

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-II**

**Company Application No.155 of  
2022**

**IN**

**TCP No. 31/MB/2014**

Under Section 242 of the Companies  
Act, 2013.

In the matter of

**Mr. Suraj T. Nanda**

(Authorised Representative of the  
Petitioner Shareholder)

Flat/Unit No. 03, Manju, 286-A, Sher-  
E-Punjab, Opp. Maratha Sahkari Co-  
operative Bank, Near Tolani Naka,  
Mahakali Road, Andheri (East),  
Mumbai-400 093.

**... Applicant/ Petitioner**

V/s.

1. Allwyn Colour and Construction  
Pvt Ltd.,
2. Kalicharan D. Makhijani
3. Malini K. Makhijani  
All having their address at: Neelam  
Apartment, Flat No.1202, Mount  
Mary Road, Bandra West,  
Mumbai-400 050.
4. H.R. Joshi,  
M/s. H.R. Joshi & Co.,  
Chartered Accountants, Shop No.  
09, 01<sup>st</sup> Floor, Hi-Life Mall, P.M.  
Road, Santacruz (West), Mumbai-  
400 054.
5. Dinesh Rajgor,  
M/s. Dinesh Rajgor & Co.,  
Chartered Accountants, Shop No.  
02, Tiwari House, Prabhat Colony,  
Road No.01, Santacruz (East),  
Mumbai-400 055.

6. The Registrar of Companies, Maharashtra, Mumbai, having its address at: Everest Building, 100, Marine Lines, Mumbai-400 002.

**Order delivered on 12.04.2024.**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)  
Hon'ble Smt. Anil Raj Chellan, Member (Technical).

**Appearance (through video conferencing):**

**For the Applicant** : Mr. Anuj Anekar a/w Anuj Bhattad.

**For the Respondent** : Counsel Mr. Nausher Kohli for Respondent No.02.

**ORDER**

1. The present Petition has been filed by the Applicant herein "Mr. Suraj T. Nanda" seeking orders under Section 242(2)(h) read with Section 242(1) of the Companies Act, 2013 (hereinafter referred to as "the Act" for the sake of brevity) for removal of Respondent Nos. 02 and 03 as directors of Respondent No.01 on the ground of wilful disobedience of orders of this Tribunal and contravention of the provisions u/s 101 of the Companies Act, 2013. The Applicant has also prayed for appointment of himself and Mr. Bipin Gupta, who is the representative of one of the shareholders of Respondent No.01, or any other fit and proper persons, as Directors of the Respondent No.01 Company until the disposal of the above-captioned petition.

**Case of the Applicant** (in brief):

2. The Respondents No. 02 and 03 held an Annual General Meeting ('AGM') on 30.11.2021 of the Respondent No.01 Company, without giving any notice of AGM to its shareholders including the Applicant herein. The Respondent Nos. 02 and 03 have totally disregarded the Order dated 16.04.2021 passed in C.A. No. 79/2021 in TCP No.

31/2014. The Respondents No. 02 and 03 have surreptitiously taken over the entire management of the company by illegally holding AGM and ensuring that the remaining shareholders are kept in dark about the affairs of the Respondent No.01 company. The Applicant alleges that the Respondent Nos. 02 and 03 are guilty of illegally increasing the share capital of the Respondent No.01 company and allotting the shares in their favour.

3. The Respondent Nos. 02 and 03 have scant regard for law and have always kept the remaining shareholders in dark by willfully ensuring that no notice of AGM is ever served upon the shareholders of the Respondent No.01 company. The actions of Respondent Nos. 02 and 03 as purported directors of company clearly show that fictitious AGM's are being held and false statements and filings are being made before the RoC.
4. Thus, the Applicant is left with no other option but to approach this Tribunal with this application seeking appropriate orders under Section 242(2)(h) read with Section 242(1) of the Act.

