

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP No: 276/MB/2022

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 241-242 and other applicable provisions of the Companies Act, 2013;

In the matter of

1. Dr. Dipen Kailaschandra Agrawal

Flat No 100, Heritage Apartment
Civil Lines, Nagpur-440 001
Email: dipen2181@gmail.com

...Petitioner No. 1

2. Govindlal Nityanand Agrawal

80, Ring Road, Shriji Kunj,
Near Burhanpur Jalebewala
Kotwal Nagar, Nagpur-440 015
Email: gla1937@gmail.com

...Petitioner No. 2

3. Ramesh Manaklal Mantri

Mantri Sadan
34, Shivaji Nagar, Nagpur-440 010
Email: mantrinagpur@yahoo.co.in

...Petitioner No. 3

4. Murlidhar Premchand Surjan

23, WHO Road, Civil Lines
Besides GS College Hostel,
Nagpur-440 001
Email: mpsurjan@gmail.com

...Petitioner No. 4

Versus

1. Nag Vidarbha Chamber of Commerce

1st Floor, Plot No. 2, Gazetted Officer,
Colony Cooperative Society, Museum Road
Civil Lines, Nagpur-440 001
Email: nvccnag@yahoo.com

...Respondent No. 1

2. Ashwin Prakash Agrawal (Mehadia)

401, 404 Ashok Tower
Beside Sanatan Dharma Bhawan,
KADBI Chowk, Nagpur-440 001
Email: amehadia@gmail.com

...Respondent No. 2

3. Registrar of Companies, Mumbai I

100, Everest, Marine Drive,
Mumbai I -400002
Email: roc.mumbai@mca.gov.in

...Respondent No. 3

Order delivered on 31.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Petitioners : Senior Counsel Mr. Arif Bookwala,
with Mr. Shyam Dewani, Adv,
Sumit Khanna, Adv., Adv Samiksha
Parekh & Adv. Dakshta Sawant

For the Respondent no 1 : Adv. Gagan Sanghi

1. This Company Petition is filed under Sections 241-242 and other applicable provisions of the Companies Act, 2013. The Petitioner prays for the following final reliefs:

- a. To pass an appropriate order under Section 213, 241, 242 of the Companies Act, 2013, to bring an end to the acts of oppression and mismanagement perpetrated by Respondents No. 2 in the matter of Respondent No. 1;
- b. That this Hon'ble Tribunal be further pleased to declare the appointment of Respondent No. 2 as President of Respondent No. 1 on 10/09/2019 and then on 21/10/2020 as null and void and bad in law in view of the facts and circumstances stated above and that all the acts, deeds, matter or thing committed or caused to be committed by the Respondent No. 2 during his unlawful tenure be declared to be null and void and not binding upon the Respondent No. 1;
- c. To appoint an eminent Independent person to act as an Administrator to administer the affairs of Respondent No. 1 Company including to conduct the Forthcoming AGM for FY 2021-22 for the smooth administration of the affairs of respondent No. 1 company;

- d. To order 77th AGM held on 15/11/2021 as illegal and fresh 77th AGM be held under the supervision of eminent Independent person in the interest of respondent No. 1;
- e. The Respondent No. 2 be directed to indemnify the losses incurred by Respondent No. 1 Company and members during the period of 10.09.2019 to till the date of filing of petition;
- f. To direct Respondent No. 3 to take immediate action against the Respondent No. 2 for getting himself appointed as the President of the Respondent No. 1 despite being disqualified under Section 164(2) of the Companies Act,2013;
- g. This Hon'ble Tribunal be pleased to order forensic audit/investigation of all documents executed by Respondent No. 2 or on his behalf as per Rule 43 of the NCLT Rules. 2016 and be further order Respondent No. 2 to be guilty u/s 447-448 of the Companies Act, 2013;
- h. The Respondent No. 2 be directed not to pass on the advantage of the benevolent proposal offered by Member of Parliament (Nagpur) under good faith to Respondent No. 1 to take lead in shifting congested market, to "Nag Vidarbha Market & Warehouse Pvt Ltd" as stated hereinabove and this Hon'ble Tribunal may give directions with regard thereto as it may deem fit and proper;

- i. Such further and other reliefs as the nature and circumstances of the case may require as this Hon'ble Bench may consider fit.
2. The respondent No. 3 has blocked the DIN (02910003) of respondent no. 2 and disqualified respondent No. 2 under section 164(2) of Companies Act for a period of 5 years from 01/11/2016 to 31/10/2021 from being a director of any company.
3. The respondent No. 2 despite being disqualified u/s 164(2) from becoming director of any company got himself elected as the President of respondent No. 2 in the year 2019 & later on again got himself re-elected on 21.10.2020 & also on 15.11.2021. As on date the respondent No. 2 is the President of respondent No. 1.
4. The respondent No. 2 despite being disqualified u/s 164(2) from becoming director of any company got himself elected as the President of respondent No. 2 in the year 2019 & later on again got himself re-elected on 21.10.2020 & also on 15.11.2021. As on date the respondent No. 2 is the President of respondent No. 1. blocking of DIN, the respondent No. 2 was disqualified u/s 164(2) of The Companies Act, 2013 from being appointed as a Director. However, the respondent No. 2 deliberately suppressed this important material fact from members of

respondent No. 1 & got himself appointed as the Director/President of the respondent No. 1.)

