

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-10-2023 AT 10:30 AM**

Invn. P 4/2023 in CP No.117/241/HDB/2020
u/s. 241 of Companies Act, 2013

IN THE MATTER OF:

Yogesh Kumar Agarwal

...Petitioner

VS

Arpana Iron and Steels Pvt Ltd & 2 others

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

CP No.117/2020

Orders pronounced. In the result, Company Petition is dismissed and the petitioner is directed to pay the costs of Rs.5 lakhs.

Inv. P 4/2023

As CP No.117/2020 is dismissed, this **Intervention petition 4/2023 is dismissed as not maintainable.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No. 117/241/2020

Under sections 241 and 242 of the Companies Act, 2013.

[As amended vide Memo dated 14.02.2020 filed by the petitioner]

IN THE MATTER OF

Yogesh Kumar Agarwal
8-2-603/M/13, Road No.10
Banjara Hills, Hyderabad
Telangana – 500037.

.... Petitioner

Versus

- 1. Aparna Iron & Steels Private Ltd.**
Registered office at: 5-4-33/4
Sterling Apartments, Distillery Road
Secunderabad, Telangana – 500003.
- 2. L.N. Agarwal**
8-2-603/M/14, Road No.10
Banjara Hills, Hyderabad
Telangana – 500037.
- 3. Praveen Kumar Agarwal**
8-2-603/M/14, Road No.10
Banjara Hills, Hyderabad
Telangana – 500037.

.... Respondents

Date of Order: 09.10.2023

Coram:

**HON'BLE DR. VENKATA RAMAKRISHNA
BADARINATH NANDULA, MEMBER (JUDICIAL)**
and
**HON'BLE SHRI CHARAN SINGH
MEMBER (TECHNICAL)**

Parties / Counsels Present:

For petitioner .. Shri Rohit Pogula, Advocate.
For respondents .. Shri Arun Kumar Satyavolu,
Advocate.

PER BENCH

ORDER

This petition is filed by the petitioner under sections 241 and 242 of the Companies Act, 2013, as amended vide Memo dated 14.02.2020 filed by the petitioner, praying that:

MAIN RELIEFS:

“8.1 (a) Direct the respondent no.1 company not to dispose, transfer, alienate or encumber the land at Sy. No.261/F (area Ac. 1.12 gunta or 0.52 hectares) and land at 263/F A (area Ac. 0.28 acres), Kollur Village, Ramchandrapuram Mandal, Medak District under G. Kollur, ZPP Medak at Sangareddy, having purchased the same under sale deed dated 18.04.1994, registered as document no.1327/94 at the Office of the Joint Sub-Registrar, Sangareddy;

(b) Direct the respondent no.1 company to provide the annual reports, financial statements and accounts of the respondent no.1 company to the petitioner;

(c) Take appropriate action against the respondent no.2 for his acts of oppression against shareholders and mismanagement of the respondent no.1 company.

(d) *Take appropriate action against the respondent no.3 for his acts of oppression against shareholders and mismanagement of the respondent no.1 company.*

(e) *Pass such further and other orders as this Tribunal may deem fit and proper.”*

INTERIM RELIEFS:

“9.3 (a) *Direct the respondent no.1 company not to dispose, transfer, alienate or encumber any of the assets of the respondent no.1 company; and*

(b) *Pass such further and other orders as this Tribunal may deem fit and proper.”*

2. Parties to the present proceedings are described as under:

Petitioner/ respondent	Name	Description	Shareholding/ incorporation
Petitioner	Yogesh Kumar Agarwal	Shareholder of R/1 company. Younger son of respondent no.2; younger brother of respondent no.3.	He holds 28,750 equity shares, amounting to 14% of the total issued equity capital. That being more than 10% of the total issued equity capital, he is entitled to filed this petition.
Respondent no.1	Aparna Iron & Steels Pvt Ltd.	It was incorporated under the provisions of the Companies Act, 1956 on 20.02.1990.	Its Certificate of Incorporation, Memorandum of Association and Articles of Association of R/1 company are at ANNEXURE-1.
Respondent no.2	L.N. Agarwal	Shareholder and Director of R/1 company.	He holds 17,300 equity shares of face value of Rs.10/-, amounting to

