

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
30-05-2024 AT 10:30 AM**

**CP No. 439/241/HDB/2019
AND
IA (CA) 288/2023, IA No. 801 & 802/2019 in CP No. 439/241/HDB/2019
u/s. 241 of Companies Act, 2013**

IN THE MATTER OF:

Harilal Patel

...Petitioner

AND

Craftsmen Products Pvt Ltd & 5 others

...Respondent

C O R A M:-

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

ORDER

CP No. 439/241/HDB/2019

Orders pronounced. In the result, **this company petition is dismissed with costs of Rs. 25,000/- to the Prime Minister Relief Fund.**

IA (CA) 288/2023

As the main company petition is dismissed, **this application is disposed of as infructuous.**

IA No. 801/2019

As the main company petition is dismissed, **this application is disposed of as infructuous.**

IA No. 802/2019

As the main company petition is dismissed, **this application is disposed of as infructuous.**

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

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

CP NO. 439/241/HDB/2019

(Under section 241 r/w 242, 244 and other applicable provision of the Companies Act, 2013)

**IN THE MATTER OF M/S CRAFTSMEN PRODUCTS PRIVATE
LIMITED**

Between:

Mr. Harilal Patel,
Capacity: Shareholder and Director,
R/o 4-9-100, Street no. 3, HMT Nagar,
Nacaharam, Hyderabad- 500076

...Petitioner

Versus

1) M/s Craftsmen Products Private Limited
CIN: U20219TG2003PTC041709
Capacity: Private Limited Company,
Reg office: Flat no. 513, B Block,
Sri Sai Land Mark, Street no. 8,
Hubsiguda, Hyderabad- 500007.

2) Mr. Sunil Kumar Jammula,
Capacity: Director and Shareholder,
R/o H.No. 10-3-453/3, 19/2RT,
Vijaynagar Colony, Masab Tank,
Hyderabad- 500057.
Also at: Plot no. 138, Lane no. 17,
Road no. 72, Prasasan Nagar,
Jubilee Hills, Hyderabad- 500033.

3) Mr. Ratilal Patel Pokar
Capacity: Director and Shareholder,
R/o 3-6-347, Laxminarayana Colony,
Danapur, L. B Nagar, Hyderabad- 500074.

4) Mrs. Manjula Ben Patel,
Capacity: Shareholder,
R/o 3-6-347, Laxminarayana Colony,
Danapur, L. B Nagar, Hyderabad- 500074.

5) Mr. Sambasiva Rao Devabhakthuni,
Capacity: Shareholder,
R/o 9-76/1, Kopalle, Tenali Mandal,
Guntur- 522307.

6) The Registrar of Companies,
Telangana, 2nd Floor, Corporate Bhavan,
GSI Post, Bandlaguda, Nagole,
Hyderabad- 500068.

...Respondents

Date of order: 30.05.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: V. Venkata Rami Reddy, Advocate

For Respondents: Gosala. S. V. Seshu, Advocate

PER BENCH

ORDER

This is a Company Petition filed by the Petitioner under section 241 read with 242, 244 and other applicable provisions of The Companies Act, 2013 seeking following reliefs:

- i. The Respondent no. 2 and 3 be surcharged for all the losses made to the Respondent no. 1 Company with their illegal means of complaints and cases.
- ii. To direct the Respondents not to alienate the assets of the Respondent no. 1 Company till disposal off this petition
- iii. To direct the Respondent no. 2, 3 and 4 to sell their shares to the petitioner by fixing a fair value by appointing a valuer.

iv. To award costs relating to the present proceedings

1) Brief of averments by Petitioner:

- 1.1. The Respondent no. 1 company was incorporated as a Private Limited Company, registered on 17.09.2003 vide CIN: U20219TG2003PTC041709. The Registered Office of the Company hereinafter referred to as the “Company”. The present Authorised Capital of the Company is Rs. 18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only) divided into 1,85,000 equity shares of Rs. 10/- each and the Paid-up Capital of the Company is Rs. 18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only) divided into 1,85,000 equity shares of Rs. 10/- each. The company was established to carry on the business of manufacturing, processing, formulating, buying, selling, exporting, importing and generally dealing in all kinds of Doors.
- 1.2. It is averred that the Respondent No. 2 has taken responsibility of day-to-day operations of the 1st Respondent Company and was entrusted with all necessary powers. He was also responsible for record keeping and for complying with all statutory and non-statutory obligations including business operations, loans and advances being the Director of the company. It is alleged that the Respondent No. 2 is misusing his

position and deriving himself undue benefit and causing loss and damage to other shareholders with his own greed and benefit.

