

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-04-2024 AT 10:30 AM**

CP No. 25/241/HYD/2021
u/s. 241 of Companies Act, 2013

IN THE MATTER OF:

Ishwarlal Jesaram Bhagia

...Petitioner

AND

Indocean Engineers Pvt Ltd

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **we hereby dismiss this petition** however, without costs.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

CP. No.25/ 241/ HDB/ 2021

**Under section 241, 242 and 244 of the
Companies Act, 2013 read with Rule 34 of
the NCLT Rules, 2016.**

IN MATTER OF M/S. INDOCEAN ENGINEERS PRIVATE LIMITED

BETWEEN

Ishwarlal Jesaram Bhagia,
S/o. Late Jesaram Dattaram Bhagia,
Residing at Flat No.201, A.K.Enclave,
Road No.3, Banjara Hills,
Hyderabad.

... Petitioner

AND

1. M/s. Indocean Engineers Private Limited,
A Company incorporated under the provisions of
Indian Companies Act, 1956,
Having its registered office at 401,
Regency House, 680, Greenlands Road,
Somajiguda, Hyderabad – 500 082,
Represented by its Managing Director,
Nanik Jesaram Bhagia S/o. Late Jesaram Dattaram Bhagia.
2. Nanik Jesaram Bhagia,
S/o. Late Jesaram Dattaram Bhagia,
8-2-696, Flat No.11,
Meenakshi Towers, Road No.12,
Banjara Hills, Hyderabad – 500034.
3. Ghrinesh Bhagia,
S/o. Nanik Jesaram Bhagia,
8-2-697/II/F/II, Flat No.11,
Road No.12, Banjara Hills, Hyderabad – 500 034.

... Respondents

DATE OF ORDER: 29.04.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties / Counsels Present

For the petitioner : Ms. Sangeeta Bhaskar, Counsel.

For respondents No.1 and 2 : Shri M S Srinivasa Iyengar, Counsel.

PER BENCH

ORDER

1. This present Petition is filed by the Petitioner under Sections 241, 242 and 244 of the Companies Act, 2013 read with Rule 34 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:

- a. To appoint a Chartered Accountant/administrator to conduct comprehensive audit exercise from 2013 till date and investigate the books of account to ascertain whether the balance sheets have been prepared correctly accounting for all the operations and funds flow into the business, and provide report on the expenditures made by the 1st Respondent Company.

- b. To identify all the meetings that were held without quorum and treat the resolutions passed therein as invalid and to declare acts undertaken in implementation of such resolutions as illegal and void;
- c. To ascertain the amount of funds siphoned by the 2nd and 3rd Respondents and direct steps to realize the amounts thus siphoned;
- d. To declare whether proper procedure was followed for holding all Board meetings (adequate notices within the statutory period, circulation of agenda, recording and confirmation of meetings, registers confirming attendance to the meetings, etc.);
- e. To nullify the issuance of right shares and its subsequent transfer of shares in favour of the 3rd Respondent and declare his appointment as a director as void abinitio and to re-constitute the Board of Directors of the 1st Respondent Company.
- f. Direct that the statutory and other records of the Company as may have been falsified and/ or fabricated to be modified/ corrected;
- g. Pass such other and further orders as may be deemed just, expedient and appropriate in order to remove the grievances, complained of;
- h. And in the alternative and if for any reason the reliefs sought for under the provisions of Section Nos. 241, 242 and 244 of the Companies Act, 2013 cannot be granted then to order winding up of the Company on

the ground of its being just and equitable to do so under section 272 under the Companies Act; and

- i. For cost of this Petition.

2. **AVERMENTS BY PETITIONER**

- 2.1 It is averred that the 1st Respondent Company is a private limited company. The 2nd Respondent was appointed as the Managing Director, and the Petitioner and his younger brother Hiralal Jesaram Bhagia were appointed as the Directors of the Company. The Memorandum of Association and Annual Return for the period 2004-2005, 2006-2007 has been filed herewith as **Annexure-1, 2 & 3**. The Share holding pattern and its corresponding ratio in the Respondent No.1 Company up to the period 2009-2010 was as follows:

Sl.No.	Name of the Promoter	Number of Shares	Shareholding percentage in the Company
1.	Nanik Jesaram Bhagia	281	40.61
2.	Ishwarlal Jesaram Bhagia	159	22.98
3.	Hiralal Jesaram Bhagia	150	21.68
4.	Vikram Hiralal Bhagia	102	14.73

The Petitioner was associated with the Respondent No.1 Company as its Director since its establishment in 1967 and was actively involved in the

business operations of the 1st Respondent and in building the said Company to its full potential as a profitable working concern. Initially, the 1st Respondent Company was a profit-making concern and the profit after tax for the period between 2007 to 2013 has been provided in the Table herein below:

Sl.No.	Financial Year	Profit (+)/ Loss (-) in Rupees (Rs.)
1.	2007-2008	(+) Rs.32,84,000/-
2.	2008-2009	(+) Rs.50,85,000/-
3.	2011-2012	(+) Rs.3,89,30,196/-
4.	2012-2013	(+) Rs.77,75,606/-

2.2 It is stated that the Petitioner has not been keeping good health for the past few years and has been visiting office majorly to attend meetings and such other important occasions as and when he is requested to be present though notice or oral communication from the Company. However, the Petitioner was keeping close watch on the business operations until then and since the appointment of the Respondent No.3 the Petitioner was displeased by the process in which the Company was functioning. The Petitioner conducted verification of the records filed with the Registrar of Companies and was shocked by the revelations.