		Father of petitioner and respondent no.3.	8% of the issued share capital.
Respondent no.3.	Praveen Kumar Agarwal.	Shareholder and Director of R/1 company.	He holds 28,750 equity shares of face value of Rs.10/-, amounting to 14% of the issued share capital.
		Elder son of respondent no.2; and elder brother of the petitioner.	

3. FACTS AS NARRATED IN THE PETITION:

20.02.1990 :

Respondent no.1/ company was founded on 20.02.1990 to engage in the manufacture, dealing, export and import of iron and steel and trading in other mineral and substances and other allied businesses. It was a closely held company managed by family members as described above. Petitioner is the shareholder of the company. Whereas, respondents no.2 and 3 are shareholders and Directors of the company, Thus, its day-to-day affairs/ management, entire financial and operational control were under R/2 and R/3.

18.04.1994 :

By sale deed land located at Sy. No.261/F, admeasuring acres 1.12 guntas or 0.52 hectares was purchased and got registered vide Document

No.1327/ 94 at the office of the Joint Sub-Registrar, Sangareddy, as mentioned in para 6.6 of the petition.

02.01.2007 and 14.10.2009 :

Since the company's business stagnated due to the alleged mismanagement by respondents no.2 and 3. Respondents no.2 and 3 held an interest as shareholders and Directors in another company, named, Agarwal Global Steels Limited. A decision was taken to mortgage the only immovable property of R/1 company and charge was created by R/2 and R/3 as security for a loan taken by said Agarwal Global Steels Limited on 02.01.2007 and 14.10.2009, in favour of City Union Bank Limited. Relevant Form filing of R/1 company evidencing creation of charge is at ANNEXURE-2.

15.02.2019 :

The lender, City Union Bank Limited, issued sanction letter dated 15.02.2019 (ANNEXURE-5) to the borrower. The property of R/1 is not listed as a security/ collateral for the facility availed by the borrower. However, the lender has not released the charge over the property of R/1 company as per the filings available on the website of the RoC.

29.11.2019 (two letters of even date) :

The lender, City Union Bank Limited had issued two letters of even date to the borrower, Agarwal Global Steels Limited, copies of which were sent to respondents no.2 and 3, the shareholders of the above Agarwal Global Steels Limited to the following effect:

(i) Letter dated 29.11.2019 (ANNEXURE-3) demanding payment of Rs.6,29,99,462.78 in respect of overdraft facility availed by the borrower and unpaid interest of facilities availed by the borrower. Said letter reads:

“We advise to take measures to clear the arrears and close the account within 5 days from the date of this letter without fail. Otherwise, your account will be forced to be classified as NPA as on 31.12.2009 and legal action will be initiated on your company and property owners.”

(ii) Letter dated 29.11.2019 (ANNEXURE-4) demanding payment of outstanding amount of Rs.3,46,759.58 plus interest from 01.11.2019. Said letter reads:

“We hereby advise to remit the amount and close the loan account immediately. Otherwise, your loan account will become NPA and legal action will be initiated on company and property owners.”

4. ACTS OF OPPRESSION AND MISMANAGEMENT ALLEGED:

(i) Respondents no.2 and 3, by their acts of omissions, have not only failed to run the business of R/1 but have also caused the single major asset

of R/1 to be in jeopardy of being appropriated by way of enforcement of security by a lender for a credit facility availed by another entity.

(ii) For the last five years R/1 company has not provided copies of Annual Reports, Financial Statements/ Accounts to the petitioner.

(iii) Respondents no.2 and 3/ Directors failed to lead R/1 company towards success. On the contrary they have prejudiced the prospect of R/1 company by alienating the only major asset of R/1 company and put the only asset at risk of being appropriated by the lender, who loaned to another entity.

