

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court -I)  
KOLKATA**

CP No. 51/KB/2022

*A petition under sections 241 and 242 of the Companies Act, 2013 read with Rule 11 of the  
National Company Law Tribunal Rules, 2016.*

*In the matter of:*

**Amar Kumar Pandey**

*..... Petitioner*

-Versus-

- 1. Dyutir Consultancy Private Limited;**
- 2. Ms. Neelam Jain;**
- 3. Mr. Barun Jain;**
- 4. Sanjay Jain;**
- 5. M/s Anand Rajendra & Co.**

*.... Respondents*

**Date of pronouncing the order: 30.04.2024**

**Coram:**

**Rohit Kapoor, Member (Judicial)**

**Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/ physical ):**

Ms. Urmila Chakraborty, Adv. : For the Petitioner

Ms. Rishika Goyal, Adv

Ms. Swapna Choubey, Adv.

Mr. Ratul Das, Adv. : For the Respondents

Mr. Tanmoy Roy, Adv

**ORDER**

***Per Balraj Joshi, Member (Technical):***

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under sections 241 and 242 of the Companies Act, 2013 by **Mr. Amar Kumar Pandey**, a director of Dyutir Consultancy Private Limited (“the Company”) against the company and its members seeking the following reliefs:
  - (a) *Declare and hold that the diverse acts complained of by the Petitioner under paragraph 5 of the present petition against the respondent Nos. 2 to 5 are clearly oppressive, amount to mismanagement and prejudicial to the interest of the respondent no. 1 apart from being prejudicial to the interest of the public at large, as well as against the interest of the Petitioner as a de jure member of respondent no. 1;*
  - (b) *The Board of Directors of the Company be superseded and a Committee be constituted by this Hon'ble Tribunal consisting of representatives of the Petitioner to function as such and manage and control the affairs of the Company on such terms and conditions as this Hon'ble Tribunal may seem fit and proper;*
  - (c) *The respondent Nos.2 and 3 be removed from the Board of Directors of the Company;*
  - (d) *The respondent Nos.2 and 3 be adjudged as having vacated office and their action post July 01, 2019 be declared as null and void;*
  - (e) *Appropriate directions should be passed on the respondent Nos.2 and 3 thereby restraining them from acting as directors of the company;*

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- (f) *Declaration be made adjudging the Annual General Meetings and Board Meetings and/or any Extra-Ordinary General Meeting held after July 01, 2019 as null and void and all actions taken by the respondent nos.2 and 3 after July 01, 2019 should also be adjudged as null and void;*
- (g) *Delivery up and cancellation of minutes of all the purported Board Meetings held on or after July 01, 2019;*
- (h) *Declaration that the purported annual general meeting held on or after July 01, 2019 is contrary to the interest of the petitioner and be declared illegal, null and void;*
- (i) *Injunction restraining the respondent Nos.2 to 4 from giving any effect or further effect or exercising any right or receiving any benefits in respect of the purported resolutions/minutes of the purported Board Meetings and the purported Annual General Meetings held on or after July 01, 2019;*
- (j) *Injunction restraining the respondent Nos.2 to 5 and their servants, agents and assigns from altering or changing in any manner the Articles and Memorandum of Association of and in the Company;*
- (k) *Injunction restraining the respondents whether by themselves or by their servants, agents and assigns from interfering with or intermeddling in the management and affairs of the Company in any manner whatsoever;*
- (l) *A Scheme be framed for management and control of the Company and running of operation thereof;*
- (m) *A Special Officer/ Administrator be appointed to take charge, custody and control of the books, records and documents of the Company as also its assets*

*and properties with a direction to make an inventory of the same and with a further direction to initial all such books, records and documents;*

- (n) An injunction restraining the respondent Nos. 2 to 4 and their men, agents and/or servants and each of them from dealing with, disposing of, encumbering, alienating and/or transferring the assets and properties of the Company in any manner whatsoever;*
- (o) An injunction restraining the Respondent no. 2, 3 & 4 or either of them from making any withdrawals from the accounts of the Respondent No. 1 company in the following banks namely HDFC Bank Limited, 1 India Exchange palace Branch, Karur Vysya Bank, Bangur Avenue Branch, Axis Bank, B.B.D Bag Branch, Kotak Mahindra Bank, Branch, IDFC First Bank, Dalhousie Branch and ICICI Bank Limited, Chowringhee Road Branch, on such terms and conditions that this Hon'ble Tribunal may deem fit and proper;*
- (p) An injunction restraining the respondents and each of them from interfering with the discharge of duties by the petitioner as director of the company in any manner whatsoever;*
- (q) A fit and proper person be appointed as a Receiver to look into the transactions of the company and sign the cheques for withdrawal of money from the said bank accounts of the company to run the day-to-day business of the company.*
- (r) An injunction restraining the respondents from using the funds of the Company for the purpose of the instant litigation in any manner whatsoever;*
- (s) Appropriate reliefs be passed under and in accordance with Sections 241, 242 and 244 of the Companies Act, 2013;*

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

*(u) Such further or other order or orders be passed and/or direction or directions be given as to this Hon'ble Tribunal may seem fit and proper.*

3. The Corporate Debtor is a private company incorporated on 22.02.2018. The authorized share capital of the company is ₹25,00,000/- and the paid-up share- capital of the company is ₹14,10,000/-.

4. **Submissions on behalf of the Petitioner:**

4.1 The case of the Petitioner is that after the incorporation of the respondent company on 22.02.2018, the Petitioner, upon insistence from Respondent No. 3 and 4, joined the respondent company as per the appointment letter<sup>1</sup> dated 25.06.2019. In the Board Meeting held on 24.07.2019, the Petitioner has been appointed as a director of the respondent company with effect from 01.07.2019. The petitioner's monthly remuneration was fixed at Rs. 1,15,000/- subject to revision on the successful completion of one year with the company.