2.3 The Petitioner submits that the Respondents were involved in several illegal actions which includes: (i) illegal appointment of Respondent No.3 as Director on the board of the Company; (ii) increase in the authorized share capital and illegal allotment of shares; (iii) reduction in the shareholding of the Petitioner to minority stake; and (iv) financial mismanagement and conduct of meeting without issuance of statutory notice.

2.4 It is stated that the relevant facts which constitute acts of Oppression and mismanagement is provided hereunder:

- a. **Illegal appointment of Respondent No.3 as Director:** It is stated that the 2nd Respondent started making attempts to induct his son, the 3rd Respondent, as the Director of the 1st Respondent Company right from the year 2010. The Petitioner and other members, Hiralal Jesaram Bhagia and Vikram Hiralal Bhagia informed the 1st and 2nd Respondent about their strong objections/ reservations to appoint the 3rd Respondent as a Director in the 1st Respondent Company through letters and e-mail on several occasions. The Letters objecting appointment of the 3rd Respondent as Director which was sent on 22.12.2010, 02.05.2011 and 05.05.2011 are filed herewith as **Annexure-4 and 5**.

- b. **Increase in authorized share capital and illegal transfer of shares:**
- i. It is stated that on 26.02.2011 at 11 AM, a meeting of the Board of Directors was conducted in the presence of the Petitioner, wherein the Board of Directors resolved that the Petitioner is treated to have vacated office as Director pursuant to the provisions of Section 283(1)(g) of the Companies Act, 1956 alleging that the Petitioner absented himself from 3 Board meetings. However, on the very same date, 26.02.2011 at 4 PM, the 2nd Respondent, maliciously concocted another Minutes of the Meeting recording entries of the alleged meeting as having been conducted by the Board of Directors, wherein the 1st Respondent made a volte-face from its allegations levelled in the meeting conducted at 11 AM and in spirit admitted to have wrongly sent notice under Section 283(1)(g) of the Companies Act, 1956.
- ii. It was resolved that the Board of Directors, had withdrawn the resolution that the Petitioner had vacated as Director, as the Petitioner requested for leave of absence on every occasion of his absence, and the same was approved by the Company. Further, the Minutes of Meeting also recorded that the 2nd Respondent resolved to increase the paid-up capital by issue of 225 equity shares of Rs.1,000/- each for cash at premium of Rs.4,000/- per share and that the share certificates were issued to the

allottee. The alleged Minutes of Meeting was concocted with the alleged signatures of the 2nd & 3rd Respondent and the Petitioner. The Minutes of the Meeting of the Board of Directors dated 26.02.2011 at 4 PM is filed herewith as **Annexure-6**.

- iii. The Petitioner was totally unaware regarding conduct of such meeting or such increase in paid up capital of the Company. The Minutes of the Board Meeting dated 31.03.2011 was manipulated allegedly showing conduct of Meeting at 11 AM wherein it was allegedly resolved to allot 225 equity shares to the 2nd Respondent. It is malafidely recorded in the Minutes that the Petitioner was present at the time of the Meeting of the Board of Directors and such falsehood is intended to distract any/all questions that would logically and statutorily arise with respect to the legality in conduct of such Board Meeting. The Minutes of the Meeting of the Board of Directors dated 31.03.2011 at 11 AM is filed herewith as **Annexure -7**.

c. Reduction in the shareholding of the Petitioner to minority stake:

- i. It is stated that the Petitioner who enjoyed the support of 59.39% shareholders in the 1st Respondent Company, called for an Extraordinary General Body Meeting through notice dated 05.05.2011, to question the allotment of 225 equity shares to the 2nd Respondent and to put to vote the removal of the 2nd Respondent from the position of Managing

- Director. In order to sabotage the Petitioner's plan of action, the 2nd Respondent manipulated the records including pre-dated and fabricated Board Resolutions in order to effect allotment of 225 equity shares to self and further transferred the said shares in favour of his son, Ghrinesh Bhagia, the 3rd Respondent.
- ii. It is stated that the 2nd Respondent in collusion with the 3rd Respondent committed fraud and acts of oppression to reduce the Petitioner's shareholding and to obtain full control over the management and affairs of the 1st Respondent Company. The Petitioner instructs to state that such issue of shares was not for the benefit of the 1st Respondent Company but only intended to benefit the 2nd and 3rd Respondents, therefore all such allotments shall be declared void.
- iii. It is stated that the 2nd Respondent, transferred 150 equity shares of Rs.1,000/- each in favour of the 3rd Respondent. After the 3rd Respondent joined the 1st Respondent Company as the Director on 01.04.2013, the shareholding in the 1st Respondent Company became as below mentioned:

Sl.No.	Name of the Shareholder	Number of shares	Share holding percentage in the Company
1.	Nanik Jesaram Bhagia	356	38.82
2.	Ishwarlal Jesaram Bhagia	159	17.34

3.	Hiralal Jesaram Bhagia	150	16.36
4.	Vikram Hiralal Bhagia	102	11.12
5.	Ghrinesh Bhagia	150	16.36

iv. It is stated that the Petitioner addressed letter dated 10.06.2011 to the Registrar of Companies regarding all such mismanagement orchestrated by the 2nd and 3rd Respondents. The Letter addressed to the Registrar of Companies pertaining to all disputes in the management of M/s. Indocean Engineers Private Limited has been filed herewith as **Annexure-8**. The appointment is void ab initio and hence liable to be cancelled, restoring status quo ante. The allotment of shares in favour of the 3rd Respondent may be set aside and necessary corrections may be made in the register of members of the Company.

d. Financial mismanagement and conduct of meetings without issuance of statutory notice:

i. It is stated that the performance of the Company nosedived after induction of the 3rd Respondent into the 1st Respondent Company. After the 3rd Respondent joined the 1st Respondent Company as the Director on 01.04.2013, there was large scale malpractices conducted by the 2nd and 3rd Respondents, as a result of which the shareholding in the 1st Respondent Company dropped into negative growth and the same

reflected in the working results of the income and expenditure is shown in the Table below:

Sl.No.	Financial Year	Profit(+)/Loss(-) in Rupees (Rs.)
1.	2011-2012	(+) Rs.3,89,30,196/-
2.	2012-2013	(+) Rs.77,75,606/-
3.	2013-2014	(-) Rs.2,25,55,551/-
4.	2014-2015	(-) Rs.2,04,51,226/-
5.	2015-2016	(-) Rs.1,05,80,535/-
6.	2016-2017	(-) Rs.1,15,74,894/-
7.	2017-2018	(-) Rs.82,20,911/-

- ii. It is stated that the entries in the Annual Return reflects payment to the Petitioner of an amount of Rs.12,00,000/- as salary and Rs.1,28,765/- as perquisites in 2016-2017 and Rs.7,00,000/- as salary 95,106/- as perquisites in 2017-2018. It is stated that the Petitioner has not received any remuneration from the 1st Respondent Company as alleged. The Petitioner is unable to provide any details pertaining to the period 2018-2019 and 2019-2020 as the financial statements for the said period have not been shared for his perusal and evaluation nor submitted in the Ministry of Corporate Affairs. The Respondents shall be held

accountable for all such misleading information declared before the statutory Authorities and for siphoning off funds of the 1st Respondent Company. Further, the financial statements clearly show how huge funds of the Company have been flagrantly misused by the 2nd and 3rd Respondents under the guise of various categories of company expenditure as shown herein below:

Sl.No.	Category	Amount in Rupees (Rs.)	
		2016-2017	2017-2018
1.	Loans/advances by GhrineshB hagia	2,15,328-00	3,49,328-00
2.	Conveyance and fuel expenses	11,23,683-00	7,44,663-00
3.	Entertainment and gift expenses	10,25,123-00	8,29,914-00

Therefore, the 2nd and 3rd Respondents committed breach of fiduciary duties as Directors of the Company and shall be held liable for breach of trust and for misappropriating funds of the company and its assets. The Annual Report for the year 2016-2017 and 2017-2018 has been submitted herewith as **Annexure-9 and 10**.

- iii. It is stated that the Minutes of the Meeting of the Board of Directors of the 1st Respondent Company decided that in supersession of the resolutions passed in the previous meetings, the Board of Directors authorized Nanik Ishwarlal Bhagia and the Petitioner to jointly operate the Company's Bank Account with Canara Bank, Somajiguda Branch,

Hyderabad and that the aforesaid Bank was instructed to honour all cheques, promissory notes and other orders drawn by the aforesaid persons and all bills accepted on behalf of the 1st Respondent Company whether such accounts be in credit or overdrawn, and to accept and credit to the accounts of the 1st Respondent Company all moneys deposited with or owing by the Bank or any account or accounts at any point of time or times kept or to be kept in the name and the amount of all cheques, notes, bills, other negotiable instruments, orders or receipts provided they are endorsed/signed jointly by aforementioned authorized signatories on behalf of the Company in the manner and to the extent authorized aforesaid and that such signatures shall be sufficient authority to bind the Company in all transactions between the Bank and the Company including those specifically aforementioned notice shall be in force with effect from 28.06.2011 until a notice in writing of its withdrawal or cancellation or supersession is given to the Bank by the Chairman of the Company/Director authorized in this regard, pursuant to a Resolution passed by the Board. Thus, in spite of the decision taken in the Minutes of the Meeting of the Board of Directors dated 28.06.2011 instructing joint operation of bank account with Canara Bank, Somajiguda Branch by both the Managing Director and the Petitioner, the Managing Director continued to unilaterally Company, in violation

of the terms in the Minutes of the Meeting of the Board of Directors requiring endorsement of joint signatures. The Minutes of the Meeting of the Board of Directors dated 28.06.2011 is filed herewith as **Annexure-11.**

- iv. It is further stated that the Petitioner issued Legal Notice dated making the aforementioned allegations of oppression and mismanagement against the Respondents. However, there was no reply from any of the Respondents nor was there any attempt to consider the allegations made in the Legal Notice and take necessary reparation steps to address the issue raised in the Notice. The copy of the Legal Notice has been submitted herewith as **Annexure-12.**

2.5 It is stated that the Respondent Nos. 2 & 3 are jointly and severally liable for misappropriation and embezzlement of funds, fraud committed against the Company and the Petitioner, non-maintenance of proper and updated books of account, non-access to the Petitioner of the books of account, fraudulent conduct of business and damages therefrom. The Respondents shall be jointly responsible for unilateral increase of share capital, allotment of shares to 2nd Respondent, rectification of the register of members, manipulation of accounts and siphoning of funds, etc and other acts of mismanagement and oppression against the Petitioner and

other members of the Company. The Respondents are also responsible for causing breach of faith, trust and confidence in the Directors who were in charge of management of the Company, colluding to bring about reduction in the shareholding percentage to minority holding, non-conduct of meetings of the Board of Directors, lapse in issue of statutory notice prior to conduct of every such meeting, non-maintenance of minutes book, conduct of meetings and passing of resolutions without proper quorum etc.

3. Reply filed by Respondent Nos. 1 and 2, inter-alia submitting that:

3.1 It is stated that the Petitioner having refused to participate in the affairs of the Respondent No.1 Company for almost 15 years, is now attempting to set up a speculative claim. The Petitioner in fact is liable for damages as he has gone out of the way to interfere and damage the business of the Respondent No.1 Company by his non-cooperation and his willful neglect in attending to the affairs of the Respondent No.1 Company.

