

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-IV**

CP/352/MB/2021

[An application filed under section 241-242 of the Companies Act, 2013]

In the matter of:

Mr. Akhtar Parvez s/o Asgharali Maimoon

Having address at: Aged 65 years, Occupation: Business

R/o 723, Saify Villa, Nelson Square

Chindwara Road,

Nagpur-440013

....Petitioner

Versus

AMA Industries Private Limited & Ors.

.... Respondent

Order Delivered on 17.04.2024.

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Petitioner:

Mr. Ashish O. Lalpuria

a/w Ms. Suman

Ramkumar Dhamecha,

Ld. Authorised
Representative.

For the Respondent: Mr. Ninad
Sahasrabuddhe, Ld.
Authorised
Representative .

ORDER

This petition under Section 241-242 of the Companies Act, 2013 is filed by the petitioners seeking certain relief against the act of oppression and mismanagement of Respondents.

I. The present Company Petition is filed by the Petitioner/ Applicant seeking following reliefs:

- a) *To direct the respondents not to give effect to, cancel and nullify the resolutions passed for removing the Petitioner from Directorship in the Respondent No. 1 Company.*
- b) *To direct the respondents not to give effect, cancel and nullify the resolutions dated 15th September 2018, 02nd September, 2020 and 18th January, 2021 passed for increasing the authorised share capital the Respondent No. 1 Company.*
- c) *To direct the respondents not to give effect to, cancel and nullify the all the 11 allotments of the shares as mentioned in the*

Petition of the Respondent No. 1 Company as wrongfully made which are particularly described herein supra.

- d) To direct the Respondents to maintain status quo of the authorised share capital of the Respondent Company as on 31.03.2018.*
- e) To direct the Respondents to maintain status quo of the composition of the Board of the Respondent Company as on 31.03.2018.*
- f) To direct the Respondents to maintain status quo of the shareholding pattern of the Respondent Company as on 31.03.2019.*
- g) To direct the Respondents not to call and convene any meeting of the Board of Directors or Shareholders of the Respondent Company without serving requisite notices by Registered Post on the Petitioner and without prior approval of this Hon'ble Bench.*
- h) To direct the Respondents not to transfer or alienate or create any third-party interest in or in any manner deal with the immovable and movable assets and properties of the Respondent No. 1 Company;*
- i) To direct the Respondents to utilize the funds of the Respondent No. 1 company only after placing the requirement for approval before the board meeting and to direct the*

respondents not to withdraw any cash unless approved in a board meeting unanimously where Petitioner is present;

- j) To direct the Respondents to provide to the Petitioner true copies of all the documents, registers etc. relat... to the board and general meetings of the respondent company and of the registers and statutory records maintained by the Respondent Company.*
- k) To instruct that all bank operations be done with one compulsory signature of Petitioner or in the alternate by any independent reputed person to be appointed as an independent Chairman of the Company.*
- l) To direct that the management and affairs of the Respondent No. 1 Company be conducted by the Board of Directors constituted by this Honourable Tribunal as it may deem fit, including petitioner as Managing Director of the company;*
- m) Direct the Respondent Nos. 1 to 3 to deposit the amount due against them to the Petitioner before the Hon'ble Tribunal;*
- n) To direct that all the bank accounts of the Respondent No.1 Company be operated under the joint signature of the Petitioner being one of the signatory and any of the other Directors being the signatory;*
- o) Direct the Creditors to withhold the payment to be made to the Respondent No. 1 Company, pending adjudication of the*

present application by the Hon'ble Tribunal or to deposit such payment before this Hon'ble Tribunal;

- p) Appoint any independent person as an interim Chair- man of the Respondent No. 1 Company with powers to approve making of the payments and withdrawals from the accounts of Respondent No.1 Company;*
- q) Grant ad-interim relief in terms of the aforesaid prayer- clauses as may be deemed fit and proper to the Hon'ble Tribunal pending adjudication of the present application on its own merits;*
- r) Declare that Respondent No. 2 and 3 are not fit and proper persons to hold the position of directorship in the Company;*
- s) To pass ad interim ex-parte order and interim order restraining the Respondents from diverting money from the bank accounts of Respondent No. 1 Company and- saddle the cost of the present petition upon the Respondents;*
- t) To grant such other relief and pass such other orders as this Honourable Tribunal may deem fit and proper in the facts and circumstances of the case and in the in- interest of justice.*

Submissions of the Petitioner:

1. AMA Industries Private Limited i.e. Respondent No.1 Company was incorporated under the provisions of Companies Act, 1956 on 24.07.2002. The Petitioner along

with the Respondent No. 2, 3 & 4 are the Directors of the Respondent No. 1 Company and is owned by the families of 3 (Three) brothers including Petitioner.