**Reply of the Respondent Nos. 02 and 03 on Affidavit dated 21.06.2022:**

5. The Applicant has filed the captioned application complaining alleged oppression and mismanagement. At the threshold, it is pertinent to note that the principal grievance in the main company petition filed somewhere in April, 2014 pertained to an allotment of shares undertaken over 14 years ago i.e. on February 02, 2000. Therefore, the petition suffers from gross and unexplained delay and laches of 14 years. The Company Application is essentially seeking reliefs that have already been sought in the above-captioned company petition and it ought to be dismissed on this ground alone as the final reliefs cannot be granted at an interlocutory stage, when the case of oppression and mismanagement is yet to be made out.
6. The Company Application has been filed alleging non-compliance of an ex-parte order dated April 16, 2021. For the same cause of action,

the petitioner has already filed a contempt application to which a reply has already been filed by the respondents. Therefore, the same issue cannot be reargued here again.

7. The Petitioner has also not explained as to how his proprietary rights as a shareholder have been prejudiced by the AGM held on 30.11.2021, when admittedly the only business transacted at the AGM was for adoption of accounts which is a statutory mandate under the provisions of the Companies Act, 2013. The law is well settled that a mere failure to provide notice would only amount to an irregularity and not oppression. An isolated action of not giving notice cannot be oppression. The respondents crave liberty to rely on judicial precedents in this regard.
8. The Petitioner cannot claim to be oppressed merely because he was not given notice of shareholding meetings, particularly when the Petitioner himself has not shown interest in the conduct of the affairs of the Respondent No. 01 company. The law is well settled that an illegal act cannot become oppressive as oppression is concerned with conduct lacking in probity. The Petitioner cannot claim probity since the Petitioner himself has not attended to the affairs of the Respondent No.01 company and therefore, cannot now be heard complaining exclusion from management participation.
9. Hence, the Respondent has prayed that the present application be dismissed with costs.

**Findings:**

10. We have heard the counsel for the Applicant and the counsel for the Respondent No.02.
11. This is an application seeking orders under Section 242(2)(h) read with Section 242(1) of the 2013 Act for removal of Respondent Nos. 02 and 03 as directors of the Company on the ground of alleged contempt by them of the Order of this Tribunal dated 16.04.2021 in Company Application No. 79/2021.

12. Counsel for the Applicant submits that the Respondents No. 02 and 03 are keeping the shareholders of the Respondent No.01 company in dark by surreptitiously holding the AGM without notice to the shareholders including the Applicant. Hence, according to the learned Counsel, grave prejudice would be caused to the company and its shareholders, if the Respondents No. 02 and 03 are not removed from their office as directors of Respondent No.01.
13. On the other hand, Counsel for the Respondent submits that the application is misconceived as the allegations of oppression and mismanagement are the subject matter of the underlying petition and the allegation of contempt of the Order dated 16.04.2021 is already under consideration of the Tribunal in Contempt Petition No.09 of 2023. Hence, the learned Counsel for the Respondent submits that the instant application is not maintainable as the same is hit by the doctrine of res sub judice. Counsel for the Respondent further submits that the Applicant has failed to show how he has been aggrieved or prejudiced by the non-compliance of Order dated 16.04.2021, as the AGM dated 30.11.2021 was held for the limited purpose of adopting accounts of the company which cannot cause prejudice to the proprietary rights of the Applicant as a shareholder of the company.
14. We have carefully examined the case on merits and weighed the submissions placed by the learned counsels on both the sides.
15. In the present case, the Applicant has essentially prayed for removal of the directors viz. Respondent Nos.02 and 03, on the ground that they have committed contempt of court. However, since as per our order of even date, the directors referred-to-above have been purged of contempt proceedings upon accepting their unconditional apology, there is no question of ousting the above-referred directors on the ground of contempt and thus, the present application does not survive on merits. The relief as prayed for by the Applicant had

already been prayed by him in TCP No. 31 of 2014 and the same cannot be granted until and unless the alleged acts of oppression and mismanagement by Respondent Nos. 02 and 03 are proved to the satisfaction of this Tribunal. Therefore, we are not inclined to grant the final reliefs at this interlocutory stage.

16. In view of the foregoing discussions, **Company Application No. 155 of 2022 is dismissed** as being devoid of any merit, with no order as to costs.

