

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**CP/68(KB)2024**

*An application under Sections 213, 241 and 242 of the Companies Act,  
2013 read with Rule 11 of the National Company Law Tribunal Rules,  
2016.*

In the matter of:

Pandua Cold Storage Private Limited (PAN: AABCP5445L) (CIN: U63022WB1962PTC025526), a Company within the meaning of the Companies Act, 2013 having its registered address at 7, Swallow Lane, Kolkata – 700001, West Bengal, India.

And

In the matter of:

Rahul Chamaria, son of Ashok Chamaria, residing at 24, Southern Avenue, Avenue Heights, 3<sup>rd</sup> Floor, Flat No.3A, Kolkata – 700026 and currently residing at 30, SB, Block B, Camelia Building, 2<sup>nd</sup> Floor, Kolkata – 700053, e-mail ID: rahulchamaria@gmail.com;

Versus

1. Pandua Cold Storage Private Limited, a Company within the meaning of the Companies Act, 2013, having its registered address at 7, Swallow Lane, Kolkata – 700001, West Bengal, India, e-mail ID: panduacoldstorage@gmail.com;
2. Ashok Chamaria, son of Late Mahabir Prasad Chamaria, residing at 24, Southern Avenue, Avenue Heights, 3<sup>rd</sup> Floor, Flat No.3A, Kolkata – 700026, email ID: panduacoldstorage@gmail.com;
3. Bimla Chamaria, wife of Ashok Chamaria, residing at 24, Southern Avenue, Avenue Heights, 3<sup>rd</sup> Floor, Flat No.3A, Kolkata – 700026, email ID: panduacoldstorage@gmail.com;
4. Jay Prakash Mishra, son of late Vivekanand Mishra, working for gain at Village Daipukur, G.T. Road, P.O. Pandua, District Hooghly, PIN 712149, e-mail ID: panduacoldstorage@gmail.com;

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5. Pallavi Chamaria alias Pallavi Ghosh, daughter of Ashok Chamaria, residing at 78A, Sreerampur Road, North, Garia, Kolkata – 700084, e-mail ID: panduacoldstorage@gmail.com;
  6. Priyanka Poddar (nee Chamaria), daughter of Ashok Chamaria, residing at 242, Aca Lanes, Dr. Apartment-10, Sunny Vale, California, United States 940866906, e-mail ID: panduacoldstorage@gmail.com;
  7. Ashok Chamaria, HUF, represented by its Karta shok Chamaria, having its address at 24, Southern Avenue, Avenue Heights, 3<sup>rd</sup> Floor, Flat No.3A, Kolkata – 700026, e-mail ID: panduacoldstorage@gmail.com.

... .. Respondents

Date of pronouncement: 13<sup>th</sup> May, 2023

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically)**

Ms. Manju Bhuteria, Adv. ] For the Petitioner  
Ms. Urmila Chakraborty, Adv. ]  
Ms. Farnaz Nasim, Adv. ]

Mr. Shaunak Mitra, Adv. ] For the Respondent Nos. 1, 2, 3, 5, 6,  
Mr. Dripto Mazumdar Adv. ] 7 and 8  
Mr. K. N. Jana, Adv. ]

**O R D E R**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The Court convened in a hybrid mode.
2. Heard the learned Counsel for the parties.

- 3.** This application has been preferred under Sections 213, 241 and 242 of the Companies Act, 2013 primarily alleging oppression and mismanagement. The Petitioner contends that the company was incorporated on June 12, 1962. Thereafter, in the year 1991, the Cold Storage business of the said company was acquired by the Petitioner's grand-father, namely, late Mahabir Prasad Chamaria on March 25, 1991, the Respondent No.2 was appointed as a Director in the company. On January 16, 2006, the petitioner and his mother, the respondent No.3 herein, became Directors of the company. Though the petitioner became a Director in 2006, his active participation was from 2017. On his induction and involvement since 2017, he has detected many instances of irregularities in the affairs and running of the company.
- 4.** It is alleged that instances of gross acts of mismanagement complained of:
- (i)** The Respondent No.3 failed to fill the entire warehouse/cold storage to the full capacity and has failed to collect the maximum rent of the installed capacity of the cold storage of 1,50,000 packets of 50 kg each.
  - (ii)** The West Bengal Pollution Control Board has issued a license to operate in favour of the company which had expired. The petitioner got payment of a fine of Rs.70,000/- (Rupees Seventy thousand only) whereafter the pollution license was renewed till 2028.
  - (iii)** The Respondent Nos.2 to 4 kept collecting market fee from 1991 till 2014 levied by the Government of West Bengal, but the said amount was not deposited with the exchequer account of the Agriculture Marketing (Administrative) Department, Hooghly. Due to non-payment for 23 years,

