

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.02

C.P No.84/BB/2019

IN THE MATTER OF:

Mr.Gautam Swaroop and another ... Petitioner
Vs.
M/s. Arkwood Décor Pvt. Ltd, and others ... Respondent

Petition under 241-242 of Companies Act, 2013

Order delivered on: 24.06.2026

CORAM:

**SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)**

COUNSELS PRESENT:

For the Petitioner : Ms. Apoorva

ORDER

C.P is dismissed vide separate order. File be consigned to records.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(HYBRID MODE)

C.P.No.84/BB/2019

Under Sections 241 and 242 read with Section 59 of
the Companies Act, 2013

IN THE MATTER OF:

1. Mr. Gautham Swaroop

S/o. Ashok Kumar Sinha,
R/at. No.302, Building No.18,
3rd Floor, J.P. Gold Apartment,
Hennur Road, 7th Cross,
Kacharkanahalli,
Bengaluru – 560 084

... Petitioner No.1

2. Mrs. Tanmayee Meher

W/o. Gautham Swaroop,
R/at. No.302, Building No.18,
3rd Floor, J.P. Gold Apartment,
Hennur Road, 7th Cross,
Kacharkanahalli,
Bengaluru – 560 084

... Petitioner No.2

VERSUS

1. M/s. Arkwood Décor Pvt. Ltd.

Site No.93, 112 Baylakere Village,
Hesaraghatta Hobli,
Bengaluru North Taluk.
Bengaluru – 560 089

... Respondent No.1

2. Mr. Harish Kumar Sinha

S/o. G S Mandal,
Flat No.803, A Block,
Hoysala Habitat,
Harohalli, Yelahanka
Bengaluru – 560 064

... Respondent No.2

3. Mrs. Veena Sinha

D/o. Srinivasa Krishna
Flat No.803, A Block,
Hoysala Habitat,

Harohalli, Yelahanka,
Bengaluru – 560 064.

... Respondent No.3

4. Mr. Preethesh Jain

S/o. Ashok Jain,
No.189, Mathrushree,
Gandhibazar, Basavanagudi,
Bengaluru – 560 004.

... Respondent No.4

Order delivered on: 24.06.2026.

Coram:

- 1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)**
- 2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)**

O R D E R

Per: Radhakrishna Sreepada, Member (Technical)

1. This Petition was filed by the Petitioner on 26.03.2019 seeking the following reliefs:
 - a) *Direct the Respondent Nos.2 & 3 to account and compensate the Respondent No.1 Company for the losses, siphoning of money on account of diversion of business to "The Ambiente".*
 - b) *Declare the impugned Board resolution dated 28/12/2017 allotting shares to Respondent No.4 as void and not binding.*
 - c) *Direct the rectification of Register of members showing the shareholding of Petitioners together as 50%.*
 - d) *Direct the Petitioner No.1 to be made joint signatory along with the Respondent No.2.*
 - e) *Retain the shareholding pattern of 50% in favour of Petitioners as was prevalent in the Respondent No.1 company at the time of inception/ incorporation.*

- f) *Recover the undue gains made by the Respondent No.2 and 3 in Respondent No. 1 company from the inception of the Company.*
- g) *Declare the board resolution dated 13.12.2017 appointing the Respondent No.4 as a Director as invalid and not binding.*

2. **Submissions OF THE PETITIONER:**

Brief submissions regarding the case as mentioned by the Petitioner are as follows:

- 1) The Petitioner No. 1 is Founder Director, Promoter, Subscriber of the Respondent No.1 Company and is presently holding 12% Shares in the said Respondent No.1 Company. But, held 30% of shares prior to impugned allotment on 28/12/2017 made to the Respondent No.4.
- 2) The Petitioner No. 2 is wife of Petitioner No.1 and is also a Subscriber of the Respondent No. 1 Company and is holding 8% Shares in the said Respondent No.1 Company. But, held 20% shares prior to impugned allotment on 28/12/2017 made to the Respondent No.4.
- 3) The Respondent No.1 was incorporated under the Companies Act, 2013 bearing CIN is U36996KA2014PTC076910.
- 4) The Respondent No.2 is also one of the Founding Directors of the Respondent No.1 Company and a shareholder holding 12%.
- 5) The Respondent No.3 is also one of the subscribers to the Memorandum of the Respondent No.1 Company and a shareholder to. the extent of 8% and is the wife of Respondent No.2. The Respondent No.3 is also running a proprietorship concern which is identical with the objectives of Respondent No.1 Company. She runs her business under the name and style "The Ambiente".

