NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 65 of 2022

& I.A. No. 1201, 1202, 3000 of 2022, 247, 2521, 2792 of 2023

(Arising out of the Order dated 01.04.2022 passed by the National Company Law Tribunal, Mumbai Bench, Court III, in C.P. No. 12/MB/2019)

IN THE MATTER OF:

1. **Venus Petrochemicals (Bombay), Private Limited**
   Having its registered office at:
   401/403, Zafryn Chambers, Sewree
   Koliwada Road, Sewree (East),
   Mumbai, Mumbai City MH 400015. **…Appellant No. 1**

2. **Atul M. Thakkar,**
   (Ex-Director of Venus Petrochemicals
   (Bombay) Private Limited),
   B-17/236, Amrutalayam,
   Chitranjan Nagar, Rajawadi,
   Ghatkopar (E), Mumabi-400077. **…Appellant No. 2**

3. **Anand A Thakkar,**
   (Director of Venus Petrochemicals
   (Bombay) Private Limited),
   B-17/236, Amrutalayam,
   Chitranjan Nagar, Rajawadi,
   Ghatkopar (E), Mumabi-400077. **…Appellant No. 3**

Versus

1. **Sunil M. Thakkar,**
   Presently residing at:
   B-161, 16th Floor, Chinar, Bldg.
   R.A. Kidwai Marg, Wadala, (W),
   Mumbai 400031. **…Respondent No. 1**

2. **Lopa S. Thakkar,**
   Presently residing at:
   B-161, 16th Floor, Chinar, Bldg.

R.A. Kidwai Marg, Wadala, (W),
Mumbai 400031. **…Respondent No. 2**

3. **Yashesh A. Thakkar,**
(Director, of Venus Petrochemicals
(Bombay) Private Limited),
B-17/236, Amrutalayam,
Chitranjan Nagar, Rajawadi,
Ghatkopar (E), Mumabi-400077. **…Respondent No. 3**

Present

For Appellants: **Mr. Bishwajit Dubey, Ms. Mallika Joshi & Mr. Shivam Wadhwa, Advocates.**

For Respondents: **Mr. Sanjeev Puri, Sr. Advocate along with Mr. Gaurav H Sethi, Mr. Deeptanshu Chandra & Mr. Rahul Pawar, for R-1.**
Mr. Hemant Sethi, Mr. Gaurav H Sethi, Mr. Deeptanshu Chandra & Mr. Rahul Pawar, for R-2.

J U D G E M E N T

(14.08.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Appeal has been filed by three Appellants, namely, Appellant No. 1 i.e., Venus Petrochemicals (Bombay), Private Limited ('**Corporate Debtor**'), Appellant No. 2 i.e., Atul M. Thakkar (**Ex-Director of Venus Petrochemicals (Bombay), Private Limited**) and Appellant No. 3 i.e., Anand A Thakkar (**Director of Venus Petrochemicals (Bombay), Private Limited**) under Section 421 of the Companies Act, 2013 against the Impugned Order dated 01.04.2022 passed by National Company Law Tribunal, Mumbai Bench,

Mumbai ('**Tribunal**') passed under Section 241 and 242 of the Companies Act, 2013 in Company Petition No. 12/MB/2019.

2. There are three Respondents in the present appeal, Respondent No. 1 i.e., Sunil M. Thakkar (Shareholder of the Corporate Debtor/ Appellant No. 1) , Respondent No. 2 i.e., Lopa S. Thakkar (Shareholder of the Corporate Debtor/ Appellant No. 1) and Respondent No. 3 i.e., Yashesh A. Thakkar(Director of the Corporate Debtor).

3. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

4. It has been brought out that the Corporate Debtor was incorporated on 21.06.1995 and is involved in the business of Chemical Solvents and Specialty chemicals products which are hazardous in nature and various licenses to deal with such hazardous substances like Solvents License and Explosive License were obtained by the Corporate Debtor to do such business.

5. It has also been submitted that the Appellant No. 2 (Mr. Atul M. Thakkar) is the father of Appellant No. 3 (Anand A Thakkar) and also elder brother of Respondent No. 1 (Sunil M. Thakkar). Similarly, Respondent No. 2 (Lopa S. Thakkar) is wife of Respondent No. 1 (Sunil M. Thakkar) and Respondent No. 3 (Yashesh A. Thakkar) is the son of the Respondent No. 1. Thus, the entire shareholding is held by the family of two brothers and the shareholding is divided in ratio of 50%-50% between two families.

6. It has also been submitted that since 1995 to 2015, both brothers i.e., Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) were the only directors of the Board of Director of the Corporate Debtor (in short **'BoD'**).

7. It is the case of the Appellant No. 2 (Mr. Atul M. Thakkar) that he was responsible for affairs of the company and was getting various licenses and compliance of various laws of the land along with other administrative and financial matters of the Corporate Debtor.

8. It is further the case of the Appellant that as a family there was a clear understanding between Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) that Appellant No. 2 (Mr. Atul M. Thakkar) was the incharge of the Corporate Debtor and was controlling the affairs of the Corporate Debtor whereas Respondent No. 1 (Sunil M. Thakkar) was to look after other three business entities owned by the family, namely, M/s. Sunil Chemicals, Puja Fab ChemPlast Private Limited and Emerald Petrochemicals Private Limited.

9. We note that the Appellant No. 2 (Mr. Atul M. Thakkar) and the Respondent No. 1 (Sunil M. Thakkar) were whole time Director of Puja Fab ChemPlast Private Limited, Emerald Petrochemicals Private Limited in addition to the Corporate Debtor (Venus Petrochemicals (Bombay), Private Limited).

10. The Appellant emphasised that right from the beginning, it was the Appellant No. 2 (Mr. Atul M. Thakkar) who was controlling the Corporate Debtor and there was hardly any role for the other shareholders and directors including Respondent No. 1 (Sunil M. Thakkar).

