

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CP 252/MB/2017

Section 241-242 of the Companies Act, 2013

**FINE HANDDLING & AUTOMOTIVE PVT
LTD**

...Petitioner

V/s

EEPOS FINE RAIL SYSTEM INDIA PVT LTD

...Respondent

Order delivered on: 18.06.2026

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Prachi Wazalwar a/w Adv. Shawn
Fernandes

For the Respondent : Adv. Avinash Khanolkar for the
Respondent is present

For the Respondent No.2 : Adv. Avinash R. Khanolkar, Adv. Maheshkumar T. Nulolu, Adv. Khushbu Bhanushali and Adv. Shivani Prabhukhanolkar

ORDER

1. The present Petition has been filed by M/s Fine Handling And Automation Private Limited (“Petitioner”), seeking appropriate orders u/s. 242 of the Companies Act, 2013 alleging Oppression & Mismanagement committed by the Respondent No. 2, M/s EEPOS GMBH in the affairs of M/s EEPOS Fine Rail Systems India Private Limited (Respondent No. 1/Respondent Company).
2. Respondent Company was incorporated by Mr. Nilesh Karandikar in 2002 in the name of M/s EFS India Load Manipulators Pvt. Ltd. and the name of Respondent Company was change to present name, namely M/s EEPOS Fine Rail Systems India Private Limited, consequent upon Respondent No. 2 agreeing to invest in the said company to carry the business further. The Respondent Company was carrying on the business of manufacturing and designing, inter-alia, of lifting equipment.
3. The Respondent No. 2 is a company registered under the laws of Germany and holds 99,975 equity share of Rs 10/- each in the paid up share capital of the Respondent Company constituting 50% of the paid up capital thereof. The remaining 50% of the paid up share capital of the Respondent Company is held by the Petitioner herein.
4. The Petitioner appointed Mr. Nilesh Karandikar as its representative on the board of Respondent Company and Respondent No. 2 appointed Mr. Timo Koch as its representative on the board of Respondent Company. Both held the position of the Managing Director in the Respondent Company.
5. It is the case of the Petitioner that the Respondent Company was incorporated as a glorified partnership firm, however, during the period from 2011 to 2017, the Respondent No. 2 being one of the Promoters of Respondent Company, did not

take part in the day to day management & affairs of the Company. Respondent Company's substantial goodwill was established during this period. Neither Respondent No. 2 nor its representative Managing Director in Respondent Company fulfil any of their fiduciary duties as Promoter and Director in Respondent Company.

6. The Petitioner states that even after repeated reminders and letters sent to Respondent No. 2 and its representative Mr. Timo Koch they completely abandoned their duties and failed to attend to the affairs of the Company. They did not take part in the Board Meetings and management and further did not extend any cooperation.
7. It is further stated by the Petitioner that, during the period from 2014-2016, Mr. Nilesh Jayant Karandikar sent various emails to Timo Koch highlighting:
 - a. Work Done by Petitioner No. 1 for furthering brand 'EEPOS" In India;
 - b. Arbitrary and unreasonable action of Respondent No. 2 by sending "JV Termination Letter" to Petitioner No. 1;
 - c. Appointment of "Techxellency Jendamark India" as the authorized representative by Respondent No. 2 to sell same products in India;
 - d. Reminders to Respondent No. 2 to prohibit "Techxellency Jendamark India" from approaching clients of Respondent No. 1 which is causing financial and goodwill loss to Respondent No. 1 Company;
 - e. Even after repeated emails Timo Koch and Respondent 2 delayed the communication thereby affecting the business of Respondent No. 1 Company. Further Mr. Timo Koch expressed happiness that other Companies are directly selling EEPOS goods in India;
 - f. Emails placing orders with Respondent No. 2 and reminders thereof. Intentional non-cooperation and breakdown of communication;
 - g. Reminders on Company law compliances and other urgent pending matters;

