear that COMP.APPL/967(KB)2019 has been made on the basis of incidence/happenings on just two dates as mentioned herein below:

(i) Date of incorporation of the respondent Company- 27th August, 1994;

(ii) List of shareholders of the respondent Company- 31st March, 2018;

3.2 The respondent would further contend that COMP.APPL/967(KB)2019 is also not maintainable on merits for it has been made on the following that even after holding 17.27% of

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shareholding of the company, they have not been made the Directors of the NAR1 company, whereas “differential disputes”, per se, cannot be grounds for a petition/application under Sections 241 and 242 of the Companies Act, 2013.

- 3.3** Moreover, the applicants have failed to mention any legal provision from Companies Act, 1956 or Companies Act, 2013 or from the Articles of Association of the Company or from anywhere else to claim a right to be Directors of the Company.
- 3.4** Further that, a careful reading of para (VI) sub-para (10), (11) and (12) would reveal that the applicants assumed that the Petitioners and Respondents in CP/218(KB)2017 would settle their dispute and withdraw CP/218(KB)2017.
- 3.5** The applicants have failed to produce any evidence in support of their allegations in para (VI) sub-para (10), (11) and (12) and as such, the said allegations are mere speculation on the part of the Applicants and cannot be sustained in the instant proceeding.
- 3.6** A careful reading of para (VI) sub-para (10), (11) and (12) would also reveal that the Applicants did not take any action, much less to settle the dispute in CP/218(KB)2017 or to intervene in CP/218(KB)2017 in the interest of Respondent No.1 Company from the year 2017 till about second quarter of 2019 and remained silent fence sitters enjoying the dispute between the petitioners and Respondents in CP/218(KB)2017.
- 3.7** It is denied and disputed that the Applicants hold substantial value of shares or even had any right/entitlement to be mandatorily appointed as Directors of the non-applicant respondent company.

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- 3.8** It has been alleged that Annual General Meetings under the Companies Act, 2013 have been called without serving 21 days' notice to the Members but no particular Annual General Meeting have been mentioned and for that reason the allegation is vague, suffers from delays and latches and is devoid of any legal merit.
- 3.9** It has been alleged that the affairs of the company are being conducted in a prejudicial manner to the interest of the petitioners but no detail regarding such allegation, much less any documentary evidence has been submitted by the applicants. For that reason the allegation is vague and devoid of any legal merit.
- 3.10** COMP.APPL/967(KB)2019 has failed to indicate any Act of Oppression against the Applicants or any act of mismanagement by the R1 company. As such, COMP.APPL/967(KB)2019 is liable to be dismissed as non-maintainable.
- 3.11** The Applicants having thus failed to make any case and are not entitled to any reliefs whatsoever.
- 4.** We have considered the rival contentions and perused the materials on record.

5. THE DISCERNIBLE FACTS

- 5.1** The grievance of the petitioner in CP 218/KB/2017 is two fold, that he has been removed as a director of the Respondent Number 1 Company on the basis of a false resignation letter showing a forged signature of the petitioner and that his shares in the respondent company have been illegally transferred in the name of Respondent Number 4.

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5.2 The respondents 1,3,4 and 6 have challenged the maintainability of CP 218 on the grounds:

- (a) That the petitioner is not a shareholder of the R1 company.
- (b) No waiver in terms of Section 244 has been sought for.
- (c) That the petitioner has failed to make out a case of Oppression and Mismanagement in CP 218.

6. ANALYSIS AND FINDINGS

6.1 Majority Powers and Minority Rights In Corporate Bodies:

A company being an artificial entity, operates through its Board of Directors, guided by majority decisions while considering the company's overall welfare. Company law envisages that the members have the authority to control the company's affairs. The principle is of "majority rule" governs the administration of a company's affairs, with the Board of Directors holding significant power and the shareholders, through general meetings, hold ultimate control over company matters apart from the Board's authority. There is always a risk of majority shareholders exploiting minority rights, necessitating a balance between majority and minority interest for smooth operations and oppression or mismanagement by the majority can lead to legal remedies for minority shareholders. The Companies Act, of so 1956 and 2013 provide provisions to curb the excessive power of the majority, granting rights to minority shareholders to seek recourse through the National Company Law Tribunal in cases of oppression or mismanagement.