(iv) Respondents no.2 and 3/ Directors are attempting to dispose of the immovable property owned by R/1 company without intimation to the petitioner.

(v) Respondent no.1 company managed by respondents no.2 and 3 have not provided notices of meeting of the shareholders to the petitioner.

(vi) Respondent no.1 company managed by respondents no.2 and 3 have not provided access to the petitioner to the Books of Accounts of R/1 company.

(vii) Respondents no.2 and 3/ Directors have failed to discharge their fiduciary duties to safeguard the business and property and to promote the

objects of R/1 company for the benefit of its members as required under section 166(2) of the Companies Act, 2013.

(viii) Respondents no.2 and 3 failed to exercise their duties with due and reasonable care as required under section 166(3) of the Companies Act, 2013.

(ix) Respondents no.2 and 3 attempted to gain unduly unto themselves and their relatives, who are shareholders of another entity, viz. Agarwal Global Steels Limited, in contravention of section 166(5) of the Companies Act, 2013, by allowing property of R/1 company to be mortgaged in favour of the aforesaid lender for credit facilities availed by another entity.

5. REPLY DATED 29.11.2021 FILED BY RESPONDENTS No.2 (FATHER OF PETITIONER) AND 3 (ELDER BROTHER OF PETITIONER).

Parawise comments by respondents no.2 and 3

Contentions raised in the Company Petition.	Response given by respondents no.2 and 3 in the Reply
6.2 Given the family relationship between the petitioner and respondents	Petitioner was about 13 years of age on the date of incorporation of R/1 company and thus, his contention that he

<p>no.2 and 3, the petitioner, with a genuine intent to help R/2 and R/3 and in the functioning of R/1 company decided to subscribe the equity shares of the company.</p>	<p>intended to help R/2 and R/3 by subscribing the equity shares in the company is untenable. R/2 with his sheer efforts spanning over a period of more than 40 years developed various business enterprises, earned revenues and suffered losses due to changed business circumstances and increase in costs. R/2 through his struggles and sacrifices made his sons and other family members including the petitioner self-sufficient.</p>
<p>6.4 Respondents no.2 and 3 made tall claims of taking R/1 company forward to new heights and tremendous growth and expansion of R/1 company. Due to the trust reposed in R/2 and R/3, the petitioner continued to assist</p>	<p>R/1 company is a closely held company of the family of R/2 and the shares are given to the family members including the petitioner by virtue of the fact that R/2 wanted to involve his family members and heirs in the family business concerns. The petitioner was given his full plate without any struggle/</p>

<p>positively towards progress of R/1 company</p>	<p>sacrifice. By virtue of family arrangement, shares are given to the family members by R/2 in the business concerns. Therefore, there is no truth in the allegation of the petitioner that he continued to assist positively towards progress of R/1.</p>
<p>6.8 The aforementioned immovable property owned by R/1 company and its business stagnated in this manner until 2007. In 2007, respondents no.2 and 3, as directors of R/1 company took decision to mortgage the only property owned by R/1 company as security for a loan taken by Agarwal Global Steels Ltd., a company in which respondents no.2 and 3</p>	<p>The petitioner is prevailing on arm twisting the factual position by suppressing material information and there is no truth in the allegation of the petitioner that the petitioner is subjected to loss due to alleged mismanagement by respondents no.2 and 3. Further, one way the petitioner is pleading that the company is defunct since 2007 and other way he is representing that R/1 company has not engaged in business since 5 years having no clarity to his own consciousness.</p>

