

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CA No. 13/JPR/2022
& CP No. 28/241-242/JPR/2021

IN THE MATTER OF:
JAGBIR SINGH & ANR.

... PETITIONERS

VERSUS

ADWIN INFRATECH PVT. LTD. & ORS.

...RESPONDENTS

MEMO OF PARTIES

JAGBIR SINGH

3A/305, Rang Rasayan Apartments,
Rohini Sector-13, Raja Pur Kalan,
North West Delhi, Rohini Sector- 7,
New Delhi- 110085

...Petitioner No. 1

ASHWINI SHARMA

House No.-C-125, Old DLF, Sector-
14, Gurgaon- 122001 (Haryana)

...Petitioner No. 2

VERSUS

M/S ADWIN INFRATECH PRIVATE LIMITED

33-A Block, Public Park,
Sriganganagar- 335001 (Rajasthan)

...Respondent No. 1

RAVI SETIA

House No. 33-A Block, Near Public
Park, Goal Bazaar, Ward No. 19,
Ganganagar, Sriganganagar- 335001
(Rajasthan)

...Respondent No. 2

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KAPIL SETIA

House No. 33-A, Public Park, Sri
Ganganagar- 335001 (Rajasthan)

...Respondent No. 3

CHANDAN AHUJA

House No. 33-A, Public Park,
Ganganagar- 335001 (Rajasthan)

...Respondent No. 4

AMIT GANDHI

Mildstream College Road, Street No.
5, New Suraj Nagri, Abohar,
Fazilka- 152116 (Punjab)

...Respondent No. 5

DHIRAJ CHALANA

House No. 20, Yadvindra Colony,
Patiala- 147001 (Punjab)

...Respondent No. 6

SURBHI BANSAL

House No. 63, G Block, NIT- 3,
Faridabad, Haryana

...Respondent No. 7

JASHANPREET SINGH

Flat No. B- 302, Himachal Appts.
Plot No. 21, Sector-5, Dwarka,
South West Delhi, Delhi- 110075

...Respondent No. 8

REGISTRAR OF COMPANIES, JAIPUR

C/6-7, Residency Area, Civil Lines,
2nd Floor, Jaipur- 302001
(Rajasthan)

...Respondent No. 9

FOR THE APPLICANT(S) :

Prakul Khurana, Adv.
Samay Maheshwari, Adv.
Jagbir Singh (P1 present in person)

FOR THE RESPONDENT(S):

Hemant Kothari, Adv. (R2)
Nitesh Shrivastava, Adv. (R8)
Mr. Jashanpreet Singh (Present in person)

Order Pronounced On: 23.04.2024

ORDER

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Per: Shri Deep Chandra Joshi, Judicial Member


1. The present application has been filed by the Petitioners namely, *Mr. Jagbir Singh* and *Mr. Ashwini Sharma* ('Petitioners') under Section 241- 242 of the Companies Act, 2013 alleging that the affairs of *M/s Adwin Infratech Private Limited* ('Respondent No. 1'/'Respondent Company') were being conducted in a manner prejudicial and oppressive to Petitioners being the members Respondent Company and is against the public interest.
2. The concerned Respondent Company was incorporated on 12.02.2010 under the Companies Act, 1956. It has an authorised capital of Rs. 10,00,000/- (Rupees Ten Lakhs Only) divided into 1,00,000/- shares of Rs. 10/- each with the current paid-up capital of Rs. 10,00,000/- (Rupees Ten Lakhs Only). A copy of Master Data is annexed as Annexure P – 3 (Colly) of the Application. Further, the Respondent Company is engaged in the business of builders, colonizers, developers, promoters, proprietors, lessors, civil contractors etc. and to deal in all the kinds of immovable property whether belongs to company or not. A copy of the Memorandum and Article of Association along with the Certificate of Incorporation is annexed as Annexure P – 1 of the Application.
3. The details of the transactions leading to the filing of this application averred by the Petitioners are as follows:
 - 3.1. The Petitioners and *Mr. Mohinder Sabharwal* were the first/founder Directors and Promoters of the Respondent Company. The Respondent