- h. "Techxellency Jendamark India" the representative appointed by Respondent No. 2 makes various attempts to poach customers of Respondent No. 1.
8. It is further stated that, during the period Aug 2016 till 2017, Mr. Nilesh Karandikar and Petitioner No. 1 addressed letters to the Respondents reminding them of the various compliances that are pending. Board Meeting notices along with agenda and unaudited financial statements for the Financial years ending 31 March 2014 and 2015 shared with the Respondent No. 2.
9. It is further stated that Respondent No. 2 formed another company namely "EEPOS India Private Limited" on 19th December 2016 with similar main objects and trade name. Consequently the Respondent Company and the Petitioner filed a civil suit before the District Judge under Section 27(2) Of the Trade Marks Act, 1999 in February-2017 for breach of fiduciary duty and responsibility under Companies Act, 2013 as well as Breach of Trust under Section 88 of Indian Trusts Act, 1882, which is still pending as on date.
10. It is further stated that a notice of default under Section 137/92/96 of the Companies Act, 2013 received by Respondent Company in February 2017 from the Registrar of Companies, Pune. Accordingly, Mr. Nilesh Karandikar, sent reminder letters to Timo Koch highlighting seriousness of the notice and need to complete various compliances. Pursuant to the notice of default, another notice in form STK 1 was issued for "Removal of the name of the Company from Register of Companies" by the Registrar of Companies, Pune to Respondent Company in March 2017, and Mr. Nilesh Karandikar forwarded the same to Mr. Timo Koch and Respondent No. 2 for appropriate response.
11. It is admitted fact that the statutory compliances under the Companies Act, 1956/2013 are not completed since 2017 in relation to affairs of the Respondent company.
12. This Tribunal vide order dated 18.09.2020 dismissed the Company Petition No. 2183 of 2019 filed by the Petitioner seeking direction under Section 97 of the Companies Act, 2013, inter-alia, seeking convening of the Annual General

Meeting for the year 2013-14 to 2017-18. The said order was carried in the Appeal by the petitioner before Hon'ble NCLAT and the said appeal was disposed of in terms of order dated 25.09.2024 recording as follows:-

“3. Admittedly the Company Petition No. 2539/2018 is still pending for winding up of the company. Admittedly as per impugned order while exercising its discretion under Section 97 of the Companies Act, 2013, the Ld. NCLT had though dismissed the Company Petition but granted a liberty to the appellant herein to approach the Tribunal, if need be, after judgement is pronounced in CP No. 2539/20018 by the said Tribunal.

4. the said Company petition is now listed on 27th September, 2024. Considering the fact the said petition is listed for final hearing, we request the Ld. NCLT to hear the petition and dispose it of in a time bound manner preferably within two months from today. In the meanwhile if any action is taken against the appellant under Section 99 of the Act, the appellant shall be at liberty to explain its position with the reasoning given in the impugned order. Further if the appellant need to file an application, after the disposal of the company petition 2539/2018, as is envisaged in the impugned order, the said application be decided uninfluenced by the finding given in the impugned order”

13. Further the petitioner filed an application namely CA 1187 of 2020 seeking filing of pending annual returns in the wake of Companies Fresh Start Scheme, 2020, available Till 31.12.2020, for filing of pending returns without undergoing further prosecution. Since, no order came to be passed in this application and scheme has since been closed, the present application is rendered infructuous.

14. Further an application namely MA 402 of 2018 was filed by Respondent No. 2 in terms of Rule 49 of NCLT Rules, 2016 seeking setting aside of the order passed by this Bench on 28 March 2018 in the present company petition pursuant to the application filed by the original petitioner; a declaration that the purported Annual filing of Respondent company done unilaterally by Mr. Karandikar for

the years 2014, 2015 and 2016 to be void and illegal; and expeditious disposal of the present petition on merits. This Tribunal had passed the following orders:-

4. On hearing both, by invoking the jurisdiction under section 97 the Joint Managing Director Mr. Nilesh Karandikar is hereby authorized to submit the accounts for the years 31.03.2014 to 31.03.2017 in compliance of the STK-3 Notice by the ROC.

5. By this compliance the Company will be saved from Striking of from the Register of the ROC. Petition disposed of accordingly.

15. This bench also recorded in its order dated 06.03.2026 that “*2. It is noted that there is nothing in the company, except the trade name ‘Eepos’, and the usage of said name is in challenge before civil court*”.

16. It is evident from the above fact that company is not engaged in any business since 2017 and the parties are contesting for the usage of trade name “EEPOS” for the business carried out in India by Respondent No. 2, who claims to be rightful owner of the said trade name, while the petitioner herein claims the Respondent Company to be its rightful owner for the business in India on the ground that it was he who had established this trade name in India in course of the business carried out by the name of Respondent Company using the said trade name from 2011 till 2017.

17. Indubitably the Respondent Company is owned equally by Petitioner and the Respondent No. 2 herein and was to be managed by the Board of Directors comprising one representative from each side. The Petitioner were willing to buy out the share held by Respondent company, however, the Respondent No. 2 agreed for transfer the shares provided the words ‘EEPOS’ is taken out from the name of Respondent Company and Respondent Company agrees not to use the said trade name for its business. As recorded in the order dated 20.03.2026 the ownership and rights in the trade name ‘EEPOS’ are already sub-judice before learned District Judge, Pune in a Civil Suit filed by Petitioner and Respondent company against Respondent No. 2 and EEPOS India Pvt. Ltd, a company

incorporated by Respondent No. 2 in India carryout its business under the trade name 'EEPOS'.

18. It is relevant to refer to decision in case of *Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwala & Anr. (1976) 3 SCC 259*, wherein the Hon'ble Supreme Court quoted at Para 17 the decision of the House of *Lords in Ebrahimi and Westbourne Galleries Ltd. and Others 1973 AC 360, the relevant part of which reads as follows :*

"..... It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations:

considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way....

The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements:

(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."

19. After analyzing the decision in case of Ebrahimi (Supra) and Yenidje (86 LJ Ch), the Hon'ble Supreme Court held at para 33 that

“When more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when share-holding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the just and equitable ground. In a given case the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on piercing the veil it is found that in reality it is a partnership. On the allegations and submissions in the present case, we are not prepared to extend these principles to the present company.”

20. In case of *Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd.*

AIRONLINE 2021 SC 179, following para of said decision, which comprehensively elucidate in what circumstances the principle can be invoked :

16.47 But it must be remembered that the origin of just and equitable clause is to be traced to the Law of Partnership which has developed, according to the House of Lords, “the conceptions of probity, good faith and mutual confidence”. Having said that, Ebrahimi pointed out that the reference to quasi partnerships or “insubstance partnerships” is also confusing for the reason that though the parties may have been partners in their ‘Purvashrama’, they had become comembers of a company accepting new obligations in law. Therefore, “a company, however small, however domestic, is a company and not a partnership or even a quasi partnership”.

16.48 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 (*Re Saul D. Harrison and Sons Plc.* 1994 BCC 475).

16.49 In *Lau v. Chu* [2020] 1 WLR 4656, the House of Lords indicated, “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 dead lock”, 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 dead lock of a paralysing kind was first clearly recognised as a ground for just and equitable winding up in *Re Sailing Ship Kentmere Co.* [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 dead lock, 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 dead lock.

16.50 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.)”

21. The Hon’ble supreme court in case of **Cyrus Investments Pvt Ltd. (Supra)** held that the first just & equitable ground is “functional dead lock” and the second is where a company is a corporate quasi partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place. It further held that where there is a complete functional dead lock, 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 dead lock.
22. The facts of the case clearly demonstrate that there is complete functional deadlock in the management of the Respondent Company since 2017 as both the groups are holding share capital in equal proportion and having equal representation on the board of Respondent Company. Further, there is irretrievable breakdown in trust and confidence between the participating members as well. Thus, there exists just and equitable ground for ordering winding up the affairs of the Respondent Company.
23. A Company Petition No. 2539 of 2018 was filed by Respondent No. 2 to seek winding up of the Respondent Company in terms of Section 271/272 of the Companies Act, 2013, and this Petition was disposed of by this Bench in terms of order dated 20.03.2026 passed in present petition after consideration of the willingness of both the parties to provide exit to other. The relevant part of the said order is reproduced hereunder :

“2. Heard the learned Counsel for the Petitioner and Respondent. It is noted that the Petitioner is willing to buy out the shares held by the Petitioner, in CP 2539 of 2018 listed at Srl. No. 41 today, in the Respondent Company, however, the Petitioner in CP 2539 of 2018 does not want to allow the Petitioner herein the use of words ‘EEPOS’ in the

name of the Respondent Company upon there exist from the Respondent Company. It is further noted that the ownership and rights in the trade mark 'EEPOS' in India are subject matter of a Civil Suit between both group of shareholders. The Petitioner herein are ready to bind themselves to the decision in the said Civil Suit after it having attain finality in relation to ownership and rights of the Respondent Company in the trade mark 'EEPOS', and proposes that the value of the shares of Respondent Company be determined what the exist of the Petitioner in CP 2539 of 2018 without considering the value of trade mark 'EEPOS' at present and the value of trade mark 'EEPOS' attributable to the share of the Petitioner in CP 2539 of 2018 in proportion to their shareholding in the Respondent Company shall be paid in case the ownership or rights, as the case may be, in the trade mark 'EEPOS' are vested in the Respondent Company upon the decision passed in civil proceeding in relation thereto pending before Civil Court attains finality under the law. We have consider the submission of the parties, accordingly, we consider it appropriate to direct the Petitioner herein to purchase the shares held by the Petitioner in CP 2539 of 2018 in Respondent Company.