4.2 By letter dated 01.07.2019<sup>2</sup>, the respondent no.2 forwarded 43 nos. of physical share certificates of a total value of Rs.4,30,000/- along with a bill for Rs.4,30,000/- for sale of equity shares held by her in the company. The petitioner, vide cheque<sup>3</sup> no.000007 dated July 01, 2019, duly paid the share consideration amount of Rs.4,30,000/- to the respondent no.2. Thereafter, share transfer forms<sup>4</sup> were duly executed by the respondent no.2 being the transferor in favour of the petitioner being the transferee on July 01, 2019.

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<sup>1</sup> Annexure "D"

<sup>2</sup> Annexure "E"

<sup>3</sup> Annexure "F"

<sup>4</sup> Annexure "F"

4.3 The petitioner started acting as a director in the company on and from 01.07.2019. Initially, the relationship between the petitioner and the respondents was cordial and the company was run on quasi partnership principles. However, after a few months from the date of joining the company as a director, the Petitioner started to encounter the following problems with the management of the company which compelled him to file the instant petition:

- i) Despite making payment of the full consideration amount and despite the execution of transfer deeds, the Petitioner's shareholdings are not reflected in the company records uploaded till January 2022 in the public domain. The Petitioner repeatedly asked the respondents No. 2 to 5 to reflect his shareholdings in the respondent company's records;
- ii) The Petitioner, being a shareholder, was entitled to be served with notice for board meetings and any general meetings, however, the petitioner never received the same. As such, the Petitioner was prevented from attending the company's meetings including the Annual General Meeting held on 30.09.2019, 21.12.2020 and 30.11.2021;
- iii) While the Respondent Company has accounts in various banks, the main transactions of the Respondent company are carried out through its accounts in HDFC Bank Limited and Karur Vysya Bank, however, the Respondents 2 to 4 have deliberately not made the petitioner a signatory the said accounts and have also neglected the petitioner's repeated requests for disclosure of the bank statements of such accounts. As such the Petitioner has been kept in the dark with regard to the transactions taking place in the company. The Petitioner was made signatory with respect to three other bank accounts of the company, which generally do not even maintain minimum account balance. Any amount credited in these three accounts is immediately withdrawn by

Respondents No. 2 to 4. By doing so, Respondents No. 2 to 4 have grossly defalcated any siphoned away the funds of the company;

- iv) The petitioner has not received his monthly remuneration from June 2021 to February 2022;
- v) The shares of the Petitioner were diluted when a further allotment of shares in favour of Respondent No. 2 took place on 27.03.2021;
- vi) Respondent No. 3 carrying out another business under the name and style of Rishavnath Trading Co. and using the resources of the Respondent Company, the same being detrimental to the company;
- vii) The user ID and password of the computer used by the Petitioner to work as the director of the company was changed on 11.02.2022 without his knowledge and the Petitioner was denied access to the same by the other directors.

5 **Submissions on behalf of the Respondent No. 4 on behalf od himself and Respondents No. 1 to 3:**

- 5.1 There is no case of oppression and mismanagement as against the Respondent No. 1 company and the Petitioner has failed to substantiate his claims with any proof.
- 5.2 Prior to incorporation of the Respondent no. 1 Company, the Respondent nos. 2 to 4 were carrying on similar business of auxiliary to financial intermediation and rendering financial services and processing loan against properties including providing financial and management consultants. The Respondent nos. 2 and 4 were carrying on business as sole proprietors under the name and style of M/s. Riddhi Siddhi Financial Services and M/s. Neelam Jain. The Respondent No.1 company was incorporated by taking over the running business, goodwill and assets of two sole proprietorship firms namely, M/s. Riddhi Siddhi Financial Services and M/s.

Neelam Jain. Since inception, the Respondent No. 1 company has been operated by Mr. Sanjay Jain and his family members.

- 5.3 The Respondent no. 4 has vast experience in this field of providing financial and management consultation and processing financial intermediation through various banking channels and acted through various banks as a Direct Selling Agent of several banks and financial association. In the course of operation of business, the Respondent no. 4 had come across the Petitioner, who was then employed with Punjab National Bank Housing Finance. The Respondent no. 4 was a Direct Selling Agent of PNB Housing Finance Limited at the relevant period.
- 5.4 In or around June, 2019, the Petitioner approached the Respondents while in employment with PNB Housing Finance Limited and proposed that as he was due for superannuation in a few years, therefore, he was looking for any opportunity wherein he could continue with service beyond such date. The Petitioner emphasized on inducting him in the business of the Respondent no. 4 and the utility he would be able to provide with regard to the nature of work. Further, the Petitioner represented and assured to the answering Respondents that he would be able to bring substantial business into the Respondent no. 1 Company due to his previous association with reputed banking companies and his personal sources.
- 5.5 Since, the Respondent no. 4 had known the Petitioner for several years and on persistent requests from the Petitioner, the Respondent no. 4 considered the request of the Petitioner and inducted him as a Director of the Respondent no. 1 Company on 1 July, 2019. A letter of appointment was prepared and made over to the Petitioner on his request. The Petitioner insisted on appointment of dedicated assistants and clerks of his choice, at the expenses of the Respondent no. 1.
- 5.6 Despite several requests, the Petitioner did not make any investment in the share capital of the Respondent no. 1, as was necessary. Only in or around end of September, 2019 the Petitioner made over cheque for subscription of shares in the Respondent no. 1. Further, the delay on account of the Petitioner was due to his



inability to make payment, as he did not have substantial funds in his bank account<sup>5</sup>. In such circumstances, the Respondents were unable to carry out compliance of share transfers in favour of the Petitioner. The Petitioner has also never made any request for such compliance as he was aware of such default on his part.

