

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MUMBAI, COURT-III**

ORDER SHEET OF THE HEARING ON 22nd MARCH, 2024, 10:30 A.M.

**I.A. 167/2022
I.A. 129/2022
C.P. 197/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Ms. Madhu Sinha**

Name of the Company	IA 167/2022 - Shaku Kishore Sadarangani IA 129/2022 - Shaku Kishore Sadarangani Vs. Alisha Holdings Private Limited. IN THE MATTER OF Shaku K. Sadarangani V/s. Alisha Holdings Private Limited.
Under Section	241(1)

For Petitioner (s) : Mr. Mr. Tanjul Sharma, Adv

For Respondent (s) : Ms. Yasmin Bhansali, for R-3 & R-5

ORDER

Ld. Counsel Mr. Tanjul Sharma appears along with Ld. Counsel Ms. Yasmin Bhansali appearing for R-3 and R-5. All the counsel appearing for the parties in the open Court reported no objection for pronouncement of the order without insisting for fresh hearing. Order is pronounced vide separate order. In the result both the IAs are dismissed.

**Sd/-
Ms. Madhu Sinha
Member (Technical)**

**Sd/-
H.V. Subba Rao
Member (Judicial)**

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT

I.A No. 129 of 2022

I.A. No. 167 of 2022

In CP No. 197 (MB) of 2022

I.A. No. 129 of 2022

Under Section 242(4) of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016.

In the matter of

1. Shaku Kishore Sadarangani, residing at Flat no. E/1, Eden Hall, 5th Floor, Dr. Annie Besant Road, Worli-400018

... Applicant No. 1

2. Sanjay Kishore Sadarangani, residing at Flat no. E/1, Eden Hall, 5th Floor, Dr. Annie Besant Road, Worli- 400018

... Applicant No. 2

3. Sonia Prakash Chhabria, residing at 51, Kshitij, 5th Floor, 566, Hill Road, Bandra (West), Mumbai- 400050

... Applicant No. 3

Versus

1. Alisha Holdings Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at Unit No. 5, Ground Floor, Raghuvanshi Mill Compound, Lower Parel- 400013

... Respondent No. 1

2. Prakash Chhabria, residing at 51, Kshitij, 5th Floor, 566, Hill Road, Bandra (West), Mumbai-400050

... Respondent No. 2

I.A No. 129 of 2022
I.A. No. 167 of 2022
In CP No. 197 (MB) of 2022

3. Switty Ajay Sadarangani, residing at Raheja Atlantis, C Wing, 1401, G.K. Marg, Opposite Nerolac House, Worli, Mumbai- 400013

... Respondent No. 3

4. Ajay Kishore Sadarangani, resident of Raheja Atlantis, C Wing, 1401, G.K. Marg, Opposite Nerolac House, Worli, Mumbai- 400013

... Respondent No. 4

I.A. No. 167 of 2022

Under Section 242(4) of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016.

In the matter of

Shaku Kishore Sadarangani, residing at Flat no. E/1, Eden Hall, 5th Floor, Dr. Annie Besant Road, Worli-400018

... Applicant

In

Shaku Kishore Sadarangani

Versus

Alisha Holdings Private Limited and Others

...Respondents

Coram:

Hon'ble Shri H.V.Subba Rao, Member (J)

Hon'ble Mrs. Madhu Sinha, Member (T)

Order delivered on: 22. 03.2024

ORDER

[Per se: Shri H.V.Subba Rao , Member (J)]

1. I.A. No.129 of 2022 has been filed under Section 242(4) of the Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 seeking following interim reliefs.
 - a. *That the Hon'ble Tribunal may allow the said application;*
 - b. *That the Hon'ble Tribunal be pleased to appoint an Administrator as a preventive measure against further deterioration of the Respondent Company to run and manage the affairs of the Company as an interim measure;*
 - c. *That the Hon'ble Tribunal be pleased to pending the present Petition and IA stay the effect and operation of the Resolution passed in the EOGM dated 21st July 2022 be stayed and status quo be maintained;*
 - d. *That the Hon'ble Tribunal be pleased to stay the appointment of Respondent No.3 to the position of director and restrain Respondent No.3 from acting as the director of the Company by way of permanent injunction;*
 - e. *Such other orders as this Hon'ble Tribunal may deem necessary and fit in the interest of justice.*

2. I.A. No. 167 of 2022 has been filed under Rules 11 and 32 of NCLT Rules, 2016 seeking following interim reliefs.
 - a. *The Interlocutory Application No.129 of 2022 be urgently heard and decided by placing the matter high on board;*
 - b. *This Hon'ble Tribunal may be pleased to stay the effect of meeting of Board of Directors of Respondent No.1 Company dated 19.09.2022, illegally recording allotment of 3,500 equity shares under 'right issue' in favour of Respondent No. 2 and 5 and to stay all consequential action and proceedings pursuant to alleged Board Meeting dated 19.09.2022.*

meeting ('EOGM") for the removal of the Petitioner from the position of director in the family Company. The reasons set out in the notice for removal of the Petitioner are false, incorrect, unfounded as well as beyond the reasons warranted by the Act for removal of a director. Thus, Respondent No.2 is trying to achieve his ulterior motive of exercising sole authority and control over the Company to the exclusion of the Petitioner and Respondent Nos. 4 to 6.

