

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CA No.179/2023

In

CP No. 99/CHD/HRY/2023

**Under Section 241 & 242, & 244 & 97
of The Companies Act, 2013**

In the matter of:

Adesh Gupta & Ors.

...Petitioners

Vs.

Liberty Shoes Limited and Ors.

...Respondents

And in the matter of:-

CA No. 179/2023

1. ADESH KUMAR GUPTA

SON OF LATE SH. PURSHOTAM DAS GUPTA
CEO & EXECUTIVE DIRECTOR & SHAREHOLDER OF LIBERTY
SHOES LIMITED
AVAILABLE AT: 3, PURNIMA FARM, CHANDAN HOLA,
BANDH ROAD, CHATTARPUR, DELHI-110074
Email: adeshgupta@libertyshoes.com

2. T-NINE LOGISTICS PRIVATE LIMITED

SHAREHOLDER THROUGH ITS DIRECTOR KSHITIJ BANSAL,
S/O RA VI BANSAL
AVAILABLE AT: UNIT NO. 3, FIRST FLOOR, MCD BUILDING,
DESH BANDHU GUPTA ROAD, PAHAR GANJ, NEW DELHI-110055
Email: adeshgupta@libertyshoes.com

3. MR. KANISHK GUPTA

SON OF SH. HK GUPTA
SHAREHOLDER

AVAILABLE AT LIBERTY PURAM 13TH MILESTONE
GT KARNAL ROAD KUTAIL PO BASTARA KARNAL HARYANA
HR 132114 IN
Email:adeshgupta@libertyshoes.com

4. MR. ANMOL GUPTA

SON OF SH. ADARSH GUPTA
AVAILABLE AT 4/42, PUNJABI BAGH, NEW DELHI
Email:adeshgupta@libertyshoes.com

5. ADESH KUMAR GUPTA HUF

THROUGH ITS KARTA ADESH KUMAR GUPTA
AVAILABLE AT: 3, PURNIMA FARM, CHANDAN HOLA,
BANDH ROAD, CHATTARPUR, DELHI-74
Email:adeshgupta@libertyshoes.com

6. UNTHINKABLE SOLUTION LLP SHAREHOLDER

THROUGH ITS DIRECTOR YOGESH KUMAR AGARWAL
S/O KRISHAN KUMAR AGARWAL
AVAILABLE AT: 6TH FLOOR, METROPOLIS HISSAR MALL,
OPPOSITE VIDYUT SADAN, DELHI ROAD, HISSAR, HARYANA 1250053 ...
Email:adeshgupta@libertyshoes.com;

....Petitioners

Vs.

1. LIBERTY SHOES LIMITED

Through Company Secreatry/Managing
Director/Directors
Having regestered office at
Liberty Puram 13th Milestone GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

2. SUNIL BANSAL

Executive Director, Liberty Shoes Limited
Availbale at Liberty House, Railway road,
Karnal-132001 (Haryana)
Also at : Ground Floor, Building No. 8A,
DLF Cyber City, Phase-II
Gurugram, Haryana-02

3. ADISH KUMAR GUPTA

S/o Late Sh. D.P. Gupta
Executive Director, Liberty Shoes Limited
Availbale at Liberty House, Railway road,
Karnal-132001 (Haryana)
Also at : Ground Floor, Building No. 8A,
DLF Cyber City, Phase-II
Gurugram, Haryana-02

4. SHAMMI BANSAL

Director
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

5. GAUTAM BAID

Independent Director
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

6. ANAND DAS MUNDHRA

Director
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

7. ADITYA KHEMKA

Independent Director
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

8. PIYUSH DIXIT

Independent Director
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

9. ASHOK KUMAR RANA

Director-Legal

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

10. SUJATA

Independent Director

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

11. MUNISH KAKRA

CFO/CS

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

12. ANUPAM BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

13. AYUSH BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

14. PULKIT BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

15. RUCHIR BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

16. AKSHAT GUPTA

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

17. VIVEK BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

18. RAMAN BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

19. MANAN BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

20. VAIBHAV BANSAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

21. SACHIN GUPTA

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO

Bastara Karnal Haryana HR 132114 IN

22. SUMEET AGARWAL

Shareholder

Available at : Liberty Puram 13th Milestone

GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

23. HEMANT JAIN

Shareholder
Available at : Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana HR 132114 IN