**Sd/-**

**Anil Raj Chellan**  
**Member (Technical)**

**Sd/-**

**Kuldip Kumar Kareer**  
**Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-II**

**CONTEMPT PETITION NO.09 of 2023**

**IN**

**COMPANY APPLICATION NO. 79 OF  
2021**

**IN**

**TCP No. 31/MB/2014**

Under Section 425 of the Companies  
Act, 2013

In the matter of

**Mr. Suraj T. Nanda**

(Authorised Representative of the  
Petitioner Shareholder)

Flat/Unit No. 03, Manju, 286-A, Sher-  
E-Punjab, Opp. Maratha Sahkari Co-  
operative Bank, Near Tolani Naka,  
Mahakali Road, Andheri (East),  
Mumbai-400 093.

**... Applicant/ Petitioner**

V/s.

1. Allwyn Colour and Construction  
Pvt Ltd.,

2. Kalicharan D. Makhijani

3. Malini K. Makhijani

All having their address at: Neelam  
Apartment, Flat No.1202, Mount  
Mary Road, Bandra West,  
Mumbai-400 050.

4. H.R. Joshi,

M/s. H.R. Joshi & Co.,  
Chartered Accountants, Shop No.  
09, 01<sup>st</sup> Floor, Hi-Life Mall, P.M.  
Road, Santacruz (West), Mumbai-  
400 054.

5. Dinesh Rajgor,  
M/s. Dinesh Rajgor & Co.,  
Chartered Accountants, Shop No.  
02, Tiwari House, Prabhat Colony,  
Road No.01, Santacruz (East),  
Mumbai-400 055.

6. The Registrar of Companies,  
Maharashtra, Mumbai, having its  
address at: Everest Building, 100,  
Marine Lines, Mumbai-400 002.

**Order delivered on 12.04.2024.**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Anil Raj Chellan, Member (Technical).

**Appearance (through video conferencing):**

**For the Applicant** : Mr. Anuj Anekar a/w Anuj Bhattad.

**For the Respondent** : Counsel Mr. Nausher Kohli.

**ORDER**

**Per: Anil Raj Chellan, Member (Technical).**

1. The present Petition has been filed under Section 425 of the Companies Act, 2013 (hereinafter as "the Act" for the sake of brevity) by "Mr. Suraj T. Nanda", seeking to prosecute the Respondents No. 01 to 06 named hereinabove for their contempt



of the Order passed by this Tribunal dated 16.04.2021 in Company Application No. 79/2021.

2. **Case of the Applicant** (in brief):

- a. The Applicant is a shareholder of the Respondent No.01-Company. In Company Application No. 79/2021, this Tribunal vide its Order dated 16.04.2021, had directed that the Company shall not hold any AGM/EOGM without serving proper notice to the shareholders and all other parties and will follow the procedures prescribed under the Companies Act.
- b. It is the case of the Applicant that despite the aforesaid Order, the Respondents No. 02 and 03, being the Directors of Respondent No.01, held an AGM dated 30.11.2021 of the Respondent No.01-Company, without giving proper notice of AGM to its shareholders including the Applicant herein. Thus, the Applicants allege that the Respondent Nos. 02 and 03 have totally disregarded the Order dated 16.04.2021, thereby committing the contempt of this court. Hence this application/petition against the Respondents No. 02 and 03 u/s 425 of the Companies Act, 2013.

3. **Reply filed on behalf of Respondent Nos. 02 and 03:** An Affidavit-in-reply dated 21<sup>st</sup> June, 2022 has been placed on record by and on behalf of the Respondents No. 02 and 03 contesting the above-captioned contempt petition on the following grounds:

- a. Order dated 16.04.2021, which is alleged to be in contempt by the Respondent Nos. 02 and 03, was passed ex-parte when neither the respondents nor their advocates were present. Respondent further submits that it is only subsequently sometime in August-September of the year 2021 that the Respondents became aware that an ex-parte order was passed and this Tribunal had directed meetings to be held only after issuing notice to the other shareholders. Therefore, the

respondents were not aware of the said Order at the relevant point in time and thus, there is no question of any wilful disobedience to the order of the court resulting in contempt.