- 4.4 Respondent No. 2 is misusing his position as director and shareholder of the Company to the oppression of the Petitioner and is clearly mismanaging the affairs of the Company. Therefore, removal of the Petitioner from the position of director would give unbridled powers in the hands of Respondent No.2 which would add to the oppression and mismanagement of the Company at the hands of Respondent No.2.
- 4.5 Unit No. 5 on ground floor of building known as Raghuvanshi Mansion, Raghuvanshi Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400013, is an asset owned and in possession of the Respondent No. 1 company with a carpet area of 4400 sq. ft. Out of the said commercial premises, an area admeasuring 2660 sq. ft. carpet area was permitted to be used for a commercial activity by a company named Shimera by way of a Leave and License Agreement. Further, the remaining area admeasuring 1740 sq. ft. carpet area was permitted to be used for commercial activity by JSL by a Leave and License Agreement.
- 4.6 A Letter was issued by the Office of Joint Commissioner of State Tax, Mumbai to the Manager of Bank of Baroda requesting to freeze the account of Respondent No.1. A Show cause notice for cancellation of GST was issued by the Office of Joint Commissioner of State Tax, Mumbai as the registration is liable to be cancelled for non-filing of GST returns for the F.Y. 2019-20 and 2020-21.

- 4.7 The Applicant sent various emails to the GST authority appraising the situation of the matter pending before the Hon'ble Bombay High Court.
- 4.8 Mr. Rajiv Jetly, administrator appointed by Hon'ble Bombay High Court informed that there is an intimation of order for suo moto cancellation of GST registration number from the GST department. Mr. Rajiv Jetly also informed that an order has been issued in Form GST DRC-07 vide Ref. NO.ZD270222029255P.
- 4.9 The Applicant then filed Company Petition before this Hon'ble Tribunal being Company Petition No. 197 of 2022 under Sections 241 and 242 of the Companies Act, 2013 against the acts of oppression and mismanagement of Respondent No.2. The Petitioner has also *inter alia* prayed that pending the hearing and disposal of the Petition, the EOGM sought to be convened for the removal of the Petitioner be stayed.
- 4.10 After filing of the said Petition, on 20.07.2022, the Applicant received an email from Respondent No.2 titled as subject - Addendum - Alisha in which Respondent No.2 had forwarded a purported addendum to the notice for EOGM proposed to be held on 21.07.2022 and includes “*New Agenda items to be taken up in the proposed EOGM to be held on 21.07.2022.*”
- 4.11 The Applicant along with Respondent No.4 holds 50.30% total shareholding of Respondent No. 1 Company. The Applicant brought on record the highly illegal addendum by way of filing Additional Affidavit to the present matter.
- 4.12 The illegally convened EOGM of members of Respondent No. 1 Company was conducted through video conference on zoom. The Applicant attended the meeting along with her son Sanjay Sadarangani, Respondent No.4. The minutes of illegally convened EOGM records that all resolutions were passed as ordinary resolutions by show of hands. It was wrongly recorded that the Applicant did not vote on the resolution of

her removal as a director as she was an entrusted Director. On the other hand, vote of Sweety Sadarangani, Respondent No.3 was counted without her being the shareholder.

- 4.13 Since, there was an urgency in the present matter and there was a requirement of immediate interim reliefs, the Applicant filed Interlocutory Application No.129 of 2022.
- 4.14 The Interlocutory Application was heard by this Tribunal for ad-interim reliefs and this Tribunal rejected to grant ad-interim reliefs. Accordingly, the said IA and CP were adjourned.
- 4.15 Being aggrieved by above order passed by this Tribunal, the Applicant filed an Appeal before Hon'ble National Company Law Appellate Tribunal, New Delhi being Company Appeal No.216 of 2022.
- 4.16 The said appeal was heard by Hon'ble NCLAT, New Delhi. The Hon'ble Appellate Tribunal heard both the parties and recorded that by consent of both parties, the Hon'ble Appellate Tribunal proposed to dispose of this appeal with an observation that in case reply is filed by all the parties on Interlocutory Application No.129 of 2022, the NCLT, Mumbai Bench may examine the same and pass appropriate order in accordance with law expeditiously.
- 4.17 The Respondent Nos. 2 and 5 without issuing notice to Petitioner/ Applicant have prepared forged and fabricated minutes of meeting of Board of Director allegedly held on 19.09.2022 and have prepared a false and fabricated record of allotment of 3,500 equity shares under 'rights issue' purportedly u/s 62 of Companies Act, 2013. No such Board Meeting of Respondent No. 1 Company was ever held. No notices were issued of such Board Meeting and consent of general body of shareholders before approving any right issue was ever obtained.
- 4.18 The Applicant has also found out that the Respondent Nos. 2, 3 and 5 have illegally allowed some third party named Flexstone to illegally use the

premises of Respondent No. 1 Company in place of JSL the earlier Licensee. Respondent Nos. 2, 3 and 5 are also claiming illegal possession of the said property by putting up a Board outside the said property stating that the said premises is in possession of a company called Shinning Staaar Interiors Private Limited, Director, Switty A. Sadarangani.

