IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court – 1)
KOLKATA

CP No. 895/KB/2019

A petition under sections 58, 59, 241, 242 and 244 of the Companies Act 2013 read with rule 11 of the NCLT rules 2016.

In the matter of:

ABP Private Limited, a Company within the meaning of the Companies Act, 2013 and having its registered office at 6, Prafulla Sarkar Street, Kolkata- 700001.

… Company

and

In the matter of:

1. Aveek Kumar Sarkar, residing at 12/4, Ballygunge Park Road, Kolkata- 700019.
2. Rakhi Sarkar, residing at 12/4, Ballygunge Park Road, Kolkata- 700019.
3. Asani Sarkar, residing at 120E, 90th Street, New York- 10128, United States of America.

… Petitioners

versus

1. ABP Private Limited, , a Company within the meaning of the Companies Act, 2013 and having its registered office at 6, Prafulla Sarkar Street, Kolkata- 700001.
2. Arup Kumar Sarkar, residing at 20, Madanmohan Tala Street, Kolkata- 700005.
3. Shithi Sarkar, residing at 20, Madanmohan Tala Street, Kolkata- 700005.
4. Atideb Sarkar, residing at 20, Madanmohan Tala Street, Kolkata- 700005.
5. Aritra Kumar Sarkar, residing at 20, Madanmohan Tala Street, Kolkata- 700005.
6. ABP Holdings Private Limited, a Company within the meaning of the Companies act, 2013 and having its registered office at 6, Prafulla Sarkar Street, Kolkata- 700001

7.Dipankar Das Purkayastha, working for gain at 6, Prafulla Sarkar Street, Kolkata- 700001

8.Ranjit Vasant Pandit, working for gain at 6, Prafulla Sarkar Street, Kolkata-700001

9.Chandan Majumdar working for gain at 6, Prafulla Sarkar Street, Kolkata-700001

10. Sarbani Sarkar, residing at 15B, Gangaram Hospital Marg, New Delhi-110060

… Respondents

Order pronounced on :03 May 2024

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Petitioners:	Mr. S.N. Mookherjee, Senior Advocate with Mr. Joy Saha, Senior Advocate, Mr. Padam Khaitan, Ms. Nandini Khaitan, Mr. Shaunak Mitra, Mr. Pratik Shanu, and Mr. Naman Choudhury, Advocates
For Respondent Nos. 1, 6 & 7:	Mr. Ratnanko Banerji, Senior Advocate with Mr. Saumabho Ghose, Mr. Deepen Kumar Sarkar, Mr, Soumitra Datta, and Ms. Ananya Sinha, Advocates
For Respondent No. 2 & 4:	Mr. Harish Salve, Senior Advocate with Mr. Arunabha Deb and Mr. Raghav Shankar, Advocates
For Respondent No. 3 & 5:	Mr. Arun Kumar Datta, Advocate
For Respondent No. 6, 8 & 9:	Mr. Joydeep Guha, Advocate

For Respondent No. 10 : Mr. Ravi Kadam, Senior Advocate with Ms. Ashika Daga, Advocate

ORDER

Per: Coram

1. The Court convened through hybrid mode.

Preliminary

2. The Petitioners have filed the Company Petition under sections 58, 59, 241, 242 & 244 of the Companies Act, 2013 (**"Act"**) complaining of acts of oppression and mismanagement perpetrated by the Respondents in respect of the affairs of ABP Private Limited, the Respondent no. 1 **("Company")**.
3. The following reliefs are sought by the Petitioners:
    a. *A scheme be framed for management and administration of the Company;*
    b. *The Articles of Association of the Company be altered by incorporating the terms of the Family Settlement dated April 12, 2017, being Annexure "O" of the petition;;*
    c. *The Respondents be directed to forthwith transfer 1,00,000 shares in favour of the Petitioners;*
    d. *Injunction restraining the Respondent No.2 from exercising any rights in respect of the shares received by him from Respondent no.10;*
    e. *Injunction restraining the Respondents from giving any effect or further effect to the purported decision taken at the Board Meeting of April 24, 2019 regarding the reporting structure of the digital content team and digital business team of the Company;*
    f. *Injunction restraining the Company from incurring any expenses for the purpose of instant litigation.*

g. *The Respondent nos. 7, 8 and 9 be restrained from involving themselves in the affairs or business of the Company;*

h. *Directions be passed to ensure that the digital division of the Respondent No. 1 be allowed to function independently under the aegis of the Petitioner no.1, without interference from the Respondents;*

i. *Restore the cut made in the budget of digital division fro FY 2018-19;*

j. *This Hon'ble Tribunal be pleased to restrain the Respondents from in ant manner whatsoever, directly or indirectly, alienating or disposing of or encumbering or creating any third party right(s) in the property, assets and investments of Company as well of any of its subsidiaries;*

k. *This Hon'ble Tribunal be pleased to direct Company to ensure that it remains a neutral party and provides all assistance to this Hon'ble Tribunal to meet the ends of justice;*

l. *Injunction restraining the Respondents from interfering with the Petitioner no. 1's role in managing and conducting the affairs of the digital division of the Respondent no. 1 Company;*

m. *Appointment of a Special Officer for taking inventory of all the statutory books of the Company and who shall affix his signature on all the pages of all such books;*

n. *Appropriate relief be passed in accordance with Section 241 and 242 of the Companies Act, 2013;*

o. *Appropriate directions be given so that there is equal representation in the board of directors of the Company to Petitioner no. 1 and his group comprising the Petitioners and to Respondent No. 2's group comprising of Respondent nos. 2 to 5;*

p. *The increase in the remuneration of the Respondent no. 2 be deposited in an interest-bearing account as the Hon'ble Tribunal may deem fit till the pendency of this petition.*

q. *Injunction restraining the Respondent no. 2 from drawing remuneration in excess of Rs.7.92 crore annually.*

r. *Injunction restraining change in remuneration of any of the present directors/Key Managerial personnel of the Company.*

s. *Appropriate direction be given for appointment of directors who are not members of Sarkar Family as this Tribunal may deem fit;*

t. *Costs of and incidental to this application be paid by the respondents;*

u. *Such further orders be passed and/or directions be given as this Hon'ble Tribunal may deem fit and proper.*

Brief history of the Company

4. The Company was incorporated on 17 May 1922 in the name and style of "Ananda Bazar Patrika Limited". The name of the Company was changed to "ABP Limited" on 11 November 1997. Thereafter, the Company was converted to a private limited company and its name was changed to its present name i.e. ABP Private Limited on 10 July 2001.
5. Late Prafulla Kumar Sarkar, the grandfather of Aveek Kumar Sarkar, was one of the original subscribers to the Memorandum and Articles of Association of the Company. The patriarchal lineal descendants of Late Prafulla Kumar Sarkar have always been in control of the management and affairs of the Company.

Submissions of the learned Senior Counsel appearing on behalf of the Petitioners are summarized hereinafter:

6. The learned Senior Counsel while setting the tone for grant of reliefs sought for, he termed the Board Resolution passed on 24 April 2019 to be a result of subterfuge.
7. While making his submission, the Learned Senior Counsel submitted that the Company is a closely held company of the Sarkar family with the preponderance of voting power vested in members of the Sarkar family.
8. The Company was controlled by Late Ashok Kumar Sarkar, the father of Petitioner No. 1, Petitioner No. 3, Respondent no. 2 and Respondent no. 10 since 1954. In 1963, there was a demarcation ·of responsibilities at the instance of Late Ashok Kumar Sarkar, whereby the editorial and content aspects were

to headed by Aveek Kumar Sarkar ***("Petitioner No. 1")*** whereas the administrative, financial and secretarial aspects were to be looked after by Arup Kumar Sarkar ***("Respondent no. 2")***.

9. It is submitted that the Petitioner No. 1 was the Editor-in-Chief of the Company from 1983 up to 2016 and under his aegis there was exponential growth of readership of the newspaper and in the business of the Company. The learned Senior Counsel asserted that the Petitioner No. 1 is responsible for the tremendous growth of the Company and is a person who enjoys worldwide goodwill and reputation in the field of journalism and media.
10. Mr. Mookherjee, the learned Senior Counsel submitted that even though the Petitioner No. 1 had stepped down as Editor-in-Chief in 2016, it was agreed and understood that he would for all intents and purposes, head and control the Digital Division of the Company. In fact, it is for this reason, to concentrate on the Digital Division that Petitioner No. 1 relinquished his position as Editor-in-Chief and this was also acknowledged in a notice vetted by Respondent No. 2 and circulated to all employees. Petitioner No. 1 in any event, continued as a Director.
11. In 2016, there were some internal disputes among the family members which led to a written Family Settlement dated 12 April 2017 ***("Family Settlement")*** which essentially contemplated equal ownership and managerial rights between Petitioner No. 1 and Respondent No. 2's groups in Respondent No. 1 Company and other Sarkar family businesses.
12. However, shortly thereafter, Respondent No. 2 in collusion with the other Respondents including Respondent No. 10, wrongfully and illegally took steps not only to deny Petitioner No. 1 group their rights under the Family Settlement (by usurping 20% additional shareholding by subterfuge), but also acted to remove Petitioner No. 1 from his accepted position as leader of the Digital Division. In other words, Respondent No. 2 and his group created a new majority for themselves at the expense of the Petitioner which in itself is an act of oppression and also oppressed Petitioner No. 1 by excluding him from his assigned managerial role as head of the Digital Division.

13. The learned Senior Counsel asseverated that the acts of oppression and mismanagement can be broadly categorised under the following heads:
    a. Transfer of shares by the Respondents in collusion with each other, in violation of the Family Settlement dated 12 April 2017 resulting in creation of a new majority in favour of Respondent No. 2 and his group.
    b. Illegal and oppressive board resolution passed on April 24, 2019 taking away the assigned role of Petitioner No. 1 in the Digital Division of the Company.
14. Mr. Mookherjee, the learned Senior Counsel submitted that in or around 2016, disputes had arisen between the Sarkar family members with respect to the control of the Company, which led to the execution of a memorandum of Family Settlement[1]**.** The Family Settlement was prepared by the common solicitor of the Sarkar family.
15. The parties to the Family Settlement were Petitioner Nos. 1-3, Respondent Nos. 2-5, Respondent No. 10 and one Champabati Sarkar, who are all members of the Sarkar family. ABP Private Limited i.e. the Respondent No. 1 was also a party along with other family companies namely, Respondent No. 6 i.e. ABP Holdings Pvt. Ltd., Ananda Pvt. Ltd. and Ananda Publishers Pvt. Ltd. The Family Settlement was signed by all the aforesaid parties including the Respondent No. 1. Thus, the members of the Sarkar family as well as Respondent No. 1 are bound by the Family Settlement.
16. The whole purpose of the Family Settlement was to settle all the disputes and differences which had arisen between the parties including the shareholding in the Company[2].
17. The learned Senior Counsel averred that the resultant shareholding pattern of the Company as per Clause 7 of the Family Settlement was to be as follows:-

Name of shareholders	**Shareholding (%)**
Aveek Sarkar-Petitioner No. 1 (on behalf of Petitioner No.3)	20%

[1] Annexure "O" at Pages 590 to 605, Vols. III & IV of the C.P.
[2] Recitals "K" and "L" page 595, Volume –III of the CP

Name of shareholders	**Shareholding (%)**
Rakhi Sarkar (wife of Petitioner No. 1)	20%
Atideb Sarkar- Respondent No. 4 (son of Respondent No.2)	18%
ABP Holdings Private Limited (Respondent No. 6)	22%
Sarbani Sarkar (Respondent No. 10)	20%

18. The learned Senior Counsel submitted that it is material to note that the Family Settlement specifically recognizes the fact that the shareholding right of each of the branches was through inheritance and/or devolution of interest. It is further submitted that there are two groups that have arisen from the said Family Settlement. The Petitioners being one group and the Respondent No. 4, 6 and 10 forming another group. It is evident from Recital I and Clause 4[3] of the Family Settlement that the Respondent No. 6 is a part of the Respondent No. 2's group.
19. As per Clause 7 of the Family Settlement, each of the parties who was to hold shares in the Company were entitled to nominate one director each on the board of the Company. This evidences the inherent management rights of the family members and of each branch and equality in distribution of rights between each group in the family. Other directors were to be appointed based on the consensus between the parties. This is in recognition of the fact that the non-family/ outside directors were to discharge duties as directors in professional capacity and/or as nominees of the family members. In any event, appointment of such other directors could be made only upon consensus of all branches to protect the rights and interests of each branch and ensure fair management of the Company[4].
20. Apart from the Company being a party to the Family Settlement, all associate and subsidiary companies were also to ensure that their respective

[3] Clauses 2 to 8 @ Pp. 596-597 of Vol. III of the C.P.
[4] Clause 9 @ Pp 597, Volume –III of the C.P.

shareholding would reflect the shareholding position provided in Clause 7 of the Family Settlement[5].

21. The parties were to take steps to amend the Articles of Association of the family companies in accordance with the Family Settlement[6].
22. The parties also agreed to a specific clause in the Family Settlement which restricted and barred transfer of shares to any person other than the signatories to the Family Settlement. However, even transfers by and between signatories to the Family Settlement were to be made only after the shareholder wishing to transfer shares, first offered the same to all the other signatories who held shares in the Company and who would be entitled to purchase the shares in accordance with their proportion of shareholding in the Company.
23. The learned Senior Counsel submitted that in other words, no other proportion of shareholding was contemplated, this was essential because the whole purpose of the Family Settlement was to crystallize and equalize the ownership and management rights between the two principal groups of Petitioner No. 1 and Respondent No. 2. It is significant to note that, in contrast to previous practice, the parties were required to hold shares exclusively in accordance with Clause 7 of the Family Settlement. Without this happening, the entire purpose behind the Family Settlement would stand negated.
24. After Clause 7 shareholding was brought about, no share transfer could be made without first offering any shares intended to be sold, to all the remaining shareholders, who would then have the right to acquire such further shares in proportion to their respective holdings.
25. The learned Senior Counsel referred to the pre-emption clause i.e. Clause 14[7] and submitted that the clause was to ensure parity in the shareholding of the groups as envisaged in the Family Settlement in line with the intent and purpose of the Family Settlement. In order to maintain such parity between the groups, transfer of shares to lineal blood descendants and by inheritance was exempted from the pre-emption clause.

[5] Clause 11 @ Pp 598, Volume –III of the C.P.
[6] Clauses 12 & 16@ Pp 597, 599, Volume–III of the C.P.
[7] Clauses 13 and 14 @ Pp. 598-599, Volume III of the C.P.

26. The Family Settlement was to constitute the whole settlement between the parties in respect of disputed claims. The settlement was to inure to the benefit of and be binding upon each of the parties and their respective heirs, legal representatives and their successors[8].
27. No amendment could be made to the Family Settlement otherwise than in writing by the parties. The Family Settlement was made under the instructions of all parties. The parties further represented that each party had made investigation of the facts relating to the Family Settlement and had jointly participated in the drafting of the Family Settlement[9].
28. Since the Company was a party to the Family Settlement, it was agreed that the Company would be bound by the terms of the settlement and steps would be taken to arrange the affairs of the Company in line with the Family Settlement.
29. The Learned Senior Counsel submitted that the Respondents have thereafter made clandestine transfers of shares wrongfully and in breach of the Family Settlement resulting in creation of a new majority in favour of Respondent No. 2 and his group. The learned Senior Counsel led us through the status of transfer of shares since 2017[10]. Prior to the Family Settlement, the shareholding pattern was as under:

Name of the Shareholder	**Percentage of Share**	**Number of Shares**
Aveek Kumar Sarkar (Petitioner No. 1)	19.5%	390,000
Arup Kumar Sarkar (Respondent No. 2)	19.5%	390,000
Atideb Sarkar (Respondent No. 4)	19.5%	390,000
Shithi Sarkar (R3)	19.5%	390,000

[8] Clause 21 @ Pg. 600, Volume III of the C.P.
[9] Clauses 26, 27 and 29 @ Pp. 601-603, Volume IV of the C.P.
[10] Pp. 105 and 106 Vol I of the C.P.

Name of the Shareholder	**Percentage of Share**	**Number of Shares**
ABP Holdings Private Limited (R6)	22%	439,999
Siddhartha Ghosh	0.00000	1

30. Pursuant to the Family Settlement on April 12, 2017, the shareholding changed to the ratio of 40:40:20 i.e. 40% shareholding each to be held by Petitioner No. 1 and Respondent No. 2 groups and giving balance shareholding of 20% to sister Respondent No. 10 who did not hold any shares earlier, so that there is parity in ownership and control was achieved and maintained and to bring to an end, the disputes for which Family Settlement was executed. Any disturbance of this clause 7 shareholding structure would negate the whole object of the Family Settlement.
31. Registration of the abovementioned transfers were all effected in Members' Register on 12 April 2017 and Form No. MGT-7 filed by the Company for the financial year 2017-18[11].
32. The learned Senior Counsel submitted that on the same day, the very same 4,00,000 shares, which were earlier transferred to Sarbani Sarkar **("Respondent No. 10")** were allegedly and clandestinely transferred by Sarbani Sarkar to Arup Kumar Sarkar[12].
33. The said transfer from Respondent No. 10 to Respondent No. 2 was not only in breach of the Family Settlement but has the effect of undoing the whole basis of the Settlement and creating a new majority for Respondent No. 2 group (from 40% to 60%). No offer was made to the existing signatories to the Family Settlement who were shareholders to purchase the shares in proportion to their shareholding in terms of Clause 14 of the Family Settlement. Such transfer was thus in violation of the Family Settlement in terms of Clauses 7, 13 and 14 of the Family Settlement.

[11] Annexure V, Pp. 655-656, Pp. 659 to 662, Volume – IV of the C.P.
[12] Page 52 of the Rejoinder to Respondent No. 10's Reply

34. The Respondent No. 2 as well as Respondent No. 10 in their respective affidavits have acknowledged and admitted that they were required to intimate and offer the shares to Petitioner No. 1 before any transfer of shares could be made from Respondent No. 10 to Respondent No. 2. However, both Respondents have taken contradictory stands on this.
35. The Respondent No. 10 has contended that *"I had also sent a text communication via SMS to the Petitioner No. 1 intimating him of my decision to transfer my shares in, inter alia, the Respondent No. 1 to the Respondent No. 2. The Petitioner No. 1 did not protest against my decision and did not controvert the contents of such communication"*[13].
36. Whereas, Respondent No. 2 has contended that *"I say that **after** the Respondent No. 10 had transferred her shares to me, the Respondent No. 10 had informed the Petitioner No. 1 by an SMS"*[14].
37. Mr. Mookherjee, the learned Senior Counsel urged us to note that while Respondent No. 10 has alleged that the intimation was sent before the decision to transfer the shares, Respondent No. 2 has alleged that the intimation was sent after the shares were transferred. But, in fact, no intimation before or after was ever sent to the Petitioners either by Respondent No. 10 or Respondent No. 2 with respect to the said transfer of shares.
38. Thus, the creation of a new majority in favour of Respondent No. 2 group who cumulatively came to hold 60% of the shareholding in the company, which eroded and disturbed the parity contemplated in the Family Settlement of 40% shareholding each between Petitioner No. 1 group and Respondent No. 2 group. The new and wrongful shareholding structure in violation of Family Settlement is given below:

[13] Paragraph No. 4(p) @Pg 11 of the Reply Affidavit of the Respondent No. 10
[14] Paragraph 21 @ Pg No. 40 of the Reply affidavit of Respondent No. 2

Member	Shareholding	Cumulative holding of group
Aveek Kumar Sarkar (Petitioner No. 1)	20%	Petitioners (40%)
Rakhi Sarkar (P2)	20%	
Atideb Sarkar (Respondent No. 4)	18%	60% (Respondent 2 to 6)
Arup Kumar Sarkar (Respondent No. 2)	20%	
ABP Holdings Private Limited (R6)	22%	

39. The alleged meeting of the Share Transfer Committee (comprising only of the Respondent No. 7) to approve the illegal and wrongful transfer of 4,00,000 shares by Sarbani Sarkar to Arup Kumar Sarkar was held on 13 April 2017.
40. Upon later discovering the illegal and oppressive share transfer by Respondent No. 10 to Respondent No. 2, the Petitioner No. 1 brought the same to the notice of the family solicitor who had been involved in the preparation of the Family Settlement who on being apprised of the same also expressed his surprise in this regard. As a result, the illegal alteration in shareholding was not contemporaneously recorded with the statutory authorities.
41. The annual returns/Form No. MGT 7 reflecting the wrongful and oppressive share transfers effected on 12 April 2017 (purportedly approved on April 13, 2017) and 24 April 2017 were filed with ROC[15] after more than 2 years, i.e. only on 04 June 2019. There is no explanation offered by the Respondent in this regard and the interactions with the family solicitor have not been denied by any of the respondents in the Reply Affidavits filed by them.
42. Sarbani Sarkar, Respondent No. 10 purportedly executed an affidavit before the Notary Public at New Delhi regarding transfer of her shares to Arup Kumar Sarkar on 25 April 2017. The purported affidavit provides proof of the fraudulent intent and covert character of the share transfer from Respondent No. 10 to Respondent No. 2, which occurred on 12 April 2017. If the transfer was lawful and did not aim to interfere with the rights under the Family

[15] Form MGT 7 @ Annexure V, Pg. 655-656, 659 to 661, Volume – IV of the C.P.

Settlement, there would be no requirement to sign such a pre-emptive affidavit. It appears that the same was prepared in advance as a premeditated defence of the unlawful transfer. When Petitioner No. 1 finally learned of the share transfer, Respondent No. 10 was obviously aware that it would be challenged.

43. The minutes of the Share Transfer Committee meetings dated 12 April 2017, 13 April 2017 and 24 April 2017 were confirmed and noted Board meeting held on 27 April 2017. The fact that Share Transfer committee meetings were held and minutes thereof prepared, was noted. There was no occasion for the Board to deliberate on (let alone approve) the subject matter of the Share Transfer Committee meetings. The minutes clearly show that the Board of Directors did not approve the resolution passed by the share transfer committee on 13 April 2017 and 24 April 2017. As such it cannot be said that Petitioner No. 1 either approved or accepted such transfers or was bound thereby and could not challenge the same. The learned Senior Counsel placed reliance on ***Parmeshwari Prasad Gupta v. Union of India[16].***

44. Mr. Mookherjee, the learned Senior Counsel pointed out that special equities apply to Family Settlements, and the courts have consistently ruled in favour of maintaining them. The Sarkar family members aimed to permanently settle their disagreements and conflicts as well as their competing claims through the Family Settlement. The Family Settlement serves as an estoppel to prohibit any party from acting in a way that would undermine, revoke, or contest the terms of the agreement, and it is binding on all parties, including the Respondents. In support of his contention the learned Senior Counsel placed reliance on ***Kale v. Dy. Director of Consolidation[17], Hari Shankar Singhania & Ors. V. Gaur Hari Singhania & Ors.[18], Ravinder Kaur Grewal v. Manjit Kaur[19].***

45. The learned Senior Counsel argued that the Respondent no. 1, a closely held Company of the Sarkar family, is on the face of it a family Company and the principles of quasi-partnership are applicable to such a family Company.

[16] (1973) 2 SCC 543;paragraphs 13-14
[17] (1976) 3 SCC 119 at paragraphs 9, 19, 24, 38
[18] (2006) 4 SCC 658 at paragraphs 42, 43, 50, 53, 67 & 68
[19] (2020) 9 SCC 706 at paragraphs 25 to 30

Reliance is placed on ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad***[20]**,** **M.** ***Ethiraj vs Sheetala Credit Holdings Pvt.*** **Ltd**[21]**.**

46. In a quasi-partnership it would not be just and equitable for the members to act in a manner contrary to the agreement and understanding entered into between the members. It would thus not be just and equitable for the Respondents to act in contravention of the Family Settlement which is binding and enforceable. In this case, the superimposition of equitable considerations is particularly evident because: (i) the Company is a family-run organisation that was founded and is still operating on the basis of a personal relationship based on mutual confidence; (ii) the parties, who are also shareholders, have entered into a Family Settlement, which recognises members' inherent right to participate in the company's business operations through Clauses 9 and 21; and (iii) the Family Settlement places restrictions on the transfer of members' interests in the company. The Learned Senior Counsel placed reliance ***Ebrahimi v Westbourne Galleries Ltd.***[22], **O'Neill v Phillips**[23]**,** ***Probir Kumar Misra v Ramani Ramaswamy***[24]**.**
47. The learned Senior Counsel asseverated that an act in derogation of the family settlement would amount to oppression particularly when the same creates a new majority.
48. The conduct of the Respondents in acting in breach of the Family Settlement lacks in probity, is unfair and also in breach of the duty to act in utmost good faith towards the Petitioners, making it just and equitable for the Company to be wound up. Reliance is placed on ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.***[25]**.**
49. The learned Senior Counsel argued with all vehemence that the Respondents have wrongfully sought to take away the right conferred upon the Petitioners by virtue of being a shareholder of the Company and a member of the Sarkar

[20] (2005) 11 SCC 314 at paragraphs 166, 225-231
[21] 2017 SCC Online Mad 4407 at paragraphs 157, 161-166 (SLP disposed of on May 17, 2018)
[22] 1972 (2) All ER 492 at 500-502
[23] (1999) 2 All ER 961 at 970
[24] (2010) 154 Comp Cas 658 at 732
[25] (1981) 3 SCC 333 at paragraphs 46-52

Family, to be offered shares under Clauses 13 and 14 of the Family Settlement. The Respondents have thus acted in an oppressive manner prejudicial to the Petitioners' legal and proprietary rights as a shareholder.

50. As stated above, the Family Settlement having been agreed to by all the shareholders of the Company were part of the Articles of Association of the Company and/or were akin to the new Articles of Association of the Company. The acts of the Respondents in breach of the Articles of Association of the Company would be *ultra vires* and acts of oppression. The learned Senior Counsel placed reliance on ***Sangramsingh P. Gaekwad (supra)[26], Cane v. Jones[27], In Re Home Treat Ltd.[28]***.

51. The learned Senior Counsel asseverated that the wrongful and illegal acts of the Respondents in effecting transfers of shares in breach of the Family Settlement, and the creation of a new majority in the Company in such a manner is itself an act of oppression. The Learned Senior Counsel placed reliance on ***Howard Smith Ltd v. Ampol Petroleum Ltd.[29], Bhaskar Stoneware Pipes (P) Ltd. v. Rajinder Nath Bhaskar[30].***

52. The learned Senior Counsel submitted that the Respondent No. 7 being a whole time Director is also in breach of his fiduciary duties towards the shareholders of the Company including Petitioner No. 1 in approving the illegal transfer of shares on 13 April 2017 and 24 April 2017. It is stated that Respondent No. 7 in the present case was acting as part of the group of Respondent No. 2 and was not acting in the best interest of the Company and its shareholders[31]**.** The duty of a director towards shareholders was recognised in the decision reported in ***Bajaj Auto Ltd. v. N.K. Firodia[32],*** and is now also provided for in section 166(2) of the Companies Act, 2013.

53. It is submitted that the Respondents have contended that Clause 7 of the Family Settlement did not consider Petitioners and Respondent No. 2-6 as two groups

[26] paragraph 167
[27] (1981) 1 All ER 533 at 535, 536 & 538 to 540
[28] (1991) BCLC 705 at 708, 709 & 711
[29] (1974) 1 All ER 1126 at pp. 1135-1136
[30] 1984 SCC Online Del 148 @ paragraphs 16, 20, 25, 27 to 32
[31] Minutes of AGM dated September, 2, 2022 at page 85 at 86 of the Rejoinder to I. A. 86 of 2022
[32] (1970) 2 SCC 550 at paragraph 12

holding 40% of the shareholding each, but instead envisaged five groups as stipulated in Clause 7 and hence there was no question of creation of new majority. In reply to such contention, Mr. Mookherjee, the learned Senior Counsel submitted that the said contention is misconceived and without any basis as the Family Settlement clearly provided that Respondent No. 2-6 as a group would hold 40% of the shareholding in the Company through Respondent No. 4 and Respondent No. 6[33].

54. The learned Senior Counsel further asserted that the Family Settlement also provided that Petitioner No. 1's entitlement to 20% shareholding would be held by his wife i.e. the Petitioner No. 2. Further, Petitioner No. 3's entitlement to 20% shares would be held by Petitioner No. 1, beneficially for Petitioner No. 3. Thus, the Petitioners together, as a group, would hold 40% of the shareholding in the Company[34].

55. Thus, the Family Settlement clearly envisaged two groups of shareholders holding 40% each in the Company. In any event, there has been a creation of a new majority in favour of the group of Respondent No. 2-6. The Respondents have wrongfully acquired additional 20% shareholding in the Company (making themselves 60% shareholders up from 40%), creating a majority which did not exist previously.

56. The learned Senior Counsel submitted that the Respondents have argued that the restrictions in the Family Settlement are not binding as the same have not been incorporated into the Articles of Association of the Company. In this regard, the Respondents have relied on the decision reported in ***V.B. Rangaraj v. V.B. Gopalakrishnan[35]***.

57. Replying to above contention, Mr. Mookherjee submitted that the decision of ***V.B. Rangaraj (supra)***, the Company was not a party to the agreement between the shareholders. However, in our case, the Company is a signatory/party to the Family Settlement and evidently bound thereby.

[33] Recital (I) page 595 and Clause 4 page 596 of Vol. III of the C.P.
[34] Clause 2 page 596 and Clause 6 page 597 of Vol. III of the C.P.
[35] (1992) 1 SCC 160

58. The learned Senior Counsel submitted that the decision reported in ***V.B. Rangaraj (supra)*** has been overruled in the decision of ***Vodafone International Holdings BV v. Union of India***[36]**,** which has been delivered by a three Judge Bench of the Hon'ble Supreme Court which is binding and the decision reported in ***V.B. Rangaraj (supra)*** is no longer a good law. In support of his argument, the learned Senior Counsel relied on ***Kaikhosrou (Chick) Kavasji Framji v. Union of India***[37]**.**

59. The learned Senior Counsel argued that by way of the Family Settlement, 100% shareholders of the Company have consented to the terms contained in the Family Settlement. In such a case, the unanimous consent of the shareholders itself operates as a Special Resolution and would be akin to the new Articles of Association of the Company and would override the existing Articles of Association, reliance was placed on ***Cane v. Jones***[38]**; *In Re Home Treat Ltd.***[39]. The law laid down by the English Courts in this regard has also been followed by the Hon'ble Supreme Court of India in the decision reported in ***Ram Parshotam Mittal & Anr. v. Hillcrest Realty Sdn. Bhd, & Ors.***[40]**.** Whether or not the consequential ministerial changes in the Articles are formally made, is totally irrelevant.

60. Anyhow, it is incongruous for the Respondents to suggest that though 100% shareholders and the Company also have formally agreed in writing to the terms of an agreement, such agreement can be ignored or not effected. Such an argument militates against the law of the land including the Indian Contract Act, 1872.

61. Without prejudice to the fact that the agreement recorded by 100% shareholders and the Company in the Family Settlement operates as the new Articles for all intents and purposes, the Respondents by unduly delaying the ministerial act of making formal changes to the Articles and filing the same with ROC, have acted in breach of clauses 12 and 16 of the Family Settlement.

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[36] (2012) 6 SCC 613 at paragraph 262
[37] (2019) 20 SCC 705 at paragraphs 37 to 46
[38] (1981) 1 All ER 533 at 535, 536 & 538 to 540
[39] (1991) BCLC 705 at 708, 709 & 711
[40] (2009) 8 SCC 709 at paragraphs 25-30, 37, 43-45, 69

The Respondents have not denied their obligation in this regard even in the affidavits filed in this proceeding.

62. The Respondents have argued that no offer is required to be made to other signatories for share transfers inter-se signatories to the Family Settlement due to the provisions of clauses 13 and 14. In reply to the contention, Mr. Mookherjee submitted that such argument is premised on a misreading and misinterpretation of clauses 13 and 14.

63. Clause 13 prohibits transfers of shares except to the existing signatories and Clause 14 stipulates that if any share transfers are contemplated to be made, the same can be done only after first offering the shares to the other signatories who were shareholders, and who would have the right to purchase the same in accordance with their clause 7 shareholding proportion. In other words, there is a right of pre-emption conferred on the shareholders, giving them the opportunity to maintain their shareholding percentage even if another shareholder wants to divest any shares. This pre-emption right reinforces the parity in shareholding that forms the basis of the Family Settlement.

64. The only exceptions to the pre-emption clause 14 are – (i) the *inter-se* transfers "*among the signatories*" necessitated to achieve the clause 7 shareholding pattern of 40:40:20; and (ii) for transfers to lineal blood descendants or by inheritance. All other share transfers, including any subsequent share transfers to existing shareholders are subject to compliance with the pre-emption clause.

65. To achieve the agreed clause 7 shareholding of 40:40:20, it would necessarily involve the making of certain transfers of shares *inter se* the signatories and since the same is anyway agreed to in the Family Settlement, that is why a qualification to the pre-emption clause has been provided in Clause 14 of the Family Settlement which states that the pre-emption clause would not apply to such inter se transfer of shares among signatories, which was necessary to reflect the shareholding position in Clause 7. Once the shareholding position as per Clause 7 was achieved, if an existing signatory wishes to transfer shares to another signatory, he/she shall first offer the same to all other signatories of Family Settlement who were the shareholders of the Company who would be

entitled to purchase the shares in accordance with their proportion of shareholding.

66. The Respondents are plainly misreading clause 14 to suggest that the pre-emption right does not apply to the share transfers made by Respondent No. 10 to Respondent No. 2. Such argument of the Respondents is contrary to the terms of the Family Settlement, because accepting such argument would nullify and render meaningless the provisions of clause 14 as also the family settlement.

67. The Learned Senior Counsel reiterated that the Respondents' have further contended that the pre-emption right contained in Clause 14 of ***M.M. Dua v. Indian Dairy and Allied Services Private Limited***[41]**,** that pre-emption rights can exist even for transfers *inter se* shareholders and violation of the said right amounts to an act of oppression.

68. The Respondents have argued that breach of Family Settlement is not sufficient to constitute an act of oppression. In this regard, the Respondents have sought to place reliance on the decision reported in ***Chatterjee Petrochem v. Haldia Petrochemicals***[42]. The learned Senior Counsel submitted that the decision reported in ***Chatterjee Petrochem (supra)*** did not relate to a family company nor were the principles of quasi partnership applicable in the said case. The said case also was not concerned with a Family Settlement. Furthermore, unlike our case, the Company was not a party to the arrangement between the shareholders in that case.

69. Mr. Mookherjee further sought to distinguish ***Chatterjee Petrochem (supra)*** and submitted that in the said case, one Chatterjee Group had agreed to invest in the Company on the promise that the Chatterjee Group would have control over the management of the Company. The Chatterjee Group complained that such promise had been breached. In the said case, the court refused relief to the Chatterjee Group as the Chatterjee Group had itself breached its own obligations to bring in sufficient funds into the Company and had itself suggested that the shares of the Company be transferred to a third-party being

[41] (1994) SCC OnLine CLB 5 at paragraph 35
[42] (2011) 10 SCC 466

IOC. It was in such context that the court held that the Chatterjee Group was not wrongfully reduced to a minority. In our case, there is no case of breach by the Petitioners of the terms of the Family Settlement. Hence, the said case has no application in the present proceeding.

70. In any event, the said decision is not an authority for the proposition that breach of a Family Settlement cannot constitute oppression. The findings in that case are based on the peculiar facts of that case and a factual finding that the complainants viz. Chatterjee group did not abide by their own obligations and in fact, contributed to dilution of their shareholding.

71. The Respondents have also contended that a breach of Family Settlement cannot be complained of in proceedings for oppression and mismanagement under the Companies Act, 2013 and the said grievance can allegedly only be made in a civil suit. The Respondents have sought to rely upon the decision reported in ***Rajiv Sanghvi v. Pradip R. Kamdar***[43]**.** The learned Senior Counsel submitted that the said contention of the Respondents is misconceived and without any basis. Though the decision in ***Rajiv Sanghvi (supra.)*** was affirmed in appeal, the decision reported in ***Pradip R. Kamdar v. Rajiv Sanghvi***[44], the same is of no relevance in the present proceedings.

72. In the said case the parties had entered into an agreement which envisaged the settlement of disputes which were the subject matter of a proceeding relating to oppression and mismanagement as also settlement of other disputes. The relief being sought before the court was restricted to specific performance of the said settlement. It was in the said context that the court held that the relief of specific performance of the settlement could be granted by a civil court.

73. The grievance in the said case did not relate to oppression and mismanagement, which can only be decided by the National Company Law Tribunal by virtue of Section 430 of the Companies Act, 2013. In our case, the Family Settlement has been relied on to show the understanding between the shareholders and members of the Sarkar family to maintain parity of control in the Company. The Respondents by acting in breach of the Family Settlement have breached

[43] (2022) SCC OnLine Bom 11752
[44] (2022) SCC OnLine Bom 3147

such understanding and created a new majority in the Company, which is an act of oppression. The reliefs sought for are to bring to an end the matters complained of arising out of the wrongful and oppressive conduct of the Respondents in acting in breach of the Family Settlement. The same can only be decided by this Tribunal.

74. It does not stand to logic that even though an act in breach of the Family Settlement is oppressive, the Tribunal cannot adjudicate the same. What is required to be seen is whether the act complained of is oppressive or not. If oppression is the result of an act by virtue of section 430, the Tribunal alone will have jurisdiction. It is further submitted that the family settlement in the present case is not only a family settlement but is akin to the Articles of Association of the Company. An act in breach of the Articles of Association and enforcement of a provision contained in the Articles of Association of a company can always form the subject matter of a petition under section 241/242 of the Companies Act, 2013.
75. The Respondents have sought to contend that the Petitioner No. 1 did not have any rights under the family settlement as he did not hold any shares under the family settlement. In reply to such contention, the learned Senior Counsel submitted that the Family Settlement provided that Petitioner No. 1's entitlement to 20% shareholding would be held by his wife P2. Further, the Petitioner No. 3's entitlement to 20% shares would be held by Petitioner No. 1, beneficially for the Petitioner No. 3. Thus, the Petitioners together, as a group, would hold 40% of the shareholding in the Company[45].
76. Furthermore, Petitioner No. 1 was further conferred with management rights independently under the family settlement[46].
77. Mr. Mookherjee asserted that even though Petitioner No. 1 was holding 20% shares beneficially for Petitioner No. 3, Petitioner No. 1 had a right to be offered shares under Clause 14 being a signatory to the family settlement in proportion to the shareholding held by Petitioner No. 1.

[45] Clause 2 page 596 and Clause 6 page 597 of Vol. III of theC.P.
[46] Clause 9 page 597 of Vol. III of the C.P.

78. In any event, even assuming but not admitting that Petitioner No. 1 was not to be considered a shareholder and only Petitioner No. 2 and Petitioner No. 3 were to be considered as the shareholders, the Respondents have still acted in breach of the family settlement and created a new majority as no offer has been made under Clause 14 to Petitioner No. 2 and Petitioner No. 3 before Respondent No. 10 transferred its shares to Respondent No. 2.
79. The learned Senior Counsel argued that an illegal and oppressive Board resolution has been passed on 24 June 2019 taking away the rights of Petitioner No. 1 in the Digital division of the Company which had vested in him by virtue of being a shareholder of the Company and member of the Sarkar family.
80. It is submitted that the digital division of the Company was started by Petitioner No. 1 sometime in the year 1997. Petitioner No. 1 as the Chief Editor was mainly responsible for the exponential growth and expansion of the ABP Group which comprised of several businesses and entities including Respondent No. 1 Company. This fact is not disputed by the Respondents.
81. The profile of Petitioner No. 1 as appearing on the website of Respondent No. 1 Company itself attributes growth and development of Respondent No. 1 Company to him. Petitioner No. 1 has also been attributed with having led the ABP Group into television.
82. It is further submitted that the major contribution by Petitioner No. 1 in the Company has also been recorded in the minutes of the Annual General Meeting of the Company dated 30 August 2017[47] and also on 02 September 2022[48] which is even after the present petition was instituted.
83. The learned Senior Counsel averred that the Digital Division was for all intents and purposes, an independently run division and was not dependent on the print division for its existence and had its own internal hierarchy and reporting structure ultimately headed by Petitioner No. 1. Though there was some co-operation and co-ordination between the divisions, the staff and employees, the administrative practices followed by the digital division were and are separate from and independent of the print division of the Company. The

[47] Pg. 519 at 522; Vol. III of the C.P.
[48] Pg. 85 at 87 of the Rejoinder to I.A. 86 of 2022

digital division enjoyed autonomy in its operations. This position the Respondents have not been able to dispute or deny with any material particulars. Rather, the evasive stand pleaded in the Reply Affidavits demonstrate and establish the fact that Digital was, for all intents and purposes, operated and run as an autonomous and independent division, separate from the print division.

84. During the discussions held on November 9, 2016 regarding the digital division of the Company, one Mr Espen Egil Hansen, a well-known journalist from Norway who was also present suggested that: "*The digital business is different from the print especially with a legacy print business. It should be a complete independent operation with independent decision-making structure*." The Board agreed to such view which would appear from Point No. 16 of the "Digital Discussion Takeaways: Board Meet 9.11.2016" which records that *"Digital is different from print: It should be an* ***independent*** *operation with* ***independent*** *decision making"*.

85. Mr. Mokherjee referred to a note of the Managing Director of the Company i.e., Respondent No. 7, circulated on 16 June 2016, which was also put upon the notice board of the Company for everyone's information. The said notice clearly records that Mr Aveek Sarkar will continue to lead digital and other initiatives of the group[49].

86. It is submitted that the Respondent Nos. 1 and 7 in their reply affidavit have contended that the notice is a draft notice and the notice which was actually issued on 22 June 2016[50]. This does not support the Respondents at all since the contents of the two notices are substantially the same. Both the notices record that Petitioner No. 1 was to continue to lead the digital division of the Company, despite stepping down as Editor-in-Chief.

87. It is further submitted that the Respondent No. 1 and 7 in their reply affidavit have also relied on emails[51] from 14 June 2016 to 17 June 2016, exchanged between Respondent No. 7 and Petitioner No. 1 regarding the contents of the

[49] *Vol-I, Annexure "I", Pages 517 and 518 of the C.P., Vol-III*
[50] Annexure C at Page 108 of their Reply Affidavit
[51] Para 5, Pages 13-14, para 19 pp. 27-30 and Annexure A, Pages 80 – 97 of Reply Affidavit of Respondent Nos. 1 & 7

notice announcing changes in the management/editorial positions and their reporting structures. From the aforesaid emails also, it will be evident that it was always clearly understood among the Company and the members that Petitioner No. 1 would continue to lead the digital division of the Company. It is submitted that the Respondent No. 2 has also taken a similar stand.

88. The learned Senior Counsel pointed out that Petitioner No. 1 stepped down as Chief Editor of the ABP Group on the same day i.e. 22 June 2016 as the notice was circulated whereby it was agreed that Petitioner No. 1 would continue to lead the digital division of the Company. Thus, it was accepted and understood by the Company, Respondent No. 7 and Respondent No. 2 that Petitioner No. 1 would continue to lead the digital division of the Company.
89. In fact, the Petitioner No. 1 always has had the final say in all important matters including editorial content, coordination between divisions and administrative matters. The learned Senior Counsel referred to several documents[52] evidencing the same.
90. Petitioner No. 1 played an active role in various Strategy Board Meetings/Board Meetings held between 14 January 2016 to 15 November 2017[53] wherein discussion regarding the development, expansion and management of digital division took place.
91. The learned Senior Counsel asseverated that under the guide of the Petitioner No. 1, the digital division of the Company has significantly outperformed the print division in terms of the editorial content. The digital division has seen exponential growth in recent years as will be apparent, *inter alia*, from the fact that the website 'anandabazar.com' had about 130 million page views (at the time of filing of CP i.e. June 2019) as compared to 20 million page views in March, 2015. On the other hand, the popularity of the print platform of the Company has relatively declined in recent years. There has been an exponential growth in the revenue of the digital division from 9.85 Crore in 2019-20 to 18.60 Crore in 2021-22.

[52] Annexure K @ Pp. 523-581 of the C.P.
[53] Annexure H, Pp. 475 – 516; Volume III of the C.P.

92. The progress achieved by the digital division in recent years has also been noted and appreciated by a foreign media expert, Yasmin Namini who was the Senior Vice President of New York Times[54].
93. The learned Senior Counsel submitted that there was a systematic oppression of the Petitioner No 1, by reducing the budget of the digital division. Discussions were held in the meeting of the Investment & Strategy Committee held during 17 April 2018 to 05 February 2019[55] regarding budget allocation of the digital division of the Company.
94. The budget allocated to the digital division was drastically sought to be reduced in the meeting of the Investment & Strategy Committee held on 5 February 2019[56] despite the growth of the digital division.
95. The learned Senior Counsel referred to the email dated 13 February 2019[57] sent by Petitioner No. 1 to Ms Zahra Basari i.e. the Company Secretary, wherein the Petitioner objected to the reduction of the budget of the digital division. However, Petitioner No. 1's objections were ignored and remained unaddressed, without any justification.
96. Mr. Mookherjee submitted that the Respondents have wrongfully and illegally passed a Board Resolution on 24 April 2019 taking away the rights of the Petitioner No. 1 in the Digital Division of the Company.
97. It is submitted that on 16 April 2019[58] Petitioner No. 1 received a notice for the Board Meeting of the Company to be held on 24 April 2019. There was no agenda item relating to the digital division of the Company.
98. During the Board Meeting held on 24 April 2019, the Respondent No. 7 i.e. the Managing Director obtained leave of the Respondent No. 8, i.e. the Chairman to discuss the "digital business" under the agenda "Any Other Business". The Respondent No. 7 proceeded with the discussion and to Petitioner No. 1's surprise and despite his objections, a decision was taken

[54] Annexure M at Page 584-587; Vol III of the C.P.
[55] Page 18, Para 26-27 of the Reply Affidavit of Respondent Nos. 1&7. Annexure B, Pages 98-107 of the Reply Affidavit of Respondent Nos. 1&7
[56] Annexure B, Page 105-107 of the Reply Affidavit of Respondent Nos. 1&7
[57] Annexure W, Pg. 673; Vol- III of the C.P.
[58] Annexure Z, Pp 679-685; Vol-IV of C.P.

regarding the digital business that control of businesses, editorial functions and contents of the digital division would be under the control of Respondent No. 2. At all material times since 1997 and thereafter, Petitioner No. 1 was recognized to be leading the affairs of digital division and this position was not changed even in 2016 when Respondent No. 2 became Chief Editor. In other words, Petitioner No. 1's role as leader of digital division was recognized and accepted as an assigned right (as a Sarkar family member) which could not be abrogated without just cause.

99. On 02 May 2019[59], Ms. Zahra Basrai circulated a draft copy of the purported minutes to, *inter alia*, Petitioner No. 1. The learned Senior Counsel led us through the relevant portion concerning the digital division is set out below:

> "B) *REPORTING BY DIGITAL CONTENT TEAM Mr. Arup Kumar Sarkar proposed that the Digital Content team should report to the respective Editors, who in tum report ·to the Chief Editor. The Digital Business team will report to the Managing Director & Chief Executive Officer. The matter was put to vote, Mr. Aveek Kumar Sarkar dissented, Chairman abstained from voting and the rest of the Directors voted for the motion. Accordingly, the matter was passed by majority."*

100. It is submitted that there is no reference in these draft minutes to any reason for the sudden decision (without agenda in notice) and no complaint from anybody is referred to.

101. The Petitioner No. 1 on 05 May 2019[60], while responding to Ms Basrai's email dated 2 May 2019 objected to the matters sought to be transacted regarding the digital business, but did not receive any reply either by Respondent No. 2 or the Chairman of the Board Meeting.

102. On 13 May 2019, Ms. Zahra Basrai forwarded an email from the Managing Director and C.E.O of the Company i.e. Respondent No. 7, dated 10 May 2019[61]. The email refers to alleged leave taken from the Chair to discuss the

[59] Annexure "AA", Pp. 686- 693; Vol-IV of the C.P.
[60] Annexure "BB" at Pg 694; Vol-IV of the C.P.
[61] Annexure "CC" at Pp. 695-697, Vol-IV of the C.P.

digital business (though no such alleged leave is reflected in the draft minutes). Furthermore, no leave of the Chairman was obtained to propose any resolution relating to the digital business. The learned Senior Counsel submitted that Secretarial Standard 1.3.10 does not permit decision/resolution to be taken under "any other business" without express leave from Chairman to such effect, which admittedly was not taken in our case.

103. On 13 May 2019[62], Ms. Zahra Basrai circulated a totally new and discrepant version of the draft minutes (amended) of the Board Meeting dated 24 April 2019. It is submitted that the new draft minutes were totally different from the one circulated earlier. In any event, it would be clear from even this version of the minutes that no leave of the Chairman was obtained for passing any resolution relating to the digital business, though mandatory under Secretarial Standard 1.3.10.

104. The learned Senior Counsel referred to the following portion of the new version of the draft minutes:

> *"B) REPORTING BY DIGITAL CONTENT TEAM*
>
> *Mr. Dipankar Das Purkayastha sought the permission of the Chair to discuss the Digital Business and this was granted. He raised the issue of editorial control of the Digital Business. For better coordination and streamlining of and content dissemination, he suggested that that there should be a common newsroom for tt.ie editorial teams of Print and Digital. This would ensure cohesion and consistency in content delivery. Mr. Arup Kumar Sarkar mentioned that there have been complaints by editors and journalists regarding Inconsistency and a lack of coordination between the editorial' teams of Print and Digital. Mr. Arup Kumar Sarkar proposed that the Digital Content team should report to the respective Editors, who in turn report to the Chief Editor. The Digital Business team will report to the Managing Director & Chief Executive Officer. The matter was put to a vote. Mr. Aveek Kumar Sarkar dissented. The Chairman abstained from voting and the*

[62] Annexure "DD", Pp. 698 to 705; Vol-IV of the C.P.

rest of the Directors voted for the motion. Accordingly, the matter was passed by majority.

There being no other business, the meeting concluded with a vote of thanks to the Chair."

105. It is submitted that these alleged draft minutes, apart from being materially different from the earlier one, contained several additional points which were never even discussed, leave alone considered at the meeting. These include alleged "complaints" which have never been disclosed even in the present proceedings by the Respondents and alleged leave sought from Respondent No. 8 by Respondent No. 7, though the first minutes did not record any such leave being taken.

106. From the above it is clear that these were afterthought "improvements" made by Company Secretary at the instance of Respondent No. 2 and Respondent No. 7 upon receiving Petitioner No. 1's objections, to cover-up the material irregularities and to invent an afterthought explanation for the curtailment of Petitioner No. 1's rights, without there even being an agenda in the meeting notice.

107. The affidavit does not give any particulars of complaints and no written complaints have been produced. The learned Senior Counsel pointed out that during the course of the hearing, the Counsel for the Respondents were asked by the Tribunal if there were in fact any complaints as referred to in the alleged revised minutes of the meeting dated April 24, 2019. However, the Respondents were not able to produce copies of any such alleged complaints or give particulars as to when and by whom such alleged complaints were made and thus it is evident that a false case was sought to be made out in the purported final minutes of the Board meeting dated 24 April 2019 only to try and justify the purported resolution impugned in these proceedings.

108. On 15 May 2019[63], the Petitioner No. 1 responded to the email of Respondent No. 7 dated 10 May 2019 forwarded to him by Ms Basrai on 13 May 2019, wherein the Petitioner stated that the resolution that was sought to be passed

[63] Annexure "EE", Pp. 706-708 Vol-IV of C.P.

regarding the digital business was proposed without leave of the Chairman, and no explanation has been given as to why such resolution was sought to be passed under item titled "Any Other Business". The Petitioner No. 1 also stated that it would be preferable to have a separate editorial team for digital and print and if they are to be integrated it is the digital editorial which has to exercise control over print editorial. No response was received to this email from the Respondents.

109. Hence, the Respondents in passing the Board Resolution dated April 24, 2019 have acted in a wrongful, illegal and oppressive manner. The Board Resolution purports to take away the role assigned to Petitioner No. 1 as the head of the digital division pursuant to the agreement and understanding of the parties. In a closely held family Company such as Respondent No. 1, the exclusion of Petitioner No. 1 from an assigned managerial role as the Head of the Digital Division is *per se* an act of oppression. The learned Senior Counsel placed reliance on ***R. Ramesh v. Devi Polymers***[64]**.**

110. It is submitted that the Petitioners brought the facts relating to the illegal Board Resolution dated 24 April 2019 to the notice of the family solicitor of the Sarkar family. Pursuant to discussions with the family Solicitor, the Resolution dated 24 April, 2019 has not been given effect to till date. It was only after passing of the illegal Board Resolution that the statutory forms were uploaded on 04 June 2019 reflecting the illegal transfer of shares made on 12 April 2017 and 24 April 2017 in breach of the Family Settlement. It has been admitted by the Respondent No. 1 and Respondent No. 7 that since there appeared to be certain issues raised by the Petitioner no. 1, the resolution dated 24 April 2019 was kept in abeyance to see if there could be any workable arrangement. The Respondent No. 2 it has also been admitted that in view of the mediation through the family Solicitor the resolution had not been given effect to, to see whether any workable arrangement could be arrived at with Petitioner No. 1.

111. It is submitted that the digital division of Company continued to do well and also outperformed the print division even after the illegal Board Resolution of

[64] 2017 SCC Online Mad 37885 at paragraphs 14, 60-62, 119, 128-132

24 April 2019. There was no justifiable reason for seeking to remove Petitioner No. 1 from its assigned role as leader of the digital division.

112. The Respondents have argued that quasi partnership principles will not apply in the instant case as there is allegedly no agreement that Petitioner No. 1 would continue to lead Digital Division. The Learned Senior Counsel in reply submitted that without question, the Company is a closely held family company. In India, such a company recognised to be in the nature of a quasi-partnership and in support of his reply has placed reliance on ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad[65], M. Ethiraj v. Sheetala Credit Holdings Pvt. Ltd.[66].***

113. The Learned Senior Counsel thereafter sought to distinguish the decision in ***Re Dinglis Properties*** **Ltd[67],** which has been relied on by the Respondent and submitted that the said decision has no application in the instant case as the decision is not the law in India, in the said decision, the company was not a family company. Furthermore, in the said case, the facts showed that it was the father who always intended to remain in control of the company. The father did not do anything to suggest that there could be any restraints on his rights as a majority shareholder. In the facts of the case, the relationship between the father and the son was found to be in the nature of a commercial relationship rather than a personal one. The learned Senior Counsel further submitted that said decision was, in fact, distinguished in a subsequent decision reported in ***Timothi Smith v. Joan Smith[68],*** wherein it was held:

> *"132. This present case is, as I see it, a very different case on its facts from Dinglis v Dinglis, and it is necessary to bear in mind that many of the observations of the deputy judge in that case were directed at the particular facts of that case. In particular: i) This case involved a large company firmly controlled by the father, who was a strong character. ii) The company was not established as a quasi-partnership company, but rather as the father's own company, albeit that shares were subsequently*

[65] (2005) 11 SCC 314 at paragraphs 166, 225-231
[66] 2017 SCC Online Mad 4407 at paragraphs 157, 161-166 (SLP disposed of on May 17, 2018)
[67] (2019) EWHC 1664, *paras 203 to 208, 211, 219*
[68] 2022 EWHC 1035 (Ch) at paragraphs 132-136

transferred to the petitioning son. iii) There was no suggestion that the son gave up anything in order to join the Company, and there was no suggestion of any understanding that control of the Company would ultimately pass to the son, and no suggestion of any understanding that the son would continue to work in the company indefinitely, or for the rest of his working life. Rather, the father, in that case, made clear that he retained control of the company, and there was no indication that he ever intended to relinquish that control. iv) The relationship between the father and son was, on proper analysis, more of a ***commercial relationship****, than a personal one so far as the affairs of the company were concerned."*

114. Furthermore, in the decision reported at ***Timothi Smith(supra)*** it was also held that in family companies that had been operated as quasi-partnership companies, those in control would be subject to equitable restraints. Further, the children who acquired or inherited shares, effectively stepped into the shoes of their parents, and the company would remain a quasi-partnership company with those in the next generation having control of the company, being subject to similar equitable restraints as their parents. In our case the shareholding of the Petitioners as well as the Respondents are by way of inheritance and the said fact is also recorded in the Family Settlement. Notably, the contents of the Family Settlement are not disputed by anybody, including any of the Respondents.

115. The Respondents have contended that the Secretarial Standards are irrelevant as no Board Meeting was required as the resolution dated 24 April 2019 was merely a change in the reporting structure of the Company. In reply to the said contention, the learned Senior Counsel has submitted that the said contention is baseless and an afterthought because the Board Resolution dated 24 April 2019 is not a change in reporting structure of the Company simpliciter.

116. By way of the said Board Resolution Petitioner No. 1's rights from an assigned managerial role were being sought to be taken away, which is an act of oppression. Furthermore, the said contention has also not been raised in any affidavit filed by the Respondents. If the resolution passed in Board meeting dated 24 April 2019 is invalid, change in reporting structure cannot be given

effect to. Regardless of the mode employed to take away Petitioner No. 1's right as head of digital division, the end result of curtailment of right would be oppressive and therefore, capable of being challenged under sections 241/242 of the Companies Act, 2013. The Respondents have not withdrawn the Resolution and are in fact, continuing to defend the Resolution dated 24 April 2019 and have prayed for implementing the same. The arguments of the Respondents are self-contradictory.

117. It is further submitted that in any event, the decision taken at the meeting dated 24 April 2019 could have only been taken by way of a Board Resolution. This is for the simple reason that the decision that Petitioner No. 1 would continue to lead the digital division was taken together by Petitioner No. 1 and Respondent No. 2 who were the only whole-time directors and also Respondent No. 7 who was the managing director. Hence, the managing director alone could not have taken any decision to remove or take away the rights of Petitioner No. 1 as leader of the digital division and the same, if at all, would have required the approval of the Board of Directors as well. This is also evident from the emails in particular email dated 16 June 2016[69] regarding the contents of the notice dated June 22, 2016 which would show that the decision that Petitioner No. 1 would lead the digital was taken jointly by Petitioner No. 1, Respondent No. 2 and Respondent No. 7.

118. The Respondents have contended that the passing of the Board Resolution dated 24 April 2019 and resultant taking away of the rights of the Petitioner as the leader of the Digital Division is not an act of oppression as the same allegedly does not affect the proprietary rights of Petitioner No. 1 as a shareholder and have placed reliance on ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.***[70] in this regard. The learned Senior Counsel in reply to the same submitted that the decision reported in ***Tata Consultancy Services Ltd. (supra)*** was not a case of a closely held family company. In the said case, Mr. Cyrus Mistry who claimed to be a part of the SP Group of companies was contesting his removal from the post of Executive Chairman

[69] Pg. 90 of Reply Affidavit of Respondent No. 1&Respondent No. 7
[70] (2021) 9 SCC 449, paras 101-106, 141-145, 239-240

and then Director of Tata Sons. The company concerned was incorporated in 1917 and SP Group became a shareholder only in 1965, almost after 50 years. A berth on the Board of Tata Sons was granted only in the year 1980 to Cyrus Mistry's father. Therefore, there was nothing on record in the form of pleadings or proof to substantiate the existence of a quasi-partnership. In fact, Cyrus Mistry's father was inducted into the Board in 1980, 15 years after acquisition of shares and such induction was not in recognition of any statutory or contractual right. After his father's exit in 2004, Cyrus Mistry was inducted in 2006, neither in recognition of a contractual right nor in recognition of a hereditary or statutory right. It was therefore held that principles of quasi partnership were not applicable. Furthermore, there was valid justification in the said case for removal of Cyrus Mistry as he was acting against the interest of the company. None of these principles or facts are relevant to the present case.

119. In the present case, Respondent No. 1 Company has been a family company from its very inception. The shareholding of the Petitioners as well as the Respondents have been acquired by way of inheritance. The fact that the post of the Editor-in-chief has always been retained by the members of the family clearly establishes that the Company is a family company. Notably, when Petitioner No. 1 stepped down from the role of the Editor-in-Chief, Respondent No. 2 took over that role, and thereafter Respondent No. 4 has become the Editor-in-Chief. It is important to note that no one from outside the family has ever been the Editor-in-Chief of the Company.

120. The Family Settlement also recognises the inherent rights of management of the different branches of the family. Contents of the Family Settlement are not disputed by anybody. It was also expressly agreed that Petitioner No. 1 would continue to lead the digital division. Exclusion from an assigned managerial role in a quasi-partnership which is exactly what has happened in our case, is an act of oppression.

121. Furthermore, there is nothing to show that Petitioner No. 1 has ever acted against the interest of the Company. No alleged complaints as referred to in the alleged amended draft minutes of the Meeting dated 24 April 2019 have

been disclosed. In fact, there was also no mention of any such complaints in the minutes circulated earlier on 02 May 2019.

122. The Respondents have also relied on a decision reported in ***Lau v Chu***[71]**,** without any context or relevance**.** The learned Senior Counsel asseverated that the said decision is far from assisting the Respondents, supports the Petitioners. The said decision lays down that just and equitable winding up may be ordered in two situations i.e. for any company – a functional deadlock and **f**or a quasi-partnership like in the present case – irretrievable breakdown of trust and confidence is enough for an order of just and equitable winding up.

123. The said case[72] follows the principle laid down in ***Ebrahimi v Westbourne Galleries Ltd***.[73] and holds that the company in that case was a quasi-partnership as there was a relationship of mutual confidence as well as an understanding that shareholders would participate in management.

124. Similarly in the present case, besides the understanding that Petitioner No. 1 would continue to lead digital, the management rights conferred upon Petitioner No. 1 by virtue of being a shareholder and member of the family in the instant case are also recognised in the Family Settlement.

125. The Respondents have further sought to argue that the Petitioners in seeking to continue to lead digital are attempting to create a 'company within a company' which is impermissible. In reply to such argument, the learned Senior Counsel vehemently argued that the same is misconceived and without any basis as the Petitioners are not seeking to create a "company within a company".

126. The Petitioner no. 1 in seeking to continue to lead the digital division of the Company is in no way seeking to supersede the Board of Directors of the Company and the digital division would continue to remain accountable to the Board of the Company. In fact, the digital division submits monthly financial statements to the Chief Financial Officer and to the executive management committee of the Company. All appointments in the digital division are

[71] (2020) UKPC 24
[72] paras 15, 16, 17, 18, 25, 31, 32
[73] (1972) 2 ALL ER 492

processed by the Human Resources wing of the Company. The internal auditors of the Company audit the accounts of the digital division. The annual increments are decided by the human resources wing for the Company as a whole. Furthermore, the digital division has grown substantially and continues to perform well under the leadership of the Petitioner no. 1.

127. The existence of divisions within a company is a common practice in many companies and is necessary for the efficient management and affairs of the company.

128. The Respondents are trying to mislead the Tribunal by arguing that the Petitioners want creation of a "company within a company" regarding the Digital Division headed by Petitioner No. 1. In actuality, what Petitioner No. 1 is praying for and is entitled to is to continue in his assigned managerial role as head of the Digital Division without being crippled or restricted in his activities at the whims and fancies of Respondent No. 2 and his nominees.

129. In other words, any decision regarding the day-to-day affairs of the Digital Division is to be taken by Petitioner No. 1 as the head and needless to say, any structural decisions *qua* the Digital Division such as budgetary allocation and HR/recruitment are also decisions to be taken by Petitioner No. 1 without undue interference from anybody.

130. It is not Petitioner No. 1's case that the Digital Division is beyond the Board of Directors. Rather, the specific prayer of the Petitioners is to protect Petitioner No. 1's entitlement to head the Digital Division and if any decision is taken by the Board of Directors regarding the Digital Division, the same will have to be done in consultation with Petitioner No. 1 and upon disclosing requisite basis, rationale and justification and upon following due legal procedure. In short, the Board of Directors including Respondent No. 2 cannot be allowed to ride roughshod over Petitioner No. 1 and to bypass Petitioner No. 1, though this is exactly what the Respondents have attempted to do by the impugned board resolution dated 24 April 2019.

131. The learned Senior Counsel referred to the supplementary affidavit dated 17 March 2021 fled by the Petitioner wherein the Petitioners has brought on record specific instances of undue interference by the Respondents into the

working of the Digital Division which are designed to undermine Petitioner No. 1's role as head of the Digital Division. For example:- undue interference by non-Digital personnel in Digital Division HR/Recruitment matters having the effect of unjustifiably overriding decisions taken by Petitioner No. 1 and the Digital Team. From this correspondence it is evident that Petitioner No. 1 has not asked for anything unreasonable. Petitioner No. 1 highlighted the independent HR practice of the Digital Division and that the Company's HR Team should be guided by the decisions of the Digital Division on Digital matters, since Petitioner No. 1 as head of the Digital Division was ultimately responsible.

132. In the correspondence exchanged, Petitioner No. 1 has ventilated his grievances on the discriminatory treatment meted out to the Digital Division, undermining Petitioner No. 1's authority and exclusion of the Digital Division from all ABP Group activities.

133. The Respondent has placed reliance on the emails dated 24 September 2020 to contend that the Petitioners are seeking to create a company within a company is wholly misplaced. It is pertinent to note that Respondent No. 7 being the Managing Director himself had informed the HR department of the Company that the digital division is not at all part of the business of the Respondent No. 1 Company and had said not to involve the digital division in the operations of the Company and when Marketing wanted to partner ABP Digital, Respondent No. 7 had suggested that that they partner with ABP Live, which belonged to the subsidiary of the Company. This was duly noted in Petitioner No. 1's email dated 04 October 2020 in response to the email dated 30 September 2020**.**

134. It is submitted that the emails dated 24 September 2020 and 04 October 2020 relate to the recruitment of one Debasree Chadha in the digital division of the Company. The HR department of the Respondent No. 1 Company had refused to process her application on the ground that she had left the Company's employment earlier to join a competitor. It is pertinent to note that since the HR was objecting to her employment, she was not ultimately employed by the Respondent No. 1 Company. However, she was engaged as a consultant and it is a matter of record that since her appointment as consultant, the business and

revenues of the digital division had grown exponentially. Engaging Debasree Chadha as a consultant clearly vindicated the stand of Petitioner No. 1 that her involvement in the digital division would be for the benefit of the Company.

135. In the aforesaid emails, Petitioner No. 1 had highlighted with support of facts and figures, the irrationality of the interfering decisions taken by the Respondents in the Digital Division. There is no question of Petitioner No. 1 wanting a company within a company. The mala fides of the Respondents are evident from the fact that they are opposed to giving any rationale or justification to interfere in the Digital Division's affairs, specifically when the records show that despite the constraints faced including unwarranted budget cuts, the Digital Division has significantly outperformed the print division. There is nothing disclosed by the Respondents to warrant undermining of Petitioner No. 1's authority as head of the Digital Division.

136. In fact, the intention of the Respondents is very clear i.e. to deprive Petitioner No. 1 of his role at any cost, regardless of performance or the bottom line. Instances of the Respondents unfairly targeting the Digital Division and Petitioner No. 1 (in his capacity as head of Digital Division) and that too, without any valid board resolution or rationale.

137. Mr. Mookherjee submitted that under section 242 of the Companies Act, 2013, the powers of this Tribunal to grant the relief in the Family Settlement sought are of widest amplitude. This Tribunal with a view to bring to an end the matters complained of, can make such order as it thinks fit. There can be no limitation on the Tribunal's power while acting under the said provision. The Tribunal also has power to give directions which are even contrary to the Articles of the company and the provisions of the Companies Act, 2013. In support of his contention, the learned Senior Counsel placed reliance on ***Bennet Coleman and Co. v. Union of India[74], Cosmosteels (P) Ltd. v. Jairam Das Gupta[75], Debi Jhora Tea Co. Ltd. v. Barendra Krishna Bhowmick and Others[76], Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad[77].***

[74] 1973 SCC Online Bom 41 at paragraphs 15 to 16
[75] (1978) 1 SCC 215 at paragraph 10
[76] 1979 SCC Online Cal 37 at paragraph 25
[77] (2005) 11 SCC 314 at paragraph 181

138. Section 242(5) itself recognises the power of the Tribunal to make alteration in the Memorandum and Articles of Association.

139. The learned Senior Counsel argued with all vehemence that this Tribunal also has the power to direct the distribution of shares of Respondent No. 10 in accordance with Clause 14 of the Family Settlement by allowing the Petitioners to purchase the shares in proportion to their shareholding. Such a power has also been recognised in the decisions reported in ***Bhubaneshwar Singh v. Kanthal India Ltd.***[78]***, M.M. Dua v. Indian Dairy and Allied Services Private Limited***[79].

140. It is further submitted that, in the instant case, the Respondents being the wrongdoers cannot be allowed to take advantage of their own wrong, therefore, the shares transferred by the Respondent No. 10 who was acting against the interest of the Company and its shareholders should not revert to Respondent No. 10 and should be transferred to the Petitioners and the Respondent nos. 2 to 6 in proportion to their shareholding in accordance with Clause 14 of the family settlement**.**

141. The Respondents have sought to contend that granting the relief of share distribution as per Family Settlement would result in the creation of a deadlock in the Company as the Petitioners and the group of the Respondent nos. 2 to 6 would be holding 50% each of the shareholding in the Company. The said contention is misconceived and without any basis. Merely because two groups of shareholders would hold 50% of the shareholding in the Company would not automatically result in a deadlock in the functioning of the Company. The learned Senior Counsel argued that the Respondents have failed to show that by granting such a relief there would be a functional deadlock in the Company. The mere apprehension that there could be a deadlock is not a ground for refusing relief.

Submissions of the learned Senior Counsel appearing on behalf of the Respondent Nos.1 and 7 are summarized hereinafter:

[78] (1986) 59 Company Cases 46 at pages 65, 78 and 89 to 92
[79] 1994 SCC Online CLB 5 at paragraph 35

142. Mr. Ratnanko Banerji, the learned Senior Counsel submitted that in the Company Petition, various allegations of mismanagement of the affairs of the Company were initially raised, which were also refuted in detail in the Reply Affidavit filed by the Answering Respondents. However, during the final hearing of the matter, the allegations of mismanagement were given up by the Petitioners and only allegations relevant to the relief sought at prayers (a), (b), (c), (d), (h), (i), (j), (k) of the Company Petition were advanced.

143. The Petitioners have limited the scope of the Company Petition to the following three alleged acts of oppression:

    a) Validity of the share transfer by Respondent No. 10 to Respondent No. 2;
    b) Amendment of the Articles of Association **("AoA")** to reflect the Memorandum of Family Settlement dated April 12, 2017;
    c) Management and control of the affairs of the digital division of the Company.

144. Out of the 3 Petitioners, Petitioner Nos. 2 and 3 have never been involved in the management or administration of the Company.

145. The learned Senior Counsel submitted the crux of the Petitioners' argument is that the transfer by Respondent No. 10 of her 20% shareholding in the Company to Respondent No. 2 represents a breach of contract i.e., the Family Settlement. The relief sought by the Petitioners pertains to the specific performance of the contractual entitlement of the Petitioners to obtain 50% of the shares transferred by Respondent No. 10 to Respondent No. 2. Notably, none of this cause of action is grounded in anything other than contract, precluding its categorization under section 241/242 of the Companies Act, 2013.

146. It is firmly established, as underscored by the Learned Senior Counsel, that proceedings under section 241/242 of the Companies Act, 2013 are not the appropriate forum for adjudicating claims of contractual breach and/or granting specific performance of contracts. The precedent set forth in

Chatterjee Petrochem (India) Private Limited v. Haldia Petrochemicals Limited[80]**,** unequivocally settles this matter.

147. The learned Senior Counsel averred that the extent of the preemptive right bestowed upon shareholders of the Company can be adjudicated by a competent forum capable of providing suitable contractual remedies. Even in the scenario where there is an assumed (albeit unadmitted) contractual breach by Respondent No. 2 or Respondent No. 10, such breach does not amount to an oppressive act and does not merit the winding-up of the Company, as it can be remedied by a competent Court granting relief in the form of specific performance or damages, depending on the circumstances.

148. The learned Senior Counsel pointed out that it is incumbent upon the Company to register any share transfer that adheres to legal requirements. The Share Transfer Committee i.e. the Respondent No. 7 was obligated to register the transfer and could not have reasonably refused to do so. Importantly, it is highlighted that prior to the filing of the Company Petition, the Petitioners had not lodged any complaints against Respondent No. 7, whether in his capacity as the sole member of the Share Transfer Committee or as Managing Director.

149. The minutes[81] of the Share Transfer Committee meeting wherein approval for this transfer was granted, were presented before the Company's Board and were unanimously confirmed and noted by the Board. Notably, Petitioner No. 1 was present at this meeting and did not raise any objections[82]**.** Mr. Banerji, the learned Senior Counsel submitted that the actions undertaken by the Company in adherence to statutory procedures cannot be deemed oppressive.

150. The learned Senior Counsel submitted that the Petitioners have sought a directive that 50% of the shares previously held by Respondent No. 10 be transferred to them, resulting in Petitioner No. 1's "group" possessing 50% of the Company and the remaining 50% held by the "group" headed by Respondent No. 2/Respondent No. 4. The learned Senior Counsel submitted that granting this relief would not be in the Company's best interest. Such

[80] (2011) 10 SCC 466, 148
[81] Annexure "R" (part) @ Pg. 614; Vol. IV of C.P.
[82] Annexure "Q" @ Pp. 610-613; Vol. IV of C.P.

action would render decision-making impossible, potentially causing a standstill in the Company's affairs and would introduce a deadlock where none currently exists.

151. The Learned Senior Counsel submitted that the Tribunal should refrain from exercising its jurisdiction under section 241/242 of the Act to grant relief that would potentially create a deadlock in the Company's management. The learned Senior Counsel emphasized that the primary objective of any relief in a Company Petition should be to resolve deadlock situations rather than instigate them.

152. Mr. Banerji stressed on the point that presently, the Company operates as a fully functional enterprise. It is acknowledged that there is currently no deadlock in decision-making. Even throughout the pendency of the Company Petition and up to the date of hearings, the Company's Board has made decisions with unanimous agreement among all Directors, including Petitioner No. 1. There is no indication from the Petitioners of any decisions made post filing of the Company Petition, at the Board level or below, that can be deemed as oppressive by the majority shareholders to the detriment of the minority.

153. It is submitted that Clause 16[83] of the Family Settlement stipulates that the Parties to the Family Settlement shall facilitate amendments to the AoA of the Company "if thought fit and necessary"**.** The Petitioners contend that Clause 16 mandates the amendment of the AoA of the Company to reflect the clauses of the Family Settlement and allege breach of this clause by the other signatories of the Family Settlement, including the Company.

154. In reply to this contention, the learned Senior Counsel submitted that this plea constitutes yet another allegation of contractual breach, with the relief sought once again pertaining to specific performance of the contract i.e., the Family Settlement. An analogous plea was presented in ***Chatterjee Petrochem (supra)***, where it was contended that the failure of a contracting party to amend the Articles of Association of the Company to reflect the terms of a contract between the shareholders amounted to an act of oppression. However, this plea

[83] Annexure "O" @ Pp.590-605; Vol. III and Vol. IV of C.P.

was decisively rejected in paragraph 148 of the judgment, with the Hon'ble Supreme Court affirming that the "remedy in such a case was not under Section 397 of the Companies Act".

155. Mr. Banerji, the learned Senior Counsel submitted that the fact that the Company is a party to the Family Settlement does not alter this legal stance. The submission by the Petitioners that the Company is also in breach of its contractual obligation to amend its AoA in a specific manner constitutes a plea of contractual breach simpliciter. If proven, this breach would give rise to the remedy of specific performance and/or damages. This cause of action does not transmute into an oppressive act solely because the Company is alleged to be a breaching contractual party.

156. Without prejudice to the above, it is further asserted that the Petitioners have not even alleged, let alone provided any material on record to demonstrate any alleged breach by the Company of Clause 16 of the Family Settlement. Pursuant to section 14 read with section 114(2) of the Act, the AoA of a Company can only be amended by the requisite majority of shareholders present and voting in favor of the Resolution. The Petitioners have not asserted that any resolution to such effect has been moved by them as shareholders in the Company. Consequently, any plea in this regard is premature.

157. If the contention of the Petitioners is that the remaining shareholders are obligated under the Family Settlement to propose such a resolution by virtue of Clause 16, this once again constitutes a purely contractual cause of action. The appropriate remedy in such a scenario would be a decree of specific performance directing the shareholders to vote in favor of such a resolution when proposed. None of this cause of action is attributable to section 241/242 of the Act.

158. The Company has consistently adhered to the provisions of the Act, and would continue to do so concerning any future amendment to its AoA.

159. The learned Senior Counsel submitted that there appears to be a lack of clarity regarding the case put forth by the Petitioners concerning the management of the affairs of the digital division, alongside ambiguity surrounding the relief sought in this regard.

160. In the Company Petition and various correspondences addressed by Petitioner No. 1 during the pendency of the present proceedings, assertions were made regarding his purported entitlement to exclusive control over the digital division, positing it as immune from Board oversight, direction, or supervision. However, during final arguments, it was submitted by the Learned Senior Counsel representing the Petitioners that Petitioner No. 1 is not pursuing the creation of a "company within a company" for the digital division and acknowledges that the Board always retained supervision and control over its matters, similar to other divisions.

161. Mr. Banerji submitted that it appears that the Petitioners have accepted that the Board and senior management of the Company can properly direct the affairs of the digital division, negating their earlier stance. Given this common understanding between the parties, the case related to the digital division appears to have been explicitly abandoned by the Petitioners, and no relief is being sought in this regard.

162. A threshold concern arises regarding the maintainability of the plea concerning the digital division. This aspect revolves around Petitioner No. 1's assertion of an in personam "right" to participate in its management. However, this purported right, assuming its existence, pertains solely to Petitioner No. 1 and is not shared by Petitioner No. 2 or Petitioner No. 3, as they have not laid any such claim in the Company Petition. As such, the alleged prejudice stemming from the impugned Board Resolution is exclusive to Petitioner No. 1.

163. The learned Senior Counsel argued that for a petition under Section 241/242 to be maintainable, the alleged acts of oppression and mismanagement must prejudice the applicant's legal and proprietary rights as a shareholder, the learned Senior Counsel placed reliance on the judgment of ***Chatterjee Petrochem (supra)***.

164. The learned Senior Counsel submitted that according to the Petitioner No. 1’s pleading, the Petitioner No. 1 does not hold legal title to any shares in the Company, and the beneficial ownership of the 20% shareholding attributed to him lies with Petitioner No. 3.

165. Hence, given Petitioner No. 1's lack of legal ownership, the plea related to the affairs of the digital division must be rejected as non-maintainable.

166. Mr. Banerji, learned Senior Counsel submitted that there is no legal basis for the claimed right of participation in management over the digital division. The burden was on the Petitioners to demonstrate the existence of an agreement granting Petitioner No. 1 exclusive control over the division, independent of Board oversight. However, no evidence supporting such a claim has been presented.

167. Petitioner No. 1's contention regarding a notice issued by the Company on 22 June 2016, allegedly vesting him with permanent control over the digital division, is refuted as unfounded. The notice, issued at a non-Board level, does not confer any substantive role or authority in the division's management upon Petitioner No. 1.

168. Additionally, the learned Senior Counsel argued that even if procedural lapses occurred in passing the impugned Resolution, it would not constitute oppression. The decision primarily concerns the internal management of the Company and could have been communicated without a Board Resolution, rendering procedural concerns immaterial.

169. The learned Senior Counsel further emphasized that the present case lacks any demonstration of legal prejudice to the Petitioners. Petitioner No. 1 remains a Whole Time Director of the Company, indicating his continued participation in its affairs without oppression.

170. The Respondents contend that the cited precedents involving shareholder oppression are inapplicable to the present scenario, where no removal of minority shareholders from the Board has occurred.

171. Overall, the Respondents assert that the Company continues to function with the participation of the Petitioners and without any oppression toward them. Granting relief as sought by the Petitioners would potentially introduce deadlock and disrupt the Company's management, contrary to its and stakeholders' interests. Therefore, no relief should be granted to the Petitioners.

While rebutting the arguments on behalf of the Petitioner, submissions of the learned Senior Counsel appearing on behalf of the Respondent Nos.2 and 4 are summarized hereinbelow:

172. The Learned Senior Counsel Mr. Harish Salve stated that although the Company Petition cites numerous instances of alleged oppression/mismanagement, the Petitioners during the final hearing have expressly limited their submissions to three aspects: (i) the validity of the transfer of shares inter-se Respondent No.10 and Respondent No. 2; (ii) amendment of the Articles of Association ("AoA") to reflect the Memorandum of Family Settlement dated 12.04.2017 and (iii) management and control of the affairs of the digital division of ABP Private Limited.

173. The Learned Senior Counsel states that arguments are being advanced on behalf of Respondent No. 2/Respondent No. 4 on the basis that the Petitioners have consciously abandoned all remaining contentions raised in the Company Petition. These no longer survive for consideration and therefore require no answer.

174. The Learned Senior Counsel has stated that as a result of the abandonment of these pleas, no allegation of mismanagement in the affairs of the Company survives.

175. The Learned Senior Counsel further states that, during the final hearing of the matter, the following specific concessions regarding the case being advanced in the Company Petition were made on behalf of the Petitioners:

> a. They are no longer seeking the creation of a "company within a company" to house the digital division;
>
> b. It is no longer disputed by the Petitioners that the Board of Directors of the Company retains oversight and control of the affairs of the digital division, and that the digital division is bound by the directions issued by the Board of Directors.

176. The Learned Senior Counsel have stated that as a result of these concessions, the case of oppression of the Petitioners in connection with the affairs of the

digital division of the Company has in effect been given up and the relief still being claimed in this regard (if any) remains unclear. As such, nothing further remains to be decided by this Tribunal with regard to this issue.

177. The Learned Senior Counsel has stated that the pleas with regard to the digital division are being dealt with abundant caution and wholly without prejudice to this submission.

178. That as regards the validity of the transfer of shares between Respondent No. 2 and Respondent No. 10, detailed submissions were made by the Respondents during the final hearing of the matter with regard to the construction of the relevant clauses of the Family Settlement.

179. The Learned Senior Counsel, Mr. Harish Salve stated that in brief, the case of the Respondents is:

a. The fulcrum of the Petitioners' case is that the Family Settlement creates two (2) "groups" and divides control equally between these two "groups". There is no foundation whatsoever in the Family Settlement which bears out this position.

b. The Family Settlement does nothing more than divide the shareholding of the Company between five (5) shareholders and gives each of these five "branches" the right to make one appointment to the Board of the Company. It does not create any other groupings or vest any rights in a "group".

c. Clause 14 of the Family Settlement is being distorted by the Petitioners to advance a case that is contrary to its plain meaning. Clause 14 creates a right of pre-emption in favour of a signatory to the Family Settlement that would operate in the event of a transfer of shares by a signatory to a non-signatory. It has no operation when one signatory to the Family Settlement is transferring their shares to another signatory. Any other interpretation of Clause 14 would render redundant the explicit recognition in Clause 13 of the Family Settlement of the unqualified right of an existing shareholder to transfer their shares to a signatory to the Family Settlement.

d. The interpretation set out above is reinforced by the second last sentence of Clause 14 itself, which clarifies that the limitation on transfer imposed under the preceding portion of the Clause shall not apply to an inter se transfer amongst the signatories to the Family Settlement.

180. The Learned Senior Counsel have specified that none of these submissions has been controverted in Rejoinder. It is therefore unclear whether the Petitioners are continuing to pursue the absurd interpretation of the Family Settlement which is the foundation of the case of oppression that has been made out in regard to the transfer by Respondent No. 10 to Respondent No. 2. If the case of "two groups" has been abandoned, nothing remains to be decided in relation to this issue and the consequential plea of a supposed "new majority" also does not survive. If the Petitioners are nevertheless pressing for relief with regard to this share transfer, the legal basis on which such relief is being claimed is unclear.

181. Furthermore, the Learned Senior Counsel has submitted that finally, the Answering Respondents have consistently taken a preliminary objection to the Company Petition raising the issue of the so-called "right" of Petitioner No. 1 to control the affairs of the digital division on the ground that Petitioner No. 1 admittedly does not have a beneficial interest in a single share of the Company. As such, the Petitioner No. 1 cannot claim any violation of his legal and proprietary rights as a shareholder of the Company, which is the threshold requirement for maintaining the present Petition under Section 241/242 of the Companies Act, 2013. Petitioner No. 2 and Petitioner No. 3 do not even claim any right in this regard.

182. That this objection has not at any stage been answered by the Petitioners. The Petitioners' case in this regard must, it is respectfully submitted, be taken to have been abandoned by them and no longer survives for consideration.

183. The learned Senior Counsel argued that the legal standard for establishing a case under Section 241/242 of the Companies Act, 2013 is clearly defined:

(i) it must be shown that the conduct of the majority of the shareholders lacked probity and that the acts of oppression were harsh and wrongful;

(ii) mere allegations of isolated incidents do not justify the grant of relief, and the existence of a continued course of oppressive conduct must be established;

(iii) the facts of the case must warrant the making of a winding-up order on the just and equitable principle;

(iv) a mere lack of confidence between the majority and minority shareholders would not suffice;

(v) removal from Directorship of the Company or from any management position are business decisions and do not constitute oppressive acts.

184. Mr. Harish Salve placed reliance on ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd***.[84]; ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad***[85]; ***Chatterjee Petrochem (India) Private Limited v. Haldia Petrochemicals Limited and Others***[86]; ***Shanti Prasad Jain v. Kalinga Tubes Ltd.***[87]; ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.***[88].

185. It is argued that the three cited instances of alleged oppression do not meet the legal standard required for the grant of relief under section 241/242 of the Companies Act, 2013.

186. The learned Senior Counsel submitted that Mr. Aveek Kumar Sarkar, i.e. the Petitioner No. 1 does not possess a beneficial interest in even a single share of the Company. Clauses 6 and 7 of the Family Settlement[89] demonstrate that the beneficial ownership of the 20% shareholding listed under the name of the Petitioner No. 1 is actually with Mr. Asani Sarkar i.e. the Petitioner No. 3, with the Petitioner No. 1 merely holding the shares for the Petitioner No. 3 "for the time being".

[84] (2021) 9 SCC 449, ¶ 114, 133-144
[85] (2005) 11 SCC 314, ¶183, 185
[86] ¶140
[87] AIR 1965 SC 1535, ¶¶17-18
[88] (1981) 3 SCC 333, ¶¶ 49-52, 106-111, 169
[89] Annexure O @ pp. 590-605 @ 597 of the Company Petition – Vol. III & IV

187. The learned Senior Counsel pointed out the terms under which the Petitioner No. 1 holds the shares for the Petitioner No. 3, as outlined in an Agreement dated 14.04.2017[90]. Specifically, the agreement records that:

(i) the shares are held "in trust and in a fiduciary capacity" by the Petitioner No. 1 on behalf of the Petitioner No. 3[91];

(ii) the beneficial interest in the shares shall always vest with the Petitioner No. 3 alone[92];

(iii) all rights accruing from the shares shall be exercised by the Petitioner No. 3 alone[93];

(iv) the Petitioner No. 1 shall vote on the shares according to specific directions given by the Petitioner No. 3 on all matters, including nominations to the Board of Directors[94];

(v) the Petitioner No. 1 shall comply with all directions given by the Petitioner No. 3regarding the shares[95];

(vi) the Petitioner No. 1 shall not deal with the shares in any manner, including by creating any rights or charge on them[96].

188. The learned Senior Counsel pointed out that the agreement between the Petitioner No. 1 and the Petitioner No. 3 was not disclosed at the time of filing of the Company Petition and only came to light following a demand for production by the Respondents. Moreover, this agreement was not presented to the Tribunal during the Petitioners' arguments. The agreement clearly indicates that the Petitioner No. 1 does not have any rights in respect of the 20% shares registered in his name. Instead, the Petitioner No. 1 is burdened with obligations towards the Petitioner No. 3, acting solely as a conduit for exercising the rights attached to the shares as directed by the Petitioner No. 3 in all matters.

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[90] Annexure A @ pp. 44-52 of the Rejoinder Affidavit on behalf of the Petitioners to the Reply Affidavit of Respondent No. 1 & Respondent No. 7 to the Petition and the Supplementary Affidavit]
[91] Recital @ p. 47
[92] Clause 5 @ p. 48
[93] Clause 6 @ p. 48
[94] Clauses 7 and 8 @ p. 48
[95] Clause 10 @ p.49
[96] Clause 9 @ p.49

189. Mr. Harish Salve contended that to maintain a petition under section 241/242 of the Companies Act, 2013, the allegations of oppression and mismanagement must have resulted in "prejudice to the applicant in exercising his legal and proprietary rights as a shareholder" (emphasis added). The learned Senior Counsel placed reliance on ***Haldia***[97]; ***Needle Industries***[98]. Therefore, the Petitioner No. 1 cannot assert any right to management derived from the shares since he does not have any beneficial interest in them. Consequently, the possibility of any legal prejudice actionable under section 241/242 of the Companies Act, 2013 being caused to the Petitioner No. 1 is non-existent.

190. The learned Senior Counsel argued that Mrs. Rakhi Sarkar i.e. the Petitioner No. 2, the wife of the Petitioner No. 1, acquired shares only through the Family Settlement. the Petitioner No. 1 consciously relinquished the rights to hold any shares in the Company, either legally or beneficially. Notably, neither the Petitioner No. 2 nor the Petitioner No. 3 have ever lodged any complaint regarding the management or affairs of the Company. The entire Company Petition is propelled solely by the Petitioner No. 1's claim to be a shareholder, which, in fact, he is not[99]

191. Upon reviewing the allegations in the Company Petition concerning the affairs of the digital division[100], it becomes evident that the Petitioners have not demonstrated that any legal prejudice has been inflicted on either the Petitioner No. 2 or the Petitioner No. 3 due to the contested Board Resolution dated 24.04.2019. Neither the Petitioner No. 2 nor the Petitioner No. 3 has ever held, nor claimed any right to, any managerial role or authority in the digital division. In fact, neither has ever been involved in managing the Company.

192. The learned Senior Counsel asseverated that a person with a 0% shareholding in the Company cannot be subjected to oppression by the acts of other shareholders. There is not a single act, whether a decision in the AGM or any resolution of the Board of Directors, that the Petitioners have identified as detrimental to the legal and proprietary rights of the Petitioner No. 2 and the

[97] ¶141
[98] ¶52
[99] para. 45 (vii) @ p. 58 of the Company Petition – Vol. I
[100] pr. 30-53 @ pp. 48-64 of the Company Petition – Vol. I

Petitioner No. 3. The "right" asserted in the Company Petition is a personal right of the Petitioner No. 1. The Petitioner No. 1 's complaint seems to be his objection to being placed within a reporting hierarchy with the Chief Editor at the top.

193. In essence, the learned Senior Counsel argued that the Petitioner No. 1 seeks to exclude other shareholders and infringe upon their legal and proprietary right to participate in the management of the digital division, rather than seeking his own inclusion in management (which he already enjoys as a Whole Time Director). This demand, they submit, is legally untenable.

194. The Learned Senior Counsel submitted that should the Petitioner No. 1 argued that he possesses a right stemming from the Family Settlement or any other document to perpetually maintain absolute control over the digital division's affairs, which has been allegedly breached by the Company, the recourse for such claimed infringement lies within the realm of specific performance proceedings before a civil court, not under section 241/242 of the Companies Act, 2013. They clarify that this particular grievance, framed as an "alleged right of participation in management," lacks the requisite components to invoke under section 241/242 of the Companies Act, 2013. It is a well-established legal principle, as highlighted by the Ld. Senior Counsel while placing reliance on ***Chatterjee Petrochem (India) Private Limited v. Haldia Petrochemicals Limited***[101]; ***Rajiv Sanghvi v. Pradip R. Kamdar***[102], (upheld in appeal: ***Pradip R. Kamdar v. Rajiv Sanghvi***[103]), submitted that proceedings under section 241/242 of the Companies Act, 2013 do not serve as an appropriate venue for addressing purely contractual disputes or for seeking contract enforcement.

195. The Learned Senior Counsel pointed out that the claim regarding a breach of Clause 14 of the Family Settlement[104] due to share transfers between Respondent No. 2 and Respondent No. 10, is fundamentally a contractual breach allegation. The relief sought, being specific performance of the Family

[101] (2011) 10 SCC 466, ¶ 148
[102] 2022 SCC OnLine Bom 11752 ¶108
[103] 2022 SCC OnLine Bom 3147)
[104] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Clause 14 @ 598-599]

Settlement, underscores this perspective. They draw attention to the Hon'ble Supreme Court's stance in Haldia, which dismissed a similar argument that a private contractual agreement's breach between shareholders constituted oppressive conduct. The court decisively held that such matters do not fall under section 397 of the Companies Act, establishing that[105], the remedy for contractual disputes lies outside the scope of under section 241/242 of the Companies Act, 2013, a principle firmly underscored by the Learned Senior Counsel in their argument.

196. The Learned Senior Counsel has argued on behalf of the Petitioner No. 1 that the transfer of shares between Respondent No. 2 and Respondent No. 10 contravened Clause 14 of the Family Settlement[106], purportedly bestowing a "pre-emption" right upon all Family Settlement signatories concerning any share transfers by any signatory.

197. The Petitioners have submitted that this claim engenders a purely contractual dispute, thereby seeking the contract's specific performance. Hence, it fails to generate a cause of action under section 241/242 of the Companies Act, 2013. Notwithstanding this argument, the Learned Senior Counsel maintain that the share transfer between Respondent No. 2 and Respondent No. 10 did not breach any Family Settlement provision.

198. The learned Senior Counsel submitted that the Petitioners' contention is based entirely on a selective and out-of-context interpretation of a single sentence within Clause 14 of the Family Settlement, which stipulates that should any shareholder wish to transfer shares, these must initially be offered to the other Family Settlement signatories proportional to their shareholdings. However, this argument is nullified when Clauses 13 and 14 are read in their entirety and understood plainly.

199. The learned Senior Counsel, Mr. Harish Salve referred to Clause 13 of the Family Settlement[107], which clarifies that no shareholder is allowed to transfer shares except to existing agreement signatories. This clause implicitly

[105] ¶148]
[106] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Clause 14 @ 598-599
[107] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Clause 13 @ 598]

recognizes the right of each signatory to transfer shares to another signatory as seen fit, including gifting shares out of love and affection, as occurred in the current scenario.

200. The learned Senior Counsel argued that Clause 14's restrictions are moderated by the entitlement delineated in Clause 13, as the former's introductory wording makes clear by not diminishing or impacting the rights outlined in Clause 13. This foundational right for a signatory to transfer shares to another signatory, without offering them to other Family Settlement signatories, originates from Clause 13 and remains unaffected by Clause 14's opening part. This principle is expressly confirmed in Clause 14's penultimate sentence, which exempts inter-se signatory share transfers from its provisions.

201. Interpreting Clause 14 as the Petitioners propose would effectively negate Clause 13, preventing any shareholder from transferring their shares to an existing agreement signatory. Such an interpretation would also render the second sentence of Clause 14 meaningless, as it would equate transfers among signatories with transfers to external third parties. Accepting the Petitioners' argument, the learned Senior Counsel argued, would necessitate an unwarranted reconfiguration of Clauses 13 and 14, a course of action deemed impermissible:

> "*13. None of the shareholders shall be entitled to transfer any of his/her/its shares except ~~to the existing signatories to this Agreement~~ in accordance with Clause 14.*
>
> *14. ~~Without in any way abridging or affecting the rights as contained in clause 13 above,~~ in the event any of the shareholders proposes to transfer his/her/its shares, he/she/it will first offer the same to all the other signatories to this agreement, who will be entitled to purchase the same in accordance with the proportion of their shareholding, within 90 days of such extended time, as may be agreed between the shareholders at a price, unless agreed, to be determined through independent valuation by two of the big four auditors, only thereafter may transfer. ~~It is agreed among the parties that the provisions of this clause shall not apply to inter se transfer~~*

~~*of shares among the signatories to this agreement.*~~ *It is further agreed that the provisions of this clause shall not apply to transfer of shares to lineal, blood, descendants or by inheritance*"

202. The Learned Senior Counsel contends that both Respondent No. 2 and Respondent No. 10 are signatories to the Family Settlement and highlight that the transfer at issue is inter se between them. The learned Senior Counsel submitted that such a transfer is expressly exempt from the requirement to offer the shares to other signatories of the Family Settlement, as per the second sentence of Clause 14. This transfer aligns with the entitlement of Respondent No. 10 under Clause 13 to transfer her shares to another signatory, in this case, Respondent No. 2, reinforcing the exemption's validity.
203. The Learned Senior Counsel further submits, drawing upon the decision of the Hon'ble Supreme Court in ***V.B. Rangaraj v. V.B. Gopalakrishnan***[108], that Clause 14 of the Family Settlement aligns perfectly with the AoA of the Company. They address the Petitioners' incorrect assertion that Rangaraj was overruled in ***Vodafone International Holdings BV v. Union of India***[109], by dissecting the judgment and demonstrating that the majority did not overrule Rangaraj, thus maintaining its legal standing.
204. The Learned Senior Counsel assert the continuity of the legal position established by ***Rangaraj (supra)***, notwithstanding the introduction of the proviso to Section 55(2) of the Companies Act. They argue that this legislative amendment, post-Vodafone, affirms that ***Rangaraj's*** principles remain largely intact, barring the specific provisions outlined in Section 55(2).
205. Petitioners' interpretation of the second last sentence of Clause 14, emphasizing that this interpretation was neither part of the original pleadings nor supported by evidence. The learned Senior Counsel argued that the Petitioners' attempt to imply terms into the Family Settlement without clear basis, emphasizing the lack of any indication from the parties that such a sunset clause was intended.

[108] (1992) 1 SCC 160
[109] (2012) 6 SCC 613

206. According to the Learned Senior Counsel such an interpretation undermines the stability and intent of the Family Settlement, creating unnecessary uncertainty and disregarding the clause's broader implications.

207. The Learned Senior Counsel pointed out that within the Company or the Sarkar family, the practice of transferring shares *inter se* members has never been accompanied by an offer of shares to all other members. Contrarily, the learned Senior Counsel asseverated that as reflected in the Family Settlement itself, that members have had the liberty to transfer their shares in the Company to other members without needing to offer shares to others. Specifically, they refer to[110], which documents the transfer of the entire shareholding of Adhip Kumar Sarkar, the late brother of the Petitioner No. 1, Respondent No. 2, the Petitioner No. 3, and Respondent No. 10, via his widow, Champabati Sarkar, to Atideb Sarkar ("Respondent No. 4"), even before the Family Settlement was executed. The Learned Senior Counsel submitted that the Petitioners have not disputed the validity of this transfer due to the lack of an offer to other members, indicating the Family Settlement's endorsement of this allotment[111].

208. The Learned Senior Counsel further submitted that even following the execution of the Family Settlement, the signatories' practice has not involved offering shares to all other members during inter se transfers. The learned Senior Counsel pointed out to a specific instance on 24.04.2017, i.e., 12 days after the Family Settlement was executed, when 20,000 shares of the Company were transferred from Respondent No. 2 to Respondent No. 4[112], without any preceding offer of shares to other members. The Learned Senior Counsel argue that if the Petitioners' interpretation were to be accepted, this transfer would contravene Clause 14 of the Family Settlement and be deemed void. Yet, they note, the Petitioners have not contested the validity of this transfer, showcasing an internal inconsistency and incoherence in the Petitioners' arguments.

209. The Learned Senior Counsel submitted that the Petitioners' argument contends that the transfer of shares by Respondent No. 10 to Respondent No. 2

[110] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Recitals E and F @ 594
[111] Clause 5 @ p.596 of the Company Petition – Vol. III
[112] p.615 of the Company Petition – Vol. IV

constitutes an oppressive act due to the creation of a "new majority" in favor of Respondent No. 2/Respondent No. 4. However, the learned Senior Counsel submitted that upon a plain reading of the Family Settlement, this argument falls short.

210. The submission of the Petitioners is predicated on the notion that the Family Settlement establishes "two main groups", with Petitioners constituting one group and Respondent Nos. 2 to 6 constituting the other, asserting that Respondent No. 10 would hold the remaining 20% shareholding[113]. Based on this, the learned Senior Counsel contended that the Family Settlement created a state of "balance" between the Aveek Sarkar group and the Arup Sarkar Group, which has been disrupted by the transfer of shares from Respondent No. 10 to Respondent No. 2. This assertion, the Learned Senior Counsel submitted, lacks any basis in the Family Settlement, as it does not envision any such "two main groups". Contrarily, the Family Settlement expressly delineates five distinct "branches/entities".

211. The arrangement outlined in the Family Settlement is explicitly laid out in Clauses 7 and 9[114]. Clause 7 divides the shareholding in the Company among five identified individuals, while Clause 9 stipulates that "(e)ach of the 5 branches/entities" shall possess certain rights regarding Board appointments. If any grouping is contemplated by the Family Settlement, it pertains to these five branches.

212. The determination of whether a "new" majority has emerged necessitates an examination of whether there existed an "old" one.

213. The learned Senior Counsel asserted that Family Settlement does not delineate any sub-grouping among the five recognized branches. It does not envision them acting collectively or exercising their shareholder rights in concert. There are no constraints on any of the five entities exercising their rights commensurate with their shareholding, implying that a majority on any given issue could be achieved by any combination of the 5 "branches/entities" voting

[113] p.36, pr. 25 (i) – of the Company Petition – Vol. I
[114] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Clauses 7 and 9 @ 597-598

in favor. Thus, Respondent No. 10, even while holding shares in her name, could have cast her vote for Respondent No. 4 and Respondent No. 6.

214. The Petitioners' plea essentially asks the Tribunal to first imagine a majority and then suppose that this hypothetical majority has been breached.

215. The latter part of Clause 9 clarifies that even if the shareholding of two or more branches/entities is consolidated into a single entity through inter se share transfers, the merged entity retains the right to nominate the same number of directors as it could prior to the merger. Hence, no alteration in the majority occurs due to a transfer of shares between Respondent No. 10 and Respondent No. 2.

216. The Company Petition avers[115] that "(e)ach of the parties who were to hold shares in the Company as provided in clause 7 of the family settlement would be entitled to nominate one director on the board of the Company". This admission directly contradicts the Petitioners' contention[116] in the Petition that the Family Settlement creates "two main groups" holding 40% shareholding each in the company.

217. The situation presented does not entail a management deadlock warranting relief under Section 241/242. In contrast to the circumstances in ***Cane v. Jones***[117] (cited by the Petitioners), where the company had only 2 directors from the same family unable to agree on any substantial issue, the current case bears no resemblance. In ***Cane (supra)***, the Articles of Association were altered to eliminate a provision for a chairman to cast a decisive vote, leading the Court to conclude that the company was "deadlocked" and headed for compulsory liquidation unless the parties reconciled. Such circumstances are vastly different from those here.

218. To date, the Company's Board operates smoothly, with no allegations that the purported "new majority" has pushed through any decisions detrimental to the other shareholders' interests. Despite the filing of the Company Petition, decisions continue to be made at the Board level with the participation and

[115] pr. 25(iii) (p. 36)
[116] pr. 25(i)
[117] [1981] 1 All ER 533

approval of the Petitioners. In this context, the Petitioners attempt to create a deadlock by positing that the old majority has been wrongfully supplanted by a "new" one.

219. If indeed there existed an old majority, it predominantly favored Respondent No. 2. The affidavit of Respondent No. 10 attests that she regarded Respondent No. 2 as a father figure and lacked such a relationship with the Petitioner No. 1. This fact would not have escaped the notice of her brothers, the Petitioner No. 1 and the Petitioner No. 3, or her sister-in-law, the Petitioner No. 2. By establishing a structure wherein Respondent No. 10 could effectively break a deadlock between the "Arup Sarkar group" and the "Aveek Sarkar group" (as imagined by the Petitioners), it was implicitly understood that Respondent No. 10, as a 20% shareholder, would be guided by her revered father figure, Respondent No. 2. This conclusion is not speculative but derives directly from Respondent No. 10's sworn testimony before this Tribunal.

220. The learned Senior Counsel argued that this insight is pertinent to the relief that can be granted. Assuming the Petitioners convince the Tribunal that the transfer was oppressive due to vesting 60% shareholding in the Arup Sarkar group, rectifying the prejudice cannot entail more than restoring the status quo ante the transfer. The Petitioners assert in the Company Petition[118] that the transfer, being contrary to a supposed pre-emption clause in the Family Settlement, is void. The consequential relief upon an act being deemed void is restoring the parties to their prior position. If the Petitioners' argument holds, the logical outcome is the shares reverting to Respondent No. 10's ownership, enabling her to deal with them as she deems fit.

221. The crux of the Petitioners' argument lies in the acts being oppressive due to their contravention of the Family Settlement, necessitating relief to enforce it. Consequently, if the transfer from Respondent No. 10 to Respondent No. 2 is invalidated, the relief granted can only enforce the Family Settlement by reinstating the shareholding configuration delineated in Clause 7, allowing the shares to return to Respondent No. 10's ownership for her disposition. The

[118] see, for instance, pr. 28(iii) (p. 45) of the Company Petition – Vol. I

insistence of the Petitioners that Respondent No. 10 be divested of these shares, even if the transfer to Respondent No. 2 is nullified, reveals that the Petition is essentially an attempt to enhance their shareholding by altering the Family Settlement's effect. Moreover, the Petitioners' demand for receiving 50% of the shares transferred by Respondent No. 10, rather than their return to her, is inconsistent with their purported goal of enforcing the Family Settlement. Under the guise of enforcing the Family Settlement, the Petitioners essentially seek to rewrite it, which is impermissible.

222. Lastly, the Learned Senior Counsel submitted the Petitioners' conduct regarding the share transfer between Respondent No. 2 and Respondent No. 10, demonstrating that this plea is an afterthought. The transfer was conducted transparently and openly. No deception was attempted or feasible. The transfer was deliberated before the Share Transfer Committee ("*STC*") of the Board and received approval on 13.04.2017[119]. The STC's minutes were unanimously "confirmed and noted" by the Board on 27.04.2017[120]. The Petitioner No. 1 was present and raised no objections, thereby effectively consenting to the transfer and waiving any right to contest it. This position remains unassailable. Section 118(7) of the Companies Act, 2013 stipulates that Board minutes "shall be evidence of the proceedings recorded therein", rendering the minutes evidence that all Board members (including the Petitioner No. 1) confirmed and noted the STC minutes.

223. The learned Senior Counsel submitted that the Petitioner No. 1 has advanced untenable arguments in response to this issue. the Petitioner No. 1 has stated in pleadings that he "had given consent to approval of the minutes without going through the same"[121]. However, this excuse is legally untenable. As a Director of the Company, the Petitioner No. 1 cannot claim to have neglected his duties to such an extent that he cannot bother to peruse a document containing a half-page of text. The Company Petition acknowledges[122] that the STC minutes of 13 April 2017 were indeed presented before the Board, in

[119] p. 614 of the Company Petition – Vol. IV
[120] Annexure Q @ pp. 610-613 of the Company Petition – Vol. IV @ p. 613
[121] p. 9 of the Rejoinder Affidavit on behalf of the Petitioners to the Reply Affidavit of Respondent No. 10
[122] p. 39

addition to those of 12 April 2017. If he was unaware of the transfer, the fact that two sets of minutes were presented should have alerted the Petitioner No. 1 to the further *inter se* transfers among members being presented to the Board for confirmation.

224. The Petitioner No. 1 has additionally pleaded that he did not provide "informed consent" to the transfer, asserting that he had endorsed it based on a "representation" that the approved transfers aligned with those envisaged in the Family Settlement. However, the learned Senior Counsel submitted that this assertion lacks substance, as it fails to specify the individual making the alleged "representation". This plea, the learned Senior Counsel submitted, is summarily dismissed. All pertinent details concerning the transfers are evident in the minutes of the STC meeting dated 13 April 2017 – encompassing the transferor's identity, the transferee's identity, and the quantity of shares transferred. The Board was not deprived of any material information regarding the transfer, as evidenced by the confirmation and notation of these minutes[123].

225. The assertion by the Petitioner No. 1 that "only the minutes of the Share Transfer Committee meeting were confirmed and noted" is deemed meaningless. They elucidate that the STC functions as a Committee of the Board of Directors entrusted with the specific responsibility of documenting share transfers.

226. The transfer occurred in April 2017 and was contemporaneously within the Petitioner No. 1's knowledge. From April 2017 to June 2019, the Petitioner No. 1 neither lodged any protest nor challenged the transfer, as highlighted by the Learned Senior Counsel. They emphasize that the challenge to the transfer is evidently an afterthought. Moreover, in the Company Petition filed in 2019, the minutes of the Share Transfer Committee have been divulged without any indication of how and when the Petitioners acquired said minutes.

227. The Learned Senior Counsel submitted that the contention that the AoA of the Company have not been amended to reflect the Family Settlement is not indicative of oppression. The learned Senior Counsel averred that a similar

[123] Annexure Q @ pp. 610-613 of the Company Petition – Vol. IV @ p. 613

argument was dismissed in the case of ***Haldia***[124], where relief akin to that sought by the present Petitioners was declined.

228. It is stated that Clause 12 of the Family Settlement explicitly documents the agreement among the parties to take measures to amend the AoA in line with the Family Settlement. The Learned Senior Counsel asserted that the Petitioners, in essence, seek the specific enforcement of this contractual provision, a matter not suitable for adjudication in these proceedings. Respondent No. 2 has affirmed on affidavit[125] that the Articles remain unaltered because the Petitioner No. 1 aims to introduce amendments that extend beyond the scope of the Family Settlement. The learned Senior Counsel asseverated that these proceedings under section 241/242 of the Companies Act, 2013 cannot be employed by the Petitioners to impose amendments to the AoA.

229. The Petitioners have contested a Board Resolution dated 24 April 2019[126] to the extent of the following decision:

> "***REPORTING BY DIGITAL CONTENT TEAM***
>
> *Mr. Dipankar Das Purkayastha sought the permission of the chair to discuss the Digital Business and this was granted. He raised the issue of editorial control of the Digital Business. For better coordination and streamlining of and content dissemination, he suggested that there should be a common newsroom for the editorial teams of Print and Digital. This would ensure cohesion and consistency in content delivery. Mr. Arup Kumar Sarkar mentioned that they have been complaints by editors and journalists regarding inconsistency and a lack of coordination between the editorial teams of Print and Digital.*
>
> *Mr Arup Kumar Sarkar proposed that the Digital Content team should report to the respective Editors, who in turn report to the Chief Editor.*

[124] ¶¶ 10(a), 21, 22
[125] p. 45 of the Reply Affidavit of Respondent No. 2
[126] pp. 700 – 705 of the Company Petition – Vol. IV

The Digital Business team will report to the Managing Director and Chief Executive Officer. The matter was put to a vote. Mr Aveek Kumar Sarkar dissented. The Chairman abstained from voting and the rest of the Directors voted for the motion. Accordingly, the matter was passed by majority."

230. The Learned Senior Counsel argued that the decision in question is tantamount to an act of oppression, as it excludes the Petitioner No. 1 from management, thereby violating his asserted "right" to participate in and oversee the affairs of the digital division of the Company.

231. The grievance concerning the control of the digital division solely pertains to the Petitioner No. 1. the Petitioner No. 2 and the Petitioner No. 3 have never been involved in the management or day-to-day operations of the Company, past or present, and do not lay claim to such involvement. It is underscored from the outset that Petitioner No. 1, devoid of any beneficial ownership in the Company, lacks standing to assert any legal or proprietary "right" to participate in management as a shareholder of the Company.

232. The purported entitlement to participation, as argued by the Learned Senior Counsel, cannot be inferred from the Family Settlement. The circumstances surrounding the execution of the Family Settlement stem from a communication dated 30 January 2017[127], wherein the Petitioner No. 3 corresponded with the family solicitor. The communication outlines the Petitioner No. 3's transfer of shares in the Company to his brothers pending the resolution of personal matters. Following the resolution of these matters, the Petitioner No. 3 sought the return of the shares, expressing concern over the delay. The Family Settlement was thus entered into with the singular objective of resolving the shareholding structure among the Sarkar family members, focusing solely on shares and not on the management of the company.

233. It is further submitted by the Learned Senior Counsel that the Family Settlement does not address management roles or create any perpetual management positions. Contrary to the misinterpretation by the Petitioners,

[127] p. 588 of the Company Petition – Vol. III

Clause 9[128] of the Family Settlement does not imply an "equal" role in management. Rather, it simply stipulates that each party shall nominate one director to the Board, thereby channeling participation in management through the Board structure.

234. The foundation of the Petitioner No. 1 's assertion, as contended by the Learned Senior Counsel, lies in his purported entitlement to absolute power and control over the affairs of the digital division in perpetuity. the Petitioner No. 1 's claim to participation in management is characterized as a plea for control over the division, distinct from the authority of the Board. This is evidenced by various communications issued by the Petitioner No. 1 subsequent to the filing of the Company Petition, wherein he has contested decisions made by the Board or Management perceived as encroaching upon the digital division's domain. By way of illustration:

a. On 07.09.2020[129], Petitioner No. 1 objected to the decision of the Company to start a "digital mall" on the ground that this was done without his "knowledge and approval" and that ***"the unauthorised initiative encroaches on my right".***

b. In the context of opposition by the HR Department of the Company to the Petitioner No. 1's decision to hire one Ms. Debashree Chadha as an employee of the Company (on the ground that she had been previously employed with the Company and had, while leaving, poached several employees of the company), the Petitioner No. 1 stated on 24.09.2020[130] that the MD's decision to not hire Ms. Chadda was ***"outside your jurisdiction",*** since "(d)*igital is an independent operation*" and that "*For ABP, Digital is an investment and not part of the operation*". Addressing the Managing Director of the Company, he wrote "*Qua Digital, you as the MD, report to me*"[131].

c. When the Company launched a mobile phone application titled "Aaro Ananda", the Petitioner No. 1 vide email dated 03.11.2021 objected

[128] Annexure O @ pp. 590-605 of the Company Petition – Vol. III & IV; Clause 9 @ 597-598
[129] Pg. 30 of Supplementary Affidavit on behalf of the Petitioners
[130] Pg. 31 of Supplementary Affidavit on behalf of the Petitioners
[131] Pg. 34 of Supplementary Affidavit on behalf of the Petitioners

> to the same, stating "*as you are aware that all digital initiatives are under my charge.* ***You are thus intruding into an alien domain****... (t)here already exists an ABP digital which uses material from the print edition. By allowing the same content in another site is an act of cannibalism which is not merely illegal but dishonourable and even incomprehensible*"[132]

235. These communications illustrate the Petitioner No. 1 's conceptualization of a "company within a company," a notion devoid of legal basis. In the Petitioner No. 1 's imagination, the digital division operates independently of the Board's jurisdiction, despite its reliance on the Company's resources.

236. The learned Senior Counsel contended that the Petitioner No. 1 has effectively fabricated a "company within a company." It is worth emphasizing that such a concept finds no basis in law. Within the Petitioner No. 1 's imagination, the digital division, though reliant on the Company for resources, is envisioned as operating beyond the purview of the Board of Directors.

237. Furthermore, it is noted that the legal foundation for the relief sought concerning the digital division remains unclear. Throughout his submissions before this Tribunal and in various communications during the course of this matter (as excerpted above), the Petitioner No. 1 seemed to demand sole control of the digital division without any oversight or control from the Board. However, during oral arguments on behalf of the Petitioners, it was consistently emphasized that the Petitioner No. 1 is not seeking the establishment of a "company within a company" to house the digital division and is not contesting the principle that (i) the Board must, as a matter of law, retain supervision and control over all divisions of the Company, including the digital division, and (ii) the digital division of the Company must adhere to the directions of the Board.

238. The arguments presented orally concede the essence of the case articulated in the pleadings. This concession contradicts the assertions made in the aforementioned communications, which assert that (i) actions by the Board

[132] pp. 237-238, Volume II of the Reply Affidavit filed by the Petitioners in IA 86/KB/2022

concerning the digital division would fall outside the Board's "jurisdiction"[133] and would constitute "intrusion into an alien domain"[134]; (ii) the digital division operates as an "independent operation"[135]; (iii) the digital division represents "an investment and not part of the operation" of the Company[136]; (iv) decisions regarding Digital's employment are solely internal to Digital, with no involvement from ABP[137]; and (v) concerning digital matters, the MD of the Company is accountable to and bound by the decisions of the Petitioner No. 1[138]. Consequently, the Petitioners must be deemed to have entirely forsaken the stance taken in these communications, as well as their pleaded case regarding the digital division of the Company, thus forfeiting any claim to relief in this regard.

239. Furthermore, the source of the Petitioner No. 1 's purported "right" to obtain such relief remains undetermined. As posited earlier, the Petitioner No. 1's claimed "right" of control cannot be traced to either general principles of company law or the Family Settlement. In reality, the right being asserted is not a right of participation in management but rather the right to exclude others (including the Board of the Company) from participating in management.

240. The learned Senior Counsel submitted that during the arguments, reference was made to the notice issued by the company on 22 June 2016[139] at the time of the Petitioner No. 1's voluntary resignation from the position of Chief Editor. This notice, to the extent relied upon by the Petitioner No. 1, states that the Petitioner No. 1 "will be supporting the news operations of the group in an advisory role but will continue to lead digital and other initiatives of the group." However, no enforceable legal right can be claimed based on this document, as:

[133] p. 31 of Supplementary Affidavit on behalf of the Petitioners
[134] pp. 237-238, Volume II of the Reply Affidavit filed by the Petitioners in IA 86/KB/2022
[135] p. 31 of Supplementary Affidavit on behalf of the Petitioners
[136] p. 31 of Supplementary Affidavit on behalf of the Petitioners
[137] p. 32 of Supplementary Affidavit on behalf of the Petitioners
[138] p. 34 of Supplementary Affidavit on behalf of the Petitioners
[139] p. 108 of the Reply Affidavit of Respondent Nos. 1 and 7

a. **The notice on the face of it does not confer the Petitioner No. 1 with unilateral control over the digital division, nor does it identify the division as an autonomous unit falling outside the pale of board control.** The words 'lead digital and other initiatives of the group' comprise only a general statement of the group falling in line with the responsibility of the Petitioner No. 1 to have a broad advisory and supporting role.

b. Obviously, such a statement which was not even issued by the Board of the Company cannot give rise to any binding obligation to give the Petitioner No. 1 a position would continue permanently. It was purely a matter of "*domestic policy of the company*". As per the law laid down by the Hon'ble Supreme Court[140], such matters of domestic policy do not give rise to a cause of action under section 241/242 of the Companies Act, 2013.

c. Such management decisions are always capable of being varied or rescinded by the Board. The Board has at no time waived or curbed its statutory powers in this regard.

d. The background in which the notice came to be issued makes it clear that it was never in contemplation of any of the involved parties that the right claimed was being conferred. To the contrary, the tenor of the prior communications makes it clear that the Petitioner No. 1 was voluntarily stepping down from the position of Chief Editor so that the editorial aspects of the business could be handed over to professionals. In the Petitioner No. 1's own words, "*(t)he appointment of professional editors should be the focus. We are making a positive statement of what type of organisation we are or want to be.* ***My role is secondary. I made way for tomorrow***"[141].

[140] **see *Tata* ¶ 133**
[141] p. 92 of the Reply Affidavit of Respondent Nos. 1 and 7

e. It was never in contemplation that any all-pervasive, autonomous control over the digital division was being handed over to the Petitioner No. 1. The Petitioner No. 1's own first draft of the notice simply noted that he would continue to support the news operations in an advisory and emeritus role, with nothing more. This draft also emphasised "*the best tradition of corporate and professional practice*"[142]**.** In consultation with Respondent No. 2, the company - in the 2nd draft of the notice - conferred on him the status of Editor Emeritus and Vice Chairman (positions he continues to hold)[143].

f. That the reporting structure on the editorial side had to have the Chief Editor at the helm was recognised by the Petitioner No. 1 himself in his revised draft[144], alongside his incorporation of language to the effect that he would be leading the digital and other initiatives of the group. This structure was retained in subsequent drafts[145].

241. Regarding the purported right of unilateral control over the digital division, the only other document relied upon by the Petitioner No. 1 is one titled 'Digital Discussion Takeaways: Board Meet 9.11.2016'[146]. This document merely reflects a suggestion made during the meeting, proposed by Espen Egil Hansen, that the digital business should operate independently, a suggestion which was not accepted by the Board.

242. The learned Senior Counsel submitted that the Petitioner No. 1 retains his position on the Board of the Company, having recently been reappointed as a Whole Time Director on 02.09.2022 for a term of 5 years[147]. Additionally, he continues to serve as Vice Chairman of the Company and holds the position of Editor Emeritus. The only notable change in management since the filing of the Company Petition has been the replacement of Respondent No. 2 by

[142] pp. 80-81 of the Reply Affidavit of Respondent Nos. 1 and 7
[143] pp. 82-83 of the Reply Affidavit of Respondent Nos. 1 and 7
[144] pp. 88-89 of the Reply Affidavit of Respondent Nos. 1 and 7
[145] pp. 90-91 and 94-95 of the Reply Affidavit of Respondent Nos. 1 and 7
[146] p. 485 of the Company Petition – Vol. III
[147] pp. 85-87 of the Rejoinder Affidavit on behalf of the Applicant/ Respondent No. 1 in I.A. 86/KB/2022

Respondent No. 4 as Chief Editor, a decision made by the Board to which the Petitioner No. 1 did not raise objections[148].

243. The impugned Board Resolution, as asserted by the Ld. Senior Counsel, does not alter the Petitioner No. 1's leadership role in the digital division. It simply reinstates a reporting structure wherein the digital content teams of Anandabazar Patrika and The Telegraph report to the respective Editors of the two newspapers, who in turn report to the Chief Editor. This reporting structure, which was in place during the Petitioner No. 1's tenure as Chief Editor, ensures a cohesive editorial strategy across the various divisions of the company and is unquestionably in the company's interests[149].

244. During the final hearing, it was submitted on behalf of the Petitioners that they do not contest the well-established principle that the Board exercises ultimate control and supervision over the digital division. Furthermore, it was acknowledged that the Petitioner No. 1 had no objection in principle to reporting to the Chief Editor when the position was held by his brother, Respondent No. 2. However, it was candidly stated that the reporting structure became objectionable to the Petitioner No. 1 only when Respondent No. 4, his nephew and much younger in age, assumed the position. The discomfort or embarrassment felt by the Petitioner No. 1 due to the Chief Editor being his nephew does not transform the continuation of the reporting structure into an act of oppression, nor does it provide a cause of action for relief under section 241/242 of the Companies Act, 2013.

245. As contended by the Learned Senior Counsel, the Petitioner No. 1 continues to participate in management in various capacities, with no alterations made to his roles. The implementation of a reporting structure for the Board to oversee the digital division's affairs is not unduly harsh or burdensome, even under the most lenient interpretation. This is not a case where the Petitioner No. 1 can plausibly argue that he has been excluded from management. On the contrary, the Petitioner No. 1's claim rests on the assertion that he is entitled to exclude

[148] p. 78 of the Application on behalf of the Applicant/ Respondent No. 1 in I.A. 86/KB/2022 in the Company Petition
[149] p. 14 of the Reply Affidavit of Respondent No. 2

the Respondents from management, a claim lacking foundation or legal precedent and deserving outright rejection.

246. The learned Senior Counsel submitts that the case regarding the digital division was effectively abandoned during final arguments. the Petitioner No. 1's consistent assertion throughout the proceedings has been that the digital division is autonomous and beyond the purview of Board supervision or control. However, it was explicitly submitted on behalf of the Petitioner No. 1 that this case did not assert that the digital division is a "company within a company" or enjoys immunity from Board control.

247. The Petitioners have also raised a procedural objection, asserting that the impugned Resolution couldn't have been passed under the head of “any other business” without providing advance notice. The learned Senior Counsel averred that the impugned decision was purely a managerial one, suggesting that it need not have been taken to the Board but could have been implemented by the Managing Director directly. Regardless, the Learned Senior Counsel argued the immediate dismissal of this plea, placing reliance the decision in ***Tata (supra)***[150], which previously rejected a similar contention by Mr. Cyrus Mistry. The Learned Senior Counsel submitted that ***Tata(supra)*** involved a higher stake, dealing with removal from a management position, unlike the present case where the Petitioner No. 1 retains all positions conferred by the Board. The Hon’ble Supreme Court's rejection of the procedural objections in Tata, relating to notice and agenda items, is cited as establishing the legal stance that removal from a managerial position cannot be deemed oppressive or prejudicial, thus applying *a fortiori* to the current scenario.

248. The Learned Senior Counsel further contends a technical objection raised by the Petitioners regarding the absence of documented complaints despite references in the impugned Resolution. The learned Senior Counsel argued that this objection is merely an afterthought, aiming to deflect from the lack of legally valid grounds to challenge the Resolution. It is stressed that the impugned Resolution does not imply that the complaints mentioned were in

150 ¶ 128-132

writing, which is unsurprising considering the potential repercussions for subordinates voicing grievances against the Petitioner No. 1, a member of the promoter family. The absence of written complaints is deemed a reflection of the workplace dynamics rather than indicating any wrongdoing. The Learned Senior Counsel explain that feedback within the newsroom often operates through informal channels, leading to the complaints about lack of coordination between print and digital teams reaching the Chief Editor (Respondent No. 2), necessitating corrective action.

249. The decision in question could have been taken by the Managing Director exercising the substantial powers vested in that position. The learned Senior Counsel averred that it was not a decision to remove or admit a Director, which would require Board approval by law, but rather a managerial decision to optimize operational efficiency. The Learned Senior Counsel argued that such decisions concerning day-to-day operations do not mandate Board approval and could have been communicated through routine channels like office memos. They underline that the decision's presentation before the Board was out of courtesy rather than necessity, thus invalidating objections based on procedural irregularities in Board approval.

250. The Petitioners' reference to the amendment of draft meeting minutes but deem the significance of this submission unclear. The learned Senior Counsel asserted that there is no implication of illegality in amending initial draft minutes based on inputs from attendees. Furthermore, the learned Senior Counsel submitted that Petitioners failed to suggest any factual inaccuracies in the draft minutes throughout their submissions. Therefore, the subsequent amendment of the draft minutes holds no legal weight[151].

251. The draft minutes, including the relevant section on the digital division, were circulated on 02 May 2019[152]. An objection to the draft was raised by the Petitioner No. 1 via email on 05 May 2019, to which a response was provided by Respondent No. 7 to the Company Secretary, Ms. Zahra Basrai, on 10 May 2019. This response comprehensively explains the events leading to the

[151] Annexure DD; pp. 698-705 of the Company Petition, Vol IV @ pp. 704-705
[152] Annexure AA; pp. 686-693 of the Company Petition, Vol IV @ p. 693

adoption of the resolution reflected in the draft minutes circulated on 02 May 2019. Importantly, the Petitioner No. 1's subsequent communication of 15 May 2019, in response to the circulated email, does not contest the accuracy of Respondent No. 7's account, thereby implicitly acknowledging the factual accuracy of the events as recorded[153][154][155].

252. In light of Respondent No. 7's email dated 05 May 2019, the draft minutes were finalized by inclusion of a paragraph that elucidates the manner in which the matter was raised before the Board. This paragraph succinctly describes the discussion preceding the proposal and voting leading to the adoption of the Resolution. The Learned. Senior Counsel argued that this inclusion faithfully reflects the contents of Respondent No. 7's email of 05 May 2019.

253. It is reiterated by the Learned Senior Counsel that the Petitioners have not alleged any factual inaccuracies in the amended minutes or the paragraph added to the draft circulated on 02 May 2019. The raising of this issue in an oblique and inconclusive manner is deemed by the Ld. Senior Counsel as yet another desperate attempt to distract from the lack of merit in the Company Petition, warranting immediate rejection.

254. The Learned Senior Counsel submits the heavy reliance placed by the Petitioners on the decision of the House of Lords in ***Ebrahimi v. Westbourne Galleries Ltd.***[156], to contend that the Company is a family company akin to a quasi-partnership. They state that this contention seeks to overcome the Petitioner No. 1's alleged right to participation in management based on equitable considerations alone.

255. The Learned Senior Counsel submitted that the Ebrahimi ratio and its subsequent modifications by English Courts have been considered by the Hon'ble Supreme Court in ***Tata (supra)***[157]. Tata underscores the distinction between a partnership and a company, asserting that equitable principles apply

[153] Annexure BB; p. 694 of the Company Petition, Vol IV
[154] Annexure CC; pp. 695-697 of the Company Petition, Vol IV @ p.697
[155] Annexure EE; p. 706 of the Company Petition, Vol IV
[156] [1972] 2 All ER 492
[157] (¶¶138-141)

differently to each. It further cites ***Lau v. Chu***[158], which delineates the circumstances under which equitable principles would apply, notably highlighting functional deadlock and irretrievable breakdown of trust and confidence.

256. Applying the law laid down in ***Tata (supra)***, the Learned Senior Counsel assert that equitable principles have no application in the present case. The learned Senior Counsel asseverated that the Board and management are functioning smoothly, with decisions made unanimously. The absence of challenges to decisions during the pendency of the Company Petition underscores the ongoing cooperation among management members. The Learned Senior Counsel argued against the existence of deadlock or an irretrievable breakdown of trust, characterizing the Company Petition as an abuse of process deserving rejection.

A. POST-*EBRAHIMI* POSITION IN ENGLISH LAW.

257. The learned Senior Counsel submitted that the position under Indian Law in regard to the narrow compass in which equitable considerations would come into play now stands settled in ***Tata (supra)***, which lays down the binding legal position set out in the preceding paragraphs.

258. It may be noted that English Law has also moved away from a wide reading of *Ebrahimi*. In ***Waldron v. Waldron***[159], the High Court after citing the legal position under *Ebrahimi* observed[160]: "*the expression of 'quasi-partnership' is nothing more than a convenient label. The use of such a label should not be allowed to subvert the underlying question: whether a petitioner can pinpoint matters giving rise to an equitable consideration which makes it unfair for those conducting the affairs of the company to rely upon their strict legal powers.* It was further held[161] that "*the fact that the Company in question is a small one or a private company does not, without more, give rise to such*

[158] (2020) 1 WLR 4656 (PC)
[159] **[2019] EWHC 115 (Ch)]**
[160] **(¶27)**
[161] **(¶29)**

considerations… those considerations will not be present in every family company and something more is needed for them to be present. Then the ownership of the shares in a company by the members of the same family and more even than the fact that family members are officers of or employed by the company in question."

259. Similarly, the Chancery Division in ***In re Dinglis Properties Ltd***[162] held: "*the mere fact that a company is a family company, and even the fact that it is managed on the basis of mutual trust and confidence, are not in themselves sufficient basis for the conclusion that the company is a quasi-partnership company. Something more is needed*." (emphasis in original) In the specific context of one member of the family asserting a right to participation in management of the company, the Court, even while noting that there was a "*high degree of interconnectedness between the personal and business, interest of the family members*", concluded that this did not mean that one member had "*any obligation which would be recognised on established equitable principles to continue to allow (the other member) to maintain a position in the management*" of the company. This statement of the law is of direct application to the present case, and demonstrates that Petitioners' reliance on *Ebrahimi* is misplaced even as a matter of English Law.

260. The learned Senior Counsel submitted that the English Law also mirrors the law laid down in ***Tata(supra)*** that a Court will be slow to interfere with managerial decisions pertaining to the "domestic policy" of the Company. As held **I*n re: Sale D Harisson & Sons pls.***[163]: "*in order to establish unfairness, it is clearly not enough to show that some managerial decision may have prejudiced the petitioner's interest. A shareholder on joining a company will be deemed to have accepted the risk that in the wider interests of the company decisions may be taken which will prejudice his own interests. Thus it may be necessary for the directors to take steps which are prejudicial to some of the members in order to secure the future prosperity of the company, or even its survival*".

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[162] ***(Ch D), [2019] Bus LR***
[163] ***[1994] BCC 475 (at 500)***

261. According to the learned Senior Counsel, the Petitioners' reliance on ***Timothy Smith v. Joan Smith***[164] does not advance their case, and in fact reiterates the legal position described above. This was a case where the majority shareholder exercised its majority to dismiss the minority shareholder as an employee as well as a director of the company. The grant of equitable relief Family Settlement in the present case was based on a detailed factual analysis[165] of the *inter se* relations between the mother (majority) and son (minority) and findings of fact to the effect that: (i) there was an understanding between the two that son would ultimately take over the business from his mother and obtain her shares upon her passing and (ii) the son had been appointed as Director of the Company in pursuance of this understanding and (iii) the son had altered his conduct in furtherance of such understanding and discontinued his studies to join the company (iv) shares had been transferred to the son on the understanding that he would participate in the management of the company and be employed by the company.

262. In light of this factual position, the Court concluded that the mother had "*become subject to equitable constraints insofar as she sought to exercise any legal power to dismiss Tim as an employee, or to remove him as a director*", since "*there did exist an understanding as between Joan and Tim that Tim would continue to participate in the management of the business , and be employed by the Company, so long er he remained a shareholder, and that was the basis upon which he became a shareholder*" (emphasis added). There is no parallel on facts in any respect in the present case.

263. The ***Timothy Smith (supra)*** case is clearly distinguishable on facts, primarily because Petitioner No. 1 has not been removed from any of his positions. Additionally, the history of relations within the family does not indicate any promise of a perpetual role for Petitioner No. 1 in the Company. On the contrary, the record indicates that Petitioner No. 1 voluntarily stepped down from the position of Chief Editor to facilitate future transitions.

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[164] [2022] EWHC 1035 (Ch.)
[165] (¶ 131)

264. Moreover, the Learned Senior Counsel argued that the judgment in ***Timothy Smith (supra)*** actually supports the Respondents' case. The learned Senior Counsel submitted that the Court reiterated the principles established in Waldron, emphasizing that equitable considerations require more than just the company being a family-owned entity. The judgment in ***Dinglis (supra)*** was referenced to underscore the importance of clear evidence regarding agreements between shareholders. The burden, the Learned Senior Counsel submitted rests on the Petitioners to demonstrate any such agreement, which, they argue, has not been substantiated.

265. The Learned Senior Counsel dismiss Petitioners' reliance on ***R. Ramesh v. Devi Polymers***[166] as similarly misplaced. He has clarified that this case dealt with the removal of a director in a closely held private company, found to be an act of oppression. However, the Learned Senior Counsel argued that Petitioners have failed to show any similar legal prejudice in the present case. They emphasize that Petitioner No. 1 was reappointed as a Whole Time Director, with the support of Respondent No. 2 and Respondent No. 4, during the pendency of the Company Petition.

266. While the Court indeed possesses such powers, relief in the judgments relied upon by the Petitioners were granted upon the violation of minority shareholders' proprietary rights. However the Petitioners have failed to establish the existence of such rights, let alone any violation thereof.

267. It is evident that the Company Petition lacks merit in establishing grounds for relief under section 241/242 of the Companies Act, 2013.

Submissions of the learned Senior Counsel appearing on behalf of the Respondent No. 10 are summarized hereinafter:

268. The learned Senior Counsel, Mr. Ravi Kadam submitted that the Respondent No. 10, being the sister of Petitioner No. 1, Petitioner No. 3, and Respondent No. 2, is the youngest of Family Settlement of their deceased father, Late Asoke Kumar Sarkar.

[166] 2017 SCC OnLine Mad 37885

269. Clarifying the circumstances, it is underscored that pursuant to the Family Settlement dated 12 April 2017, Respondent No. 10 was endowed with 4,00,000 shares in the Respondent No. 1 Company, ABP Private Limited, constituting a 20% shareholding in the Company.

270. The learned Senior Counsel while emphasizing on the voluntary nature of the action, submitted that it is elucidated that the shares allocated to Respondent No. 10 were relinquished by her of her own accord, motivated by love and affection and without any pecuniary consideration, to Respondent No. 2 *via* a transfer deed dated 12 April 2017. Importantly, this transfer garnered approval from the Share Transfer Committee of the Company on 13 April 2017[167] and subsequently from the Board of the Company on 27 April 2017[168].

271. The learned Senior Counsel, Mr. Ravi Kadam submitted that the contention put forth by the Petitioners in the Company Petition revolves around the purported violation of Clause 14 of the Family Settlement, which, according to their argument, renders the transfer "void"[169].

272. Respondent No. 10's legal representatives firmly oppose the prayer articulated by the Petitioners, which seeks, among other things, a directive for the Respondents to "forthwith transfer 2,00,000 shares in favor of the Petitioners"[170].

273. The learned Senior Counsel asseverated that Respondent No. 10 has never been directly engaged in the day-to-day operations or administration of the Company[171]. Consequently, she refrains from addressing the remaining pleas articulated in the Company Petition and maintained by the Petitioners. The Respondent No. 10 does not implicitly concede the validity of any other contentions advanced by the Petitioners.

274. The learned Senior Counsel submitted that there exists no legal flaw in the transfer of shares from her to Respondent No. 2, affirming the valid possession of the shares by Respondent No. 2 as of the present date.

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[167] Annexure "R" @ p. 614 of the Company Petition – Vol. IV
[168] Annexure "Q" @ pp. 610-613 of the Company Petition – Vol. IV @ p. 613
[169] pr. 28(iii) (p. 45) of the Company Petition – Vol. I
[170] prayer (c)
[171] pr. 6 @ p. 14 of the Reply Affidavit of the Respondent No. 10

275. As an alternative argument, the learned Senior Counsel contended that even if the Tribunal were to determine the transfer as legally invalid for any reason, the sole consequence thereof would be the nullification of said transfer, leading to the reversion of the shares (along with the attached rights) to Respondent No. 10, who may thereafter dispose of them at her discretion.

276. The learned Senior Counsel submitted that in defense against the allegations brought forth by the Petitioners, it is contended on behalf of Respondent No. 10 that there exists no violation of the Family Settlement, as asserted by the opposing party.

277. The learned Senior Counsel argued that the crux of the Petitioners' argument hinges upon the purported contravention by Respondent No. 10 in transferring her 20% shareholding in the Company, purportedly in defiance of a clause enshrined in Clause 14 of the Family Settlement, thus rendering the transfer void.

278. Furthermore, the learned Senior Counsel asserted that the said transfer precipitated the establishment of a "new majority" in favor of a "group" consisting of Respondent No. 2, Respondent No. 4, and Respondent No. 6, thereby wielding a 60% shareholding in the Company, relegating another "group" composed of the Petitioners to a 40% "minority". This alleged act of oppression is purportedly the foundation for seeking redress under section 241/242 of the Companies Act, 2013.

279. The learned Senior Counsel asseverated that each of these assertions by the Petitioners, as contended, is deemed wholly misconceived and bereft of any substantive basis.

280. The Family Settlement, as it stands, was orchestrated for the explicit purpose of apportioning the shares of the Company among the progeny of Late Asoke Kumar Sarkar. The contextual backdrop leading to the execution of the Family Settlement is meticulously elucidated in the recitals thereof, underscoring the intestate demise of Asoke Kumar Sarkar, who left behind five children. Notably, Recital F to the Family Settlement[172] documents the transfer by Ms.

[172] Annexure "O" @ pp. 590-605 of the Company Petition – Vol. III & IV; Recital F @ 594

Champabati Sarkar of her entire shareholding to her nephew, Respondent No. 4, a transaction that has not been contested by the Petitioners.

281. Clause 5 of the Family Settlement[173] distinctly acknowledges the transfer of 20% to Respondent No. 4. Subsequently, the remaining shares in the Company were apportioned in a manner stipulated as follows:

a. The 20% entitlement of Petitioner No. 1 was designated to be held by his wife, Petitioner No. 2.

b. The 20% entitlement of Petitioner No. 3 was temporarily designated for transfer to Petitioner No. 1, albeit with the beneficial interest in the shares to be retained by Petitioner No. 3.

c. The entitlement of Respondent No. 2 was slated to be held through a holding company, Respondent No. 6, with an additional understanding stipulating that Respondent No. 4 would hold 18% in the Company, while Respondent No. 6 would possess 22% of the Company.

d. Respondent No. 10 would be entitled to 20% shares of the Company.

282. The delineated shareholding structure was explicitly delineated in Clause 7 of the Family Settlement. The requisite share transfers necessitated to effectuate this structure garnered approval from the Share Transfer Committee of the Company via a Resolution dated 12 April 2017[174] and subsequently from the Board of the Company during its meeting held on 27 April 2017[175].

283. The learned Senior Counsel submitted that the sequence of events following the transfer of 20% shares of the Company to her, Respondent No. 10 expeditiously transferred her entire shareholding to Respondent No. 2. The rationale behind this action has been elucidated in the Reply Affidavit tendered by Respondent No. 10 before this Adjudicating Authority[176].

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[173] Annexure "O" @ pp. 590-605 of the Company Petition – Vol. III & IV; Clause 5 @ p.596 of the Company Petition – Vol. III
[174] Annexure "P" @ pp. 606-609 to the Company Petition – Vol. IV
[175] Annexure "Q" @ pp. 610-613 of the Company Petition – Vol. IV @ p. 613
[176] pr. 4(k) and 4(l) @ p. 9 of the Reply Affidavit of the Respondent No. 10

284. Mr. Ravi Kadam, learned Senior Counsel submitted that among the Respondent No. 10's siblings, she shares the closest personal bond with Respondent No. 2, who, post their father's demise, assumed a paternal role in her life, offering the affection and care that she felt lacking from Petitioner No. 1 or Petitioner No. 3. The decision to transfer her shares to Respondent No. 2 thus emanated as a natural expression of gratitude and affection, devoid of any financial motive. As the transfer was devoid of consideration, Respondent No. 10 affirmed an affidavit on 25.04.2017[177], attesting to the voluntary nature of the transfer prompted solely by fraternal affection.

285. There was no subterfuge or concealment surrounding the said transfer as alleged by the Petitioners. The close-knit relationship between Respondent No. 2 and Respondent No. 10 was common knowledge within the family circle, as was the fact that Respondent No. 10 had no involvement in the Company's management nor sought such involvement. Hence, it wouldn't have come as a surprise to either Petitioner No. 1 or Petitioner No. 3 that Respondent No. 10 would promptly transfer her shares to Respondent No. 2, given the evident familial dynamics. The immediacy of the transfer post the Family Settlement further underscores the mutual understanding among all parties that Respondent No. 2 would inherit her shares.

286. The learned Senior Counsel submitted that in the spirit of maintaining familial harmony, Respondent No. 10 extended the courtesy of informing Petitioner No. 1 of her decision via an SMS. Regrettably, this message is no longer accessible to Respondent No. 10 and thus hasn't been presented in these proceedings. Nevertheless, in his Rejoinder Affidavit to the Counter filed by Respondent No. 10, Petitioner No. 1 does not refute receiving this communication but rather claims to not recollect such intimation being conveyed to him.

287. It is crucial to emphasize that the SMS was merely a gesture of familial courtesy, signifying the notification of her decision to transfer the shares, not a solicitation for permission or consent for the transfer. Respondent No. 10 was

[177] Annexure "B" @ pp. 22 – 27 of the Rejoinder Affidavit to Reply Affidavit filed by Respondent No. 10

unequivocal in her understanding that under the recently concluded Family Settlement, she possessed the autonomy to transfer her shares, in part or in full, to any other signatory to the Family Settlement without seeking permission or consent from the others. Given the familial relations, it was implicit that her actions would be comprehended by all concerned.

288. During oral arguments, it was contended on behalf of the Petitioners that the existence of this SMS (which Petitioner No. 1 claims to not recall) amounts to an admission by Respondent No. 10 of her obligation to seek Petitioner No. 1's consent before transferring her shares to Respondent No. 2. However, this contention appears oblivious to Petitioner No. 1's own submissions before this Tribunal. The aforementioned Rejoinder Affidavit elucidates that Petitioner No. 1 perceives such communication as Respondent No. 10 "intimating her decision to transfer her shares" to Respondent No. 2[178], rather than a plea for permission. Moreover, Petitioner No. 1 explicitly clarifies that "my consent was never sought"[179]. Hence, any insinuation that Respondent No. 10 believed she needed consent from Petitioner No. 1 or Petitioner No. 3 to transfer her shares to Respondent No. 2 lacks merit and is merely a desperate attempt by the Petitioners to substantiate an unfounded case.

289. Moreover, Petitioner No. 1 was undeniably apprised of the transfer no later than two weeks post its occurrence. The minutes of the Share Transfer Committee meeting, endorsing the transfer, were laid before and ratified by the Board during its meeting on 27 April 2017. These minutes[180] comprehensively detailed the transfer, furnishing Petitioner No. 1 with all requisite information regarding Respondent No. 10's transfer of her entire shareholding to Respondent No. 2, including the names of the transferor and transferee, as well as the number of shares transferred. It is undisputed that Petitioner No. 1 was present at the meeting held on 27 April 2017 and voiced no objection to the ratification of the said minutes. Moreover, for the subsequent two years until

[178] pr. 6 @ pp. 6 – 7 of the Rejoinder Affidavit to Reply Affidavit filed by Respondent No. 10
[179] pr. 6 @ p7 of the Rejoinder Affidavit to Reply Affidavit filed by Respondent No. 10
[180] Annexure "R" @ p. 614 of the Company Petition – Vol. IV

the filing of the instant Company Petition in 2019, Petitioner No. 1, despite full cognizance of the aforementioned facts, acquiesced to the same.

290. The learned Senior Counsel submitted that in the Petitioner's Rejoinder Affidavit to the Counter filed by Respondent No. 10, Petitioner No. 1 avers[181] that he had "given consent to approval of the minutes without going through the same" under the representation that the share transfers approved by the Share Transfer Committee aligned with those envisioned under the Family Settlement. However, this assertion cannot be accepted at face value and is inconsequential. As a literate individual, Petitioner No. 1 wouldn't find it arduous to peruse a half-page document containing a singular table. By endorsing the minutes without scrutiny, Petitioner No. 1 inadvertently admits to a dereliction of his fiduciary duties as a director of the Company. Consequently, he cannot claim immunity based on such oversight.

291. Under Section 118(7) of the Companies Act, 2013, the meticulously maintained minutes of the Board meetings are deemed as evidence of the recorded proceedings. Petitioner No. 1 has failed to proffer any evidence to challenge this presumption. Hence, Petitioner No. 1 must be deemed as having been apprised of the transfer at all pertinent times and is deemed to have assented to the same. The commencement of the present proceedings over two years post the transfer implies that the challenge to the said transfer is an afterthought and an erroneous endeavor to lend credence to a groundless petition under section 241/242 of the Companies Act, 2013.

292. The contention presented herein revolves around the purported breach of Clause 14 within the Company Petition.

293. Primarily, it is asserted that the crux of the matter under consideration in the present Petition is inherently contractual in nature. The Petitioner seeks the enforcement of specific performance of the provisions outlined in the Family Settlement, as construed by them. In line with established legal precedent, as articulated by the Hon'ble Supreme Court in ***Chatterjee Petrochem (India) Pvt. Ltd. v. Haldia Petrochemicals Ltd.***[182], it is well-settled that remedies for

[181] pr. 6 @ p. 9 of the Rejoinder Affidavit to Reply Affidavit filed by Respondent No. 10
[182] ***(2011) 10 SCC 466 @ pr. 148***

contractual breaches, inclusive of specific performance, do not fall within the purview of proceedings concerning oppression/mismanagement. This legal dictum finds reaffirmation in the pronouncement of the Bombay High Court in ***Rajiv Sanghvi v. Pradip R. Kamdar 2022***[183], where it was concluded that "...the Courts have held that the NCLT/NCLAT does not have jurisdiction to deal with the issues relating to enforcement of contractual provisions between the parties and they have no jurisdiction to decide a civil suit of specific performance." This ruling was subsequently upheld on appeal by a Division Bench of the Hon'ble High Court at Bombay, as per the judgment.[184].

294. Consequently, the focal point raised in the Company Petition is one that cannot be adjudicated upon within the framework of the current proceedings. Moreover, the relief sought, namely specific performance of Clause 14 as construed by the Petitioners, cannot be granted. Hence, the Company Petition is liable for dismissal on this concise ground.

295. Irrespective of the foregoing contention, it is asserted that upon a straightforward examination of the Family Settlement, no breach of Clause 14, or any other clause therein, has been demonstrated by the Petitioners.

296. Clause 13 of the Family Settlement explicitly acknowledges the entitlement of the signatories to transfer any or all of their shares to an existing signatory of the Family Settlement. Importantly, Clause 13 imposes no limitations on this entitlement. Hence, Clause 13 acknowledges that, as exemplified in the present scenario, Respondent No. 10 possessed the right to gift her shares entirely to Respondent No. 2 out of familial affection.

297. The plain import of Clause 13 assumes paramount significance in the interpretation of Clause 14, as the introductory language of Clause 14 renders it subordinate to Clause 13. Clause 14 commences with the phrase, *"(w)ithout in any way abridging or affecting the rights as contained in Clause 13."* Thus, rather than circumscribing the right/entitlement delineated in Clause 13, Clause 14 is expressly subject to the overriding operation of the right under Clause 13, whereby a signatory to the Family Settlement may transfer any of

[183] ***SCC OnLine Bom 11752 @ pr. 109***
[184] 2022 SCC OnLine Bom 3147

their shares to another signatory sans qualification or limitation. The foundational flaw in the interpretation posited by the Petitioners lies in its attempt to invert the plain language of the provisions and reconfigure both Clause 13 and 14 to subordinate Clause 13 to Clause 14.

298. Notwithstanding the absence of ambiguity in the breadth and import of Clause 13, Clause 14 unequivocally underscores the intent and reiterates the supremacy of Clause 13 through the employment of the following phrase: "It is agreed among the Parties that the provisions of this clause shall not apply to inter se transfer of shares among the signatories to this Agreement."

299. Consequently, the unadorned language of the Family Settlement fails to substantiate the alleged breach of Clause 14, nor can the Petitioners procure the relief of specific performance of the Family Settlement as sought.

300. The learned Senior Counsel asserted that the Petitioners have endeavored to propel forward a narrative of oppression predicated on the alleged emergence of a "new majority" consequent to the transfer of shares from Respondent No. 10 to Respondent No. 2.

301. Underlying this argument put forth by the Petitioners lies the assertion that the Family Settlement delineated three distinct "groups":

a. Group A, encompassing the Petitioners, collectively holding 40% of the Company's shares;

b. Group B, constituted by Respondent No. 2, Respondent No. 4, and Respondent No. 6, collectively owning 40% of the Company's shares;

c. Respondent No. 10, holding 20% of the Company's shares.

302. According to the Petitioners' framework, the Family Settlement purportedly established a state of parity between Groups A and B, granting Respondent No. 10 an effective deciding vote in case of any discord between the two groups. It is alleged that this equilibrium has been disrupted by the transfer of shares from Respondent No. 10 to Respondent No. 2/Group B, thereby elevating Group B to a majority position, holding 60% of the Company's shares.

303. This contention not only lacks grounding in the Family Settlement but also fails to reconcile with the unambiguous language of the various clauses comprising the Family Settlement.

304. As mentioned earlier, Clause 7 delineates the shareholding framework implemented subsequent to the inter se transfer of shares among certain signatories to the Family Settlement, establishing the five individuals collectively owning 100% of the Company's shares, namely, Petitioner No. 3 (retaining beneficial interest in shares held on his behalf by Petitioner No. 1), Petitioner No. 2, Respondent No. 2, Respondent No. 4, and Respondent No. 6. Subsequently, Clause 9 of the Family Settlement stipulates that "(e)ach of the five branches/entities as indicated above in clause 7 shall be entitled to nominate one Director on the Board…" (emphasis added).

305. The learned Senior Counsel submitted that Clause 9 serves to dismantle the foundation of the Petitioners' argument. The crux of the Petitioners' case rests on the assertion that the Family Settlement effectively formed two equivalent groups, each holding 40% of the shares, with the remaining shares held by Respondent No. 10. However, Clause 9 outrightly dispels any notion of such categorization within the Family Settlement. On the contrary, it explicitly mandates that each of the five shareholders of the Company be treated as distinct "branches," with each "branch" entitled to nominate one director to the Company's Board.

306. Moreover, Clause 9 further stipulates that the right of each of the five branches to nominate a Director remains intact even in the event of one branch assimilating another through an inter se transfer of shares, implying that the branch/entity acquiring shares from another shall retain the entitlement to nominate two directors.

307. The learned Senior Counsel pointed out the fallacy in the Petitioners' depiction of two distinct groups, namely Group A and Group B, within the Family Settlement. Neither the Family Settlement nor any of its clauses recognize the existence of Group A or Group B, or any other grouping among the five (5) shareholders identified in Clause 7. There exists no foundation within the Family Settlement to assert that Respondent No. 2, Respondent No. 4, and

Respondent No. 6 must be amalgamated into a single group, or that their shareholding should be consolidated to exercise rights under the Family Settlement. Likewise, the Family Settlement does not bind Petitioner No. 2 and Petitioner No. 3 together, mandate their collaboration, or link their rights to a joint pooling of their shareholding.

308. On the contrary, the Family Settlement expressly acknowledges each of the five (5) shareholders of the Company as separate branches, endowing each branch with an equal right of participation in Company management by appointing a Director to the Board and facilitating consensus among shareholders regarding further Board appointments. This stance, derived from the explicit language of Clause 9, cannot be disregarded or overridden merely to uphold the construct presented by the Petitioners.

309. The Family Settlement confers upon Respondent No. 10 not only an economic interest comprising 20% of the Company but also a corresponding right to participate in management commensurate with said shareholding, on par with the other four shareholders identified in Clause 7. The equilibrium engendered by the Family Settlement pertains solely to the parity among these five shareholders concerning appointments to the Board of Directors.

310. This case is underpinned by a written agreement executed by the parties, constituting a legally binding document. Clause 18 stipulates that the "Agreement constitutes the whole settlement of the disputed claims between the Parties hereto…". Pursuant to Section 91 of the Evidence Act, 1872, when the terms of a contract are documented, no evidence other than the document itself shall be adduced to establish said terms. Hence, adherence to the explicit language of the Family Settlement is imperative, precluding any interpretation divergent from that delineated above, as such interpretations would deviate from the plain and unambiguous language of the Family Settlement. It is neither permissible nor warranted to delve beyond the confines of the binding legal document executed by the parties.

311. The Petitioners' case reflects a conspicuous lack of coherence and consistency, evident in the ambiguity and self-contradiction within pr. 25 at p. 36 of the Company Petition. Sub-paragraph (i) of pr. 25 alludes to "two main groups",

while sub-paragraph (iii) references the inherent management rights of each "branch" of the Company identified in Clause 7, i.e., the five shareholders. Such confusion and inconsistency stem from the clash between the Petitioners' concocted narrative and the reality encapsulated in the written word of the Family Settlement.

312. The Family Settlement pertains to the division of shares among the children of Late Asoke Kumar Sarkar and does not extend to the day-to-day operations or allocation of management responsibilities among shareholders. The Family Settlement addresses management matters to a limited extent solely through Clause 9, which, as aforementioned, confers upon each of the five shareholders the right to nominate one Director to the Board and participate in the appointment of remaining Directors through consensus. Consequently, there exists no basis within the Family Settlement for Petitioner No. 1 to assert a right to control any specific division of the Company, nor does any other shareholder possess the right to claim a particular management position or role designation.

313. The Learned Senior Counsel argued with all vehemence that Petitioner No. 1 does not hold any shares of the Company, as he himself acknowledges in Clause 2 of the Family Settlement[185], expressing his preference for his wife, Petitioner No. 2, to hold his inherited 20% shareholding. Additionally, it is revealed that the shares attributed to him in Clause 7 are held pro tem for Petitioner No. 3, with the beneficial interest lying with the latter. The Learned Senior Counsel further submitted that participation in management is intrinsically linked to shareholding, as underscored by the settled legal principle articulated by the Hon'ble Supreme Court, notably in ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.***[186], emphasizing that a complainant must demonstrate prejudice in the exercise of their shareholder rights.

314. The learned Senior Counsel, Mr. Ravi Kadam asserted that an individual devoid of shareholding cannot lay claim to management rights in a company

[185] Clause 2 @ p.596 of the Company Petition – Vol. III
[186] *(1981) 3 SC 333* (para 52)

unless there exists a contractual obligation binding the company to provide such a position under specified terms. In this context, it is highlighted that Petitioner No. 1 has not presented any such contractual stipulation within the Family Settlement, as none exists.

315. The purported right to participate in management, claimed absolutely and indefinitely, is an afterthought, as evidenced by the circumstances surrounding the execution of the Family Settlement. Documents submitted by Petitioner No. 1 himself reveal his voluntary relinquishment of the Chief Editor post approximately one year before the Family Settlement's execution. The Learned Senior Counsel argued that this voluntary withdrawal from an active managerial role precludes any speculative claims regarding management rights. Notably, in an email dated 16 July 2016[187], Petitioner No. 1 acknowledged stepping aside for a larger management restructuring, indicating his awareness of the forthcoming changes. Upon his resignation, Petitioner No. 1 assumed the honorific position of Editor Emeritus, devoid of any involvement in day-to-day operations. Symbolically, at the time of the Family Settlement's execution, Petitioner No. 1 was already transitioning out of active involvement, occupying a ceremonial position. The Learned Senior Counsel contend that Petitioner No. 1's actions preceding the Family Settlement's execution contradict any assertion of seeking or being offered an active managerial role, especially exclusive control over the digital division. The Petitioner No. 1 admitted during the course of arguments that his grievance stemmed from his nephew (Respondent No. 4) assuming the Chief Editor position. This underscores that no management rights were pursued or granted to Petitioner No. 1, neither upon his resignation in 2016 nor during the Family Settlement's execution in April 2017.

316. Statement in the Notice dated 22 June 2016[188] ,issued by the Company, wherein it was mentioned that Petitioner No. 1 would "lead" the digital initiatives, should not be interpreted in isolation. The learned Senior Counsel submitted that this statement should be considered in conjunction with the

[187] p. 92 of the Reply Affidavit of Respondent Nos. 1 and 7
[188] p. 108 of the Reply Affidavit of Respondent Nos. 1 and 7

declaration in the same notice that he would serve as Editor Emeritus of the Group. This connotes that his leadership role would be akin to that of an elder statesman rather than an active manager. Moreover, the Learned Senior Counsel asserted that the notice does not delineate the digital division's functioning as an independent entity beyond the purview of Board supervision, nor does it provide a basis for the claimed right of Petitioner No. 1 to exert absolute control over the digital division indefinitely.

317. The Learned Senior Counsel submitted that the relief sought by the Petitioners cannot be granted.

318. The Learned Senior Counsel argued that even if the Tribunal leans towards finding the transfer between Respondent No. 10 and Respondent No. 2 contradictory to the Family Settlement, as acknowledged by the Petitioners themselves, such transfer is deemed "void" in law.

319. The learned Senior Counsel asserted that the only conceivable relief would be a declaration of the transfer's void ab initio status, rendering it legally inconsequential. Consequently, the shares would revert to Respondent No. 10, maintaining her ownership. If Clause 14 necessitates offering shares to all signatories, then it falls within Respondent No. 10's purview to handle her shares accordingly.

320. Furthermore, the Learned Senior Counsel argued that the Petitioners' plea for a directive to transfer 50% of the shares from Respondent No. 10 to Respondent No. 2 cannot be sanctioned, even if the Tribunal deems the transfer violative of the Family Settlement. Firstly, this relief contradicts the Company Petition's assertion that the transfer is "void" due to Family Settlement infringement. If the transfer is void, Respondent No. 2 cannot possess title to the shares, let alone transfer 200,000 shares to the Petitioners. Secondly, stripping Respondent No. 10 of her property rights based on the contract breach is unjustifiable.

321. Since there is no dispute regarding Respondent No. 10's valid ownership of the shares before the transfer, the entire spectrum of rights associated with such ownership belonged to Respondent No. 10. These rights were exercised with the specific intent of gifting the shares to Respondent No. 2 as an act of love

and affection. In essence, Respondent No. 10 chose to relinquish the shares under the condition that they exclusively belong to Respondent No. 2. Whether this condition stands invalidated due to the absence of an offer to other shareholders is a matter for Respondent No. 10 to deliberate upon.

322. Ttransfer by Respondent No. 10 wasn't a solitary action; it was a voluntary transfer predicated on the understanding that the shares would be vested solely in Respondent No. 2, excluding all others. This transfer is either valid or not. If deemed invalid, it must be considered as never having occurred in the eyes of the law, thereby maintaining Respondent No. 10's sole ownership of the shares.

323. Alternatively, if the Tribunal finds that Respondent No. 10's right to transfer the shares was indeed exercised, but the transfer is declared invalid, the shares must revert to Respondent No. 10. This action must align with the Tribunal's declaration of the transfer's invalidity. The Learned Senior Counsel submitted that this right cannot be exhausted by judicial decree, and certainly not by an order compelling the transfer of shares to the Petitioners.

324. In light of these arguments, the Ld. Senior Counsel submitted that the Company Petition should be dismissed with costs

Analysis and Findings

325. Heard the learned Senior Counsel appearing on behalf of the Petitioner and Learned Senior Counsel and learned Counsel appearing on behalf of the Respondents and perused the records.

326. During the final hearing of the matter on 30 January 2024, the learned Senior Counsel appearing for the Petitioners stated that the petitioners wished to limit their prayers to (a),(b),(c),(d),(h),(i),(j),(k) out of the prayers given at Pp. 76-79 of Vol-1 of the Petition. This leaves us with the following issues to be dealt with :

    (i) The validity of the transfer of shares inter-se Respondent No.10 and Respondent No. 2 vis-à-vis the Family settlement.

(ii) Management and control of the affairs of the digital division of ABP Private Limited with issues associated with the procedural obligations.

(iii) Amendment of the Articles of Association ("AoA") to reflect the Memorandum of Family Settlement dated 12.04.2017 and Corporate Governance modalities

Background

327. The company in question belongs to a predominant business house of Kolkata and the establishment of the company traces its origins to the British times. A de-facto heritage institution it was established by one Mr. Mrinal Kanti Ghosh started Ananda Bazar Patrika along with Mr. Suresh Chandra Mazumdar on 17 May 1922, which has over a period of time evolved to be a prominent media house known as ABP Private Ltd. The company boasts of two major newspapers of Bengal namely Anand Bazar Patrika and The Telegraph, a paper with British lineage. There are other vernacular publications and newspapers which amongst others has a widely read Bengali paper namely Ebela. The ABP Private limited, as the company has come to be known, was established by Sh. Praffula Sarkar, and was a signatory to the Memorandum of Association of the company. The Registered office of the group is situated in Prafulla Sarkar Street, Kolkata.

328. In 1954 the son of Prafula, Mr. Ashok Kumar Sarkar took over the reins of the company. In 1963 Ashok Kumar Sarkar demarcated the responsibilities of the company between the Petitioner No. 1 and Respondent No. 2. Respondent No. 2 was looking after the commercial aspects and the Petitioner No. 1 who was from an alumnus of college of intellectual leanings, got to shoulder the editorial responsibilities. In 1983 the Petitioner No. 1 took over the charge of the company and in 1989 he was appointed the editor of Telegraph and later rose to become the Editor -in - Chief of the group and remained so till 2016. During this time he championed the beginning of the Digital division in the company.

329. In 2016, differences cropped up between various directors-cum-shareholders, belonging to different branches of the same family who owns the company and

in order to sort out the differences as also to avoid their occurrence in future, a Family Settlement was worked out with the help of Family Solicitors. However immediately after signing of the Family Settlement, certain shares came to be transferred, albeit within the family, the mode and manner of which gave rise to suspicion and mistrust between the two main branches of the family. This eventually led to loss of faith and acrimony between the parties, with the Petitioner group filing the present petition before this Tribunal praying for a large number of reliefs and interim reliefs.

330. This petition has been filed under section 241/242 of the Companies Act, 2013, as well under sections 58 and 59 of the Companies Act, 2013 as the Petitioners seem to believe that the new majority that has resulted in the company and which is now seemingly oppressing the petitioners is the result of a concocted share transfer behind their back and hence the prayers for rectification of the register of the company under sections 58 and 59 of the Companies Act, 2013.

331. In the administration of the companies, the possibilities of a majority oppressing a minority are far too well recognized and remedies provided for in the Companies Act 2013, by way of empowering the Tribunal by way of section 242 of the Companies Act, 2013 to issue necessary directions with a view to bringing to an end, the matters complained about. There are a catena of judgements as to what should be construed as 'oppression and mismanagement' and what are the remedies available in law. The modus of oppression of one faction by another one, generally is that of a majority oppressing the minority but the converse also not being unknown, more often than not is the result of loss of trust between the parties or obstruction by one faction in the path of the other resulting in a quagmire , wherein it becomes difficult to identify the real cause . Then there is an element of the family companies and each side's perceived parity or otherwise with the non-family members in the Management of its affairs. The role of the family settlements in family companies is also well treated in various judgements of the superior courts, with a pro and counter view expressed by the parties involved in the vexed issue of oppression and mismanagement, which generally centers around removal of the minority from the Directorship, dilution of the

shareholding, non-payment of remuneration and finally having a say in managing the affairs of the company. This petition also has similar connotations.

332. Both the sides made elaborate submissions during hearing based on the respective pleadings comprising of Petition, replies, Rejoinder and supplementary affidavits. The protracted hearing of the matter spanned over a few months, which was followed by the written notes by the parties. These written notes of submissions were extensively referred to during the hearing. The summary of submissions by various parties have been extracted above from the pleadings on record.

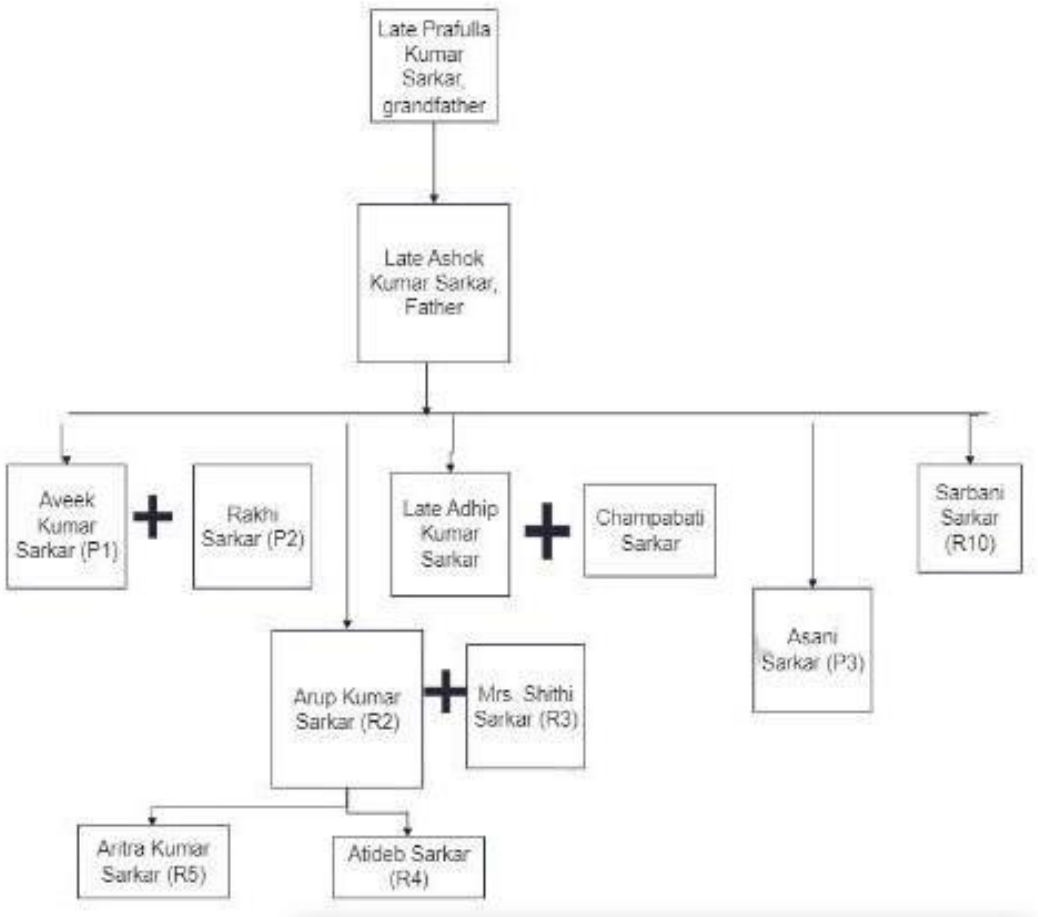
333. We have heard both the learned Senior Counsel at length, perused the pleadings and prima facie opine that it is primarily two actions of the Respondent group which have crystallised the matter to its present form and these coupled with some sequential events are being labeled as acts of Oppression by the petitioners.

    a. Transfer of shares by Respondents allegedly in collusion with each other, in violation of the Family Settlement dated 12 April 2017(referred to as subterfuge by Petitioners), so as to form a new majority within the company board.
    b. Board resolution passed on April 24, 2019 taking away the assigned role of Petitioner No. 1 in the Digital Division of the Company.

Family Settlement and transfer of Shares

334. At the outset it is made clear that the instrument being referred to herein as Family settlement is actually titled as “Memorandum of Family Settlement”. However, in our view this does not make material difference to the merits of the matters as the issues regarding the registration of this document, its necessity or otherwise, though debated substantially and judgments cited but during the hearing itself, this comes to be accepted as a Family settlement in terms of the spirit of the document and therefore it is being referred to as such in the ensuing text. The family settlement envisaged an equitable distribution of the share capital between the five offsprings of Late Ashok Kumar, which envisaged 20% shares to each of the siblings namely Aveek Kumar Sarkar,

Arup Kumar Sarkar, Adhip Kumar Sarkar, Asani Sarkar and Sarbani Sarkar. At the outset it would be useful to have a look at the Family Tree to understand the family dynamics and its role in the management of the company.



334.The shareholding pattern of Company as per the Financial Statement for FY 2016-17, immediately prior to the Family Settlement, was as follows:

Name of the Shareholder	**Percentage of Share**
Aveek Kumar Sarkar (P1)	19.5%
Arup Kumar Sarkar (R2)	19.5%
Atideb Sarkar (R4)	19.5%
Shithi Sarkar (R3)	19.5%
ABP Holdings Private Limited (R6)	22%
Siddhartha Ghosh	0.000001

The shareholding consequent upon signing of the said Family settlement arrived at on 12th April 2017 is was as follows: (page 590 of the petition)

Name of the Shareholder	**Percentage of Share**
Aveek Kumar Sarkar (P1)	20 %
Rakhi Sarkar (P2)	20%
Atideb Sarkar (R4)	18%
Sarbani Sarkar (R10)	20%
ABP Holdings Private Limited (R6)	22%

335. It appears that Family settlement was arrived at after hectic deliberations, with the help of Family Solicitors, who took into account the family situation prevailing at that time, e.g. the share of Asani Sarkar was to be held by Aveek Kumar Sarkar in trust and the shares held by Champabati Sarkar were transferred to Atideb Sarkar in line with the Recital 5. As per the Memorandum of Settlement, each branch had the right to nominate a director. So there have to be 5 directors and any further induction of Directors has to be by consensus. This *inter-alia* means that each of the branches were supposed to be having a say in the management of the company.

336. Everything seemed to be in order till the signing of the Family Settlement till the very next day the entire shareholding of Sarbani Sarkar(R-10) was transferred to Arup Kumar Sarkar (R-2). The Petitioners were taken aback with this sudden develoment as it was perceived that the settlement that had been arrived at after considerable effort by the Family Solicitors, stood negated with this transfer and it tends to create a new majority of the company now. This is now being perceived by the Petitioners as an act of Oppression against them.

337. Added to the apprehensions of the petitioners was the fact that the share transfer was regularized through the Share Transfer Committee, whose meeting was convened on the very next day.

338. Following dates and events are relevant for answering the issues raised by the parties:

a. **12 April 2017**: Family settlement document between parties was executed on 12-04-2017.

b. **13 April 2017**: Whereas STCs minutes held on 13-04-2017 recorded share transfers (Page 606 to 609 Volume III of CP).

c. **27 April 2017**: The Board of Directors held its meeting (Page 610 to 613 of CP) and the Directors present in this meeting included (Petitioner No. 1) Mr. Aveek Kumar Sarkar as Director, and Vice Chairman of the Company. Physical presence of Mr. Aveek Sarkar has not been disputed by in the pleadings. This meeting of Board of Directors recorded several minutes including minute of share transfer committee dated 12 April 2017 referred herein above were confirmed and noted by the Board as is recorded in para 7 of these minutes, extracted herein below:

ANNEXURE – F

ABP PRIVATE LIMTED

Minutes of the Meeting of the Share Transfer Committee held on Wednesday, April 12, 2017 at 6, Prafulla Sarkar Street, Calcutta – 700 001 at 6:00pm

Transfer of Shares

The following request for transfer of shares of the Company was received from Shithi Sarkar, shareholder of the Company. The transfer deed, for the same, duly stamped and executed was placed on the table for the consideration of the Committee. After examination, it was **RESOLVED THAT** the transfer of the undernoted shares as applied for, be approved:

Sl No.	Distinctive Numbers		No. of Shares	Transferor	Transferee
	From	To			
1.	450115	645114	195,000	Shithi Sarkar	Arup Kumar Sarkar
2.	1390001	1585000	195,000	Shithi Sarkar	Arup Kumar Sarkar
		Total	390,000		

Further **RESOLVED THAT** necessary entries be made in the relevant registers to give effect to the above resolution and any one of Mr. Dipankar Das Purkayastha, Managing Director and Chief Executive Officer or Ms. Zahra Basrai, Group Company Secretary be severally authorized to sign the Share Certificates, duly transferred as authorized signatory.

Transfer of Shares

The following request for transfer of shares of the Company was received from Atideb Sarkar, shareholder of the Company. The transfer deed, for the same, duly stamped and executed was placed on the table for the consideration of the Committee. After examination, it was **RESOLVED THAT** the transfer of the undernoted shares as applied for, be approved:

Sl No.	Distinctive Numbers		No. of Shares	Transferor	Transferee
	From	To			
1.	725056	735055	10,000	Atideb Sarkar	Arup Kumar Sarkar
2.	735056	745055	10,000	Atideb Sarkar	Arup Kumar Sarkar
	745056	755055	10,000	Atideb Sarkar	Arup Kumar Sarkar
		Total	30,000		

Further **RESOLVED THAT** necessary entries be made in the relevant registers to give effect to the above resolution and any one of Mr. Dipankar Das Purkayastha, Managing Director and Chief Executive Officer or Ms. Zahra Basrai, Group Company Secretary be severally authorized to sign the Share Certificates, duly transferred as authorized signatory.

19 JUN 2019 Certified to be true Copy

ABDUL HAMID MOLLA GOVT. OF INDIA NOTARY REGD NO. 9380/2011

614

ANNEXURE-R

ABP PRIVATE LIMITED

Minutes of the Meeting of the Share Transfer Committee held on Thursday, April 13, 2017 at 6, Prafulla Sarkar Street, Calcutta – 700 001 at 10:30 am

Transfer of Shares

The following request for transfer of shares of the Company was received from Sarbani Sarkar, shareholder of the Company. The transfer deed, for the same, duly stamped and executed was placed on the table for the consideration of the Committee. After examination, it was **RESOLVED THAT** the transfer of the undernoted shares as applied for, be approved:

Sl No.	Distinctive Numbers		No. of Shares	Transferor	Transferee
	From	To			
1.	450115	645114	195,000	Sarbani Sarkar	Arup Kumar Sarkar
2.	1390001	1585000	195,000	Sarbani Sarkar	Arup Kumar Sarkar
3.	725056	735055	10,000	Sarbani Sarkar	Arup Kumar Sarkar
		Total	4,00,000		

Further **RESOLVED THAT** necessary entries be made in the relevant registers to give effect to the above resolution and any one of Mr. Dipankar Das Purkayastha, Managing Director and Chief Executive Officer or Ms. Zahra Basrai, Group Company Secretary be severally authorized to sign the Share Certificates, duly transferred as authorized signatory.

On behalf of the Committee

DIPANKAR DAS PURKAYASTHA

April 13, 2017

ABP PRIVATE LIMITED

Minutes of the Meeting of the Share Transfer Committee held on Monday, April 24, 2017 at 6, Prafulla Sarkar Street, Calcutta – 700 001 at 11:00 am

Transfer of Shares

The following request for transfer of shares of the Company was received from Arup Kumar Sarkar, shareholder of the Company. The transfer deed, for the same, duly stamped and executed was placed on the table for the consideration of the Committee. After examination, it was **RESOLVED THAT** the transfer of the undernoted shares as applied for, be approved:

Sl No.	Distinctive Numbers		No. of Shares	Transferor	Transferee
	From	To			
1.	725056	735055	10,000	Arup Kumar Sarkar	Atideb Sarkar
2.	1390001	1400000	10,000	Arup Kumar Sarkar	Atideb Sarkar
		Total	20,000		

Further **RESOLVED THAT** necessary entries be made in the relevant registers to give effect to the above resolution and any one of Mr. Dipankar Das Purkayastha, Managing Director and Chief Executive Officer or Ms. Zahra Basrai, Group Company Secretary be severally authorized to sign the Share Certificates, duly transferred as authorized signatory.

Splitting of Share Certificate

In order to transfer the shares held by a member of the Company, in favour of the transferees, it was necessary to split the Share Certificates. The Committee approved the splitting of the shares of the Company, as may be necessary.

Accordingly, it was **RESOLVED THAT** the splitting of the undernoted shares in the Company as contained in the statement, be approved and any one of Mr. Dipankar Das Purkayastha, Managing Director and Chief Executive Officer or Ms. Zahra Basrai, Group Company Secretary be severally authorized to take all necessary steps in this regard.

Share Certificates to be Split	No. of shares
21	10,000
	1,85,000

On behalf of the Committee

339. The categoric stand taken by the Petitioner No. 1 in its petition in at page 39 is:

> *At the said meeting date 27,2017, it was also represented that the share transfers approved by Share transfer Committee on April 13, 2017 and April (24) 2017 were shares contemplated under Memorandum of Family Settlement dated 12th April 2017 and on the basis that basis Petitioner No. 1 gave his consent to approval of such minutes without going through the same.*

340. Thus, consent to approval to minutes of meeting is admitted by the petitioner number 1 in pleadings. However, the learned Senior Counsel appearing for Petitioners strenuously emphasized during his arguments

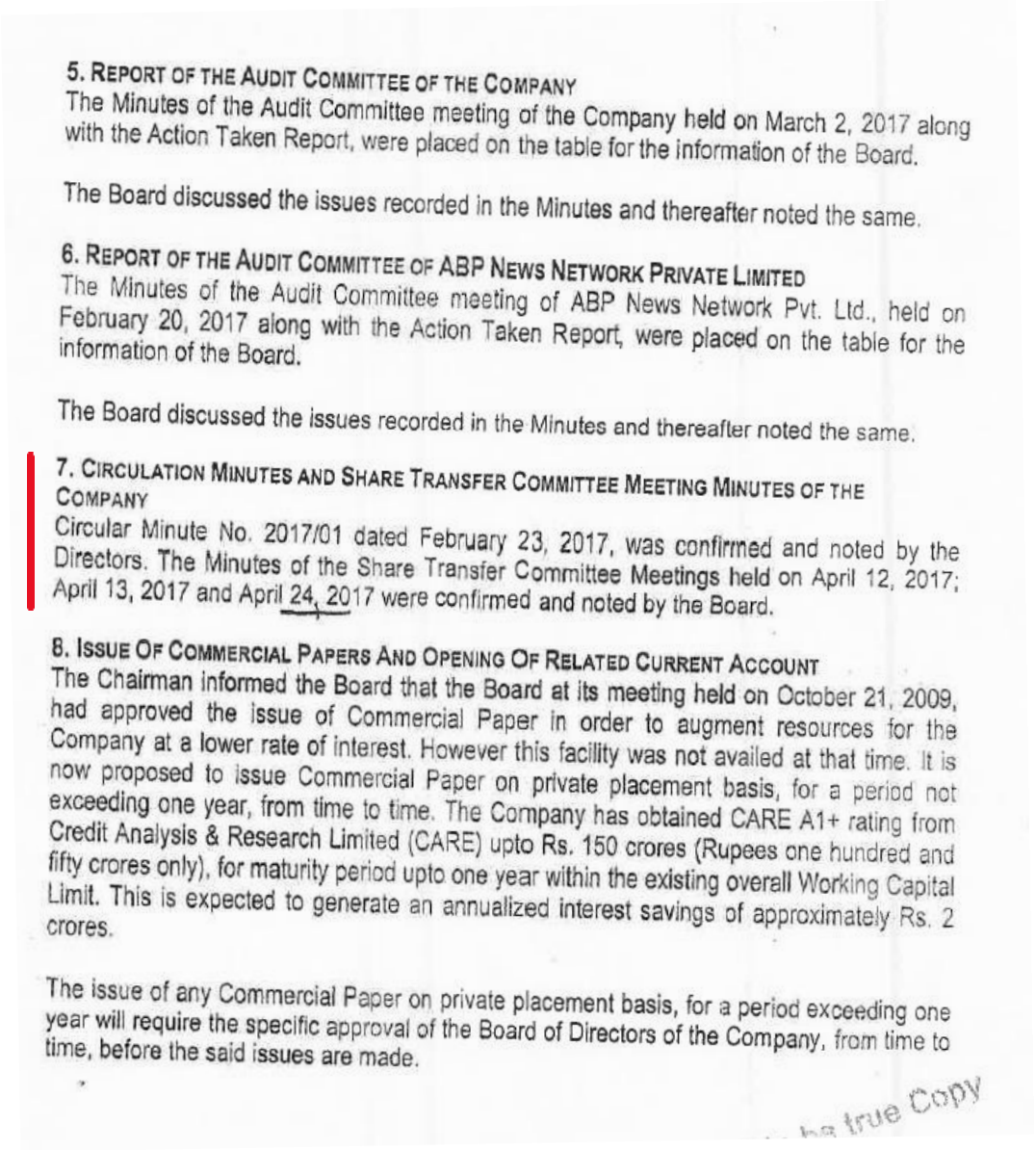
"confirmation as recorded in the above minutes doesn't mean approval by petitioner number 1." It is reiterated in written submissions as well. Therefore, on the face of it, oral argument is contrary to what is pleaded in petition. Notwithstanding this position, let us examine the oral argument of ld. Counsel for petitioners as advanced before us, recorded herein above. While examining the argument "confirmation doesn't mean approval' it is pertinent that we refer to definition of word 'confirmation' in the ensuing text

341. The terms *'confirmation'* and to *'confirm'* as defined in Black's Law Dictionary are reproduced hereinafter:

> ***confirmation**, n. 1. The act of giving formal approval <Senate confirmation hearings. 2. The act of verifying or corroborating; a statement that verifies or corroborates*
>
> The terms *'confirmation'* and to *'confirm'* have been defined in Black's Law Dictionary.

Thus, confirmation means approval.

342. Confirming the share transfer minutes with his presence in the Board meeting as Director and Vice Chairman of the Company, is not a case of merely tacit consent by petitioner of acceptance/acknowledgement of transfer of 20 % shares by Ms Srabani Sarkar to Mr, Arup Kumar Sarkar. This transfer of shares has been accepted with express conduct by according his **approval** as recorded in para 7 of Board meeting dated 27 April 2017 minutes extracted hereinbelow. He has not denied his presence in these Board meeting nor has disputed the contents of minutes of this Board meeting held on 27 April 2017. This aspect of transfer of 20 % of her shares by Ms Srabani Sarkar is a relevant and established fact for us to take view this act/conduct of petitioner confirming approved the minutes of share transfer committee dated 12 April 2017 in Board meeting held on 27 April 2017 and this legally binds the petitioner from making a turn around and say in June 2019 'transfer of shares by the Respondents in collusion with each other is in violation of the Family Settlement dated 12 April 2017'.



5. REPORT OF THE AUDIT COMMITTEE OF THE COMPANY
The Minutes of the Audit Committee meeting of the Company held on March 2, 2017 along with the Action Taken Report, were placed on the table for the information of the Board.

The Board discussed the issues recorded in the Minutes and thereafter noted the same.

6. REPORT OF THE AUDIT COMMITTEE OF ABP NEWS NETWORK PRIVATE LIMITED
The Minutes of the Audit Committee meeting of ABP News Network Pvt. Ltd., held on February 20, 2017 along with the Action Taken Report, were placed on the table for the information of the Board.

The Board discussed the issues recorded in the Minutes and thereafter noted the same.

7. CIRCULATION MINUTES AND SHARE TRANSFER COMMITTEE MEETING MINUTES OF THE COMPANY
Circular Minute No. 2017/01 dated February 23, 2017, was confirmed and noted by the Directors. The Minutes of the Share Transfer Committee Meetings held on April 12, 2017; April 13, 2017 and April 24, 2017 were confirmed and noted by the Board.

8. ISSUE OF COMMERCIAL PAPERS AND OPENING OF RELATED CURRENT ACCOUNT
The Chairman informed the Board that the Board at its meeting held on October 21, 2009, had approved the issue of Commercial Paper in order to augment resources for the Company at a lower rate of interest. However this facility was not availed at that time. It is now proposed to issue Commercial Paper on private placement basis, for a period not exceeding one year, from time to time. The Company has obtained CARE A1+ rating from Credit Analysis & Research Limited (CARE) upto Rs. 150 crores (Rupees one hundred and fifty crores only), for maturity period upto one year within the existing overall Working Capital Limit. This is expected to generate an annualized interest savings of approximately Rs. 2 crores.

The issue of any Commercial Paper on private placement basis, for a period exceeding one year will require the specific approval of the Board of Directors of the Company, from time to time, before the said issues are made.

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343. Further, the stand taken by petitioner he gave his consent to minutes without going through is just unbelievable, more particularly keeping in view the huge intellectual knowledge, experience held by the person in the field of journalism and very high positions in the Company. The confirmation of the Share Committee meeting happened in 2017, whereas he filed this petition in 2019. There is no plausible reason on record to explain such a huge delay particularly if at all he signed the minutes without reading. The one-line plea (page 40) that he wanted to avoid

litigation is on the face of it is afterthought and unacceptable in view of the position of facts on record as referred herein above.

344. Also, it is significant to note that the right of Srabani Sarkar to hold and transfer these 20 % shares accrued to her through family settlement is not disputed or denied. Assuming, transfer of these 20% shares was not as per clause 14 of Memorandum of family settlement dated 12 April 2017 as interpreted by petitioner, still in view of the above facts and circumstances, petitioner by his conduct is now is estopped from espousing his claim before this Tribunal in 2019 as this is in conflict with its previous conduct whereby he confirmed/approved the minutes of share transfer impugned in this Company petition, in Board meeting on 27 April 2017 and without any demur.

345. Right of petitioner, if any to challenge transfer of 20 % shares by Srabani Sarkar (Respondent No. 10) to Respondent No. 2 in violation of the Family Settlement dated 12 April 2017 stands clearly extinguished by estoppel. The Petitioner is now bound by his approval as recorded in the Board meeting of 27 April 2017 (supra).

Management and control of digital division

346. The flash point of prompting the petitioner to file this petition before this Tribunal on 19 June 2019 looks to be one resolution passed on 24 April 2019 whereby control of digital business of the Company was taken away from the petitioner. Notwithstanding dissent of petitioner and abstaining of the Chairman from voting, it is a fact that the resolution was passed with majority.

347. The impugned Board Resolution simply defines a reporting structure wherein the digital content teams to report to the respective Editors of the print newspapers, who in turn report to the Chief Editor. Now, who will manage this position or who will head the digital Division or who should not, are purely managerial/ decisions and must be left out the Company and wisdom of Directors alone.

348. In any case, no prejudice can be said to have been caused in assigning the role that was with petitioner number 1 to another person who is a shareholder Director of the Company.

349. And assuming a scenario, after his exit from being head of Digital Division, it is not doing well, it is again for the Company and the Company alone to choose the right man for the job. This Tribunal is not expected to choose who to hold a particular position in a Company. Further, any person chosen to hold a position does not acquire a vested right to continue to hold it forever.

Oppression

350. It is evident from the foregoing that the decision of the Board of the company to define a reporting structure for a vertical of the company is being perceived as an act of Oppression by the Petitioner. The learned Senior Counsel for the Petitioner No. 1 stressed on the fact that being a family company, the treatment of the individuals forming the company has to be done differently and not by applying the rigid rules of the normal companies and as held in the famous **Ebrahimi Case**

> " *The words are a recognition of the fact that a limited company is more than a mere judicial entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure."*

351. It was further stressed by the learned Senior Counsel for the Petitioner No. 1 citing ***Ebrahimi (supra)*** that the company though being called a Company is working as a quasi-partnership, being a family company, and therefore the equitable considerations are a necessary corollary. However the respondents relied on **Dinglis Properties Ltd. (Chancery division)** wherein it has been held that "*Mere fact that a company is a family company, and even the fact that it is managed on the basis of mutual trust and confidence, are not in themselves sufficient basis for the conclusion*

that the company is a quasi-partnership company. Something more is needed."

352. The petitioner has relied on the judgement by Delhi High Court in ***Bhaskar Stoneware Pipes (P) Ltd. v. Rajinder Nath Bhaskar*, 1984 SCC OnLine Del 148 : (1988) 63 Comp Cas 184** at page 200.

The applicability of this judgment is sought to be established on the basis of the fact that the company in question is a family company being run as a quasi-partnership. The relevant part is extracted below and highlighted for the contextual reference:

> ***25.*** *We have ……The applicability of the analogy of a partnership depends not on the number of shares held by various persons but on whether* ***there was a personal relationship, mutual trust and confidence, an unwritten but clear and distinct****, if implied, understanding between the parties as to the manner in which the firm and then the company were to carry on their affairs……..*
>
> *…… Having regard to the history of the business and the manner in which the groups held the shares all along, there can be no doubt that the petitioner has a prima facie case to say that****, though constituted as a company, the business was in substance a partnership, with an underlying basic obligation that the balance between the several groups should not be disturbed, as indeed it was not disturbed even though the shareholdings inside each family got reshuffled from time to time……. ..*** *The crux of the question seems to be not whether any group has been expelled or whether this was done lawfully or otherwise but whether* ***there has been breach of a basic mutual understanding****. It is difficult, therefore, to say that a prima facie case has not been made out for the applicability of* ***Ebrahimi's****, [1972] 2 All ER 492 (HL) principle here.*

353. *This concept of "Just and Equitable" behavior is further sought to be underscored by relying on the famous Ebrahimi case law:*

a. *My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force.* ***The words are a recognition of the fact that a limited company is more than a mere judicial entity, with a***

personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. *That structure is defined by the Companies Act 1948 and by the articles of association by which shareholders agree to be bound. In most companies and in most context, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable consideration; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*

b. *It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles.* ***The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements : (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence-this element will often be found where a pre-existing partnership has been converted into al limited company;(ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business;(iii) restriction on the transfer of the members interest in the company-so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.***

c. *The just and equitable provision nevertheless comes to his assistance if he can point to, and prove,* ***some special underlying obligation of his fellow member(s) in good faith, or confidence, that to long as the business continues he shall be entitled to management participation, an obligation so basic that if broken, the conclusion must be that the association must be dissolved.***

354. In order to define the said **something more**, we refer to two well-established theories in management namely Maslow's hierarchy of needs as well as Frederick Herzberg theory who theorized that employee satisfaction has two dimensions: "hygiene" and motivation. Hygiene issues, such as salary and supervision, decrease employees' dissatisfaction with the work environment. Motivators, such as recognition and achievement, make workers more productive, creative and committed. The theory is based on the assertions that if the needs of an individual are not satisfied, he is likely to feel demotivated or in the present context - oppressed.

355. The precepts of these theories are apparently manifesting themselves in the situation here, since the very instant that the Petitioner No. 1 started feeling that he is oppressed is **not** on 13 April 2017 when Respondent No. 10 transferred her shares to Respondent No. 2, but only when the subject resolution was passed in the board on **24 April 2019** that he filed the present Company Petition before this Tribunal. So when this particular feeling, that the digital division that had been ostensibly raised and nurtured by the Petitioner No. 1 would be required to work under the supervision of others, particularly under the colleagues who might be lesser competent and were much junior in age is when the feeling of getting sidelined seeped in which got further complicated by the prospect of not enjoying a complete autonomy in running the affairs of the Digital division, which he was accustomed hitherto, is what is being constituted as Oppression. We are of the view that this event of the passing of resolution does not amount to oppression.

Corporate Governance issues

356. Elaborate arguments were advanced by the Petitioners outlining various procedural incongruities. Two sub-issues that need to be dealt with under this head are as follows:

i. Whether the Secretarial standards were followed in the impugned board meeting of 24 April 2019?

ii. Whether the minutes of the board meeting correctly depict the events taking place therein, in view of the e-mail sent by the Petitioner No. 1 for rectification of the minutes?

iii. Amendment of the Articles of Association ("AoA") to reflect the Memorandum of Family Settlement dated 12.04.2017.

357. Pages 51-52 para 34 of the Company Petition, Vol I deals with the events of the board meeting held on 24 April 2019, wherein the decision regarding the reporting structure of the digital division was taken by way of a board resolution passed under the head Any Other Business (AOB). The petitioner's subsequent comments on the draft minutes and also on the finally approved minutes have been annexed to the petition to arrive at the assertion in para 44 at Page 57 of the Company Petition, Vol I, that the purported resolution is passed in violation of the provisions of the Companies Act 2013 as well as the Secretarial standards, the exception to whose provisions have been also taken in the succeeding paragraphs. In this regard we set out the relevant requirements of the Secretarial Standards as follows:

Secretarial Standard on Meetings

> ***1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.***
> *Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.*
> ***1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.***

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting, However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution.

The items of business that are required by the Act or any other applicable low to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at Annexure 'A'.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at Annexure 'B'.

1.3.10 Any item not included in the agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

358. Now since the subject resolution was passed under the head "Any other Business", therefore the provisions of 1.3.10 are squarely applicable. Though at the risk of repetition, the minutes of the Board meeting were finally circulated by the Company Secretary on 13 May 2019 and the relevant part is extracted here with :

UNITED BANK OF INDIA, CURRENT ACCOUNT NO. 0450050008801

RESOLVED THAT in supersession of the resolution for operation of Current Account No. 0450050008801 with United Bank of India, City Centre, Durgapur, passed at the meeting of the Board of Directors held on June 29, 2017, the Bank be and is hereby authorized to honour all cheques, bills of exchange, drafts, promissory notes, drawn, accepted or made on behalf of the Company for Current Account no. 0450050008801, JOINTLY by any TWO of the following signatories:

ta Biswas;
krishna Ma
shna Das;

the Ban ized instr ction so given
verdraw relat sacti ns of the Com

Further RESOLVED THAT the authority conferre include power
account, and direct transfer of the balance to any n any o mannie
aforesaid may in their absolute discretion deem fit

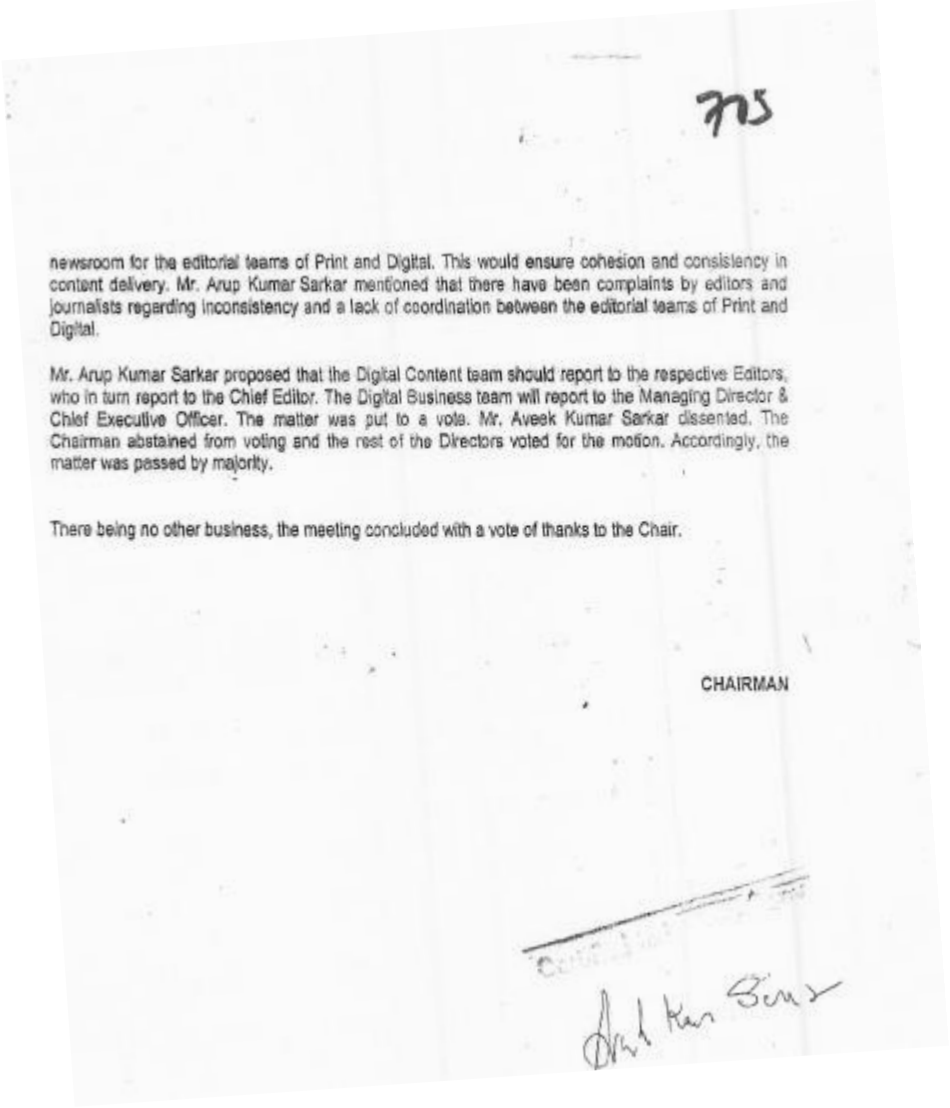
Further ESOLV rai, mpany Secretary, be here uthorize
to send copy of cer y be required for their ation record.

Further RESOLVED THA
to send a copy of the reso Secre and here uthorize
12. ANY OTHER BUSINESS quired info ation record.
The following matters were

A) NOMINATION OF MR. RANJIT PANDIT AS CHAIRMAN OF THE AUDIT COMMITTEE
Mr. Dipankar Das Purkayastha proposed that Mr. Ranjit Pandit be nominated Chairm
Committee of the Company. The Board approved the same unanimousl ccordin
Committee comprises of the following members:

1. Mr. Ranjit Pandit, Chairman
2. Mr. Arup Kumar Sarkar
3. Mr. Atideb Sarkar

B) REPORTING BY DIGITAL CONTENT TEAM
Mr. Dipankar Das Purkayastha sought the permission of the Chair to discuss the Digital Business and this was granted. He raised the issue of editorial control of the Digital Business. For better coordination and streamlining of and content dissemination, he suggested that that there should be a common



705

newsroom for the editorial teams of Print and Digital. This would ensure cohesion and consistency in content delivery. Mr. Arup Kumar Sarkar mentioned that there have been complaints by editors and journalists regarding inconsistency and a lack of coordination between the editorial teams of Print and Digital.

Mr. Arup Kumar Sarkar proposed that the Digital Content team should report to the respective Editors, who in turn report to the Chief Editor. The Digital Business team will report to the Managing Director & Chief Executive Officer. The matter was put to a vote. Mr. Aveek Kumar Sarkar dissented. The Chairman abstained from voting and the rest of the Directors voted for the motion. Accordingly, the matter was passed by majority.

There being no other business, the meeting concluded with a vote of thanks to the Chair.

CHAIRMAN

359. It is clear from the final minutes issued that regarding the Reporting by Digital Content Team, *"Mr. Dipankar Das Purakayastha sought the permission of the Chair to discuss the Digital business and this was granted"*

360. It is also noted that after the contest by the Petitioner No. 1 and despite exchange of a few mails objecting to the language of the minutes, the minutes were indeed **signed by the Chairman** and as such he did accord the permission to take up the matter under AOB. Thus, the stipulations of Cl 1.3.10 above are deemed to have been met with and we see no infirmity. In this regard we would also like to quote the relevant portion of section 118 from the Companies Act 2013 which is as below:

118

(*5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—*

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

(7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

361. Even though it has been contended by the Petitioners that the final minutes are different from the draft minutes circulated, which many a times is the case in the corporate world, this leads to nothing substantive since the minutes that have been issued are duly signed by the Chairman duly contain the wording that the *Permission was sought and granted* and as per the sub section (7) above, this is considered as the evidence of the proceedings recorded therein. As such we cannot agree with the learned Senior Counsel for the Petitioner that the provisions of the Companies Act as well as the Secretarial Standards, in so far as it refers to the subject matter in question have been violated.

362. In so far as the prayer regarding amendment of the AOA in line with the family settlement is concerned, the basic premise is that if the precepts of the Family settlement would have been incorporated into the AoA, as decided in the Recital 12 of the Family settlement, it would not have been possible or rather the share transfer would have been termed illegal being against the AoA.

363. In this regard Clause 34 of the AoA needs to be examined. Being relevant Clause governing the purported Transfer of Shares from R-10 to R2, it provides as under:-

> *" 34. A share may be transferred by a member or other person entitled to transfer to any member, selected by the transferor; but save as provided in clauses 34 to 40 hereof no share shall be transferred to a person who is not a member so long as any member (or any person selected by the Board as one whom it is desirable in the interest of the Company to admit to membership) is willing to purchase the same at a fair value".*

364. Clearly this Clause in effect restricts the transfer of share to a person who is not a member so long as such transfer complies with the Clauses 34 to 40 of the AoA.

365. If the family settlement would have been made as part of the AOA as envisaged under section 12, then the governing recitals regarding transfer of shares *viz.* 13 and 14 (given below) that would have been part of the AoA:-

> "**13.** *None of the shareholders shall be entitled to transfer any of his/her/its shares except to the existing signatories to this Agreement.*
>
> ***14.*** *Without in any way abridging or offering the rights as contained in Clause 13 above, in the event any of the shareholders proposes to transfer his /her /its shares, he/she /it will first offer the same to all the other signatories to this Agreement who will be entitled to purchase the same in accordance with their proportion of their shareholding within 90 days or such extended time as may be agreed between the shareholders as a price, unless agreed, to be determined through independent valuation by two of the big four auditors, only thereafter may transfer. It is agreed among the*

Parties that the provisions of this clause shall not apply to inter se transfer of shares among the signatories to the Agreement. It is further agreed that the provisions of this cause shall not apply to transfer of shares to lineal blood descendants or by inheritance".

366. The learned Senior Counsel appearing for the petitioner has put much thrust on the first part (highlighted above) of the recital 14, terming it as a right of preemption, so that the proportional envisaged in the Family settlement with a view to ensure that the balance of the shareholding is not disturbed. Whereas, the learned Senior Counsel appearing for the Respondent has very clearly stated that the so-called right of pre-emption stands negated in the second part(highlighted above) of the recital itself, where it is mentioned that the provisions of this Clause shall not apply to transfer of shares to lineal blood descendants or by inheritance.

367. Sarbani Sarkar being lineal blood relation of Respondent No. 2 would in no way have been restricted in transfer of shares to Respondent No. 2 in the light of this recital. As such, we see no rationality in the argument that things would have been different had these precepts of the family settlement being incorporated into the AoA before allowing any transactions of the shares.

368. Finally, in view of the above, we find that sufficient case has not been made out by the petitioner to establish the allegations of oppression against the respondents. Even though Digital Division might have done well during his tenure, the petitioner has no right to ask for a particular position in the Functional management on a standalone basis through this petition, let alone ask for creation of separate divisions like HR and Finance under the Digital division, which would be akin to carving a Company within a Company. Such policy matters are necessarily the prerogative of the Company which is driven by its Board. If the Board of the Company may so think proper, it may again assign the petitioner the position that he was holding prior to impugned resolution or make any structural changes that it deems necessary.

369. We further reiterate that in the corporate governance , making of the company policy, defining the organizational structure and assigning particular management position to individuals for its implementation is necessarily in the functional domain of the Board and the Management of the company, who are tasked with making the decisions of running the company in a pragmatic manner by adopting best management practices, keeping the best interest of the company in mind.

370. As a result of foregoing analysis & reasons thereof, this petition is disallowed. Consequently, any interim order/directions shall also stand vacated.

371. A certified copy of this order may be obtained by persons desirous of doing so, subject to fulfillment of necessary formalities.

372. CP No. 895/KB/2019 is accordingly disposed of.

373. File be consigned to Records.

Balraj Joshi
Member(Technical)

Rohit Kapoor
Member (Judicial)

Signed on this 03 day of May 2024.