

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : S P Velumani &1 Ors
Vs
Magnum Spinning Mills India Pvt Ltd & 6 Ors

MAIN PETITION NUMBER : CP/1097/2019

(IA/MA) APPLICATION NUMBERS

Comp.Appl/1/2022

ORDER

CP/1097/2019; Comp.Appl/1/2022

Present: Ld. Counsel Ms. Manjula Devi for Petitioner.

Ld. Counsel Ms. Poorthi Balakrishnan for the Respondent.

Vide common order announced in Open Court, the petition and the application are **dismissed**.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/1097/2019

(filed under Sections 241/242 of the Companies Act, 2013)

In the matter of M/s. Magnum Spinning Millss India Private Limited

- 1 SP Velumani,**
No. 124, Makkiripalayam,
Sowdhapuram,
Tiruchengode Taluk,
Namakkal-638 008.
Tamilnadu
- 2 V. Prabha,**
No. 124, Makkiripalayam
Sowdhapuram,
Tiruchengode Taluk,
Namakkal-638 008
Tamilnadu
- ... Petitioners

Vs

- 1. Magnum Spinning Millss India Private Limited.,**
Having its registered office at SF No 355,
Varuthampatti Chinna Goundanoor Sankari.
Salem-637 303.
Tamilnadu
- 2 A. Natesan,**
Patharai, Sowthapuram Post,
Tiruchengode Taluk,
Namakkal-638 008
Tamilnadu
- 3 M. Parthiban,**
No. 3/930, Pillumadaikadu,
Kadachanallur Post, Tiruchengode Taluk,
Namakkal-638.008.
Tamilnadu.

4 **P. Chandrasekaran,**
No. 696, APT Road,
Erode- 638 003,
Tamilnadu

5 **P. Raju,**
1-49D, Periakadu, Korakattampalayam.
Modamangalam Post,
Tiruchengode Taluk,
Namakkal-637 304,
Tamilnadu.

6. **P. Sathasivam,**
1/101, Kadachanallur Post,
Tiruchengode Taluk,
Namakkal- 637 304,
Tamilnadu.

7 **R. Karthikeyan,**
3/37, Vilankattur, Kadachanallur Post,
Tiruchengode Taluk,
Namakkal-638 006,
Tamilnadu.

... Respondents

**Along with
Comp Appl (Comp Act)/1(CHE) 2022**

1 **SP Velumani,**
No. 124, Makkiripalayam,
Sowdhapuram,
Tiruchengode Taluk,
Namakkal-638 008.
Tamilnadu

2 **V. Prabha,**
No. 124, Makkiripalayam
Sowdhapuram,
Tiruchengode Taluk,
Namakkal-638 008
Tamilnadu

... Applicants/ Petitioners

Vs

1. **Magnum Spinning Millss India Private Limited,**
Having its registered office at SF No 355,
Varuthampatti Chinna Goundanoor Sankari.
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Tamilnadu
6. **R. Karthikeyan,**
3/37, Vilankattur, Kadachanallur Post,
Tiruchengode Taluk,
Namakkal-638 006,
Tamilnadu.
- 7 **P. Chandrasekaran,**
No. 696, APT Road,
Erode- 638 003,
Tamilnadu

8. **P.C. Prabakaran,**
No 60 , Nathakaddu,
Vediyarasampalayam,
Pallipalayam,
Erode -638008

... Respondents

Order pronounced on **09th May, 2024**

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicants : *K.S. Ravichandran PCS along with
S. Manjula Devi, Advocate*

For Respondents : *Mr Vidyashankar, Advocate*

COMMON ORDER

(Heard through hybrid mode)

This is a Company Petition filed by the Petitioners under Sections 241 / 242 of the Companies Act, 2013 seeking the following reliefs:

- a. *To declare the resolution passed at AGM 2019 rejecting the reappointment of Petitioner No. 1 in the guise retirement of directorship by rotation as oppressive and to set aside the said Resolution.*
- b. *To restrain the Respondents from in any manner interfering with the Petitioner's participation in the management of the Company,*
- c. *set aside the remuneration given to the Respondents No.2 to 8 in violation of Articles of Association of the Company.*

- d. *To direct the Respondent No. 1 Company and Respondents to alter the composition of Board of Directors giving a proportional representation to the Shareholders groups so that each group has a proportional representation; for instance, if 6 Directors represent 77.5%, Petitioners side would have 2 Directors Shareholders groups so that each group has a proportional representation for instance, if 6 Directors represent 77.5%, Petitioners side would have 2 Directors*
- e. *To direct the Company and the Respondents to follow the applicable provisions and Secretarial Standards with reference to Board Meetings and General Meetings so that the management of the affairs of the Company is regulated and conducted in a transparent manner without putting into jeopardy the interest of any Shareholders or other stakeholders.*
- f. *That such further orders may be passed as the Hon'ble Bench may deem fit to regulate the affairs of the Company and thus render justice.*

INTERIM RELIEFS:

- a. *To appoint an Independent Chairman for chairing the Board and General Meetings of the Company.*
- b. *To restrain the Respondents from implementing the Resolution passed in the alleged Annual General Meeting held on 30th September 2019.*
- c. *To direct the Company to stay the filing of DIR 12 with respect to cessation of directorship of Petitioner No. 1.*
- d. *To direct the company to treat the Petitioner No.1 as Director and issue notices to him for all board meetings by registered post.*
- e. *To restrain the Respondents from altering the composition of Board of Directors.*
- f. *To direct the company to maintain status quo in the shareholding pattern.*
- g. *To direct the alienation of immovable properties of the Company in any manner without the leave of this Hon'ble Tribunal whatsoever until the disposal of the Company Petition.*

- h. to pass such other further relief as this Hon'ble Bench may feel deem fit considering the facts and circumstances of the case.*

Comp Appl (Comp Act)/1(CHE) 2022

2. This is a Company Application filed by the Applicant under Section 242 (4) of the Companies Act, 2013 read with Regulation 11 of National Company Law Tribunal Rules 2016 seeking the following reliefs:

- a) To declare that the act of respondents in proposing the issue of shares on right basis is in contempt of the Order of this Hon'ble Tribunal dated 23rd Oct 2019.*
- b) To declare that holding board Meetings without presence of the Petitioner 1 by removing his directorship is oppressive and there is a sequence of events to reduce the petitioners to insignificant persons.*
- c) To grant such other reliefs that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.*

INTERIM RELIEFS:

- a) To restrain the rights issue purportedly approved at Board Meeting allegedly held on 13th Dec 2021.*
- b) To restrain the respondents from in any manner diluting the stake of the applicant in the Company.*
- c) To direct the respondents to file an affidavit showing date and amount purportedly brought in by the respondents from time to time in 2020-2021 and 2021-2022.*

d) To grant such other reliefs that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

3. SUBMISSIONS BY PETITIONERS

a. The Company is a closely held private Company incorporated on 29th October 2010, under the name and style of "Magnum Spinning Millss India Private Limited" with the Corporate Identification Number (CIN) U17111TZ2010PTC016477. The Company is engaged in the business of running a spinning mill.

b. The Petitioner No. 1 is a founder promoter director and shareholder of the First Respondent Company. The Company was formed and promoted by the Petitioner No. 1 and Respondents in the nature of a partnership with specific shares for each group.

c. The Petitioner No. 2 is the wife of Petitioner No. 1 and she is also a shareholder of the First Respondent Company. Between Petitioner No 1 and his wife, they hold 21.86% stake in the Company.

d. Ever since the incorporation of the Company, the Petitioner No. 1 has been a part of the management of the day to day affairs of the Company, until the Petitioners had filed the previous petition, being CP No. 17/2017.

e. The Company has seven directors in which except Petitioner No. 1, all other directors ie. Respondent No. 2 to 7 are close relatives

f. The shareholding pattern of the parties as stated in the Annual Return as on 31st March 2018 is as follows (A full list of the shareholders of the company as per Annual Return as at 31st March 2018 is annexed hereto as Annexure No. P4):

Sl. No.	Name of the shareholder	No. of shares	Percentage of shareholding	Array of party
1	S.P Velumani	2,53,730	19.55%	P1
2	V. Prabha	30,000	2.31%	P2
3	A. Natesan	1,81,911	14.01%	R2
4	M. Parthiban	44,100	3.40%	R3
5	M. Parthiban (HUF)	29,200	2.25%	R3
6	P.Chandrasekaran	62,740	4.83%	R4
7	P.Chandrasekaran (HUF)	13,260	1.02%	R4
8	P Raju	75,050	5.78%	R5
9	P.Raju (HUF)	20,100	1.55%	R5
10	P.Sathasivam	65,600	5.05%	R6
11	R.Karthikeyan	84,792	6.53%	R7
12	R Karthikeyan (HUF)	45,793	3.53%	R7
13	Total Shareholding	9,06,276	69.82%	

g. The composition of Board of Directors as on 30.09.2019 is as follows

SI.No.	Name	Designation	Party in the Petition	Is he First Director of the Company (As per Article 20)	Is he subscriber to the MOA of the Company
1	A Natesan	Director	R2	Yes	Yes
2	M. Parthiban	Director	R3	Yes	Yes
3	P.Chandrasekaran	Director	R4	No	No
4	P. Raju	Director	R5	Yes	Yes
5	P.Sathasivam	Director	R6	Yes	Yes
6	S.P Velumani	Director	P1	Yes	Yes
7	R.Karthikeyan	Director	R7	Yes	Yes

h. The financial position and business state of affairs of the Company could be seen further in the Audited Financial Statements for the year 2017-18 and 2018-19 which have been enclosed as Annexure No. P5.