- 4.19 The Applicant has carried out search of the said Property and has realized that No Registered Leave and License is executed by the Respondent No. 1 Company w.r.t to the said Premises after the last Leave and License executed with JSL.
- 4.20 The Applicant learnt since the Bank account of Respondent No. 1 in Bank of Baroda was frozen by GST authority. Respondent No.2 along with Respondent No.3 has opened a separate bank account of Respondent No. 1 Company in HDFC Bank and requested JSL to transfer an amount of Rs. 49,06,372/- outstanding and dues towards the rent receivables from JSL.
- 4.21 The apprehension of the Applicant is that if the Interlocutory Application is not heard and no direction or interim reliefs provided by this Tribunal, Respondent Nos.2 and 3 shall siphon off the funds accumulated in the new HDFC Bank account opened in the name of Respondent No. 1 Company. This siphoning of funds will severely affect and prejudice the working capital / income of Respondent No. 1 Company.
5. Respondent No. 1 & 2 *vide* Reply dated 20.09.2022 submits:
- 5.1 The Applicants have not challenged the Resolution passed in the Extra Ordinary General Meeting (EOGM) dated 21.07.2022. However, in the instant IA, the Applicants are praying for interim protection from this Tribunal by seeking to stay the effect and operation of the Resolution passed in the EOGM dated 21.07.2022. It is a trite position in law that in the absence of any final relief, no ad-interim/interim relief can be granted.

Moreover, the request of Applicants to appoint an Administrator in the R1 Company does not survive.

5.2 No ad-interim/interim relief as prayed in the instant IA ought to be granted on the following grounds:

A. Appointment of R3 as the Director of R1:

- i. The contention that R3 has been appointed as the director in absolute contravention of the Companies Act, 2013 and Articles of Association of R1 is baseless.
- ii. The EOGM Notice was issued upon the Members on 27.06.2022. Thus, the Applicants were given 21 days' Notice of the EOGM to be held on 21.07.2022. However, no action was taken by the Applicants on the Notice for holding EOGM till such time the EOGM was held, and Resolutions were passed therein in accordance with the explanatory statement to the Notice of Addendum.
- iii. R3 was appointed as an Additional Director of the Company by the Board of Directors in their meeting held on 13.06.2022, as per the provisions of Section 161 of the Companies Act, 2013. Applicant No. 1 is a housewife and has never participated in Board Meeting during the lifetime of Kishore Jetaram Sadarangani. Applicant No. 1 was always a figurative nominee and had no real participation.
- iv. There was an equality of votes in EOGM for the Resolution confirming R3 as an Executive Director. Thus R2 in capacity as the Chairman, had a casting vote and voted in favour of Regularization/Confirmation of R3 as the Executive Director of R1. R2 have been acting as the Chairman since 2014 and the same is evident from one such Resolution appointing R-2 as the Chairman at the Board of Directors Meeting held on 09.08.2014 and Notice dated 16.07.2018 for Annual General Meeting of R1 issued by R-2 as the Chairman of R1.

- v. The appointment of R3 has been confirmed as the Executive Director of R1 after following the due process of law and the same is also evident from form DIR-12 filed by R1 for confirming the R3 as the Executive Director of R1.
- vi. It was also the purported contention of the Applicants that R3 cannot be appointed as the Director of R1 as the Hon'ble Bombay High Court has granted stay on the EOGM Notice dated 10.10.2019, by its order dated 16.10.2019. The Applicants have deliberately failed to annex the Notice dated 10.10.2019 in the instant IA to misguide and mislead this Tribunal.
- vii. Pertinently, the order dated 16.10.2019 was passed to specifically injunct the Applicant No. 1 from taking any further steps pursuant to the letters dated 10.10.2019, till further orders of the Court. The said order nowhere states that any other additional director cannot be appointed for R1. Thus, the contention raised by the Applicants is baseless, bogus and without any merits.

B. Removal of Applicant No. 1 as the Director of R1:

- i. The removal of the Applicant No. 1 as the Director of Respondent No. 1 cannot be deemed as an act of oppression and mismanagement.
- ii. Applicant No. 1 had applied to resign as Director on 10.11.2006. Accordingly, R1 had filed Form-32 on the basis of the Application submitted by Applicant No. 1 to resign as the Director.
- iii. R3 and Applicant No. 1 participated in the Board Meeting held on 26.06.2022, was issued by R1 for convening an EOGM, scheduled on 21.07.2022, to transact the special business of removal of Applicant No. 1 as the Director of R1.
- iv. Any special business to be transacted at an early fixed EOGM does not require further notice and can be put by the chair even at the time

of the Meeting. There was no objection at the EOGM opposing the Addendum served on 20.07.2022. It was further decided without any objection from any of the Members, that the voting would be done by show of hands. This is in accordance with Article 57(a) of the Articles of Associations of R1.

- v. Accordingly, the Resolution for the removal of Applicant No.1 as the Director of R1 was passed by the majority who voted in favour of the removal of Applicant No. 1. The Applicant No. 1 being the interested Director, could not have participated in the vote. R1 has thereafter filed Form DIR-12 confirming cessation of the Applicant No. 1 as Director of the R1.

C. Other Resolution passed in EOGM dated 21st July, 2022

- i. It was decided in the EOGM dated 21.07.2022 to increase the contribution of the members by increasing the Authorized Share Capital of Respondent No. 1. The said resolution to increase the Authorized Capital of R1 was passed as the majority voted in favour of the Resolution. R1 has also filed its Form SH-7 for Authorization of Share Capital of Respondent No. 1. The Resolution for alteration of the Capital Clause of Memorandum of Association of R1 was passed, as the majority voted in favour of the Resolution.

