

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing / VC Mode (Hybrid))*

**CA No.62 of 2023 in**  
**CP No.115/BB/2022**

U/s 242(4) and other applicable provisions of  
Companies Act, 2013 read with  
Rules 11 and 32 of NCLT Rules, 2016

**In the matter of CA No.62 of 2023:**

**M/s. Simplex TMC Private Limited**

Having its Registered Office at:  
Building No.201, 2<sup>nd</sup> Floor, Yamuna Block,  
BDA Apartment Kengeri Mysore Road,  
Bangalore – 560 060.

... Applicant No.1

**Mr. Kapil Shah**

S/o Mr. Navin Ramji Shah  
R/o 304, Athens 2, Prestige Acropolis,  
Adugudi Post, Bangalore – 560 029.

*Currently living at:*  
2-37-24 Nata, Higashi-ku,  
Fukuoka 811-0204.

... Applicant No.2

**M/s. Unified Company Limited**

Having its Registered Office at:  
Room No.1305, 13/F, Lucky Plaza,  
165-171 Wan Chai Road, Wanchai,  
Hong Kong.

... Applicant No.3

**Versus**

**M/s. Simplex Naigai Castings Pvt. Ltd.**

Having its Registered Office at:  
Plot No.144, 145 and 146,  
Obadenahalli Industrial Area,  
Doddaballapura, 3<sup>rd</sup> Phase, Sunnaghatta,  
Kundana Hobli, Devanahalli Taluk,  
Bangalore, Karnataka – 562 110.

... Respondent No.1

**M/s. Tokyo Foundry Company Ltd.**

Having its Registered Office at:  
Kamitoyookamachi, 561-8, Takasaki,  
Gunma, Pref 370-0871, Japan.

... Respondent No.2

**Mr. Jun Ozawa**

S/o Mr. Yoshihiro Ozawa  
R/o 345-9, Ueno Soujyamachi Maebashi City,  
Gunma, Japan.

... Respondent No.3

**Mr. Tetsuo Saito**

S/o Mr. Tomio Satio  
R/o 800-115, Yawatamachi Takasaki,  
Gunma, Japan.

... Respondent No.4

**In the matter of CP No.115/BB/2022:****M/s. Tokyo Foundry Company Ltd.**

Having its Registered Office at:  
Kamitoyookamachi, 561-8, Takasaki,  
Gunma, Pref 370-0871, Japan.

... Petitioner No.1

**Mr. Jun Ozawa**

S/o Mr. Yoshihiro Ozawa  
R/o 345-9, Ueno Soujyamachi Maebashi City,  
Gunma, Japan.

... Petitioner No.2

**Mr. Tetsuo Saito**

S/o Mr. Tomio Satio  
R/o 800-115, Yawatamachi Takasaki,  
Gunma, Japan.

... Petitioner No.3

**Versus****M/s. Simplex Naigai Castings Pvt. Ltd.**

Having its Registered Office at:  
Plot No.144, 145 and 146,  
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Kundana Hobli, Devanahalli Taluk,  
Bangalore, Karnataka – 562 110.

... Respondent No.1

**M/s. Simplex TMC Private Limited**

Having its Registered Office at:  
Building No.201, 2<sup>nd</sup> Floor, Yamuna Block,  
BDA Apartment Kengeri Mysore Road,  
Bangalore – 560 060.

... Respondent No.2

**Mr. Kapil Shah**

S/o Mr. Navin Ramji Shah  
R/o 304, Athens 2, Prestige Acropolis,  
Adugudi Post, Bangalore – 560 029.  
Shareholder and Director of Simplex Naigai Castings P. Ltd.

Also at: No.35, Plymouth, Irvine, CA 92620  
Also at: 2000 Corporate Dr, APT 531  
in Ladera Ranch, CA

... Respondent No.3

**Mr. Jishnu Madhavan**

S/o Mr. Puthiyaveedu Madhavan  
R/o Kalyan, Thiruvangad, Thalassery,  
Kannur, Kerala – 670 103.

Also at: Mitokosan Building 2F, 2-4  
Kanda-Jimbocho, Chiyoda-ku,  
Tokyo 101-0051, Japan.  
Shareholder and Director of  
Simplex Naigai Castings Pvt. Ltd.