i. It is pertinent to note that the Petitioner No 1 had given his personal property worth more than Rs.5.00 crores as collateral security for the credit facilities availed by the Company. He had also given personal guarantee for the loans availed by the Company. In order to do away with his personal guarantee and property, the Respondents 2 to 7 had moved the loan accounts of the Company to another bank as a result of which subsequently, the bank released the title deeds of his personal property.

j. Dispute and difference of opinion arose between the parties when the Respondents carried out certain transactions in an unacceptable manner for making personal gains and fabricated

invoices for which the Petitioner No. 1 objected to make payments. The Respondents had been engaging in making bogus vouchers by booking bogus purchases of cotton and siphoning out money of the company in several ways including by showing as though cotton has come from the State of Gujarat and creating records as though cotton had been purchased at a higher price and also by showing and paying a higher transport charges. When the Petitioner No. 1 caught them, there was quarrel. Truck drivers were also creating issues to clear their charges.

k. When the Petitioner No.1 started questioning the fabricated transactions, the Respondents with an intent to put an end to the intervention of the Petitioner No.1 decided to change the mandate for operating the bank accounts of the Company and concocted a plan as if an alleged Board Meeting was conducted on 22nd August 2016 and resolutions were passed by which any two directors could operate the Bank Account. *A copy of the Board Meeting minutes held on 22nd August 2016 is enclosed herewith Annexure No. P6.*

l. As stated by the Petitioners in CP No. 17/2017, the Company is a closely held company, by fabricating the records as if a resolution was passed on 22nd August 2016 behind the back of the Petitioners, the Respondents have not only side-lined the Petitioner No.1 but also, they have oppressed them. The only

purpose of such a malicious action on the part of the Respondents is to deprive him of his rights and to side-line him, so that all their fabricated transactions will not be questioned. Once bank account operations are removed ingeniously from the hands of the Petitioner No.1, Respondents can have their field day as the only clutch in the hands of the Petitioner had been removed in this manner. Exactly the Respondents have achieved this status now.

m. The Petitioner No 1 who worked for the betterment of the Company was oppressed and side-lined. It is essential to note that ever since the incorporation of the company, the Petitioner has been operating the Bank account of the Company. There has been no issue of any difficulty to the management of the affairs of the Company in a proper way

n. Apart from the change in mandate for operating the bank accounts of the Company, the Respondents had indulged in fabrication and manipulation of records and further in carrying out unauthorized and illegal construction activities, diverting short term funds of the Company and thereby mismanaging the affairs of the Company. Since the buildings are without approval of the regulatory authorities and such structures if demolished will hole the coffers of the company in a huge manner and it will be a write off causing jeopardy not only to the interests of the members but also to that of the creditors of the company. It is on

record that the Petitioner had brought on record the irregularity committed by the Respondents with respect to the construction of Buildings. Further, it could be seen from the audited financial statement of 31st March 2019 that the balance sheet does not show even a rupee towards additions to Buildings. Everything is accounted as Work in Progress.

o. Having found the above oppressive acts and acts of mismanagement by the Respondents and the mismanagement in the affairs of the Company the Petitioners already moved Company Petition before this Hon'ble Tribunal in CP No. 17 of 2017 under Section 241/242 of the Companies Act, 2013 praying for various reliefs to safeguard the interest of the Petitioners and the same was disposed of by this Hon'ble Tribunal dated 11th July 2019 against which the Petitioners have preferred appeal before the Hon'ble National Company Law Appellate Tribunal. The Petitioners crave leave of this Hon'ble Tribunal to refer to the pleadings and documents filed along with the said petition and the same is not repeated for the sake of avoiding repetition. A copy of the Company Petition No. 17 of 2017 is enclosed as Annexure No. P7. A copy of the order passed by the Hon'ble Tribunal in CP. No. 17 of 2017 dated 11th July 2019 is enclosed as Annexure No. P8.

p. After the above said order, the Petitioners had received notice of Annual General Meeting dated 30th September 2019 along

with the Annual report of the Company for the year 2018-2019 on 17th September 2019. One of the Agenda stated in the said notice was as follows:-

5. To elect a Director in the place of Shri.S.P.Velumani who retires by rotation at the end of this Annual General Meeting and being eligible, offers himself for reappointment”.

q. At the AGM, the resolution for the reappointment of the Petitioner No.1 was defeated by the Respondents being the majority shareholders. The Petitioner was told at the AGM that no other shareholder has voted for his reappointment. In fact, the Petitioners had been completely alienated and sidelined by the majority shareholders. An act of deep oppression is borne out by animosity. In effect, the Respondents have removed his directorship illegally.

r. The following chart shows the retirement of directors in the past 6 years:

S. No	NAME OF THE DIRECTOR	DATE OF APPOINTMENT	RETIREMENT BY ROTATION OF DIRECTORS IN AGM					
			29/09/2014	30/09/2015	30/09/2016	30/09/2017	26/09/2018	30/09/2019
1	M.Parthiban	29/10/2010	---	M. Parthiban	---	M. Parthiban	---	M. Parthiban
2	P. Raju	29/10/2010	---	P Raju	---	P Raju	---	P Raju
3	R Karthikeyan	29/10/2010	R. Karthikeyan	---	R. Karthikeyan	---	R. Karthikeyan	---
4	A Natesan	29/10/2010	---	A Natesan	---	A Natesan	A Natesan	---
5	S.P.Velumani	29/10/2010	S.P. Velumani	---	S.P. Velumani	--	---	S.P. Velumani
6	P.Sathasivam	29/10/2010	P. Sathasivam	---	P. Sathasivam	---	P. Sathasivam	---
7	P. Chandrasekaran	15/11/2012	--	--	P. Chandrasekaran	---	P. Chandrasekaran	---

s. As per Article 20 of the Articles of Association, one third of the directors shall retire at the end of every Annual general meeting [AGM] and they are eligible for re-appointment. There are 7 directors, in total.

t. In this AGM the company had proposed 4 directors for retirement by rotation and re-appointment. This itself will expose the design of the Respondents. The representation that was made by the Board is the report under Section 134 of the Companies Act, 2013 that retiring directors offer themselves for re-appointment. This was stated in the Notice of AGM 2019 also While that being so, the Respondents representing the majority surreptitiously and deceitfully played a trick and used the opportunity to oppress.

u. A perusal of the notice of AGM 2018 and 2019 will show that the Respondents have cleverly excluded the Petitioner from remuneration to Directors. It is yet another oppressive act Respondents No. 2 to 7 perpetrated and denied benefits to Petitioners. As per Article 32 of the Articles of Association, the remuneration of the Managing Director / Whole Time Director shall be fixed by the Directors and may be by way of fixed salary / commission/ profits / turnover of the company or of any other company in which the company is interested/ by participation in any such profits or by an / all these modes. However, the

remunerations of all the Directors were revised except that of Petitioner No.1 at the previous AGM 2018 also, it was passed in the same manner.

v. In the AGM held on 30th September 2019, the members of the Company passed the following resolution on remuneration:

"To consider and if thought fit to pass the following as a Special Resolution

RESOLVED THAT pursuant to the provisions of Section 196, 197 and 203 and all other applicable provisions, if any, of the Companies Act, 2013 (the Act) read with Schedule V to the said Act and Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and as per the Articles of Association of the Company and subject to such other approval(s) or sanction(s) as may be required, consent of the Company be and is hereby accorded to approval the remuneration fixed by the Board of Directors to Mr. A Natesan, Mr. R Karthikeyan, Mr. P Raju, P Sathasivam, Mr. P Chandrasekaran and Mr. M Parthiban, Directors of the Company"

w. This resolution clearly contravenes the provisions of the Articles of Association of Respondent No.1 Company. Further, it clearly establishes the fact of excluding Petitioner No. 1 from the management of the affairs of the Company who has been the pillar of strength of the Company, ever since its incorporation.

x. When a group of persons have joined together to float a venture with a set of understanding, any unilateral decision of the majority members of the Board who are aligning in one

group since all of them are relatives is an act of oppression. When a particular way of managing the affairs of the company has been in vogue smoothly without any trouble for a fairly long period of time, more than decade, altering the arrangement is nothing but an act of oppression. A look at the course of the events after the fallout relating to cotton purchase scam, the Respondents have been indulging in insulting and sidelining the Petitioners in all possible ways. What initially started as bank account mandate change has now culminated in the majority divesting the directorship of the Petitioner.