24. STATE BANK OF INDIA

Commercial Branch, First Floor
Marvel Tower, Newar Bus Stand
Karnal-132001

25. HDFC BANK

Branch 6/3, Safdarjund Enclave,
Deer Park
New Delhi-110029

...Respondent

Order delivered on: 20.11.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant in CA No. 179/2023

- 1.) Mr. Anand Chibbar, Senior Advocate
- 2.) Mr. Viren Sibbal, Advocate
- 3.) Mr. Vaibhav Sahni, Advocate

For the Respondent in CA No. 179/2023

- 1). Mrs. Munisha Gandhi, Senior Advocate
- 2). Mr. Vaibhav Sharma, Advocate
- 3). Ms. Salina Chalana, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

CA No. 179/2023

The present application has been filed by the Petitioners under Sections 244(1)(a) and 244 (1)(b) of The Companies Act, 2013, seeking waiver of the requirements of the aforementioned sections.

2. The Petitioner No.1(hereinafter referred to as the Petitioner) submits that he is the Executive Director and Key Managerial Personnel and admittedly the representative of the promoters (Petitioners) in the Board and shareholder in the Respondent No.1 Company. The Petitioners represent 5.83% shareholders and about 41.5% of the shareholding is held by the public. The Petitioner being one of the five Executive Directors on the Board of 10 Directors, is entitled to proportionate representation.

3. It was submitted by the Petitioner that the Respondents have indulged in various acts of oppression and mismanagement, namely:

(a) insider trading,

(b) misappropriation of monies obtained from the bank and misappropriation of funds of the company in wasteful expenditures and to artificially inflate the share value for insider trading benefits,

(c) siphoning off monies in related party transactions,

(d) scheming and falsely portraying that Petitioner has been stripped off from the role of Executive Director/KMP in the presence of employees and vendors, all without adhering to proper legal procedures - all with the intent of tarnishing and defaming his reputation,

(e) Colluding with each other for sending the Special Notice for removal of Petitioner in about three successive but failed attempts under Section 169 Companies Act to remove him as CEO and Executive Director by imposing false allegations and then withdrawing them,

(f) Colluding with each other to remove the Petitioner as CEO and Executive Director in the recent effort in the AGM to be held on 30.9.23, on sham allegations that the company is not performing well as compared to its peers without analyzing the true facts and circumstances behind such performance,

(g) indulging in oppressive conduct with the staff to ensure that the diligent, professional, and domain expert staff is removed and sycophants of the Respondents are only retained,

(h) indulging in breach of the licence agreement and shortfall of license fee leading to termination of Trademark Licence Agreement dated 03.04.2013 with Liberty Footwear Co.

4. It was submitted by the Petitioner that the Respondents, by attempting to remove the Petitioner from the Board are trying to unlawfully usurp the control of the company and intend to further their unlawful actions of siphoning off funds of the company, insider trading, and misappropriation of funds of the Banks and of the Company. In view of the same, a notice by Mr. Sachin Gupta dated 02.09.2023 was circulated and included in Agenda Item of AGM to be held on 30.09.2023 to remove the Petitioner. There is no sustainable allegation at all in the said notice and the notice is sham. The grounds are not explicit in the said notice and the allegations are also vague as it lacks clarity and that the Petitioner is being proposed to be removed as Executive Director of the Respondent No. 1-Company. No seven days (7 days) clear Notice for Board Meeting Dated 05.09.2023 (Special Notice moving agenda only on 02.09.2023) was circulated.

5. The Petitioner has also submitted that he is liable to remain the Director by rotation representing the Petitioner till March 2024. The AGM proposed to be held on 30.09.2023, which was proposed to remove the Petitioner as a Director, is liable to be restrained immediately.

