IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.16
CA. Nos. 72, 91, 97, 98/2022, 43/2024, 133/2025
& IA(CA) No.13/2022 in
CP. No. 88/BB/2021

IN THE MATTER OF:

Mr. Tono Thomas … Petitioner

Vs.

Nowon Technologies Pvt Ltd … Respondent

Petition under Section 241-242 of CA, 2013

Order delivered on: 28.07.2026

CORAM:

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

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Ms. Maitreyi Bhat
For the R1 to R3 : Shri K M Vishakh Nag *for* A Murali
For the R4 to R7 : Shri Saji P John
For Respondent No. 8 : Shri Aditya Sethi *in CP No. 88 of 2021*

ORDER

CA. Nos.97, 98/2022, 133/2025 and I.A (CA) No.13/2022 are allowed vide separate orders.

The Respondent Nos. 4 to 8 deleted from array of parties in the Company Petition.

List the CAs, for arguments on 10.08.2026.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Hearing conducted through Hybrid mode)

C.A No.98 of 2022
in
C.P No. 88/BB/2021

Under Rule 11 of the National Company Law Tribunal 2016

In the matter of:

GURUMURTHY PANKU
G-1, Omsai Residence,
11th Main, 2nd Cross,
Malleshpalya Extension,
Bengaluru – 560075 --- Applicant/Respondent No.5

TONO THOMAS,
Residing at 13A, Express Estate,
Kaloor,
Cochin-682016 --- Respondent/Petitioner

Order delivered on: 28.07.2026

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

PRESENT:

For the Applicant in C.A : Shri Saji.P.John & Shri Ajai.P.Johnson
For Respondent in C.A : Mrs. Maitreyi Bhat

O R D E R

1. This Company Petition is filed on 06.12.2022 by **Mr.Gurumurthy Panku** (hereinafter referred as "Applicant") under Rule 11 & 32 of the National Company Law Tribunal 2016 inter-alia seeking the following reliefs:
   a. *Direct to remove Respondent No.5 /Applicant from the cause title and case;*
   b. *Pass such other order as this Hon'ble Tribunal may deem fit in the interest of justice and equity;*

2. **Facts of the case:**

a. The Applicant has filed the main Petition under Section 241-242 seeking reliefs against the oppression and mismanagement and has also alleged that there are financial mismanagement and siphoning of funds and business in the Respondent Company to Respondent Company No. 8. Without prejudice to the allegations made in the Main Petition the Applicants submits that the Applicant herein is one of the Shareholders of Respondent No.1 Company and holds 1,42,200 Equity Shares constituting 17.04% of the total Equity Shareholding. Applicant was Executive Director of the Company during 2009-2013. As on date of filing of the Petition Applicant is not part of the Board of Directors of the R-1 Company. The Applicant stepped down from the Board of R-1 Company in the year 2013. The Petition is filed in 2021 which is after 7-8 years of his stepping down. The Applicant is arrayed as Parties/Respondents to the Main Case only because he is a Shareholder of R-1 Company. A bare perusal of the Main Company Petition clearly depicts the fact that there are no specific allegations directed against R-5, who is the Applicant herein.

b. The major chunk of the Petition is filled with allegations against R-2 and R-3 whom the Respondent/Petitioner finds guilty for loss of his investment. It may be noted that the Respondent's investment was to the Preference Shareholding of the R-1 Company and the Applicant herein did not know or induce him to invest in the Company at any point in time before. The Respondent herein has miserably failed to produce any documentary evidence in the Main Petition to show that the Applicant/R-5 was the reason for his investment in Nowon. The Respondent was willing to invest due to the market opportunity as reasonably perceived at that point of time and if the Business could not profit as per the Business plan it is solely because of the mobile platform market disruptions by lead players and fluctuations in market ecosystem and such other genuine reasons which were beyond the control of the company. As an investor, the Petitioner is well aware of the same and for that matter any investor must be willing to take the risks associated with their investments in technology driven market domains. All investments come with its own risks and benefits and the investors evaluate both and then make the investment. The Respondent is a man of reasonable prudence and knowledge. The Respondent herein has had his reasonable opportunity to peruse and ask for any documents of the R-1 Company before investing, which the Respondent/Petitioner would have done also. The Applicant herein did not solicit or induce him to invest and there is no reference to this effect in the Petition or any supporting documents towards the same. It is pertinent to note that the Applicant herein, being an Equity Shareholder of Nowon is also facing the same loss of its investment, as is the case with other Shareholders/investors. The Company Petition is nothing but an attempt to misguide, attribute and portray the business/investment loss due to market disruptions as mismanagement and fraud under the guise of Section 241 & 242 of the Companies Act, 2013.

c. The Applicant was neither the First Directors nor the Promoter of the Respondent Company. Applicant /Respondent No. 5 was an Executive Director of the Respondent Company from 30th October, 2009 to 31st May, 2013 was primarily managing engineering operations & technology development owing to his core competencies.

d. It is reiterated that the Applicant herein is a Party to the Case only because of the shareholding of Applicant and Directorships held by Applicant in the R-1 Company. There are no specific allegations in the Petition against the Applicant herein who is R-5 to the Main Petition. Apart from the same, Applicant ceased to be the Directors of R-1 Company in the year 2013.