<p>had an interest as shareholders and directors. Charge was created by R/1 company on 02.01.2007 and on 14.10.2009 over immovable property owned by the company in favour of City Union Bank Ltd., by way of execution of memoranda of deposit of title deeds. Relevant filings of R/1 company evidencing creation of charge are at Annexure-2.</p>	<p>In fact, properties of the company were mortgaged as collateral security for benefit of other company inasmuch as said other company is also a family company of R/2. In spite of R/2 having suffered huge losses in other companies; the petitioner did not lend any helping hand to R/2 at such times. Further, the allegation of the petitioner regarding the mortgage of properties of R/1 company, the properties were mortgaged in 2009, which was in public domain. The Board of Directors took decisions in the best interest of the shareholders and all sanctions were in place. Further by virtue of arrangement amongst the family members, R/1 company had entered into agreements with third parties in respect of properties of the company almost about a year before</p>
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	<p>which the petitioner is a witness and has full knowledge. Because of certain family disputes, the petitioner has filed the above petition in order to assert pressure on his father and rest of the family members. It is a clear case of misuse of process of law.</p>
<p>6.9 The petitioner being merely a shareholder of R/1 company was not involved with day to day functioning of R/1 and was a bystander to this decision of respondents no.2 and 3 to alienate the only asset of R/1. Such alienation would mean that the business prospects of R/1 were put in jeopardy if the borrower (Agarwal Global Steels Ltd) defaulted in repayment of the</p>	<p>These averments are far from truth. Every fact and transaction about R/1 is well within the knowledge of the petitioner. He has family ties and nothing can be secreted from him by respondents no.2 and 3 and jeopardy alleged is merely an allegation of the petitioner.</p>

facilities availed by it from the lender (City Union Bank Ltd.)	
6.10 No benefit or consideration was derived by R/1 company for the loan availed by the borrower and there was only risk undertaken by R/1. However, the petitioner continued repose faith in the latter.	Petitioner's allegations are to foist false case against his father to further his selfish interest in the family.
Paras 6.11 and 6.12 : Lender (City Union Bank Ltd) sent two letters dated 29.11.2019 (Annexures 3 and 4) demanding repayment of loans availed by borrower. In case it is not repaid the loan account would be declared as NPA.	As on date the loan outstandings were cleared under support of third party on the belief that the petitioner has agreed to settle with third party on his joining as witness to the agreements in respect of the property and later the petition was filed by the petitioner to create friction in the family and cause inconvenience to his father, family members and third

	party who has extended supporting hand to the family to come out from dire situations.
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6. WRITTEN SUBMISSIONS DATED 02.08.2023 FILED BY THE PETITIONER.

(i) It is submitted by the petitioner that R/2 in connivance with R/3 had put the only asset of R/1 company in danger of being appropriated by way of enforcement of security by a lender for credit facilities availed by another entity. Presently, the mortgage on the said immovable property has been released. Yet the actions of respondents no.2 and 3 cannot be overlooked.

(ii) Vide Intervention Application No.4 of 2023, one Ravindra Kumar Agarwal, who is prospective purchaser of the sole asset of R/1 company has been attempting to implead himself as R/4. He is third party. He has no interest whatsoever in the present case. Intervention Application explicitly shows that respondents no.2 and 3 in collusion with R/4 have attempted to sell the immovable property in 2021 itself by undervaluing the property and getting undue benefits for the same, prejudicial to the interest of R/1 company, thereby by breaching their obligations and duties towards the interest of R/1. Said R/4 is neither a shareholder nor a director of R/1 company. He is in no way connected to the affairs of the company. Therefore, he cannot be impleaded in any manner.

(iii) Respondents no.2 and 3 have not provided copies of Annual Reports, financial statements or accounts to the petitioner. Respondent no.1 failed to intimate the petitioner about any meetings of shareholders and thereby breached the provisions of the Companies Act, wherein it is mandatory under the Companies Act, 2013 to provide notice to the shareholders of the meetings of R/1 company.

(iv) Petitioner has not been given access to Books of Accounts of R/1 company. This proves the intention of the respondents to conceal the day to day activities of R/1 company from the petitioner.

(v) Respondents no.2 and 3 are not running business of R/1 company. Now they intent to dispose of the sole asset/ property of R/1 company at price lower than market value.