6. It was stated by the Petitioner that vide email Dated 16.12.2022 he wrote about

the fraud and diversions of funds that took place at the Gharaunda plant of M/s Liberty Shoes Limited and also called upon for an immediate action against the guilty officials who have indulged in siphoning and diversion of funds to the tune of 60 Lacs of Rupees and vide email dated 27.12.2022 stated that no action was taken against the guilty officials.

7. The Petitioner also submitted that the Respondent No. 12/Mr. Anupam Bansal is responsible for siphoning off funds and usurping the role of CEO for the retail division. Mr. Anupam Bansal in connivance with Respondents indulged in insider trading to artificially inflate the share price for unlawful profits of his friends and family members. Shares worth several crores were purchased by the family and friends of Mr. Anupam Bansal at the same time interval and within the same time interval of about five months the share prices almost tripled. The Petitioner red-flagged the issue of insider trading in Board Meetings when he observed that share prices in a short span had reached Rs. 375 on 14.10.2022 from a mere Rs. 162 per share on 08.04.2022 and friends and family of Mr. Anupam Bansal invested heavily. To inflate the share price, the company gave dividends twice in a year, which artificially inflated the share price.

8. That owing to the constant breaches and defaults at the end of the Respondents, the Trademark License Agreement dated 3.4.2013 with Liberty Footwear Co. came to be terminated. The breaches and defaults at the end of the Respondents are enumerated herein under:

- a) Delay in payment of License Fee and Interest on delayed payments;
- b) Failure to provide Audited Annual Accounts and allow Inspection;
- c) Outsource manufacturing without sub-license.

9. Petitioner further submitted that vide Email Dated 07.04.2022, Respondent No. 11

wrote to Petitioner that certain shareholders have also sent special Notice u/s 169 of the Companies Act, 2013 dated 20.09.2023 & 21.09.2023 seeking removal of the Respondent No. 2-4 as Executive Directors of the Respondent No.1 Company. On 25.07.23, Respondent No. 3 circulated defamatory email stating all powers of the Petitioner have been taken away, pursuant to which Petitioner was compelled to approach Hon'ble High Court of Delhi, wherein vide order Dated 14.08.2023 the Hon'ble High Court of Delhi restrained the Respondents from circulating the defamatory and unauthorized communications any further.

10. The Respondents' extensive engagement in related party transactions coupled with aligning with the people of the same interest within Respondent No.1-Company constitutes a form of oppression and mismanagement and has led to financial embezzlements and siphoning of funds of hefty amounts.

11. The Petitioner through his submissions seeks the waiver of requirements mentioned in Sections 244(1) (a) and (b) of the Companies Act, 2013, so as to enable the Petitioners-herein to file the Application under Section 241 of the Companies Act, 2013.

12. Notice of this petition with the present application was given to the Respondents.

13. The Respondent Nos.1-4 (hereinafter referred to as Contesting Respondents) in their reply dated 04.10.2023 stated that the present application is not maintainable as the Petitioners do not meet the requirement of Section 244(1)(a) of the Act, which mandates that a member or members holding not less than one-tenth of the issued share capital or representing not less than one-tenth of the total number of members can file a petition under Section 241-242 of the Act. Therefore, they have filed an application under Section 244(1)(b) of the Act, seeking permission to file the main petition.

14. The Contesting Respondents submitted that the Petitioner has been found guilty of various instances of misconduct and mismanagement of the affairs of the company.:

i. Violation of resolution dated 04.02.2022 modifying the authority to joint signatories towards cheques amounting to INR 5 lacs or above and issuing 16 cheques of INR 5 lacs each and one cheque for INR 4.71 lacs for the purchase of a Mercedes car for his personal use.

ii. Violation of resolution dated 10.11.2022 that no payments shall be made by Respondent no. 1 on behalf of partnership firms by issuing various cheques in the month of April/May/June 2023 for the expenses of Liberty Footwear Co. and Liberty Group Marketing Division, run by himself along with other partners of the firm, from the account of the company.