5. It is submitted that respondent No. 2 at the time of his appointment as the Director / President of respondent No. 1 has either given false declaration u/s 152(4) of the Companies Act or not given any declaration at all. Therefore, the appointment of respondent No. 2 as the President of the respondent No. 1 is bad-in-law.
6. After getting appointed as the President of the respondent No. 1. the respondent No. 2 taking advantage of his post started taking various illegal decisions with oblique motive to grab the properties or assets of the respondent No. 1. Many times the respondent No. 2 has also not followed the mandatory provisions of law. Few of the recent contraventions are enumerated below.
7. Operating bank accounts, Signing of Financial Statement, Signing ROC/MCA documents by camouflaging identity.
8. The Respondent No. 2 terminated membership of members, who questioned the decisions of the Respondent No. 2 and board, without there being any provision in the Articles of Association and also without following the due process of law.

9. The Respondent No. 2 in collusion with board members is mismanaging the assets, properties of the Respondent No. 1 and gaining unlawful huge profits by surrendering the tenancy rights of Respondent No. 1
10. The 77th Annual General Meeting of the respondent No. I was called on 27.10.2021, wherein the members of the respondent No. 1 were issued with the notice for attending the same.
11. Suddenly a Board Meeting was held about 04:45 pm. wherein the agenda was to postponed the 77th Annual General Meeting, surprisingly the notice of such Board Meeting was issued by email on the same day at about 03:05 pm.
12. An Emergent Executive Committee Meeting was held about 05:15pm wherein the agenda was to postpone the 77th Annual General Meeting fill further notice: surprisingly the notice of such Board Meeting was issued on the same day at about 04:27 pm, ie., 18 minutes before the start time of Board meeting.
13. Thereafter an email was circulated with the members of the respondent No. 1 at about 06:22 pm, which also encompasses an attachment dated 23.10.2021 wherein it was specifically mentioned that new date for 77th AGM will be announced shortly.

14. As per the knowledge of the petitioner the emergent Executive Meeting was called on 25.10.2021 & no notice pertaining to the executive Meeting dated 23.10.2021 was ever Issued, then how come the decision of postponement of the 77th AGM has been taken even prior to board meeting. To the knowledge & information of the petitioners no such meeting was ever held on 23.10.2021.
15. Public notice was published in the news paper which states that 77th AGM scheduled on 27.10.2021 has been postponed due to some unforeseen circumstances & new date of the postponed AGM will be announced soon. The public notice is contrary to the alleged ante-dated minutes of emergent executive committee meeting alleged to be held on 23.10.2021.
16. That for the first time a notice dated 25.10.2021 for 13th Executive Committee Meeting along with minutes of Emergent Executive Committee Meeting which was held on 25.10.2021 (ante-dated to 23.10.2021), were circulated to the board & executive committee members on whatsapp group wherein it was claimed that 77th AGM was postponed till 15.11.2021.
17. A notice was circulated by email at about 15:50 hrs for general members of the respondent No. 1 regarding conducting of 77th Annual

General Meeting on 15.11.2021 at about 11:00 am. The notice itself is bad in law, as per Articles of Association no AGM can be called without issuing 21 days notice to the general members. But in the present case the notice was issued merely few hours before the AGM. One of the major agenda of the AGM was to elect the president, 3 vice president and 41 executive members for further period of one year. The respondent No. 28 his associates in order to maintain their positions in the Board of the respondent No. 1. devised the notice in such a manner that it would not reach to all the members & even if it does, they would not be in a position to participate in said meeting.

18. The respondent No. 2 in said 77th Annual General Meeting got himself elected as the President of respondent No. 1. Same is the case with the other board members. Thus, it is absolutely clear that the Respondent No. 2 & his associates in conspiracy with each other were mismanaging the affairs, manipulating the records of Respondent No. 1 with an obvious malafide intention.
19. The election of the respondent No. 2 & other office bearers is in utter violation of the provisions of the Companies Act, 2013 & also contrary to the Articles of Association which specifically provides 21 days notice for calling AGM. Thus, the business approved & resolutions passed therein including the election of the respondent No. 28 other office

bearers is illegal, bad- in-law & in utter violation of the mandatory provisions of the law.