D. Allegation *vis-a-vis* oppression and mismanagement in Respondent 1 and relief for appointment of Administrator.

The contention that Applicant No. 1 is subjected to acts of oppression and mismanagement in R1 ever since the death of the Deceased, are false, frivolous and devoid of any merits. Applicant No. 1 has been conducting the business of R1 as if she is the sole director of R1 for the following reasons:

- i. Applicant No. 1 has filed Form MGT-7a for filing returns of R1 for the period of FY 2018-19, 2019-20 and 2020-21. The said forms are

filed on her DSC. The said forms are filed without an Annual General Meeting. The said Forms contain false information that an AGM had taken place on 30.09.2019, 31.12.2020 and 30.11.2021, when no such AGMs were convened on the said dates in view of pending disputes and litigation between the parties.

- ii. Applicant No. 1 in connivance with Applicant No. 3 has illegally and unlawfully taken over the custody of all the cheque books, Registers and other documents from the office of R1. A complaint was lodged against Applicant No. 1 for unlawfully and illegally taking over the documents of R1, including their cheque book, bank statement file, IT file and share certificate file. After taking over the custody of the documents, Applicant No. 1 at the behest of Applicant No. 3 started misusing the said documents. Applicant No. 1 neglected to issue the cheques with her signature, as a result R1 defaulted in complying with its statutory obligations.
- iii. Applicant No. 1 filed Interim Application (L) No. 4349 of 2020 and Interim Application (L) No. 21435 of 2021 wherein Applicant No. 1 had sought reliefs in the nature that the outstanding charges/amount/expenses/statutory dues vis a vis Respondent No.1 be paid to avoid any adverse action being initiated against R1. To overcome the said issues, R1 sent notice dated 02.12.2021 informed the advocate of Applicant No. 1 that he was ready and willing to sign the requisite cheques duly signed by Applicant No. 1 in discharge of the Lease Charges, Corpus Fund, Legal/Counsel Professional Charges and the Property tax payable *vis-a-vis* the Subject Premises to Raghuvanshi Compound Management Association. By the said notice R1 further provided the calculation of the GST payable along with interest to the GST authorities *vis-a-vis* the license of JSL Lifestyle Limited for the period from April, 2020 to June, 2021. R1

also provided the chart of calculation of the GST payable *vis-a-vis* the license given to JSL Lifestyle Limited. However, Applicant No.1 did not come forward to discharge the statutory liability of R1.

- iv. Since, R1 was unable to pay the statutory dues, which included lease rent, GST, etc. due to the deliberate and intentional failure of Applicant No. 1, Respondent No. 1 filed an Interim Application bearing lodging no. 9901 of 2022 in Suit No. 1370 of 2019 seeking for direction to Applicant No. 1 to sign the cheques for the payment of statutory dues and liabilities.
- v. Applicant No. 3 was never a shareholder in Respondent No.1.
- vi. Applicant No. 1 and 3 are leaving no stone unturned to settle the score. Applicant No. 1 is functioning at the behest of Applicant No.3 and taking the decisions pertaining to Respondent No.1. The Hon'ble Bombay High Court by its order dated 16.10.2019 injuncted Applicant No. 1 from taking any further steps pursuant to the letters dated 10.10.2019.

E. Forum Shopping:

- i. The Applicant No. 1 has agitated similar issue and sought the same/similar reliefs in the Hon'ble Bombay High Court by filing Interim Application (L) No. 19367 of 2022 in Suit No. 1370 of 2019. The matter was taken on board however, no reliefs have been granted to the Applicant No. 1 till date.
6. Respondent No. 3 and 4 (Respondents 3 and 5 in the main CP) filed their written submission on 06.07.2023. The relevant paras are reproduced as follows.
- 6.1 Relationship of the Parties:
 - a. Shaku Kishore Sadarangani is the widow of Late Kishore Jetaram Sadarangani and the Mother of Mr. Sanjay Sadarangani (R4), Mr. Ajay Sadarangani (R5) and Mrs. Sonia Chhabria (R6).

- b. Mr. Prakash Chhabria (R2) is the estranged husband of Sonia (R6) and son-in-law of the Petitioner and the Deceased.
 - c. Mrs. Sweety Ajay Sadarangani (R3) is the wife of Ajay (R5) and daughter-in-law of Shaku.
 - d. Petitioner, R4 and R6 are the Applicants in IA No.129 of 2022.
 - e. R1, R2, R3 & R5 are the contesting the Respondents in the Petition and the IA.
- 6.2 The Present Petition is a fall out of an ongoing family dispute between the Parties. After Respondent No.6 separated from her Husband, Respondent No.2 in 2018, the family feud led to Kishore Sadarangani, the Husband of the Petitioner and Father of Respondent Nos. 4, 5 and 6 to commit suicide on 04.08.2019. He was a Director of the Company. There is a Civil Dispute which is pending before the Bombay High Court where injunction orders have been passed against the Petitioner and Respondent No. 4 and 6. There are matrimonial proceedings pending before the Family Court between Respondent Nos. 2 and 6. The present Petition is filed by the Petitioner, who is actually a proxy litigant under the instructions and at the behest of Respondent No. 6 who anyhow wants to harm the business of the estranged Husband, the Respondent No. 2. She is not a bonafide Petitioner. In view of the matrimonial dispute, the Company and Shareholders are made to suffer. The aim is to paralyse the working of the Respondent Company.
- 6.3 The Petitioner is not entitled to any reliefs sought either in the Company Petition or the Interlocutory Applications i.e., IA No.129 of 2022 and IA No.167 of 2022 for the following reasons:
- a. The final reliefs in the Company Petition were relating to the Board Meeting of 26.06.2022 which was called to fix date of EOGM to remove Petitioner under the provisions of Section 169 of the Companies Act, 2013 (AW). The Petitioner also sought removal of R3

from the post of Director. Pertinently, there is no relief sought to set aside the Resolution dated 13.06.2022 appointing R3 as an Additional Director. The Petitioner filed the present Petition on 15.07.2022 and the Petition was listed on 22.07.2022 for the first time before the Hon'ble Tribunal. This was subsequent to conducting EOGM on 21.07.2022.