iii. Indulging in Insider Trading by advising his brother and promoter shareholder of the company to sell his shares during the trading window closure period via email dated 07.10.2023

iv. Employing 6 people at the payroll of Gharounda Unit at a monthly payout of INR 2 lacs at the place of SS Industries at Panipat (a vendor) under the name of quality inspection, a process which has never been adopted by the Company for any vendor.

v. Paying an advance of INR 185 lacs to SS Industries, Panipat in April-July 2021 for a supply of materials, which has never been received and the vendor has raised false invoices on the company under petitioner's instructions to defraud this amount from the company.

vi. Refusal to sign Audited financial statements, other statutory documents, and Stock Statements for the last two years, in violation of his roles and responsibilities as the CEO and Executive Director of the company as mandatorily required under Section 134 of the Companies Act, 2013.

vii. Paying INR 60-70 lacs to E&Y hired by the Petitioner for restructuring the business of the company, without any prior approval of the Board.

viii. Setting up a venture of perfume division in Liberty Shoes Ltd. and investing INR 10 crores of the Company's profit with minimal profit and siphoning off the investment in the process.

ix. Unlawful transfer of an amount of INR 2,70,72,604/- to M/s Deepak Kumar & Sons, M/s S.S. Industries, and M/s Mansarovar Industries at Panipat in violation of the resolution dated 16.06.2023.

15. It is submitted by the Contesting Respondents that Petitioner's executive powers were suspended by the management committee for a period of three months on 16.06.2023, which was later ratified by the Board on 11.08.2023. The Petitioner was also removed from his position as CEO with immediate effect by the Board on 05.09.2023. On 08.09.2023, the Respondent No. 1 company circulated a notice dated 05.09.2023 for AGM along with the Special Notice dated 02.09.2023 received from Respondent No. 21 for removal of the Petitioner, in compliance with Section 102(5) read with Section 169 of the Companies Act, 2013, to which the Petitioner replied via letter dated 18.09.2023 seeking clarification on acceptance of the special notice.

16. Further, on 20.09.2023 special notices were sent to Respondent No.21 by Petitioner Nos. 2,3 and by Sh. Harish Kumar Gupta, father of Petitioner No.3 on 21.09.2023, u/s 169 of the Act seeking removal of Respondent Nos. 2,3 and 4 as Executive Directors/Directors of Respondent No.1, which were rejected by Respondent No. 1 on the ground that they were not issued in conformity with Sections 169, 115 and Rule 23(2) of the Companies (Management and Administration) Rules, 2014, which require the special notice to be issued by not less than 14 days before the AGM.

17. This Tribunal vide its order dated 27.09.2023 declined to stay the AGM and directed the Respondents to conduct the same on 30.09.2023 in accordance with the law on the date and time fixed, however, the decision taken in the said AGM shall not be acted upon till the next date of hearing. The AGM was conducted on 30.09.2023 through video conferencing in which an overwhelming majority of 83.14% of shareholders and 81.95% of public shareholders voted in favor of removing the Petitioner as Director/Executive Director of Respondent No.1. On the same date, in compliance with the provisions of

Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the combined voting results and Scrutinizer Report of the 37th Annual General meeting was also submitted to the NSE and BSE.

18. It is submitted by the Contesting Respondents that since the single purpose of filing the present petition by the Petitioner to continue as the Executive Director of the Respondent No.1 has already been lost, and he has been removed by an overwhelming majority of both promoter and public shareholders of the company, there exists no reason to grant a waiver to the Petitioner to persist with the petition. His removal is based on valid and cogent reasons and evidence and was done in accordance with law and due process.

19. It is prayed by the Contesting Respondents that the present Application may be dismissed with an order as to costs.

20. The Petitioners in their written submissions dated 12.10.2023 submitted that the Petitioner is being faced with frivolous and defamatory attempts to remove him and disparage his reputation at the hands of Respondents representing majority of the shareholders.