y. The Petitioner was recently called by officers of the GST Department for enquiry. The Petitioner apprehends that there are serious irregularities in the GST compliances which may expose the company to prosecution under the GST laws. Bogus bills practice continues even now. Previously, the Petitioner had pointed out about the irregularities in construction of illegal structures. It was already pointed out that these buildings were marked as work in progress of value more than Rs.2.30 crores have been constructed without any approval from local government. There was not even Board approval Despite admission that a compound wall has been constructed, it has not been shown in the financial statement. Now it appears that Respondents No. 2 to 7 have been engaged in the further mismanagement of affairs of the Company. The apprehensions of the Petitioner are true and removal of the Petitioner from the

Board will make it easier for the Respondents to do whatever they want. This situation itself is prejudicial to the interests of the Company.

z. It is therefore submitted that all such actions of the Respondents constitute gross unfair acts of oppression and mismanagement. The Petitioners submit that the exclusion of the Petitioner No.1 is extremely prejudicial to his interests in the Company and shocks the foundation with which he invested in the Company. The Respondents have actually removed the Petitioner No.1 so as to have complete and unbridled control over the management of the Company.

aa. It is reiterated that the principles of partnership will squarely apply to the management of the affairs of the Respondent No 1 Company. As a promoter founder of the company, he had a legitimate expectation that he would be a director of the Company. Further ever since the incorporation, he has been a director of the Company. Initially the Respondents insulted the Petitioner No.1 Then they removed his bank account operating mandate. Thereafter they removed the Petitioner No. 1 from management altogether. The Supreme Court has held that the affairs of a Private Company have to be tested on a much finer scale.

bb. The Petitioners have time and again pointed out that the Board Meetings and General Meetings are held as eyewash only. Recent AGM 2019, was over in 10-15 minutes without any discussion. Suddenly the Respondents announced that the Resolution for reappointment of the Petitioners has got defeated by show of hands even before Petitioner could understand what was going on. Further, a perusal of the AGM 2019 will show that the same has been held at a hotel which is 45 kms away from the Registered Office of the company. This is in gross violation of the provisions of Section 190 of the Act. Sankari itself is a separate Taluk Chinnagoundanoor is a village. In order to properly administer and call, hold and monitor these meetings and to ensure transparency and fair participation by all concerned, it is necessary to appoint a person of integrity as an Independent Chairman to chair the Board and General Meetings.

cc. The Petitioner submit that removal of his directorship is an act grossly unfair and metes out unfair advantage to the Respondents who have all the powers to enjoy causing a permanent jeopardy to the Petitioners interests and is prejudicial to the interests of the Company also The Petitioners humbly submit that even a single act of oppression amounts to oppression and mismanagement. The removal of the Petitioner from his Directorship, refusing to provide the Petitioner with remuneration etc., all are acts of oppression and amounts to oppression.

dd. Presently the stake of the Respondents No.2 to 7 is 77%, they are the six out of seven directors in Board, on an average representing 12.9% each. However, there are not less than 3 directors who hold 10% or less and still enjoy a directorship. In this situation a proportional representation would have been appropriate remedy to operate as a check when the majority control showing tendencies to run the management of the affairs of the company according to their whims and fancies excluding the Petitioners from the management though they are rightfully entitled for the same. The Company being in the nature of Partnership, a proportional representation should be introduced in the composition of Board of Directors of the Company. Though in CP.No.17 of 2017, it was not granted, and though the final order in that CP is in appeal (yet to be admitted), it is submitted that what was apprehended in CP.No.17 of 2017 has turned out to be true. Therefore, in order to be just and equitable, it is necessary to offer protection to the Petitioners.

ee. The Petitioners submit that, it is necessary to ensure that the Respondents do not alter the shareholding pattern or the composition of the Board of directors without seeking the leave of the Tribunal. They should not be allowed to alienate the properties of the company except in the ordinary course of the business.

ff. The Petitioners have made a strong prima facie case against the Respondents *qua* the persistent oppressive acts of the Respondents. The Respondents actions are accentuated by malafide and they want entire control of the Company. These irregularities, violation of fiduciary duties, grossly unfair conduct of the Respondents must be tested in the interests of the Company.

gg. The Petitioners submit that the affairs of the Company are being conducted in a manner oppressive to the Petitioners but also prejudicial to the interests of the Company and its shareholders and that to wind up the same would unfairly prejudice the members though facts would prove that it is just and equitable to wind up the Company.

4. COUNTER FILED BY THE 1ST & 5TH RESPONDENTS:

4.1. The Company Petition is not maintainable, it is an abuse of process of Court, does not espouse grievance of shareholder and is unsustainable in law and on facts.

4.2. At the outset, it is submitted that the issues canvassed till para D(o) of the Company Petition have already been canvassed far more extensively by the Petitioner in earlier *CP/17/2017* before this Tribunal and the said Company Petition has been dismissed by detailed and reasoned order. The Petitioner has

gone in appeal to NCLAT against the said Order. In the circumstance, none of the said issues arise for consideration in the present Company Petition. To the extent the present C.P. seeks to canvass grievances and issues already adjudicated by the Tribunal, the Petitioner is barred by res-judicata and it is a gross abuse of process of Court.

4.3. The only other grievance canvassed in the Company Petition is related to the non-re-election of the 1st Petitioner as a Director at the AGM of the Company held on 30-09-2019. In this regard, the following submissions are made:

- a. The issue canvassed is not one qua shareholder.
- b. The parties have consciously incorporated the Respondent Company as a corporate entity and not as a Partnership. There is nothing on record to indicate that the parties intended the Respondent Company to be treated as Quasi Partnership or agreed to give representation to all shareholders in the Board at all points of time.
- c. There were seven Board Meetings and two Annual General Meetings held between 21st April 2018 and 30th September 2019. Notices for all of such Board Meetings were duly served on the Petitioner as evidenced by **Exhibit R-1 series**. There is no grievance in the CP, that the notices for such meetings were not served on the Petitioner. At all such meetings, the Petitioner either did not attend the meeting or deliberately refused to sign the Attendance Register. The

Attendance Register for all such meetings is **Exhibit R-2 Series**.

d. The Petitioner having filed an Appeal before NCLAT against order dated 11-07-2019 in CP/17/2017 passed by NCLT, deliberately delayed getting the papers passed by the Registry of NCLAT and in bringing it up for hearing before NCLAT.

e. The Banker of the 1st Respondent Company was State Bank of India. Deliberately, the Petitioner mis-used his status as Director of the Company and refused to execute the credit arrangement letter and other documents as sought for by SBI and this led to a very serious impasse with the Company's banker. SBI addressed a letter dated 29-08-2017 (**Exhibit R-3**) to the Petitioner with a copy to the Company in this regard. As a fallout thereof, the Company had to take up the issue with the bank vide their letter dated 11-10-2017 (**Exhibit R-4**) highlighting that the Petitioner was refusing to execute the documents, and that consequently, SBI may waive the personal guarantee of the Petitioner, and sanction the credit limit based only on the personal guarantee and execution of documents by the other directors. Even thereafter, the Respondent continued to make efforts to get the Petitioner to execute the document with the bank and addressed a letter dated 16-10-2017 (**Exhibit R-5**) in this regard. The Respondents also personally pleaded with the Petitioner in this regard. In the circumstances, SBI, vide letter dated 22-01-2018 (**Exhibit R-6**) refused a request for fresh limit made by the Company, and also cautioned the Company that the revival documents are due for execution in July 2018 and that if the documents are not executed by all Directors/ Guarantors, the bank would recall the limits and proceed to take action for enforcement against the Company and the

Guarantor/Directors. The Petitioner clearly orchestrated the entire situation as aforesaid by abusing his status as Director of the Company with a seriously malafide intent of bringing the Company to a financial crisis and liquidation.

f. In the context of the impasse with SBI and discomfort that SBI had with the Company resulting from the deliberate actions of the Petitioner, SBI kept increasing the interest rate on the borrowing of the Company from 11.15% to 12.5%. The additional interest was a direct loss to the Company. The statement of account reflecting the enhanced interest rates is Exhibit R-7.

g. Constrained by all of the aforesaid actions of the Petitioner, the Company was forced to move away from State Bank of India to Canara Bank. In fact, SBI in no uncertain terms indicated that they were not inclined to continue the limits for the Company in view of the conduct of the Petitioner. In the circumstance, the Company availed fresh limits from Canara Bank vide their sanction letter dated 17-08-2019 (**Exhibit R- 8**), and in such sanction ensured that the personal guarantee of the Petitioner was not insisted upon. The Respondents by such actions also brought about a reduction in rate of interest from 12.5% to 10.4%.

h. The Petitioner did not stop with creating problems for the Company with the bankers alone. The Petitioner caused complaints to be made to various statutory authorities including to Commissioner of GST, RDO and Government of Tamilnadu etc making false and reckless allegations merely to harass the Respondents and derail their management of the affairs of the Company. The evidence in this regard is Exhibit R-9.

i. The Petitioner disowned his own actions as a Director of the Company merely to spite the Respondents and cause wrongful loss to the Company. Having verified and approved payments towards purchase of cotton (Exhibit R-10 series) the Petitioner came forward with an allegation in *CP/17/2017* that such payments were wrongful. It is noteworthy that such allegation was made for the first time after several years, only in the Company Petition.

j. Similarly, on earlier occasions as well, the Petitioner had refused to co-operate with the other Directors. Grasim Industries Limited is the primary supplier of raw materials to the Respondent Company. They sought comfort letter during tight market situation. All the Directors barring the Petitioner executed such comfort letter (Exhibit R-11).

k. Even in *CP/17/2017*, the primary grievance canvassed was that the Petitioner should be a compulsory Joint Signatory to the operation of Bank Accounts. None of the other Directors had such authority vested in them. The Resolution only authorized any two Directors to jointly operate the Bank account. Therefore, at no point of time, was the Petitioner willing to work in a democratic environment.