... Respondent No.4

**M/s. Unified Company Limited**

Having its Registered Office at:  
Flat/RM 1305, 13/F, Lucky Centre,  
165-171, Wan Chai Road, Wanchai, Hong Kong.  
Shareholder and Director of  
Simplex Naigai Castings Pvt. Ltd.

... Respondent No.5

**Order delivered on: 19<sup>th</sup> April, 2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Applicants : Shri Shariq Riyaz, Adv.  
For the Respondents : Shri Vivek Kohli, Sr. Adv.

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This Company Application has been filed by M/s. Simplex TMC Pvt. Ltd. and two others (hereinafter referred to as '**Applicants**' being the Respondent Nos. 2, 3 and 5 in the main Company Petition) under Section 242(4) and other applicable provisions of the Companies Act, 2013 read with Rules 11 and 32 of the National Company Law Tribunal Rules, 2016 against aforementioned '**Respondents / Non-Applicants**' seeking the following reliefs:

- (a) *Allow the present Application and dismiss the captioned petition for being devoid of merits and non-maintainable;*
- (b) *Allow the Applicants herein to buy the entire shareholding of the Petitioners / Non-Applicants herein at the cost of their initial investment made at the time of the incorporation of the Respondent No. 1 Company along with a simple interest between 12% to 18% per annum. The Applicants will repay the External Commercial Borrowings ("ECB") as in the books of the Company as per a revised schedule which may be determined by this Hon'ble Tribunal in the order passed by this Hon'ble Tribunal while deciding the captioned petition;*

**Or in the alternative**

(c) Allow the Applicants to sell their entire shareholding in favour of the Non-Applicants at the cost of their initial investment made at the time of the incorporation of the Respondent No. 1 Company along with a simple interest between 12% to 18% p.a.;

**Or in the alternative**

(d) Allow the Applicants to sell their entire shareholding to third party as specified in Para 15(iii) of the instant Application;

(e) Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and in the interest of justice.

**2. Brief facts of the case as stated by the Applicants are given hereunder:**

- (a) Respondent Nos.2, 3 and 4 herein have filed the main Company Petition bearing C.P. No.115/BB/2022 titled 'Tokyo Foundry Company Ltd. & Ors. v. Simplex Naigai Castings Pvt. Ltd. & Ors.' u/s 241 and 242 of the Companies Act, 2013 *inter alia* alleging oppression and mismanagement by the Applicants and others in Respondent No. 1 Company, pending before this Tribunal.
- (b) Respondent No. 1 Company ('R-1 Company') ceased business operations amid disputes between Applicant Group and Non-Applicants, resulting in a deadlock over its functioning and management. Non-Applicants' Petition alleging oppression and mismanagement by Applicants is baseless due to the Company's closure and absence of business activities for years. Moreover, recent data from the MCA Portal confirms the R-1 Company's striking off by the Registrar of Companies. As the Company is non-existent, grant of relief under Sections 241 and 242 of the Companies Act, 2013 is impractical, as Tribunal orders cannot be enforced against a defunct entity and thus reviving the R-1 Company is necessary for Tribunal orders to be executable.
- (c) It is stated that the Non-Applicants, acting as oppressors, approach this Tribunal with unclean hands, manipulating facts to level baseless oppression allegations against the Applicants. Non-Applicants in the Petition are implicated in serious misconduct, such as tampering with meeting minutes, financial misappropriation of R-1 Company, employee

harassment, and breaching the Joint Venture Agreement's terms. Given these actions, they cannot be allowed to seek relief from this Tribunal under its equitable jurisdiction.