- 6) The Respondent No.4 was appointed as Additional Director of the Respondent No.1 Company on 13/12/2017 and he was allotted 60% of shares (i.e., 15000 equity shares of Rs.10/- each) vide the impugned Board Meeting dated 28/12/2017. Further the Bank statement shows the infusion of funds by Respondent No.4 to the tune of Rs.2 Crores while there was no necessity for the Respondent Company at the present stage. Further, Respondent No.1 Company is being used as shell Company for siphoning the funds by Respondents.
- 7) It is submitted that Petitioner No.1 managed production-related activities and petty expenses, while Respondent No.2 handled accounts, finance, purchases, sales, and statutory compliances. Despite the company being at a nascent stage, it showed strong growth prospects and sustained operations largely due to capital infused by Petitioner No.1. Although Petitioner No.1 invested over Rs.80 lakhs on multiple occasions, Respondent No.2 deliberately failed to record these investments in the company's books. Acting in good faith for the company's welfare, Petitioner No.1 raised funds by pledging gold, selling ancestral property, and availing personal loans. Taking advantage of this trust, Respondent No.2 siphoned company funds to his wife's proprietorship concern under his control. Details of the investments, including an email dated 09.05.2018 and cash deposit challans, are annexed as Annexure-5, along with deposit challans evidencing transfers made by Petitioner No.1 to Respondents No.1, 2, and 3 for the benefit of the company (**Annexure-5A**).
- 8) It is submitted that Respondent No.2, with a mala fide intention to oust the Petitioners from the management of Respondent No.1 Company, illegally inducted Respondent No.4 by allotting shares worth Rs.1,50,000/- on 28.12.2017. No notice was

issued and no Board Meeting was held for the said allotment. It is submitted that Petitioner No.1 and Respondent No.2 were the only two Directors on the Board at the relevant time. Respondent No.2 fabricated notices, offer letters and Board resolutions to falsely show compliance with pro-rata offer to existing shareholders and alleged renunciation thereof. No Extraordinary General Meeting was convened, however fabricated documents were filed with the Registrar of Companies. The impugned allotment was made in violation of Clause 3(1) of the Articles of Association and the provisions of the Companies Act, 2013, resulting in dilution of Petitioner No.1's shareholding from 30% to 12% and Petitioner No.2's from 20% to 8%. Respondents No.2, 3 and 4 acted in collusion with ulterior motive. Copies of the impugned documents are **annexed as Annexures 6 to 12.**

- 9) It is submitted that the aforesaid documents are fabricated and bear the signature of Respondent No. 2 alone. The digital signatures used for filing the E-Forms with the ROC also belong exclusively to Respondent No. 2. The Petitioners had no knowledge or consent regarding these transactions and became aware of the same only upon filing of such fabricated documents with the ROC. Further, Respondent No.2 illegally appointed Respondent No. 4 as Additional Director by creating false and fabricated Board Resolutions. Copies of Form DIR-12, alleged Board Resolution, Form DIR-2, DIR-8 and Letter of Appointment are annexed as **Annexure-13.**
- 10) It is submitted that Respondent No.2 unlawfully changed his designation from Director to Managing Director on the basis of fabricated documents, without obtaining any approval of the Board of Directors or the shareholders of Respondent No.1 Company.

- 11) It is submitted that Respondent No.2 has misappropriated and siphoned off the funds of Respondent No.1 Company by withdrawing monies for personal use and transferring company funds to the personal bank account of his wife, Respondent No.3, without any authority. The said funds were utilised for purchase of a residential flat in the name of Respondent No.3. Respondent No.2 further utilised the company's funds to make unauthorised payments to vendors for materials and capital goods which were used for his personal business operated under the name "The Ambiente", owned by Respondent No.3, thereby acting in a manner prejudicial to the interests of the Company and its shareholders. Respondents No.2 and 3 treated the Company's bank account as their personal account. Respondent No.2 also diverted the business and leads of Respondent No.1 Company by setting up a parallel business in the name of "The Ambiente", debited the books of Respondent No.1 towards alleged manufacturing/purchase expenses, and sold the resultant goods through "The Ambiente" for illegal personal gain. He further made unauthorised payments to his relatives and other unrelated persons.
- 12) It is submitted that Respondent No.2, without the knowledge, consent or approval of Petitioner No.1, who was the only other director of Respondent No.1 Company, unauthorisedly availed a loan of Rs.19,72,000/- from HDFC Bank on 29.09.2017. The said transaction is reflected in the Company's bank statement. The bank statement for the period 30.12.2014 to 16.04.2018 is annexed as **Annexure-14**.
- 13) It is submitted that Respondent No.2 has failed to discharge his fiduciary duties as a director and has acted in breach of Section 166 of the Companies Act, 2013. Respondent No.2 siphoned off the funds and business of Respondent No.1 Company to his

personal business, "*The Ambiente*", operated in the name of his wife. Major clients, including *Nestaway*, were diverted, resulting in stagnation and decline in turnover and profits of the Company. The bank statements for the period 01.03.2018 to 14.02.2019 demonstrate decline in sales, infusion of funds by Respondent No.4 and diversion by Respondent No.2, thereby treating Respondent No.1 as a shell company. Copies of AOC-4, Balance Sheets, P&L Accounts, MGT-7 for FYs 2015-16 to 2017-18 and relevant bank statements are annexed as **Annexures-15 to 19**.