3. <u>Reply by the Respondent:</u>

The Respondent has filed the statement of objection vide Dy.No.1791 dated 29.03.2023 contending as follows:

a) The Respondent No.5 is a necessary party to the present petition in the absence of whom reliefs sought in the main petition cannot be granted. In other words, for the grant of relief claimed in the prayer of the present petition, Respondent No.5 must be a party the main petition. The Respondent NO.5 was the director of the Company till 2015, the tenure in which the acts of oppression and mismanagement is alleged to be committed by the Respondents NO.2 to 8. The Respondent NO.5 was also an active participant in the company and in discussions leading up to the Petitioner's investment in the Company.

b) The Petitioner has sought defined, subsisting, direct and substantive relief against the Respondent no.5 in the main petition the nature of which is legal and also equitable. The reliefs have been sought against the Respondents including the Respondent No.5 jointly and severally in the main petition.

c) The Petitioner raised specific allegations against Respondent No.5 in the main petition more particularly under Para7 to 10; para 21 and para 38 and para 54 to 62 of the main petition. The averments in the main petition clearly lays down how Respondents No.2 to 7 including the Respondent No.5 misappropriated funds of Respondent No.1 to the benefit of the Respondent No.8 Company. Respondent NO.5 was an active participant in the Company who along with Respondent NO.2 and 6 has represented himself as the Promoter/Director of the Company and proposed investment plan and induced the Petitioner to nest substantial amounts in the Company by stating that there would be lucrative and substantial results in the company.

d) Respondents No.2 to 7 have been siphoning off the funds to Respondent NO.8 Company wherein the Petitioner has also produced the evidence in the main petition to show how Respondent No.8 Company made profits due to illegal designs of Respondents No.2 to 7. Hence the Petitioner has a right to relief against Respondent No.6 in respect of the dispute involved in the present petition and as such no effective decree can be passed in the absence of above Respondent NO.6.

e) It is well established principle under law that the veil of corporate entity would be pierced in cases of oppression and mismanagement in order to determine the culpability of the persons behind the veil of Company. As such the Respondent No.5 was the director of the Respondent No.1 Company when the acts of oppression and mismanagement took place and it is reiterated that the Respondent No.5 was actively involved in inducing the Petitioner to invest substantial amount sin to the Company by stating that there would be lucrative and substantial results in the Company. Therefore, impleading of Respondent No.6 as party to the main petition has become necessary and mandatory.

4. Rejoinder for the reply has not been filed by the Applicant.
5. Heard the Ld. Counsel for the Applicant and Respondent and perused the records.
6. **ANALYSIS**: Principles regarding the Necessary party and Proper Party are laid down and discussed by the Hon'ble Supreme Court in Nak Engineering Company Pvt. Ltd. Vs. Tarun Keshrichand Shah and Ors. In SLP (C) Nos. 6024-6025 OF 2022 as below

> The fundamental distinction between a "necessary party" and a "proper party" was succinctly explained in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, wherein this Court held:
> "6… A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."
> 34. In Kasturi v. Iyyamperumal, this Court crystallized the twin tests for a necessary party:
> "…the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy

involved in the suit. … two tests are to be satisfied for determining the question as to who is a necessary party.

The tests are:

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings;

(2) no effective decree can be passed in the absence of such party."

35. This principle has been consistently reiterated. In Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.7, this Court reiterated:

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

"proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

36. Thereafter, in Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.8, the broad principles governing impleadment were summarized:

"41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

> 41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
>
> 41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff."

7. Tested against these Principles and the Tests laid down, the Petitioner has not established the necessity of impleading the parties proposed. The Petitioner has also not clarified as to what relief is being claimed against them.

8. It is seen that the Applicant in this application is the Respondent No 5 in main petition. He is a Shareholder of the Company and Executive Director during 2009 to 2013. He was not a member of Board of Directors of the Respondent Company on the date of filing of the petition. Though the Petitioner claims that during the discussions regarding his investment in the Company, the applicant was involved, this may not give rise to any relief against him.

8.1. Even the Legal Notice dated 02.07.2020 placed at page nos 132 to 135 of the petition at the last para on page 134, a request is made to intervene in the matter.

9. **DECISION**: Considering the Totality of facts, We are of the considered opinion that without any specific and direct role having been established in the petition the presence of the applicant is totally unnecessary and may actually be burdensome. Hence, the application is allowed and the Applicant/ Respondent no 5 is deleted from the array of parties in the Petition and the **CA in 98 of 2022 is Allowed**.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**