(d) The Applicants earlier filed Company Petition No. 20/BB/2019 against the Non-Applicants under Sections 241-242 of the Companies Act, 2013, due to their illegal, oppressive, and arbitrary actions within the R-1 Company. The Applicants, aggrieved by the oppression and mismanagement by the Non-Applicants, sought the following reliefs from this Tribunal in the aforementioned Petition:

- (a) *“Declare that the alleged appointment of Respondent No. 2 as managing director as illegal and void;*
- (b) *Declare that Respondents are guilty of grave oppression and mismanagement in Respondent No. 1 Company, and are acting against the interest of Respondent No. 1 Company and restrain them from any further commission(s) / omission(s) which may be detrimental to the interests of the Respondent No. 1 Company or its members, particularly as set out above;*
- (c) *Declare the Board Meeting held on 18.12.2018 are illegal and void and all resolutions passed there at to be set aside;*
- (d) *Cancel/ Set-aside the transactions regarding financial dealings, recruitment of employees, purchase orders, plant and machinery etc. which are unilaterally taken by the respondents, without the consent of the Petitioners;*
- (e) *Declare that Respondents are guilty of gross misappropriation and misutilization of the funds of Respondent No. 1 Company, and direct Respondents to repay to Respondent No. 1 Company, the entire funds misappropriated by them with immediate effect;*
- (f) *Direct Respondents to give the Petitioners, inspection all the Statutory Records, Books, and/ or other documents, as well as the Books of Accounts, Tally Data, and/ or other documents in originals, pertaining to the Company;*
- (g) *Direct Respondents to solely bear their personal expenses and shall not accrue such liabilities in the name of Respondent No. 1 Company;*
- (h) *Declare that Respondents No. 2 and 3 are unfit to be the Director of Respondent No. 1 Company and pass an order directing the removal of Respondents as Directors of the Company and permanently restrain them from re-appointment as Directors of Respondent No. 1 Company;*
- (i) *Pass an order awarding the costs of the present litigation to the Petitioner;*

- (j) *Restrain Respondents from committing any act or omission which may be detrimental to the interests of Respondent No. 1 Company or its members;*
- (k) *Direct the Respondents to buy the entire shareholding of 50% held by the Petitioners in Respondent No. 1 Company at a fair market valuation to be determined by an independent Chartered Accountant/ Valuer to be appointed by this Hon'ble Tribunal;*
- (l) *Pass such other / further order(s)/ direction(s), which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*
- (e) The Tribunal, *vide* its Order dated 26.09.2019 in CP No.20/BB/2019, granted the Applicants' request to exit the R-1 Company at a fair market valuation. Both Parties were directed to suggest two common names of Chartered Accountant or one common name for ascertaining the market value and fair value of the R-1 Company. Pursuant thereto, the Applicants herein (Petitioner therein) suggested 'O3 Capital Global Advisory Pvt. Ltd.' whereas the Non-Applicants herein (the Respondents therein) suggested 'Corporate Catalyst (India) Pvt. Ltd.'. As consensus was not reached, the Tribunal appointed both to assess the Company's value, concluding the matter with CP No.20/BB/2019. The Applicants were granted the liberty to return if grievances persisted.
- (f) Due to reasons like the unavailability of a business plan, 'O3 Capital', suggested by Applicants, could not conduct the valuation. Subsequently, the Applicants engaged Ms. Daisy Shukla, a registered valuer with IBBI, to carry out the necessary valuation of shares of the Applicants herein. She submitted her report on 07.07.2020. The Applicants filed I.A. No. 370 of 2020 to take on record the valuation report dt.07.07.2020 and I.A. No. 457 of 2020 to consider the valuation report provided by Ms. Daisy Shukla. However, the Tribunal, *vide* its Order dated 07.04.2022, disregarded both Ms.Daisy Shukla's report and that of 'Corporate Catalyst'. All the pending applications were dismissed, leaving the grievances of the Applicants unresolved.
- (g) It is further stated that the Non-Applicants failed to appeal the Order dated 07.04.2022 in C.P. No. 20/BB/2019 and have now filed a belated, frivolous C.P alleging oppression and mismanagement against the Applicants. Since 2019, the R-1 Company's operations have ceased due to Non-Applicants'

oppressive acts. It is stated that the Non-Applicants admit to running the Company since 2019, making their oppression claims baseless and that filing a Petition for a Dormant Company is wasteful and unnecessary. The Non-Applicants' conduct is crucial in such matters, and good faith is required for relief u/s 241 & 242. Their Petition lacks merit and no case of oppression and mismanagement is evident, rendering them ineligible for relief. The present CP is a retaliatory, fabricated effort by Non-Applicants to impede the Applicants' business in the R-1 Company. It lacks good faith and suppresses vital facts, as evident in CP No. 20/BB/ 2019.