- 14) Upon becoming aware of the aforesaid illegalities, Petitioner No.1 issued a letter dated 02.07.2018 seeking clarification regarding statutory compliances, unauthorised appointment of Respondent No.4 as Additional Director, change of designation of Respondent No.2 as Managing Director, increase in authorised capital, availing of HDFC loan and unauthorised payments. Despite reminders, including a final notice dated 30.07.2018 sent by RPAD, no reply was received. Copies of correspondence are annexed as **Annexures-20 to 21C**.
- 15) It is further submitted that Respondent No.2, in order to conceal illegal banking transactions, unauthorisedly opened another bank account with IndusInd Bank without the knowledge or consent of Petitioner No.1. As per the annual returns for FYs ended 31.03.2016 and 31.03.2017, Petitioner No.1 and Respondent No.2 were the only directors, and opening of such account without Board approval clearly establishes manipulation and fabrication by the Respondents. Relevant annual returns are annexed as **Annexures-16 and 18**.
- 16) It is submitted that the Respondents have deliberately failed to convene the AGM for the Financial Year 2017-18 and have not provided any financial statements to the Petitioners despite

repeated requests and payment of requisite fees through Demand Draft. The said conduct is oppressive and prejudicial to the Petitioners. Copies of notice dated 26.10.2018, Demand Draft and postal records are annexed as **Annexures-22 to 22C**.

- 17) It is further submitted that the Ministry of Corporate Affairs has sent Notice to the Petitioner No.2 questioning the non-compliance of Section 137 (1) of the Companies Act, 2013. This situation the Petitioners are left with no option except to approach this Tribunal for justice and Notice received from MCA is furnished as **Annexures-23**.

3. **SUBMISSIONS MADE BY RESPONDENTS:**

3.1. The **Respondent No.1** has filed statement of objections contending as follows:

- 1) It is submitted that the allotment of shares to the 4th Respondent and his induction as a Director of the 1st Respondent Company were made with the consent and knowledge of all shareholders. It is false to contend that the Company was not in need of funds, when the 4th Respondent invested approximately Rs.2 Crores, duly accounted for as a loan to the Company.
- 2) It is submitted that the 1st Respondent Company was in acute need of funds and the investment made by the 4th Respondent has been instrumental in keeping the Company solvent and operational. The 4th Respondent's financial contribution is substantially higher than that of the other shareholders, including the Petitioners.
- 3) It is submitted that the 1st Respondent is engaged in the business of manufacturing and sale of furniture, upholstery sofas, interior décor, fabrication, decorative art, sculptures, etc., and is a profit-making entity. The Petitioners have been drawing salaries and other benefits from the Company. However, the Company's

growth was adversely affected due to the acts and omissions of the Petitioners.

- 4) It is submitted that the accounts, finance and statutory compliances of the Company were handled by the 2nd Respondent along with the 1st Petitioner, who jointly signed the financial statements filed with the Registrar of Companies. Both were equally responsible for statutory compliances as Directors.
- 5) It is submitted that from incorporation till the financial year 2017-18, the financial statements of the 1st Respondent Company were duly audited and signed by the 1st Petitioner and the 2nd Respondent. The balance sheets for each year clearly reflect the loans advanced by the respective shareholders.
- 6) It is submitted that as per the ledger account for the financial year 2017-18, the loan amount of the 1st Petitioner stood reduced to a mere sum of Rs. 76,060/-. All loans advanced by the shareholders have been duly recorded in the ledger accounts and reflected in the audited balance sheets of the 1st Respondent, which have been filed with the Registrar of Companies. From the date of incorporation of the 1st Respondent till date, no objection or correspondence has been raised by the Petitioners disputing the correctness of the financial statements. The audited financials, therefore, constitute conclusive proof of the loans, if any, advanced by the Petitioners.
- 7) As per **Annexure-5A**, the amount allegedly deposited into the bank account of the 1st Respondent is only **Rs.3,90,000/-**. An additional sum of **Rs.1,33,000/-** is alleged to have been deposited into the bank accounts of the 2nd and 3rd Respondents. Even assuming, without admitting, that the said amount of Rs.1,33,000/- was towards the 1st Respondent, the total alleged contribution would amount to only **Rs.5,23,000/-**, which is far below the amount claimed by the Petitioners in the present

Petition. The reliance placed by the 1st Petitioner on an email dated **09.05.2018** alleging an investment of over **Rs.80,00,000/-** is wholly misplaced.