(vi) The actions of respondents no.2 and 3 tend to show that the affairs of the company are conducted in a manner prejudicial to the interest of shareholders and other members of the company. However, respondents no.2 and 3 by their acts and omissions, have completely failed to discharge their fiduciary duties as directors. Respondents no.2 and 3 failed to act in good faith and promote the objects of R/1 as required under the Companies Act, 2013, and failed to exercise their duties with due diligence as required under section 166(3) of the Companies Act, 2013. They have also tried to alienate the property without consent of all the shareholders, putting minority shareholders in heavy loss and unjustly enrich themselves and their relatives at the expense of the shareholders in contravention of section 166(5) of the Companies Act, 2013.

(vii) The petitioner has relied on the following decisions:

- Cyrus Investments Pvt Ltd & another Vs. Tata Sons Ltd & others, 2017 SCC OnLine NCLAT 261, wherein the Hon'ble NCLAT, New Delhi held that:

“151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-

(i) Whether the applicants are member(s) of the company in question ? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement' ? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded ?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.”

- Jithendra Parlapalli Vs. Jithendra Parlapalli and others, MANU/NL/0076/ 2023, wherein the Hon'ble NCLAT, Chennai held that:

“34. It is incumbent of an `Applicant / Petitioner', to establish that `he is a Member of a Company', as per Section 2 (55) of the Companies Act, 2013 (Section 41 of the Companies Act, 1956),

and further that, he is eligible to prefer an 'Application' / 'Petition', with the 'criteria' specified in [Section 244](#) of the Companies Act, 2013.

35. The requirement of a 'Share Qualification', is a 'relevant factor', and 'quite material', to maintain a 'Petition', in respect of an 'Oppression' or 'Mismanagement.

36. An 'Individual', whose name, does not 'appear', on the 'Register of Members', is not a 'Member', and has no 'Locus', to 'Prefer' a 'Petition', under [Section 244](#) of the Companies Act, 2013. To put it differently, if 'a person', is not a 'Member' of a 'Company', the question of his alleging 'Oppression', does not 'arise'."

- Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (1965) 35 Com Cases

351, the Hon'ble Supreme Court held that:

"It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

- The petitioner has also relied on A company, re: ex parte, Schwarcz (No.2), 1989 BCLC 427; and T.N. Raghunath (Dr.) Vs. Lake Side Medical Centre P. Ltd. (2007) 137 Com Cases 741.

7. Having gone through the written statements and other documents and after hearing counsels from both sides ,our observations and findings are given as under.

- (i) This petition is filed by one of the shareholder of the R1 company who holds 28,750 equity shares, amounting to 14% of the total issued equity capital and is brother of R3 and son of R2 .The main relief sought for is to direct the Respondent No.1 Company not to dispose, transfer, alienate or encumber the land located at Sy.No.261/F (area Ac. 1.12 guntas or 0.52 hectares) and land at 263/F (area Ac. 0.28 acres), Kollur Village, Ramachandrapuram Mandal, Medak District under G.P. Kollur, ZPP Medak at Sangareddy with other reliefs .The other reliefs sought for are to provide the annual reports, financial statements and accounts of the Respondent No.1 and take appropriate action against the R2 & R3 for their acts of oppression against shareholders and mismanagement of the Respondent No.1 Company.
- (ii) The petitioner alleges that Respondent No.1 have mortgaged its only immovable property, without any intimation to Petitioner ,as a security for a loan taken by M/s. Agarwal Global Steels Limited, a company in which the Respondents No.2 and 3 had an interest (as shareholders and directors) and on failure of payment of the loan, the loan account would be declared an NPA and R1 company,s interest may be jeopardized. Petitioner further alleges that Respondents No. 2 & 3, has not provided any notices of meetings of

shareholders to the Petitioner and also not provided access to the books and accounts of the Respondent No.1 and failed to run the business of the Company on account of mismanagement failed to discharge their duties as Directors in accordance with Section 166(2), 166(3) and 166 (5) of the Companies Act, 2013.