- (h) It is also averred that since 2019, the Petitioners/Non-Applicants herein have controlled and managed the R-1 Company, despite the filing of CP No. 20/BB/2019. They continued oppressive actions by conducting Board Meetings, altering bank signatories, etc. Allegedly, on 31.07.2019, they unilaterally passed a Board Resolution instructing Banks not to honour Cheques without joint signatures from Non-Applicant No.3 and Mr. Jishnu Madhavan, excluding the Simplex Group. Letters were sent to Banks and legal notices were issued on 04.03.2020, impacting banking operations. Consequently, payments to the company's Chartered Accountants for essential services, including compliance with RBI and statutory audit requirements, were hindered.
- (i) Further, it is stated that the R-1 Company's statutory dues, such as ESIC, EPF, Professional Tax, and TDS payments, remained unpaid. Employee salaries couldn't be credited due to Non-Applicants' legal notice freezing Company Bank Accounts. Despite repeated requests, the Non-Applicants ignored settling outstanding amounts from the Company's accounts, hindered by their illegal Board Resolution and Bank signatory changes. These actions halted Company operations. The Applicants sought relief in IA No.457 of 2020 to unfreeze accounts for discharging liabilities. Notably, security guard payments were made from Non-Applicant No. 2's Accounts, though the Company funds were available. This demonstrates ongoing oppressive behaviour by the Non-Applicants, leading to non-compliance and mismanagement in the Company.
- (j) The Non-Applicants have sought relief u/s 241-242 of the Companies Act, 2013 invoking the Tribunal's equitable jurisdiction as an alternative to

winding up the Company. However, such relief cannot be granted. As an alternative to winding up, the Applicants propose three alternatives to resolve the dispute: Firstly, they offer to buy the entire shareholding of the Non-Applicants at the initial investment cost, plus simple interest between 12% to 18% p.a., and repay ECB loans as per a revised schedule, securing the shares in an ESCROW account as collateral. Alternatively, they are willing to sell their shares to the Non-Applicants under the same terms. Lastly, if the Non-Applicants decline to purchase the shares, the Applicants request waiver of the Right of First Refusal (ROFR) clause, allowing them to sell to a third party. In light of the above, the Applicants seek a six-month period to finalize the sale. If in the event the Tribunal deems the third proposal is suitable, they request the vacation of the Order dated 27.10.2022 maintaining *status quo* on shareholding of R-1 Company to facilitate the transfer.

3. Pursuant to the Order dated 02.06.2023, Petitioners in C.P. have filed a Memo *vide* Diary No.3598 dated 06.07.2023 regarding the maintainability of the Company Petition by, *inter alia*, stating as under:
  - (a) It is stated that Respondent Nos. 2 to 5 managed R-1 Company in violation of Companies Act, 2013 and its Articles of Association and Memorandum of Association. Instances of oppression and mismanagement by them are outlined in the Company Petition and Rejoinder. They are responsible for day-to-day finance, accounting, tax matters, etc., as per the JV Agreement. Further, the financial statements and tax returns have been handled solely by Respondent Nos. 2 to 5 since the Company's inception, leaving the Petitioners uninformed about the Company's financial status.
  - (b) Until 2022, Mr. Salim Khan, representing the Simplex group, handled R-1 Company's financial matters without the Petitioners' knowledge. The Petitioners discovered this when Mizuho Bank contacted them about monthly ECB reports, stating they had been receiving reports from Mr. Salim Khan until February, 2022. Mr. Salim Khan allegedly claimed the Company was in the process of liquidation, a claim which the Petitioners deny. This underscores Respondent Nos. 2 to 5's responsibility for filing



statutory statements and handling financial matters without consulting the Petitioners.