11. The Appellant Nos. 2 & 3 alleged that Respondent No. 1 (Sunil M. Thakkar) changed his behaviour in 2015 and started putting hurdles in the affairs of the company and also started raising false objections against the company and Appellant No. 2 (Mr. Atul M. Thakkar) in BoD.

12. The Appellant No. 2 (Mr. Atul M. Thakkar) also alleged that Respondent No. 1 (Sunil M. Thakkar) was indulged in anti company activities and in such background, the three Respondents filed Company Petition No. 12/MB/2019 before the Tribunal for alleged acts of oppression and mismanagement committed by the Appellants herein without any substantial reasons.

13. The Appellant No. 2 (Mr. Atul M. Thakkar) defended the action taken in appointing Appellant No. 3 (Anand A Thakkar) as Director in the BoD since the Appellant No. 2 (Mr. Atul M. Thakkar) was not well being senior citizen of 60 years age and also wanted to develop a clear succession in the management of the company.

14. The Appellant No. 2 (Mr. Atul M. Thakkar) stated that Respondent No. 1 (Sunil M. Thakkar) was not co-operating and the company was heading towards deadlock and Appellant No. 2 (Mr. Atul M. Thakkar) has no other choice but to

appoint third director and since the Appellant No. 3 (Mr. Anand A Thakkar) has been working as employee of the company for many years who was later elevated as Executive Director (**'ED'**), was well qualified to act as Director. It is the case of Appellant No. 2 (Mr. Atul M. Thakkar) that there is no oppression and mismanagement as alleged and there was no ulterior motive in doing so.

15. The Appellant No. 2 (Mr. Atul M. Thakkar) further alleged that Respondent No. 1 (Sunil M. Thakkar) adopted the attitude of complete non-cooperation and started opposing every move to harm the company and also refused to sign the cheques. It was pleaded that all these started impacting the Corporate Debtor adversely in the business and finances.

16. The Appellant No. 2 (Mr. Atul M. Thakkar) submitted that the attitude of Respondent No. 1 (Sunil M. Thakkar) was still negative and he opposed the directorship of Appellant No. 3 (Mr. Anand A Thakkar) in BoD as such the Appellant No. 2 (Mr. Atul M. Thakkar) has to exercise his casting vote as Chairman of the Corporate Debtor and passed resolutions as required. It was pleaded that this was done only in the interest of the Corporate Debtor and significantly the shareholding of the Corporate Debtor was never touched which shows the genuine intent of the Appellants.

17. It is the case of the Appellant No. 2 (Mr. Atul M. Thakkar) that there are hardly any instances reported by the Respondent which can meet the test of

oppression and mismanagement as per Section 241 and 242 of the Companies Act, 2013.

18. The Appellant No. 2 (Mr. Atul M. Thakkar) also countered the allegation of the Respondent that Dubai Subsidiary of the Corporate Debtor was making losses and therefore the act of the Corporate Debtor to invest in its subsidiary was an alleged act of mismanagement. In this regard, the Appellant No. 2 (Mr. Atul M. Thakkar) submitted that for any commercial venture in initial period, it may not be possible to make profit, however, in due time, it started generating revenue and hence the allegation is incorrect.

19. The Appellant No. 2 (Mr. Atul M. Thakkar) mentioned that there have been pre-existing family disputes which has been wrongly and falsely termed as "oppression of mismanagement" and the provisions of Companies Act, 2013 has been grossly misused by the Respondents.

20. The Appellant No. 2 (Mr. Atul M. Thakkar) pleaded that the casting vote has been specifically mentioned in the Article of Association which is a legal right for the Chairman of the Corporate Debtor to exercise in order to resolve the issues and take the company forward and no mala-fide intention can be attributed to such decisions taken by casting votes.

21. The Appellant No. 2 (Mr. Atul M. Thakkar) submitted that concept of quasi-partnership is not applicable in present appeal as there was a clear understanding and division of responsibilities between the Appellants and the

Respondents and pleas of the Respondents based on quasi-partnership issue are not applicable in the present case.

22. The Appellant No. 2 (Mr. Atul M. Thakkar) also stated that there is no legal provisions that the equal representation in Board of Director should be given to shareholders and countered the allegations of the Respondent No. 1 (Sunil M. Thakkar) that the Respondents were neither given representation nor remuneration nor of Appellant No. 2 (Mr. Atul M. Thakkar).

23. The Appellant No. 2 (Mr. Atul M. Thakkar) assailed the Impugned Order on points i.e., casting vote was taken away from the Chairman with further directions by the Adjudicating Authority that all cheques should be signed by one representative of Appellants and one representative of Respondents and further that equal representation in the BoD should be given of both the groups.

24. The Appellant No. 2 (Mr. Atul M. Thakkar) pleaded that this Impugned Order is perverse and illegal in so much so that the Tribunal do not have any power to give such directions. The Appellant No. 2 (Mr. Atul M. Thakkar) further argued that "oppression and mismanagement" has been misused and the Impugned Order rather than resolving the dead lock of the Corporate Debtor have created further mess in so much so that Respondent has not been signing any cheques. Hence, there have been instances of statutory defaults.

25. The Appellant No. 2 (Mr. Atul M. Thakkar) reiterated that no representation for shareholder in the BoD cannot be a ground for "oppression

and mismanagement". The Appellant No. 2 (Mr. Atul M. Thakkar) further argued that appointment or disqualification of directors is not a subject matter be dealt under "oppression and mismanagement" under Companies Act, 2013.

26. The Appellant No. 2 (Mr. Atul M. Thakkar) further assailed the Impugned order where it was held that company is in nature of quasi-partnership purely relying on the submission of the Respondents without looking into the true facts. The Appellant No. 2 (Mr. Atul M. Thakkar) submitted that there is no legal basis to treat the Corporate Debtor on the basis of quasi -partnership and further submitted that the companies run by Respondent No. 1 (Sunil M. Thakkar) and the Appellant No. 2 being director of such cross companies is merely incidental as a result of family understandings and the elements of quasi-partnership are not applicable here.