- 8) The said email is unilateral in nature and cannot override or contradict the audited financial statements and ledger accounts duly signed by the 1st Petitioner and the 2nd Respondent. All funds transferred to the 3rd Respondent have been duly accounted for and recorded in the books of the 1st Respondent. Hence, the allegations regarding unaccounted loans are baseless and contrary to the documentary record.
- 9) The allotment of shares worth Rs.1,50,000/- to the 4th Respondent was carried out strictly in accordance with the Companies Act, 2013 and the Articles of Association of the 1st Respondent Company, after following due process.
- 10) The Board of Directors of the 1st Respondent Company issued a Rights Offer Letter dated 16.12.2017 to all existing shareholders in proportion to their shareholding, in compliance with Section 62(1) of the Companies Act, 2013. The 1st Petitioner was offered 4,500 equity shares, with a clear stipulation that in case of renunciation, the Board was entitled to allot such shares to a third party.
- 11) The 1st Petitioner, vide letter dated 19.12.2017, expressly and unequivocally renounced the offer of 4,500 equity shares. Similar offer letters were issued to all existing shareholders, who also renounced their respective rights.
- 12) Pursuant to such renunciation, a valid Board Resolution dated 28.12.2017 was passed allotting the shares to the 4th Respondent. The resolution specifically records that the shares were first offered to existing shareholders and, upon renunciation, allotted to a new shareholder. The relevant documents have been filed by both sides and form part of the record.

- 13) The allegation regarding improper conduct of the Board Meeting is untenable. Rule 25 of the Companies (Management and Administration) Rules, 2014 permits the Chairperson to sign Board resolutions. There is no legal requirement for signatures of all directors. The impugned resolution, signed by the Chairman (2nd Respondent), is valid and lawful.
- 14) Allegations of fabrication of documents are vague, bald, and unsupported by any evidence. All documents were available in the public domain well before filing of the Petition, and no objection was raised earlier. The allegations are therefore an afterthought and deserve outright rejection. The shares were issued for a bona fide purpose, namely raising funds for the Company.
- 15) Since incorporation in 2014, the 2nd Respondent has been the Managing Director of the 1st Respondent Company. Statutory filings with the Registrar of Companies, including those signed by the 1st Petitioner, clearly evidence this position. Relevant documents have been placed on record.
- 16) The funds transferred to the 3rd Respondent were in the nature of loans advanced by the Company with the knowledge and consent of the Petitioners and the 2nd Respondent. Similar transfers were also made to the 1st Petitioner on various occasions. All transactions are duly recorded in the books of accounts, audited, and filed with the Registrar of Companies annually.

3.2. The **Respondent Nos.2 and 3** have filed statement of objections contending as follows:

- 1) In 2011, the 2nd Respondent, then Sales Manager at Getit Infoservices Pvt. Ltd., recommended the 1st Petitioner for the post of Deputy Manager at the request of the 1st Petitioner. The management accepted the recommendation, and the Petitioner and 2nd Respondent worked together. In 2013-14, the 2nd

Respondent joined Springwel Mattress Pvt. Ltd. as Regional Manager, and upon the 1st Petitioner's request, he recommended the Petitioner for the role of Marketing Manager, which the management accepted. In 2014, the 2nd Respondent proposed starting his own company and agreed to include the 1st Petitioner and his wife as partners in Arkwood Decor Pvt. Ltd., considering their relationship.

- 2) The Petition, filed under Section 241 of the Companies Act, 2013, primarily pertains to Section 241(1)(b) alleging mismanagement. The cause of action, dated 28.12.2017, relates solely to the induction of the 4th Respondent into the Board of the 1st Respondent Company.
- 3) For brevity, the allegations are categorized as follows:
The alleged investment of the 1st Petitioner amounting to approximately Rs.80,00,000/-.
 - i. Allotment of shares to the 4th Respondent and maintainability of the petition filed by the 2nd Petitioner.
 - ii. Maintainability of the petition filed by the 2nd Petitioner.
 - iii. Financial aid from Ambiente and the 3rd Respondent.
 - iv. Uninvolvement of the Petitioner in the business of the 1st Respondent Company.
- 4) A major portion of the Company's expenses pertained to vendor payments and manufacturing/production costs, fully managed by the 1st Petitioner. Finance and statutory compliances were jointly handled by the 1st Petitioner and the 2nd Respondent, as evidenced by the financial documents, including balance sheets filed with the Registrar of Companies, which were signed by both.
- 5) The meager funds invested by the 1st Petitioner and substantial funds invested by the 2nd Respondent were insufficient to meet

the Company's operating cycle. Consequently, both decided to seek an investor to sustain the Company.