3.2 It is stated that the Respondent No.1 Company is a private limited company incorporated by the Respondent No.2 and his father the late Jesaram Dattaram Bhagia as evident from the Articles of Association (**Annexure - 1**). Respondent No.2 and his father were the first Directors of the Respondent No.1 Company and the Respondent No.2 was appointed as the

first Managing Director of the Company in 1967 itself. The Respondent No.1 Company was involved in electrical and mechanical engineering to take over the partnership styled as M/s. Indocean, 12A, Nizamuddin, Delhi.

3.3 It is stated that the Respondent No.3 joined in the Respondent No.1 Company as Sales Manager in 2008 as the Respondent No. 2 required more help in running the Respondent No.1 company. A meeting was held on 28.06.2011 (**annexed as Document No.2**) which was attended by the Petitioner and the Respondent No.2 inter alia the following steps were taken by the Respondent No. 1 company.

- a) 225 equity shares of Rs. 1000/- at a premium of Rs. 4000/- per share was to be issued which were paid for by Respondent No. 2. A copy of the Respondent No. 1's ledger statement (**annexed as Document No.1**) reflects the same.
- b) 150 equity shares of Rs. 1000/- each were transferred from Respondent No. 2 to Respondent No. 3 and Respondent No. 3 was appointed as a sales manager.

3.4 It is stated that the Respondent No.2 vide notice dated 18.02.2013 called for an extraordinary general meeting to consider the appointment of Respondent No.3 as a director and his appointment date is 01.04.2013

(Annexed as Document No.3) and Form 32 is also filed as **Document No.4.**

3.5 It is stated that the decision to induct the Respondent No.3 as a Director and Transfer shares to him was done with the consent of the Petitioner and for the last 11 years the company is being run by the 2 Directors i.e., Respondent No. 2 &3 and the Petitioner has no interest in the running of the business of the Respondent No.1 Company but has refused to participate in the management of the Company and participate in the business of the company, resulting in serious damage to the business of the company and also Petitioner is not willing to co-operate with the other shareholders but is solely interested in bringing ruin to the Company only to fulfil his selfish demands for a stake in the assets of the Respondent No.1 Company.

3.6 It is stated that there is no case for invoking Section 241, 242 and 244 of the Companies Act, 2013. The complaints/claims raised in this petition admittedly relate to acts/decisions made in 2011 and therefore any complaint/claim should have been raised immediately or within 3 years thereof and the fact the complaints are made now, which is almost after a period of 10 year, shows lack of bonafides and are clearly barred by time. It is pertinent to note that the petition filed is absolutely silent about the

cause of action, if any, arose on the date of the purported acts of illegality as pleaded in the Petition that is on and around 26.02.2011 (issue of rights) and then on 31.03.2011 (allotment of additional shares) and then on 11.06.2011 (letter purportedly addressed to Registrar of Companies). Therefore, any claim/dispute ought to have been raised immediately or within 3 years thereof.

3.7 The Respondents filed parawise reply, stating that:

- i.** It is stated that the Respondent denies all allegations contained in the Petition, except those, which are specifically admitted hereafter in this reply. Nothing stated in the counter should be deemed to be admitted merely because the same is not specifically traversed. It is also stated that anything stated in the Petition contrary to and/or inconsistent with what is stated in this Counter be deemed to be expressly denied.
- ii.** It is stated that with regard to the contents of the para regarding jurisdiction of the bench and Limitation the same are hereby false and denied. It is stated that the Petition is hopelessly barred by limitation and therefore the Petition deserves to be dismissed.
- iii.** It is denied that the Petitioner conducted verification of the records filed with the Registrar of the Companies. It is specifically denied that the

Respondents were involved in several illegal actions which includes: (i) illegal appointment of Respondent No.3 as Director on the board of the Company; (ii) increase in the authorized share capital and illegal allotment of shares; (iii) reduction in the shareholding of the Petitioner to minority stake; and (iv) financial mismanagement and conduct of meetings without issuance of statutory notice. It is stated that the affairs of the Respondent No.1 Company are being conducted as per the provisions of the Companies Act, 2013, and the so-called incidents of oppression and mismanagement are false claims made by the Petitioner to blackmail and set up a speculative claim.

- iv.** It is stated that with regard to paras 4.1 & 4.1.1. **(Illegal appointment of Respondent No.3 as a director)** of the Petition, the contents therein are false and hereby denied. It is denied that the 2nd Respondent started making attempts to induct the 3rd Respondent as a Director of the 1st Respondent Company right from the year 2010. It is denied that the Petitioner and other members, Hiralal Jesaram Bhagia and Vikram Hiralal Bhagia informed the 1st and 2nd Respondents about their strong objections/ reservations to appoint the 3rd Respondent as a Director in the 1st Respondent Company through letters and e-mails on several occasions. It is stated the so-called letter filed as Annexure 4 & 5 by the

Petitioner are self-serving documents and there is no proof filed to show that the same have been received by the Respondent in the absence of which the same cannot be relied upon.

- v. It is stated that with regard to paras 4.2 & 4.2.1 (increase in authorized share capital and illegal transfer of shares) of the Petition, the contents therein are false and hereby denied in toto and the Petitioner is put to strict proof of the same. It is reiterated that Shares had been allotted as per Companies act 1956 by issuing notice to attend the meeting where the directors attended for the same and issued Right shares to Respondent No.2 @ 4000/- Per share Premium and 1000/- each Face Value. It is stated that the Company has allotted the Respondent No.2, 225 shares as per provisions of the Companies Act, 1956 and also as per the Article 7 of the Articles of Association of the Company. With regard to para 4.2 & 4.2.2 of the Petition, the contents therein are false and hereby denied in toto and the Petitioner is put to strict proof of the same.
- vi. It is stated that with regard to paras 4.3 & 4.3.1 (Reduction in the shareholding of the Petitioner to minority stake) of the Petition, the contents therein are false and hereby denied in toto and the Petitioner is put to strict proof of the same. It is reiterated that the Petitioner consented

to the issuance of additional shares and therefore is estopped from contesting the same now.