- 5.7 In as much as the Petitioner was previously employed in Banking companies and portrayed to the Respondents that he was capable of bringing in substantial work to the Respondent no. 4 accepted such requests for remuneration and Directorship.
- 5.8 Majority of the transactions of the Respondent company was directed through its Bank Accounts maintained with HDFC BANK, ICICI Bank and Karur Vyasa Bank that was opened at the time of incorporation of the Respondent no. 1 Company. The Respondent nos. 2 and 3 were the signatories of such accounts from its inception. The Petitioner never made any request to be added as a signatory to the said bank accounts, as the transactions from such accounts was operated and transacted by the Respondent group.
- 5.9 The Petitioner insisted that the Respondent no. 1 Company open accounts with Kotak Bank, Axis Bank and IDFC Bank and new portfolio in respect of such accounts shall be raised by the Petitioner. The Petitioner and all other directors were made signatory to these accounts, as the same were opened after the induction of the Petitioner in the Respondent no. 1 Company.
- 5.10 Although the Petitioner had caused such accounts to be opened for the Respondent no. 1 Company. All withdrawal from the said bank account was made in the usual course of business and for day-to-day operation of the Respondent no. 1. No revenue or business was generated by the Petitioner in the said Bank Accounts and to ensure minimum amounts OF being maintained to avoid penalty charges.
- 5.11 Initially, the Petitioner would regularly attend office and participated in the daily affairs of the company. The Petitioner had also brought in some work and business

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<sup>5</sup> Annexure "B" to the reply Affidavit - Bank Account statement of the petitioner

to the Respondent no. 1 Company amounting to Rs. 12-13 lakhs only till date. The Petitioner participated in the affairs of the Respondent no. 1 company till March, 2021.

- 5.12 It is pertinent to mention that the Respondent no. 1 company commenced its operations on and from May 15, 2020 in compliance with the restrictions imposed by the Central and State Government due to the global pandemic. Despite, the operation of business in the Respondent no. 1 company, the Petitioner choose and/or abstained from attending office or participating in business, administration or operation of the Respondent no. 1 till December, 2020.
- 5.13 In spite of non-participation in the affairs of the company or providing his services or procuring any business for the Respondent no. 1 company, the Petitioner claimed and withdrew salary for the period of March, 2020 till March, 2021. This amounted to unjust enrichment of the Petitioner at the expense and behest of the Respondent no. 1 company.
- 5.14 The Respondent no. 1 Company was adversely affected due to the pandemic and despite, such dire conditions the Respondents regularly attended office on and from June, 2020 along with limited staff on rotational basis in compliance of the Government norms. Further, the market condition post June, 2020 was deplorable and the Petitioner was required to scale back its operations. In light of such adverse conditions the Respondents were compelled to reduced salary payments of its staff and employees. All the staff and/or employees co- operated with the Respondents. Despite, being a Director of the Respondent no. 1, the Petitioner insisted on payment of his entire salary for that period. Such action would amount to anti-company activities by the Petitioner.
- 5.15 However, the Petitioner failed to bring in any work and/or income to the Respondent no. 1 Company after, March, 2021. The Petitioner stopped visiting the office of the Respondent no. 1 and failed to discharge his duties or manage the operations and administration of the Respondent no. 1 Company. There is no documentary evidence

to reflect any business being brought into the Respondent no. 1 Company by the Petitioner. Further, no such case has also been made out or pleaded by the Petitioner to show his contribution in the Respondent no. 1 Company.

- 5.16 The disputes and difference arose between the Petitioner and the Respondent group when the Petitioner continued to claim his entire salary without rendering any services in favour of the Respondent Company. The Petitioner made illicit and arbitrary demands on account of its salary without considering the adverse condition of the Respondent no. 1 Company's business.
- 5.17 The primary operations of the Respondent no. 1 is carried out from Kolkata, despite, the Petitioner's work being limited to Kolkata, the Petitioner insisted that he visits the branch offices of the Respondent no. 1 Company at the expense of the company. The Respondent no. 4 initially refused such request.
- 5.18 However, the Petitioner kept on insisting that the share subscription amount be returned to him. The Petitioner started causing disruption in the operation of the business from the registered office of the Company. Under such circumstances, the Respondents were compelled to bear an all-expenses paid trip of the Petitioner to visit the Siliguri and New Delhi offices of the Respondent no. 1 in the month of January, 2020.
- 5.19 The Petitioner visited the Delhi office and the Siliguri Office of the Respondent no. 1 in January, 2020, shockingly, several employees and/or staff of the Respondent no. 1 at the respective offices tendered their resignation from the Company immediately after the visit by the Petitioner.
- 5.20 After disputes and differences arose between the Petitioner and the Respondent group, he went on a vacation with his family in the month of September, 2021 and January, 2022. The Petitioner arbitrarily and illegal demanded payment of his entire salary for this period. The Petitioner had not attended office from May, 2021 till September, 2021. Despite, the Petitioner being a Director and Principal Officer of the Respondent no. 1 company his actions were irresponsible and lackadaisical. The

Petitioner failed to perform his duties and obligation as the Director and Principal Officer of the Respondent no. 1 Company. The Petitioner was not interested in the operation and affairs of the Respondent no. 1 company but keen on extracting his salary from the Respondent no. 1 despite, the adverse market conditions during the global pandemic. Such actions of the Petitioner were blatantly against the interest and growth of the Respondent no. 1 Company.

- 5.21 In the aforementioned circumstances, the Respondent group lost interest and was frustrated with the actions of the Petitioner, who was inclined to disrupt the day to day affairs of the Company. On refusal by the Respondents to make such payment, the Petitioner visited the office of the Respondent no. 1 on February, 2022 and stormed out of the office only to visit the local Police Station to lodge a complaint against the Respondents. No steps have been taken in respect of such alleged complaint.
- 5.22 From the conduct of the Petitioner it became evident that his was not interested in pursuing with the Respondent no. 1 Company and was only involved in it for unjust gains. After, the Respondent no. 1 started suffering losses, the Petitioner neither visited the office nor took part in its management or operations. On the contrary, at such period its was the efforts of the answering Respondents, more particularly the Respondent no. 4 and the staff of the Respondent no. 1 Company that helped tide over the difficult period.
- 5.23 From the actions and the conduct of the Petitioner it would be evident, that the Petitioner was purporting to create and/or manufacture evidence for the purpose of filing the instant company petition. It is submitted that all the necessary documents<sup>6</sup>and records of the Respondent no. 1 required to be filed with the Ministry of Corporate Affairs have been duly complied in accordance of proper accounting principles by the Company Secretary and Chartered Accountant of the Respondent

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<sup>6</sup> Annexure C to the Reply Affidavit

no. 1. Copies of the filing before the Ministry of Corporate Affairs for the relevant period on and from 1st July, 2019 that are relevant for the adjudication process are collectively annexed hereto and marked with the letter "C".

5.24 At this time the Respondents made an enquiry with the previous employers and colleagues of the Petitioner, when it had come to the knowledge of the answering Respondents that the Petitioner was involved in such anti-organizational activities and lacked working ethics and sincerity with its previous organization causing disputes with his immediate superior officers. Therefore, the representations made by the Petitioner at the time of approaching the Respondents for his appointment were false and incorrect.

5.25 The Respondent no.4 on further inquiry had come to learn that the Petitioner has been carrying out several illegalities and anti-company activities that are as follows:-

- i. Several staff and employees of the Respondent no. 1 company in Delhi were informed that there was no future in the Respondent no. 1 and the Petitioner would himself establish a similar business where the trained staff and/or employees could apply and on being inducted would be benefitted from the experience of the Petitioner. The Petitioner lodged complaints against the directors to coerce and manipulate the Respondent no. 4 at all stages.
- ii. The Petitioner involved in making enquiries into the affairs of the Respondent no. 1 Company to find discrepancies and lacuna in the procedural aspect which later was used to blackmail the Respondent no. 4 with Threats to file complaints.
- iii. The Petitioner defaulted in its assurances in bringing in substantial business to the Respondent no. 1 Company and participated in anti-company activities.
- iv. The Petitioner did not properly attend office or daily affairs of the Respondent no. 1 since March, 2020.

- v. In these circumstances, the answering Respondents were compelled to carry on with its business with the exclusion of the Petitioner.

6 **Submissions on behalf of the Petitioner in Supplementary Affidavit dated 10.05.2022:**

- 6.1 The individual states that in February 2022, they initiated Company Petition CP No.51/KB/2022 under Sections 241 and 242 of the Companies Act, 2013 against the respondents before the Tribunal and following a hearing, the Tribunal ordered to maintain the Board's composition and refrain from alienating fixed assets without its consent. Afterwards, this Tribunal directed that the status quo of the composition of the Board of the Company shall be maintained and no fixed assets should be alienated without the leave of this Tribunal. Further, the respondents were directed to file their reply affidavit within a three weeks from date and service of such affidavit upon the petitioner.
- 6.2 During the course of hearing of the said petition, this Tribunal had some queries, inter alia, regarding the Petitioner's share certificates and share transfer forms. Apropos the said queries and in view of the subsequent events, the present supplementary affidavit was filed.
- 6.3 It is admitted that the Petitioner is holding 43,000 equity shares of Rs. 10/- each in the company. Though the share was purchased by me from the respondent no.2 on 1st July, 2019 which will be evident from letters, bills, cheque and share transfer form (SH-4) dated 1st July, 2019, there is no date of registration of such transfer indicated in the annual return of the company for the financial year 2019-2020. The respondents have acted illegally, wrongfully and unlawfully in not reflecting such transfer in the said annual return of 2019-2020. However, surprisingly the transfer is being shown as registered in the annual return of the company for the financial year 2020-2021 and the date of registration of transfer from the respondent no.2 to me was given as 30th March, 2021.

- 6.4 The company's purportedly false financial statements were admitted by respondent counsels during the hearing on 29<sup>th</sup> March 2022, prompting the Tribunal's direction of maintaining status quo on Board and fixed assets of the company. During the course of the said hearing, the Petitioner was asked to disclose the original share certificates. However, the Petitioner could not trace the same and has lodged a General Diary<sup>7</sup> with the local police station.
- 6.5 On the queries raised by this Tribunal apropos notice of Board Meeting authorizing transfer of shares, it is mentioned that the Petitioner has not received any notice of any Board Meeting of the company since he joined the company as its director on and from 1st July, 2019. He has also not received any notice of any Annual General Meeting whatsoever despite being a 43% shareholder in the company. The transfer effected in the Petitioner's favour is registered by the company as would appear from the annual return of the company for the financial year 2020-2021. However, such return is false on the face of the records as the share transfer was executed on 1st July, 2019 and as such the date of registration of the said transfer could not have been 30<sup>th</sup> March 2021.
- 6.6 With regard to this Tribunal's queries regarding the allotment of Director Identification Number (for short "DIN"), it is submitted that the Petitioner's application for DIN allotment was approved by the Ministry of Corporate Affairs, DIN Cell, on 5th July, 2019 and DIN 0008501927 is allotted<sup>8</sup> in his favour.
- 6.7 It is also submitted that despite the order dated March 29, 2022, the respondent nos.2 to 4 have instructed the company staff not to allow any person to visit me at the office. On April 28, 2022, one Mr. Avijit Mondal, who is a Sales Agent came to consult me, in the midst of the meeting he was asked to leave and was forced to exit the office. The company staff were also instructed by the respondent nos.2 to 4 not to follow the Petitioner's instructions.

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<sup>7</sup> Annexure B to Supplementary Affidavit

<sup>8</sup> Annexure C to Supplementary Affidavit

- 6.8 Further, the password and user ID of the company's server was changed behind the Petitioner's back and the new password was not shared with me. Consequently, The Petitioner has been prevented from discharging his duties as a director and shareholder of the company.
- 6.9 Facing such tremendous opposition from all fronts and on the effectively ousted from the day-to-day affairs and business of the company, the Petitioner approached the respondent nos.2 to 4 and requested them not to aggravate the situation at which the respondent nos.2 to 4 became violent and verbally abused me and have threatened me with dire consequences. As such, the Petitioner was compelled to issue a legal notice<sup>9</sup> to the company and the respondent nos.2 to 4 dated 28th April, 2022 with a copy to the Officer-in-Charge, Hare Street Police Station, Kolkata.
- 6.10 On 29th April, 2022 when the Petitioner reached office of the company, he found that the respondent no.3 is sitting in his chair and is using his office computer. Despite my repeated requests, the respondent no.3 did not move from his chair nor allowed him to sit at any place and work in the office. As such, he was again forced to issue a written complaint against the respondent nos.3 and 4 before the Officer-in-Charge, Hare Street Police Station, Kolkata on 29th April, 2022.
- 6.11 On May 2, 2022, the Petitioner was constrained to file an application<sup>10</sup> being Misc. Case No.242 of 2022 under Section 144(2) of the Code of Criminal Procedure, 1973 against the respondents before the Learned Executive & Metropolitan Magistrate, 10th Court at Kolkata.
- 6.12 By order dated May 2, 2022, the Learned Executive & Metropolitan Magistrate, 10th Court at Kolkata was pleased to direct<sup>11</sup> both parties to maintain peace and tranquility over the locale and the Hare Street Police Station was directed to file a

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<sup>9</sup> Annexure D to Supplementary Affidavit

<sup>10</sup> Annexure F to the Supplementary Affidavit

<sup>11</sup> Annexure G to the Supplementary Affidavit



report for ascertaining the exact fact and the matter is kept on June 6, 2022, inter alia, for police report.

- 6.13 During the said investigation conducted by Hare Street Police Station, the respondent no.4 claimed that the Petitioner was no longer a director in the company and that he had been removed from the Board of the company under Section 169 of the Companies Act, 2013. When the police interrogated the respondent no.4 as to how such removal can be done during the subsistence of the status quo order dated 29th March, 2022 of this Tribunal on the composition of the Board, the respondent no.4 said that this was done by his legal consultant and that his lawyers have all the papers pertaining to such alleged removal. The respondent no.4 brazenly claimed that his group purportedly held 73% shareholding in the company and that in January 2022, they have removed me from the Board of Directors of the company.
- 6.14 Immediately after conclusion of the said meeting, the Petitioner checked the ROC records pertaining to the company from the website of the Ministry of Corporate Affairs. No document pertaining to such alleged removal had been filed with the portal of the Ministry of Corporate Affairs.
- 6.15 The respondents are trying to completely usurp control of the company and to oust the Petitioner from the affairs and business of the company. The respondent nos.2 to 4 are indulged in rampant acts of mismanagement, misappropriation of funds and are using the infrastructure of the company for their other business without any checks and balances.
- 6.16 Despite being the 43% shareholder and a director in the company, the Petitioner has been kept in the dark with regard to the accounts and financial position of the company. Further, a purported annual general meeting is shown to have been held on 30th November, 2021, though no notice was given to the Petitioner in respect thereof.

7 **Rejoinder on behalf of the Petitioner:**

- 7.1 Sometime on May 10, 2022 the Petitioner filed a supplementary affidavit thereby disclosing material documents and events that have transpired after filing of the present petition. The statements and contents of the said supplementary affidavit are also true and correct and are reiterated in the instant rejoinder.
- 7.2 It is the respondents who have approached the petitioner to avail and utilize my expertise and services in the field of financial intermediation to act as a Direct Sales Agent (for short "DSA"). The Petitioner joined the company as a shareholder and a director therein. As such, the story of changing employment from PNB Housing Finance Limited to the respondent no.1 company is manufactured, bogus and sham. It is stated that petitioner's induction as a shareholder and director of the company was the understanding between the parties. Thus, the petitioner was appointed as a director of the Company on 1st July, 2019.
- 7.3 The Petitioner had handled the respondents' work at PNB Housing Finance Limited with all due sincerity and acumen and the respondents were hugely benefited by the said work. The respondents have also obtained deals as Direct Sales Agent due to the sheer hard work and skills of the petitioner herein in the finance market. The respondent no.4 was a willful defaulter with his banker and his CIBIL score was very poor and for that reason he approached me to join him in his business. At his insistence and request have left my secured and well-paying job at PNB Housing Finance Limited in September, 2019.
- 7.4 In the petition the Petitioner has duly annexed a cheque dated July 01, 2019 paid to the respondent no.2 on account of share consideration money. The said cheque was duly encashed by the respondent no.2 within the validity of the said cheque. The respondent no.2 has also executed share transfer deed/share transfer form and a requisite Form SH-4 wherein the date of transfer of her shares to me are recorded as July 01, 2019. The said documents are all annexed to the petition. Despite such

transfer effected on July 01, 2019 the petitioner came to learn that only in the Form No.MGT-7A, i.e. the annual return for the Financial Year 2020-2021 such transfer from the respondent no.2 to me has been reflected and the date of registration of transfer was given as 30th March, 2021. Such purported MGT-7A is also duly annexed to the main Company Petition. In any event, the respondent no.2 has never objected or raised any issue regarding delay, if any, in payment of the share consideration money. As such the contention of the respondents regarding alleged delay to pay the share consideration amount is completely malafide and is made to digress from the real issues raised in the petition.

7.5 The respondents in breach of the right of privacy of the petitioner have accessed his bank statements from the devices which were used by the petitioner in the office of the respondent no. 1. The respondents are not allowing the petitioner to have access to the office premises and are also not letting him enter the said office premises and by illegal and wrongful means they are accessing the personal files of the petitioner kept in the office system. It is material to note that such personal files containing Aadhaar, passport, bank statements, CIBIL score, PAN cards, etc. are required to be kept in the office while liaising with banks for submission of KYC for getting the DSA Code.

7.6 The difference in the revenue generation of the Company after the Petitioner's inception into the company is given hereinafter and clearly indicates his contribution to the Company:

Financial Year	Revenue Generation (in Rupees.)
2017-18	0.00
2018-19	39,72,920.00
2019-20	1,06,54,849.00
2020-21	65,57,331.00

2021-22	90,77,200.00
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- 7.7 Even during the Covid period the Petitioner had rendered continuous service for the welfare of the Company. The petitioner had in good faith, believed that the respondents will operate the bank accounts where they were signatories in a transparent and honest manner. As such, initially he had insisted to be added as a signatory to the bank accounts of the Company. However, after noticing that there has been irregularity in the operation of the accounts maintained with HDFC Bank and Karur Vysya Bank where major transactions are being dealt with, he had objected to such illegality and irregularity perpetrated by the respondents. The opening of company accounts with Kotak Mahindra Bank, Axis Bank Ltd. and IDFC Bank demonstrate his involvement in the business of the company. As a Direct Sales Agent, the petitioner acting on behalf of the Company had to communicate with banks which have resulted in opening of all the aforesaid accounts at the time of generation of Code as per the banks' mandate.
- 7.8 The Petitioner has brought business to the Company amounting to Rs.35 lacs (Approx) and have participated in the affairs of the Company till middle of February, 2022. Even post-March 2021, he brought business/revenue to the company to the tune of Rs. 40 Lacs (Approx.). The fact that the Petitioner has rendered services will also appear from the fact that he received remuneration/salary for the months of March, 2020 to March, 2021 which will be evident from the financial statement of the petitioner for the relevant period, copies whereof are annexed hereto and marked "A".
- 7.9 The staff and/or employees received 50% salary as they were asked to come on rotation basis for two or three days in a week whereas Petitioner has rendered continuous service to the Company even during the raising Covid period. The Petitioner has worked round the clock and at times due to lack of staff and technical assistance he had to take up their role as well. As such, it is wrong to state that he is

not entitled to full salary during the Covid period or that payment of my legitimate salary dues would amount to anti-company activities on my part, as alleged or at all.

7.10 The Petitioner had nothing to do with the resignation of the employees and staff as alleged. Instead, it was because of the rude behavior of Respondent No. 3 that the employees left office.

7.11 Admittedly the Petitioner has been excluded from the business of the company by the respondents. There is no justification whatsoever stated or disclosed in the purported reply affidavit to exclude me or deprive me from participating in the business of the company. The respondents are clearly driven by vendetta against me since he questioned the way accounts are maintained and money is withdrawn from the company for the personal enrichment and/or wrongful gains of the respondent nos. 2 to 4. The respondent no.3 withdraws money from the funds of the company for his own business purpose whereas the respondent no.4 amongst other transactions, withdraws and siphons away and/or misappropriates the funds of the company for his daughter's higher studies. Such diversion and defalcation of company's money are done through the bank accounts of the Company maintained with HDFC Bank, India exchange place Branch and Karur Vysya Bank, Bangur Branch. Despite the repeated requests, reminders and/or demands made by me, till date the respondents have not disclosed the bank accounts of the Company maintained with the said banks for the period between March, 2021 and February, 2022. The Petitioner again call upon the respondents to furnish the bank statements of the Company maintained with HDFC Bank and Karur Vysya Bank bearing A/c No.50200036808232 and A/c No.3116135000001896, respectively for the period from March, 2021 to February, 2022.

8 **Analysis and Findings:**

8.1 The petitioner's allegations are summed up below, such as:

- a. The issuance of a cheque by the Petitioner dated July 01, 2019, for the payment of Rs. 4,30,000/- as share consideration to Respondent No. 2.
- b. The execution of transfer deeds by Respondent No. 2 in favor of the Petitioner on July 01, 2019.
- c. The alleged non-receipt of notices for board and general meetings, which could be corroborated by communication records or meeting minutes.
- d. The alleged withholding of bank statements and denial of access to main bank accounts, which could potentially be evidenced through correspondence or records of requests made by the Petitioner.
- e. The alleged non-payment of monthly remuneration from June 2021 to February 2022, which could be supported by payroll records or bank transactions.
- f. The alleged dilution of the Petitioner's shares during a further allotment of shares to Respondent No. 2 on March 27, 2021, which could be evidenced through shareholding records or board resolutions.
- g. The alleged change of computer access credentials without the Petitioner's knowledge, which could be evidenced by IT records or communication with IT personnel.

8.2 The Respondents have stated:

- a. The respondents assert that the petitioner approached them while still employed elsewhere, proposing to continue working beyond his anticipated superannuation. They claim the petitioner was inducted into the company with assurances of bringing substantial business, but they allege that the

petitioner delayed making the necessary investment in the company's share capital.

- b. The respondents argue that the petitioner failed to fulfill his obligations and did not actively contribute to the company's business. They highlight instances where the petitioner allegedly abstained from office attendance and participation in business operations, despite insisting on being paid his entire salary during challenging market conditions due to the pandemic.
- c. The respondents claim that the petitioner's actions disrupted the company's operations and led to the resignation of several employees after a visit by the petitioner to branch offices. They accuse the petitioner of attempting to coerce and manipulate the company's management, as well as engaging in anti-company activities such as making inquiries to find discrepancies and threats to file complaints.
- d. The respondents assert that the petitioner's actions were aimed at extracting unjust gains from the company and purporting to create or manufacture evidence for the petition. They claim that the company's compliance with regulatory requirements and filing of necessary documents have been duly carried out, and any discrepancies alleged by the petitioner are unfounded.

8.3 In this backdrop, the principle issues that arising for our considerations in the present dispute can be summed up as follows:

- 1. Whether the actions of the respondents purport to be Oppressive against the Petitioner being a shareholder of the company..***
- 2. During the period of Directorship was the petitioner paid his remuneration as per the terms of employment ? .***

3. *During the time that the petitioner was a Director, how many board meetings/AGMs were held and whether he was invited to attend ?*
4. *Whether Petitioner is a bonafide share holder? IF yes then why his name should not be reflected in the Register of the Members of the company,*

8.4 In the question as to whether these contentions act as oppression and mismanagement this Adjudicating Authority would like to bring into notice as to what constitutes as oppression or mismanagement. The Hon'ble Supreme Court in the matter of *Needle Industries; (1981) 3 SCC 333* has observed as follows;

*"It is clear from these various decisions that on a true construction of Section 397, an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give rise to a claim for relief under that section. The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity. conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder. It may be mentioned that the Jenkins Committee on Company Law Reform had suggested the substitution of the word 'Oppression' in Section 210 of the English Act by the words 'unfairly prejudicial' in order to make it clear that it is not necessary to show that the act complained of is illegal or that it constitutes an invasion of legal rights (see Gower's Company Law. 4th edn. page recommendation was not accepted and the English Law remains the same as in Meyer and in Rel H. R. Hartner Ltd. 119591 WLR 62 as modified in Re Jermyn St. Turkish Baths.(supra) We have not adopted that modification in India."*



8.5 Also, the observations of Lord President Cooper in *Elder vs Elder & Watson 1952 SC 49* is relevant for the present issue, which are reproduced hereunder;

*"The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the 'just and equitable' jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the 'just and equitable' jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, atleast, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy"*

8.6 As discerned from the aforementioned judicial precedents, a consistent principle emerges delineating the criteria for identifying oppressive conduct within the sphere of commercial enterprise, particularly concerning decisions undertaken by majority shareholders or corporate management. This principle, often referred to as the "golden thread," posits that mere imprudence in the exercise of commercial judgment by majority stakeholders does not ipso facto constitute oppression or mismanagement.

8.7 From the above-mentioned grievances of the Petitioner and the Respondents it is clear that a tussle was going on between the parties to this lis. But there are no official letters or complaints made as should have been the prompt action. Even as to threatening Respondent No 4, the Petitioner was not brought to justice by the other respondents as they say they were compelled to keep him in the interest of the company.

8.8 It is seen from the submissions that the Petitioner indeed has been a Director from 1st **July, 2019 to May 2022**. The very fact the company was paying for his outstation trips with an expectation that the business of the company would be enhanced due to the efforts of the Petitioner, shows that the company recognized the efforts made by the incumbent for getting business irrespective of the fact whether he was successful in bringing in work/money as promised to the company. It is not possible to go into the issues like productivity and efficiency of an employees by this Tribunal, but suffice it to say that there appears to be a genuine effort on the part of the petitioner to do his bit for enhancing the business of the company. Thus, he is entitled the remuneration of the Petitioner June 2019 to February 2022 as per the terms of employment.

8.9 It is seen from the averments that the Petitioner paid Rs 4,30,000 /- by cheque and he was allottee 43000 shares of the company making him a 43% shareholder. It has been submitted and also pleaded that the share certificates of the petitioner got lost. That he was a shareholder is seen from the transfer deed produced by the Petitioner (page 111-121 of the Petition). That being the case, a simple remedy under Section 46 of the Companies Act 2013 is available to the petitioner. The provisions of section 46 are extracted below :

*46. Certificate of shares.—(1) A certificate, [issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary], specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.*

*(2) A duplicate certificate of shares may be issued, if such certificate*

*a) is proved to have been lost or destroyed; or*

***b) has been defaced, mutilated or torn and is surrendered to the company.***

*(3) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.*

*(4) Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.*

*(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.*

Thus, the Petitioner shall be allowed to reclaim Duplicate Share Certificates, as provided for in Section 46 (Supra) and the same shall be restored by the Company and its register shall be amended accordingly.

8.10 It is stated by the Petitioner that he was not informed of the AGMs on 30.09.2019, 21.12.2020 and 30.11.2021 and it is simply denied by the Respondents. Denial Cannot be vague or ambiguous as held by Hon'ble Supreme Court in ***Gian Chand and Brothers and anr. vs. Rattan Lal Alias Rattan Singh - (2013) 2 SCC 606***, which states:

24. *We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible. In this context, we may profitably refer to a two-Judge Bench decision in **Sushil Kumar v. Rakesh Kumar** wherein, while dealing with the pleadings of election case, this Court has held thus: -*

*“73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order 8 Rule 3 and 5 of the Code of Civil Procedure. The High Court had also not analysed the evidence adduced on behalf of the appellant in this behalf in detail but merely rejected the same summarily stating that vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid.”*

8.11 No ostensible documents or submissions have been made on behalf of both the parties that would show that the purported board meetings as also AGM was held on given dates and whether or not the Petitioner was sent a notice thereof as required in law. In such a scenario the prayer of the Petitioner about a declaration that the Annual General

Meetings and Board Meetings and/or any Extra-Ordinary General Meeting being void cannot be sustained.

8.12 Furthermore, we note that the petitioner being a 43% shareholder still remained in minority and would not have been able to thwart any board decision. Notwithstanding the fact that a notice of the board meeting and AGM is necessarily required to be given to the Directors / Shareholders as the case may be, and the same if not sent is clearly a violation of the law, however in the situation being discussed here, even if the incumbent was present in the meetings, it would not make a material difference to the outcomes of these meetings because of his minority status Therefore we are not inclined to stay the proceedings of the Board meetings as well as AGM

8.13 Further by his own admission, the petitioner acknowledges that the company was doing pretty well throughout except for dip in revenue in 20-21 due to the effect of Covid. **(Annexure A of Supplementary Affidavit)**, so there is no gainsaying that the company did not do well during the period and thereby we do not agree to the assertion that the company's interests were hampered due to alleged pilferages. It is clear from the Independent Auditor's Report supplied in the Rejoinder:

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court -I)