the outstanding amount had kept increasing with penalty aggregating to Rs.5,87,636/- (Rupees Five lakhs eighty seven thousand six hundred and thirty six only). The Petitioner after taking charge of the company got it deposited with the Office of the Hooghly Zilla Regulated Committee.

- (iv)** Due to non-clearance of marketing fees, the trade license was not issued and/or renewed in the name of the company. It was the petitioner who was instrumental in getting cold storage license in the name of the company. That the Respondent Nos.2 to 4 having not taken any steps for clearing of such dues or to commence the license. A show-cause notice was slapped upon the company by the Department in 2017 and a case was also lodged against the Directors of the company including the petitioner under Section 21 (1) read with Section 3/4 of the West Bengal Cold Storage (License and Regulation) Act, 1966 being G.R. No.1172 of 2018, T.R. No.23 of 2019 and CIS No.54 of 2019 before the learned Court of the Judicial Magistrate, 3<sup>rd</sup> Court, Chinsurah, Hooghly (Sadar). The petitioner has been discharging his fiduciary duty in right earnest and most sincerely. By reason of the sincere and dedicated acts of the petitioner, the company obtained Trade License/Certificate of Enlistment from the Kolkata Municipal Corporation for its registered office premises situated at Swallow lane, Kolkata and Gram Panchayat Trade License from Kshirkundi – Namaj Gram – Niyasa, Pandua Block, and Hooghly District for the cold storage premises.

- (v)** That the company was regularly showing losses in the balance sheet. The Respondent Nos.2 and 3 had lent and advanced a sum of Rs.8,14,222/- (Rupees Eight lakhs fourteen thousand two hundred and twenty two only) to a tea estate owner, namely, Subhankar Madanlal in the year 2007 which the company could not recover even in 2016. The Respondents again in 2016 advanced a loan to North Western Cacher Tea Company of Rs.21,10,466/- (Rupees Twenty one lakhs ten thousand four hundred and sixty six only). Such amount could only be recovered by the petitioner with the help of Hare Street Police Station in 2021. Further that conversion of the land in the name of the company was pending since 1991. The same could have been done and paid by the company in the year 2023 for a sum of Rs.4,00,000/- (Rupees Four lakhs only) paid from the pocket of the petitioner on August 4, 2023.
- (vi)** On August 30, 2023 and on September 2, 2023 further sum of Rs.6,00,000/- (Rupees Six lakhs only) and Rs.8,00,000/- (Rupees Eight lakhs only) respectively, were given as unsecured interest free loan by the Petitioner for repayment of loan to the creditors of the company. That the Petitioner states that from April 1, 2021 till December 13, 2023 a total sum of Rs.23,89,245.93p (Rupees Twenty three lakhs eighty nine thousand two hundred forty five and ninety three paisa) was lent and advanced by the Petitioner in favour of the company. After he took charge of the cold storage, the Petitioner introduced various reforms in the company. The staff salary was increased, proper security and surveillance were deployed at the cold storage. The cold

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storage business could yield maximum rent as the installed capacity was utilized at its optimum level and at his instance, a solar panel has been installed at the cold storage.

- (vii)** That the company had acquired in January, 2023 from Forever Commodial Private Limited 90,909 numbers of shares of Indong Tea Company Limited at a price of Rs.33/- (Rupees Thirty three only) each lying in the Demat Account, for which an amount of Rs.29,99,997/- (Rupees Twenty nine lakhs ninety nine thousand nine hundred and ninety seven only) was paid by the company. The Respondent No.2 unilaterally and without any board meeting or notice to the Petitioner for Rs.18.25 (Rupees Eighteen and twenty five paisa) per share for a total sum of Rs.16,59,089.25p (Rupees Sixteen lakhs fifty nine thousand eighty nine and twenty five paisa only) immediately after the expiry of the lock in period in February, 2024 and as such, the company suffered a massive loss of Rs.13,40,907.75p (Rupees Thirteen lakhs forty thousand nine hundred seven and seventy five paisa) on his account alone. A part payment of Rs.11,00,000/- (Rupees Eleven lakhs only) was received by the company in its account No.59200020200002 Imperia at Camac Street Branch immediately after the receipt of the said amount. A sum of Rs.9,50,000/- (Rupees Nine lakhs and fifty thousand only) was illegally, unlawfully and wrongfully withdrawn by the Respondent No.2 on February 2, 2024 itself.
- (viii)** That despite being a valid Shareholder and Director of and in the company, the Petitioner was obstructed and