4.4. It can therefore be seen that the Petitioner was indulging in act of oppression and acts detrimental to the interest of the Company and brought about wrongful loss to the Company. The Petitioner at all times only misused and abused his position as a director of the Company. The Petitioner was by his conduct deliberately refusing to maintain amity and good relationship with the Respondents, its bankers, its suppliers etc. In the

circumstance, majority shareholders were within their right to not re-elect the 1st Petitioner to the Board of Directors of the Company. There is nothing illegal or irregular or oppressive about such decision of the majority shareholders, when the majority has taken a decision keeping in mind the best interest of the Company.

4.5. In respect of issue of further capital and the prayer in this regard in the Company Petition, the following submission are made:

- a. The Company has been growing from time-to-time and a tabulation of the performance of the Company over last five years is given hereunder:

YEAR	GROSS	INCOME TAX	NETT
	PROFIT	PAID	PROFIT
31/03/2015	1,79,09,045	37,08,622	1,42,00,423
31/03/2016	2,03,69,162	43,38,412	1,60,30,750
31/03/2017	3,14,41,301	66,76,342	2,47,64,959
31/03/2018	3,26,17,780	1,14,31,670	2,11,86,110
31/03/2019	3,49,34,996	1,14,,40,766	2,34,94,230

- b. The growth of the Company required infusion of capital. The Respondents also felt that it would be appropriate to go in for an expansion and had prepared a Project Report for putting up 11,520 spindles and had prepared a detailed project report (**Exhibit R-12**). However, only because of the issues with the Petitioner, this could not be pursued. The majority of the shareholders feel it would be

appropriate for the Company to embark on expansion as otherwise, the Company would eventually lose out on economies of scale and also on market opportunities

- c. In the circumstance, stalling equity infusion is detrimental to the interest of the Company. There is also a debt burden on the Company which needs to be brought down by further equity infusion. The borrowing of the Company presently stands at Rs.9 Crores.
- d. There is no understanding between the parties that even for a rights issue of shares, the affirmative vote of the Petitioners is needed. The Petitioners can have a grievance if a preferential issue is attempted. To further the growth of the Company, if the majority genuinely believe that equity contribution is required, it is unfair and oppressive for the Petitioners to totally seek to stall equity infusion. The Petitioner can always exercise his choice of wanting to invest or not, but cannot stall the equity issue in toto.
- e. In the circumstance, as and when any issue is envisaged the Respondent undertake to opt for Rights Issue and not Preferential allotment of shares. But there is no justification to plead for a blanket ban on the issue of shares.

4.6. Without prejudice to the foregoing, the Respondents deny all allegations and averments in the Company Petition as if each such averment and allegation is specifically set out herein and traversed.

4.7. In respect of allegation upto paragraph D(4) of the Company Petition, the averments have been traversed in detail in the pleadings of the Respondents in CP/17/2017 and has culminated in order of the Tribunal dated 11-07-2019. The Respondent would refer to and rely on the same wherever necessary. The allegations contrary thereto are denied.

4.8. The allegation that the Company moved the Bank account from SBI to Canara Bank in order to avoid personal guarantee and property security of the Petitioner is a seriously false and misleading statement. The Petitioner deliberately refused to cooperate in executing documents, brought about caution letter to be issued by SBI, and further caused limits to be declined by SBI etc. Having been a party to this extremely oppressive action, the pleading in this regard in the Company Petition is disingenuous in the extreme.

4.9. It is submitted that AGM of the Company on 30-09-2019 was validly and properly convened and business properly transacted there at and the allegations to the contrary are denied. It is denied that the Respondent alienated the Petitioners or indulged in any oppression borne out by animosity. The Directors owe a fiduciary duty to the Company and the majority only acted in the interest of the company. It is denied that there was anything irregular in the Petitioner having been offered for retirement and re-election. It is denied that there is any violation

of the Articles of Association of the Company in not re-electing the Petitioner as a Director. It is denied that the Petitioner was a pillar of strength for the Company. It is denied that the Respondents are all related or that they have aligned in one group to commit any act of oppression. It is denied that there was any cotton purchase scam or that the Respondent indulged in any insinuating action, or action intended to side line the Petitioner.

4.10. The contention that there are irregularities in GST compliance is a false and vague allegation. In fact, the Petitioner attempted to cause certain proceedings to be initiated by the GST Department just to spite the Company which did not succeed. It is denied that there is any wrongful construction that has taken place or that any expenditure in connection with any construction is not properly accounted for. It is denied that there is any act of oppression or mismanagement or that there is any extremely prejudicial conduct. It is denied that principles of partnership will apply or that the Petitioner has any legitimate expectation which is to be met. It is denied that the AGM for the year 2019 was not properly conducted or that there was no deliberation at the meeting. The venue for the AGM was within the District, at an easily accessible hotel in the vicinity of the Mill, and the Petitioner did not have any difficulty in attending the meeting at the venue. It is denied that there is any unfairness meted out to the Petitioner. It is denied that the stake of the Petitioner entitles him to a Board Seat or proportionate representation. The remuneration

paid to the Directors is in consonance with the Companies Act, reasonable and commensurate to the work done, and the remuneration paid is only Rs.46 Lakhs in aggregate to all the 6 Directors which is a very reasonable sum and does not warrant interference. It is denied that there is any prima facie case or balance of convenience for grant of any relief.

4.11. It is therefore prayed that this Tribunal may be pleased to dismiss the Petition with cost and render justice.

5. **REJOINDER FILED ON BEHALF OF THE PETITIONERS**

5.1. With respect to the Counter that there is operation of res judicata and abuse of process by the Petitioners is specifically denied. It is submitted that there is neither res judicata nor any abuse of process. The Respondents do not appear to note if even the matter is amenable to challenge on the ground of res judicata, it does not constitute an abuse of process. The Petitioners state that the reason why certain background information has been given as fact of the part of the case in para No. D(a) to D(o) of the Petition including the information about the order of Tribunal dated 11th July 2019 and the Appeal against the said order is to establish clearly that the removal of the Petitioner No. 1 from the Directorship is an act of oppression (a) which is accentuated by malafides; (b) Intended to cause a permanent blow to the Petitioner No.1 and is prejudicial to the

interests of the Company; (c) Completely contrary to the principles of partnership with which the Company was formed and has been managed for several years and contrary to the legitimate expectation of the Petitioners who have founded and promoted the Respondent No. 1 Company. Therefore, the contentions in Para No.2 are absolutely untenable.

5.2. The Petitioners state that from the reliefs sought in the Petition, it can be understood that it is not a simple matter of non-election of Petitioner No.1. It is a matter of Oppression. It is a matter of malicious conduct of the Respondents. It is a matter stressing the need to regulation of the affairs of the Company and securing the paramount interest of the Company and for securing the economic interest of the Petitioners.

5.3. The Respondents state the issue canvassed is not qua shareholder. Unfortunately, throughout the Counter it appears that the Respondents seem to be backing on this particular theory which has been rejected in several decisions. Considering the facts of the case, it is not difficult to understand that the very subscription to the shares of the Company and the manner in which the affairs of the Company having been carried on for years, and the manner in and motive with which the Respondents have eliminated the presence of the Petitioners in the Board and management and have deprived the Petitioner No.1 of his statutory and other rights are forming the foundation

for this Company Petition arising from the stake of the Petitioners in the capital of the Company.

