

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**C.A. 85 OF 2021**

**In**

**C.P. 4313/MB/2019**

Under Section 210, 213, 241, 242 and 244  
of the Companies Act, 2013

Mr. Shripad M Salunkhe

...**Applicants**

V/s

Elina Solution Private Limited

... **Respondent**

*Order delivered on: 16.05.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant : Mr. Mahesh Athavale, Mr.  
Avinash R. Khanolkar,  
a/w Ms. Surekha Yadav,  
Advocates

For the Respondent : Mr. Pulkit Sharma a/w Ms.  
Prachi Wazalwar, Ms. Arusha  
Bapat and Ms. Sheba  
Abraham Advocates

**ORDER**

**Per: V.G. Bisht, Member (Judicial)**

1. This company petition CP 4313 of 2019 is filed by Shri Shripad M Salunke ('Petitioner') under section 241, 242 of the Company Act, 2013 alleging oppression and mismanagement in the affairs of M/s Elina Solution Pvt. Ltd. (Respondent no.1) seeking following relief :

- I. *To declare that the affairs of the Respondent No.1 company had been run by the Respondent No. 2 to 5 in a manner prejudicial to the interest of the Respondent No.1 company, its shareholders, creditors, employees, governments and public at large and order for consequent reliefs/directions as may be deem fit an necessary in the circumstances of the whole case.*
- II. *To direct investigation of the affairs of the company as contemplated by section 210 & 213 of the Companies Act, 2013.*
- III. *To Direct the Respondents to allow the Petitioner to participate in the day to day affairs of the Respondent No. 1 Company.*
- IV. *To declare that the Annual Accounts for the 2017-18 have not been prepared in accordance with the provisions of Companies Act, 1956/2013 and consequently quash various returns with Registrar of Companies, Pune and other authorities.*
- V. *To direct for prosecution of the Respondent No. 2 to 5 for violation of various provisions of Companies Act, 2013 either by the Registrar of Companies and/or by other authorities for violation of provisions of Companies Act, 2013 and/or Indian Penal Code or any other provisions of law.*
- VI. *To set aside resolutions passed in the General meetings illegally held by the Respondents and declare the General meetings held illegally as void since 30<sup>th</sup> August, 2018.*
- VII. *To appoint an independent valuer to carry out the valuation of shares of the company on net asset-based valuation.*

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*VIII. To direct Respondents to either purchase shares of the petitioner at the value fixed by such valuer or sell their shares to the petitioner at the same valuation.*

*IX. Such other orders as the Hon'ble Tribunal may think fit.*

2. A Company Application CA 85/2021 is filed by Mr. Shripad M Salunkhe ("Applicant") in the Company Petition No. 4313 of 2019 ("Petition") under section 210, 213, 241, 242 and 244 of the Companies Act, 2013 seeking directions from this Bench to direct respondents to maintain status quo with respect to the assets, properties and liabilities of the R1 company. Since, the company petition is taking the final order this CA seeking interim relief has become meaningless and accordingly dismissed.
3. Elina Solutions Private Limited, Respondent No.1 Company, (was incorporated on 05 June 2003 as a private Company limited by shares vide Corporate Identification No. U29299PN2003PTC018002, issued by the Registrar of Companies, Pune. The Registered Office of the Company is presently situated at Flat No. 301, Anubhuti Apt, S. No 20/3/2/5 Pl. No. 3+4, Bavdhan, Pune 411021. The Respondent Company was incorporated with its main object to carry on business of manufacturing, designing, erecting, installing, operating, planning, developing, fabricating , assembling, importing, exporting and dealing in process plant & machinery, engineering, mechanical, hydraulic, electrical and electronic equipment's, tools, machinery, spares and parts, accessories, components, devices, forgings, castings, instruments, appliances required for household, commercial, agricultural and industrial application.
  - 3.1. Petitioner holds 35,000 (Thirty-Five Thousand) equity shares of Rs. 10/- (Rupees Ten Each) in Respondent No.1 Company amounting to 35 % of the Paid-up Capital of Respondent no. 1 Company. Petitioner is a Promoter, director of Respondent No.1

Company since 05 June 2003 (date of incorporation of the company). He was a subscriber to the Memorandum of Association of the company. The Petitioner submits that he holds more than ten percent of the issued capital of the Respondent Company and hence satisfies the eligibility criterion under section 244.

3.2. Respondent no. 2 (R2) is Mr. Abhay Chaudhari. He was a subscriber to the Memorandum of Association. R2 and petitioner know each other as both were working together in a company called as Praj Industries Ltd. Respondent no. 3 (R3), is the wife of R2, is a Director of the company and looks after the Finance, Accounts and Secretarial matters of the company. R3 was a Director of R1 company from 29<sup>th</sup> Feb. 2012 to 22<sup>nd</sup> Aug. 2012 and is presently a Director from 7<sup>th</sup> Sept. 2016 till date. Respondent No. 4 (R4) is son in law of R2 and R 3 and has been involved in the business of the company since 2014. R4 was appointed as a Director of the company on 17<sup>th</sup> September 2018 to gain wrongful majority on the Board and to oust the Petitioner from the company. Respondent No.5 (R5) is the daughter of R2 and R3 and wife of R4. She is a Chartered Accountant and a Company Secretary. R5 was involved in maintaining the secretarial and accounting records of the company since 2010 along with R3. She was appointed as a full time employee of the company in the year 2016. As on the date of filing of this petition, R5 holds 40% shares in the Respondent 1 Company. R5 was director in R1 Company from 30<sup>th</sup> August 2011 to 29<sup>th</sup> February 2012.

3.3. R1 Company was incorporated on 05 June 2003 by the Petitioner, R2 and one Mr. Ashok Patwardhan, father of R3 and Father in law of R2, who later transferred his shares to R5 and resigned from Directorship in the year 2011. Petitioner and R2 knew each other

since 1993 as they both were working with a company named PRAJ INDUSTRIES LIMITED as employees.

3.4. As per the latest annual return filed by the company made up to 31 March 2018, following is the list of shareholders:

Sr. No.	Name of the person	Number of shares held
1.	Mr. Shripad Salunke (Petitioner)	35,000
2.	Mrs. Swati Chaudhary (R3)	25,000
3.	Mrs. Preeti Deo Chaudhary (R5)	40,000
	<b>Total</b>	<b>1,00,000</b>

4. In the year 2014, R2 i.e Mr. Abhay Chaudhary transferred/ gifted his 40% shares to Mrs. Preeti Deo Chaudhary (R5). However, they have no transfer deeds in relation to these transfer.

4.1. There have been following changes in the composition of the board of directors of the company since incorporation:

Sr. No.	Name of the Person	Date of Appointment	Date of Cessation
1.	Mr. Shripad Salunke (Petitioner)	Since Incorporation (05 June 2003)	Continues to be a Director, however a resolution was passed on 27

			September 2018 removing him as an employee.
2.	Mr. Ashok Patwardhan	Since Incorporation (05 June 2003)	30 August 2011.
3.	Mr. Abhay Chaudhari (R2)	Since Incorporation (05 June 2003)	Resigned on 22 <sup>nd</sup> August 2012; again appointed on 17 September 2018*
4.	Mrs. Preeti Deo Chaudhari (R5)	30 August 2011	Till 29 February 2012.
5.	Mrs. Swati Abhay Chaudhari (R3)	29 February 2011	Resigned on 22 August 2011 and was again appointed on 07 September 2016.
6.	Mr. Vijay Kumar Jagtap	22 August 2012	Till 07 September 2016.
7.	Mr. Narendra Deo (R4)	17 September 2018	Till date*

\*Appointment of R2 and R4 is being challenged being oppressive and done with mala fide intentions of taking over the management of the company in an unjust manner.

4.2. R1 is a Project Engineering Company. As stated hereinbefore, even though R2 was a director of the company, he was not looking after the affairs of the company since he was employed on full time

basis elsewhere. None of the Respondents have any contribution in the development of the business of the company. It was the Petitioner who has always been working for the development of the company. Petitioner was working full time in this company. He was paid salary of Rs. 1,80,000/- per month till July 2018.

- 4.3. The respondents no. 2, 4, 5 and one ShriRam K Chaudhari had drawn salary from the respondent company the total salary paid to Chaudhary family come to Rs. 3,78,970 per month
- 4.4. The respondent company had steady growth in its turnover till 2014 when the petitioner was looking after technical site of the business however, after appointment respondent no. 2, 3 and 4 in the company the turnover drastically fell from 42.01 crore in 2013-14 to Rs. 9.08 cr. and it further reduce to 6.99 cr. 2017-18.
- 4.5. There was raid from the Income Tax Department in April 2012 on the residence of R2 and R3 wherein cash was rupees 25 lakhs was seized it is pertinent to note that all the cash transaction and financial matters of respondent company was looked after by R2 and R3 there have been instances of huge cash expenses/investments./ During the entire episode of the raid the petitioner had run to pillar to post. However, after the settlement of the raid in 2014 R2 insisted upon appointment R4 as employ of the Company.
- 4.6. In hindsight, the Petitioner realizes that appointment of R4 and R5 in the company was a strategic move of R2 to grab complete control of the entire business and assets of the company which is the creation of the Petitioner. The assets of the company as per present valuation are more than worth Rs. 800 lakhs. After appointment of Statutory Auditors and Secretarial consultants of choice of R5, they started reporting only to R3 and R5 only. There after R3 and R5 totally stopped sharing any document/information with the Petitioner. The Petitioner was not allowed to

participate in the business matters of the company. The Petitioner has been asking for the copies of statutory registers, notices and minute book etc.

- 4.7. After termination of services from M/s Gea Process Engineering (India) Pvt. Ltd. in July 2018, R2 started harassing the Petitioner with the help of R3, R4, R5. He was insisting that Petitioner should leave the company and resign from the Board of Directors of R1 Company. When Petitioner refused to leave the company, R3 and R5 sent EOGM requisition by speed post to Petitioner for appointment of R2 and R5 as directors of R1 Company so that petitioner goes into minority even on the Board of Directors of R1 Company.
5. The Respondent filed affidavit in reply submitting that the contents of the letter of the Petitioner dated 23.03.2021 has been adequately discussed during the Board Meeting held on 29.03.2021. However, as stated earlier, the Petitioner does not listen to any discussion happening in the meeting and keeps shouting on other directors hence might have not understood the pointers being discussed. The Petitioner has not provided any solution for the financial crunch being faced by the Company and instead has only written lengthy letters accusing the directors on various front. The Directors also wrote letters to the Petitioner asking for his help in the financial crisis, however, no reply has been received from the Petitioner till date. This proves that the Petitioner is only creating records for the purpose of submission to the Hon'ble Court and has no good intentions towards the Company. The Respondent No.2 and his family members have come forward and contributed during the financial crunch of the Company and helped the Company to pay the employees and other creditors.
6. Heard learned Counsel and perused the material on record.
  - 6.1. It is a case of the petitioner that the nature of the respondent company is that of quasi-partnership and he, being a holder of 35%

share and being in minority, has been oppressed by appointment of R2 and R4 on the Board of respondent company. On perusal of pleadings, we find that petitioner has made a case on the ground of fall in the business of the respondent company after excessive interference of the respondents in the business of the respondent company and withdrawal of monthly salary by the respondent family. The petitioner has also made out the case that the respondent no. 2 transferred his share to his family member without executing transfer deeds.

6.2. On perusal of the pleadings we find that petitioner has made grievances in relation to his directorial rights. Even if the argument of quasi-partnership is taken into consideration, the petitioners holding 35 % shares cannot lay claim for the equal representation on the board of the respondent company. The pleading suggests that there is a complete loss of trust between the petitioner and respondent family and they can not get along together. We further note that the respondents disposed of one of the property of respondent company allegedly without taking into confidence the petitioner and by taking advantage of lack of clarity on the continuance of ad-interim order dated 12<sup>th</sup> April, 2021 passed by this bench. In *Needle Industries (India) Ltd. & Anr. v. Needle Industries Newey (India) Holding Ltd. & Anr. [(1981) 3 SCC 333]*, the Hon'ble Supreme Court of India held that:

*“49. ... But a series of illegal acts following upon one another can, in context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom these acts are directed....*

*52. ... 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 a shareholder...”*

- 6.3. Accordingly, we find the acts of Respondents to be harsh and burdensome. In view of the deadlock between both the groups we find it is a case for winding up of the respondent company. However, the order of the winding up shall be prejudicial to the interest of other stakeholders, we consider it appropriate to pass an order under section 242 of Companies Act, 2013.
- 6.4. During the course of hearing, this bench was intimated about the demise of the petitioner and the counsel appearing for deceased Petitioner informed this bench that they may seek instructions from the legal heir of the deceased petitioner if an offer for purchase of their share holding is made by the respondents. However, the counsel for the respondent informed that the client is not inclined to give any offer because they are also willing to exit from the company.
- 6.5. We note that the respondent company has been in control and management of respondent no. 2 to 5 since 2014-15 and they have been taking all material decision in relation to the affairs of the company. It is not in dispute that petitioner is in minority in the respondent company holding 35% shares and is also in minority on the board of the respondent company. The petitioner pleaded that it was his technical expertise that made the respondent company to grow exponentially. Accordingly, after the demise of the petitioner we do not find it appropriate to direct the legal heir of the deceased petitioner to provide exit to the respondents. However, the petitioner placed in CA 425 of 2021 a list of immovable properties owned by respondent company and had pleaded therein that the gross block value of these immovable properties amounted to Rs. 5,87,85,000/-. We note that of the property at Kasar Amboli has already been disposed of by the respondent company.

- 6.6. Accordingly, we direct the Respondent Company to seek valuation of its share within 30 days and the Respondent shall pay the consideration in accordance of such valuation report for the shares of deceased petitioner to the legal heir of Petitioner within 30 days thereafter. The whole exercise shall be completed by 20<sup>th</sup> July, 2024.
- 6.7. The Parties are directed to file an application with this Tribunal for submitting report of compliance of the order.
7. In view of aforesaid, the CP 4313/2019 is disposed of and CA 85 of 2021 is dismissed as infructuous.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)