- (c) Due to Respondents' mismanagement, R-1 failed to file statutory returns and financial statements since 2018, violating Companies Act, 2013. Despite Petitioners' attempts to hold the Board Meetings and discuss compliance, Respondent Nos. 2 to 5 created deadlock situations. Instead of fulfilling obligations, they filed CP No.20/BB/2019 alleging oppression and mismanagement by Petitioners. Petitioners sought intervention via I.A. No.72/2021, requesting the Tribunal appoint a neutral Chairperson to oversee meetings and ensure compliance, including preparation of financial statements and responding to Income Tax Department notices.
- (d) Petitioners approached Statutory Auditors M/s. Guru & Jana to fulfil legal obligations and prepare financial statements for the R-1 Company, but Auditors declined, citing management's responsibility. It is averred that Respondent Nos. 2 to 5's conduct led to non-compliance, resulting in the Company's name being struck off by the ROC Karnataka on 11.11.2021, while the previous Petition was pending. Despite Petitioners' efforts to engage Respondent Nos. 2 to 5 in discussions and compliance, it is stated that they faced constant resistance.
- (e) Section 252 of the Companies Act, 2013 permits a member aggrieved by a company's name being struck off to apply to the Tribunal for restoration. The Tribunal may restore the name if satisfied that the company was in operation at the time or if restoration is just. Rule 87A of the NCLT Rules mandates filing pending financial statements and annual returns upon restoration.
- (f) As stated supra, Respondent Nos. 2 to 5, as per the JV Agreement, were responsible for the day-to-day finance, accounting, and compliance. Petitioners lack financial information due to this arrangement. Despite being 50% shareholders and meeting the second condition for Section 252, they cannot apply for restoration as they lack financial data required for compliance with the Companies Act, 2013.
- (g) It is necessary that Respondent Nos. 2 to 5 be directed to sell their shares to Petitioners at a fair valuation determined by Corporate Catalyst, as prayed for in the previous petition in terms of Order dated 26.09.2019.

This will enable the Petitioners to revive the Company and meet compliance requirements. Alternatively, if Respondent Nos. 2 to 5 refuse to sell, it is prayed that winding up of the Company should be considered.

- (h) The Company Petition filed under Sections 241 and 242 of the Companies Act highlights oppression and mismanagement by Respondent Nos. 2 to 5, detrimental to R-1 Company and Petitioners. Despite the Company's name being struck off, the Tribunal retains authority to adjudicate the petition. Section 248(8) of the Companies Act confirms the Tribunal's power to wind up a Company even if its name has been struck off. This legislative provision ensures that striking off a Company's name doesn't hinder the Tribunal's authority to issue orders against it. In this regard, reliance has been placed upon the decisions, namely, *Hemang Phophalia v. The Greater Bombay Co-operative Bank Limited and Another*, (2019) SCC OnLine NCLAT 1220 and *Elektrans Shipping Private Limited vs. Pierre D'silva and Another*, (2019) SCC OnLine NCLAT 1169. Therefore, the present Company Petition remains maintainable post the striking off of R1 Company's name, aligning with principles established in prior cases such as *Hemang Phophalia* and *Elektrans Shipping*. Alternatively, the Tribunal holds the authority to restore the Company's name and positions of involved parties for adjudication purposes. Further, Section 248(7) of Companies Act, 2013, states that the liabilities of directors, managers, or other officers, and members of a dissolved company, continue as if the company had not been dissolved. Section 250 clarifies that a dissolved company ceases operations except for realizing dues and discharging liabilities or obligations.
- (i) In the instant CP, it is stated that the Petitioners have not only provided an equity investment of INR 6,00,00,000 to the R-1 but have also advanced substantial External Commercial Borrowing (ECB) loans, totalling INR 10,67,05,337 & JPY (Japanese Yen) 240,200,000, secured from Japanese banks under the credit facility of Petitioner No.1, pursuant to various Loan Agreements to support the business operations intended to generate revenue for R-1. Despite these financial aids, R-1, under the management of Respondent Nos. 2 to 5, has defaulted on both the payment of interest and repayment of the principal of the ECB loans. Furthermore, R-1 Company has failed to comply with various legal obligations. Given these

undischarged liabilities and non-compliance, it is stated that Respondent Nos. 3 and 4, as directors, bear continuing liability, and are enforceable as if the Company has not been dissolved.