3. To give effect to this, the Petitioner herein is directed to draw the financial statements of the respondent company as on 31.12.2025 within 30 days from the date of this order and the net asset value determined on that basis shall be the exit price for the share held by the Petitioner in CP 2539 of 2018. The Petitioner in CP 2539 of 2018 shall extend necessary

cooperation in this relation. The amount attributable to the share of the Petitioner in CP 2539 of 2018 shall be paid by the Petitioner herein within 30 days from the date of determination as aforesaid. Further, the value of the trademark 'EEPOS' shall be determined after the outcome of the civil suit pending before the Pune Civil Court and in case the Respondent Company is granted the trademark rights in the said proceedings in terms of the order passed therein attaining finality under the law, the Petitioner herein shall carryout the valuation of trade mark 'EEPOS' within 30 days thereof and shall pay the amount attributable to the shareholding of the Petitioner in CP 2539 of 2018 as on today within 30 days from the date of the valuation report. Needless to say, in case the Respondent Company is not granted the trademark rights in the said proceedings in terms of the order passed therein attaining finality under the law, the petitioner herein as well as the Respondent Company shall immediately take necessary steps in accordance order passed in civil proceedings attaining finality under the law. As regard uses of the word 'EEPOS' by the Respondent Company in its name during the pendency of the said civil proceedings, the Petitioner herein as well as of the Petitioner in CP 2539 of 2018 may obtain an appropriate direction from the Court of Competent Jurisdiction, who shall consider the prayer in this relation on its own merits de-hors the purchase of shares of the Petitioner in CP 2539 of 2018 in the Respondent Company by the petitioner herein.

- 24.** The Petitioner placed on record before us an unaudited financial statement for the year ended 31.03.2026 under signature of Mr. Nilesh Karandikar. The said financial statement has accounts for “Brand Value” arising from trade name ‘EEPOS’ at Rs. 9.31 crore and the value thereof is being enhanced every year. If such value excluded from the assets of Respondent Company, its networth would come to 23.06 lakhs in negative. Pursuant to direction by this Tribunal both the parties placed on record draft minutes of the order containing their proposal. The proposal submitted by the Petitioner offers to pay Rs. 10 lakhs to the Respondent

No. 2 in consideration of Transfer of its 50% shareholding in the Respondent Company. On the other hands the Respondent No. 2 has proposed that it bear allowed and opportunity to purchase the petitioner share on exactly the same term and the same value as directed during the hearing held on 20.03.2026 stating that the Respondent Company has not carried out any business since incorporation for almost 15 years and is not likely to carry on any business unless the trademark dispute is finally resolved.

25. In view of willingness of both the parties to provide exit to other and pendency of dispute in relation to rights in the tradename “EEPOS” in India, we are of considered view that an order of winding-up in the present matter shall be prejudicial to the interests of both the members, accordingly, we considered it appropriate to allow Respondent No. 2 to buyout the Petitioner’s 50% shareholding in the Respondent Company for a consideration of Rs. 10 lakhs, as has been offered by the petitioner to buyout them in the Respondent Company, considering the facts that the tradename “EEPOS” is originally in use by Respondent No. 2 in Germany and the name of the Respondent Company came to be changed to contain the word “EEPOS” consequent to the investment made by Respondent No. 2 in the share capital of Respondent Company. The said consideration shall be paid within 30 days from the date of this order by the Respondent No. 2 to the Petitioner and the Petitioner shall tender the duly executed transfer deed in relation to its shareholding in the Respondent Company forthwith on receipt of said consideration, failing which after expiry of 15 days from the date of payment to the petitioner, the Respondent No. 2 shall be entitled to transfer the shares standing in the name of the Petitioner in the Member Register of Respondent Company without any further act or deed. Further, the Petitioner’s nominee on the board of Respondent Company shall cease to be director of the Respondent Company upon transfer of Petitioner share in the Respondent Company, and Respondent Company shall be entitled to convey a board meeting with the quorum of remaining director on its board for appointment of minimum two directors within 15 days thereafter. Needless to

say the Petitioner shall handover the complete statutory records, including the books of account of the Respondent Company, and all other records including correspondences maintained/kept by them in relation to affairs of the Respondent Company.

26. It is clarified that the value of the trademark 'EEPOS' shall be determined after the outcome of the civil suit pending before the Pune Civil Court and in case the Respondent Company is granted the trademark rights in the said proceedings in terms of the order passed therein attaining finality under the law, the Respondent No. 2 herein shall carryout the valuation of trade mark 'EEPOS' within 30 days thereof and shall pay the amount attributable to the shareholding of the Petitioner herein as on today within 30 days from the date of the valuation report. Needless to say, in case the Respondent Company is not granted the trademark rights in the said proceedings in terms of the order passed therein attaining finality under the law.
27. It is further clarified that our observation in this order shall not be read or considered as our opinion in relation to the rights in the trade name "EEPOS" in any person favour.
28. In terms of the above CP 252 of 2017 is disposed of. Consequent thereto, MA (COMPANIES ACT)/402(MB) 2018 and COMP.APPL/1187(MB)2020 shall also stand disposed of.
29. Files be consigned to records.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)