2. Disregarding the fraudulent and illegal increase in authorised share capital and the allotments made by the Respondents on various dates, the Petitioner holds 2,50,000 Equity Shares which accounts to 33.33% of the total paid up share capital of the Respondent No. 1 Company.
3. The Respondents have fraudulently shown allotment of Equity Shares to Respondent No. 2 & 3 by way of right issues during the period starting from 29/06/2019 to 12/03/2021, thereby diluting the shareholding of the Petitioner from 33.33% to meagre 4.94% unilaterally. The Respondent Nos. 2. & 3 have also illegally removed the Petitioner from his office of Director of the Respondent No. 1 Company without giving him an opportunity of being heard by showing an illegal Ordinary Resolution of 23.06.2020 which was during the national lockdown imposed by the government due to Covid. They have been also mismanaging the Respondent No. I Company by selling the properties of Respondent No. 1 Company despite caution notices in local newspapers warning against such unauthorized sales.
4. Three major acts of oppression and mismanagement raised by the Petitioner in the Petition filed are detailed as under:

4.1. Dilution In Shareholding Of The Petitioner From 33.33% To 4.94%.

- i. Various illegalities committed by the Respondents in increasing the Authorised Share Capital (ASC) of the Respondent Company from Rs. 1 Crore to Rs. 5.06 Crores.
- ii. No Notice was served upon the Petitioner pursuant to Section 173(3) of the Companies Act, 2013 for conducting board meetings on 01/09/2018, 02/09/2020/, 18/01/2021 for increasing the ASC of the Company from Rs. 1 crore to Rs. 3 crores, Rs. 3 crores to Rs. 4.9 crores and Rs. 4.9 crores to Rs. 5.06 crore respectively.
- iii. Notice pursuant to Section 101 of the Companies Act, 2013 was not served upon the Petitioner for conducting Extra- Ordinary General Meetings on 15/09/2018, 02/09/2020/, 18/01/2021 for increasing the ASC of the Company as aforestated.
- iv. Pursuant to Clause 13. (i), (iii) of Articles of Association of the Respondent Company, consent of members pursuant to section 101 of the Companies Act, 2013 is required to conduct general meetings on a shorter notice period i.e. less

than 21 clear days. However, no such consent was obtained by the Respondent Company.

v. Various illegal allotments dated 29/06/2019, 23/11/2019, 07/12/2019, 21/12/2019, 17/02/2020, 09/11/2020, 20/11/2020, 30/11/2020, 10/12/2020, 18/12/2020, 12/03/2021 of total 4310000 equity shares on rights issue were allotted by the Respondents to themselves thereby diluting the shareholding of the Petitioner from 33.33% to 4.94%. The petitioner was not offered proportionate shares and therefore the question of renunciation of shares does not arise.

- 4.2. No Notice was served upon the Petitioner for alleged EGM held on 23/06/2020 for removal of the Petitioner from the Respondent Company; The Petitioner was not given the opportunity of being heard pursuant to the provisions of sub section 1 of section 169 before his purported removal;
- 4.3. Even after publication of Caution Notice dated 20/03/2021 in local newspaper, the Respondents have illegally sold the office block of the Respondent Company situated at Nagpur to son of Respondent No. 3.

Submissions of the Respondent:

1. Removal of the Petitioner as director from the Respondent No.1:

- a) The petitioner was removed by following the due process of law as prescribed under section 169 of the companies Act,2013 r/w sec 100 of the Companies Act,2013. The Respondent has relied upon the following documents:

Sr. No	Particulars	Event Date	Provision of law
1	E Form DIR 12 filed with the ROC for removal of petitioner as Director of the R1	22/07/2020	The E Form DIR 12 is required to be filed within 30 days from passing of a Resolution. Whether complied- yes
2	Requisition received from Abdul Hussain and Maimoon and Iqbal Hussain Maimoon(both shareholders) addressed to the Board of Directors of the R1 for requiring EOGM to be held for removal of petitioner as	19.05.2020	Sec 100 of the Companies Act, 2013. Whether complied- yes