1.3. It is averred that in May, 2018 the Respondents No. 2 and 3 have unilaterally without any general meeting or any Board meeting decided to shut all operations, while the factory was functioning well. The said acts of uncalled closure of the factory/unit of the Respondent no. 1 company by the Respondent no. 2 and 3 have intentionally made the company sick and the business of the Respondent no. 1 company was diverted to another firm by name M/s. Niki Doors owned the 2nd Respondent.

1.4. It is averred that the sudden unjustified closure has ruined the business of the company and the reputation of the Directors including the Petitioner have been questioned in public by various stakeholders. Despite several requests by the petitioner for relevant Board Meetings the said were not considered. It is alleged that the Respondents No. 2 and 3 were entrusted with the responsibility to run the operations of the company. But since May, 2018 they have not discharged their duties in a prudent manner and burdened the Respondent no. 1 company with both financially and making it non-compliance of laws.

1.5. It is averred that the Petitioner being a Shareholder and Director was not given access to ledger statements, books of accounts, minutes books and other statutory records. It is alleged that no board meetings and general meetings were called for or convened during the years 2017-2019. That the Respondent no. 2 is transferring all the business and the premises of the Respondent no. 1 company to M/s. Niki Doors owned and run parallelly by him. It is further alleged that Respondent no. 1 Company used to supply material to M/s. Niki Impex, Bangalore. Whereas, the Respondent No. 2 has floated another firm with a name M/s. Niki Doors and is supplying the said materials to M/s. Niki Impex, Bangalore. It is nothing but stalling the business of the Respondent no. 1 Company and benefiting the firm owned by him.

1.6. It is averred that the stock on hand as on 31.03.2018 of Respondent No.1 Company are not giving truthful picture correlated with the statement of stocks submitted to the Bankers. The Respondent No. 2 has submitted a letter dated 11.07.2018 to Kotak Mahindra Bank, Somajiguda Branch requesting for closure of working capital limits stating that the decision to close the working capital limits was unanimously taken. That in fact, such decision was never approved in any Board Meeting. It is alleged that two cars owned by the 1st Respondent Company are utilised by the Respondents No. 2 and 3 for

their personal use without proper approval from the Board of the 1st Respondent Company. The above acts of the Respondents would result in wound up of the 1st Respondent Company.

2) Brief of averment in the counter filed by the Respondents No. 2 & 3:

2.1. The Respondents outrightly denied the allegations levelled against these Respondents. It was asserted that the Petitioner approached the Tribunal with unclean hands and distorting facts. It is averred that the Petitioner benefitted from his role as Director and shareholder until certain policy decisions needed to be made. At that point, the Petitioner, with the involvement of his brother Ambalal Patel, engaged in deceptive behaviour to exploit perceived shortcomings and initiate legal proceedings against the Respondents. It was submitted that both the Petitioner and respondent no. 3 equally contributed unsecured loans for the company's smooth operation.

2.2. It is averred that the Petitioner ought to have taken appropriate steps by issuing notice for the purported acts committed by the Respondent no. 2 and 3 or initiating appropriate legal proceedings rather than rushing to the Hon'ble Tribunal. It is submitted that there were financial disputes and misunderstandings between the Petitioner and Respondent no. 2 and 3, leading to a decision to temporarily halt the operations of Respondent no. 1 company. That the Petitioner's refusal

to cooperate in resolving these differences, influenced by Ambalal Patel, ultimately led to the company's shutdown, as evidenced by the letter dated 15.06.2018.

2.3. It is averred that the Petitioner, influenced by his brother Ambalal Patel, who has dubious intentions, has played a significant role in overseeing the operations of the 1st Respondent company, despite not being directly involved. It is submitted that Ambalal Patel is facing multiple criminal cases, some under investigation and others already in trial before competent courts.

2.4. It is averred all the records were very much available to the petitioner in the 1st Respondent company premises. That even as on date the petitioner is at liberty to inspect the 1st Respondent company premises, its machinery and records. If the said allegation of the petitioner was taken into account the petitioner ought to have filed a complaint either before a law enforcing agency or any such competent authority which was not done as on date. In the absence of any such complaint the allegations of the petitioner cannot support itself. It is further submitted that nothing prevented the petitioner to cause written communication to the respondent to call for conducting of Borad meetings and general meetings. That instead of getting the inability

and incapability of the petitioner repaired he came before this Tribunal.