- b. The final reliefs of the Petition are infructuous in view of Petition having been filed much after Board Meeting was held. Resolutions passed at Board Meetings and at EOGM are uploaded on MCA website. In view of the EOGM held on 21.07.2022 subsequent to the filing of the CP, there is no challenge to the Resolutions passed at the EOGM. The Petitioner has not filed application for amendment to the CP and has forwarded arguments on the Resolutions passed at the EOGM.
- c. R3 was co-opted at Board Level. The appointment of R3 as Additional Director was to be challenged, the Board Resolution passed on 13.06.2022 would have been challenged in the CP. However, the Petitioner has not challenged the Board Resolution passed on 13.06.2022 for appointing R3 as the Additional Director. It was not as if the Petitioner was unaware of the Board Resolution dated 13.06.2022. She has made a reference to the said Board Resolution in Para 28 of the Petition. In any event, a Directorial challenge cannot lie in a Petition under Sec. 241 and 242 of the Act.
- d. The above IA No.129 of 2022 was filed much after filing the Petition *i.e.*, in August, 2022. The reliefs in the IA do not aid the final reliefs. The Challenge to R3's appointment as the Director of R1 is clearly an afterthought. The challenge has come up because the Petitioner was, served with Sec. 169 Notice for her removal. The appointment of R3, is valid and legal in accordance with applicable provisions of the Act.

R3 was appointed on Board after Notice dated 05.06.2022 calling for a Board Meeting on 13.06.2022. She was appointed as per Sec. 161 of the Act. Board Meeting was held on 26.06.2022 to fix the date of EOGM. Thereafter, the Notice dated 27.06.2022 for EOGM to be held on 21.07.2022 was issued. On 21.07.2022, EOGM was held by video conferencing. By show of hands, Resolution was passed in accordance with Article 57 of the Articles of Association (AoA) of the Company. There was no objection in the Meeting to voting by show of hands.

- e. The above IA No.167 of 2022 has been filed by the Applicants above on 09.12.2022 challenging the effect of the Resolutions passed at the Board Meeting dated 19.09.2022. Neither the prayers in IA No.129 of 2022 or IA No.167 of 2022 are in aid of the Final Relief. Pertinently, the Offer Letters were issued to the Respondents pursuant to the Board Meeting of 25.08.2022. Minutes of Board Meeting dated 25.08.2022 is at page 165 of Respondent 1's Affidavit in Reply in IA 167 of 2022. The Offer Letters are at Exhibit U page 168 of R1's Affidavit in Reply to IA 167 of 2022. The postal receipts are at page 173. The Acceptance Letters are at **page 174**. On 19.09.2022, another Board Meeting took place where the unsubscribed portion was allotted to Ajay Sadarangani (R5) [page 41 of IA 167 of 2022]. Pertinently, despite having full knowledge of the Meetings and Resolutions passed, the Petitioner has not amended the Petition to challenge the same.
- f. The present Company Petition is an outcome of the family disputes brewing *inter se* parties herein and the said family disputes have arisen only because of R6, who has differences with her estranged husband i.e., R2. There are proceedings pending before the Bombay High Court where several Orders are passed against the Applicants in the present IA. (**Ex. '2-colly' at Pg.22 of the R3's Reply to the IA**).

g. Arguments were forwarded by the Applicants that Shimera Project Lighting Private Limited is the Licensee of R1 Company as per Leave & License Agreement dated 01.04.2015 for the Premises owned by the R1 Company and that R2 has illegally allowed Companies owned by R2 himself to occupy the Premises of RI Company by receiving rent in the account of Shimera (Company of R2). Pertinently, the said Agreement is signed by R6 herself as the representative of Shimera (Ex. C-colly to the Petition, Pg. 75 and signature at Pg. 90). Clause 13 of the Agreement permitted R2 to assign, transfer, sublet or part with possession of the Property to Associate Companies or any other company which it has direct control, without the written consent of R1 Company (Clause 13 at Pg. 80 of the Petition). This agreement suited the Applicant 3 till such time the relationship between R2 and R6/Applicant 3 was cordial. After matrimonial discord between R2 and R6, R6 forwarded a case that Respondent No. 1's property was used by R2 without paying any license fees. The jurisdiction for trying the leave and License Agreement would not lie with NCLT.

6.4 Shareholding pattern of Alisha Holdings Private Limited (R1 Company) at the time of filing of Petition before NCLT, Mumbai Bench. (Subsequent to 21.07.2022. Admittedly the Shareholding pattern has changed with Petitioner having less than 8% shares in the Company subsequent to rights issue on 19.09.2022) –

Name of Shareholder	% of Shares	No. of Shares
Shaku Sadarangani jointly with Ajay Sadarangani	16.80%	168
Shaku Sadarangani jointly with jay Sadarangani	16.70%	167
Prakash Chhabria	33%	330
Ajay Sadarangani (Kishore's Shareholding)	16.70%	167

Sanjay Sadarangani (Kishore's Shareholding)	16.80%	168
Total	100%	100

Ajay and Sanjay were joint Shareholder with Kishore Sadarangani. Since the demise of Kishore Sadarangani, Ajay and Sanjay are entitled to Kishore's Shareholding as shown in the table.

6.5 R3's appointment as director is valid and in accordance with the applicable provisions-

- a. Notice dated 05.06.2022 was issued for the Board meeting to be held on 13.05.2022, for R6's appointment.
- b. R3 was appointed by the Board on 13.06.2022 — as per Section 161.
- c. Thereafter, notice dated 27.06.2022 for the EOGM to be held on 21.07.2022 was issued, for the Special Business of Removal of P as director. By way of Addendum dated 20.07.2022, it was notified that the confirmation of R3's appointment would also be placed before the general body.
- d. On 21.07.2022, the EOGM was held by video conferencing. By a show of hands, the aforesaid 2 resolutions were passed, upon voting by a show of hands in accordance with Article 57 of AoA (Pg.59 of the Petition).

6.6 The aforesaid facts pertaining to the EOGM held on 21.07.2022 have taken place subsequent to the filing of the Company Petition, and no amendment to the CP has been made by the Petitioner. The NCLT cannot therefore grant interim reliefs in respect of matter which do not form part of the CP – *SP Join r. Kalinga Tubes (1965) 2 SCR 720 para 7, 23, 33, 34; -Shree Ram Urban Infrastructure Ltd. v. Shri RIB Dhall, 2009 SCC OnLine 1413 paras 7, 10, 14.*

6.7 Interim relief can only be in aid of final relief in the proceeding and cannot go beyond the final relief sought — *St. of Orissa v. Madan Gopal Rungta*

AIR 1952 SC 12 - paragraph 15; Cotton Corporation of India v. United Industrial Bank (1983) 4 SCC 625 paragraph 10; Ritona Consultancy v. Lohia Jute Press (2001) 3 SCC 68 paragraph 5.

6.8 Petitioner cannot continue as director in view of the bar contained in Section 196 of the Companies Act-

a. The NCLT cannot now restore R1 to a position where one of its directors shall be in violation of Sec. 196 - ***Mahima Dada v. Renuka Dada, (2022) 10 SCC 258.***

b. The NCLT cannot remove R3 as director at the interim stage, which would render R 1 without quorum. Court orders cannot lead to or perpetuate an illegality -- ***South Eastern Coalfields v. State of MP, (2003) 8 SCC 648 paras 27, 28; Goa State Cooperative Bank Ltd. v. Krishna Nath A, (2019) 20 SCC 38 paras 22-24.***

6.9 The High Court has passed the following orders which disclose that the dispute is essentially civil in nature, and therefore, it cannot be entertained by the NCLT. The Petitioner / Applicant No.1 has also filed interim applications for similar reliefs before the High Court and failed to obtain orders in her favour-

a. 09.10.2019- it is recorded that “*there are disputes inter se between the family members which has a bearing on the operations of these two companies*”.

b. 16.10.2019- restraining parties from acting upon a notice whereby P proposed R6 to be appointed as director.

c. The jurisdiction of NCLT under Section 430 is to be strictly construed- ***Aruna Oswal v. Pankaj Oswal, (2020) 8 SCC 79 para 28,29,31,33; Pradip Kaindar v. Rajiv Sanghvi, 2022 SCC OnLine Born 3147 paras 44, 45.***

6.10 The Petitioner has approached the Tribunal with unclean hands. It is the duty of a party asking for an injunction to bring under the notice of the

Court all facts material to the determination of his right to that injunction. The Petitioner has suppressed filing of the IA (L) No.19367 of 2022 (Ex.13 at Pg. 70 in R3 Reply to the Petition) wherein reliefs were sought which are identical to the reliefs sought in the present Petition. The cause of action on the basis of filing IA (L) No. 19367 of 2022 and the facts therein are identical to the cause of action and the facts in the present Petition. The Petitioner has suppressed these from this Tribunal.

- 6.11 By an Order dated 11.10.2022, the IA (L) No. 19367 of 2022 was withdrawn unconditionally. *Ramjas Foundation v. Union of India (2010) 14 SCC 38: (2011) 4 SCC (Civ) 889: 2010 SCC OnLine SC 1254 at page 51 paragraphs 21-25.*
- 6.12 Where oppression is alleged by one group of members against another, and where conduct of both groups is not above board, the claim of equity of the aggrieved group cannot be sustained- *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333 paragraphs 46, 49, 68-73, 171.*
- 6.13 It was argued that the Addendum was issued one day before the date of EOGM. Under Section 101 of the Act, a Notice of three-week period needs to be given for General Meeting, which was correctly given in this matter. Under Section 102 of the Act, a statement showing the special business needed to be carried out is to be annexed to the Notice. There are no legal provisions setting out the procedure to serve an Addendum. But in practice, an addition can be made to Notice to add an item of business. The reasoning is that if any item of business needs the calling of a general body meeting, then instead of waiting for 21 days and first give notice, an addendum can be circulated to those entitled to receive notice. There is an amendment to notice, then a fresh Notice will need to be issued and 21 days service will be required.
- 6.14 The Secretarial Standard 2 states as under

—SS. 1.2.9 — Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the Notice of the Meeting at least twenty-one clear days before the Meetings.