- 6) From incorporation until the end of FY 2017-18, all financial statements, including balance sheets, were audited and signed by both the 1st Petitioner and 2nd Respondent. Each year's balance sheet reflected loans advanced by the shareholders. The breakup of loans advanced up to FY 2017-18 is as follows:

Shareholder	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
Petitioner No.1	Rs.12,00,560	-	Rs.4,80,000	Rs.3,00,000	Rs.21,80,560
Petitioner No.2	Rs.4,50,000-	-	-	-	Rs.4,50,000
Respondent No.2	Rs.15,21,748	Rs.3,90,000	Rs.11,26,030	Rs.9,00,000	Rs.39,37,778
Respondent No.3	Rs.4,50,000	-	Rs.5,50,000	Rs.5,64,000	Rs.15,64,000

- 7) After various withdrawals by each of the shareholders during the period between 2014-15 and 2017-18, the balance of their loan advanced at the end of financial year 2017-18 is as follows:

Shareholder	FY 2017-18
Petitioner No.1	76,060.65
Petitioner No.2	4,25,000/-
Respondent No.2	1,23,218.42/-
Respondent No.3	(-21,57,500/-)

- 8) It is submitted that as per the ledger account for the year ending 2017-18, the 1st Petitioner's loan to the 1st Respondent stands reduced to Rs. 76,060/-. All loans advanced by shareholders are duly recorded in the ledger and reflected in the audited balance sheets filed with the Registrar of Companies. Since incorporation, the Petitioners have never raised any objection regarding the financial statements.

Therefore, the financial statements are conclusive evidence of the loans advanced. The Petitioners are attempting to claim amounts exceeding the actual loan, whereas they are liable to pay Rs. 29,30,000/- to the 1st Respondent, as per Legal Notice dated 26.10.2019 (**Annexure-2**).

- 9) As per Annexure 5A, only Rs. 3,90,000/- was deposited in the 1st Respondent's bank account, and Rs. 1,33,000/- in the 2nd and 3rd Respondents' accounts. Even assuming the latter relates to the 1st Respondent's loan, the total of Rs. 5,23,000/- is far less than claimed by the Petitioners, who rely on an email dated 09.05.2018 to assert investments exceeding Rs. 80,00,000/-.
- 10) The email is unilateral and cannot override the ledger and financial statements signed by the Petitioners and audited. The Petitioners have failed to discharge their burden of proving actual loans advanced. In contrast, the 2nd Respondent has established the balance payable based on duly audited and filed financials.
- 11) The funds transferred to the 3rd Respondent are duly recorded in the books of accounts of the 1st Respondent Company. According to these records, the 3rd Respondent is liable to pay Rs. 21,57,500/- to the Respondent. Thus, no funds have been misappropriated.
- 12) The 1st Petitioner invested Rs. 12,00,560/- in September 2014, and the 2nd Petitioner invested Rs. 4,50,000/-, as evidenced from the ledger and balance sheets of the Respondent Company. The claim that the Petitioners invested "colossal sums" is incorrect and demonstrates their limited financial interest in the Company. The 1st Petitioner was not involved in the affairs of the 1st Respondent Company. It was mutually agreed that the 2nd Respondent would manage client relations,

marketing, and business development. The 2nd Respondent fulfilled these responsibilities diligently, securing multiple clients including Nestaway.

- 13) It is submitted that the 1st Petitioner has withdrawn large sums and used Company resources for personal benefit. For instance, an invoice dated 15.05.2018 for Rs. 3,30,000/- relates to products for the personal use of the Petitioner, which remain unpaid. This evidences misappropriation of both funds and products by the 1st Petitioner.
- 14) The 2nd Respondent wrote to the 1st Petitioner on 27.09.2019 **(Annexure-6)** requesting payment for overdue products, pending for over a year and four months. No response has been received to date.
- 15) The 1st Petitioner has deliberately suppressed the transfers made to him from the 1st Respondent Company, only disclosing amounts given to the 2nd and 3rd Respondents. Ledger statements clearly show substantial funds transferred to the 1st Petitioner.
- 16) The 1st Respondent is a family-owned quasi-partnership. The 3rd Respondent provided significant financial and operational support to the 1st Respondent without any compensation, solely due to the family nature of the business.
- 17) Consequently, when the 3rd Respondent faced temporary financial difficulty, funds were transferred from the 1st Respondent with the approval of the 1st Petitioner, who did not object at the time. All transfers are accounted for in the financial statements; no misappropriation occurred.
- 18) All withdrawals, including those by the 2nd Respondent, were for loans advanced or remuneration due. The 1st Respondent, being a quasi-partnership, did not enforce strict timelines for salary payments.