- (iii) The respondents countered the allegations and submitted that the mortgage was created by the Respondent No.1 about 11 years ago and the Petitioner is well aware of the said fact, he kept to remain silent and now came to this tribunal only to assert pressure on the Respondent No.2 and other family members. The loan out-standings over the mortgage account relating to the immovable property of Respondent No.1 were cleared with the support of third party to which the Petitioner was also a witness. The respondents further submitted that Petitioner is well aware of all the transactions held by and on behalf of Respondent No.1 subsequent to he becoming a member of the Respondent No.1.

8. In In the light of the contest as aforementioned, the points that emerg for our consideration are :

- 1. Whether the 1st Respondent is bound to intimate the Petitioner, being a shareholder, while disposing off the immovable property of Respondent No.1?**

- 2. Whether the allegation by the Petitioner that he was not provided with any notices of meetings of the shareholders proved sufficiently?**
- 3. Whether the allegation by the Petitioner of denial of access to the books of accounts of the Respondent No.1 was sufficiently substantiated?**
- 4. Whether the Respondents No. 2 & 3, as Directors of Respondent No.1, acted in contravention of Section 166 (2), 166 (3) & 166 (5)?**
- 5. Whether the affairs of the Respondent No.1 are conducted in a manner prejudicial or oppressive to any members or prejudicial to public interest or prejudicial to the interests of the Respondent No.1 Company?**

9. We have heard learned counsel shri Rohit Pogula, for the petitioner and Learned Counsel Shri Arun Kumar Satyavolu, for the Respondent. Perused the record.

10. We give below our view on these points based on ,representations oral as well as written by both the parties, perusal of documents submitted to us and relying on the case law referred by both sides.

Point No 1: Whether the Respondent No.1 is bound to intimate the Petitioner, being a shareholder, while disposing off the immovable property of Respondent No.1?

Section 180 of The Companies Act reads as follows:

(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:--

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.-- For the purposes of this clause,--

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

The word undertaking of a Company is to be differentiated from the word asset of a Company. In **Yallamma Cotton Woollen & Silk Mills Co. Ltd., In re [1970] 40 Comp. Cas. 466 (Mys.)**, in relation to the word “*undertaking*”, it was observed as follows:

It is not in its real meaning anything which may be described as a tangible piece of property like land, machinery or the equipment; it is in actual effect an activity of man which in commercial or business parlance means an activity engaged in with a view to earn profit Property movable or immovable, used in the course of or for the purpose of such business can more accurately be described as

the tools of business or undertaking, i.e., things or articles which are necessarily to be used to keep the undertaking going or to assist the carrying on of the activities leading to the earning of profits.

In International Cotton Corpn. (P) Ltd. vs. bank of Maharashtra [1970] 40 Comp. Cas. 1154 (Mys.), it was observed as:

Webster's New Standard Dictionary describes the word "undertaking" as meaning a business or project engaged in. The word "undertaking" has been defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade"The business or undertaking of the company must be distinguished from the properties belonging to the company. In this case, it is only the properties belonging to the company that have been dealt with by the board of directors under the deeds of hypothecation and mortgage in favour of the bank. Hence, the learned company judge was right in holding that no part of the undertaking of the company was disposed of in favour of the bank.

In light of these observations, it can be said that the immovable property involved in the present petition is to be termed as an asset of Respondent No.1 and the same can be disposed off without any special resolution provided under Section 180 of the Companies Act, 2013.

Hence, the answer to point no 1is in negative.

Point no 2: Whether the allegation by the Petitioner that he was not provided with any notices of meetings of the shareholders proved sufficiently?

No proof or acknowledgment or any kind of document was filed by the Petitioner to show that he requested Respondent No.1 for the notices of meetings of the shareholders and that the same were denied, apart from a mere allegation.

Hence, the issue is to be answered in negative.

Point no 3: Whether the allegation by the Petitioner of denial of access to the books of accounts of the Respondent No.1 was sufficiently substantiated?