20. Again the petitioners have lodged the complaint against the respondent No. 2 and various submissions have been made before the appropriate authority as well to the Respondent No. 3.
21. It is submitted that there is a breach of fiduciary duties on the part of respondents in siphoning of funds. The Respondent No. 2 through his son viz. Vidhan Ashwin Agrawal along with one past president Mr B. C. Bhartia incorporated a clone Company viz. Nag Vidarbha Market and Warehouse Pvt Ltd to take personal benefits & to take lead in developing infrastructure to shift congested market. This clone Company is in violation of the provisions of Companies Act 2013 and Rule 8 and BA of the Companies (Incorporation) Rules. 2014.
22. The Petitioners on knowing all these illegal activities immediately wrote to Respondent No. 3 to suspend the present board of Directors and appoint an independent person to take care of the affairs of the Respondent No. 1 Company and also to verify authenticity of each member on record, convene fresh 77th AGM and afresh election in the said AGM. All the above facts were brought to the notice of ROC/ Police and other authorities through additional affidavit.

23. That Respondent No. 3 is investigating serious and blatant violation of provisions of Companies Act and oppression and mismanagement by present Board of Directors in collusion with Respondent No. 2. The allegation of non-maintenance of statutory members register: adding bogus members; illegally terminating membership of members, non-compliance of provisions for appointments of director(s) are under investigation by the authorities. It is pertinent to mention here that the Central Government (Ministry of Company Affairs) after considering the representation and that prima facie case has been made out, had ordered Inspection under Section 206(5) of the Companies Act, 2013.
24. That Respondent No. 2 refused to renew the membership of members and replied that the membership renewal will be decided after the AGM which is scheduled on 17th December, 2022.
25. Heard the Ld. Counsels for the parties and perused the records. In the backdrop of above stated facts we hold as follows;
26. The powers of the Board of Directors including the powers of persons acting or purporting to act or exercise substantial powers of Management of R1 is immediately and completely suspended except to the extent specified here after.

27. Shri U C Nahta, former Member of CCI, resident of T-16 Green Park Extension, New Delhi 110016, (Mob No. – 8595387010 Email Id: ucnahta@gamil.com) is hereby appointed as “**Administrator**” of R1 at a remuneration of Rs. 3,50,000/- Lakhs per month and other usual perks to manage the affairs of the R1 until further orders. The remuneration and other perks will be paid by the Petitioner. The Petitioner shall also pay the other expenses including travel and stay of the Administrator, It is also made clear that, except R2 other directors shall look after R1’s day to day affairs including financial transactions under the supervision and control of the Administrator. Further the petitioners and respondents and their representatives shall render utmost cooperation and assistance to the Administrator and his staff/consultants/Representatives in discharge of his functions as well as scope of work entrusted in this order.

28. The Administrator shall examine or cause to be examine and make a report (s) to the Tribunal on all the acts/resolutions/decisions/agreements taken, passed, executed by R1 or any of R1’s past and present directors to facilitate the impugned issue and for this purpose may carry out or cause any special audit/transaction audit/fund flow audit/forensic audit and the like so

as to assist this Tribunal to pass appropriate order (s) on the Company
Petition and related Company Applications.

29. That the Administrator is hereby empowered/authorized to appoint or engage such of the staff, consultants, professionals, subject experts as may be deemed appropriate on such fee/remuneration/compensation as may be determined by the Administrator which shall be paid by the Petitioner.
30. That R1 shall make to the Administrator or his staff a full and free/complete disclosure of records of R1, including Books of Accounts/Financial Statements, Contracts, Agreements and the like relating to the affairs of the R1.
31. Until disposal of the present petition, the Respondents and the Administrator shall not (except in the ordinary course of business),
 - a. sell or otherwise dispose of or encumber R1's assets
 - b. incur liabilities
 - c. distribute funds from the company
 - d. enter into any contracts, except those specified in (4) above, to be performed for a period longer than six months
 - e. change the nature of business
 - f. alter or increase the paid-up share capital or issue further shares of R1

g. enter into any related party transactions

32. That R1 is directed to ensure all compliances before the relevant statutory authorities including but not limited to filings under the Companies Act, 2013, under the supervision and superintendence of the Administrator
33. That the reports as directed above shall be completed and filed by the Administrator, as far as possible, initially for a period of 6 months. The term and function of Administrator shall come to an end upon furnishing of the final report to this Tribunal and on passing appropriate orders on the same.
34. That the Administrator shall enjoy complete immunity from any kind of civil and criminal proceedings already launched or to be launched in or outside the country against R1 and its directors for all acts done prior to and subsequent to the date of appoint as an Administrator with an additional immunity and protection during all such legal proceeding for and against R1. None of the state or Central Government agencies shall initiate any actions, civil or criminal, punitive or coercive, against the Administrator for the acts of omission or commission in R1, in exercise of regulatory, enforcement and the like powers.

35. That the Administrator is given liberty to seek such of the directions or guidance from this Tribunal for effective discharge of his functions by filing appropriate applications/reports before this Tribunal.

Sd/-

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
31.01.2023
SAM/Jagdish

JUSTICE P. N. DESHMUKH
Member (Judicial)