27. The Appellant No. 2 (Mr. Atul M. Thakkar) cited few judgments according to which the findings of the Tribunal are incorrect and deserved to be set aside especially three directions regarding casting vote, equal representation and restoring of directorship to the Respondents.

28. The Appellant No. 2 (Mr. Atul M. Thakkar) pointed out that enhancement of salaries of the Board Member has been done after the due resolutions have been passed by the BoD and there is no illegality in this regard.

29. As regard non declaration of dividend, the Appellant submitted that distributions of dividends or keeping profit as retained earning, is the business

decision and since the company was in need of the business money to procure various materials to sustain and grow business and it was wise decision not to distribute the dividend and rather to plough in the company. The Appellant argued that after all the valuation of the company is increased and which is really material for shareholders rather than small amount is being distributed as dividend.

30. The Appellant No. 2 (Mr. Atul M. Thakkar) stated that the Respondent No. 1 (Sunil M. Thakkar) and Respondent No. 2 (Lopa S. Thakkar) have been doing activities which are against the interest of the Corporate Debtor and also demonstrate conflict of interest and a violation of Section 166 (4) of the Companies Act, 2013.

31. The Appellant No. 2 (Mr. Atul M. Thakkar) stated that in terms of Tribunal order dated 19.10.2022, the retired Chief Justice of Rajasthan High Court was appointed as the Administrator for three months. However, the Administrator was discharged vide Tribunal's Order dated 23.01.2023 and subsequently order did not adequately clarified the reinstatement of the Board of Directors leading to misinterpretation by the Respondent and taking advantage of same the Respondent refused to sign the cheques and provide personal guarantees which led to financial instability for the corporate Debtor including unpaid debts and invoked Standby letters of creditor.

32. Concluding his arguments, the Appellant pleaded that the Impugned Order passed by the Tribunal is illegal and deserves to be set aside which will help the Corporate Debtor to come back on his own feet and survive.

33. Per contra, the Respondent Nos. 1, 2 & 3 (in short **Respondents**) of the Corporate Debtor have denied of the allegations of the Appellants labelling these as mischievous and misleading.

34. The Respondents submitted that the Adjudicating Authority have gone through all the facts and taken relevant laws into consideration before passing the Impugned Order which is just and fair and perfectly legal.

35. The Respondents alleged that the Appellant Nos. 2 & 3 have run the Corporate Debtor like 'Proprietary Firm' since 2015 and submitted that the Appellant No. 2 (Mr. Atul M. Thakkar) illegally inducted the Appellant No. 3 (Mr. Anand A Thakkar) despite objections from the other directors i.e., Respondent No. 1 (Sunil M. Thakkar) by misusing the provision of the casting vote.

36. The Respondents further alleged that the Appellant No. 2 (Mr. Atul M. Thakkar) and Appellant No. 3 (Mr. Anand A Thakkar) have been siphoning of the company's funds and have diverted to its wholly owned subsidy in Dubai which is a loss making company of which the Appellant No. 2 (Mr. Atul M. Thakkar) another's son was made incharge.

37. The Respondents also alleged that the Appellant has been enhancing his own salary and incurring expenses for his personal requirements at the cost of shareholders.

38. The Respondents also alleged that the Appellants have been committing offences of non compliance of provision of law, breach of agreements entered with the clients to harm the interest of the company and the Respondents.

39. The Respondents submitted that subsequent to the Impugned Order dated 01.04.2022, the Respondents fully cooperated, however, the Appellants have been involved in contrary actions against the Impugned Order.

40. The Respondents alleged that despite clear orders of Tribunal regarding equal pay to the Respondents in the management of the company and to provide fair banking access, the Appellants have only taken action to white wash in the name of compliance and the Respondent No. 2 (Lopa S. Thakkar) and her son Mr. Rohan S. Thakkar have been appointed as Additional Directors and no remuneration or perks have been allowed for them.

41. The Respondents stated that the Appellant No. 2 (Mr. Atul M. Thakkar) was disqualified to work as Director in terms of Section 162 of the Companies Act, 2013, however, without any consultation with the Respondents, the Appellant No. 2 (Mr. Atul M. Thakkar) was appointed as Chief Operating Officer of the company vide letter dated 03.06.2022 which is a Key Managerial Personal (**KMP**).

42. The Respondents alleged that even after the Impugned Order dated 01.04.2022 passed, the Appellant family members are KMP, however, none of the family members of Respondent are treated as KMP.The Respondents also alleged that even the banking operations are being centralised by the Appellant.

43. The Respondents submitted that the company was found in 1995 and is akin to quasi-partnership with the Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) being the shareholder and only directors of the Corporate Debtor since 1995 to 2015. The Respondent No. 1 (Sunil M. Thakkar) mentioned that the Appellant No. 2 (Mr. Atul M. Thakkar) looked after day to day business operations while Respondent No. 1 (Sunil M. Thakkar) looked after important aspects like marketing, PR and was instrumental in procuring big contracts for the Corporate Debtor.

44. The Respondent No. 1 (Sunil M. Thakkar) mentioned that the Appellant No. 2 (Mr. Atul M. Thakkar) started misusing his casting vote from 2015 with the intention to take the control over the company in favour of his family and made his son Appellant No. 3 (Mr. Anand A Thakkar) as incharge of the company and resultantly and practically ousted the Respondents from the management of the company.

45. The Respondent No. 1 (Sunil M. Thakkar) pointed out that the Appellants has been indulging in “oppression and mismanagement” as shareholders as well as directors and in this direction, the Respondents submitted that on 29.12.2015

during BoD of the Corporate Debtor, the Appellant No. 2 (Mr. Atul M. Thakkar) introduced one item under caption "In other business with the Permission of Chair" and resolved to appoint his son Appellant No. 3 (Mr. Anand A Thakkar) as Additional Director which was opposed by Respondent No. 1 (Sunil M. Thakkar) but the Appellant No. 2 (Mr. Atul M. Thakkar) used his casting vote and passed the resolution.