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In **Rajahmundry Electric Supply Co. v. Nageshwara Rao AIR 1956 SC 213** Hon'ble Apex Court held:

“ The courts will not, in general, intervene at the instance of shareholders in matters of internal administration, and will not interfere with the management of the company by its directors so long as they are acting within the powers conferred on them under articles of the company. Moreover, if the directors are supported by the majority shareholders in what they do, the minority shareholders can, in general do nothing about it”.

6.2 THE TERMS: OPPRESSIONS AND MISMANAGEMENT

The term “oppression” and “mismanagement” lacks specific definitions in company law. Cases like **Shanti Prasad (supra)** elucidates “**oppression**” as a conduct that is burdensome, harsh and wrongful involving lack of probity or fair dealing to a member in the manner of his proprietary rights as a shareholder. “**Mismanagement**” involves inept or unfair conduct harming the economic interest of company members. Further, the affairs of the company should not be prejudicial to public interest or members.

6.3 STATUTORY PROVISIONS OF OPPRESSION AND MISMANAGEMENT AND THEIR APPLICABILITY

A member of the company, who is otherwise eligible under Section 244 and has a right to apply, is eligible to complain of ‘**oppression**’ and ‘**mismanagement**’ under Section 241. Section 241 of the Companies Act, 2013 envisages provisions on “**Prevention of Oppression and Mismanagement**” as extracted under:

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“241. Application to Tribunal for relief in cases of oppression, etc.

(1) Any member of a company who complains that—

(a) *the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*

(b) *the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.*

(2) *The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.”*

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The petitioner is admittedly not a shareholder/member in the Company, his shares being transferred way back in 2016, i.e, at least 8 years back.

- 6.4** To maintain an application under Section 241-242, it was imperative that the applicant seeks leave under Section 244 of the Companies Act, 2013 which is extracted hereunder for clarity:

“244. Right to apply under section 241. ---(1) The following members of a company shall have the right to apply under Section 241, namely: -

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

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Explanation. ---For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.”

Evidently, the petitioner is neither a shareholder or a member nor a Director in the company as on the date of filing of CP, but no leave under Section 244 which is mandatory, has been sought for. The basic principle is thus, in order to maintain an application under Section 241 of the Companies Act, 2013, the petitioner should either hold 10 percent or more of shares of the issued capital or constitute one-fifth or more of member of the company or seek a waiver under section 244 of the Companies Act, 2013. On that score the petition is a non starter. **The Hon’ble NCLAT in its judgement in Cyrus Investments Pvt. Ltd & Anr Vs. Tata Sons Ltd & Ors, Company Appeals (AT) No. 133 and 139 of 2017** has observed:

“140. From plain reading of sub-section (1) of Section 244, the following facts emerges. In the case of a company having a share capital, the following member(s) have right to apply under Section 241:

(i) not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less; and

(ii) any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares”.

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“141. Apart from two categories of members who have right to apply under Section 241, under proviso to sub-Section (1) of Section 244, the Tribunal on an application made to it in this behalf by any member, i.e. those who are otherwise not eligible, may waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the member to apply under Section 241”.

“143. Therefore, before grant of waiver, the question of forming opinion by Tribunal on an application made under Section 241 and to pass any order as it thinks fit does not arise. If the Tribunal intends to decide the application under Section 241 on merit, it is required to waive the requirement as prescribed under sub-section (1) of Section 244”.

The petitioner having failed to seek waiver in terms of Section 244, is not entitled to any relief under Section 241 of the Companies Act, 2013.

- 6.5** Under Sub-Section (1) of Section 242, this Tribunal is empowered to pass order on any application made under Section 241, as it thinks fit, with a view to bringing to an end the matters complained of, if it forms opinion in terms of clause (a) and (b) therein, as quoted below:

*“**242. Powers of Tribunal.** —(1) If, on any application made under section 241, the Tribunal is of the opinion—*

*(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; **and***

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(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.”

6.6 The provisions are explicit that any member of the company having the right to apply under Section 244 may apply to this Tribunal for an order alleging that the affairs are being conducted in a manner prejudicial to public interest or oppressive to any other member, or there is a material change, not in the interest of any creditors or any class of shareholders by management and by that change, the affairs will be conducted in a manner prejudicial to its interests or its members or any class of members which the petitioner has failed to establish.

6.7 The provisions under Sections 241 and 242 explicates that this Tribunal may pass order on an application under Section 241 as it thinks fit with a view to bringing an end the matters complained of if it is of the opinion that the company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and that to wind up the company would fairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up. In the case at hand the applicant, a non member/shareholder without seeking recourse Section 244, seeks to

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invoke his rights under Section 241 to allege acts of oppression that has taken place admittedly 8 years back. He has failed to make out a case that justifies making of a winding up order on the ground that it was just and equitable that the company should be wound up.

7. JUDICIAL PRECEDENTS AND THEIR APPLICABILITY

(i) The Hon'ble National Company Law Appellate Tribunal, New Delhi in Company Appeals (AT) No. 133 and 139 of 2017, in **Cyrus Investments Pvt Ltd & Another vs. Tata Sons Ltd & Ors.** had observed in para 66 that *“In respect of a complaint of oppression, both under the 1956 Act as also under the 2013 Act, any member can make a complaint that any other member is being oppressed.”*

The present petition has been preferred not by a Member of the company.

(ii) In **Cosmosteels Private Ltd. v. Jairam Das Gupta (1978)** it has been held that *“NCLT is empowered to exercise its wide powers under Sections 397,398, 402 and 403 of the Companies Act that are aimed at protecting the interests of the company and its shareholders.”*

The petitioner in the present case has failed to demonstrate that his removal and transfer of his shares were against the interest of the company and its shareholders.

(iii) Hon'ble' Apex Court In **Needle Industries (India) Ltd & Ors. vs. Needle Industries Newey (India) holding Ltd. MANU/SC/0050/1981** has observed that *“there may be situations, where, a resolution passed against a Director, which may be, otherwise, perfectly, legal, may yet be oppressive”*. Similarly, it went on to observe that *“the converse may also be triggered, which is, that*

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a resolution, which is, in contravention of the law could be in the interest of the shareholders and the company”.

This principle was refined, by the Court, with the following observations made in **paragraph 54** of the very same judgement:

“54..... The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder.....”.

(iv) In **Needle Industries India Ltd. (supra)** the Supreme Court has further held that *“An Illegal act will not in and of itself be treated as oppressive, unless it is accompanied by a mala fide intention or if otherwise such an act was harsh, burdensome and wrongful. However, where there has been a series of illegal acts directed against a person, it would be justifiable to conclude that they are a part of the same object of committing oppression”.*

The propositions would come to the aid of a petitioner only when a petition under Section 241 is maintainable.

(v) In **V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.**, The Hon'ble Supreme Court relied on the Needle Industries case, and ruled that *“the test of gauge whether an action is oppressive – is not whether it is illegal, but rather, whether the act of oppression entailed the absence of probity, good conduct, or an act that was mala fide, harsh burdensome and wrong or for a collateral purpose”.* Going further, *“it observed that although the ultimate objective of such an action may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis others”.*

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Here the Petitioner has failed to demonstrate that the respondent, by way of his removal 8 years back seeks to gain an advantage or achieve a “collateral purpose”.

(vi) In **Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors.** it was held *“Mere removal of a director isn’t enough for oppression and mismanagement claims. The NCLT can dismiss such complaints unless the removal is part of a larger scheme to harm certain members. The Court highlighted that the Tribunal can’t reinstate directors or management. Its role is to assess past or current conduct, not address concerns about future misconduct solely based on a company’s articles.”*

(vii) In **Shanti Prasad Jain Vs Kalinga Tubes Limited (supra) paras 33 and 34**, it was held

“The Oppression of which a petitioner complains must relate to the manner in which the affairs of the company concerned are being conducted; and the conduct complained of must be such as to oppress a minority of the members (including the petitioners) qua shareholders”.

Admittedly the petitioner was not an active participant in the Board since 2009. His resignation and transfer of shares took place way back in 2016. The judgement further expounds that:

“The circumstances must be such as to warrant the inference that ‘there has been at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company’s affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy’.”

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“ On such application being made, if the court is of the opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the matter of management or control of a company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to bringing to an end or preventing the matters complained of or apprehended , make such order as it thinks fit. This section only comes into play, as the marginal note shows, when there is actual mismanagement or apprehension of mismanagement of the affairs of the company. It may be contrasted with section 397 which deals with oppression to the minority shareholders, whether there is prejudice to the company or not.”

In the present case the petitioner has failed to establish that his removal was a part of larger scheme to harm certain members. The Petitioner has failed to establish that his removal 8 years back has ever seriously impaired the running of business in the company and that he was ever in the driver’s seat and the company then was doing fairly well.

(vii) In **Cyrus (supra)** Hon’ble Apex Court has held that;

118. *“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 tantamounts 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”.*

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121. “the validity of and justification for the removal of a person can never be the primary focus of a Tribunal under Section 242 unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members”.

The petitioner herein has miserably failed to demonstrate that his removal and transfer of his shares was oppressive or prejudicial to some of the members.

8. Allegations regarding forging of signature and fabrication of documents to oust the petitioner from the Board of the Company is in the nature of a criminal offence which this Tribunal lacks power to deal with. **In Bengal Luxmi Cotton Mills, [1965] 35 Comp. Cas. 187, 213** it was held that;

“... to make an order under section 397 or section 398 on the ground that a criminal complaint has been made against the directors or even on the ground that the directors had been convicted of a criminal offence, would be introducing into the law relating to companies, matters which are entirely foreign to company law and administration, and beyond the ambit of the jurisdiction which this court exercises.”

9. By way of **COMP APPL 146 of 2018**, the respondents urge the dismissal of CP 218/2017 on the following grounds;

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- (i) The petitioner in CP 218/2017, is not eligible to maintain CP 218/2017 under Section 241 read with Section 244 of Companies Act, 2013 for not being a member of the company on the date of filing CP 218/2017.
- (ii) CP 218/2017 is non maintainable, as CP 218/2017 seek to gain collateral benefit for a Partnership Firm which is otherwise not eligible to invoke the jurisdiction of National Company Law Tribunal under sections 241 of the Companies Act, 2013.
- (iii) CP 218/2017 is not maintainable for being in the nature of Directorial Complaint.
- (iv) Petitioner in CP 218/2017 has initiated a parallel proceeding under the Code of Criminal procedure, 1973 on self same cause of action.
- (v) The petitioner has filed the said, inter alia, to garner some benefit in the matter of a partnership firm by the name and style "Fashion Fabric".
- (vi) The said CP has been filed with an intention to undo the willful exit of the petitioner in CP 218/2017 as a member and as a director of the company.
- (vii) The said CP has been filed, inter alia, with an intention to dig out or discover or extract further information through the proceedings in the said CP 218/2017.

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- 10.** In the light of the enumerations above we are of the considered opinion that the petitioner does not deserve relief he has sought for.
- 11.** In the aforesaid backdrop we **dismiss** the **CP 218/KB/2017** with all the connected Company Applications.
- 12.** Certified copies of the order may be issued, if applied for, upon compliance with all the requisite formalities.

D. Arvind

Member (Technical)

Bidisha Banerjee

Member (Judicial)

This order signed on the 1st day of July 2024.

Oindrila, K. (LRA)/Sayon (Steno)