5.4. Petitioners reiterate the fact that the Respondent Company is essentially a quasi-partnership founded on the principles of partnership. There can be no denying of the fact that the Petitioner No.1 is the founder and promoter of the Respondent Company right from the date of its incorporation dating back to 29th October 2010. It is also on record that it was Petitioner No.1, who had contributed to a major stake in the capital of the Respondent Company. Further the Respondents cannot turn a blind eye to the fact that Petitioner No.1 was also solely responsible for the management and administration of the affairs of the Respondent Company, including signing the cheques as a sole signatory on behalf of the Respondent Company. Further the solid fact is that the Petitioners have not indulged in any oppressive, malicious, illegal or fraudulent acts like the Respondents.

5.5. The Petitioners submit that the allegation that Petitioner No.1 did not either attend or deliberately sign the attendance register shows to what extent they are answering on facts and to what extent they have gone through their own records. They won't be able to answer on the mockery of sorts they do in the name of Board meetings. They don't send proper notes and agenda they simply follow what the auditor says who has lost

his independent position in 2015-16 itself. They don't send accounts in advance for studying. From the minutes of the meetings, it is not difficult to note the presence of the Petitioner. The Company has made false recording in the Annual return an **"extract of which is enclosed"**. Further it is nothing but a deliberate action on the part of Respondents not to get the attendance register signed by the Petitioners.

5.6. The Petitioners state that unnecessary allegations have been made against them and Petitioners vehemently object to the allegations with regard to deliberately causing delay in obtaining the papers from Registry of the Hon'ble National Company Law Appellate Tribunal. The Petitioner see no object of the Respondents in throwing such meaningless allegations.

5.7. The respondents are advised to look at the way they had surreptitiously altered the mandate for operating the Bank account. Their contention about revival deadline gets demolished by the date of their moving to another Bank. There was no such threat of enforcement. These are self-serving and convenient allegations to justify their oppressive acts. The real reason is that State Bank of India had understood how the Respondents had misused short term funds for constructing buildings which were unauthorized and illegal.

5.8. It is stated that the documents enclosed do not in any manner suggest that it was due to any action or inaction attributable to Petitioner No.1 rate of interest was increased. Even the previous rate of interest charged by State Bank of India was higher than what Canara Bank has offered in 2019. There is not even any letter or any recording in the minutes that State Bank of India had increased interest rate on account of anything done or omitted to be done by the Petitioner No.1.

5.9. With reference to Para No.3(g), the Respondents are put to strict proof of their allegations. Having moved to Canara Bank for the purpose of eliminating Petitioners from the management of the Company, the Respondents have come up with these allegations. In the previous Company Petition (CP.No.17 of 2017), it was stated by the Petitioners that he had offered his personal guarantee and property. In order to overcome this aspect, the Respondents have done this. It is the Respondents who had taken away the powers of the Petitioner No.1 by manipulating the records. It is as a result of such oppressive act; Petitioner No. 1 was constrained to correspond with the banker.

5.10. Even in the minutes of the meeting held on 21st April 2018 and on 30th March 2019, the subject matter of discussion was a letter received from State Bank of India dated 4th March 2019 and it is recorded that the Board requested Petitioner No. 1 to offer his personal guarantee and property and security. In the

sanction letter dated 17th August 2019 issued by Canara Bank, it is stated that as though there is going to be a change shareholding pattern. The Respondents have not brought on record any meeting of the Board of Directors in which there is any proposal to borrow from Canara Bank. There is no approval of the Board for the same. Even for the so-called proposal submitted to Federal Bank, there is no approval of the Board. No document has been produced with respect to the approval of the Board for borrowing from Canara Bank. No record has been produced on the alleged refusal of Petitioner No.1 with respect to offering his personal guarantee. From the letter dated 11th October 2017, addressed to State Bank of India by Respondent No.1, it is clear that their agenda in 2017 itself was to remove these obligations so that they are able to show that the Petitioner's presence is not required for running of the Company. The Petitioners put these Respondents to strict proof with respect to the Board Meeting in which decision was taken to borrow from Canara Bank and the board Meeting in which the sanctioned loans and facilities and terms and conditions imposed by Canara Bank were approved.

5.11. It is the misdeeds of Respondents; the Petitioner No.1 was called upon by Goods and Service Tax Authorities (GST Authorities) to explain. The evidence in Exhibit R9 pertains to irregular and unauthorized construction activity undertaken by the Respondent No. 1 Company.

5.12. The Petitioner No.1 reiterates that it is not difficult to understand why Respondents played a fraud and manipulated Board record and oppressed the Petitioner No.1 by surreptitiously altering the Bank account operating mandate. If the allegation that Petitioner No. 1 was not sitting to work in a democratic environment is true, it is not clear how until 2016, affairs were smoothly managed. It is the Respondents who were caught when they fabricated invoices to make money on the sly and when they carried out unauthorized buildings and when they make meetings a mockery of sorts.

5.13. The Respondents are advised to take a look at the main relief(s) prayed for in the Company Petition. The Petitioners have no objection to any rights issue made for a bonafide purpose at a fair price. The Petition is for regulating the affairs of the Company and proportional representation and to ensure restoration of rightful entitlement of the Petitioners and to protect the stake of the Petitioners.

5.14. The Petitioners state that no discussion ever took place in any Board meetings nor was any perfect report shared with the Petitioner No.1 at any time. The records enclosed to the Counter itself prove the same.

5.15. The Respondents have manipulated Board Meetings in collusion with auditors in August 2016 and oppressed the

Petitioner No.1. It is their act that they removed the supervisory control Petitioner No. 1 had been having.

5.16. The Petitioners state that the action of majority in acting in concert and removing the directorship of Petitioner No.1 has nothing to do with fiduciary role of directors. From their conduct it is clear that they have ganged together ever since their alleged Board Resolution of 16th August 2016 / 22nd August 2016. Their acts are oppressive and accentuated by mala fide. The contentions that Petitioners are not entitled to Board seat is invalid and oppressive. The averment about venue of AGM 2019 is irrelevant.

5.17. It is pertinent to note that the Respondent Company, had since its incorporation been solely under the management and administration of the Petitioner No.1. Therefore, the Respondents contention that it is not bound by the principle of partnership is contrary to the manner in which Respondent Company was formed and has been functioning since incorporation.

6. WRITTEN SYNOPSIS OF ARGUMENTS OF THE PETITIONERS

6.1. Petitioners are victims of continuous oppression caused by Respondents who have ganged up together to eliminate and oppress the Petitioners despite the core fact that Petitioners hold

22% stake in the Company and Petitioner No.1 is the founder, promoter, subscriber and first director of the Company.

6.2. Oppression takes many forms and oppression caused to the Petitioners is required to be seen from the angle of small companies formed by persons of same community who view position and power as a status symbol and for achieving the same they put all their hard-earned savings and devote all their time in such business.

6.3. Until August 2016, Petitioner No.1 was handling the management of the finances of the Company and operating the bank account ever since its incorporation. In August 2016, the Respondents ganged up to pass a resolution to alter the mandate for operating bank account of the Company merely because the Petitioner No. 1 had raised certain objections to the manner in which a few directors have been booking fictitious purchases of cotton by fabricating way bills.

6.4. No doubt, immediately after such side lining the Petitioners had moved the Company Petition *CP.No.17 of 2017* which was disposed of by order of this Hon'ble Tribunal dated 11th July 2019. The allegations contained in the said CP included inter alia the oppression caused to the founder promoter by altering the mandate for operating the bank account of the

Company without assigning any reasons and without the Petitioner No. 1 committing any wrongs.

6.5. An appeal preferred against this decision too was dismissed by the Hon'ble NCLAT in Company Appeal (AT) No.299 of 2019. In the judgment and order dated 24th June 2020 Hon'ble NCLAT held that change in mandate for operating Bank A/c would not constitute oppression relying on its own decision in Upper India Steel Manufacturing (Para 35). The decision of Hon'ble NCLAT has been filed before this bench vide a memo dated 11th October 2020 by the Respondents.

6.6. Respondents thought that they can do anything and get away with the same. They went about oppressing the Petitioner No. 1 further deeply and harshly. With bank account operation in their hands, the Respondents went about in an unbridled manner not only to eliminate the Petitioner No. 1 totally but also indulge in making money on the sly in several ways which only a scrutiny of books of account will reveal.

6.7. Petitioner No. 1 suffered serious mental agony caused by the series of oppressive acts resulting elimination and nullifying the Petitioners from the Company and shattering their legitimate expectations in a grossly unfair manner. Unable to bear with the grossly unfair and oppressive conduct of the Respondents, the Petitioner No. 1 had no other go except to knock the doors of this

Tribunal seeking justice in exercise of its equitable jurisdiction. There has been a material change brought by the Respondents in the management of the affairs of the Company entitling the Petitioners to invoking the laudable jurisdiction of this Tribunal by filing *CP.No.1097 of 2019*.

6.8. Their next agenda was to remove the directorship of the Petitioner No.1 so that his presence will not be there at all at the Board Meetings also whereby he will be totally kept in dark from the Board also. Firstly, by removing the bank account operation from his hands and next by removing ingeniously his directorship and during this CP by altering the shareholding pattern too to reduce his stake once and for all. Thus, the course of events from 2016 clearly establishes oppression caused to the Petitioners in a calculated manner. Similarly, in order to eliminate the need for support of the Petitioners, the Respondents changed the bankers of the Company itself from State Bank of India to Canara Bank so that his properties and personal guarantees too are rendered unnecessary. Further, the Respondents had insulted the Petitioner No.1 by instructing even accountants not to share any information with the Petitioner No.1.

6.9. At the AGM held on 30th September 2019, the Petitioner No.1 was removed in the guise of retirement by rotation and majority Shareholders did not vote in favour of his re-

appointment. The AGM Notice is in Page No. 17, Directors report is in Page No. 182. The number of directors to retire and those who were made to retire itself is a farce (Ref Para (r) to (k) of the CP). This is not only contrary to law but is a deliberate act of oppression constituting a permanent oppression and brings about a material change in the management and control as stated in Section 241(1)(b) and are being conducted in a manner oppressive of and prejudicial to the Petitioners as major Shareholder as Stated in section 241(1)(a).

6.10. While all the above oppressive acts of the Respondents are pending adjudication in the CP 1097 of 2019, the Respondents took up their next malicious agenda of reducing the stake of the Petitioners (22 Paise in every rupee) even when this Tribunal had protected the rights of the Petitioners by issuing an order to maintain status quo in shareholding pattern on 23.10.2019.

6.11. The Respondents with an intention to reduce the stake of the Petitioners, came up with a letter of offer dated 20.12.2021 in the guise of a rights issue. Immediately, the Applicants vide letter dated 24.12.2021 raised their objection to the proposed issue of shares on rights basis and clearly stated that the entire proposal is contempt of order dated 23.10.2019 of the Tribunal. There are several illegalities and infirmities in this offer besides being oppressive and violative of orders of this Tribunal.

6.12. It is submitted that, the Notice of AGM held in 2021 speaks about increasing the authorized capital for the purpose of strengthening the financial position and meeting growth objectives. However, at the same AGM there was a proposal to alter the main object of the MOA.

6.13. Thereafter, left with no option, the Petitioners had to take out an Application (CA.No.1 of 2022) to challenge the Rights issue. This rights issue is entirely oppressive and illegal with the twin agenda of reducing the stake of the Petitioners and further obtaining a higher stake *without a fair valuation of shares* knowing fully well that the Petitioners would not subscribe to further issue of shares until their grievances are remedied.

6.14. In **Re.A company, (No.007623 of 1984) 1986 BCLC 362**, it was held by Hoffmann J *"Nevertheless, I do not think that the bone fides of the decision or the fact that the petitioner was offered shares on the same terms as other shareholders necessarily means that the rights issue could not have been unfairly prejudicial to his interests. If the majority know that the petitioner does not have the money to take up his rights and the offer is made at par when the shares are plainly worth a great deal more than par as part of a majority holding (but very little as a minority holding), it seems to me arguable that carrying through the transaction in that form could, viewed objectively, constitute unfairly prejudicial conduct."*

6.15. Here also in the name of rights issue Respondents have obtained shares of the Company at face value. In order to support their agenda, in the name of a stipulation from Bankers they have stated that they are increasing the share capital forgetting for a minute that the Bank has not asked them to do the same by hook or crook. Further, they are in contempt of the orders of this Tribunal.

6.16. It is submitted that the Respondent instead of filing their Counter to the Company Application filed only a Memo dated 22nd March 2022 and the only point, the Respondents are trying to establish was that the Company had to increase the share capital pursuant to a condition stipulated by bankers.

6.17. Thus, this CP is about a consecutive story of oppression caused to the Petitioners who the major shareholders of the Company with all others were having individually holding about 16% of the capital only. This is a story of back stabbing and kicking down the ladder after climbing. Company being an entity formed on the principles of partnership, the Petitioners have a legitimate expectation that they will be on the Board and participate in the management of the day-to-day affairs of the Company. The Respondents have created a new equation in the management of the Company.

6.18. More so when seen from the angle of a company formed by members of the same community who joined together to invest their funds and go about managing the business of the Company in a particular manner. When the arrangement for the Petitioner is to have 22 paise for every rupee, it reflects and tells a lot about the foundation of their understanding and any attempt by persons holding 78 paise in every rupee who have ganged up in their common agenda to eliminate the Petitioners and destroy the said foundation is contrary to principles of partnership and throw the legitimate expectations of the Petitioners to winds establishing that it is just and equitable to wind up the Company.

6.19. The Respondents contend that the filing of earlier CP No. 17 of 2017 and disposal of the same constitute Res judicata. This contention is invalid. They are put to strict proof thereof. The narration of oppressive acts which were covered by the earlier CP is only to show the consecutive story and to explain how the Respondents had ganged up together in eliminating the Petitioners from the management of the Company, removing bank account operating powers first, switching over to another Bank to render his presence insignificant, removing his directorship to put him in total dark and ultimately giving a final hard blow by increasing the share capital and reducing the stake of the Petitioners.

6.20. Nothing precludes this Tribunal from taking note of the course of acts and the design perpetrated by the Respondents to hijack the management of the Company Para 2 of Rejoinder dated 13th March 2020 explaining the position clearly.

6.21. The Petitioners submit that the jurisdiction conferred upon this Tribunal is for protecting the rights of minority shareholders and any order to uphold the acts of Respondents would only be paying a premium to the oppressors. Their acts have seriously jeopardized the rights of the Petitioners.

6.22. In the above facts and circumstances and considering the judicial precedents and in exercise of the equitable jurisdiction conferred upon this Tribunal, the Petitioners seek justice praying for the grant of reliefs as prayed for and to grant such other relief(s) and to pass such other orders as this Hon'ble Tribunal may deem it fit to pass and thus render justice.

7. WRITTEN SYNOPSIS ARGUMENTS FILED BY RESPONDENTS

7.1. The Company Petition is barred by res judicata and it is vexatious. The issues raised in the Company Petition, have already been fully canvassed by the petitioner in the earlier *CP No 17 of 2017* which was also filed as a petition before NCLT u/s 241 pleading oppression and mismanagement.

7.2. The Company Petition in *CP 17 of 2017* was dismissed by NCLT vide order dated 11.07.2019 and the same was upheld by Appellant Tribunal vide order dated 24.06.2020.

7.3. The prayers in the Company Petition for proportionate representation in board, remuneration to other directors were raised in the prior petition and were not granted by NCLT / NCLAT. Therefore, the Company Petition is liable to be dismissed *in limine*.

7.4. The current *CP 1097 of 2019* was filed during pendency of Appeal before Hon'ble NCLAT in *Company Appeal AT 299 of 2018*. Hon'ble NCLAT had subsequently dismissed the appeal. The present Company Petition is therefore for all purposes, infructuous and vexatious.

7.5. In terms of decisions in *LIC vs Escorts Ltd & Ors (1986(1) SCC 264)* and *Invesco Developing Markets Fund vs Zee Entertainment Enterprises Ltd reported in (2022) SCC Online Bom 630* , which has been followed recently by NCLAT in the matter of *AAPICO Hitech Public Company Ltd & Ors vs ABT Ltd & Ors Company Appeal (AT) (CH) No 27 of 2022*, shareholders have the prerogative to elect directors and remove them and no injunction should normally be granted to restrain implementation of such shareholders resolution.

7.6. The petitioners have not been attending Board Meetings and General Meetings for a very long period of time.

7.7. Petitioners acted against the interest of the company. The petitioners refused to execute routine loan renewal documents with State Bank of India. Therefore SBI kept charging penal interest against the company. Eventually the company had taken steps to move away from SBI to Canara Bank excluding personal guarantee of the petitioners.

7.8. The petitioners disowned their own actions and disowned transaction to which they were signatories causing enormous problem to the company.

7.9. The petitioners made false allegations regarding construction of superstructure to Government authorities.

7.10. The company has not done any preferential allotment of shares and only went for rights issue, thereby ensuring that the shareholding pattern is not distorted.

8. **FINDINGS:**

8.1. Heard the counsels of the applicant and respondents.
Perused the submissions made.

8.2. As mentioned by *Hon'ble NCLAT in Cyrus Investments Pvt Ltd & ors Vs Tata Sons & Ors in Company Appeals AT No 133 and 139 of 2017*, the initial question for determination is

'whether the petition preferred by appellants under Sections 241 or 242 of Companies Act is maintainable? In other words, whether the appellants qualify the condition of holding minimum 1/10th of the "Issued Share Capital" of the 1st Respondent Company'?

8.3. In the current case, even after the alleged share issue, as advised in the letter of the 1st Respondent to the Petitioners on 25.01.2022, it was advised that the shareholding of the petitioners was diluted to 10.93% from 21.86% owing to the lack of participation in rights issue. So the petitioners were having more than 10% shareholding even after dilution and the petition filed by the Petitioners is maintainable.