46. The Respondents alleged that they holding 50% shares wanted to invite Respondent No. 2 (Lopa S. Thakkar) as director of the company which was not approved by the Appellant No. 2 (Mr. Atul M. Thakkar). On 03.01.2016 during the board meeting, which the Respondent No. 1 (Sunil M. Thakkar) could not attend but due to personal reasons, the Appellant No. 2 (Mr. Atul M. Thakkar) again violated the rights of the shareholders and appointed Appellant No. 3 (Mr. Anand A Thakkar) as Vice Chairman passing the resolution under agenda "Other Business".

47. The Respondents stated that the Respondent No. 2 & 3 have been misusing their strength in the board and have increased salary and perks payable to them by 50% while no remuneration was paid to Respondent No. 1 (Sunil M. Thakkar) and again on 29.09.2006 during AGM of the Corporate Debtor, the Appellant No. 3 (Mr. Anand A Thakkar) was appointed as regular director despite opposition of Respondent No. 1 (Sunil M. Thakkar) by exercising casting vote by the Appellant No. 2 (Mr. Atul M. Thakkar).

48. The Respondents stated that the Appellant have been misusing their powers and resulting into oppression of the Respondent and mismanagement of the affairs of the company, so much so, that during board meeting of the company held on 14.01.2017, the Appellant No. 2 (Mr. Atul M. Thakkar) proposed to fund the loss making subsidiary i.e., Venus Petrochemicals Middle East DMCC which was objected by the Respondents, however, the Appellant No. 2 & 3 approved the resolution ignoring the will of 50% of shareholders which clearly demonstrate the wrongful intention of the Appellants and oppression of the 50% shareholders.

49. The Respondents submitted that yet another act of misuse of the power by the Appellant resulting into "oppression and mismanagement" of the Respondent appeared on 18.07.2017 were during the board meeting, the Appellant No. 2 (Mr. Atul M. Thakkar) passed a proposed agenda to appoint his another son also as additional director and despite the opposition of Respondent No. 1 (Sunil M. Thakkar) the same was passed due to illegal majority of the Appellants.

50. The Respondents explained that from 2016-2018, the Respondents sent several e-mails and communications to the Appellants expressing their grievances regarding "oppression and mismanagement" by the Appellant No. 2 & 3. However, no cognizance was given to their grievances and kept on passing

the resolutions by way of circular resolutions despite opposition from Respondent No. 1 (Sunil M. Thakkar).

51. The Respondent No. 1 (Sunil M. Thakkar) stated that the Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) were the directors in another family firm M/s Emerald Petrochemicals Pvt. Ltd. and Appellant No. 2 (Mr. Atul M. Thakkar) was the chairman of the said company, however, the Appellant No. 2 (Mr. Atul M. Thakkar) deliberately did not file the annual returns of the said company and refused to sign the balance sheet which resulted into disqualification of Respondent No. 1 (Sunil M. Thakkar) along with the Appellant No. 2 (Mr. Atul M. Thakkar) to act as director in any company including the Corporate Debtor. As a result of which despite having 50% share of the company, the Respondent No. 1 (Sunil M. Thakkar) did not remain director of the Corporate Debtor whereas the Appellant No. 3 (Mr. Anand A Thakkar) was already inducted into board of the Corporate Debtor by using the casting vote by the Appellant No. 3 (Mr. Anand A Thakkar), thus Appellant family caused oppression of the Respondents as shareholders.

52. The Respondents stated that in order to make the balance of composition in the BoD, the Respondents made requisition for EOGM. However, during EOGM Meeting held on 31.01.2019, Appellant No. 2 (Mr. Atul M. Thakkar) using his casting vote rejected the appointment of two sons of Respondent No. 1

(Sunil M. Thakkar) i.e., Rohan S. Thakkar and Hriday S. Thakkar as director of the company.

53. The Respondents alleged that since they were not getting response or cooperation from the Appellant, who were bent upon to damage the Respondents financially, the Respondent No. 1 & 2 were left with no other option and therefore file the Company Appeal under Section 241, 242 & 244 of the Companies Act, 2013 before the Tribunal on 28.11.2018.

54. The Respondents hailed the gestures of the Tribunal which directed the parties to attempt to resolve their *inter se* disputes and directed Appellants and Respondents to carry out valuation of the Corporate Debtor which somehow could be fructify due to non cooperation by the Appellants.

55. The Respodnents submitted that final judgment was pronounced by the Tribunal vide Impugned Order dated 01.04.2022 by eliminating the imbalance of the rights and power in the management of the Corporate Debtor created by the Appellants and the relevant directions were given in Para 20 of the Impugned order.

56. The Respondents also alleged that the Appellant No. 2 (Mr. Atul M. Thakkar) has not declared any dividend in the company and rather diverted the funds of the company in purchasing bunglow in the name of the company for the use of the Appellant No. 2 and his family.

57. The Respondents alleged that after the Impugned Order dated 01.04.2022 the Respondent No. 2 (Lopa S. Thakkar) and Rohan S. Thakkar were appointed as Additional Director, however, continued exploitation of the Respondents by not appointing them as a whole time directors but only appointing them as an Additional Directors.

58. The Respondents cited few judgements to buttress their point regarding "oppression and mismanagement" being done by the Appellants which has rightly been intervened by the Tribunal by way of the Impugned Order dated 01.04.2022 restoring the position on equal footing between the Appellant family and the Respondents family.

59. Concluding their arguments, the Respondents requested this Appellate Tribunal to dismiss the Appeal with an exemplary cost.

Finding

60. We have already noted that the Corporate Debtor was formed in 1995 by the Respondent No. 1 (Sunil M. Thakkar) and the Appellant No. 2 (Mr. Atul M. Thakkar) for various petrochemicals products. It is undisputed fact that from 1995 to 2015 i.e., about 20 years the company was running successfully without any dispute.