21. The skills of the Petitioner are recognised even in the Annual report of 2023. On one hand, the notice u/s 169 is alleging non-performance of the Petitioner, on the other hand, the Annual report is acknowledging skills and resource person in the Petitioner in each and every area required by the company.

22. The Petitioner submitted that in the AGM conducted on 30.09.2023, the Petitioner's microphone and video were switched off by the Respondents deliberately, depriving him of his right to call for a poll as a member as per Clause 9 of the Secretarial Standards.

23. The Petitioner placed reliance upon the judgment of Hon'ble NCLAT in the matter

“Manoj Bathla & Ors. v. Vishwanah Bathla & Ors.” in **Company Appeal (AT) No. 399 of 2018**, wherein the Hon’ble NCLAT upheld the waiver on the grounds of oppression and mismanagement indulged in by the respondents, even though the petitioner was merely a 0.33% shareholder. Further, in the matter titled as **“Thomas George v. Malayalam Industries Ltd.” Company Petition No. 36/2018**, it was observed by NCLT Chennai, that substantial interest of the Petitioners on the Company would be characterized as an exceptional reason for the grant of waiver under Section 244.

24. The Contesting Respondents vide their written submissions dated 13.10.2023 submitted that the Petitioner being in control and in-charge of the company himself, cannot claim that any mis-management has taken place in affairs of the company. The grievance of “Oppression” can only be raised against the management of a Company. Whereas in the present case, a shareholder (Respondent No. 21) issued a special notice under Section 169(3) of Companies Act, 2013 seeking removal of Petitioner as Director/Executive Director of Respondent No. 1 company as its forthcoming AGM scheduled on 30.09.2023, which makes it clear that events leading to his removal at the AGM were not set in motion by the management of the Company, but by another shareholder.

25. Reliance is placed by the Contesting Respondents on the judgment of the Hon’ble NCLAT in **“Cyrus Investment Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors.”**, MANU/NL/001/2017, wherein it was observed:

“145. The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for

waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of (proposed) application under Section 241 and to form opinion whether allegation pertains to ‘oppression and mismanagement’ of the company or its members.”

26. Reference to the Hon’ble Supreme Court’s observation in **Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd. and Ors.** MANU/SC/0227/2021 is also made upon by the Contesting Respondents:

16.21. In fact the real reason why the complainant companies thought fit, quite tactfully, not to press for the reinstatement of CPM is that the mere termination of Directorship cannot be projected as something that would trigger the just and equitable Clause for winding up or to grant relief Under Sections 241 and 242.

16.28. An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant relief under Section 242 unless the removal was oppressive or prejudicial.

27. Reliance is also placed upon the judgment of Hon’ble NCLAT in **Jithendra**

Parlapalli vs. Jithendra Parlapalli and Ors. reportable MANU/NL/0076/2023, wherein it has been held:

“64. It cannot be forgotten that a ‘Directorial Complaint’ cannot be a basis for filing a ‘Petition’, under Section 241 & 242 of the Companies Act, 2013 as ‘complaints’, in such a ‘Petition’, should relate to the ‘Rights’, in the ‘status/capacity’ of a ‘Member’.”

28. The Contesting Respondents submitted that the Petitioners have padded up their actual grievance with various historical facts to make a deceptive appearance, and thus, the present petition may be dismissed.

29. After hearing the Ld. counsels for the parties and careful consideration of the submissions made on behalf of both the parties as well as perusal of the material available on record and law iterated by the parties, we are of the considered view that the sole point of determination in the present application is:

- i. Whether the Petitioners are entitled to waiver of requirements under Section 244(1)(a) and (b)?