8.4. In the pleadings, various other areas, not relating to the reliefs claimed in the petition and appeal, were discussed by both the parties which were covered in the earlier *CP 17 CHE 2017* decided by NCLT on 11.07.2019 and *Company Appeal AT No 299 of 2019* decided by Hon'ble NCLAT on 24.06.2020. These pleadings, which have no bearing on the reliefs sought are not taken cognizance of in the current judgement.

8.5. As the petition and application are being considered for the final disposal, the various interim reliefs claimed in the petition and application are not being considered.

8.6. **The main issues raised in the prayers / reliefs sought in the petition and application, one by one.**

- a) To declare the resolution passed at AGM 2019 rejecting the reappointment of Petitioner No. 1 in the guise of retirement of directorship by rotation as oppressive and to set aside the said Resolution.*
- b) To restrain the respondents from in any manner interfering with the Petitioner's participation in the management of the company.*
- c) To declare that holding Board meetings without the presence of Petitioner no 1 by removing his directorship is oppressive.*

8.7. It is stated that the Articles of Association not only states that one third of directors shall retire by rotation but also states that the retiring directors are eligible for reappointment. It is stated that but for the oppressive action of respondents voting against reappointment, the directorship of Petitioner No 1 would not have ended.

8.8. The number of directors to retire and those who were made to retire is contrary to Articles of Association and Under

Section 10 of Companies Act, Articles of Association is binding on the company.

8.9. It is stated that there were seven directors in the company and one third of them shall retire and are eligible for re-appointment. It is stated that in the Annual General Meeting 2019 it was proposed that 4 directors would retire and are eligible for reappointment and this itself would expose the design of the respondents.

8.10. The relevant portion of minutes of Ninth General Body Meeting dated 30.09.2019 is as under:

5. To elect a Director in the place of Shri.S.P.Velumani who retires by rotation at the end of this meeting and being eligible , offers himself for reappointment.

Proposed by Mr. R.Karthikeyan

Seconded by Mr. M.Parthiban

Resolved that pursuant to Section 152 and other applicable provisions, if any , of the Companies Act 2013, read with Article 20 of the Articles of Association of the company, be and is hereby re-appointed as a Director of the company whose office is liable to retire by rotation.

Chairman announced passing of the above resolution through voting by show of hands. 26 shareholders having in aggregate 1014270 votes, voted against.

Thereafter, Chairman declared that the above ordinary resolution was passed with requisite majority.

In the light of the foregoing resolution not to reappoint Mr. S.P. Velumani, an ordinary resolution not to fill the vacancy caused by non re-election of Mr. S.P.Velumani was

Proposed by Mr. P.Sathasivam

Seconded by Mr.M.P. Chandrasekaran

The text of the resolution proposed and seconded reads as follows:

Resolved that pursuant to Section 152 and other applicable provisions if any of the Companies Act 2013, the vacancy created by non-reelection of Mr. S.P.Velumani as Director of the Company be not filled up.

On being put to vote by show of hands, the above ordinary resolution was passed by majority/ unanimously.'

8.11. Let us examine what the Articles of Association of Respondent No 1 Company says about retirement by rotation and re-election. *Clause 20 of the Articles of Association states as under:*

' 20. The first directors of the company shall be

- 1. NATESAN.A*
- 2. PARTHIBAN.M*
- 3. PRABHALARAN.P.C.*
- 4. RAJU.P*
- 5. SATHASIVAM.P.*
- 6. VELUMANI.S.P.*
- 7. KARTHIKEYAN.R.*

One third of the Directors including the First Directors, shall retire at the end of every Annual General meeting and they shall be eligible for the reappointment.'

8.12. In the pleadings made by the Petitioner, it is stated that four directors were proposed to retire in AGM 2019 as against 1/3rd directors (Total number of directors being 7). A chart containing number of directors retiring by rotation each year was is furnished as under:

Year/ Date of AGM	Number of directors retiring by rotation
29.09.2014	3
30.09.2015	3
30.09.2016	4
30.09.2017	3
26.09.2018	3
30.09.2019	4

8.13. On scrutiny of the chart, it is observed that not only in 2019, earlier also in 2016, four directors retired by rotation. Hence the contention that it was only in 2019, four directors were chosen for retirement by rotation is not valid.

8.14. It is an established fact that shareholders have the fundamental right to elect or not to elect the directors who offer themselves for appointment/ re-appointment. This has been upheld in *LIC vs Escorts Limited & Ors (1986 (1) SCC 264)* and *Invesco Developing Markets Fund vs Zee Entertainment Enterprises Ltd reported in 2022 SCC Online Bom 630*, which has been followed by NCLAT in the matter of *AAPICO Hitech Public Company Ltd & Ors vs ABT Ltd & Ors Company Appeal AT CH No 27 of 2022*, wherein it is stated that shareholders

have the prerogative to elect directors and remove them and no injunction should normally be granted to restrain implementation of such shareholders resolution.

8.15. Hence, the issue is decided against the petitioners and in favour of the respondents.

8.16. ***To set aside Payment of remuneration to whole time directors No.2 to 8 given to the Respondents in violation of Articles of Association of the Company.***

8.17. It is stated by the Petitioner that the Respondents have cleverly excluded the Petitioner from remuneration to directors. It is an oppressive act perpetrated by the respondents 2 to 7. However, the remunerations of all directors were revised except that of Petitioner No 1.

8.18. Petitioner have cited the case of **Gurmit Singh and Ors. V. Polymer Papers Ltd. And Ors. (2003 SCC OnLine CLB 31)**, where the Hon'ble Bench observed as follows:

25. In the same case, it is also observed in Paragraph 24 that *"Further, the petitioners have also invoked the principle of legitimate expectations. In cases of legitimate expectations, the denial of the same could be considered oppression. Referring to the observations of the board in the Tirath Ram Ahuja's Case [2004] 199 Comp Cas 385, "when certain groups of*

shareholders who have formed a company and have been participating in the affairs of a company for a long time with remuneration, then there can be a presumption of legitimate expectation and exclusion of one from the management can be an act of oppression. The court finally noted: "I have no hesitation to come to the conclusion that the principles of quasi partnership and legitimate expectation can be applied in the present case."

8.19. Let us examine the relevant provisions of Articles of Association and also the resolution passed in General Meeting regarding the remuneration and also regarding the contention that there is a legitimate expectation. Clauses 26, 27 and 32 of *Articles of Association* talk about remuneration of the director as under:

26. The remuneration of a director shall be such sums not exceeding Rs.250 per each meeting of the Board or of a Committee thereof attended by him as the Board may determine from time to time. The directors may also be paid all travelling, hotel and other expenses for attending the meetings of the Board or a Committee thereof or a general meeting of the company or in connection with any business of the company.

27. Subject to the provisions of Section 314 of the Act, if any director shall be appointed to advise the Board as and expert or be called upon to perform extra services or make special exertions for any purpose of the company, the directors may pay such director special remuneration as they think fit, which remuneration may be in the form of either a salary, commission or lump sum in addition to the remuneration specified in Article 26.

32. The remuneration of Managing Director or a Whole Time Director by shall from time to time be fixed by the directors and by way of fixed salary or commission on profits or turnover of the company

8.20. The resolution regarding payment of remuneration to Directors passed on the 9th Annual General Meeting of Magnum Spinning Mills India Private Limited, held on 30th September 2019 is as under:

Resolved that pursuant to the provisions of Section 196,197 and 203 and all other applicable provisions, if any of the Companies Act 2013 read with Schedule V to the said Act and Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 and as per Articles of Association of the company and subject to such other approvals or sanctions as may be required, consent of the Company be and is hereby accorded to approval the remuneration fixed by the Board of Directors to Mr. A. Natesan , Mr. R. Karthikeyan, Mr. P. Raju, Mr. P. Chandrasekaran and M. Parthiban , Directors of the company. Carried unanimously.

8.21. It is stated regarding the remuneration paid to the respondents that the company was growing and the Net Profit for the company had steadily increased as under Rs.1.42 crore (Mar 15), Rs. 1.60 crore (Mar 16) , Rs. 2.47 crore (Mar 17) Rs. 2.12 crore (Mar 18) and Rs.2.35 crore (Mar 19) and the remuneration paid to the 6 directors in aggregate was only Rs.46 lakhs for the financial year vis-à-vis the net profit of Rs.2.35 crore.

8.22. In the counter filed the respondents regarding non-payment of salary to Petitioner 1 they have contended that the petitioner had not attended the Board Meetings and General meetings for a long time and hence no remuneration was paid to him. To substantiate that minutes of the Board meetings held on these dates 21st April 2018, 17th August 2018, 22nd November 2018, 20th February 2019, 30th March 2019 , 26th June 2019, 30th August 2019 were produced as Annexures. It is observed that the Petitioner had not signed the attendance sheet in any of the minutes of the meetings. Without discharging the duty as director expecting a remuneration is not correct. Hence the principle of legitimate expectations cannot be extended to this case.