This applies to an amendment to the notice and not to an addendum to the notice. An addendum is an 'addition' to the content of the original Notice whereas amendment is an `alteration' in the content of the existing Notice.

6.15 In the circumstances, the IA 129 of 2022 and IA 167 of 2022 be dismissed with Cost.

Findings and Observations:

7. It is an admitted fact that the present Respondent Company is not doing any business except owning immovable property in the Commercial Building known as “Raghuvanshi Mansion” which is drawing rental income. Similarly, it is also an admitted fact that the Petitioners as well as the Respondents are closely related to each other. It is also an admitted fact that the present IA 129 of 2022 is filed by the Petitioner Smt. Shaku Kishore Sadarangani along with Mr. Sanjay Kishore Sadarangani and Smt. Sonia Prakash Chhabria who are respectively arrayed as Respondents 4 & 6 in the main Company Petition. Similarly, there are multiple legal proceedings pending before the Hon’ble Bombay High Court between the parties.
8. Now, coming to the contentions of the Applicants that Respondent No.2 has illegally and unilaterally taken over the management of Respondent No.1 Company to the exclusion of the Applicant and is taking decisions for the Respondent No.1 Company without conducting meetings and /or giving notices of meetings to the Applicant as provided for under the law. To this effect, the Applicant submitted that the notice served on 14.06.2022 required the signatures of Respondent No.6 who holds shares jointly with Respondent No.2 and the notice for addendum served just one day before the EOGM dated 21.07.2022 is also bad

in law because the Act prescribes a period of 21 days for serving such notice. These instances were cited as evidence of the prejudicial manner in which the affairs of the Respondent No.1 Company are being carried out.

The Respondents while denying the same, have placed on record that the notice for the EOGM held on 21.07.2022 was duly served upon the Members on 27.06.2022, which is well within the 21 days' notice that is to be given to the members of a company as per the statutory requirements. However, the realm of inquiry here is whether there was also a requirement to comply with the 21 days' requirement while serving the addendum to the agendas of the EOGM dated 20.07.2022. It is clear from reading of Companies Act, 2013 that there is no obligation to provide a 21 days' notice for an addendum to an EOGM that has already been scheduled in compliance of the 21 days' notice.

9. It is further contented by the Applicant that there has been negligence and dereliction of duty by Respondent No.2 and such conduct resulted in Respondent No.1 Company's failure in complying with statutory obligations like payment of goods and services tax (GST), property tax, electricity charges etc.

This Tribunal notes that there are pending disputes before the Hon'ble High Court of Bombay in which the Respondent No.2 and others allege negligence and dereliction of duty on the behalf of the Applicant which resulted in the failure of complying with the statutory obligations and payment of relevant statutory dues. Therefore, the Petitioner once again reagitates the same issue which is already *sub judice* before the Hon'ble Bombay High Court.

10. The Applicant also submitted that illegal appointment of Respondent No.3 without notifying the Board (Applicant) or Shareholders, in addition to the failure to call any meetings or holding any voting is in contravention to the provisions of the Companies Act, 2013. The primary argument of the Applicant here is that the stay order of the Hon'ble Bombay High Court dated 16.10.2019 on EOGM notice dated 10.10.2019 was not vacated and despite the stay order, the appointment of Respondent No.3 took place. In terms of another order of the Hon'ble Bombay

High Court dated 06.02.2020 a neutral Authorised Representative was appointed for the Respondent No.1 Company by the Court who tendered resignation on 18.12.2020.

It must be noted that Respondent No.3 was appointed as an Additional Director by the Board of Directors of the Respondent No.1 Company on 13.06.2022 and regularized in the EOGM held on 21.07.2022 as reflected in the DIR-12 placed on record. On perusal of the order dated 16.10.2019, it appears that there was no explicit embargo on the appointment of an additional director of the Respondent No.1 Company till the *lis* was pending before the Hon'ble Bombay High Court but only those corporate actions were stayed that formed part of the letter/ EOGM notice dated 10.10.2019.

11. The Applicant has also challenged the EOGM dated 21.07.2022 which had an agenda amongst others for the regularization of Respondent No.3 as one of the Directors. Annexure C to the Application is the MCA Master Data attached to it and which reflects the appointment of Respondent No.3 as the Director of Respondent No.1.
12. As far as the issue of the removal of Applicant is concerned, the Applicant was issued a special notice dated 18.06.2022 (Annexure E to the Application) under Section 169 of the Act setting out reasons for removal which according to the submission of the Applicant are not within the ambit of Section 169. This notice was given pursuant to a notice dated 14.06.2022 for meeting of the Board of Directors on 26.06.2022 to deliberate on convening an EOGM for the removal of the Applicant. The Applicant sent its representation on 25.06.2022 replying to the special notice dated 18.06.2022, which was also read during the meeting of the Board of Directors dated 26.06.2022. Therefore, it is established that the Applicant was given an opportunity to be heard as contemplated under Section 169 of the Act.
13. It was further contended by the Applicant that since Respondent No.2 and Respondent No.6 are "Joint Shareholders" holding 33% in the Company, the

notice dated 14.06.2022 is bad in law for want of signatures of Respondent No.6. It is interesting to note that although the Applicant and Applicant No.2 (Respondent No.4 in the main Petition) were present at the EOGM held on 21.07.2022, according to the Applicant's own submissions, despite them having a combined shareholding of 50.30%, their votes were discarded on the issue of removal of the Applicant. Although, an attempt to establish the joint shareholding has been done by the Applicant, nothing concrete was placed on record to ascertain the appropriate breakup of shareholding of the shareholders of Respondent No.1.