For ready reference, Section 244(1)(a) and (b) is reproduced as under:

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

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital

of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members: Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

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

30. In the case in hand, it is pertinent to note that the Petitioners are having in total 5.83% of shareholding (i.e. 9,96,132 shares) in the Respondent No.1 Company, which is mentioned as under:

NAME	% SHARES	NO. OF SHARES	PROMOTER/ NON-PROMOTER
Sh. Adesh Kumar Gupta	0.56	95000	Promoter
Adesh Kumar Gupta HUF	3.99	680000	Promoter
Sh. Anmol Gupta	0.04	6132	Promoter
Sh. Kanishk Gupta	0.64	110000	Non-Promoter
Unthinkable Solutions Private Limited	0.18	30000	Non-Promoter
T-Nine Logistics Private Limited	0.44	75000	Non-Promoter

Total	5.83%	996132	
-------	-------	--------	--

Petitioner who had been the CEO of the Respondent No. 1 Company is authorized by the remaining petitioners to file the present petition u/s 241 and 242 read with application u/s 244.

31. Now, the question arises whether a CEO who has been one of the five Executive Directors on a Board of ten Directors, can allege instances of Oppression and Mismanagement, at the ends of other directors or shareholders/respondents?

32. To answer this question, we would have to analyze the allegations chronologically.

33. It is also worthwhile to note that there are counter allegations against the Petitioner about his act and conduct, which are as under:

i. Violation of resolution dated 04.02.2022 by issuing 16 cheques of INR 5 lacs each and one cheque for INR 4.71 lacs for the purchase of a Mercedes car for his personal use.

ii. Violation of resolution dated 10.11.2022 by issuing various cheques for the expenses of Liberty Footwear Co. and Liberty Group Marketing Division, run by himself along with other partners of the firm, from the account of the company.

iii. Indulging in Insider Trading by advising his brother and promoter shareholder of the company.

iv. Employing 6 people at the Gharounda Unit under the name of quality inspection, a process never adopted by the Company.

v. Paying an advance of INR 185 lacs to SS Industries, Panipat for supply of materials, which was never received and raising false invoices on the company to defraud the amount from the company.

vi. Refusal to sign Audited financial statements, other statutory documents, and Stock Statements for the last two years, in violation of his roles and responsibilities as the CEO and Executive Director of the company.

vii. Paying INR 60-70 lacs to Ernst & Young hired by the Petitioner, without any prior approval of the Board.

viii. Setting up a venture of perfume division in Liberty Shoes Ltd. and investing INR 10 crores of the Company's profit and siphoning off the investment in the process.

ix. Unlawful transfer of an amount of INR 2,70,72,604/- to M/s Deepak Kumar & Sons, M/s S.S. Industries, and M/s Mansarovar Industries at Panipat in violation of the resolution dated 16.06.2023.

34. On the other hand, it is alleged by the Petitioner/Applicants that the Petitioner was removed from the post of CEO/Executive Director by the Respondents in violation of provisions u/s 169 of the Act, which was included in Agenda item no. 7 dated 05.09.2023 for approval in the AGM to be conducted on 30.09.2023.

35. One of the main allegations leveled by the Petitioners against the Respondents is that they committed constant breaches and defaults, namely:

(a) insider trading,

(b) misappropriation of monies obtained from the bank and misappropriation of funds of the company and artificial inflation of the share value for insider trading benefits,

(c) siphoning off monies in related party transactions,

(d) scheming and falsely portraying that Petitioner has been stripped off from the role of Executive Director/KMP with the intent of tarnishing and defaming his reputation,

(e) Colluding with each other for sending the Special Notice for removal of Petitioner in about three successive but failed attempts under Section 169 Companies Act to remove him as CEO and Executive Director by imposing false allegations and then withdrawing them,

(f) Colluding with each other to remove the Petitioner as CEO and Executive Director in the recent effort in the AGM to be held on 30.9.23, on sham allegations that the company is not performing well as compared to its peers,

(g) indulging in oppressive conduct with the staff to ensure that the diligent, professional, and domain expert staff is removed and sycophants of the Respondents are only retained,

(h) indulging in breach of the license agreement and shortfall of license fee leading to termination of Trademark License Agreement dated 03.04.2013 with Liberty Footwear Co.

36. However, the Petitioners have not impleaded Liberty Footwear Co. as one of the parties in the Petition U/s 241 and 242. Moreover, if at all Liberty Footwear Co. Ltd. has any grievance, against the management, then it is having independent remedy of redressal for its grievances.

37. It is pertinent to note that the Petitioner had been the CEO/Executive Director of the Respondent No. 1 Company till 05.09.2023. Thus, he being the key person at helms of affairs of the company cannot pursue allegations of Oppression and Mismanagement being in charge of the day to day activities of the Company. If at all, he was having any grievance about the Oppression and Mismanagement at the hands of the Contesting Respondents or other Directors, then he could have preferred such petition u/s 241 and 242, much before his removal as CEO/Executive Director on 05.09.2023.

38. It is settled law that mere removal/termination of the Director cannot be projected as something which would trigger the just and equitable clause to grant relief u/s 241 and 242 of the Act, as said by the Hon'ble Supreme Court in **Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd.** (supra) relied upon by the Contesting Respondents.

39. More so, removal of the Petitioner as CEO/Executive Director at the AGM has not been set in motion by the management of the Company but by another shareholder of the Company i.e. Respondent No. 21 by issuing special notice u/s 169(3) of the Act.

40. Taking into consideration above mentioned facts and circumstances, the Petitioners have failed to show any valid grounds to constitute Oppression and Mismanagement u/s

241 of the Act.

41. It is also settled law that while considering application for waiver under provision to Section 244, the Company Law Tribunal may look into proposed petition u/s 241 and 242 but cannot take into consideration the merits of the said petition for waiver, as held by the NCLAT in **Cyrus Investment Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors.** (supra).

42. There is nothing contained in the Petition u/s 241 and 242 to suggest allegations/complaints are in violation of the rights of the Petitioner as member/shareholder and acts of the Contesting Respondents/Directors are prejudicial to the rights of the Petitioner or public at large.

43. The grant of relief of waiver is discretionary and an equitable relief in which the act and conduct of the Petitioner is to be taken into consideration before granting this relief. There are serious allegations as pointed above against the act and conduct of the Petitioner while acting as the CEO/Executive Director. It may be noted that there is also other litigation pending against the directors/respondents preferred by the Petitioner/Applicant before Hon'ble High Court of Delhi.

44. It is contended on behalf of the Petitioner is that the right of representation u/s 169(3) of the Act has been denied to him while discussing the proposal of his removal as Director and further, was not allowed to participate in the AGM conducted through video conferencing as his microphone and video were switched off by the Respondents and the AGM held on 30.09.2023 is also violative of Secretarial Standards. However, this contention on behalf of the Petitioner is not tenable because firstly; the agenda of his removal in the AGM conducted on 30.09.2023 along with his representation/clarification dated 18.09.2023, was widely circulated amongst all the Public shareholders on

21.09.2023 and secondly; the removal of Petitioner as CEO/Executive Director does not ipso facto amounts to an instance of Oppression and Mismanagement u/s 241 and 242 of the Act. But it may be noted that his removal as the CEO/Executive Director was approved by an overwhelming majority of 83.14% shareholders including the Promoters and Public Shareholders. Even if the Promoter vote is segregated, then also 81.95% voted for his removal as the CEO/Executive Director. Results of item no. 7 of the AGM are annexed as R-15, page 346 of the reply filed by the Contesting Respondents.

45. In this backdrop of facts, it seems that the Petitioner who is individually holding 0.56% of shares in order to avenge his removal as CEO/Executive Director by the Board of Directors on 05.09.2023, comraded other Petitioners to file this Petition u/s 241 and 242 against the Company and other directors.

46. Therefore, the petition u/s 241 and 242 is filed by the the Petitioners to grind their own axe and prima facie removal of the Petitioner as CEO/Executive Director is neither prejudicial to the interest of the public shareholders nor to the affairs of the Respondent No. 1-Company which is otherwise a Public Listed Company. Consequently, the **present application u/s 244 of the Act for seeking waiver of the conditions is not maintainable and is dismissed** accordingly, however, without any order as to costs.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

November 20, 2023
ASG/TNV

Sd/-
(Harnam Singh Thakur)
Member (Judicial)