- 19) The 1st Petitioner ceased attending the 1st Respondent's office since July 2018. The 2nd and 4th Respondents managed the business thereafter. Loans taken by the 2nd Respondent were in the interest of the Company and approved by the 1st Petitioner.
- 20) Ambiente is not a party to the Petition, and allegations against it are baseless. If the 1st Respondent were making super profits, the Petitioners would not have abandoned it. Nestaway Bengaluru, formerly a client of the 1st Respondent, stopped business due to poor performance by the 1st Petitioner. Ambiente cannot be accused of siphoning clients, as it operated in separate regions. Reduction in profits for a particular year does not imply diversion of funds. The Petitioners' claims are contradictory—they allege both profits and misuse of the 1st Respondent.
- 21) The 2nd Respondent's acts were neither prejudicial nor oppressive. The Petitioners deserted the Company since July 2018; the 2nd and 4th Respondents continued operations. The Petitioners acted with mala fide intent, seeking to coerce payment of Rs. 2 Crores. They abandoned the Company when it required support and have twisted facts to frame a baseless oppression case.
- 22) The 1st Petitioner had equal rights and responsibilities to monitor the financials and statutory compliances. He signed financial statements but failed to ensure statutory adherence, thus cannot feign innocence.
- 23) The Annual General Meetings and Board Meetings were conducted, and returns filed, contrary to Petitioners' claims. Notices for delay in filing returns were complied with; annual returns for 2017-18 were submitted.

24) The Petition is frivolous, self-serving, and aimed at extracting Rs. 2 Crores from the 2nd Respondent. No case of oppression or mismanagement is made; the Petition deserves dismissal with costs.

3.3. The **Respondent No.4** has filed statement of objections contending as follows:

- 1) The 4th Respondent did not have direct knowledge of events preceding the allotment of shares. The 4th Respondent knew the 2nd Respondent through a mutual friend and was aware of the 2nd Respondent's business acumen and dedication. Through due diligence, the 4th Respondent also became aware of the family discord between the 1st Petitioner and the 2nd Respondent.
- 2) Interested in the business of the 1st Respondent, the 4th Respondent met the 1st Petitioner and 2nd Respondent to understand the business. The 4th Respondent realized that the 1st Petitioner's actions had adversely affected the company.
- 3) Prior to appointment as Additional Director, the 4th Respondent examined the books of accounts and discovered significant withdrawals by the 1st Petitioner in the name of "vendor payments," for which no records were maintained.
- 4) Observing the mismanagement by the 1st Petitioner, the 4th Respondent advanced a loan of Rs.2,00,00,000/- to the 1st Respondent, recognizing its profit-making potential with the guidance of the 2nd Respondent.
- 5) The 2nd Respondent, holding only 8% shares, lacks locus to file the petition under Section 244 of the Companies Act, 2013. Further, no consent letter from the Petitioners has been produced.
- 6) The Petitioners have raised frivolous disputes regarding the allotment of shares to the 4th Respondent to circumvent statutory provisions; the Petition is liable to be dismissed at the outset.

- 7) The 4th Respondent ensured due diligence before acquiring shares. The allotment of shares was the responsibility of the 1st Respondent and was carried out in accordance with law.
- 8) The 1st Respondent issued an Offer Letter dated 16.12.2017 to existing shareholders, providing the right to purchase shares proportionate to their holdings, while retaining the right to allot shares to third parties in case of declination.
- 9) Financial records show erosion of capital and dissipation of funds by the 1st Petitioner. Despite prior contributions by the 2nd, 3rd, and 4th Respondents, additional capital infusion was necessary:

Shareholder	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
Respondent No.2	Rs.15,21,748	Rs.3,90,000	Rs.11,26,030	Rs.9,00,000	Rs.39,37,778
Respondent No.3	Rs.4,50,000	-	Rs.5,50,000	Rs.5,64,000	Rs.15,64,000

- 10)The allotment was made for a proper purpose after giving the Petitioners sufficient opportunity to subscribe to the shares. The Petitioners never objected to the allotment to the 4th Respondent before filing this Petition. The allegation is therefore an afterthought, motivated to enable the 2nd Petitioner to file this Petition. The Petition is liable to be dismissed with costs.
- 11)It is submitted that since the incorporation of the 1st Respondent in 2014, the 2nd Respondent has been its Managing Director. The allegation to the contrary is false, as documents filed with the Registrar of Companies, many signed by the 1st Petitioner, show the 2nd Respondent as Managing Director. Raising an objection despite signing such documents amounts to blowing hot and cold, which is impermissible. The documents evidencing the 2nd Respondent's position are filed **as Annexure 5** and are publicly available, which is how the 4th Respondent acquired knowledge thereof.

Amounts paid to the vendors of the 1st Respondent Company:

Sl. No.	Date	Particulars	Remarks
1	23.12.2017	Transfers to Raj Furniture	This payment was remitted for the work done by Raj furniture for the 1 st Respondent Company. A bare perusal of the entry in the financials produced by the Petitioners will indicate that there is no mention of Ambiente anywhere. It is therefore merely a fiction created by the Petitioner with a view to misguide this Tribunal. There is absolutely no material on record to show that the payments were made on behalf of Ambiente. In fact, this shows the extent to which the Petitioner knew about the 1 st Respondent Company and its vendors.
2	31.01.2018, 05.02.2018, 10.04.2018	Transfers to Hema	Ms. Hema is the landlord of one of the showrooms of the 1 st Respondent Company located at New BL Road, Bengaluru and the amounts shown in the bank statement is towards the deposit and rental payments. The lease deed has already been filed by the 2 nd and the 3 rd Respondent as Annexure-7. It is therefore merely a fiction created by the Petitioner with a view to misguide this Tribunal. There is absolutely no material on record to show that the payments were made on behalf of Ambiente. In fact, this shows the extent to which the Petitioner knew about the 1 st Respondent Company and its vendors.
3	02.03.2018, 14.03.2018, 19.03.2018,	Transfers to Sunil Kumar Sharma	It is submitted that Mr. Sunil Kumar Sharma is one of the contractors engaged by the 1 st

	28.03.2018, 09.04.2018, 23.04.2018, 24.04.2018, 25.04.2018, 27.04.2018, 04.05.2018, 05.05.2018, 07.05.2018, 08.05.2018, 09.05.2018, 11.05.2018, 22.05.2018, 28.05.2018		<p>Respondent Company at the Project Site, on a project to project basis and the payments shown in the bank statement is towards his contract fees. Mr. Sunil was engaged by the 1st Respondent in the projects such as Coconut store, Minds Group, a consulting firm and the Shaswat project.</p> <p>It is therefore merely a fiction created by the Petitioner with a view to misguide this Tribunal. There is absolutely no material on record to show that the payments were made on behalf of Ambiente. In fact, this shows the extent to which the Petitioner knew about the 1st Respondent Company and its vendors.</p>
4	23.12.2017	Transfers to Veena	The same has been accounted for in the ledger statement produced by the Respondents.
5	07.05.2018, 08.05.2018, 09.05.2018, 10.05.2018, 11.05.2018, 16.05.2018, 17.05.2018, 18.05.2018, 24.05.2018, 25.05.2018	Transfers to Arif	It is submitted that Mr. Arif is one of the contractors engaged by the 1 st Respondent Company at the Project Site, on a project to project basis and the payments shown in the bank statement is towards his contract fees. It is therefore merely a fiction created by the Petitioner with a view to misguide this Tribunal. There is absolutely no material on record to show that the payments were made on behalf of ' Ambiente. In fact, this shows the extent to which the Petitioner knew about the 1 st Respondent Company and its vendors.

- 12)The 1st Petitioner ceased attending the office of the 1st Respondent Company since July 2018, for reasons known only to him. Consequently, the 4th Respondent and other shareholders may initiate action against the Petitioners for abandoning the Company without notice. Meanwhile, the 2nd Respondent, assisted by the 4th Respondent, continued managing the Company's operations.
- 13)Ambiente has not been made a party to the instant petition despite unsubstantiated allegations. Such allegations are mala fide. Moreover, had the 1st Respondent been generating super profits, the Petitioners would not have abandoned the Company without informing the Managing Director or other shareholders.
- 14)A reduction in profits for a particular year does not indicate diversion of funds. It is natural for a company to have profitable years followed by losses. The Petitioners' claim is contradictory: they assert both that the Company previously made profits and that it was used as a shell entity. The decline in sales is attributable to the Petitioners' actions, who allegedly sought secret profits from the 1st Respondent's business.
- 15)As a director, the 1st Petitioner had the right to inspect the books of accounts and the duty to ensure they were duly audited and statutory filings completed. The 1st Respondent, being uninvolved, had to rely on the 2nd and 4th Respondents for information regarding these compliances.
- 16)However, apart from the letter dated 02.07.2018 and the follow-up email of 30.07.2018 seeking clarifications on administrative matters, there was no prior communication. In any case, all statutory compliances were duly met by the 2nd, 3rd, and 4th Respondents, and the Petitioners' consent for inducting the 4th Respondent onto the Board was obtained as noted above.

17) It is submitted that the Petitioners, as directors of the 1st Respondent, had equal rights and responsibilities to oversee the company's financials and ensure statutory compliances. The 1st Petitioner has, in fact, signed the financial statements and other filings, including records of Board and Annual General Meetings, with the Registrar of Companies. Therefore, the Petitioners cannot disclaim involvement selectively. Further, the notice from the Ministry of Corporate Affairs pertained only to delayed filing of Annual Returns, which were subsequently complied with by the 2nd and 4th Respondents for the year 2017-18.

4. Rejoinder is filed by the Petitioner to the reply of the Respondent Nos.2 to 4 vide Dy.No.2569 dated 15.06.2022 reiterating the facts mentioned in the Petition and the same is taken on record.
5. Ld. Counsel for the Respondent Nos.2 and 3 have filed written submissions vide Diary No.2847 dated 20.05.2024 while reiterating the averments made in the Petition. The same is taken on record
6. We have heard the arguments on behalf of **Ms. Apoorva**, Ld. Counsel appearing for the Petitioners and **Shri Hitesh Kumar**, Ld. Counsel appearing for the Respondent Nos.2 & 3 and pursued the material on record.

7. **ANALYSIS:**

Primarily the issues raised by the Petitioners appear to be relating to

- a. Diversion of funds by Respondents
- b. Rights Issue
- c. Not being made a Joint Signatory to the Bank accounts

These issues are discussed below:

a. Diversion of funds by Respondents:

From the details furnished by the Respondents reproduced in

- i. point no 11 in para 3.2 reflect the amounts outstanding against each of the Directors as at 31.3.2017.

Further, it is seen that the funds transferred to the 3rd Respondent are duly recorded in the books of accounts of the 1st Respondent Company. According to these records, the 3rd Respondent is liable to pay Rs. 21,57,500/- to the Respondent. When the amounts are reflected in the Books of account and are shown in the Balance sheet there can be no inference that the funds have been misappropriated.

- ii. At point no 6 in para 3.3, it is seen that the transactions indicate the person to whom each of the payments have been made and the Purpose for which such payments were made.

In the face of such evidence, it would not be possible to come to a conclusion that there is any kind of incorrect utilisation of funds unless the Petitioner brings on record strong evidence to the Contrary.

From the material available on record, we are unable to find any such evidence produced by the Petitioner.

b. Rights Issue:

The petitioners have strongly contended that the Rights issue of the 1st Respondent Company through Offer Letter dated 16.12.2017 to all existing shareholders in proportion to their shareholding, in compliance with Section 62(1) of the Companies Act, 2013. The 1st Petitioner was offered 4,500 equity shares, with a clear stipulation that in case of renunciation, the Board was entitled to allot such shares to a third party.

The 1st Petitioner, vide letter dated 19.12.2017, expressly and unequivocally renounced the offer of 4,500 equity shares.

Pursuant to such renunciation, a valid Board Resolution dated 28.12.2017 was passed allotting the shares to the 4th Respondent. The resolution specifically records that the shares were first offered

to existing shareholders and, upon renunciation, allotted to a new shareholder.

It is contended by the Petitioners that the so- letter mentioning refusal to apply rights shares was not given by them and that their Signatures on such letters were forged. Hence, it is contended that the Rights issue was not properly done.

It is to be brought on record and observed that neither at the time of filing of the Petition nor till the time this tribunal pointed out the issue, the Petitioner never brought on record any substantiating Documentary evidence regarding the alleged forgery of signatures.

On 21.4.2026, the Ld Counsel for the petitioner was directed to file Copy of the Report of the Handwriting expert if the same has been obtained and submitted in the Criminal case filed against the Respondents for allegedly committing forgery.

On 09.06.2026, the Ld Counsel for the Petitioners submitted that she will now move an application for making a reference to the Forensic examination of the genuinely of the Signatures to prove that they were forged. It is a Very belated request coming too late after 7 years of filing of this Petition.

It is seen that the CP was filed on 26.03.2019. Having alleged forgery, it was not considered necessary by the petitioners to substantiate the allegation with the Report of Forensic examiner to conclusively prove the allegation.

In view of this and in the absence of any material before us to hold that the Signatures are forged, we are unable to accept the prayer to this effect.

c. Not being made a Joint Signatory to the Bank accounts

This Prayer of the Petitioner is prima-facie not admissible in so far as he has not been able to establish that

- i.* the activities undertaken by the Respondents are to the detriment of the Respondent No-1 Company and

- ii. He has not been permitted to discharge his duties as a Director and Shareholder.

The record and the Correspondence made by the Respondents clearly establishes that they have been requesting him to attend the Meetings of the Directors and take part in the Governance of the Company.

Making the Petitioner a joint Signatory to the Bank account of the Company is the Decision to be taken by the Board of Directors in their best wisdom. This authority refuses to get drawn in to the day-to-day working of the Respondent no-1 Company.

In view of the above discussion, we are not convinced that the Petitioners have been able to effectively prove the case of any Oppression or Mismanagement.

8. In the Result, The Petition is **Dismissed**. No order as to Costs.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**