- 2.5. It is averred that the Respondent no. 2 started a firm under the name and style “NIKI DOORS” and is conducting similar business activity has no relevancy to the contentions raised in the present petition and the relief sought thereof. Further the contention of the Petitioner that some of the machinery which was installed at the 1st Respondent factory premises were moved out from there to the premises of the said M/s. Niki Doors, is false and denied. Even assuming for a moment without admitting, had that been the case, the Petitioner ought to have taken Legal action against such illegal movement of machinery from the factory premises. It is further submitted that in the course of business the 1st Respondent company has been supplying its products to various dealers and distributors across the state of Telangana and the State of Karnataka as well. The contention of the Petitioner that the 1st Respondent company was supplying material to NIKI IMPEX, Bangalore may be no doubt true but this Respondent No. 2 floating another firm under the name and style “M/s Niki Doors” has got nothing to do with the contentions raised by the Petitioner.

2.6. It is averred that the stock on hand as on 31st March, 2018 have been kept intact within the premises of the 1st Respondent company and the petitioner is at liberty to check the same. Denying the allegation of siphoning off funds by the Respondents No.2 and 3, it is submitted that the letter dt: 11-7-2018 addressed to Kotak Mahendra Bank, Somajiguda Branch, wherein the working capital limits were closed was issued with the approval of the Petitioner. It is submitted that as on the date of issuing the said letter Dt: 11-7-2018, there were absolutely no loans pending in the accounts of the 1st Respondent company.

2.7. It is averred that the Registered Office of Respondent No.1 Company was never shifted and that all the records of the Respondent No.1 Company are well within the premises. It is further submitted that the keys of the said premises are under the custody of the Petitioner herein. It is submitted that all the operational activities of the bank account of Respondent No.1 were done with the consent of the Petitioner including the withdrawal of the amounts on various occasions from the Bank accounts. It is submitted that during 2016, Mr. Ambala Patel and his son Nikil Patel, started a company under the name and style NIKI PANEL PRODUCTS and that certain disputes were purposefully and intentionally pushed into the business activity

of the 1st Respondent company by the said Ambalal Patel in connivance with the Petitioner herein leading to the misunderstandings between the Petitioner and the Respondents.

2.8. The Respondents No. 2 and 3 pleaded ignorance with respect to the complaint made by the Petitioner to the Registrar of Companies, vide letter dt:11-06-2019.

2.9. It is submitted that the Petitioner is not entitled for the reliefs sought and that he is liable to be prosecuted for levelling false allegations against the Respondents.

3) Brief of averments of the counter filed by Respondents No. 4 & 5:

3.1. Denying the allegations of the petitioner, it is submitted that the petitioner has approached with unclean hands and distorting facts. It is averred that since the petitioner did not intend to comment on any of the allegations concerning the Respondent no. 4 and 5, they do not want to agitate on any of the contentions raised by the petitioner.

3.2. It is submitted that the reliefs both interim and main sought are more particularly against the other respondents. It is further submitted that it is an established principle of law that a shareholder of a company, unless directly involved in the day-to-day managerial and financial functioning, cannot be prosecuted more particularly for offences as

contemplated under the provisions of sections 241 and 242 of the companies act, 2013.

4) Brief of Written Submissions filed by the Petitioner:

- 4.1. Reiterating the averments in the Company Petition, it is submitted that the Respondent no. 4 and 5 are necessary parties as they have direct vested interest in the 1st Respondent company having 10.81% and 5.40% respectively. Due to the alleged decisions taken by the Respondent no. 2 and 3 for the closure of the company has caused loss to the Respondent no. 4 and 5 along with the company. Submitting the above reliance was placed on the Hon'ble Supreme court's decision in *Udit Narain Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar (MANU/SC/0045/1962)*. Stating the said the petitioner submitted that the IA No. 801 and 802 of 2019 filed by the Respondent no. 4 and 5 are not maintainable.
- 4.2. It is submitted that no notice was given to the petitioner to attend the Board meetings and general meetings since 2017. There were no proofs were attached by the Respondent in their counter. The petitioner placed reliance on *Union of India vs. Ibrahim Uddin and ors 2012 (119) AIC161* wherein it was held that

“Adverse inference is required to be decided by the court by deciding whether any document/evidence, withheld has any relevance at all or omission of its production would directly establish the case of the other side.”