- (j) It is also stated that this Petition, filed against both the R-1 Company and Respondent Nos. 2 to 5, remains maintainable despite the striking off of R-1's name, due to the mismanagement by Respondent Nos. 2 to 5. These Respondents created a deadlock, precipitating the financial and corporate decline of R-1. By failing to file statutory financial statements and returns, and now raising frivolous objections, they seek to deprive the Petitioners of remedy. Therefore, Respondent Nos. 2 to 5 should be estopped from raising such belated objections and not hinder the adjudication of this CP.

4. In response to the aforesaid Memo, Applicants herein have filed reply to the maintainability of Petition *vide* Diary No.315 dated 16.01.2024 by, *inter alia*, further stating as under:

- (a) It is reiterated that R-1 Company, having been struck off by the ROC, no longer exists, and thus, no relief u/s 241 and 242 of the Companies Act, 2013 can be granted, as the Tribunal's orders cannot be implemented against a non-existent entity. For any orders to be enforceable, the R-1 Company must first be revived. In this regard, they have relied on the Judgement of Hon'ble NCLAT in "*Panthera Developers Pvt. Ltd. v. Sankalp Buildwell Pvt. Ltd. & Ors.*," in Company Appeal (AT) No. 55 of 2023, wherein it was held that a Company struck off for non-filing of statutory returns could not maintain a Petition alleging oppression and mismanagement. Section 250 stipulates that a dissolved Company ceases operations except for discharging liabilities or collecting dues.
- (b) The Applicants denied that Mr. Salim Khan handled financial matters of R-1 Company until 2022 without Petitioners' knowledge, as they frequently interacted with him for financial information. An email dated 23.02.2018, from Mr. Kawanabe to Mr. Salim Khan, involving a visit by Mr. Nose, a Chartered Accountant representing the Petitioners, was cited. While Mr. Nose was not authorized by R-1 to request documents, he sought financial details which were provided, indicating no ill intentions of the Applicants. Furthermore, the Petitioners have treated R-1 Company as their personal domain, excluding Respondent Nos. 3 and 4. Since its inception, the

Petitioners have unilaterally imposed their will, encroaching on matters within the authority of Respondents and thus it led to the filing of CP No. 20/BB/2019 by the Respondents in response to the Petitioners' actions.

- (c) The Applicants assert that no notice was issued for IA No. 72/2021 in CP No. 20/BB/2019. They were deprived of the opportunity to respond, and the IA's contents are wholly denied and furthermore mentioning of the said IA in the present Petition holds no significance. The Petitioners persistently imposed their unilateral decisions on the Applicants herein, disregarding the mutual understanding for joint decision-making as equal shareholders in the JV Company. It is averred that such actions not only disadvantage the Applicants but also harm the interests of R-1 Company. Moreover, their actions deliberately violated the Companies Act 2013, its Rules, and Secretarial Standards, which are evidenced by irregularities in conducting Board Meetings, as detailed in their reply to the main CP.
- (d) The Petitioners sought financial records since 2017, with representatives inspecting accounts during visits to India. Contrary to their claim, Petitioners had ample access to financial information through Mr. Salim Khan's correspondence and meetings. While any shareholder can file Petition for Company revival, it is stated that no derivative action can be brought for a Company which is non-existent as in the present case.
- (e) Moreover, the Judgments cited by Non-Applicants lack relevance to the present case, as they pertain to insolvency and bankruptcy, and not for oppression and mismanagement. The provisions of the I&B Code, 2016 do not directly correspond to those of the Companies Act, 2013. Sections 241-242 of the Companies Act constitute a comprehensive legal framework, rendering their reliance on insolvency-related judgments erroneous. Thus, the Petition warrants dismissal.
- 5.** Pursuant to the Order dated 18.01.2024, Applicants herein have filed written submissions *vide* Diary No.567 dated 29.01.2024 by reiterating the facts as stated *supra* has, *inter alia*, further stated that as R-1 Company is dissolved, relief u/s 241 and 242 of Companies Act, 2013 is untenable, as affirmed in "*Mukund Maheshwari v. Perfect Pottery Co. Ltd. & Anr.*" (1997 SCC OnLine CLB 28) wherein the Court dismissed the Petition, noting that its orders could not be enforced against a non-existent Company. However, the Petitioner was

given liberty to reapply if the Company's name is restored u/s 560(6). It is well-established that any shareholder can file petition for a Company's revival u/s 252 of Companies Act, 2013. Instead of pursuing revival, the Petitioners initiated a derivative action for the non-existent R-1 Company. Reliance in this regard is placed on the Judgments of "*Jaishree Dealcomm Pvt. Ltd. & Ors. v. RoC West Bengal*" (2019 SCC OnLine NCLAT 1270), where a shareholder's appeal was upheld u/s 252(3) of the Companies Act, 2013, and "*Asom Estate Developers Pvt. Ltd. & Anr. v. Registrar of Companies, NER*", (CP No.16/252(3)/GB/2023), wherein, Hon'ble NCLT, Guwahati Bench affirmed shareholders' rights u/s 252(3) to protect their contributions once the Company is active, emphasizing the legal recourse available for revival over derivative actions. The Petitioners, having provided ECB, could have pursued relief u/s 7 of the IBC, 2016. However, the main Petition u/s 241-242 of Companies Act, 2013 is untenable as the R-1 Company is dissolved, leaving them with revival or insolvency petition options. Moreover, the reliance of Petitioners on Section 248(8) of Companies Act, 2013 for the main Petition is misguided. Further, the Tribunal's powers for winding up u/s 270 of Companies Act, 2013 are now governed by I&B Code, 2016. Section 250 ensures the Company's existence for financial liabilities, as in the present case.

6. Pursuant to Order dated 18.01.2024, Non-Applicants herein have filed written submissions *vide* Diary No.1182 dated 22.02.2024 by reiterating the facts as stated supra has, *inter alia*, further stated as under:

(a) Section 248(8) of the Companies Act, 2013 empowers the Tribunal to wind up a Company despite its name being struck-off. Hon'ble NCLAT has affirmed in cases like *Hemang Phophalia (supra)* and *Elektrans Shipping (supra)* that applications under the I&B Code, 2016 are maintainable even for struck-off companies, with the Tribunal authorized to restore their status. Section 248(7) mandates continued liability for directors and members of struck-off companies, enforceable as if the Company had not dissolved, while Sec. 250 permits operation solely for recovering dues and settling obligations.

(b) In the main Petition, R-1 Company, managed by Respondent Nos.2 to 5, defaulted on repaying ECB Loans obtained from Japanese banks, totalling

INR 10,67,05,337 and JPY 240,200,000. The Petitioners seek winding up of R-1 Company and repayment of all funds, including ECB Loans. The Hon'ble NCLAT, New Delhi in *Ramesh Shantilal Modi & Ors. vs. Modi Landscapes Pvt. Ltd. & Ors.*, MANU/NL/0227/2023 citing the decision of the Hon'ble Supreme Court in *M.S.D.C. Radharamanan vs. M.S.D. Chandrasekara Raja & Anr.*, (2008) 6 SCC 750 affirmed the broad powers of the NCLT under Sections 241-242, allowing diverse reliefs, including winding up, if warranted by circumstances. Thus, considering the reliefs sought and the undischarged liabilities of R-1 Company, the present Petition is deemed maintainable.

- (c) The judgment of *Panthera (supra)* cited by the Applicants does not align with this case, as in *Panthera*, it was the Petitioner's name struck off, and not the Respondent's. Here, it's R-1 Company's name that was struck off due to fault of Respondent Nos. 2 to 5.
- (d) Respondent Nos. 2 to 5 were responsible for managing day-to-day finances, accounting, and regulatory compliance for R-1 Company. Petitioners lack access to sufficient financial information to file restoration application u/s 252. Vide prayer (e) of interim reliefs and prayer (g) in the CP, they sought access to statutory records and cooperation from Respondent Nos. 2 to 5 to finalize financial statements for filing and thus adjudication of CP is crucial for resolution.
- (e) Respondent Nos. 2 to 5, having entrusted with the financial management of R-1 Company, failed to fulfil statutory obligations since 2018, which led to its name being struck-off. Despite the Petitioners' efforts to ensure compliance, Respondent Nos. 2 to 5 created deadlock and hindered resolution and it is averred that this negligence proves their oppression and mismanagement. Thus, even with the Company dissolved, the Petition remains maintainable against Respondent Nos. 2 to 5.

- 7.** Heard the learned Counsel for the Applicants and the learned Senior Counsel for the Respondents and carefully perused the materials on record.
- 8.** This is a case where the Respondent No.1 Company, namely, M/s. Simplex Naigai Castings Private Limited has already been struck off by the Assistant Registrar of Companies Karnataka on 11.11.2021 under Section 248 of the

Companies Act, 2013. The main Company Petition was filed under Sections 241 and 242 of Companies Act, 2013 against M/s. Simplex Naigai Castings Pvt. Ltd. itself on 04.07.2022 when the R-1 Company was already struck off and not existing as a legal entity in the Register maintained by the Registrar of Companies Karnataka. The main contention of the Applicants in this C.A. is that since the Company has become non-existent the Petition under Sections 241 and 242 of the Companies Act, 2013 is not maintainable, and even if the Tribunal grants any Order, the same cannot be enforced against a Company which is non-existent. The Applicants herein have in their written submissions cited the Judgment of *Mukund Maheshwari v. Perfect Pottery Co. Ltd. & Anr.*, 1997 SCC OnLine CLB 28, in which it was held as under:

*“8. At present the company is not in existence. Even assuming that the allegations of the petitioner merit consideration and warrant grant of the relief sought for, it is to be borne in mind that the provisions of sections 397, 398 are alternative to winding up, in cases where the petitioner feels that it would be unfairly prejudicial to the petitioner to seek winding up of the company even though the facts may justify such winding up. In the present case, the company having been already dissolved, the question of grant of any relief under section 397/398 would not arise as orders of ours could not be implemented against a non-existing company. Therefore, without going into the merits of the case, we dismiss this petition as infructuous and vacate all interim orders. However, the petitioner is given the liberty to apply again in case he gets the company’s name restored in terms of section 560(6).”*

9. Moreover, in an Order passed by this Tribunal in the case of *Chaitanya Manohar v. All Square Realtors India P. Ltd.* reported in (2019) SCC OnLine NCLT 35807 also when a Petition of oppression and mismanagement was filed against a Company under Sections 397 and 398 of the Companies Act, 1956 and such a Company was struck off by the ROC, the Petition was held to be not maintainable unless the Company was restored back to the Register of the ROC u/s 252 of the Companies Act, 2013. In view of these orders, it is abundantly clear that a Petition u/s 241 and 242 of the Companies Act, 2013 cannot be maintained against a Company which has been struck-off by the ROC and dissolved u/s 248(5) of the Companies Act, 2013; since there is no legal existence of such a Company. In this connection, the reliance of the Petitioners in the main CP and the Respondent in this CA on the Judgments related to application under the Insolvency and Bankruptcy Code, 2016 being maintainable even for struck-off Company are not relevant; since here it is not

a Petition u/s IBC, 2016, but under the provisions of Sections 241 and 242 of the Companies Act, 2013.

- 10.** It would be relevant to refer to the provisions of Section 250 of the Companies Act, 2013, which states as under:

*“250. Effect of company notified as dissolved – Whether a company stands dissolved under Section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.”*

Therefore, filing of a Petition for ‘Oppression and Mismanagement’ under Sections 241-242 of the Companies Act, 2013 cannot be considered to be covered by the exceptions provided under Section 250 of the Companies Act, 2013.

- 11.** Accordingly, we are of the considered opinion that this Company Petition bearing CP No.115/BB/2022 is not maintainable and accordingly, **CA No.62 of 2023 is hereby allowed** and CP No.115/BB/2022 is liable to be dismissed as not maintainable. However, the Petitioners in the main C.P. are at liberty to seek restoration of the Respondent No.1 Company u/s 252 of the Companies Act, 2013 in accordance with Law; for seeking further relief if they so desire.
- 12.** Further, the interim orders granted by this Tribunal on 27.10.2022 stands vacated. In view of the above, **CP No.115/BB/2022 stands closed** along with pending IAs, if any.

**Sd/-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K. BISWAL**  
**MEMBER (JUDICIAL)**

*jsr*