- vii.** It is stated that with regard to para 4.4 to 4.4.4 (Financial mismanagement and conduct of meetings without issuance of statutory notice) of the Petition the contents therein are false and hereby denied in toto and the Petitioner is put to strict proof of the same. It is stated that the Petitioner, for the reasons best known to him has chosen not to attend the Board meetings, approve and sign the said accounts. It is further stated that it's a known fact that the Financial Accounts have to be signed by two directors mandatorily under section 215 of Companies Act 1956, before submission to auditors for their report being the only other director of the Company refuses to sign the Annual Accounts of the Company from the last three financial years been 2009-10, 2010-11 & 2011-12 and has also not co-operating with the management of the Company. It is for this reason that Respondent Nos. 2 & 3 have been running the company with the full knowledge of the Petitioner who is being sent all the notices regarding meetings, etc. The Respondents reserve the right to produce such notices/ documents to prove that the Petitioner being aware of the affairs of the Company has chosen to not cooperate nor attend any meetings.

viii. It is stated that with regard to para 4.4.5 of the Petition the contents therein are false and hereby denied in toto and the Petitioner is put to strict proof of the same. It is stated that the Respondent is not aware of the alleged legal notice dated 02.11.2020 as the offices of the Company were closed due to the present Covid-19 pandemic. The Petitioner has always had access to the books of account to verify the same and it is false to state that he has been denied access to the books of the company. The Petitioner, being a Director, has always has access to the books of the Respondent No.1 Company and is welcome to verify the books of the Respondent No.1 Company before making false and defamatory claims. It is stated that without even examining the books the Petitioner has rushed to this Court to make out a false and speculative case. The reliefs claimed on such inadequate material are completely speculative, untenable and are required to be dismissed with costs.

3.8 It is stated that except for vague allegations there are no pleadings regarding any misconduct by any Director and having admitted to the fact that the Petitioner has not had access to the books of account it is evident that the claims of the Petitioner are speculative and baseless. It is stated that in the absence of any pleading regarding the alleged oppression and mismanagement the Petitioner requires to be dismissed with costs.

4. Rejoinder filed by Petitioner, inter-alia submitting that:

4.1 The Petitioner states that it was a blatant lie of the Respondents to say that the Respondent No.3 was employed in the Respondent No.1 Company as a Sales Manager since 2008. The Document No.1 submitted by the Respondent No.3 along with the Counter contradicts his submissions as the document clearly states that the Board of Directors proposed to appoint the Respondent No.3 as the Sales Manager on and from 28.06.2011. Further, the Petitioner reiterates that he was not aware of the Board Meeting nor had any information regarding the decisions taken in the Minutes of the Meeting dated 28.06.2011, as the Petitioner was not present for the said Board Meeting.

4.2 It is stated that the Respondents have not answered the allegations raised specifically with respect to the unilateral decision to increase the share capital, allotment of shares to Respondent No.2, subsequent transfer of shares to Respondent No.3 and other objections in relation to non-compliance of statutory procedure. The Petitioner submits that the Respondents have not complied with Clause 7 of the Article of Association, which provides the procedural compliance applicable pertaining to issue of equity shares. Further, the transfer of shares by Respondent No.2 in favour

of Respondent No.3 is in clear violation of the procedure laid down under Clause 12 of the Articles of Association.

4.3 It is stated that the Petitioner reiterates that there was no notice served on the Petitioner pertaining to the alleged EGM, consequently, the Petitioner has not attended the EGM and therefore questions the legal sanctity of the decisions taken and implemented further to the alleged EGM which was conducted without the requisite quorum. Contrary to the averments in Para-7, the Petitioner and the other Directors always objected to the appointment of the Respondent No.3 as Director in the Respondent No.1 Company and also informed their absolute disapproval on the transfer of shares in favour of the said Respondent No.3. The Letters issued by the Petitioner and the other Directors raising their concerns and objections on the appointment of the Respondent No.3 were submitted along with the Petition. It is absolute falsehood to state that the Petitioner had not participated in the management of the Company. The Petitioner was also refused to access to the registers to enable him endorse his signature for confirmation of presence on such dates.

4.4 It is stated that since the induction of the Respondent No.3 into the Respondent No.1 Company, there has been continuous acts of oppression and mismanagement instigated by the Respondent No.2 & 3. All decision

making was arbitrarily undertaken through conduct of meetings in a secretive and manipulative manner.

4.5 It is stated that there is no signature endorsed by the Petitioner on any of the Minutes of the Meetings nor are there register entries to confirm his presence. All the decisions undertaken towards business operations were in total exclusion of the remaining Directors/shareholders. The unilateral issue of 225 equity shares in favour of the Respondent No.2 and the subsequent transfer of 150 shares in favour of the Respondent No.3 had reduced the collective shareholding of the Petitioner, Hiralal Jessaram Bhagia and Vikram Hiralal Jessaram Bhagia from 59.39% to 44.82% shareholding; and the shareholding of the Respondent No.2 increased from 40.61% to a combined shareholding with the Respondent No.3 of 55.18%. Since the arbitrary introduction of the Respondent No.3 into the Company by the exercise of high handedness by the Respondent No.2, there has been continuous acts of oppression and mismanagement conducted by the Respondent No.2 & 3. These acts of oppression also led to fall of a profit making organization into negative growth as explained in Para 4.4 of the Petition. Meetings were arbitrarily conducted by the Respondent No.2 & 3 and unilateral decisions were taken and implemented on the guise of majority shareholding of 55.18% without complying with any statutory

requirement stipulated under the Companies Act. In view of all the aforementioned and the averments already placed in the Petition, it is stated that there have been multiple acts of oppression committed by the Respondents in continuation to the appointment of the Respondent No.3 which gives the Petitioner ample cause of action and the Petition is well within the period of limitation to institute the present Company Petition.