- b. The Respondent states that the AGM held on 30.11.2021 was held only for the limited purpose of compliance with the provisions of the Companies Act, 2013 and ensure that financial statements of Respondent No.01 are filed. Therefore, the Respondent states that the Petitioner has failed to show the prejudice, if any, occasioned by non-service of such notice.
- c. The present application is misconceived and is nothing but an attempt to delay the hearing of the main petition since the Petitioner is liable to be called upon to explain why it took him over a decade to complain of purported oppression.
- d. The Respondents tender their unconditional apology for the inadvertent non-compliance with the Ex-Parte Order dated April 16, 2021.
- e. The Petitioner's application is belated, and he has been sleeping over his rights for more than a decade before coming to the court asking for his right of being served with notices before holding AGM.

**4. Submissions advanced on behalf of the Respondent No.02:**

The submissions advanced by the counsel for the Respondent No.02 are recapitulated hereunder.

- a. Counsel for the Respondent No.02 submits that his client has not committed contempt for the reasons briefly stated below:
- b. The Order dated April 16, 2021 was passed ex-parte. Neither the Respondents nor their advocates were present during the course of hearings and pronouncement of order. Therefore, the Respondents at relevant point in time were not aware that an ex-parte order had been passed against them. the Respondent submits that the Respondents were not informed of the hearing dated April 16, 2021 or of the outcome of the hearing. the

Respondent further submits that it is only subsequently sometime in August-September of the year 2021 that the Respondents became aware that an ex-parte order was passed and this Tribunal had directed meetings to be held only after issuing notice to the other shareholders. Therefore, the question of there being any deliberate or willful disobedience does not arise. In fact, the non-compliance was inadvertent and a bona fide error.

- c. Counsel for the Respondent submits that failure to send a notice of the AGM is merely a procedural lapse and does not in any manner constitute oppression or mismanagement u/s 241 of the Companies Act. Under Section 101(4) of the Companies Act, 2013 any accidental omission or failure to give notice to or non-receipt of such notice by any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.
- d. Counsel for the Respondent submits that the Respondents were not informed of the hearing dated April 16, 2021 or of the outcome of the hearing. Ld. Counsel for the Respondent further submits that it is only subsequently sometime in August-September of the year 2021 that the Respondents became aware that an ex-parte order was passed and this Tribunal had directed meetings to be held only after issuing notice to the other shareholders.
- e. Counsel for the Respondent submits that the Respondent No.02 tenders his unconditional apology for their inadvertence and non-compliance with the ex-parte order dated 16.04.2021. This is strictly without prejudice to their submission that there has been no deliberate non-compliance with the ex-parte order.
- f. Counsel for the Respondent states and submits that the AGM held on 30.11.2021 was only for the limited purpose of compliance with the provisions of the Companies Act, 2013

and ensure that financial statements of Respondent No.01 are filed. Counsel for the Respondent in his humble submission states that the Petitioner has failed to show the prejudice, if any, occasioned by such notice and its non-service.

- g. Counsel for the Respondent lastly states and submits that the present application filed by the Petitioner is misconceived and it is nothing but an attempt to delay the hearing of the main petition. Counsel for the Respondent further avers that the Petitioner has failed to show that non-compliance with the order of this Tribunal was willful on the part of the Respondents; and therefore, the present petition must fail as the Applicant has failed to raise any cogent grounds for initiation of contempt proceedings.

**5. Findings:**

- a. On perusal of the records, it is evident as an incontrovertible fact that this Tribunal vide Order dated 16.04.2021, had directed that the Company shall not hold any AGM/EOGM without serving proper notice to the shareholders and all other parties, and have to follow the procedures prescribed under the Companies Act. However, despite the aforesaid order, it is seen that the Company held its AGM on 30.11.2021 of the Respondent No.01-Company, without giving notice of AGM to the Applicant. Respondent Nos. 02 and 03 are the directors of the Respondent No.01.
- b. Counsel for the Respondent pleads that the present petition is barred by limitation and therefore, the same should be dismissed. As per the facts of the case as narrated by the Applicant in his application, the date when the offence of civil contempt was allegedly committed by the Respondent Nos. 02 and 03 is 30<sup>th</sup> November 2021 when the AGM was conducted without giving notice to the Applicant in breach of the Order dated 16.04.2021. The period of limitation for initiating

contempt proceedings has been stipulated u/s 20 of the Contempt of Courts Act, 1971 which is reproduced as follows: *“No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”* However, since the present contempt petition has been filed on **26<sup>th</sup> February 2022** (though registered on 23.08.2023), which is within one year from the date on which the contempt is alleged to have been committed (i.e. **30.11.2021**), therefore, the present petition is held to be within the period of limitation.