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	Director of the Company.		
3	Special Notice received from Abdul Hussain and Maimoon and Iqbal Hussain Maimoon(both shareholders) addressed to the Board of Directors of the R1 for requiring EOGM to be held for removal of petitioner as Director of the Company.	19.05.2020	Pursuant to Sec 169(2) of the Companies Act, 2013. Whether complied- yes
4	Proof of dispatch of notice of Board Meeting to convene EOGM.	20.05.2020	Section 173(3) of the Companies Act, 2013. Whether complied- yes
5	Notice of EOGM sent by the company pursuant to receipt of requisitions and special notice.	01.06.2020	Sec 100 and Sec 169(4) of the Companies Act, 2013. Whether complied- yes

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6	Proof of dispatch of notice of EOGM to be held on 23.06.2020	01.06.2020	Sec 101 of the Companies Act, 2013. Whether complied- yes
7	The EOGM was duly held and resolution was passed with the requisite majority.	23.06.2020	Sec 100- 109 of the Companies Act, 2013. Whether complied- yes
8	The nagpur Municipal Corporation issued an order dated 05.06.2020 relating to easing of restrictions phase wise till 30.06.2020.	05.06.2020	As per the referred circular, the Private Offices were permitted to operate with 10% strength or 10 people which ever is more. Whether complied- yes

Considering the above, it is submitted that the due process of the law was followed while removing the Petitioner as Director from the Respondent No.1.

- b) The petitioner was removed from directorship of the Company because of his various anti-company activities and for not fulfilling the commitment made by him to his Mother and leaving the Respondent No.1 abruptly on 31.07.2018 citing reasons relating to his mental health and the stress which he was unable to sustain in managing the affairs of the Respondent No. 1. The Respondent No. 1 operates in a highly sensitive industry and requires full alertness, non-interference, and unidirectional management control.
2. It is stated that if Respondent No. 1 Company decides to nullify the resolutions, It will have to pay back all the money that it has received through these allotments which would indeed be detrimental to the interest of the Respondent No. 1 Company because the fund received through the issue of shares is already put in use to pay the creditors and financiers. Further, as a matter of fact, the Respondent.No 2 and Respondent No. 3 have also given the additional unsecured loans by disposing of their personal properties for infusing the funds in Respondent. No 1 whenever required. Therefore, if the resolutions with respect to the increase in authorised share capital and allotments are nullified, the Respondent No 1 will lose on a lot of funds which is already put in operations. Secondly, as majority beneficiary of such allotments, Respondent No 2 and Respondent No. 3 do not want their money back because it was ultimately put in use for the benefit

and in the best interest of the Respondent No 1 Company which had gone sick due to mismanagement of Respondent No. 1 by the Petitioner since 2012 and by abruptly leaving the Respondent No. 1 on 31.07.2018. Therefore, it is reiterated that the undoing of the allotments to restore the original shareholding position will result in a financial crisis for the Respondent No 1 as it does not have sufficient liquidity to pay off to the beneficiaries of such allotments, further resulting into irrecoverable losses of the Respondent No. 1 affecting interest of approximately 70 employees working with the Respondent No. 1 adversely.

3. It is submitted that, the Respondent No. 1 Company is run on principles of quasi partnership. The Petitioner, Respondent No. 2 and Respondent No. 3 are real brothers The Meeting of Board of Directors and further the notices of meeting of Extra ordinary General Meeting were duly convened as per the applicable provisions of the Companies Act, 2013. The Company being run as a quasi- partnership follows a practise of hand delivering notices to the directors and shareholders of the Company, since the directors and shareholders of the Respondent No. 1 are the family members. The Petitioner by his own will refused to accept the notices of the Board Meetings, as well as of the Extra Ordinary General Meetings, refused to give acknowledgement of receipt of notices, neither ever recorded and conveyed his formal or informal leave of absence to the Respondent No. 1. Therefore, the said Board

Meetings and the Extra Ordinary General Meetings were held validly, in spite of willing absence of the Petitioner and the resolutions as placed before the Board and the Extra Ordinary General Meeting were passed with unanimous majority.