5. **The Counsel for the Petitioner filed written submissions by reiterating the contents of the petition and rejoinder, apart from that it is submitted that the present Petition is not hit by the Laws of Limitation as alleged by the Respondents. In support of the argument the Counsel has cited the following Judgments:**

- 5.1 The Order passed by the Honourable Delhi High Court in Surinder Singh Bindra & Others Vs. Hindustan Fasteners dated 09.05.1989, opines that:

“I am in respectful disagreement with the view expressed by the aforesaid Calcutta High Court decision that the events prior to the period of three years of the date of filing of the petition cannot be looked into.”

“12. These can be looked into if they form part of a continuous process continuing up to the date of petition showing that the affairs of a company are being conducted in a manner stipulated in Ss. 397 and 398 of the Act. This, in fact, is the requirement of these provisions. Further, if the acts complained of form part of the same transaction constituting oppression or mismanagement these acts can also be looked into even if they occurred three years prior to the institution of the petition. Same will be the case if the conduct arising from even a single wrongful act in a given case is such that its effect will be a continuous course of oppression or mismanagement though the wrongful act occurred three years earlier to the date of filing of

the petition. It is something akin to the terminology 'continuing cause of action'. Whether events complained of form part of continuous acts or not or form part of the same transaction constituting oppression or mismanagement or effect of a particular wrongful act is continuous course of oppression or mismanagement or the wrongful act is stale or is an isolated event, would all be different questions to determine. To this extent, therefore the preliminary objection regarding maintainability of the present petition on the ground of limitation is overruled. This exercise about the applicability of the provisions of the Limitation Act, 1963 to the application under Ss. 397 and 398 of the Act, would now appear to be academic as after the Companies (Amendment) Act, 1988, applications under these sections lie before the Company Law Board."

- 5.2 The plea of limitation as preliminary issue was considered by the National Company Law Tribunal, Kochi in T.R.Venugopal & 3 Others Vs. Yamuna Roller Flour Mills dated 25.11.2019, and the Hon'ble Tribunal opined as follows:

"...it is very clear that when a question deciding limitation occurred, it cannot solely be decided as a question of 'fact' alone. We have to look into the contents and circumstances of the main petition and decide whether this can be decided based on facts alone or there involved a question of "fact and law". After going through the main Company Petition and the pleadings in the IA, we are convinced that the main company petition does have a mixed question of "law and fact".

6. **The Counsel for the Respondents filed written submissions, by reiterating the contents of the counter, apart from that the counsel has cited the following Judgments:**

- 6.1 The Hon'ble Supreme Court in C.S.Ramaswamy *Versus* V.K.Senthil & Ors., in Civil Appeal No. 500 of 2022 at para 7.8) has reiterated that the

plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation.

6.2 The Hon'ble NCLT in *Praveen Shankaralayam Vs. Elan Professional Appliances Pvt. Ltd.* 2016 SCC OnLine NCLT 85:

“3. It appears that the matters concerning illegal removal or induction of directors has not been specifically dealt with in any of the articles. It also becomes obvious that no period of limitation has been provided for illegal reduction of shareholding with malafide intention to acquire majority shareholding. In these circumstances, the question is which provision of the Limitation Act would apply. The answer is found in Article 113 which deals with the subject of suits for which there is no present period of limitation.

6.3 It is stated that it is a well settled principle of law that in cases relating to Section 241 of the Companies Act, 2013, full particulars have to be given regarding acts of oppression and mismanagement to enable the other party to defend itself which has not been done in this case. (see *Shanti Prasad Jain Vs. Kalinga Tubes Ltd* AIR (1965) SC 1535 (see also in *Mohta Bros (P) Ltd Vs. Calcutta Landing and Shipping Co. Ltd and Ors* MANU/WB/0108/1969 at para 13, erstwhile Company Law Board Principal Bench, New Delhi judgement in the case *M.M.Dua and Ors Vs. Indian Dairy and Allied Services Private Limited* the Hon'ble Board has cited a judgement by the Calcutta High Court in *Clive Mitts Co. Ltd.*, in re [1964] 34 Comp Cas 731 at paras 53-55).

- 6.4 It is stated that, if any reliefs of the Petitioner are allowed the same would result in serious loss and damage to the Respondent No.1 Company as Respondent No.3 has been acting as a Director from 2013 and the increase in authorized shares has been done as far back as on 2011. It is also stated that the reliefs are seeking to undo all the actions taken by the Respondents since 2011 which is absurd and also barred by limitation.
7. In the light of the contest as aforementioned from both the parties the following point emerges for our consideration :

POINT:

Whether the affairs of Respondent No.1 Company are conducted in a manner prejudicial or oppressive to the Petitioner or prejudicial to public interest or interest of the Respondent No.1 Company and thus making a case of oppression and mismanagement?

8. We have heard Learned Counsel Ms. Sangeetha Bhaskar for the Petitioner and Learned Counsel Mr. M.S.Srinivas Iyengar for the Respondent No.1 and 2, perused the written submission and other documents submitted to the Tribunal.

POINT:

Whether the affairs of Respondent No.1 Company are conducted in a manner prejudicial or oppressive to the Petitioner or prejudicial to public interest or interest of the Respondent No.1 Company and thus making a case of oppression and mismanagement?