Nothing was brought on record to show that the Petitioner actually tried to access the books of accounts of the Respondent No.1 and the same was denied by the Respondents No.2 & 3, apart from a mere allegation.

Hence, the issue is to be answered in negative.

Point No4: Whether the Respondents No. 2 & 3, as Directors of Respondent No.1, acted in contravention of Section 166 (2), 166 (3) & 166 (5)?

An act of mortgaging an immovable property of the Respondent No.1 as a security for a loan advanced to another Company, authorized by the Directors of the Respondent No.1, cannot be said to be in contravention of Section 166 (2) and 166 (3), when such act was well within their powers as Directors and the same is not prohibited by Memorandum or Articles of the Company.

The Petitioner failed to show what advantage the Respondents No. 2 & 3 has obtained by the mortgage of the immovable property as a security to the loan advanced to another Company, when the other Company is also a family Company belonging to the Petitioner's family. The same was countered by the Respondents, stating that the loan out-standings were already cleared by them in respect of the loan account. Apart from merely alleging, the Petitioner failed to show the contravention of Section 166(5) of the Act on part of Respondents No. 2 & 3.

Hence, the issue is to be answered in negative.

Point No 5: Whether the affairs of the Respondent No.1 are conducted in a manner prejudicial or oppressive to any members or prejudicial to public interest or prejudicial to the interests of the Respondent No.1 Company?

The phrase "affairs of the Company are being conducted" indicates a continuous wrong. But conditions in clauses (a) or (b) of sub-section (1) of Section 241 must exist, before the Tribunal can entertain an application. In *Shanti Prasad Jain v. Kalinga Tubes Ltd (1965) 35 Com Cases 351*, the Hon'ble Supreme Court observed as follows:

It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous act on the part of the majority shareholders, continuing upto the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must

be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.

No evidence was furnished by the Petitioner to show that the mortgaging of the only property of Respondent No.1 as a security for the loan advanced to another company, which is also a family company held by the Respondents No. 2 & 3 is an act which is prejudicial to the members of the company or public interests or to the Company itself.

The Petitioner failed to show what interest of his as a shareholder was prejudiced in the day-to-day conduct of the affairs of the Company on account of mortgaging the only property of Respondent No.1. Apart from a mere apprehension on non-payment of the loan out-standings by M/s Agarwal Global Steels Limited, no other interest of the Petitioner is prejudiced by the act of mortgage done by the Respondent No.1, that too about 11 years ago. As already observed by the Hon'ble Supreme Court, the acts complained of, if any, are not to be taken in isolation and those acts must continue till the date of petition.

The act of mortgaging a property cannot be termed prejudicial to public interests unless it is shown that such mortgage was done by illegal means or done in furtherance of an illegal act.

Moreover, it is completely within the power of the Respondent No.1 Company to mortgage the property as the same was mentioned in the Memorandum of Association at **Clause B-9, 11, 12, 14, 22 and Clause C-9.**

In view of these observations, the issue is to be answered in negative.

11. We find from the records that one implead petition , IA No. 4 OF 2023, is filed in this company petition which was heard but still pending for adjudication. From the records of the said implead application we find that applicant herein entered into an agreement of sale with possession on 31.12.2020 in relation to the same immovable property of the R1 for which petitioner herein in this petition is seeking direction not to dispose, transfer, alienate or encumber the said land. Further, this said agreement of sale dated 31.12.2020 is signed by petitioner as witness. This act of petitioner , clearly indicate that he has not approached the Tribunal with clean hands and his intention in filing this petition is to prevent the sale of a property for which money has already been paid.

12. In view of the answers to the points raised and other facts as stated above , we order as under:

(1) The petition is dismissed and thus disposed of.

(2) The petitioner is directed to pay a cost of Rs.5 lakhs towards cost of the petition to Prime Minister relief fund through Bharat Kosh and file Compliance within 10 days.

SD

Charan Singh

Member Technical

Karim /pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial