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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CA No. 49/CB/ 2021
&
CA No. 50 /CB/ 2021
In
CP No. 124/ CB/2019

In the matter of:

An application under Section 244 read with Section 241 of the Companies Act.

-And-

CA No. 49/CB/ 2021

In the matter of:

This is an application filed under proviso to section 244 (1) of the Companies Act 2013

-And-

In the matter of:

1. **Jyotirmoy Mohanty**, residing at Plot No. 80, Surya Nagar, Bhubaneswar- 751 015;
2. **Ashok Agarawalla**, residing at N-3/62, IRC Village, Nayapalli, Bhubaneswar, 751 015;

...Applicants

-Versus-

1. **The Utkal Chamber of Commerce & Commerce & Industry Limited**, having its registered office at N/6, IRC Village, Nayapalli, Bhubaneswar- 751 015, Dist- Kurda;
2. **Ramesh Mahapatra**, residing at Palasuni, Rasulgarh, Bhubaneswar- 751 015;
3. **Ashok Kumar Sarda**, residing at Surya Vihar, Patia, Bhubaneswar;
4. **Dipak S. Rathor**, residing at College Square, Cuttack;

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5. Akshay Khandelwal, Director, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015;

6. Brahmanada Mishra, Director, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015;

7. Narayan Kumar, Director, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015;

...Respondents

-And-

CA No. 50/CB/2021

In the matter of:

This is an application filed to reject the waiver application C.A.No.49/CB/2021.

-And-

In the matter of:

1. The Utkal Chamber of Commerce & Industry Ltd, having its registered office at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015, Khurda, Odisha

...Applicant

-Versus-

1. Jyotirmoy Mohanty, residing at Plot No. 80, Surya Nagar, Bhubaneswar;

2. Ashok Agarawalla, residing at N-3/62, IRC Village, Nayapalli, Bhubaneswar- 751 015;

...Respondents

-In-

CP No. 124/CB/2019

1. Jyotirmoy Mohanty, residing at Plot No. 80, Surya Nagar, Bhubaneswar;

2. Ashok Agarawalla, residing at N-3/62, IRC Village, Nayapalli, Bhubaneswar- 751 015

...Petitioners

-Versus-

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1. **The Utkal Chamber of Commerce & Industry Ltd**, having its registered office at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015, Khurda, Odisha;
2. **Ramesh Mahapatra**, residing at Palasuni, Rasulgarh, Bhubaneswar- 751 015;
3. **Ashok Kumar Sarada**, residing at Surya Vihar, Patia, Bhubaneswar;
4. **Dipak S. Rathor**, residing at College Square, Cuttack;
5. **Akshay Khandelwal**, Director, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015;
6. **Brahmanada Mishra, Director**, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015;
7. **Narayan Kumar, Director**, The Utkal Chamber of Commerce & Industry Ltd; at N/6 , IRC Village, Nayapalli, Bhubaneswar- 751 015

...Respondents

-And-

Appearances (through hybrid mode)

For the petitioner : Mr. Saswat Kumar Acharya, Adv. } CA No.
Mr. Lalitendu Mishra, Adv. } 49/CB/2021
Mr. S. Pholgu, Adv. }
Mr. Subham Agarwal, Adv. }
Mr. Abhijeet Agarwal, Adv. }

For the Respondents : Mr. S Kalia, Adv. } CA No.
Mr. Rakesh Wadha, Adv. } 50/CB/2021
Mr. Umesh Sahoo, Adv. }

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Kaushalendra Kumar Singh : Member (Technical)

Order Pronounced on: 22.04.2024

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COMMON ORDER

1. **CA. No./49/CB/2021:** This is an application filed under proviso to section 244 (1) of the Companies Act 2013 seeking leave of the Tribunal to waive the requirement specified in section 244(1)(b) of the Companies Act 2013.
2. **C.A.No.50/CB/2021:** This is an application filed to reject the waiver application C.A.No.49/CB/2021.
3. **The brief contents of C.A.No.49/CB/2021 are as follows:** The two members of 1st respondent company filed company petition under sections 241 and 242 of the companies Act for themselves and on behalf of 121 members of the 1st respondent company. The petitioners and other consenting members to the petition jointly constitute less than one-fifth of the total members of the company, hence this application is filed to waive the said one-fifth requirement.
4. The Articles of Association of 1st respondent company is not in compliance with the Companies Act 2013, rendering the Board of Directors Completely powerless and powers are vested with the executive committee. The decision of the executive committee overrides and prevails over the decision of the board, as per the articles of association and thus the same is in clear violation of the Companies Act 2013. The 2nd respondent deliberately did not amend the articles of association to bring it in compliance with the Companies Act. The election held during 20.01.2021 to 22.01.2021 was not conducted as per the Articles of Association nor as per the Companies Act 2013. The Board of Directors at its meeting on 12.01.2021 canceled the Election schedule and resolved that an EGM would be convened when the next election would be held. In spite of this, the 2nd respondent along with other respondents conducted the election on 20.01.2021 to 22.01.2021 and thus acted against the Companies Act 2013. The 1st applicant and other members as the Directors of the Respondent No.1 were removed illegally in violation of section 169(3) of the Companies Act 2013. This action was taken by the executive committee with malafide intention. The 2nd respondent should not

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have been continued in the office of the president of 1st respondent company after expiry of present tenure and further after attaining 70 years of age. The compliant also filed by other members and former directors of company with ROC, Cuttack, against the illegal acts of the executive committee of the 1st respondent company. The respondents are not interested to work for the benefit of the Company but acted for their own benefit. The waiver to be granted since exceptional circumstances exist.

5. On the respondent side no separate counter has been filed, instead C.A.No.50/CB/2021 is filed to reject the waiver application C.A.No.49/CB/2021. This Tribunal by order dated 17.01.2024 recorded to treat this application as counter to C.A.No.49/CB/2021.

6. The brief contents of CA No. 50/CB/2021: The allegations made in the petition do not make out a case under section 241, 242 and 244 of the Companies Act 2013. The allegations of directorial and election disputes does not fall under the scope of oppression and mismanagement. The allegations are relating to the past concluded issue. The petitioners approached seeking to urge personnel grievances. No prima facie case was made out by the petitioners. No exceptional case is made out to grant waiver. *The Hon'ble NCLAT in Cyrus Investments Pvt. Ltd and Ors. vs Tata Sons Ltd and Ors.* laid down the guideline when the waiver can be allowed. There are 1076 members as on date of filing of the company petition. The petitioners have alleged that they have obtained the consent of 121 members to file this petition, but particulars of those persons have not been disclosed. While Civil suits are pending, the petitions filed by the applicants are not maintainable. The petitioners have not approached this Tribunal with clean hands. The Company is a public limited by Guarantee, not having Share Capital and registered under the Companies Act 1956. The company is similar to Section 8 of the Company Act not for profit but not registered under section 25 of Companies Act 1956. The main object of the company is to protect and promote the interest of its members representing the trade, commerce, and Industry in the State of Odisha.

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7. The Articles of Association of the company envisages different categories of members representing different sectors such as Industry (i) Large Scale Industry, (ii) Medium Scale Industry, (iii) Small Scale Industry (iv) professional Members (v) Affiliate Members (vi) Expert members, (vii) Honorary members. All the members having voting right to elect the members for the committee and the office bearers. As per the amended AoA, it defined the office bearers means President, vice-president, (Industry) Vice-president (Commerce), Vice-President (G.), Honorary Secretary, Honorary Joint Secretary, Honorary Treasurer and Honorary Joint Treasurer. All these office bearers are elected by the members of the company. Office bearers of the company shall be directors of the company and constitute the Board of Directors. The Executive committee of the company constituted under AoA shall include the President and other office bearers., the elected members, and Ex-Officio members and co-opted members nominated by the president. As per 30(a) of AoA management activities of the company and funds of the company shall be vested with the committee. Functions of the office bearers are also narrated in AoA. They are designated as Directors but no collective powers have been given to the Board of Directors. Normally Board of Directors function as a team and all or majority of decisions are taken, but here it is vested with the executive committee. The president has over all powers on day today matters and he is executive head of the company. All decisions and resolutions are decided by the majority members of the committee. The Executive Committee, where the Board of directors are part of it, which is all powerful and vested with all executive powers. The office bearers of the company constitute the Board of Directors; however, the decision-making power lies with the executive committee. The executive committee is the competent authority to convene the general meetings. There is no specific provision in the AoA for convening of Board meetings and powers and functions of Board of Directors. By notice dated 03.08.2020 bearing No.147 Board meeting was called for, scheduled to be held on 10.08.2020 with agenda to discuss adoption of Balance Sheet for the year 2019-2020, to discuss regarding holding of Annual General Meeting in the month of October and to discuss reconstitution of Expert committee. Two of the Executive members filed a suit challenging the said