61. We note that the dispute arose somewhere in 2015, where equal representation in the board based on 50:50 equity holding by Respondent No. 1 (Sunil M. Thakkar) and the Appellant No. 2 (Mr. Atul M. Thakkar) was

allegedly sought to be changed by the Appellant No. 2 (Mr. Atul M. Thakkar) by way of inducting his son, Appellant No. 3 (Mr. Anand A Thakkar) in the BoD of the Corporate Debtor.

62. We will note that the shareholding of the Corporate Debtor, which is as under :-

Shareholder	Number of Shares	% Shareholding
Atul Thakkar Group (50%)		
Atul M. Thakkar (Appellant No.2) **(AMT)**	2470080	49.6
Pravina A. Thakkar (w/o Appellant No.2)	100	0.002
Anand Thakkar (Appellant No.3) **(AT)**	10,000	02
Yashesh Thakkar (Respondent No.3) **(YT)**	10,000	0.2
Sunil Thakkar Group (50%)		
Sunil M. Thakkar (Respondent No.1) **(ST)**	24,89,680	49.990
Lopa S. Thakkar (Respondent No.2) **(LT)**	500	0.010

63. It has also been brought out that Respondent No. 1 (Sunil M. Thakkar) wanted the Respondent No. 2 (Lopa S. Thakkar) and his son i.e., Rohan S. Thakkar to be on the BOD of the Corporate Debtor, for equal representation which was denied by the Appellant No. 2 (Mr. Atul M. Thakkar).

64. Another allegation against the Appellant No. 2 (Mr. Atul M. Thakkar) was non distribution of dividends and infusion of money in its wholly owned subsidiary company in Dubai Subsidiary Company despite protest on the Respondent No. 1 (Sunil M. Thakkar) being a loss making company.

65. The issue regarding quasi-partnership nature of the Corporate Debtor was also raised and deliberated in the Impugned Order.

66. The Appellant have preferred the present Appeal against the Impugned Order aggrieved by the fact that the Impugned Order held them responsible for "oppression and mismanagement" of the Respondents.

67. The Appellants are also aggrieved by the directions passed by the Adjudicating Authority in the Impugned Order which gave the following directives contained in Para 20 which reads as under :-

> *"20. In view of above, The Bench directs the following;*
>
> *i. The Petitioner's side and the Respondent's side in line with their about 50% of the shareholding to have equal number of representations in the board of Directors of the Respondent No.1 Company.*
>
> *ii. Keeping in view that the casting vote have been heavily misused by the Respondent's side, there will not be any casting vote available to either side and all decisions on the board will be taken only when representative of both side (petitioner and respondent) represented in equal number on the board, agree to the Resolution before the Board.*
>
> *iii. The bank accounts of the company will be operated under the joint signature of representative (one representative each) from the Petitioners and the Respondent's side.*
>
> *iv. The above decision of the Bench to be implemented within 15 days of the pronouncement of this order."*
>
> *(Emphasis Supplied)*

68. Thus, the basic issues in the present appeal are following :-

(i) Whether, the action taken by the Appellants by way of appointment of Appellant No. 3 (Mr. Anand A Thakkar) on BoD of the Corporate Debtor, denial of the appointment of Respondent No. 2 & 3 on the BoD of the Corporate Debtor, alleged wrongful infusion of money is subsidiary in Dubai, denying the opportunity in participating in the management of Corporate Debtor were the acts of "oppression and mismanagement".

(ii) Whether, the Corporate Debtor along with other family owned business entities were in nature of quasi-partnership.

(iii) Whether the 50:50 equity shareholding by both Respondent No. 1 (Sunil M. Thakkar) family and the Appellant No. 2 (Mr. Atul M. Thakkar) family, can become basis for equal representation in the BoD.

(iv) Whether, the Adjudicating Authority had rights to impose the conditions contained in Para 20 of the Impugned Order (already noted above).

(v) Whether the casting vote is privilege of the Chairman of the BoD or can be done away by the Adjudicating Authority as done in the Impugned Order.

Since, all these points are interconnected, inter- dependent and inter-linked, these will be taken up and discussed in subsequent discussion in conjoint manner.

69. Before dwelling into these issues, it would be desirable to look into the relevant provisions of the Companies Act, 2013. The relevant sections which provide for "oppression and mismanagement" are Section 241 & 242 of the Companies Act, 2013 which reads as under :-

> ***"241. Application to Tribunal for relief in cases of oppression, etc.—*** *(1) Any member of a company who complains that—*
>
> *(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
>
> *(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a*

manner prejudicial to its interests or its members or any class of members,

*may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.****

***242. Powers of Tribunal**.— (1) If, on any application made under section 241, the Tribunal is of the opinion—*

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his

appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

[(4-A) At the conclusion of hearing of the case in respect of sub-section(3)of section241, the Tribunal shall record its decision stating therein specifically as to whether or not the

respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of the company.]

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable [***] with fine which

shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees."

(Emphasis Supplied)

70. From above, following emerges :-

- The application can be made by the member of the company i.e., as a shareholder not as a director of the BOD.
- The affair of the company has been or are being conducted in a pre-judicial manner which are oppressive to such members of the company or against the interest of the company.
- Such oppression and mismanagement have not been defined exhaustively and it is for the Tribunal to look into the given facts. While doing so, the material changes being done by the Corporate Debtor against the interest or any member of the creditor or debenture holder or any class of shareholder by way of taking place in the management or control of the company including by way of alteration in the BoD or ownership of the company shareholders, etc., shall be deemed to be activities covered under "oppression and mismanagement".

71. We also note that Section 241(1)(a) and 241 (1)(b) deals with "oppression". The scope of Section 241 is quite wide and covers acts which are pre-judicial to a member of the company. The action which is pre-judicial could be adequate to invoke Section 241 without having to show "oppression". In fact the oppressive act may also be pre-judicial to a member which entitle him is seek relevant relief under Section 241 & 242 of the Companies Act, 2013.