FACTS OF THE CASE:

9. The Respondent No.1 is a Company which was established in the year 1967 and Petitioner herein is the director in the Company having shareholding of 17.34% in the Company and younger brother of Respondent No.2. The Petitioner has alleged the following acts of oppression and mismanagement against the Respondents:
- i. Illegal appointment of Respondent No.3 as director.
 - ii. Increase in authorized share capital and illegal issuance of share and thereby reducing the share holding to minority stake of Petitioner.
 - iii. Financial mismanagement and conduct of meetings without issuance of statutory notice.

SUBMISSIONS:

10. The Learned Counsel for the Petitioner submits that Respondent No.3 was appointed as a director in the Company in spite of strong objections raised by the Petitioner by letters dated 22.12.2010, 02.05.2011 and 05.05.2011.

11. The Learned Counsel for the Petitioner further submitted that 225 shares were allotted to Respondent No.2 for Rs.1,000/- per share with a premium of Rs. 4000/- per share through a board resolution dated 28.06.2011 in which the Petitioner was shown as present but he was not part of that board meeting. Further, the Respondent No.2 transferred 150 equity shares in favour of Respondent No.3, after the Respondent No.3 joined the Respondent No.1 Company as director on 01.04.2013.

12. The learned counsel further submitted that consequent to issuance of these shares the Petitioner's shareholding was reduced from 22.98% to 17.34%. The Counsel for the Petitioner further contended that the performance of the Company has nosedived after induction of Respondent No.3 into the Respondent No.1 Company because of the malpractices conducted by Respondent No.2 and Respondent No.3.

13. The Counsel for the Petitioner further alleged that in the annual returns for the period 2016-17 of the Respondent No.1 Company, it has been reflected that Petitioner has received a salary of Rs.12,00,000/- and perquisites of Rs.1,28,765/- though no such remuneration are received by the Petitioner. Same way in the year 2017-18 the salary of Rs.7,00,000/- and perquisites

of Rs.95,106/- are shown in the annual returns against the name of the Petitioner which he has not received.

14. Further, the Petitioner alleged that though it was decided in the board meeting that the bank account of Respondent No.1 Company will be operated jointly by Petitioner and Respondent No.2. But Respondent No.2 is continuing to operate the account unilaterally in violation of the minutes of the meeting dated 28.06.2011. The Learned Counsel for the Petitioner further submitted that Clause 7 of the Articles of Association was not complied with in respect of issuance of equity shares.
15. The Learned Counsel for the Respondents submits that Petitioner was not participating in the affairs of the Respondent No.1 Company for almost 15 years and this petition is only to damage the business of the Respondent No.1 Company. The Respondents further submitted that Respondent No.2 and his father were the 1st Directors of the Respondent No.1 Company and Respondent No.2 was appointed as Managing Director of the Company in 1967 itself.
16. The learned counsel further submitted that Respondent No.3 joined the Respondent No.1 Company as sales manager in 2008 and thereafter he was appointed as a Director with effect from 01.04.2013 as per resolution

passed in the Extra-Ordinary General Meeting of the Company held on 01.04.2013. Ld counsel submitted that decision to induct Respondent No.3 as a director and transferring shares to him was done with the consent of the Petitioner as there were only 2 Directors i.e. petitioner and Respondent No. 2 and the Petitioner was not taking any interest in the affairs of the Company and therefore it was necessary to have one more director in the Company. As far as the complaints about the Respondent No.3 are concerned, they were raised in 2011 and thereafter no complaint was raised and he was taken in the board in 2013, hence these complaints have no bearing to his appointment as director in the R1 company. The Respondent further submitted that the petition is absolutely silent on the issue of purported acts of illegality in issuing any allotment of additional shares or appointment of R3 as director. The decision to allot the shares was taken through board resolution dated 26.02.2011 and Petitioner was also a party to this decision making. Therefore, now he cannot challenge the decision.

17. The Learned Counsel for the Respondent submitted that the Respondents are not involved in any financial mismanagement and meetings were conducted after issuance of statutory notices as required. The Learned Counsel further submitted that it is well settled principle of law that in case relating to oppression and mismanagement full particulars have to be given

regarding acts of oppression and mismanagement to enable the other party to defend itself which is totally missing in this case and therefore this petition is liable to be dismissed. The Respondent also relied on case law “*Shanti Prasad Jain Vs. Kalinga Tubes Ltd AIR (1965) SC 1535*”.

OUR FINDINGS:

18. We find from the records that Respondent No.3 was appointed as an Director on 01.04.2013 through a resolution passed in Extra-Ordinary General Meeting dated 01.04.2013 and accordingly Form No.32 was filed with ROC by the Managing Director of the Company. The Petitioner has simply made allegation that Respondent No.3 has been appointed as Director in spite of his letters objecting his appointment as Director. We perused the said letters and find that letter dated 22.12.2010 is in respect of notice for board meeting to be held on 23.12.2020. The Petitioner through this letter objected for appointment of Respondent No.3 as Director in the said meeting and also did not attend the meeting. Consequently, no decision to appoint R3 as Director could be taken, as board meeting could not take place. Since, no decision for appointment of Respondent No.3 as Director has been taken in that meeting, the objection letter written by Petitioner lost significance as on date. The other two letters i.e., dated

02.05.2011 and 05.05.2011 are in reference to requisition for calling an Extra-Ordinary General Meeting. In these letters also the Petitioner has challenged the appointment of Respondent No.3 as Director of the Company on record.