14. Now, it is an accepted principle that mere removal of a director from the company does not amount to oppression and mismanagement as has been held in *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors.* 2021 SCC *OnLine SC 272*. Therefore, removal of director in compliance with the law with no indication of a grand scheme or plan against the director cannot be termed as oppression prejudicial to the interests of the Respondent No.1 Company or its members.
15. However, the challenge to the EOGM dated 21.07.2022 cannot be sustained in light of the fact that there is no requirement of a 21 days' notice for an addendum to an already schedule EOGM.
16. Lastly, the Applicant also contended that Respondents have violated several provisions of MoA, AoA of the Respondent No.1 Company and the provisions of the Companies Act, 2013 as well. The Applicant submitted that the increase in share capital at the EOGM is absurd and bad in law as no opportunity was given to other shareholders. Further, it was also submitted that Respondent No.2 illegally made himself the chairman of the Board without following the procedure prescribed in the Articles of Association. However, the Respondent No.2 has placed on record the Resolution appointing him as the Chairman of Respondent No.1 Company in a meeting of the Board of Directors dated 09.08.2014 and a notice dated 16.07.2018 for the Annual General Meeting of Respondent No.1

Company issued by Respondent No.2 as the Chairman of the Respondent No.1 Company.

17. Therefore, the prayers of the Applicant to the effect of appointing an administrator as a preventive measure against deterioration of Respondent No.1 Company's affairs and staying the effect and operation of the resolution passed in the EOGM dated 21.07.2022 cannot be sustained. Moreover, since the Respondent Company is not doing any business as such and the only source of income for the company is through the rental income, appointing an administrator would not serve any purpose and the best alternative order would be ordering winding up which can be considered at the time of passing of final order.
18. The Hon'ble Supreme Court of India in *Shanti Prasad Jain v. Kalinga Tubes Limited, 1965 AIR 1535, 1965 SCR (2) 720*, interpreted the term "oppression" to mean a series of events that showed that the affairs of the company were being conducted in a manner that was burdensome, harsh and wrongful to the minority shareholders of the company. Furthermore, such conduct necessarily involved an element of lack of probity or fair dealing towards the minority shareholders, who had entrusted their capital to the company. The Petitioners except citing the above two incidents did not show series of incidents of misappropriation as laid down by the Hon'ble Supreme Court in the above case.
19. In so far as the oppression relating to the EOGM held on 21.07.2022 and the right issue dated 19.09.2022 are concerned, both the incidents have taken place subsequent to the filing of the Company Petition as the Company Petition was filed on 15.07.2022. The Petitioner did not file any amendment application claiming those reliefs in the main Company Petition except claiming them in the above IAs. As rightly contented by the Respondents, the Hon'ble Supreme Court in *State of Orissa v. Madan Gopal Rungta AIR 1952 SC 12* held that interim relief can only be in aid of final relief in the proceeding and cannot go beyond the final relief sought.

Therefore, NCLT cannot grant interim reliefs in respect of matter which do not form part of the CP.

20. Moreover, as per the written submissions of the Respondents, they allege that at the time of filing of the main Company Petition, the Shareholding pattern changed with Petitioner having less than 8% shares in the Company subsequent to rights issue on 19.09.2022. The Petitioner is having 16.80% and 16.70 % shareholding jointly with Mr. Ajay Sadarangani and Mr. Sanjay Sadarangani respectively. However, the other joint shareholders did not join as Petitioners in the main Company Petition.
21. In light of the above facts and conduct of the parties, this bench is of the considered opinion that the Applicant and the Respondents are in loggerheads and litigating in different legal forums and their conduct is nothing but a clear misuse of the process of NCLT and a clear case of forum shopping.

This Tribunal is unable to understand that how certain Respondents, mainly R4 and R6 in the main Company Petition can file an application along with Applicant for interim reliefs and the conduct of the Applicant in filing the above application itself speaks that there is a collusion and group rivalry among the Applicant and some of the Respondents on one side and the other Respondents on the other side. This Bench also observes that the present Applicant Smt. Shaku Kishore Sadarangani is merely being used as a pawn to settle the score among the Respondents.

22. It is a settled principle of law that an interim order cannot be granted by Courts or Tribunals unless the Petitioner establishes prima-facie case, balance of convenience and irreparable injury. This bench did not find any prima facie case or balance of convenience in favour of the Petitioners for granting of interim relief more so in view of the fact the Company is not doing any business except getting rental income from the property owned by the Company.
23. For the aforesaid reasons, viewing from any angle, this tribunal is of the view that the Applicants did not approach this bench with clean hands and they are not

entitled for any interim or equitable relief and the IAs are liable to be rejected. Accordingly, with the above observations, IA 129 of 2022 and IA 167 of 2022 are dismissed.

24. The dismissal of the above IAs does not mean granting passport to the Respondents to run the Company by totally giving go by to the legal principles of Corporate Governance.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)