72. We note that there is no definition of the term "oppression" in the Indian Companies Act, 2013 and it is discretion of the court to give the meaning of "oppression" in the given circumstances of each case.

73. We note carefully that this is "oppression" or pre-judicial against the member of the company i.e., as shareholder and not as a director which is testing criteria. This tantamount that the *inter-se* disputes between the directors may not be sustainable justification for invoking Section 241 & 242 of the Companies Act, 2013.

74. Generally speaking, the various provisions of Companies Act requires to show and establish contravention of law as basis for seeking remedies under the act. In contrast to this, this required of contravention of law may not be applicable in case of "oppression" to amplify the action taken by the company which is legal and lawful may still be oppressive in nature.

75. The lack of probity or equity would be more relevant factors in the cases of "oppressions". This will further imply that intention behind of the action taken by the Corporate Debtor or person in charge of the company would also be relevant factor to look into such allegations of "oppression of mismanagement".

76. Generally speaking, the oppressive actions are taken by the majority of shareholders which are pre-judicial to the minority members of the company. In the present case, we have already noted that both the Appellants and the

Respondents are holding equal shareholding of 50:50 as such there is no majority shareholders. It is primarily the issue of control of the management of the Corporate Debtor.

77. It will also important to note for such oppressive acts should not be one time act and rather should be of continuing nature which has got adverse impact on the members of the Corporate Debtor or against the interest of the company.

78. Logically the court can pass any suitable order under Section 241 & 242 of the Companies Act, 2013, once it is satisfied that the company affairs are being conducted in manner oppressive to any members and then can take suitable decisions based on in the given circumstances including order for winding up of the company.

79. In the present appeal, we have noted that both Respondent No. 1 (Sunil M. Thakkar) and the Appellant No. 2 (Mr. Atul M. Thakkar) were disqualified to continue to be director of any company under Section 166 (4) of the Companies Act, 2013 as they did not file financial returns within the time and subsequently both have ceased to be directors of the Corporate Debtor i.e., Venus Petrochemicals (Bombay), Private Limited and even on date, the present status continues.

80. We note that the Appellant No. 2 (Mr. Atul M. Thakkar) despite objections by the Respondent No. 1 (Sunil M. Thakkar) holding 50% of the shares appointed his son i.e., Appellant No. 3 as a BoD using his casting vote.

81. The moot question here is whether such appointment or non appointment of the Director on BoD can be cause of "oppression and mismanagement". As we have already noted that the act of "oppression and mismanagement" should be pre-judicial to a member of the company and not against the director of the BoD. Technically and legally speaking the appointment and removal of directors cannot be treated as act of "oppression and mismanagement".

82. The other point is regarding distribution of the dividends or kept as a retained earning of the company. It is normally financial decision taken by the Corporate Debtor regarding use of profit at the end of the year. The profit is distributed as dividends to the shareholder as a reward for their investment in the company. However occasionally the company may choose not to give the dividends and to keep profits as retained earning which is being reflected as reserves and surplus which enable the company to plough back for the development of the company. This non declaration of dividend were *per-se* cannot be a ground for to be an oppressive act.

83. However, we have already noted that the term "oppressive" is no where defined in the companies act and what is required to be looked into the intention of action taken by the majority of shareholder. It is reiterated that the equity shareholder was always 50:50 by the Appellants and the Respondents and even on date continues to be same, as such there is no concept of majority shareholders v/s minority shareholders in present appeal.

84. It is important to understand whether such Corporate Debtor are in nature of quasi-partnership or not. Again the definition of the term quasi-partnership has not been provided in the Companies Act, 2013 and the same is required to be determined by the court based on the facts of each case. If the present case there are few business entities i.e., M/s. Sunil Chemicals (a partnership firm), Puja Fab ChemPlast Private Limited and Emerald Petrochemicals Private Limited and there has been cross shareholding and cross directorship in these companies by the family members of Respondent No. 1 (Sunil M. Thakkar), the Appellant No. 2 (Mr. Atul M. Thakkar).

85. In the case of ***Ebrahimi vs. Westbourne Galleries Ltd and Others, (1972) 2 All ER 492(House of Lords)***, Lord Wilberforce listed three factors that might be present in a case of quasi-partnership. These are referred to as the core criteria for determining whether a quasi-partnership exists i.e., (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders, shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

86. Similarly, the Supreme Court of India has discussed the concept of quasi-partnership in case of ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, Kilpest Private Limited Vs. Shekar Mehra*** and ***MSDC Radharamanan Vs. M S D Chandrasekhara Raja & Ors.***

87. During pleadings before us, the Appellants have referred the decision of the Hon'ble Supreme Court of India rendered in the case of ***Tata Consultancy Services Pvt. Ltd. vs. Cyrus Investments (P) Ltd. [(2021) 9 SCC 449]*** to emphasise that the Appellant Company was not a quasi-partnership as the company was not converted from an existing partnership, there was nothing in the incorporation documents of the company to suggest that upon incorporation, the company's operations were to be managed in the nature of a quasi-partnership. The Appellant submitted that no relief could have been granted to the Respondents under the just and equitable standard as there was no existence of a quasi -partnership.

88. On the other hand, the Respondent stated that ***Tata Consultancy Services (Supra)*** on contrast is applicable and referred paras no. 139, 140 & 141 which reads as under :-

> *139. That, "for superimposing an equitable fetter on the exercise of the rights conferred by the articles of association, there must be something in the history of the company or the relationship between the shareholders", is*

fairly well settled [Saul D. Harrison & Sons Plc., In re, 1994 BCC 475] .