prevented from entering into the said cold storage and/or interacting with potato farmers who are the tenants in respect of the cold storage. Further, he is denied access to the vital documents, accounts, cheque books, internet banking and/or register of the company. Due to continuous non-cooperation and acts of oppression and mismanagement perpetrated by the Respondents, the Petitioner was constrained to issue a letter to the Registrar of Companies, West Bengal on February 2, 2024 and also to the concerned Police Station at Hare Street and Pandua by a complaint letter dated February 29, 2024. That a letter dated February 5, 2024 has been received from the office of the Assistant Director of Agricultural Marketing (Administrative), Hooghly, Government of West Bengal thereby intimating that the validity of the cold storage license will expire on April 30, 2024 but no steps have been taken by the Respondents to submit the renewal application till date.

- 5.** It is alleged that the Respondents are completely mismanaging the affairs of the company, that statutory dues such as Professional Tax are also due for the past 4 years. Copies of reminder, emails issued by the Directorate of Commercial Tax e-mails dated October 9, 2023 and February 9, 2024 have been annexed as evidence.
- 6.** It is further alleged that –
  - 6.1.** The Respondent Nos.2 to 7 have sought to convert the Respondent No.1 company into a vehicle to gratify their personal greed and ambition to scuttle the business and process of revival and rehabilitation of the company.

- 6.2.** By their wrongful and illegal acts, the Respondent Nos.2 to 7 have demonstrated that they lack probity and are incapable of fair dealing and are otherwise untrustworthy.
- 6.3.** The acts of the Respondent Nos.2 to 7 are *per se* illegal and oppressive.
- 6.4.** They have indulged in wrongful acts for personal gain and in planned manner to usurp the management and control of the company at the cost and detriment of the company and its business.
- 6.5.** There is a clear, direct and blatant attempt on the part of the Respondent Nos.2 to 7 to prejudicially, affect the proprietary rights of the Petitioner as a shareholder. The Respondent Nos.2 and 3 are guilty of misfeasance and breach of trust in relation to the affairs of the company.
- 6.6.** The facts and circumstances make it just and equitable for the company to be wound up but to do so will unfairly prejudice the company and the petitioner.
- 6.7.** Further, the petitioner reasonably apprehends and believes that the Respondent Nos.2 to 7 have concocted and/or fabricated records, papers and documents pertaining to the Respondent No.1 company with a view to further act in an oppressive manner and to conceal the illegalities and/or harsh and oppressive acts and deeds committed by them.
- 7.** Per contra learned Counsel Mr. Shaunak Mitra attempting to refute the allegations would submit that a Petitioner, a shareholder with a 16 per cent shareholding cannot be allowed to seek a debit freeze as the Petitioner has done by way of his letter dated February 29, 2024 address to the manager, HDFC Bank.



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The intention of the Petitioner is clearly that he does not want the company to run.

- 8.** It is further alleged that the allegations itself show that the Petitioner has access to the documents and the allegations do not constitute any act of mismanagement.
- 9.** We have considered the rival contention and perused records.
- 10.** Section 241 of the Companies Act arms this Tribunal with wide powers including removal of managing director, manager, any of the directors makes such order as it deems fit.
- 11.** In our considered opinion, since it is evident that the Respondents have persistently withdrawn amounts from the accounts of the company, for the ends of justice we allow the prayers seeking injunction restraining the Respondents and each of them whether themselves, their men, servants, agents and/or assigns from selling, dealing with, alienating, disposing of any of the assets whether moveable or immovable of the Respondent No.1 company in any manner whatsoever without taking the other in confidence.
- 12.** Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order signed on this, the 13<sup>th</sup> day of May, 2024.**

Sayon (Steno)