4. The rights issues as carried by the Respondent No 1 from time to time were based upon the various verbal communications since the commencement of the Financial Year 2019-20 and finally the written communication by the Union Bank of India dated 25.09.2019, banker of the Respondent No 1 to increase the share capital of the Respondent No 1 to Rupees 250 Lakh up to 31.03.2020. It is pertinent to note that the Petitioner himself was named as personal guarantor in the said letter of Union Bank of India for sanction of Credit Facilities. There was no personal gain to the Respondent No. 2 and Respondent No. 3 pursuant to such allotments under rights issue. The Respondent No. 2 and 3 infused the capital into the Respondent no. 1 by availing the rights issue and further availing the renunciation including renunciation by the Petitioner, who played mischief with the Respondents by verbally agreeing to renounce his rights to the Respondent No. 1 and Respondent No. 2 with a false promise to sign the renunciation letter at a later date. The Respondent No. 2 and 3 being in quasi partnership with the Petitioner believed claims of the Petitioner not having sufficient money to infuse as capital in the Company and accepted renunciation in good faith.

5. The Respondent No. 2 and Respondent No. 3 have infused the funds in the Respondent No. 1 in good faith and in the best interest of the Respondent No. 1. The Respondent No. 2 and Respondent No. 3 have also infused funds in the Respondent No. 1 whenever necessary in form of unsecured loans amounting to Rs. 7,69,46,101 and Rs. 4,85,77,988 respectively, which is much more than the financial contribution of the Petitioner.
6. The main grievance of the Petitioner is with respect to the allotment of shares purportedly done without involving him, both the Respondent No. 2 and Respondent No. 3 are inclined towards restoring shareholding of the Petitioner to the position as it was before the dispute raised in Company Petition No. 352 of 2021 in a fairest manner possible, with co-operation, intent, and support of the Petitioner to settle the dispute amicably.
7. The Respondent No. 1 Company, which is represented by the Respondent No 2 and Respondent No. 3 presently is ready to allot fresh shares to the Petitioner to bring the shareholding of the Petitioner at par with the Respondent No. 2 and Respondent No. 3.
8. It may also be noted that the Respondent No 1 which is represented by the Respondent No. 2 and Respondent No. 3 has also emailed to the Petitioner on 11 December 2023 expressing their intentions to issue fresh equity shares to the

Petitioner to bring the shareholding of the Petitioner at par with the Respondent No. 2 and Respondent No. 3.

Findings

10. It is the petitioner's case that the Authorised Share Capital was increased over the years from 2018/2019 onwards through rights issue. This bench notes that up to June 2020 the petitioner was the director of the Company and accordingly was in full knowledge of the shares being allotted through rights issue and other related procedures. As a director/shareholder, the Financial statements of the company. was also in his knowledge the petitioner and he was also well aware of the communication received from Union Bank of India (the petitioner is named as Personal Guarantor in the Communication from Union Bank of India) directing the Company to increase the share capital. Despite being in full knowledge, the petitioner has knowingly and voluntarily chosen not to subscribe to the rights issue and now at this late stage and probably as an afterthought has moved this Tribunal alleging Oppression and Mismanagement.
11. The petitioner alleges that he was not given notice for EOGM held on 23.06.2020. However, the bench takes note of the submissions of the respondent wherein proof of dispatch of notice for board meeting to convene EOGM; Notice of EOGM and proof of dispatch of the same have been given. In the EOGM on 23.06.2020 the resolution was

passed by majority. Further, the Secretarial Compliance Certificate filed by the Respondent No. 1 Company with the MCA clearly shows the holding of the board meeting and the said EOGM. Hence, the petitioner's allegation on this account is devoid of merit.

12. The Authorised Share Capital of R1 was increased and R1 and R2 infused funds through subscription of rights issue to overcome the financial needs of the company for payments to the financial creditors and operations of the company, after following the due process of Law prescribed under Companies Act, 2013. Therefore, there is no illegality or violation of provisions laid down in statute. This bench is of the considered view that the Petitioner has failed to substantiate the violation of the procedure by the law laid under Companies act, 2013.
13. In view of the above discussion and findings, this Bench is of the considered view that this Bench cannot grant the relief prayed in the CP No. 352/2021 in terms of Section 241 & 242 of the Companies Act, 2013. Accordingly, the CP No. 352/2021 is **Rejected**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
17.04.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)