140. In Lau v. Chu [Lau v. Chu, (2020) 1 WLR 4656 (PC)] , the House of Lords indicated: (WLR p. 4662, para 14) "that a just and equitable winding up may be ordered where the company's members have fallen out in two related but distinct situations, which may or may not overlap." The first of these is labelled as, "functional deadlock", where the inability of members to cooperate in the management of the company's affairs leads to an inability of the company to function at Board or shareholder level. The House of Lords pointed out that functional deadlock of a paralysing kind was first clearly recognised as a ground for just and equitable winding up in Sailing Ship Kentmere Co., In re [Sailing Ship Kentmere Co., In re, 1897 WN 58] . The second of these is where a company is a corporate quasi-partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place. In the first type of these cases, where there is a complete functional deadlock, winding up may be ordered regardless whether the company is a quasi-partnership or not. But in the second type of cases, a breakdown of trust and confidence is enough even if there is not a complete functional deadlock.

141. Therefore, for invoking the just and equitable standard, the underlying principle is that the court should be satisfied either that the partners cannot carry on together or that one of them cannot certainly carry on with the other [The

advantage that the English courts have is that irretrievable breakdown of relationship is recognised as a ground for separation both in a matrimonial relationship and in commercial relationship, while it is not so in India.] .

(Emphasis Supplied)

89. The Respondents highlighted that their case are falls within the ambit of ***Tata Consultancy Services (Supra)***. The Respondents stated that the present case is clearly within family members and even Appellants submissions are that, there has been dead lock in company and as such these specific situation tallies with ratio of ***Tata Consultancy Services (Supra)***.

90. We find merit in the contentions of the Respondents. Although, ***Tata Consultancy Services (Supra)*** stand on its own facts, some of which are relevant and few other may not be applicable, but on wholistic application ratio of ***Tata Consultancy Services (Supra)*** by and large and visibly found in the present case looking to family history, close connection and cross directorship of Respondent No. 1 (Sunil M. Thakkar) and Appellant No. 2 (Mr. Atul M. Thakkar) in group private limited companies. We find that the principle of quasi-partnership will be applicable in the present appeal.

91. From the above judgments, it is noted that principles of quasi-partnership is not foreign to the concept of the Companies Act, 2013. For the purpose of grant of relief, the principles of quasi- partnership had been applied even in a public limited company. It is held that the true character of the Company and

other relevant factors should be considered to decide the true factor of 'quasi-partnership'. Based on above principles and in the light of the ratio given by Hon'ble Supreme Court in above cited judgments including ***Tata Consultancy Services (Supra)*** it seems that the intent of the shareholders and the original two directors was to run the company as the family controlled company alongwith the other three firms where both Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) were directly and indirectly concerned and / or director were also in nature of family control. Thus, the prima-facie all these falls in the nature and definition of quasi-partnership. We consciously note that only being of family controlled companies cannot be a ground to treat these as quasi-partnership and the intent and understanding, whether explicit or implicit, or by acts or by deeds, of the concerned parties would be and should be the relevant factors.

92. Based on these parameters we find that it was always the understanding of the promoters of the Corporate Debtor i.e., the Appellant No. 2 (Mr. Atul M. Thakkar) and Respondent No. 1 (Sunil M. Thakkar) to be jointly owners and jointly controllers.

93. It is noted that there was a sacred thread of trust and confidence between Appellant No. 2 and Respondent No. 1 and that is the reason the company grew and continued as a profitable company since inception in 1995 till 2015. This was also based on equal representation and participation in the conduct of the

affair of the company. However, around in 1995 and this balance of power was ought to be changed by Appellant No. 2 (Mr. Atul M. Thakkar) which was opposed by Respondent No. 1 (Sunil M. Thakkar).

94. In this connection, we note that the plea taken by the Appellant No. 2 (Mr. Atul M. Thakkar) in the concerned board meeting was that since he was old of 60 years age, he wanted to induct Respondent No. 1 (Sunil M. Thakkar) as director in the board of director. However on wholistic reading of all facts and events, it transpires that this was not the true reason and intention was to induct his family at the cost of the Respondents who were also holding equal 50% of shares of the Corporate Debtor, which is clear sign of oppressive of one set of shareholder i.e., Appellants at the cost of another set of shareholders i.e., Respondents.

95. We also note that subsequent to disqualification of the Appellant No. 2 (Mr. Atul M. Thakkar) to be director of any company, the Appellant No. 2 was appointed as Chief Operating Officer of the company on the similar salaries and perks treating him to be invaluable assets required for the company. Thus, the reasoning given by the Appellant No. 2 that he was getting old to run the affairs of the company are contradicted by himself after assuming the charge of Chief Operating Officer of the company. It clearly reflects that the intent was to oust (Respondent No. 1) and his family from the management and to have full control of the company by his family members.

96. We also note that the shareholders invest their money for several reasons including anticipation of the dividends or enhancement of the value of shares or by way of participating control and management in the conduct of the affairs of the Corporate Debtor. Undoubtedly, in the present case the Corporate Debtor is a private limited company and obviously shares are not listed in a stock exchange thus the legitimate expectation of the members of the company is either dividend or is in control of the company.

97. We already held that the distribution of dividend or otherwise, is the financial and the corporate decision of the company and cannot be treated as oppressive act. However, the participation in the affairs of the management can be legitimate aspiration of members holding substantial equity share in the Corporate Debtor and in this background, the Appellant No. 2 by using the casting vote overrules will of 50% of shareholding of the Respondents to take the control of the Corporate Debtor and pass on the same to sons which fall in the arena of oppressive act of set of shareholders.

98. We also note from the Impugned Order that Appellant No. 2 abruptly stopped the monthly remuneration of Respondent No. 1 from 01.04.2016 and increased his own monthly remuneration in the company. The relevant pleadings noted in this regard are contained in Para 9 of the Impugned Order :-

> *"9. The Petitioners further submit that as is evident from the correspondences referred and mentioned herein above, Respondent Nos. 2 abruptly stopped the monthly*

remuneration of the Petitioner No.1 from the Company from 1st April 2016, and instead increased his own monthly remuneration from the Company. Respondent No. 2 with the help of Respondent No.3 also extended tenure of his appointment as the whole-time director of the Company. The Petitioners therefore submit that they are neither getting return of their investment in the form of dividends nor in the form of monthly remuneration due to the oppressive acts of Respondent Nos. 2 to 4."

(Emphasis Supplied)

99. We observe that after noting in details submission made by the Appellant and Respondent, the Tribunal came to conclusion that Appellant No. 2 was not conducting the board meeting in fair manner and misused his casting vote.

100. The Impugned Order also recorded that from 2016 by way of major decisions were taken through circular resolution which was put up to the board for ex-post facto as fait accompli. The Impugned Order also note that the board were held merely for procedural formalities and without following any corporate governance norms.

101. In this background we would like to revisit the directives given by the Tribunal contained in Para 20 which we have noted earlier. There were three clear directions. It was stipulated that both the Appellant No. 2 family and Respondent No. 1 family with their 50% shareholding should have equal representations in the BoD of the Corporate Debtor. The Impugned Order

further held that looking to the chequered history in the affairs of the Corporate Debtor the casting vote of the Chairman, which has been held to be heavily misused by the Appellant No. 2, will not be available to either side and the decision of the BoD will be taken on unanimous basis. The last directives by the Tribunal is that bank account will be operated under joint signature i.e., one representative each from both the sides.

102. The Appellant alleged that the Tribunal could not have given these directives as these were not within the mandate with the Tribunal. The Appellant is especially aggrieved by the fact that his casting vote, which is a creation of Article of Association of the company, has been taken away. It was further allegation of the Appellant during pleadings that subsequent to the Impugned Order the Respondents have not been signing any cheques and causing corporate governance issues.

On a pointed query by this bench, the Respondents submitted that large number of cheques have been signed by the Respondents, which could not be denied by the Appellant in totality, who however stated that all cheques were not signed by the Respondents. The allegation of the Appellants on account of non-signing of cheques by the Respondent is therefore incorrect. Hence the direction regarding joint signature of the parties is causing harm to the company, is not found to be true.

103. As regarding casting vote, we have seen during pleadings that casting voting provisions was available to the chairman of the company. Here worthwhile to understand the nature and the circumstances when the casting vote can be used.

104. The casting vote is additional vote given to the chairman of the Board to break the deadlock in the matter where there is equality of votes for and against.

105. The chairman is not obligated to use his casting vote always and in all circumstances. The chairman is however expected to act in good faith while using his casting vote and the casting vote cannot be used to over come a decision taken by majority. In the present case, since there was no majority, being both the group holding 50:50 shareholders, as such it can be presumed that if the casting vote used by the chairman can tantamount if used not in good faith particularly if used only for creating imbalance in the board composition or enhancement of his own remuneration, which precisely happened in the present case.

106. From submission made before us, we note that only on three occasions casting vote was used by the Appellant No. 2 (Mr. Atul M. Thakkar). For the first time on 29.12.2015, casting vote was used by Appellant No. 2 (Mr. Atul M. Thakkar) for appointment of Appellant No. 3 (Anand A Thakkar) as Additional Director. Again on 29.09.2016 the Appellant No. 2 (Mr. Atul M. Thakkar) used casting vote to make Appellant No. 3 (Anand A Thakkar) as regular Director.

107. Subsequently, by majority of two i.e., Appellant No. 2 (Mr. Atul M. Thakkar) and Appellant No. 3 (Anand A Thakkar) decisions were taken overruling dissent of Respondent No. 1 (Sunil M. Thakkar) on 24.07.2017, 18.07.2017, 19.09.2017, 06.12.2018 etc.

108. Finally, in EGOM held on 31.01.2019, Appellant No. 2 (Mr. Atul M. Thakkar) used casting vote to reject the appointment of sons of Respondent No. 1 (Sunil M. Thakkar) i.e., Rohan S. Thakkar and Hriday S. Thakkar as directors of the company.

109. Thus, it is clear that casting vote was always used by Appellant No. 2 (Mr. Atul M. Thakkar) for appointment of his sons as Director and opposing sons of Respondent No. 1 as directors.

110. We note that for no other purpose the casting vote was used. Thus, the contention of Appellant No. 2 (Mr. Atul M. Thakkar) regarding importance of casting vote for company is not found true and stand rejected.

111. These circumstances certainly cannot be treated as the circumstances requiring to use the casting vote by the chairman, in the given circumstances of the present case. If the chairman use the casting vote not in the interest of the company, perhaps the members of the company can challenge the same which has been done in the present case by the Respondents.

112. We have already noted that the casting vote were invoked only 2015 onwards when dispute arose between the parties and subsequently majority of

such casting votes were used for benefits of the Appellants rather than for the company. It is appreciated that the disqualification of both the directors of company i.e., Appellant No. 2 and Respondent No. 1 would have rendered company without any director which is not permissible. Hence it would have been necessary to appoint directors. The Appellant No. 3 was appointed by the Appellant No. 2 using his casting vote have been prior to his disqualification and further refusing the appointment of other directors of the Respondent No. 1, who held equal 50% shareholding in the company affair again will tantamount to not in good faith and is prejudicial to the members of the company for participation in the management of the company.

113. Thus, the Adjudicating Authority took decision to remove the casting vote in these extraordinary circumstances which created company imbalance by one set of 50% shareholders taking all decisions for their own benefits and denying any right to other 50% shareholders. Based on the strength of the shareholding one can legitimately expect to have representation and say in the BoD of the company if otherwise eligible under Companies Act, 2013.

114. 'Oppression' may take different forms and need not necessarily be for obtaining pecuniary benefit. It may be due to a desire to obtain power and control, or be merely vindictive. In this background, the decision of the Tribunal cannot be faulted with .

115. Based on all above, we do not find anything illegal or beyond jurisdiction of the Tribunal in passing the three directives contained in para 20 of the Impugned Order. In totality, we do not find any error in the Impugned Order.

116. In fine the appeal is found to be devoid of any merit and therefore fails and stands dismissed.

117. No costs. IA, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sim