KOLKATA

Amar Kumar Pandey vs Dyutir Consultancy Private Limited

CP No. 51/KB/2022

DYUTIR CONSULTANCY PRIVATE LIMITED  
CIN: U72900WB2010PT01228732

BALANCE SHEET AS AT 31st MARCH, 2022

Particulars	Sl. No.	As at 31st March, 2022	As at 31st March, 2021
<b>EQUITY AND LIABILITIES</b>			
<b>1 Shareholder's Funds</b>			
(a) Share Capital	2	14,179.61	11,091.00
(b) Reserves and Surplus	3	9,999.63	10,415.34
<b>2 Non-Current Liabilities</b>			
(a) Long term Borrowings	4	2,399.00	18,818.00
(b) Deferred Tax Liabilities (Net)		22.31	31.72
<b>3 Current Liabilities</b>			
(a) Short-Term Borrowings			8,556.94
(b) Trade Payables	5	-1,791.47	8,311.40
(c) Other Current Liabilities	6	5,679.50	2,128.86
(d) Short term Provisions	7	1,924.67	-
<b>Total Equity &amp; Liabilities</b>		<b>56,027.02</b>	<b>45,058.14</b>
<b>II Assets</b>			
<b>1 Non-current assets</b>			
(a) Fixed Assets			855.14
(i) Gross Block	8	2,549.46	349.31
(ii) Depreciation		866.86	-
(iii) Net Block		1,682.60	349.31
(b) Deferred Tax Assets (Net)			1,375.00
(c) Long Term Loans & Advances	9	1,525.00	220.00
(d) Other Non-current assets	10	1.00	-
<b>2 Current assets</b>			
(a) Current investments			-
(b) Inventories			-
(c) Trade receivables	11	1,449.29	13,500.22
(d) Cash & Cash equivalents	12	1,843.60	10,648.57
(e) Short-term loans and advances	13	29,015.54	29,238.56
<b>Total Assets</b>		<b>56,027.02</b>	<b>55,058.15</b>

Notes referred to above and annex attached thereto form an integral part of Balance Sheet  
This is the Balance Sheet referred to in our report of above date.

In terms of our report of even date attached  
For Jyoti Todi & Associates  
Chartered Accountants  
Firm Registration No. 332784E

JYOTI TODI  
Proprietor  
Membership No. 513559  
UDIN : 93313399BIRKRA9500

Place : Kolkata  
Date : 16.09.2022



DYUTIR CONSULTANCY PRIVATE LIMITED  
Dyutir Consultancy Private Limited, the Company  
CIN: U72900WB2010PT01228732

Neelam Jain  
NEELAM JAIN  
(DIRECTOR)  
DIN: 07994759

BARUN JAIN  
(DIRECTOR)  
DIN: 08017345

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court -I)

KOLKATA

Amar Kumar Pandey vs Dyutir Consultancy Private Limited

CP No. 51/KB/2022

**DYUTIR CONSULTANCY PRIVATE LIMITED**  
CIN : U67190WB2019PTC224732

**PROFIT & LOSS STATEMENT FOR THE PERIOD ENDED ON 31ST MARCH, 2022**

(Amount in ₹ Except EPS)

Particulars		Rule No	As at 31st March, 2022	As at 31st March, 2021
I.	Revenue from operations Other income	14	90,272.19 249.44	65,573.31 -
	I Total Revenue		91,021.63	65,573.31
II	Expenses:			
	Cost of Materials		-	-
	Change in inventories		-	-
	Employee Benefit Expense	15	28,054.62	9,713.48
	Financial Costs		-	-
	Depreciation and Amortization Expense	8	317.52	207.54
	Other Administrative Expenses	16	61,529.20	51,471.67
	III Total Expenses		89,921.34	61,392.69
IV	Profit before exceptional and extraordinary items and tax	(I-III)	1,100.29	4,180.62
V	Exceptional Items		-	-
VI	Profit before extraordinary items and tax (V-VI)		1,100.29	4,180.62
VII	Extraordinary Items		-	-
VIII	Profit before tax (VII-VIII)		1,100.29	4,180.62
IX	Tax Expenses:			
	(1) Current tax		256.04	1,171.03
	(2) Earlier tax		-	-
	(3) Deferred tax		9.41	3.94
X	Profit(Loss) from the period	(VIII-IX)	833.66	3,005.65
XI	Earning per equity share:			
	(1) Basic		0.66	2.13
	(2) Diluted		0.66	2.13

Notes referred to above and notes attached thereto form an integral part of Balance Sheet  
This is the Balance Sheet referred to in our report of even date.

In terms of our report of even date attached  
For Jyoti Tooti & Associates  
Chartered Accountants  
Firm Registration No. 332794E

Jyoti Tooti  
Proprietor  
Membership No. 313599  
UDIN : 2231359980RKA8500

Place : Kolkata  
Date : 25.06.2022

Dyutir Consultancy Pvt. Ltd.  
Dyutir Consultancy Private Limited  
For and on behalf of the Board of Directors  
Neelam Jain B. Jain  
Director Director  
NEELAM JAIN BARUN JAIN  
(DIRECTOR) (DIRECTOR)  
DIN : 07994758 DIN : 080197345

8.14 Thus, to sum up the findings and in order to put the matters to an end we hereby order as follows:

- a. The Petitioner shall be paid his remuneration for the period he actually worked as a Director of the company, irrespective of the fact that he was or was not productive enough in the eyes of other Directors. This payment shall be made to the petitioner by the

company within Four weeks of this order on the terms and conditions of his initial appointment as a Director, however no interest shall be paid on the sum thus paid and a compliance affidavit in this regard shall be filed by the company within 10 days of making payment failing which this petition is liable to be revived.

- b. The RoC , West Bengal is directed to look into the aspect of notices being sent to all the shareholders for the AGM and all the Directors for the board meetings and also levy necessary penalty for any violations, with respect to the filings made by the company for the relevant period.
- c. The Register of the companies shall be updated/corrected and subject to procedural formalities and duplicate share certificates shall be issued to the Petitioner in accordance with Section 46 of the Companies Act 2013, if applied for.

9 In terms of the above direction, **CP No. 51/KB/2022** is **disposed of**.

10 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**This order is pronounced on the 30<sup>th</sup> day of April, 2024.**

*SM(LRA), A.J.S*