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notice in C.S.No.1182 of 2020 against the Board members inclusive of 1st petitioner in this company petition. In the suit it is prayed to declare that the Executive Committee is the only and final authority to take decision of confirmation of Balance sheet, Annual General Meeting and the office Bearers/directors are part of Executive Committee and not a separate body etc. In the said suit interim order was passed on 08.09.2020 in I.A.No.1 of 2020 holding that the Board of Directors and the Executive Committee of Respondent company are at liberty to hold any meeting but those should be in consonance with the provisions of MoA and AoA of the company. The second petitioner in Company petition filed another suit C.S.No.1700 of 2020 to declare that meeting dated 30.09.2020 conducted by 2nd respondent in the company petition is null and void. Finally, the company issued notice dated 11.12.2020 adjourning the 56th AGM and on 16.12.2020 the Returning officer invited nomination for election of members of Office Bearers including Executive Committee for the year 2020-2022. Emergency meeting of Executive Committee was held on 14.01.2021, after discussion resolution was passed to suspend 5 members who acted contrary to AoA and on resignation of Returning officer, the Executive Committee appointed Mr. Prasant Satpathy as Election Officer for the ensuing election. The Returning Officer issued election notice dated 19.01. 2021 scheduled to be held on 20.01.2021 to 23.01.2021. The election was held on the scheduled date peacefully, the Returning officer declared election result on 23.01.2021. In the election, the 1st petitioner could not be elected. Having failed to be elected to their contesting post the petitioners filed this petition under section 241 and 242 of the Companies Act 2013. The General Body meeting was held on 20.03.2021 for adoption of the new set of Articles of Association in terms of Table H of the schedule -I of the Companies Act 2013 for a company having no share capital. In the said meeting necessary resolutions were passed in this regard. There is no cause of action to file this Company petition since on same subject civil suits are pending and parties are participated in the civil suits. The company is not having shareholders hence the question of majority shareholders oppressing the rights of minority shareholders does not arise. The entire allegations in the company petition is pertaining to the power/ authorities/ duties/ functions

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of directors, Executive committee, and office bearers. Election. Suspension etc. are all directorial issues, election disputes fall beyond the scope of sections 241 and 242 of the Companies Act 2013. This company petition is barred by acquiescence /estoppel as at no point of time the petitioners or their proxy have ever objected to AoA of company. In the circumstances waiver may not be granted and waiver application to be rejected.

8. For the sake of convenience the parties are referred in this order as arrayed in C.A.No.49/CB/2021.

9. The Point for Consideration is:

1. Whether the waiver to be granted?

10. Point No.1: The applicants in this application are petitioners in the main company petition filed petition, under sections 241 and 242 of the Companies Act 2013 for oppression and mismanagement along with authorization/consent of 121 members.

11. The 1st respondent company is a Public Company limited by Guarantee and not having Share capital. According to the applicant total number of members of the company is 680 but according to the respondent the total number of members of the company as on the date of filing the company petition is 1076, in either case, the petitioners has not fulfilled the requirement of one-fifth of total number of members of company to file the petition under section 241 of the Companies Act 2013, hence the applicants preferred this application C.A.No.49/CB/2021 to waive the said requirement under proviso to section 244(1)(b) of the Companies Act 2013.

12. *The Hon'ble NCLAT-Delhi in Cyrus Investments Pvt. Ltd and Ors Vs Tata Sons Ltd. and Ors. 2017 SCC Online NCLAT 261: MANU/ NL/ 0100/ 2017(2017) 141 CLA 368*, laid down the reasons when the waiver can be allowed. Both sides relied upon this citation. The relevant portion of the supra citation runs as follows:

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“146. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion

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

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

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

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

147. The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming an opinion as to whether application merits 'waiver'.

From the reading of the citation and section 241 of the Companies Act 2013, to get the relief of waiver the applicants shall comply with the following requirements.

- (i) The applicants must be the members of the company.
- (ii) The company petition must relate to oppression and mismanagement of the company or its members.
- (iii) The similar petition with same allegation was not decided earlier.
- (iv) Existence of any exceptional circumstances.

13. In this application both the applicants are members of the company. Their main grievance against the respondents is that they have not taken any steps to amend the Articles of Association of the Company in consonance with Table H of the Schedule-I of the Companies Act 2013. It is alleged that the present Board of Directors of the company is powerless and all the powers are vested with the executive committee in violation of section 6 of the Companies Act 2013.

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14. The applicants wants the Board of Directors become powerful and shall manage the affairs of the company in the place of executive committee. In this regard in respect of convene the meetings, the applicant relies upon section 100 of the Companies Act 2013. On the respondent side stated that as per the AOA of the company, the power of convene the meeting lies with the executive committee.

15. In common parlance the meaning of Board of Directors of the company mean it is a governing body of a company, whose members are elected by the members/shareholders of the company.

Section 2(10) of the Companies Act 2013 defines the Board of directors as follows:

“Board of Director” or “Board” in relation to company, means the collective body of the directors of the company.

Section 2(34) of the Companies Act 2013 define “director” as follows:

“director” means a director appointed to the Board of company;

Further as per section 152(2) of the Companies Act 2013, *every director shall be appointed by the company in general meeting.*

16. Thus, it is made clear that the directors are to be elected by the members of the company in general meeting, collection of those elected members are collectively called as Board of Directors or Board, the Board is governing body of the company and vest with all powers.

17. In this case all the members elected by the members of the company in General meeting are not termed as directors, they are termed as executive members along with other nominated members. Among the elected members of the company, eight persons are selected as office bearers of the company viz one President, three vice-presidents, one Honorary secretary, one Honorary Joint secretary, one Honorary Treasurer, and one Honorary Joint Treasurer. This group of office

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bearers are termed as Board of Directors. Even though this group is termed as Board of Directors but they are not the only persons elected/appointed in the General meeting of the company.

18. The executive committee of the company includes all the elected/appointed members of the company (inclusive of office bearers) along with six nominated members of the company appointed by the President. Even though the AoA of the company termed the officer bearers alone as the Board of directors but it is not in consonance with section 152(2) of the Companies Act 2013. The applicants given much importance to the nomenclature Board of Directors referred in the AoA instead of true spirit of the word Board of Directors referred in the Companies Act 2013. It is settled law the title of the document would not decide the nature of the document, but in fact the contents of the document would decide the nature of the document, similarly, the word board of directors referred to in the AoA alone is not enough to construe that the applicants/office bearers of the company alone are board of directors.

19. On the applicant side relies upon section 100 (1) of the Companies Act 2013, and argued that the Board alone is competent authority to call for the meeting, in the Board meeting held on 10.06.2021, five office bearers (inclusive of 1st applicant) out of eight office bearers passed the following resolutions. The minutes of the meeting is dated 15/17 July 2020 Annexure 5 of the company petition page 104.

(i) That the AGM of the company has to be held in the month of October 2020.

(ii) All the financial transactions /communications between the Company and MCA has to be made by the Honorary Secretary of the company, not by the president.(2nd respondent)

(iii) Early action should be taken to amend the AOA of the company to comply the same with the Companies Act 2013.

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20. Article 30(a) of AoA of the company vest all powers with the committee. As per Articles 35 and 36 of AoA of the Company, the committee is competent body to convene the AGM and EGM. As per Article 31 of AoA of the company, the President is the competent authority to represent the company before any forum. As per Article 31(c) in the absence of president, senior most vice president among vice president (Industry) and vice president (Commerce) shall look after the duties of president, in the absence of two vice presidents then only the Honorary secretary will have the power to perform the duties of correspondence and representations. These factors shows that above resolutions were passed in utter violation of the AoA of the company.

21. On the applicants side stated that the AoA of the company is illegal in view of section 6 of the Companies Act 2013. Section 6(2) of the Companies Act 2013, says any provisions contained in the Memorandum, articles, agreement and resolutions repugnant to the provisions of the Companies Act 2013 are would be void. As already discussed in the AoA ,the office bearers of the company is termed as Board of directors, this is only small part of the elected members of the company. All the members elected in Annual General meeting inclusive of office bearers (Board of directors) constitute Executive committee, upon which all powers are vested. Even otherwise if the provisions relating to committee is void it will not ipso facto confer all powers with the office bearers simply because they are termed as Board of Directors. The constitution of committee is referred in Article 20 of AoA of the company. Annexure 3 at page 54 of C.A.No.50/CB/2021 disclose the total number of members of the executive committee for the relevant period 2020-2021 as on 31.08.2020 was 119 inclusive of 6 nominated members. All are appointed in the Annual General meeting of the company. When there are 119 members in the executive committee/ Governing body of the company only five elected members tried to usurp the powers of Governing body under the pretext of using the nomenclature Board of Directors is unacceptable.

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22. Further two of the executive members filed a suit C.S.No.1182 of 2020 on the court of Senior Civil Judge, Bhubaneswar against the office bearers of the company for declaration declaring that the Executive committee is the only and final authority to take the decision on the confirmation of Balance Sheets, Annual General Meeting and the office bearers/directors be part of executive committee not a separate body etc; In I.A.No.01 of 2020 the Civil Judge Senior Division, Bhubaneswar by an interim order dated 08.09.2020 permitting both the Board of Directors and the Executive Committee of UCCI is at liberty to hold any meeting but those should be in consonance with the provisions of M & AOA of UCCI, as per their convenience, till final disposal of the suit.

23. The 2nd applicant also filed Civil Suit C.S.No.1700 of 2020 on the court of Senior Civil Judge, Bhubaneswar against the 2 to 4th respondents in company petition and another challenging the meeting dated 30.09.2020 conducted by 1st defendant in the said suit. (2nd respondent in the company petition)

24. The applicants prayed to declare the resolution dated 12.01.2021 is valid and binding. The minutes copy of the meeting is filed as Annexure 26 page 181 of the company petition. In the meeting out of eight office bearers 5 office bearers attended and passed resolution resolving that 2nd respondent ceased to continue as Director of the company upon attaining the age of 70 years and authorizing Mr. Dhiren Kumar Dhal Honorary secretary to file necessary forms with ROC in respect of above cessation of directorship of 2nd respondent. It is also similar to annexure 5 referred supra. As on the said date 12.01.2021, the interim order passed in I.A.NO.1 of 2020 is in force. By the said order Board of Directors are granted liberty to hold any meeting but those should be in consonance with the provisions of M & AOA of UCCI. As already discussed, AOA of the company given an authority to the executive committee to convene the meeting. There is no provision in the M & AOA to convene the meeting by the Directors/office bearers. The applicant claims that out of eight directors five directors attended the meeting by majority passed the resolution hence binding. It is ridiculous as per Article 28(c) of

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AoA 25% of the members of committee shall form quorum, as already stated as per Annexure 3 at page 54 of C.A.No.50 /CB/ 2021 the total number of members of executive committee was 119 inclusive of 6 nominated members. In such a situation it requires 30 members for quorum but the applicants on their taking advantage of nomenclature claiming that the resolution passed by them to be accepted. In the absence any authority under AOA to convene the meeting by the office bearers/directors it is held that the resolution dated 12.01.2021 is unsustainable.

25. On the respondent side argued that since already Civil suits are pending between the parties and dispute is pertaining to the Civil rights of members the Civil court alone has jurisdiction and not by this Tribunal. On the applicant side relied upon section 430 of the Companies Act 2013 which exclude the Jurisdiction of the Civil court. Even though on the applicant side argued that this Tribunal alone have the jurisdiction to deal with the company matters, but the 2nd applicant himself filed the Civil suit C.S.No.1700 of 2020 pertaining to corporate matter, where he could not get any interim relief and then joined with the 1st applicant and filed this company petition. It amounts to forum shopping. Let it be in view of section 430 of the Companies Act 2013, the Civil Court Jurisdiction is expressly ousted. Further the 1st applicant in the application along with another person previously filed Company petition C.P.No.11/CB/2021 under section 241 and 242 of the Companies Act on this same subject. Writ petitions W.P. (c) No.12645 of 2021 and W.P.(c) No.2328 of 2021 were preferred before the Hon'ble High Court of Orissa to quash the proceedings C.P.No.11 /CB/2021 on the file of this Tribunal, challenging the Jurisdiction also. The Hon'ble High Court by common order dated 02.09.2021 dismissed both the writ petition holding that NCLT has jurisdiction to adjudicate the matter. In the circumstances, the jurisdictional issue raised by the respondent is turned down as unsustainable.

26. The executive committee meeting held on 14.01.2021 resolved to appoint new election officer to conduct the election. On 19.01.2021 Returning officer issued an election notice and the election was conducted from 20.01.2021 to 22.01.2021 and

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the result was declared on 23.01.2021. The election result is marked as Annexure 28 page 193 of Company Petition. It shows that the applicants were contested for the post of Honorary Joint treasurer and vice president (commerce) but both were not elected.

27. On the applicant side challenged the election and termed it as illegal election. It is alleged that 1st applicant and other ex-directors were barred to enter the office premises at the instance of 2nd respondent by engaging bouncers. In this regard, no document has been filed to substantiate this contention such as police complaint or immediate communication addressed to the returning officer or to ROC etc. It is stated on 31.01. 2021 Mr. Dhiren Kumar Dhal sent objection to 6th respondent newly elected president. Annexure 28 reveals that the said Dhiren Kumar not contested the election further the said objection was made after a week from the publication of the election results where the applicants were not elected. These factors show there is no prima facie case that the election was conducted under the duress. Even otherwise non-election of applicants for the office bearers of the company comes under the directorial dispute.

28. By notice dated 1.3.2021 General Body meeting called for scheduled to be held on 20.03.2021. The meeting was held on 20.03.2021 resolution was passed for adoption of the new set of articles of association in terms of Table H of schedule - I of the companies Act 2013. Further, the applicants side also stated that the Compliant was already preferred with ROC, Cuttack, for non-adoption of AOA of company in accordance with Table H of Schedule -1 of the Companies Act 2013 and the matter is now ceased by ROC, Cuttack.

29. The one another aspect noticed is that five office bearers of the company are named in Annexure 26 at page 181 of the company petition. convened the meeting on their own without any authority as discussed above. At first Mr. Dhiren Kumar Dhali Honorary Secretary filed petition under sections 241 and 242 of the Companies Act 2013 in C.P.No.7/CB/2021 which was withdrawn by him on

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18.01.2021. Then Mr.Sanjeev Mohapatra, Honorary Joint secretary and 1st petitioner Mr.Jyotimoy Mohanty jointly filed petition under sections 241 and 242 of the Companies Act 2013 in C.P.No.11/CB/2021 which was withdrawn by on 24.11.2021. Then now this company petition NO.124/CB/2021 has been filed.

30. The prayers made in the petition that the relevant clauses of AOA is illegal as it violates the provision of the Companies Act and allied rules is only replication of section 6(2) of the Companies Act 2013, once the statute itself is clear it is unnecessary to reiterate it. For declaration that resolution dated 12.01.2021 and to adjudge the cessation of petitioners as directors null and void, petitioners and ex-directors are forthwith to be reinstated as directors of the company, remove the respondent 3-7 as directors of the company and be restrained from holding themselves as directors of the company and quash the elections held on 20.01.2021 to 22.01.2021. On perusal of the company petition proves that the reliefs sought in the petition does not relates to oppression and mismanagement of the company or its members and it is frivolous.

31. In view of above discussion it is concluded that no case is made out under section 241 of the Companies Act 2013 hence waiver cannot be granted. In fine C.A.No.49/CB/2021 is **dismissed** and C.A.No.50/CB/2021 is **allowed**. In consequence, C.P.No.124/CB/2019 is rejected. No cost.

32. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

33. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 22th day of April, 2024.