

**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, 01st 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)