Further placed reliance on ***G. Madhusudhan Reddy Vs. RMS Research Labs Private Limited and Ors. MANU/NC/4684/2022***, having similar factual matrix it was held by the Hon’ble NCLT Hyderabad Bench that:

“..We have observed serious allegations against Respondents 2-4 with respect to siphoning of huge sum of money from the 1st Respondent Company for acquiring AS Bulk Drugs by the 2nd Respondent in his own name. The Petitioner was able to make out a case that the 2nd Respondent has misused the trust reposed in him by the Petitioner and has misused his fiduciary responsibility as the Managing Director.”

5) Brief of Written Submissions filed by the Respondent No. 2, 3, 4 & 5:

5.1. Reiterating the averments in the Counter, it is submitted that the petitioner has failed to prove his contentions as pleaded. It is submitted that the respondents have categorically imposed confidence and faith on the petitioner. The petitioner is at liberty to come and participate in any congenial discussions which would draw logical conclusions for the smooth, effective and successful functioning of the Respondent no. 1 company.

6) In the light of the contest putforth the Point that emerges for our consideration is:

Whether the acts complained of against the respondents 2 to 4, namely, closure of the factory, diversion of business, denial of access to the records, non-issuance of notice of board meetings, and closure of bank account, constitute the acts of oppression and mismanagement? If so, whether the petitioner has established the same? and to what relief?

- 7) We have heard Mr. Pandu Ranga Reddy Ld. Counsel for Petitioner and Mr. GSV Seshu the Ld. Counsel for Respondent no. 2 to 5, perused the records and the submissions.

Point.

Whether the acts complained of against the respondents 2 to 4, namely, closure of the factory, diversion of business, denial of access to the records, non-issuance of notice of board meetings, and closure of bank account, constitute the acts of oppression and mismanagement? If so, whether the petitioner has established the same? and to what relief?

Submissions:

- 8) The Ld. Counsel for the Petitioner, at the outset submits that the factory was shut down unilaterally by the 2nd and 3rd respondents after May, 2018 without any approval or discussion in board meeting and in support of this plea the Ld. Counsel relied on the letter dated 11.06.2018 from Petitioner to the 2nd respondent, the reply letter dated 15.06.2018 and the complaint submitted to ROC, Telangana, dated 11.06.2019. Ld. Counsel further submits that, the 2nd and 3rd respondents have diverted the business of the 1st respondent to another firm by name M/s Niki Doors owned by the 2nd respondent. In

support of this plea, Ld. Counsel relied on the E-way bills, invoice cum delivery challan of M/s Niki Doors. According to the Ld. Counsel this act on the part of the 2nd and 3rd respondents constitutes an act of oppression and mismanagement.

- 9) Refuting the above allegations, Ld. Counsel for the respondents contends that the cessation of factory operations was not a deliberate act. However, it is evident from the letter dated 11.06.2018 and its response dated 15.06.2018, that the petitioner was conscious of the operational challenges faced in the factory. The Ld. Counsel further contended that no record, except the E-way bills, invoice cum delivery challan of M/s Niki Doors establishing the business nexus if any by the 2nd respondent was placed before the Tribunal. More over even according to the petitioner the factory business of 1st respondent has been closed in the year 2018 itself.

Findings:

- 10) We find that these letters of correspondence between petitioner and the respondent no. 2 and 3 as referred above indicate that the matter was duly deliberated upon between the parties. Furthermore, the reply of the 2nd Respondent dated 15.06.2018 reinforces that petitioner was aware of the situation prevailing in the factory. Therefore, the petitioner's assertion that the factory closure constituted oppressive conduct is rendered untenable in

light of these circumstances. As regards the complaint dated 11.06.2019 submitted to the ROC, regarding the closure of the factory was nearly one year after the closure. The Petitioner has not furnished the responses if any received from the ROC nor indicated whether any measures were undertaken by the ROC in response to the representation. So much so, we do not find any force in the contention of the Ld. Counsel for the Petitioner that, acts above constitute the acts of oppression and mismanagement.

11) We further observe that the allegation of Ld. Counsel for the petitioner that the 2nd and 3rd respondents have diverted the business of the 1st respondent to another firm by name M/s Niki Doors owned by the 2nd respondent is not tenable in view of the fact. That the records mentioned i.e., E-way bills, invoice cum delivery challan do not establish a nexus if any or a business is being carried out by the 2nd respondent. More over the factory business of 1st respondent has been closed in the year 2018 itself.

12) We therefore do not find any force in the submission of the Ld. Counsel for the Petitioner that, the 2nd and 3rd respondents have diverted the business of the 1st respondent to another firm by name M/s Niki Doors owned by the 2nd respondent. Similarly, we find no supportive record in respect of the petitioner's plea of submitting wrong statements of stocks to the bankers and involving in illegal business activities affecting the company. The

assertion of the 2nd respondent that the stock on hand as on 31st March, 2018 was intact within the premises of the 1st Respondent company and the petitioner is at liberty to check the same remain unrebutted. The letter dated 11-7-2018 addressed to Kotak Mahendra Bank, Somajiguda Branch, discloses that the working capital limits were closed as on the date of issuing the said letter Dt: 11-7-2018 and that no loans were pending in the accounts of the 1st Respondent company.

13) As regards the petitioner's allegation that he was not given access to ledger statements, the books of accounts, minutes books, bank account statements and other statutory records, and that the registered office is closed all the time is not maintainable in view of the fact that the petitioner did not place before us any communication made to the 1st respondent company requesting access to the records of the company or regarding the alleged denial of such an opportunity. In the absence of such record, we are not inclined to accept the plea that, the Petitioner was denied access to the records by the 1st respondent.

14) We also found that the plea of non-issuance of notice for board meetings and general body meetings is vague. Admittedly the quorum for the board meeting of 1st respondent is of two members. Mere conducting of a board meeting without notice to all the members by itself is not an act of

oppression and mismanagement, unless it is shown that, the conduct of such meeting is illegal. The annual reports of the 1st respondent dated 31.03.2016 filed before ROC, states that the AGM's of the 1st respondent was held on 30.09.2016, and 30.09.2017 and all the directors were present as per Director's report. In respect of the AGM held on 30.09.2018 the petitioner contends that he had no notice of the same. Moreover, the petitioner is also fully empowered to call for a board meeting by issuing notice to other directors of the 1st respondent company, however no effort has been made by the petitioner. In this regard the Hon'ble Supreme Court in ***Needle Industries (India) Pvt. Ltd. vs. Needle Industries Newey (India) Holdings Ltd. & Ors., 1981 3 SCC 333***, observed as follows:

*“49. The question sometimes arises as to whether an action in contravention of law is per se oppressive. It is said, as was done by one of us, Bhagwati, J., in a decision of the Gujarat High Court in **Seth Mohanlal Ganpatram v. Sayaji Jubilee Cotton & Jute Mills Co. Ltd.** that “a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company”. On this question. Lord President Cooper observed in *Elder v. Elder*:*

*.....Neither the judgment of Bhagwati, J. nor the observations in *Elder* are capable of the construction that every illegality is per se oppressive or that the illegality of an action does not bear upon its oppressiveness. In *Elder* a complaint was made that *Elder* had not received the notice of the Board meeting. It was held that since it was not shown that any prejudice was occasioned thereby or that *Elder* could have bought the shares had he been present, no complaint of oppression could be entertained merely on the ground that the failure to give notice of the Board meeting was an act of illegality. The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support*

the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful.

- 15) In any case, as held by Hon'ble Supreme Court of India, in ***Shanti Prasad Jain vs. Kalinga Tubes Ltd. AIR1965 SC p 1535,***

"it is necessary for the petitioner who has filed a petition under Section 397 (now Section 241) of the Act to show that the conduct complained of was oppressive and "this requires that events have to be considered not in isolation but as 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".

- 16) This observation shows that the acts complained of as being oppressive have to be viewed in a wholesome manner and without dissecting them into separate, disjunctive or component parts of oppression. What is complained of is oppression and such oppression may be the result of several continuous acts, all of which constitute what the Supreme Court describes as a consecutive story. The same was explained in detail by the Hon'ble Supreme Court in ***Needle Industries (India) Pvt. Ltd. vs. Needle Industries Newey (India) Holdings Ltd. & Ors., 1981 3 SCC 333,*** it was observed as follows:

"54..... The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder....."

17) Therefore, it is neither proper nor necessary to look at each act of oppression disjointedly. Viewed from this angle also, no case of oppression and mismanagement has been made out by the petitioner.

The point is answered accordingly.

18) Therefore, in the light of our discussion on the point above, we are of the firm view that the present petition is devoid of any merit or substance hence the same is liable to be dismissed. Accordingly, the same is hereby dismissed. No costs.

Sd/-
Charan Singh
Member (Technical)

Sd/-
Dr. N.V. Ramakrishna Badarinath
Member (Judicial)