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No. 2 was appointed as the Director of the Respondent Company w.e.f. 28.08.2014 but never held any shares in the Company. The Respondent No. 3, the son of Respondent No. 2, joined the Company on 13.08.2019 and held 900 equity shares comprising of 9% of shareholding. The Respondent No. 4 namely *Mr. Chandan Ahuja*, Respondent No. 5 namely *Mr. Amit Gandhi* and Respondent No. 6 namely *Mr. Dhiraj Chalana* were illegally appointed as Additional Directors of the Respondent Company w.e.f. 30.08.2021 in a purported Board Meeting dated 30.08.2021. The Respondent No. 7 namely, *Ms. Surbhi Bansal* is a practising Company Secretary who verified/attested the Form DIR-12 pertaining to appointment of the above Respondents as Directors and Form PAS-3 signifying increase of share capital. The Respondent No. 8 namely, *Mr. Jashanpreet Singh* was appointed as Director of the Respondent Company.

- 3.2. It is contended that an Agreement to Sell dated 28.01.2010 was entered into on behalf of Respondent Company with *M/s JCT Limited* to purchase immovable property situated at CHAK-6-Z, Khata No. 78/69, Karanpur Road, Sriganganagar, Rajasthan. The Petitioners and former Directors/Promoters infused few crores rupees by way of unsecured loan into the Respondent Company. Later, the seller i.e. *M/s JCT Limited* failed to discharge its obligations as stipulated under the terms of Agreement to Sell which led to filing of a civil suit for Specific



Performance, which came to be settled by mediation wherein land admeasuring 40 bigha square feet was to be transferred by *M/s JCT Limited* in favour of Respondent Company. While the transfer of the land was pending, the Respondent No. 2 was appointed on the Board of the Respondent Company as Additional Director as he was a local resident of Sriganganagar and the Petitioner No. 1 transferred 900 shares to the Respondent No. 3. Since, the business of the Respondent Company was to boost up substantially after transfer of the immovable property, new directors namely, *Mr. Harpal Singh*, *Mr. Malkeet Singh Veerpal* and *Mr. Virendra Pal Singh* were inducted in the Board meeting dated 02.09.2021 and Form DIR-12 was filed on 06.09.2021.

3.3. It has been submitted that by illegal increase in paid up capital and fraudulent allotment of 90,000 shares unilaterally by *Mr. Ravi Setia* ('Respondent No. 2') to his son i.e., *Mr. Kapil Setia* ('Respondent No. 3'), the Petitioners shareholding has been reduced to a mere 9% as opposed to the earlier 91% in the Respondent Company. The same was carried out to usurp the control and ownership of the Respondent Company in favour of the Respondents. The current shareholding pattern of the Respondent company along with the earlier shareholding, as per the Annual Return of the Company for the Financial Year 2019-2020, is tabulated below for ease of reference:

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S. No.	Name	AS PER FY 2019-2020		NOW	
		Shareholding	Percentage	Shareholding	Percentage
1.	Jagbir Singh (Petitioner No. 1)	5100	51%	5,100	5.1%
2.	Ashwani Sharma (Petitioner No. 2)	4000	40%	4,000	4%
3.	Kapil Setia (Respondent No. 3)	900	9%	90,900	90.9%
	TOTAL	10,000	100%	1,00,000	100%

3.4. The Respondent No. 2 with the aid and connivance of other Respondents, illegally and unilaterally filed Form PAS-3 on 01.09.2021 before the Registrar of Companies, Jaipur without the knowledge and consent of the Petitioners, as per which 90,000 shares have been allotted to the Respondent No. 3 in a purported Board Meeting held on 30.08.2021. The said purported board meeting was never called or convened as the Petitioner No. 1 and the Respondent No. 8 namely, *Mr. Jashanpreet Singh*, who were the Directors out of the total 03 directors, neither received any notice nor attended the said Board Meeting.

3.5. As per the Board Resolution dated 30.08.2021 attached with Form PAS- 3, as many as 90,000 shares are stated to be allotted to the Respondent No. 3 by way of rights issue in terms of Section 62(1)(a) of the Companies Act, 2013. However, no Letter of Offer was given to the existing shareholders i.e., the Petitioners, specifying the number of shares offered and limiting a time which is to be mandatorily given in

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terms of Section 62(1)(a) of the Act. Also, no notice of board meeting for approval of Letter of Offer for the purpose of issuing Letter of Offer was ever called or convened and therefore, the existing shareholders have never renounced their right/ offer for further allotment of shares. Further, no amount has been received by the Respondent Company in its bank account pertaining to share allotment money of Rs. 9,00,000/- (Rs. Nine Lakhs Only), which the Respondent No. 3 has paid towards the allotment of 90,000 equity shares. The alleged Board Resolution is an invalid document as neither notices were given to the Directors for calling a meeting nor there was proper quorum. Hence, any decision taken or resolution passed in the meeting is null and void.

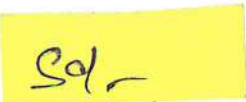
- 3.6. It has further submitted that on 03.09.2021, a DIR-12 form was filed before the ROC declaring the appointment of the *Mr. Chandan Ahuja* ('Respondent No. 4') as an additional director of the Company with effect from 30.08.2021 on the basis of a forged and back-dated board Resolution dated 30.08.2021. Also, on 16.09.2021, another DIR-12 form was filed by Respondent No. 2 before the ROC declaring the appointment of *Mr. Amit Gandhi* ('Respondent No. 5') and *Mr. Dhiraj Chalana* ('Respondent No. 6') as Additional Directors of the Company. The said appointment is said to have been with effect from 30.08.2021. This appointment has been made without following any of the requirements under the Companies Act, 2013 or the Articles of




Association. To appoint an Additional Director, a board meeting has to be held, which required sending a notice prior to calling the board meeting, which was never sent to the other directors of the company. Thereafter, no board meeting was held and the same can be assessed by the fact that there was no quorum, nor could there exist any minutes of the meetings or attendance register of the meeting.

3.7. The mandatory documents that need to be submitted to the company such as Form MBP-1 pertaining to the disclosure of interest by the Director have not been filed by Respondent No. 4 and the forms of Respondent Nos. 5 & 6 are not in the format as prescribed under the Companies (meeting of board and its powers) Rules, 2014 and also not been signed by the appointee additional directors, hence, are invalid. The Form DIR-8 of Respondent No. 4, 5 & 6 which undertakes that the director is not disqualified to be appointed at the position of a director have not been provided to the company nor have been attached with the invalid DIR-12 so filed by the Respondent No. 2 with his digital signatures.

3.8. It is thereafter submitted that the Respondent No. 2 not only forged a Board Resolution for appointment of the Respondent Nos. 4, 5 & 6 as additional directors without complying with the legal requirements but also resolved to authorize his own self to file all documents on behalf of the Company. The Respondent No. 2 was the only signatory to the




purported board resolution. The Respondent No. 2 authorized his own self to file the documents on behalf of the company which is illegal and makes apparent that the said Board Resolution is a forged and concocted document which is void-ab-initio. The Respondents have attempted to completely marginalize the Petitioners and are attempting to illegally reduce them to a minority shareholding in their own company in which the Petitioners actually hold 91% shares.

4. An Application numbered as *CA No. 13/JPR/2022* was filed by the Respondent No. 2 under Section 442 of the Companies Act, 2013 read with Rule 6 of the Companies (Mediation and Conciliation) Rules, 2016 for appointing a Mediator/referring the matter to the Mediation and Conciliation Panel.
5. The Respondent No. 8 filed reply vide Diary No. 1181/2022 dated 20.04.2022 informing that he joined the Respondent Company as Director on 25.05.2018. It has also been contended that no intimation or any board meeting notice regarding the further issuance of Share Capital to be held on 30.08.2021 was given to the Respondent No. 8. Further, no intimation or knowledge of any such board meeting appointing the Respondent No. 4 to Respondent No. 6 was provided to the Respondent No. 8. Hence, both these acts are invalid and void. It has been stated that the answering respondent has been wrongly impleaded in the Petition as no allegations have been made with respect to him.

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6. A status report has been filed by the Registrar of Companies vide Diary No. 2592/2023 dated 30.10.2023 in compliance of the Order dated 13.10.2023 informing the status of the Company along with the list of Signatories of the Respondent Company.
7. The Respondent No. 2 has filed its Preliminary Objections vide Diary No. 577/2024 dated 05.03.2024. However, since the reply of the Respondent No. 2 to 6 was closed, these are being treated as Written Submissions as under:
- 7.1. The Petitioners have failed to not only satisfy but have also failed to demonstrate any semblance of efforts to fulfil the requirements under Section 242(1)(b) of the Act. Hence, this Petition is liable to be rejected in *limine* as it clearly lacks cause of action. The sole purpose of filing this Petition is to pressurize the Respondent No. 2 and to siphon off the legitimate properties of the Respondent Company.
- 7.2. It has been submitted that on 28.01.2010, the Respondent No. 2 and Petitioner No. 2 jointly entered into an Agreement to Sell with *JCT Ltd.*, for purchase of free hold industrial piece & parcel of land measuring about 80 Bighas situated at *Karanpur Road, Tehsil & District Sriganaganagar* for a total consideration of Rs. 28.08 Crores. On 03.02.2010, a Memorandum of Understanding was executed between the Respondent No. 2, the Petitioners and *Mr. Mohinder Sabharwal* whereby the factum of the Agreement to Sell dated 28.01.2010 was recorded and it was further agreed between the parties

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to incorporate the Respondent Company. The respective shares of the Parties was also defined in the MoU.

- 7.3. As per the terms of the Agreement to Sell, 20% consideration was to be paid in advance against which 6.33 crores was paid to the seller i.e. *JCT Ltd.* A part of the above amount i.e. Rs. 1.5 Crores was paid by the Respondent No. 2 to seller. However, in the balance sheets of the Respondent Company, the contributions made by the Respondent No. 2 are incorrectly recorded whereas the amount of Rs. 30,98,000 (Rs. Thirty Lakhs Ninety- Eight Thousand Only) paid by the Respondent No. 2 for share application money in the year 2010-11 and recorded in the balance sheet for the 2010-11 was fraudulently removed.
- 7.4. Since 2010, the filings and compliances of Respondent Company were handled by the Petitioners without keeping the Respondent No. 2 in loop. The Respondent No. 2 continuously followed up with regard to its rights and interest in terms of agreement to sell as well as MOU. Only then, the Respondent No. 2 was made a director in 2014 but no shares were issued to him in the Respondent Company. Meanwhile, due to various issues, the seller issued a notice of termination dated 28.01.2010. Following the same, the Respondent No. 2, the Petitioner No. 2 and the Respondent Company instituted a suit for specific performance to cause the seller to register the sale deed for transfer of the subject property in terms of the Agreement to Sell dated

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28.01.2010. While, the said suit was pending, the parties settled in Lok Adalat and a settlement dated 08.06.2010 was arrived at. Following the settlement, a judgment and decree dated 12.07.2016 was passed by the Trial Court. Thereafter, the seller filed an application seeking rectification/ correction in the judgment dated 12.07.2016, the same was allowed by Trial Court on 19.05.2018. Subsequently, the Civil Writ Petition was filed challenging the order dated 19.05.2018 wherein the Hon'ble High Court vide order dated 02.09.2019 stayed the effect and operation of order dated 19.05.2018.

7.5. The possession of the subject property was all along with the Respondent No. 2 for proper upkeep and maintenance. The Respondent No. 2 has personally invested more than Rs. 3 Crores for the same. While the Respondent No. 2 was safeguarding and protecting the asset of the Respondent Company, the Petitioners were keeping the Respondent No. 2 completely out of operations and management of the affairs of the Respondent Company and would share information only on piecemeal basis. Thereafter, since the year 2019, the Respondent No. 2 has continuously followed up with Petitioner No. 1 for settlement of all difference including the amounts invested. Moreover, on 18.07.2019, the Petitioner No. 1 removed the Petitioner No. 2 as director for the reason that he was not reachable.

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7.6. The Respondent No. 2 followed up for larger share in subject property due to huge sum invested in the property and also due to management of the entire litigation of the property by Respondent No. 2. It was aggrieved that the registered office of the Respondent Company shall be shifted to the house of the Respondent No. 2 and shares will be allotted to the Respondent No. 3. Hence, in the year 2019, the proceedings for changing the registered office of the Respondent Company from Delhi to Rajasthan were initiated and 900 shares were transferred to Respondent No. 3. It was also agreed that Respondent No. 2 shall be duly compensated for all the time, money, resources and energy invested and spent in securing the subject property. Following the change of registered address of the company, the Respondent No.2 had no access to the statutory records of the Respondent company. Thereafter, in the personal meeting held from June to August, 2021, the appointment of Respondent Nos. 4 to 6 as directors was agreed and it was also agreed that the remaining unpaid capital will be issued in favour of Respondent No. 3. The Respondent No. 8 also attended the meetings in this regard for appointment of directors and for issuance of shares in favour of Respondent No. 3.

7.7. The dispute arose when the Petitioner No. 1 refused to honour the said agreement. Later on, the Respondent No. 2 came to know that the Petitioner No. 1 behind the back of other shareholders agreed to sell its

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shareholding to Mr. Harpal Singh (one of the directors), unilaterally appointed by Petitioner No. 1 without adherence to legal requirements. Also, the Petitioner No. 1 chose to usurp the affairs of the Respondent Company by appointing his own directors and causing Respondent No. 8 to resign on the pretexts of induces and gains that may have been promised by the Petitioner No. 1 and filing the requisite forms immediately after the completion of agreed process of allotment of shares to Respondent No. 3.

7.8. On 02.09.2021, the resignation of Respondent No. 8 also establishes that such resignation immediately after agreed upon allotment of shares must have been forced on the basis of threats and inducements best known to them. The Petitioners and Respondent No. 2 have been long time friends and business partners, hence, the discussions were always kept through verbal communications and personal meetings.

7.9. The Respondent No. 2 filed another set of Written Submissions vide Diary No. 709/2024 dated 20.03.2024 whereby it reiterated the same as mentioned in the Preliminary Objections.

8. The Petitioners filed their written submissions vide Diary No. 793/2024 dated 01.04.2024 whereby it is contended that the shares of the Petitioners, i.e. 91% shareholding in the Respondent company, was illegally reduced to 9% and the Respondent No. 3 who was holding only 9% shares has been wrongly reflected as a shareholder of 91%. It has been submitted that no

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provisions of the Companies Act, 2013 pertaining to allotment of shares have been followed. The Form PAS- 3 is void as shares have been shown to be allotted in the Board meeting dated 30.08.2021, however, there is no notice of Board Meeting on record. Any decision taken in such purported Board Meeting is in nullity as only one director cannot convene a Board Meeting. Also, as per the Board Resolution dated 30.08.2021, the Respondent No. 2 has authorized his own- self to allot to Respondent No. 3. More importantly 90,000 shares of Rs. 9 Lakhs at the rate of Rs. 10/- each are shown to be allotted to Respondent No. 3, however, no consideration has been paid by Respondent No. 3. The Petitioners have mentioned a detailed list of compliances which are required to be adhered to in such circumstances, but no such compliance has been carried out while allotment of shares or appointment of Directors. With respect to violation of mandatory provisions of Sections 42 & 62 of Companies Act, the Petitioners have relied on the judgment of Hon'ble NCLAT in *Proddaturi Malathi vs. SRP Logistics Private Limited (2018) 96 TAXMANN.Com 565 (NCLAT)*. Also, with respect to appointment of directors, it is reiterated that two out of 3 directors have stated on oath that no notice of meeting was received by them, neither any meeting was attended nor any draft minutes were shared. The Tribunal has also directed Respondents to furnish reply multiple times, however, no reply was filed.

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9. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and Written Submissions along with the documents enclosed therein.
10. The questions before us which need answering in the present matter are as below:
- 10.1. *Whether the Board Meeting convened on 30.08.2021 was conducted as per the provisions of the Companies Act, 2013?*
- 10.2. *Whether the issuance of 90,000 shares to the Respondent No. 3 valid?*
- 10.3. *Whether the Appointment of New Directors is valid?*
11. Before delving into the questions mentioned above, we refer to the current status of the Respondent Company as available on the database of Ministry of Corporate Affairs. The Respondent Company is a Private Company with authorised and paid up share capital of Rs. 10 Lakhs. There are as many as 8 Directors in the Respondent Company as per the master data. From the perusal of the Articles of Association, it is undisputed that the Respondent Company was incorporated with the minimum paid-up capital of Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 Equity Shares at the rate of Rs. 10/- and at the beginning, the Petitioners along with one *Mr. Mohinder Sabharwal* were the Directors of the Respondent Company.
12. The shareholding in the Respondent Company as on 31.03.2020 as admitted by both the parties was distributed amongst the Petitioners and Respondent No. 3 in the manner as prescribed i.e. 5100 shares were held by the Petitioner

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No. 1, 4000 shares were held by Petitioner No. 2 and 900 shares were held by the Respondent No. 3 (transferred from the Petitioner No. 1 on 13.08.2019) totalling to 10,000 shares of the Respondent Company. Further, the Respondent No. 2 was appointed as a Director in the year 2014 and FORM DIR-12 was filed in compliance with the provisions of the Act. The current share capital of the Respondent Company as reflected in the master data of the Company is Rs. 10 Lakhs. The amended shareholding pursuant to the Board Resolution dated 30.08.2021, as held by the Petitioner No. 1, Petitioner No. 2 and Respondent No. 3 is 5.1%, 4% and 90.9% respectively i.e. Petitioner No. 1 holds 5,100 shares, the Petitioner No. 2 holds 4,000 and the Respondent No. 3 holds 90,900 shares in the Respondent Company.

13. The Petitioner has alleged that the Respondent No. 2 issued 90,000 shares at the rate of Rs. 10/- to his son i.e. Respondent No. 3 pursuant to the Board Resolution dated 30.08.2021, which is null and void as the Board Resolution was passed without complying with the provisions of the Act. Also, the appointment of New Directors i.e. Respondent No. 4 to Respondent No. 6 is also invalid as the same was in furtherance with the invalid Board Meeting dated 30.08.2021. The Respondent No. 2 on the other hand has denied allegations made by the Petitioners and contended that the allotment of shares was done as part of an amicable settlement arrived at between the parties, pursuant to Respondent No. 2's efforts in pursuing the litigation of the property, which was the only asset of the Respondent Company.

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14. First, we deal with the issuance of 90,000 shares to the Respondent No. 3 by the Respondent No. 2 pursuant to Board Resolution dated 30.08.2021. It has been contended that the Respondent No. 2 filed FORM PAS-3 towards the new allotment of shares in favour of the Respondent No. 3 and the same was signed by the Respondent No. 7 i.e. *Ms. Surbhi Bansal*. It is clear that the compliance of the new allotment was done with the Registrar of Companies i.e. Respondent No. 9 in the present case. While all the filing with ROC is in place, the Petitioners have contended that no notice for the said meeting was issued to the Directors i.e. the Petitioner No. 1 and Respondent No. 8. The Respondent No. 8 in its reply has clearly mentioned that no notice of the meeting scheduled on 30.08.2021 was received by him.
15. To determine the same, we go refer to the manner in which the Board meeting dated 30.09.2021 was conducted by the Respondent No. 2. The provisions of Chapter XII of the Companies Act, 2013 mentions the procedure for the meeting of Board of Directors and its powers. The relevant Section 173 (3) provides that a meeting of board shall be called by giving not less than 7 days' notice in writing to every director at his residence registered with the company and such notice shall be sent by hand or by post or by electronic means. The Section 174 provides that the quorum of the meeting of the board of directors shall be 1/3rd of its total strength or two directors, whichever is higher. Also, Section 179 enunciates the powers of the board. The provisions of the Act, not only provide for compulsory

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notices to the Board of Directors but also mention the quorum mandatory for holding a meeting of the Board.

16. In continuance, the Articles of Association of the Respondent Company are also being considered as the same lays down the procedural aspect required to be adopted while undertaking the affairs of the Company. The same reads as below:

“IV. CAPITAL

5. The shares shall be under the control of the Board of Directors who may allot or otherwise dispose of the same to such persons on such terms as the Board of Directors think fit and to give any persons any shares whether at par or at premium and for such consideration as the Board of Directors think fit.

6. Subject to these presents mention that subject to the provisions of the Act, the shares of the Company whenever issued shall be under the control and the disposal of Board of Directors, who may allot, issue or otherwise dispose of the same or any of them to such persons or on such terms and conditions and at such times and at par or premium or discount as they may, from time to time, think fit and proper, may also allot and issue shares in capital of the Company in payment or part payment for any property sold or transferred to or for service rendered to the Company in or about the conduct of its business and the shares which may be so allotted may be issued as fully paid-up shares and if so issued deemed to be fully paid-up shares.”



17. The AoA of the Respondent Company clearly mentions that the shares of the Respondent Company are under the control of the Board of Directors who are vested with the powers to dispose or give of the same to such person as it may think fit. The AoA of the Respondent Company also mention that subject to Sections 171, 190 and 219 of the Act, all General Meetings be called by giving to members clear 7 days’ notice in writing except where

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such condition is waived off unanimously by all members in writing in the meeting. Further, the AoA clearly delineates that no business in the General Meeting shall be transacted unless a quorum of members is present at the time, the quorum shall consist of atleast 2 members present in person.

18. The Petitioner No. 1 and Respondent No. 8 have clearly stated that no notices were received for conducting a meeting on 30.08.2021. The Respondent on the other hand failed to prove that notices for the said meeting was sent to either of the directors. Time and again the Respondents were given an opportunity to provide its reply but nothing was filed and hence, the reply of the Respondents was closed. It is settled law that a general meeting of a Company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed, the same has been mentioned in Section 101 of the Companies Act, 2013. At that time, it has been admitted by both the parties that Petitioner No. 1, Respondent No. 2 and Respondent No. 8 were the directors of the Respondent Company. From the contentions of the parties and the documents presented, it is apparent that the general meeting which was scheduled on 30.08.2021, was conducted without providing any kind of notice to either the Petitioner No. 1 or the Respondent No. 8. Hence, no notice of the meeting scheduled to be conducted on 30.08.2021 was provided to the other Directors of the Board of the Respondent Company.



19. Also, the Board Resolution of the meeting held on 30.08.2021, as annexed by the Respondent No. 2 vide Diary No. 577/2024 dated 05.03.2024, mentions that the Respondent No. 8 could not attend the board meeting and no intimation was received on his behalf. The only signatory to the Resolution is the Respondent No. 2. It is abundantly clear that the meeting on 30.08.2021 was conducted without an appropriate forum. In the same, it is only the Respondent No. 2 who has put initials and resolved the issuance of shares to Respondent No. 3 along with appointment of directors Respondent Nos. 4 to 6. Therefore, it is blatantly clear that the Board Meeting dated 30.08.2021 was conducted without following the procedure prescribed under the Companies Act, 2013.
20. The pre-condition for invoking Section 241 is that the affairs of the Company have been conducted or are being conducted in a manner which is oppressive or prejudicial to the members of the Company. Consequently, the powers of the Tribunal are provided under Section 242 of the Companies Act, 2013 which empowers the Tribunal, upon being satisfied that the affairs of the Company are being conducted in a manner prejudicial or oppressive to any members or prejudicial to public interest or prejudicial to the interests of the Company, to grant appropriate relief so as to remedy the wrongs undertaken therein. To obtain relief under Section 242 of the Companies Act, 2013, the petitioner must show that the oppression arises from the way

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in which the affairs of the Company are conducted or is attributable to an act or omission in the affairs of the Company.

21. Now coming to the issuance of 90,000 shares by the Respondent No. 2 to Respondent No. 3 pursuant to Board Meeting dated 30.08.2021, the Petitioners have contended that no compensation was provided against the same and on the other hand the Respondent No. 2 contended that these shares were issued on the basis of an amicable settlement. Therefore, it is abundantly clear that no payment was made against the issuance of the share by the Respondent No. 3. Both the parties have mentioned civil litigation pending with respect to a property of the Respondent Company, however, the bearing of the same have no relevance in the present matter as this is a matter determining whether the procedure undertaken by the Respondents is falling under the category of oppression and mismanagement as prescribed under Section 241-242 of the Companies Act, 2013.
22. The Companies Act, 2013 does not specifically define the terms “*oppression*” and “*mismanagement*” and it is left for the courts to decide on the facts of each case whether the conduct of the parties calls for action under the section 241 and 242 of the Companies Act, 2013. Earlier, under the Companies Act, 1956; Section 397 and Section 398 provided for remedy against oppression and mismanagement respectively and Section 402 laid down the powers of the Tribunal. The Hon’ble Supreme Court in the matter of *S.P. Jain vs. Kalinga Tubes Ltd.*, AIR 1965 SC 1535 and *Needle Industries*

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(India) Ltd vs. Needle Industries Newey (India) Holdings Ltd., (1981) 51 Com Cases 743 has laid down the detailed version of the actions which govern an act of oppression. The person making allegations for acts of oppression and mismanagement shall be obligated to present that he/she has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder. It is settled law that each case has to be examined in the light of particular facts.

23. The filing of the Form PAS-3 and DIR-12 by the Respondents after illegally issuing shares in favour of the Respondent No. 3 and appointing the Respondent No. 4 to 6 as Directors unilaterally by the Respondent No. 2 by not issuing notices to the Board Meeting dated 30.08.2021 is clearly falling within the parameters of acts amounting to oppression and mismanagement in the affairs of a Company. By way of such resolution, it is clear that the Respondent No. 2 has violated the provisions of the Companies Act, 2013. The said act of the Respondent No. 2 amounts to a strong case oppression and mismanagement under Section 241-242 of the Companies Act, 2013.
24. The *CA No. 13/JPR/2022* was preferred by the Respondent No. 2 to refer the matter to mediation. It is seen that this Application was filed to derail the Company Petition while no reply was preferred by the Respondent No. 2 after multiple opportunities. To refer a matter to mediation, consent of both the parties is required. However, in the present matter, no such mutual

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consent was present. Therefore, in view of the following directions, such request cannot be allowed at this stage. Hence, the Application stands rejected and disposed off.

25. In view of the foregoing, the following directions are passed:

25.1. The Board Meeting conducted on 30.08.2021 stands void and nullified.

25.2. Consequently, the status of the shareholding of the Petitioners along with the Respondent No. 3 shall stand reinstated as existed before the Board Resolution dated 30.08.2021 i.e. the Petitioner No. 1 shall hold 5,100 Equity Shares, the Petitioner No. 2 shall hold 4,000 Equity Shares and the Respondent No. 3 shall hold 900 Equity Shares. Pursuant to the same, the Petitioners are directed to file appropriate compliance with the RoC i.e., Form PAS-3 for updating the status of shareholder in the Respondent company.

25.3. The Directorship of Respondent No. 4, Respondent No. 5 and Respondent No. 6 in the Respondent company pursuant to board resolution dated 30.08.2021 stands cancelled as the Board Resolution is void. Necessary compliances, if any, shall be filed with the RoC for removing the name of Respondent No. 4 to Respondent No. 6 as Directors.

25.4. The records, assets and documents of the Respondent Company shall be taken over by the Petitioners as existed prior to the passing

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of the Board Resolution dated 30.08.2021. Further, all the compliances with respect to the Respondent Company shall be duly adhered to by the Petitioners.

25.5. The compliances of the above shall be carried out by the Petitioners within 30 days from the date of this Order. This order shall be communicated to the RoC for proper compliances in accordance with Companies Act, 2013.

26. Accordingly, this Company Petition stands disposed of subject to the aforementioned directions.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


RAJEEV MEHROTRA,
TECHNICAL MEMBER