- c. The Respondent No.02, who happens to be a director of the Company, has not denied the fact that the AGM of the Company was held on 30.11.2021 without giving notice to the Applicant, but pleaded that the order was ex-parte and the Respondents came to know about the aforesaid Order dated 16.04.2021 only somewhere in the month of August-September, 2021, and therefore, the breach of the Order dated 16.04.2021 in Company Application No. 79 of 2021 was not willful but only out of inadvertence for which the Respondent No.02 tenders his unconditional apology. Thus, the factum of conduct of AGM dated 30.11.2021 without giving notice to the Applicant in breach of the Order dated 16.04.2021 is not in dispute. Therefore, in our considered view, a case of civil contempt against the Respondents No. 01 to 03 is made out.
- d. Mere fact that the said order was passed ex-parte is no ground to avoid or escape from the contempt proceedings. Whenever a court, tribunal or any other quasi-judicial authority proceeds ex-parte against the defendants/respondents, it is only when the judicial or quasi-judicial body, as the case may be, is satisfied that the notice of the suit/proceeding has been duly served upon the respondents and yet they either failed

put in their appearance or the respondent(s) have entered appearance but chosen not to file their reply/written statement in the matter despite opportunity of being heard having been duly afforded to them. Therefore, it would be inappropriate and incorrect to say that there can be no contempt proceedings in case of breach of ex-parte orders. It is a matter of record that the Respondents No. 01 to 03 herein had remained present through their counsels while contesting the Transferred Company Petition No. 31 of 2014. Therefore, the mere fact that the Respondents No. 02 to 03 and/or their counsels were not present at the time of passing the Order dated 16.04.2021, which is alleged to be in contempt by the Respondents No.01 to 03, does not ipso facto absolve them from the charge of contempt as it was their duty to keep themselves abreast of all orders being passed including the Order dated 16.04.2021 in Company Application No. 79 of 2021 in Transferred Company Petition No. 31 of 2014. Hence, the defense of ex-parte order taken by the Counsel for the Respondent is devoid of any merit.

- e. The object of the law of contempt is to uphold the majesty of the rule of law by ensuring that the authority of the Court/Tribunal is not denigrated or undermined by the wilful breach or contumacious conduct on the part of the contemnors. Hence, in our considered view, the principle of no prejudice would not apply to the contempt proceedings, as the contempt proceedings are not for the execution of orders or decrees or judgments of the Court/Tribunal with a view to benefit the Applicant/Petitioner, but to safeguard the public interest and to protect the public faith in the judicial system of this nation.
- f. Now the question arises whether the respondents are liable to punished for contempt of court or not. Having thoughtfully

pondered over the matter and taking into consideration the facts and circumstances of the present case, we are of the considered view that it is not a fit case for punishing the respondents for contempt. The respondents have stated in the affidavit-in-reply dated 21<sup>st</sup> June, 2022 that the non-compliance of the Order dated 16.04.2021 was only out of inadvertence and not wilful and no serious prejudice is shown to have been caused to the petitioners. In addition to this, the Respondent Nos. 02 and 03 have tendered their unconditional apology for the same. The respondents seem to be first offenders and they have shown remorse as well. Under the circumstances, this Tribunal is inclined to accept the apology tendered by the respondents being bona fide.

- g. In view of the foregoing reasoning and discussions, the **Respondent No.02 and the Respondent No.03 are hereby discharged** under the proviso to Section 12(1) of the Contempt of Courts Act, 1971 by accepting their apology, which in our opinion, is made bona fide and to the satisfaction of the court. However, we give a stern warning to Respondent Nos. 02 and 03 to be careful in future and not to repeat the offence of contempt. Accordingly, the Contempt Petition No.09 of 2023 stands disposed of in the aforesaid terms.

**Sd/-**

**Anil Raj Chellan**  
**Member (Technical)**

**Sd/-**

**Kuldip Kumar Kareer**  
**Member (Judicial)**