8.23. The issue is decided against the petitioners and in favour of the respondents.

8.24. Rights issue is oppressive, invalid and illegal. Allotment of shares with intent to bring down holding of petitioners and is in contempt of the order of the tribunal dated 23rd October 2019.

8.25. It is stated by petitioners, that the respondents are relying on terms of sanction of Canara Bank in letter dated 07.12.2020 to contend that certain unsecured loans have been converted into equity capital. It is stated that the respondents

have come out with rights issue to reduce the stake of petitioners.

8.26. Regarding the rights issue and unsecured loan, the respondents stated that this was duly discussed and approved in the Board Meeting held on 13.12.2021, as under:

- i) Sanction Memorandum of Canara Bank dated 08th January 2020, where stipulation of margin money of Rs.2.08 crore to be brought upfront was submitted and discussed.
- ii) Sanction Memorandum of Canara Bank dated 07th December 2020 stipulating the promoters to bring in Rs.9.20 crores as Promoters contribution, to bring in Rs.4.50 crore as unsecured loan and later to convert the unsecured loan to equity was discussed
- iii) Sanction Memorandum of Canara bank dated 18.09.2021 sanctioning additional cash credit limit of Rs. 7 crore stipulating promoters to bring Rs. 1.70 crore as their contribution was discussed
- iv) Total sum of Rs.12.98 crore was proposed to be raised (Rs.7 crore + Rs. 2.08 crore + Rs.1.70 crore) by way of rights issue.
- v) It was recorded in the minutes that '*the necessity to allot Rs.4.50 crore (out of the Rs. 9.20 crore) on the right basis towards unsecured loan brought in by the Promoter shareholders as detailed herein above and the balance right shares to the tune of Rs.8.48 crore on right basis to the existing shareholders in the ratio of 1: 1.'*

vi) the resolution for rights issue was passed with various terms and conditions including :

' ... iii) In respect of the Promoters who have brought in unsecured loans as required under the sanction letter, to the extent of unsecured loan amount outstanding, the same will be adjusted towards share consideration and the promoters will be required to pay in cash for any right shares not covered under the secured loan amount' .

vii) Resolution was passed that a total of 12,98,000 shares on 1:1 rights basis is being offered to existing shareholders (petitioners and respondents). In the resolution, it was discussed that, *if certain portion of rights issue is not subscribed, the Board of Directors are authorized to dispose of the unsubscribed part of the new shares in such a manner as they think most beneficial to the Company.*

8.27. It is found that on 20th Dec 2021, a letter of offer was made to the existing shareholders proposing an issue of equity shares on the rights basis 12,98,000 equity shares in the ratio of 1:1 for the shares held by existing shareholders.

8.28. The petitioners have not subscribed to the rights issue. However, in PAS 3 filed by the company it is shown that entire 12,98,000 shares had been allotted on 04.02.2022.

8.29. It is stated by the petitioners that this act of rights issue and handling of unsubscribed portion is in violation of the

protection granted by the tribunal that share holding pattern cannot undergo any change without the leave of the tribunal. Further, it was contended that issue of rights issue at par without obtaining fair value of the shares was not proper.

8.30. Respondents stated that the share issue was a rights issue and not a preferential issue. Due notice of offer by mail and registered post were sent. Respondents further stated that 1st Respondent company again wrote to the Petitioner on 25.01.2022 stating that even if the petitioner was to remit the money at that juncture, the company was willing to make allotments to the Petitioner. Petitioner failed to make remittance thereafter.

8.31. Regarding the unsecured loan getting converted to equity shares in the rights issue, the respondents stated that this has been discussed in detail in the Board Meeting.

8.32. Our view is as under:

- (i) Rights issue of 1:1 shares by the company gave equal opportunity to both petitioner and respondents to subscribe.
- (ii) The petitioner got the notice for rights issue and chose not to subscribe. The case law of **company** , **(No. 007623 of 1984) 1986 BCLC 363** cited by Petitioner is not applicable as in that case petitioner did not have money to subscribe the rights issue.

- (iii) A company comes out with the rights issue for infusion of capital for expansion of business and the amount is decided based on the future projections of the capex proposed for the company. If a portion of rights issue is not subscribed, then the Board of Directors, in the best interest of the company, can ask the remaining shareholders to subscribe the unsubscribed portion, so that the expansion projects are not stalled.
- (iv) As all the existing shareholders get the rights proportional to their existing share holdings during rights issue, it does not matter whether the rights issue is made at par or with premium. Only in the case of preferential issue, the valuation matters.
- (v) Again in rights issue, the existing shareholders subscribe to the shares in proportion to their existing shareholding, there was *no violation of the tribunal's order that share holding pattern cannot undergo change*. The petitioner not choosing to subscribe the right issue resulted in the reduction in his shareholding percentage.
- (vi) The contention that part consideration for rights issue by respondent was by conversion of unsecured loan giving unfair advantage to respondents is not correct as the money / consideration had come to the company by way of unsecured loan earlier and that amount only is getting converted to equity share.

8.33. The issue is decided against the petitioners and in favour of the respondents.

8.34. *To direct the Respondent No. 1 Company and Respondents to alter the composition of Board of Directors giving a proportional representation to the Shareholders groups so that each group has a proportional representation; for instance, if 6 Directors represent 77.5%, Petitioners side would have 2 Directors Shareholders groups so that each group has a proportional representation for instance, if 6 Directors represent 77.5%, Petitioners side would have 2 Directors*

8.35. This prayer has been dealt with in CP 17/ CHE / 2017 In CP 17/CHE/2017, this tribunal vide its order dated 11th July 2019 has dealt with the above plea in para 47 of the order as under:

“----- However in the case of private limited company, the Articles of Association can prescribe the method to appoint any and all directors . In case the Articles are silent, the directors must be appointed by shareholders. In the case on hand the Articles of the 1st Respondent Company provide that any person whether a member of the company or not , may be appointed as director of the company and no qualification by way of shareholding shall be required from any director, Therefore in the absence of any provision in the Articles of Association or

Shareholders agreement, the 1st Respondent Company cannot be forced to have a proportionate representation on the Board. ----"

8.36. The order of NCLT in CP 17 CHE 2017 was challenged. However the same was upheld by Hon'ble NCLAT in *Company Appeal AT 299 of 2018* and the appeal was **dismissed**.

8.37. We concur with the views of the NCLT which have been upheld by Hon'ble NCLAT with regards to proportional representation.

8.38. *To direct the Company and the Respondents to follow the applicable provisions and Secretarial Standards with reference to Board Meetings and General Meetings so that the management of the affairs of the Company is regulated and conducted in a transparent manner without putting into jeopardy the interest of any Shareholders or other stakeholders.*

8.39. The petitioners stated that the Board Meetings and General Meetings held were eyewash only. AGM 2019 was over in 10 -15 minutes without any discussion. Suddenly the respondents announced that the Resolution for reappointment of petitioners has got defeated by show of hands, even before the petitioner could understand what was going on. AGM 2019 was

held in a hotel which is 45 kms away from the Registered Office of the Company. This is in gross violation of the provisions of Section 96 of the Act. Sankari is a separate taluk. Chinnagoundanoor is a village.

8.40. The respondents have submitted that the venue of the AGM was within the same district, at an easily accessible hotel in the vicinity of the mill and the Petitioner did not have any difficulty in attending the meeting at the venue. The respondents denied that there was any unfairness meted out to the Petitioner.

8.41. Section 96, first proviso, sub clause 2 , added to Companies Act with effect from 13.06.2018 states that

' provided that annual general meeting of an unlisted company may be held in any place in India, if consent is given in writing or by electronic mode by all members in advance'.

8.42. No such consent has been produced by the respondents. Instead, the respondents have produced the minutes of seven Board Meetings and two annual general meetings between 21st April 2018 and 30th September 2019. All these meetings, during the above relevant period, were held at Salem, where the alleged AGM of 2019 was also held. They were not held at the registered office of the company. The Petitioners had received the notices for all these meetings and had not raised any objections in spite of them being director and

shareholder of the company. An implied consent from the members and directors can be presumed. Hence, the petitioners are estopped from taking this plea now, for the Annual General Meeting.

8.43. Further, the recording of the minutes of the AGM 2019 reveal that all the agenda items were discussed and voted by the members present. The voting was declared as passed based on the show of hands.

8.44. Section 107 of the Companies Act 2013 states

' 1. At any general meeting , a resolution put to vote of the meeting shall , unless a poll is demanded under Section 109 or the voting is carried out electronically, be decided on a show of hands.'

So no irregularity is found in voting by show of hands

8.45. The issue is decided against the petitioners and in favour of the respondents.

CONCLUSION:

9. In view of the facts, circumstances and the legal position stated above, the acts complained of are neither falling within the purview of oppression nor mismanagement. Therefore CP/1097/2019 and

Company Application 1 of 2022 are **dismissed**. Interim order, if any, stands vacated. There is no order as to costs.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)