19. We carefully perused the minutes of board meeting dated 26.02.2011 (at 4PM) and find that Respondent No.3 resigned from the directorship on 26.02.2011 and his resignation was accepted by the board in the said board meeting dated 26.02.2011. Therefore, the letters written by the Petitioner in May, 2011 lost significance as Respondent No.3 ceased to be a director much before writing the said letters. Respondent No.3 was later on appointed as Director through Extra-Ordinary General Meeting dated 01.04.2013 and Petitioner has not pointed out any irregularity in his appointment as Director during the said Extra-Ordinary General Meeting. Therefore, we find that the contention of the Petitioner that appointment of Respondent No.3 as Director is illegal is not maintainable and devoid of any fact.
20. On the issue of increasing share capital, we have perused the board resolution dated 26.02.2011 in which the Petitioner is also shown as present. We reproduce herein the resolution passed in respect of issuance of shares.

“RESOLED THAT 225 Equity Shares of Rs.1,000/- each in the share capital of the Company be issued for cash at premium of Rs.4,000/- per share to the existing holders of the Equity Shares of the Company, in proportion, as nearly as circumstances admit inter alia on the following terms and conditions:

(i) The full amount of Rs.1,000/- per share together with premium of Rs.4,000/- per share shall be payable along with the acceptance/ application for such shares in the prescribed application form of the Company.

(ii) The offer aforesaid shall include a right exercisable by the persons to renounce the shares now being offered in favour of any other persons.

RESOLVED FURTHER THAT the draft letter of offer as tabled before the Meeting and initialed by the Chairman for identification be and is hereby approved and Mr. N.J.Bhagia, Managing Director or Mr. I.J.Bhagiae, Director, of the Company, was authorized to issue the letters of offer to the holders of shares as on the aforesaid date, to make necessary arrangements for disposing off the shares which may remain unsubscribed by the existing share holders and to do all other acts as may be necessary for the aforesaid issue.”

On perusal of the above resolution, we do not find any discrimination against any of the shareholders, as equal opportunity was given to all the existing shareholders to subscribe to the additional shares to be issued.

21. Further, on perusal of the board resolution dated 31.03.2011 in which also the Petitioner is shown as present, we find that these shares were allotted to R2 as only his application was received and considered by the board.
22. The resolution passed in the said meeting are also reproduced below for more clarity in the matter.

“4. ALLOTMENT OF 225 EQUITY SHARES

The Board of Directors took note of the applications received for 225 Equity Shares of Rs.1,000/- each together with premium of Rs.4,000/- per share issued on Rights basis and it was:

“RESOLVED THAT 225 Equity Shares of Rs.1,000/- each in the capital of the Company be and are hereby allotted to Mr. N.J.Bhagia at a premium of Rs.4,000/- per share as per the application placed before the meeting and initialled by the Chairman for the purpose of identification:

RESOLVED FURTHER that any director of the Company be and is hereby authorized to file the return of allotment pursuant to section 75 of the Companies Act, 1956 with the Registrar of Companies, Andhra Pradesh, Hyderabad.

RESOLVED FURTHER THAT the share certificates for the shares allotted as aforesaid be issued to the allottee under the signatures of Mr. N.J. Bhagia, Managing Director, Mr. I.J.Bhagia, Director and Mr. GhrineshB hagia as Authorized Signatory of the Company and the Common Seal of the Company be affixed on the share certificates in their presence.”

After the above item of business Mr. N.J. Bhagia, Managing Director, resumed the Chair and continued the Proceedings.”

On perusal of the resolution for allotment of shares, we find that only application for issuance of shares placed before the board was of Mr. N.J.Bhagia, which was approved by the board.

23. We have also taken a note that Petitioner in his pleadings has not made a case that he applied for the shares and he was not allotted the same. The petitioner has also not alleged any specific irregularity in allotment of shares to R2. On the basis of the above facts , this is very much clear that there is no illegality involved in the issuance of shares to the Respondent No.2.

24. The Petitioner also alleged that Respondent No.2 has transferred his 150 shares to Respondent No.3 which is illegal but we find that this transfer of shares has been approved in the board meeting dated 28.06.2011 in which Petitioner was also present. Otherwise, also the Petitioner has not deliberated upon the details of irregularities in transferring of shares and merely made an allegation which is not sustainable in absence of any facts and details. Therefore, we decide that the allegation of Petitioner about issuance and transfer of shares and thereby reducing his share holding is not acceptable.
25. On the issue of financial mismanagement the Respondents have denied in toto the allegations made by the Petitioner and submitted that the Petitioner has not submitted any proof for the same. We also find from the records that mere allegations have been made by the petitioner for financial irregularities but no evidence or proof of these irregularities was submitted to the Tribunal. Therefore, in the absence of any valid proof or evidence, we cannot hold the respondents responsible for committing financial irregularities.

26. In the above backdrop, we are of the opinion that the Petitioner has merely pleaded the allegations of oppression and mismanagement but has not given any particulars to substantiate and prove the same with evidence which is the core principle of deciding any case of oppression and mismanagement.

27. We also place our reliance on case law “*Shanti Prasad Jain Vs. Kalinga Tubes Ltd AIR (1965) SC 1535*” in this respect.

Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (1965) 35 Com Cases 351, the Hon’ble Supreme Court held that:

“It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.”

28. Therefore, we decide that the Petitioner has failed to prove that the affairs of Respondent No.1 Company are conducted in a manner prejudicial or oppressive to the Petitioner or prejudicial to public interest or interest of

the Respondent No.1 Company and thus making a case of oppression and mismanagement. Accordingly, the issue is decided.

29. Keeping in view the answer to the point raised and placing reliance on case law *supra*, we are of the opinion that this application filed under Section 241 of the Companies Act, 2013 is liable to be dismissed. Hence dismissed, with no costs.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher