NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 7th AUGUST 2026

CP/9/GB/2022

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Laxmi Narayan Sogani, 2. Usha Devi Sogani, 3. Sumit Kumar Sogani, 4. Laxmi Narayan Sogani& Sons (HUF), Vs Sogani Commercials Pvt. Ltd. 2. Sudhir Kumar Sogani, 3. Nidhi Devi Sogani.
Under Section	U/s 241 of Companies Act, 2013

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. Sandeep Chamaria, Adv.

For Respondent (s) : None

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Zeba (PS)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP/09/GB/2022

A Petition under Section 241 of the Companies Act, 2013.

In the matter of:

Shri Laxmi Narayan Sogani, son of Danmal Sogani, residing at A-5, Pancharatna Apartment, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

… Petitioner No.1

-And-

Smti Usha Devi Sogani, wife of Laxmi Narayan Sogani, residing at A-5, Pancharatna Apartment, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

… Petitioner No.2

-And-

Sri. Sumit Kumar Sogani, son of **Laxmi Narayan Sogani,** residing at A-5, Pancharatna Apartment, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

…Petitioner No.3

-And-

Laxmi Narayan Sogani & Sons (HUF), Danmal Sogani, residing at A-5, Pancharatna Apartment, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

… Petitioner No.4

-Versus-

Sogani Commercials Pvt. Ltd., having its registered office at 3A, 3rd floor, Utsav Garden, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

… Respondent No.1

-And-

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP/9/GB/2022

Shri Sudhir Kumar Sogani, son of Laxmi Narayan Sogani, , residing at 3A, 3rd floor, Utsav Garden, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam. (Director of Sogani Commercials Pvt. Ltd.)

...Respondent No.2

-And-

Smt. Nidhi Devi Sogani, wife of Sudhir Kumar Sogani residing at 3A, 3rd floor, Utsav Garden, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam. (Director of Sogani Commercials Pvt. Ltd.)

... Respondent No.3

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through hybrid mode)

For the Petitioner(s) : Mr. S. Chamaria, Mr. Nayan Moni Deka, Ms Momi Kalita (Advs.)

For the Respondent(s) : Mr A. Guha, Mr. S. Dutta (Advs.)

Order pronounced on: 07.08.2026

As Per Bench

1. This Company Petition has been filed by the Petitioners under Section 241, of the Companies Act, 2013 seeking certain relief against the alleged acts of oppression and mismanagement by the Respondents in Respondent No.1 (R-1) Company *i.e.* Sogani Commercials Pvt. Ltd. *via* actions of Respondent No.2 & 3 (R-2 &3). That vide this instant petition u/s 241 of the Companies Act 2013, the petitioner hereby prays for the following reliefs :

(a) For regulation of affairs of the R-1, in future by the proper interferences of the present petitioners.

(b) Restrictions can be imposed on the transfer or allotment of the shares by the R-2 and 3 of the R-1 during pendency of this petition.

(c) Removal of the present Directors, who are arrayed herein as R-2 and 3 of the company.

(d) Recovery of undue gains and benefits made by present R-2 and 3 for their personal purposes being the Directors of the R-1.

(e) Declare all the Resolutions adopted by the R-2 and 3 being Directors of the R-1, which are contrary to the Company Act and Rules as well as adopted in violation of the MOA and AOA of the R-1 as null and void for all purposes more particularly from the period 2016-2020 and afterwards.

(f) Declare all the purported AGM from the year 2017-2020 as null and void which, were convened contrary to the Company Act and Rules as well as called for in violation of the MOA and AOA of the R-1 and subsequently shown in the website of MCA as AGM of the R-1.

(g) Declare the Resolution of R- 2 and 3 for apply and acceptance of Loan of Rs. 370 lakhs only from the I. D. B.I. Bank, Guwahati as null and void and make free the R-1 from the said burden of loan liability and thereafter the said liability be shifted to the R- 2 and 3 at their personal capacities.

(h) Pass such other order/orders etc. which this Hon'ble forum deem fit and proper for the benefits of the shareholders of the R-1 and also for the betterment of the R-1.

In the Interregnum:

(i) During pendency of the Case, appoint two independent "Administrators" to perform the role of Directors of the R-1, who may report the Hon'ble Tribunal for its day to day affairs on regular basis. In alternative, During pendency of the Case, the said R-2 and 3 may be restricted to take any major decision more particularly for financial matters on behalf of the R-1, without leave of this Hon'ble Forum.

(j) Direct the R-2 and 3 to produce all the Records of R-1, specifically all the Copies of Resolution adopted since the year 2014 and the Records including the Notices connected to AGM from the year 2016 to 2019 and financial records for the said period.

(k) Other direction/directions, as it may deem necessary by the Tribunal.

2. As stated in the Petition, Petitioner No.1 to 4 are Shareholders in Respondent No.1 Company in "Sogani Commercials Pvt. Ltd", being a body corporate registered under the Companies Act, 1956, having registered office at 3A, 3rd floor, Utsav Garden, Sati Jaymati Road, Athgaon, Guwahati – 781001, Kamrup (M), Assam.

3. **Now, it is the case of the Petitioner(s) that:**

3.1 The petitioners are shareholders of Sogani Commercial Private Limited who share a common interest in this dispute. They have filed this application seeking legal relief against the oppression and mismanagement committed by Respondent Nos. 2 and 3 within the company. Respondent Nos. 2 and 3 are directors of the company and are married to each other, with Respondent No. 2 being the eldest son of Petitioner Nos. 1 and 2. The petitioners possess the requisite shareholding to qualify for and maintain this action before this Hon'ble Forum.

3.2 That, Sogani Commercial Private Limited (the "Company") is a company incorporated under the Companies Act, 1956. Its initial registered office at M.S. Road, Bargola Building, Fancy Bazar, Guwahati, Assam was later purportedly shifted to Utsav Garden, Flat No. 3A, 3rd Floor, above Steel House, S.J. Road, Athgaon, Guwahati, Assam. Incorporated on September 5, 2008, the Company's main object is to engage in multi-business activities involving petrochemicals and allied industries.

3.3 That the authorized share capital of the Company is Rs. 50,00,000/-, divided into 5,00,000 equity shares of Rs. 10/- (Face Value) each. The paid-up capital of the Company at present is Rs. 18,93,840/-, comprising 1,89,384 equity shares of Rs. 10/- each. The shareholding pattern and the list of present shareholders are annexed herewith for ready reference, as detailed hereunder:

Sl.No	Name of the Share Holders	Share Nos.	Percentage (%)
1.	Balaji Candles Pvt Ltd	90,000	47.52
2.	Laxmi Narayan Sogani	25,549	13.49
3.	Laxmi Narayan Sogani & Sons	11,857	6.26
4.	Pallavi Jain	1,099	0.58
5.	Sudhir Kumar Sogani	39,000	20.59

6.	Sumit Kumar Sogani	19,681	10.39
7.	Sweta Sogani	1,099	0.58
8.	Usha Devi Sogani	1,099	0.58
	TOTAL SHARES	**1,89,384**	**100.00**

3.4 That the principal and other objectives of the Company are evident from the Memorandum and Articles of Association of Respondent No. 1. Other relevant corporate details, as retrieved from the official portal of the Ministry of Corporate Affairs (MCA), indicate that the present Directors of the Company are:

1. **Sri Sudhir Kr. Sogani**
2. **Smti Nidhi Devi Sogani**

3.5 That the Respondent No. 1 Company has a distinct financial history spanning from its inception. The fundamental objective behind the incorporation of the said Company was to enhance the family business, thereby ensuring that all family members would derive adequate benefit from its diverse commercial activities *per se*. The individuals associated with the Respondent No. 1 Company primarily belong to the family of Sri Laxmi Narayan Sogani (Petitioner No. 1 herein), whose singular objective was to establish a viable platform for his two growing sons in the petrochemical industry within the Northeast region. It was for this purpose that the Company was originally promoted and constituted at the instance of Petitioner No. 1.

3.6 The Petitioners contend that from the incorporation of Respondent No. 1 Company in 2008 until the year 2013, the affairs of the Company were conducted smoothly without any adverse incidents. However, the dispute arose in 2014, when Respondent No. 2 allegedly began pressing for the partition of family properties and engaged in activities detrimental to the interests of the family business, including Respondent No. 1.

3.7 The Petitioners specifically allege that Respondent No. 2 took unilateral decisions to usurp absolute control over Respondent No. 1, systematically ousted other family members from the Company, and passed unauthorized corporate resolutions. It is further contended that Respondent No. 2 falsely represented himself to third parties as the sole owner and occupier of the Company. The Petitioners submit that these actions precipitated a multiplicity of litigations among the family members of Sri Laxmi Narayan Sogani, deeply entangling Respondent No. 1 and disrupting the family estate.

3.8 That, *vide* deed of family settlement dated 14.03.2016, all parties came to a rational conclusion that the entire scheduled properties of this Settlement Deed have to be adjusted amongst the parties according to the terms and conditions set forth therein including a Resignation letter dated 12.04.2016 of R-3 submitted before the Board Of Directors (BOD) of "Sogani Commercials Pvt. Limited". The parties to this Settlement Deed further also sincerely agreed that they would performed their compliances, without fail.

Moreover, as per the Deed of Settlement, the properties entitled by the R-2 are herein detailed below-

i) A property situated at Kharghuli, Guwahati, belonging to "Sogani Commercials Pvt. Ltd." was already handed over to the R-2 and accordingly, R-2 is in possession and control of the same.

ii) A property mentioned in the Schedule- C of this Deed, i.e.- flat situated at Athgaon, Guwahati is also under the exclusive possession of R-2.

iii) The property mentioned in Clause (D) i.e. "Petrol Pump", situated at Chagolia, Dhubri, Assam was also handed over to the said R-2 and accordingly, R-2 is in possession and control of the same, wherefrom the said R-2 is constantly earning good amount of profits as on date.

The copy of the Settlement deed and resignation letter is annexed as *Annexure-4* and *Annexure-5* respectively to the petition.

3.9 The Petitioners contend that despite fulfilling all major obligations under the Family Settlement Deed dated 14.03.2016 in favor of Respondent No. 2, the latter has failed to comply with the substantive terms of Clause (XII) of the Deed. Specifically, the Petitioners on 10.02.2018, formally requested Respondent No. 2 to tender his resignation letter from Respondent No. 1 Company ("Sogani Commercials Private Limited") as mandated by Clause (XII) of the Settlement Deed. The Petitioners allege that Respondent No. 2

refused the request and has taken no positive steps to comply with the clause since. Consequent to this non-compliance, the Petitioners state they were compelled to seek legal redress before the courts at Guwahati. This initiated a subsequent round of multifaceted litigation between the parties across various forums, which remains pending and active as of today.

The current status of the pending litigations between the parties is detailed below:

GAUHATI HIGH COURT :

Sl. No.	Case No.	Party Name
1.	Crl. Pet. No. 930/2018	Sudhir Kr. Sogani & anr –vs– State of Assam & Anr.
2.	Crl. Pet. No. 700/2018	Sumit Kr. Sogani –vs– State of Assam & Anr.
3.	Crl. Pet. No. 150/2018	Sumit Kr. Sogani –vs– State of Assam & Anr.
4.	Crl. Pet. No. 126/2018	Sumit Kr. Sogani –vs– State of Assam & Anr.
5.	FAO No. 74/2019	Sudhir Kr. Sogani & anr –vs– Smt. Pallavi Jain & 5 Ors.
6.	CRP No. 107/2019	Sumit Kr. Sogani –vs– Sogani Commercials Pvt. Ltd.
7.	I.A.(C) No. 4282/2019	Sudhir Kr. Sogani & anr –vs– Smt. Pallavi Jain & 5 Ors.
8.	I.A.(Crl)No.1047/2019	Sudhir Kr. Sogani–vs– State of Assam
9.	CRP(I/O)No.205/2019	Sogani Commercials Pvt. Ltd.
10.	Crl. Pet. No. 192/2020	Sudhir Kr. Sogani & anr –vs– State of Assam & Anr.

SUB - ORDINATE COURTS AT GUWAHATI -

Sl. No.	Case No.	Party Name	Court
1.	C.R.No. 6450/2018	Sumit Kr. Sogani	Addl. CJM

		–Vs– Sudhir Kr. Sogani & Anr	Guwahati.
2.	T.S. No. 351/2018	Laxmi Narayan Sogani Vs IDBI Bank & Ors.	Civil Court 1 Guwahati.
3.	T.S. No. 582/2019	Sudhir Kr. Sogani & Anr –Vs– Smt. Pallavi Jain & Ors.	Civil Court 1 Guwahati.
4.	T.S. No. 177/2018	Laxmi Narayan Sogani Vs Sogani Commercials Pvt. Ltd.	Civil Court 3 Guwahati.
5.	T.S. No. 23/2014	Sogani Commercials Pvt.Ltd. Vs Laxmi Narayan Sogani & Ors.	Civil Court 3 Guwahati.

3.10 That, in relation to the present Company's affairs in hand, it is alleged that without any advance notices and consent etc., the Respondent Nos. 2 & 3 vide BOD resolution dated 26.12.2017, in contravention to the Settlement Deed dated 14.03.2016, took out a loan of Rs. 370 Lakhs only in the name of the R-1 from the IDBI Bank, Guwahati, wherein the Company's property situated at Kharguli was kept as mortgaged for the said loan purposes. This facts was revealed *vide* letter dated 10.02.2018 issued on behalf of the IDBI Bank, Guwahati against the letter dated 12.01.2018 given by the present petitioners to the said IDBI Bank, Guwahati for certain clarification only. Moreover, while taking such loans, in capacity of a Director of "Sogani Commercials Pvt. Limited", the said Respondents No. 2 & 3 had suppressed the existence of Settlement Deed dated 14.03.2016 before the concerned bank as well as the Resignation letter dated 12.04.2016 of his wife (R-3) submitted before the BOD of "Sogani Commercials Pvt. Limited" erstwhile. It is moreover alleged that R-2 by keeping the petitioner No. 1 in dark about such loan, the said R-2 and 3 has defrauded and cheated the petitioner No. 1 and hence the petitioner No. 1 for the purpose of seeking reliefs, has already approached before the appropriate forum and on 13.08.2018 also filed FIR for the same, which investigation is still going on as on date. Consequently, the R-2 has also lodged some frivolous criminal cases against his own parents and brothers which are still pending for Investigation.

Further, the applicant alleges serious financial irregularities and manipulation of accounts by Respondent Nos. 2 and 3 (R-2 and R-3) across the financial years 2017-2018 and 2018-2019. Specifically, the applicant submits that in FY 2017-2018, R-2 and R-3 recorded an unverified disbursement of ₹3,98,15,000.00 under "other short term Loans and advances" to an unknown party, a transaction that allegedly vanished or was arbitrarily reduced to just ₹33,26,000.00 in the subsequent year's books. Furthermore, for FY 2018-2019, the respondents declared their bank borrowings as "NIL," implying the loan was settled; however, the applicant contends that the company's books fail to show the proper corresponding entries for such a repayment or receivable. To substantiate the claim of deliberate malpractice, the applicant points to the IDBI Bank statement for FY 2018-2019, which directly contradicts the respondents' filings by showing the loan amount as unpaid and outstanding against Respondent No. 1 (R-1).

The copy of the Loan Sanction Letter is annexed as Annexure-8, the copy of the BOD Resolution is annexed as Annexure-9 and the F.I.R copy is annexed as Annexure-10 to the petition.

3.11 The applicant further submits that since February 2020, Respondent Nos. 2 and 3 (R-2 and R-3) have been attempting to dispose of the assets and properties of Respondent No. 1 (R-1) for wrongful purposes. Additionally, the applicant raises a grave apprehension that R-2 and R-3 are seeking to secure further bank loans in the name of R-1, which would overburden the company with liability and cause severe, potentially existential financial losses. The applicant contends that the respondents may pass unauthorized or detrimental corporate resolutions to achieve these hidden goals, demonstrating that their ongoing activities are prejudicial to both R-1 and the petitioners.

3.12 That the Applicant highlights ongoing anomalies within the company, submitting that Respondent Nos. 2 and 3 (R-2 and R-3) have consistently acted against the common interest of the stakeholders of Respondent No. 1 (R-1). It is alleged that R-2 and R-3 have illegally seized control of R-1 in their capacity as Directors and have continuously misused the company's assets and capital for personal or unauthorized purposes. The applicant contends that these actions have caused severe prejudice to the interests of both R-1 and the petitioners as shareholders, the specific details of which are narrated sequentially for the appraisal of this Forum.

3.13 That, the Respondent Nos. 2 & 3, post settlement, in their capacity as Directors, has suppressed material information regarding the internal affairs from the stake holders of Respondent No. 1 as well as have concealed the books of accounts and other financial dealings of Respondent No. 1 and have allegedly avoided the enquiries made by Respondent No. 1 on different pretexts.

3.14 That the respondent Nos. 2 &3 in their capacity of the directors have allegedly failed to carry out any positive or inspiring business activities for the welfare of Respondent No. 1 (R-1) as mandated by its Memorandum of Association (MOA) and Articles of Association (AOA). It is alleged that despite ample opportunities, their mismanagement has kept the organization in a state of continuous, heavy financial loss. Consequently, the applicant contends that R-2 and R-3 are accountable to this Tribunal and must be directed to produce all corporate and financial records from 2016 to 2020 to reveal the true nature of their business dealings and involvement in R-1's financial affairs over the last four years.

3.15 That the Respondent nos. 2 & 3 have failed to call any Annual General Meetings (AGMs) for genuine causes or in the common interest of the shareholders, in clear violation of the Companies Act, 2013. It is alleged that the respondents deliberately withheld formal statutory notices for such meetings from the petitioners and other shareholders to serve their own vested interests. Furthermore, the applicant contends that the AGM details uploaded to the Ministry of Corporate Affairs (MCA) website for the financial years 2017-2018 and 2018-2019 are highly questionable and constitute mere paper formalities. The applicant argues that the overarching objective of R-2 and R-3 is to keep the remaining shareholders completely in the dark so they can manage the affairs of Respondent No. 1 (R-1) without scrutiny. The copy of the details of R-1 from the MCA website is annexed as Annexure-11(series) to the petition.

3.16 It is alleged that Respondent No. 3 (R-3) formally resigned from the Board of Directors of "Sogani Commercials Pvt. Limited" *vide* her resignation letter dated 12.04.2016, following the aforesaid settlement and with prior notice to Respondent No. 2 (R-2). The applicant contends that in the eyes of the law, R-3 ceased to be a director of the company as of that date. However, it is alleged that through active connivance with R-2, R-3 has continued to act as a director and has taken numerous decisions that prejudice the interests of both the company and its shareholders. Consequently, the applicant argues that all corporate decisions, consents, and signatures executed by R-3 in the capacity of a director after 12.04.2016 are illegal and liable to be declared null and void for all purposes.

3.17 It is alleged that Respondent Nos. 2 and 3 (R-2 and R-3) suppressed material facts from Petitioner No. 1 and illicitly secured a loan of ₹370 Lakhs from IDBI Bank, Guwahati, in the name of Respondent No. 1 (R-1). It is contended that these substantial funds were never utilized for the commercial activities or upliftment of R-1, but were instead siphoned off by the respondents for their personal use. The applicant further challenges the serious manipulation and suppression of vital information regarding this loan in the company's books of account for the financial years 2017-2018 and 2018-2019. Consequently, the applicant submits that R-2 and R-3 are accountable to this Forum and must be directed to produce all corporate records from 2017 to 2020 to show how, if at all, these funds benefited R-1.

3.18 That, the R-2 and 3 had shifted the Registered Office of the R-1 from the original place i.e. M.S. Road, Bargola Building, Fancy Bazar, Guwahati, Assam-781001 to new address namely Utsav Garden, Flat No. 3A, 3rd Floor, above steel House, S. J Road, Athgaon, Guwahati 781001, Assam with an ulterior motive to avoid the present petitioners from the knowledge of day to day activities of R-1. In this context, the BOD resolution if any adopted, the said fact was never shared with the other shareholders of the R-1 and as such, decision of the R-2 and 3 for this purposes seems malafide and also adopted against the basic interest of the R-1 too.

3.19 That R-2 and 3 allegedly failed to manage the affairs of the R-1 in consonance with the aims and objective set forth in the MOA. The said MOA contains as many as 44 objects (Main Objects, incidental and ancillary objects - 1 to 42. However, R-2 and 3 in illegal command of R-1 has failed to achieve any such objects upto the satisfaction of the present shareholders and for the direct and indirect benefits of the R-1 at any point of time and hence, their performances and interest towards R-1 is always found vulnerable and as such, it demands direct interference of this Hon'ble Forum in respect of the present affairs of the R-1.

3.20 That, the clause (36) AOA of the R-1 distinctly refers about the convening of the AGM by giving 21 days prior notice to the all share holders, but this was never complied by the R-2 and 3 with an ulterior motive and by mere mechanical formalities, these AGM has been purportedly shown as called with. This apart, as per the clause (38) of AOA, the R-1, the R-2 and 3 are invariably duty bound to circulate the "Annual accounts", prior to 21 days of convening AGM of the R-1 but this too has not been complied with by R-2 and 3 for their vested interest and purposes. Moreover, the petitioners allege that they have neither received any formal or informal information about the convening of AGM of the R-1 for the year 2017-2018 and 2018-2019 nor was the Annual Accounts circulated to the present petitioners till date.

3.21 That, *vide* Deed of Settlement dated 14.03.2016, in clause XII, the R-2 has already received all the properties as mentioned therein for his personal benefits but has not complied with the clause of relieving himself from Directorship of the said R-1. Moreover, despite having no right to act as being Director of the said R-1 Company, R-2 is seeking to secure illegal gains either under the guise of the Deed of Settlement dated 14.03.2016, or by falsely projecting himself as an active Director of R-1 is continuously acting against the common interest of all the shareholders and to the detriment of the greater benefits of R-1.

3.22 That, R-2 and 3 by resorting some malpractices has taken a loan of Rs. 370 lakhs only in the name of the R-1 which was otherwise never warranted for. The name of the R-1, was palpably misused to get such huge amount of loan and apart from this, the said big amount was also never utilized for the commercial activities for the R-1, which itself proves that their intention and action towards R-1 is rather than *bonafide*. Further, by carrying such illegal activities, they have made "material changes" of the basic structure of the R-1, which adverse impact surrounding to the name and fame of the R-1 till date.

3.23 Moreover, R-2 and 3 has mislead the public at large and acted against the public interest, while suppressing vital information in their Audit Report for the year 2017-2018 and 2018-2019, wherein in Column g (i) averred that the R-1 do not have any litigations pending, which would impact its financial position contrary to the fact that R-2 and 3 along with R-1 is facing crucial litigations at different court of laws since the year 2017-2018. Despite having full knowledge of such facts, they have misrepresented it in their Audit Reports, which amounts to a case of "misrepresentation of material facts in the audit Reports" of a Company.

3.24 It is alleged that the R-2 and 3 are devoid of morality and fairness while dealing with the affairs of the R-1, which is prejudicial to Interest of the petitioners indispensably herein. Moreover, R-2 & R-3 has ineptly, incompetently, or dishonestly managed the affairs of the R-1, requiring scrutiny by this Hon'ble forum. Furthermore, it is alleged that R-2 and 3 are constantly misusing the funds of the R-1 for their personal gain and vested purposes and as such, their continued directorship of R-1 is detrimental for the survival of the R-1 as well as the present petitioner's interests. The activities of R-2 and R-3 amounts to violation of the cardinal objects and purposes laid down in the MOA and AOA of the R-1. The mode and manner adopted to secure a loan of Rs. 370 Lakhs from I.D.B.I, Guwahati itself proves unjustified and arbitrary decisions, the said R-2 and 3 has burdened R-1 within a huge loan liability with high chargeable rate of interest for coming days for the same, which posesa serious threat of "Bankruptcy ". Moreover, the loan funds were never utilized for the welfare of Respondent No. 1 (R-1), but were instead converted by Respondent Nos. 2 and 3 (R-2 and R-3) in an arbitrary manner for their personal purposes. It is further contended that the present assets and overall worth of R-1 are currently in unsafe hands, creating a strong apprehension that its remaining value will be further misused by R-2 and R-3 in the near future. Consequently, the applicant seeks immediate protection from this Forum to safeguard the company's assets.

3.25 That the conduct of Respondent Nos. 2 and 3 (R-2 and R-3) in their capacity as Directors of Respondent No. 1 (R-1) openly constitutes continuous oppression and blatant mismanagement of the company. It is alleged that they have consistently attempted to force new and highly risky business objects upon R-1, thereby prejudicing the company's interests in various ways. Furthermore, the applicant contends that the activities of R-2 and R-3 amount to fraud, misfeasance, and misconduct toward the shareholders, who have approached this Forum as petitioners to rightly blow the whistle on the financial and administrative anomalies committed by the respondents in the name of R-1.

3.26 The applicant submits that Respondent Nos. 2 and 3 (R-2 and R-3) have purposefully and systematically suppressed vital meeting notices and critical information from the petitioners, thereby committing continuous oppression and depriving the shareholders of their legitimate statutory rights under the Companies Act and Rules. It is further alleged that the respondents have carried out major mismanagement by conducting the affairs of Respondent No. 1 (R-1) behind closed doors, according to their own whims and caprices, and have siphoned off considerable amounts from the company’s funds for personal use. Given the ongoing and helpless state of mismanagement, the applicant seeks the intervention of this Forum to appoint two independent "Administrators" for a period of six months, vesting them with all directorial powers to stabilize and run the company smoothly. Finally, contending that R-2 and R-3 are inefficient and unwarranted persons for the future of R-1, the applicant prays for their removal from the Directorship and requests that the petitioners be permitted to appoint new Directors through due process of law.

4. **On the other hand, the Respondents vide their reply dated 13.01.2023 submit that:**

4.1 It is averred by the Respondents that the application is liable to be dismissed with exemplary costs.

4.2 That the present petition alleging illegality and mismanagement of the Affairs of Respondent No. 01 is a result of fabricated story by the Petitioners for personal benefits and the Petitioner No. 4 has not given any affirmation or authorization to the same.

4.3 That the present petition is barred by the principle of waiver, acquiescence, estoppels and is analogous thereof. Moreover, it is submitted that the instant petition has been filed without any cause of action and is nothing but an outcome of afterthought aimed at extracting undue advantage and unjust enrichment by the Petitioners.

4.4 It is submitted that this petition is an attempt to negate the liability of the Petitioners and escape the consequences, and an effort to mislead this Tribunal by misrepresentation on record. Further, it is alleged that the entire petition is based upon false submissions and therefore, the contents of the petition in its entirety is denied. That it is averred that the Respondents are putting forth their joint reply as detailed below.

4.5 With reference to the paragraph iv (F), the Respondent denies and disputes all allegations contrary or inconsistent *per se*. The statement mentioned therein is irrelevant to the instant case alleging mismanagement of the affairs of the company and therefore bears no relevance being a deliberate attempt to deviate the proceedings from reaching a logical conclusion. It is averred that the Petitioners are not liable to get any relief as the prayers can only be granted as per provisions of S. 242(2) of the Companies Act, 2013 however this application has been filed u/s 241 of the Act.

4.6 With reference to the paragraph iv (h), the Respondent denies all the allegation contrary and inconsistent thereof. Similarly, being false, such statement bears no relevance for the purpose of adjudication and is a deliberate attempt to mislead this Tribunal. It is averred that the Respondents have been unable to comply with the terms of the settlement deed dated 14.03.2016 due to the fraudulent activities of the Petitioners. As for the Resignation Letter, the same was withdrawn and hence became invalid due to withdrawal and non-filing with the authorities. The Respondents also submits that they have taken legal recourse and filed various cases before the courts as detailed below:

Sl No	**Particulars**
1.	CP No 930/2018

2.	FAQ No 74/2019
3.	I. A. (C) No 4282/2019
4.	I. A. (CRL) No 1047/2019
5.	CRL Pet No. 192/2020
6.	CRL Pet No. 192/2020
7.	T.S. No 23/2014
8.	T.S. No. 582/2019

4.7 Further, with reference to paragraphs iv (I) of the said petition, the Respondents hereby denies and disputes all allegations contrary and inconsistent *per se*. It is further averred that the requisite permissions have been taken to avail the loan of 370 lakhs for the growth of the business of the company and that no fraud has been committed. The Petitioners have levelled this allegation without any documentary proof to establish malpractice and have used the data of the Respondent Company at their own whims and choices.

The Respondents submit that they have disbursed the loan to some other entity for repaying the loan taken by them. Till date, such loan is being repaid timely which is suppressed by the Petitioners. Moreover, the allegations of the Petitioners is said to cause adverse effects to the company and therefore deserves the strictest of sanctions for consuming the valuable time of the Tribunal and causing abuse of law.

Further, it is alleged by the Respondents that the Petitioners have never indulged in the affairs of the company and that this petition is filed in furtherance of a family dispute. That the Petitioners have not even visited the registered office of the company as such for 10-15 years and *in lieu* of the family dispute, the Petitioners have started blaming the Respondents for their actions in regard to the management of the company which doesn't satisfy the ingredients and basic components of Sec. 241 of the Companies Act 2013 and amounts to abuse of law.

4.8 With reference to paragraph iv (j) of the petition, the Respondent denies and disputes all allegations contrary and inconsistent *per se* and further submits that the Respondents have approached the bank seeking loans to invest in new projects of the

Respondent Company to generate revenue and growth and consequently denies all allegations due to their inability to provide any relevant documents.

4.9 With reference to the part (i), (ii) & (iii) of iv (k) of the said petition, the Respondents deny and dispute all allegations contrary and inconsistent *per se* and that the Respondents were managing the affairs of the company owing to the inability of the petitioners. The Respondent No. 2 & 3, being the directors of the company avers that they have always managed the affairs of the company in a fair manner and have always tried to share the actual financial position of the company with the shareholders in its Annual Reports. Moreover, the petitioners have never shown interest in the affairs of the company for the past several years and are suddenly levelling allegations against the respondents despite the fact that they have never preferred any formal complaint to the Registrar of Companies, NER for violations of the Companies Act, 2013.

That this conduct of the petitioner shows that they were never bothered with the actual affairs of the company and that the reason for such sudden allegations is collusion with the interests of the shareholders of the company. That the petitioners are merely carrying out their family disputes to harass the Respondents.

It is moreover disputed and denied that the Respondents No. 2 & 3 have suppressed the facts from its shareholders and managed the affairs of the company with a misleading and illegal motive. The respondents also re-iterate the fact that AGMs for every financial years as well as all the provisions of the Companies Act, 2013 has been duly complied with.

4.10 With reference to the part (iv) of IV (k) of the petition, the respondent deny and dispute all allegations contrary and inconsistent *per se* and re-iterates that the Resignation Letters were never filed with RoC, NER and such resignations have been duly withdrawn thereby rendering them null and void and maintains good faith towards the management and affairs of the company.

4.11 With reference to para IV (L) of the petition, the respondents deny and dispute all allegations contained therein and re-iterates that the Resignation Letters were never filed by them or the Respondent No. 1 and that they have withdrawn such resignations and the same should be considered null and void.

5 The petitioners vide their rejoinder submit that :

5.1 That in respect to para 1 of the reply, the answering deponent denies the existence of any board resolution authorizing Respondent No. 2 to make submissions in regard to Respondent No. 1 i.e. Sogani Commercials Pvt Ltd. The board resolution dated 07.07.2023 annexed to the reply affidavit is allegedly false with malafide intent.

5.2 Moreover, the petitioner re-iterates the alleged exploitation of the assets of R-1 for personal gains by the R-2 &3 resulting in the R-1's current paralyzed state due to irreparable losses which is further detailed as below :

5.3 That the Respondent No. 2, by fabricating the company's documents and without the knowledge of the company's shareholders and other concerned persons, have allegedly sold out a plot of land measuring 2 Kathas 10 Lechas covered by Dag No. 94, Patta No. 250 of Ramsahill Grant, Ulubari Mouza under Guwahati Revenue Circle with two Assam typed and R.C.C. house situated in Kharguli Area on 24.05.2022 despite having knowledge of the fact that the said property is under mortgage to IDBI Bank against a loan amount of Rs. 4,15,92,615.00/- due till date. The agreement for sale dated 21.05.2022 also mentions the same and therefore the petitioners allege fraud over such sale transaction which is severely detrimental to the interests of the present petitioners. The copy of the loan sanction letter is annexed as *Annexure 3* to the rejoinder.

5.4 That it is alleged that R-2 in collusion with the officials of the Deputy Commissioner's office at Kamrup Metro Assam, despite Objections dated 03.03.2020, 12.02.2021 and 07.04.2022, have alienated the assets of R-1 without obtaining NEC, Form 54, Permission for Sale of Land and by fabricating Board Resolutions dated 21.04.2022. Moreover, such transaction has allegedly also been undervalued as Rs. 50,00,000 instead of the original value of Rs. 4,15,92,615. The said discrepancies is highlighted on the Sale Deed dated 24.05.2022 (Annexure-5) and the Agreement for Sale dated 21.05.2022 (Annexure-6) submitted with the rejoinder.

5.5 Moreover, it is alleged that the said amount derived from the sale of the aforesaid property has been misappropriated by R-2 & 3 causing severe losses to the interest of the shareholders and the persons concerned.

5.6 That R-2 & 3 allegedly, despite having full knowledge of the mortgaged status of the said property, have nevertheless proceeded with such transaction by illegal means and manipulation of records and furthermore, the proceeds from such sale have been transferred to the personal account of R-2 thereby leaving the company with a liability of Rs. 4,15,92,615.00. It is submitted that such Agreement for sale and the sale deed in respect to the alienated property stands in violation of the Companies Act and pursuantly, the petitioners have lodged and F.I.R dated 06.12.2022 before Latasil Police Station as well as have preferred a complaint before the Commissioner of Lower Assam Division on 06.12.2022 for initiating necessary legal action. A copy of the FIR dated 06.12.2022 is attached to the Petition as "*Annexure 11*".

5.7 That pursuant to the last annual returns and audit report, it is evident that the Respondent No. 1 under the management of the Respondents No. 2 & 3 is regularly making losses with no scope for upliftment. The audit report is annexed as Annexure 12 to the rejoinder affidavit.

5.8 That Respondent Nos. 2 & 3, are using the Company funds for their personal gains without disclosure rendering the petitioners helpless as such. This impugned conduct of the Respondent Nos. 2 & 3 pose a serious apprehension of further illegal disposal of the assets of R-1.

5.9 It is further submitted that in respect to the para-9 of the reply, the resignation letter submitted post-settlement has sufficient merits and despite such resignation, the Respondent No. 3 in connivance with Respondent No. 2 is still in command of R-1 and its assets.

5.10 That in respect to Para 10 of the reply, it is submitted that the loan of Rs. 370 Lakhs illegally obtained upon R-1 has been misappropriated by R-2 & 3 instead of being used for the benefit of R-1 and the Respondents have failed to establish the proper utilization of such loan funds.

5.11 Moreover, in respect to para 11 of the reply , it is the admitted position of the respondents that they have taken further loan for a new project with an aim to generate revenue, however the respondents no. 2 & 3 have failed to satisfactorily establish the same.

5.12 That the petitioners allege unfairness being evident from the activities of R-2 and R-3 which poses a serious risk of insolvency and bankruptcy of R-1 detrimental to the survival of R-1 as well as the interest of the present petitioners. Moreover, in respect to para 13 of the reply , the issue of withdrawal of the resignation letter in devoid of merit due to a lack of documentary evidence as deserved so value in the eyes of law.

Furthermore, it is submitted that R-2 has submitted the reply on behalf of all the respondents without any due and valid authorization, contrary to the official records and without proper administration of oath and therefore is liable to be treated as fabricated.

6 Heard Mr. S. Chamaria, Ld. Counsel appearing for the Petitioners, Mr. A. Guha and Mr S. Dutta, Ld. Counsel appearing for the Respondents, and perused the available records.

7 **Findings and Analysis:**

7.1 It is understood that this Petition is filed under Section 241 of the Companies Act, 2013 seeking certain relief against the acts of oppression and mismanagement upon the affairs of the Respondent No.1 Company i.e. Sogani Commercials Pvt. Ltd. *via* actions of Respondent No.2 & 3.

7.2 After going through the submissions of both the Petitioners and Respondents, the key issues for consideration are reduced as follows:

I. Whether this petition is maintainable u/s 241 of the Companies Act. 2013?

II. Whether the Family Settlement Deed dated 14.03.2016 has any bearing or contains rights enforceable in the present proceedings?

III. Whether the continuation of Respondent No. 3, Mrs. Nidhi Devi Sogani, as Director of Respondent No. 1 Company is valid?

IV. Whether the Petitioners have established unexplained discrepancies in the books of account, including allegations of siphoning or diversion of funds, amounting to mismanagement under Section 241 of the Companies Act, 2013?

IV.A Whether Petitioner No. 1 had knowledge of, and consented to, the sanction of the IDBI loan of Rs. 3.7 Crores?

V. Whether the sale of the Company's property situated at Kharguli Hills was un-authorized, mala-fide and prejudicial to the interests of the Company and its shareholders?

VI. Whether the alleged procedural and statutory non-compliances in the conduct of the affairs of Respondent No. 1 relating to Annual General Meetings, circulation of annual accounts, service of notices, and shifting of the registered office, amounts to oppression and mismanagement?

VII. Whether, on the cumulative effect of the acts complained of, a case of oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013 is made out against the Respondents?

I. Whether this petition is maintainable u/s 241 of the Companies Act. 2013?

i. This Petition has been instituted under Section 241 of the Companies Act, 2013 alleging oppression and mismanagement. While considering the maintainability of the Petition, this Tribunal has examined the relevant provisions of the Companies Act, 2013 and the Limitation Act, 1963.

ii. The Tribunal further notes that the right to invoke the jurisdiction under Section 241 is subject to the eligibility requirements prescribed under Section 244 of the Act. From the material available on record, the shareholding pattern of the petitioners are as follows:

Sl No.	Name	Percentage of shareholding.
1.	Laxmi Narayan Sogani	13.49 %
2.	Usha Devi Sogani	0.58%
3.	Sumit Kumar Sogani	10.39%
4.	Laxmi Narayan Sogani & Sons (HUF)	6.26%
	Total	**30.72%**

Therefore, this Tribunal is of the opinion that the Petitioners satisfy the statutory threshold prescribed therein and, therefore, possess the requisite *locus standi* to maintain the present proceedings.

iii. The Respondents have contended against maintainability of this present petition. It is submitted that although the Petition has been filed under Section 241, the reliefs sought are in the nature of those contemplated under Section 242(2) of the Act and that the Petition is, therefore, not maintainable. This contention cannot be accepted. Section 241 confers upon eligible members the substantive right to approach the Tribunal alleging oppression and mismanagement, whereas Section

242 confers the remedial and equitable powers upon the on any application under Section 241. The powers enumerated under Section 242(2) are illustrative of the wide jurisdiction vested in the Tribunal and cannot be construed as limiting or defeating a petition otherwise maintainable under Section 241.

iv. In view of the foregoing, this Tribunal finds no merit in the objections raised as to maintainability. The Petition satisfies the statutory requirements for invocation of jurisdiction under Sections 241 and 244 of the Companies Act, 2013, and no ground has been made out at this stage to reject the application filed under Sec 241 of the Companies Act, 2013. . Accordingly, the objections as to maintainability stand rejected and the Petition is held to be maintainable.

II. Whether the Family Settlement Deed dated 14.03.2016 has any bearing on, or gives rise to rights enforceable in, the present proceedings?

i. The petitioners have relied upon the Family Settlement Deed dated 14.03.2016 in support of several grievances in the present petition. It is averred that certain immovable properties were allotted to R-2 as settlement of his claims against the family. They further contend that Clause xii of the Deed requires R-2 & 3 to resign from directorship of R-1 Company. It is further alleged that although R-2 accepted the benefits of the settlement, he failed to comply with the obligations around it.

ii. The Respondents dispute this altogether. It is submitted that the Family Settlement Deed was never implemented by the Petitioners and that no enforceable rights arose from it.

iii. Upon perusal, this Tribunal finds that the Family Settlement Deed has two differing set of provisions. On one hand, it allocates various immovable properties among the family members including the present petitioners and R-2 and 3. On the other hand, Clause XII of such deed relates to the management of R-1 Company by recording an undertaking regarding the resignations of R-2 and 3 as Directors. These provisions hence require separate consideration.

iv. With respect to the clauses relating to immovable properties, the petitioners contend that possession of certain properties were handed over to R-2 and that he has been enjoying the benefits arising out of such properties. However no documentary evidence, either registered or mutated or otherwise, has been placed on record before this Tribunal to prove the same. The burden of proving such implementation lies squarely with the petitioners. Mere production of the Deed and allegations regarding enjoyment of such properties are insufficient to prove the same, especially when faced with denial by R-1 & 2 regarding its implementation.

v. It is settled law that a Family Settlement Deed may be acted upon if the implementation is proved. However in this present case, no such circumstance has been proved. The jurisdiction of this Tribunal under Sections 241-242 is limited to allegations of oppression and mismanagement regarding the affairs of a company. Questions relating to title, possession, ownership or other proprietary rights fall within the jurisdiction of the competent civil courts. This Tribunal, therefore confines itself to examining whether the Deed creates any enforceable corporate rights relevant to the present proceedings.

vi. Further, Clause XII stands on entirely different footing. It records an undertaking regarding the resignation of Respondent No. 2 & 3 from the directorship and ownership of the R-1 company. The petitioners also contend that R-2 having enjoyed benefits cannot deny the obligations arising out of such arrangement. However, this argument cannot be accepted unless the petitioners, by cogent material evidence, first establish that such implementation has been effected post execution. Unless proved, the plea of estoppel fails.

vii. Accordingly, Clause XII cannot be construed to establish enforceable rights of the petitioners or impose obligations upon the respondents in the present proceedings. This Tribunal consequently holds that the petitioners have failed to prove the implementation of the Family Settlement Deed warranting obligations upon R-2 & 3. The provisions regarding the immovable properties do not create any enforceable rights capable of adjudication in the present proceedings, and in any event, falls outside the ambit of this Tribunal. Clause XII may be considered for its limited evidentiary value as an attempt to reconcile and cannot establish a case of oppression and mismanagement.

III. Whether the continuation of Respondent No. 3, Mrs. Nidhi Devi Sogani, as Director of Respondent No. 1 Company is valid?

i. The Petitioners have averred that the Family Settlement Deed dated 14.03.2016 obligated R-2 & 3 to resign as directors of R-1 Company. In pursuance, R-3 complied with the same by submitting a resignation letter dated 12.04.2016 addressed to the Board of directors. It is therefore argued that she ceased to hold directorship status from such date and every Board Resolutions, statutory filings or any other corporate acts containing her participation as director is null and void.

ii. The Respondents denies and disputes all allegations. They contend that – " *the resignation letters were never filed by them or by the respondent Company and they have withdrawn their resignation*". According to the respondents, the alleged resignation never took effect, was never acted upon by the company and was subsequently withdrawn. Further, no statutory filing reflects her cessation of office as a Director.

iii. Upon examination of the record, this Tribunal finds that the petitioners have solely relied upon a copy of the resignation letter dated 12.04.2016 *(Annexure-5 to the petition).* Against this, the contemporaneous corporate records consistently reflect Nidhi Devi Sogani as an active director of R-1 Company. The MCA Master Data too continues to reflect her as an active director since 12.02.2014. She has continued to sign Board Resolutions, Financial Statements and other statutory documents after such alleged resignation. No objection was raised before the Registrar of Companies or any other statutory authority challenging her continuance nor is there any record of the R-1 Company treating her office as vacant since the date of her alleged resignation i.e. 12.04.2016

iv. This must be examined in light of Section 168 of the Companies Act, 2013. Section 168(2) provides that resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Although acceptance of the resignation by the Board or filing of Form DIR-12 is not a condition precedent, the person asserting cessation of office must establish that the resignation was duly communicated to and received by the company. Unless such foundational fact is proved, the statutory consequence under Section 168 cannot follow.

v. In the present case, apart from the sole resignation letter, no evidence is produced regarding its communication and receipt thereof on or after 12.04.2016. Once the Respondents specifically deny the effectiveness of such resignation, the burden lays upon the Petitioners to prove the contrary. Mere production of a signed resignation letter is insufficient to establish valid cessation of office. The disputed resignation letter dated 12.04.2016 is addressed to the Board of Directors of Sogani Commercials Pvt. Ltd. Any subsequent action taken by the board on this aspect has not been brought before us nor has this Tribunal been informed whether the Board has accepted or rejected such resignation. On the other hand, the contemporaneous corporate and statutory filings and the MCA Master Data continuously reflect her as director of R-1 Company and carries greater evidentiary value as compared to the disputed resignation letter.

vi. Likewise, the plea of the petitioners to invalidate years of corporate decisions and filings based upon such disputed document is too rejected. Section 176 of the Companies Act, 2013 provides that – "*No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:*

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated."

Here, all the acts of R-3 as an active director till date are protected irrespective of the question of the validity of her resignation due to any subsequent finding of defect in her appointment or continuation, if any.

vii. Accordingly, the challenge to the directorship status of R-3 is rejected and the plea to invalidate all corporate acts containing her participation as director of R-1 Company is also accordingly rejected. This Tribunal upholds the directorship status of R-1 Company for the purpose of the present proceedings. This issue is accordingly answered in favour of the Respondents.

IV. Whether the Petitioners have established unexplained discrepancies in the books of account, including allegations of siphoning or diversion of funds, amounting to mismanagement under Section 241 of the Companies Act, 2013?

i. The petitioners allege that R-2 & 3 deliberately manipulated the financial affairs of the R-1 company through improper accounting treatment of the term loan of Rs. 3.7 Crores sanctioned by IDBI Bank *vide* sanction letter dated 27.12.2017. According to the petitioners, the loan was obtained without disclosure of material facts to the bank and its proceeds were diverted for personal gain. Reliance was placed upon the audited financial statements of R-1 Company *(Annexure- 13 series to the petition)* which disclose concealment, manipulation and diversion of corporate funds.

ii. The Respondents deny this allegation. They contend that the loan was availed with valid board resolutions for legitimate business purposes. Such loan was disbursed to some other entity for repayment thereof, which is being repaid till date.

iii. This issue must be examined in the light of Sections 128,129,133 and 134 of the Companies Act, 2013 which mandated proper books of account reflecting a true and fair view of the financial affairs in accordance with the prescribed accounting standards. Failure to maintain such true statements and discrepant books of accounts, if left unexplained, leads to a conclusion of lack of transparency, probity and is prejudicial to the interests of the company and its shareholders attracting the jurisdiction of Tribunal under Sec 241-242 of the Companies Act, 2013.

iv. Having considered rival submissions and perusing the material placed record, this Tribunal finds that the petitioners have identified specific discrepancies in the accounting treatment of the impugned loan transaction. The relevant extracts of the audited financial statements of F.Y. 2017-18 and F.Y. 2018-19 are reproduced as hereunder:

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP/9/GB/2022

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Sogani Commercial Pvt Ltd
Utsav Garden, Flat No-3A, 3rd Floor, Above Steel House, S J Road, Athgaon, Guwahati- 781001
CIN: U51109AS2008PTC008801
Balance Sheet as at 31 March, 2019

		Note No.	As at 31 March, 2019	As at 31 March, 2018
A	**EQUITY AND LIABILITIES**			
1	**Shareholders' funds**			
	(a) Share capital	3	18,93,840	18,93,840
	(b) Reserves and surplus	4	1,87,64,412	1,87,74,801
			2,06,58,252	2,06,68,641
3	**Current liabilities**			
	(a) Short Term Borrowings	5	27,80,040	3,97,60,486
	(b) Other current liabilities	6	12,100	12,100
			27,92,140	3,97,72,586
	TOTAL		**2,34,50,392**	**6,04,41,227**
B	**ASSETS**			
1	**Non-current assets**			
	(a) Fixed assets			
	(i) Tangible assets	7	1,90,78,767	1,90,78,767
			1,90,78,767	1,90,78,767
2	**Current assets**			
	(a) Cash and cash equivalents	8	10,44,995	15,46,830
	(b) Short-term loans and advances	9	33,26,630	3,98,15,630
			43,71,625	4,13,62,460
	TOTAL		**2,34,50,392**	**6,04,41,227**
	See accompanying notes forming part of the financial statements			

In terms of our report attached.
For Anupama & Associates
Firm Registration No : 327859E
Chartered Accountants

SD/-

(Anupama Bharuka)
Proprietor
M.No. 303872

Place : KOLKATA
Date : 28.08.2019

For and on behalf of the Board of Directors

SD/-
Sudhr Kumar Sogani
Director
DIN- 02162850

SD/-
Nidhi Devi Sogani
Director
DIN- 03062593

Certified to be true copy
Rebanesh Ker
Advocate

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP/9/GB/2022

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Sogani Commercial Pvt Ltd

Note 4 Reserves and surplus

Particulars	As at 31 March, 2019	As at 31 March, 2018
(a) Securities premium account		
Opening balance	1,76,06,160.00	1,76,06,160.00
Add : Premium on shares issued during the year	-	-
Less : Utilised during the year		
Closing balance	1,76,06,160.00	1,76,06,160.00
(b) Surplus / (Deficit) in Statement of Profit and Loss		
Opening balance	11,68,641.36	12,64,869.00
Add: Profit / (Loss) for the year	(10,389.40)	(96,227.64)
Closing balance	**11,58,251.96**	**11,68,641.36**
Total	1,87,64,411.96	1,87,74,801.36

Note 5 Short term borrowings

Particulars	As at 31 March, 2019	As at 31 March, 2018
Loan from Bank	-	3,70,00,000.00
Loan From Body Corporate	6,60,486.00	6,60,486.00
Loan from Others	21,19,554.00	21,00,000.00
Total	27,80,040.00	3,97,60,486.00

Note 6 Other current liabilities

Particulars	As at 31 March, 2019	As at 31 March, 2018
Liability for Expenses	12,100.00	12,100.00
Total	**12,100.00**	12,100.00

Note 8 Cash & Bank Balances

Particulars	As at 31 March, 2019	As at 31 March, 2018
Cash and cash equivalents		
Cash in Hand	9,01,213	9,11,213
Bank Balances		
In Current accounts	1,43,782	6,35,617
TOTAL	**10,44,995**	**15,46,830**

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Note 9 Short Term Loans and Advances

Particulars	As at 31 March, 2019	As at 31 March, 2018
	`	`
Other Loans and Advances		
Advance Recoverable in cash or kind or value to be received	33,26,000	3,98,15,000
Tax Deducted At Source	630	630
TOTAL	**33,26,630**	**3,98,15,630**

Note 10 Other Income

Particulars	As at 31 March, 2019	As at 31 March, 2018
	`	`
Rent	-	3,76,000.00
Total	**-**	**3,76,000.00**

Note 11 Employee Benefit Expense

Particulars	As at 31 March, 2019	As at 31 March, 2018
	`	`
Salary and Bonus	-	3,00,000.00
Total	**-**	**3,00,000.00**

Note 12 Finance Cost

Particulars	As at 31 March, 2019	As at 31 March, 2018
	`	`
Interest	-	-
Total	**-**	**-**

Note 13 Other Expenses

Particulars	As at 31 March, 2019	As at 31 March, 2018
	`	`
Audit Fee	10,000.00	10,000.00
Bank Charges	389.40	174.64
Sundry Balances written off	-	91,808.00
Accounting Charges	-	12,000.00
Filling Fee	-	900.00
Professional Fee	-	1,200.00
Legal Fee	-	3,000.00

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GUWAHATI

CP/9/GB/2022

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Sogani Commercial Pvt Ltd
Utsav Garden, Flat No-3A, 3rd Floor, Above Steel House, S J Road, Athgaon, Guwahati- 781001
CIN: U51109AS2008PTC008801
Balance Sheet as at 31 March, 2018

		Note No.	As at 31 March, 2018	As at 31 March, 2017
A	**EQUITY AND LIABILITIES**			
1	**Shareholders' funds**			
	(a) Share capital	3	18,93,840	18,93,840
	(b) Reserves and surplus	4	1,87,74,801	1,88,71,029
			2,06,68,641	2,07,64,869
3	**Current liabilities**			
	(a) Short Term Borrowings	5	3,97,60,486	27,20,486
	(b) Other current liabilities	6	12,100	1,26,700
			3,97,72,586	28,47,186
	TOTAL		**6,04,41,227**	**2,36,12,055**
B	**ASSETS**			
1	**Non-current assets**			
	(a) Fixed assets			
	(i) Tangible assets	7	1,90,78,767	1,91,31,912
			1,90,78,767	1,91,31,912
2	**Current assets**			
	(a) Cash and cash equivalents	8	15,46,830	10,61,705
	(b) Short-term loans and advances	9	3,98,15,630	33,26,630
	(c) Other Current Assets	10	-	91,808
			-	-
			4,13,62,460	44,80,143
	TOTAL		**6,04,41,227**	**2,36,12,055**
	See accompanying notes forming part of the financial statements			

In terms of our report attached.
For Anupama & Associates
Firm Registration No : 327859E
Chartered Accountants

For and on behalf of the Board of Directors

SD/-

(Anupama Bharuka)
Proprietor
M.No. 303872

SD/-
Sudhr Kumar Sogani
Director
DIN- 02162850

SD/-
Nidhi Devi Sogani
Director
DIN- 03062593

Place : KOLKATA
Date : 17.08.2018

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Debasrijah Ray
Advocate

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Sogani Commercial Pvt Ltd

Note 4 Reserves and surplus

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
(a) Securities premium account		
Opening balance	1,76,06,160.00	1,76,06,160.00
Add : Premium on shares issued during the year	-	-
Less : Utilised during the year		
Closing balance	1,76,06,160.00	1,76,06,160.00
(b) Surplus / (Deficit) in Statement of Profit and Loss		
Opening balance	12,64,869.00	12,88,894.00
Add: Profit / (Loss) for the year	(96,227.64)	(24,025.00)
Closing balance	**11,68,641.36**	**12,64,869.00**
Total	1,87,74,801.36	1,88,71,029.00

Note 5 Short term borrowings

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Loan from Bank	3,70,00,000.00	-
Loan From Body Corporate	6,60,486.00	27,20,486.00
Loan from Others	21,00,000.00	-
Total	3,97,60,486.00	27,20,486.00

Note 6 Other current liabilities

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Liability for Expenses	12,100.00	1,26,700.00
Total	**12,100.00**	1,26,700.00

Note 8 Cash & Bank Balances

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Cash and cash equivalents		
Cash in Hand	9,11,213	9,83,913
Bank Balances		
In Current accounts	6,35,617	77,792
TOTAL	**15,46,830**	**10,61,705**

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Debarteshu
Advocate

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Note 9 Short Term Loans and Advances

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Other Loans and Advances		
Advance Recoverable in cash or kind or value to be received	3,98,15,000	33,26,000
Tax Deducted At Source	630	630
TOTAL	**3,98,15,630**	**33,26,630**

Note 10 Other Current Assets

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Prelimininary Expenses not written off	-	91,808
TOTAL	**-**	**91,808**

Note 11 Other Income

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Rent	3,76,000.00	3,76,000.00
Total	**3,76,000.00**	**3,76,000.00**

Note 12 Employee Benefit Expense

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Salary and Bonus	3,00,000.00	1,09,000.00
Total	**3,00,000.00**	**1,09,000.00**

Note 13 Finance Cost

Particulars	As at 31 March, 2018	As at 31 March, 2017
	`	`
Interest	-	1,82,719.00
Total	**-**	**1,82,719.00**

Certified to be true copy
Debangshu Ray
Advocate

v. Upon a comparative examination of the audited Balance Sheets of R-1 Company FY-2017-18 and F.Y. 2018-19, this Tribunal notes an apparent discrepancy in the accounting treatment of the impugned loan. The amount reflected under the head *" Other loans and advances- Advance Recoverable in cash or kind or value to be received"* increased from Rs. 33,26,630 as on 31.03.2017 to Rs. 3,98,15,630 as on 31.03.2018 before reducing to Rs. 33,26,630 as on 31.03.2019. Similarly, the financial statements also disclose a *"Loan from Bank"* entry of Rs. 3,70,00,000 under the head *"short term borrowings"* for F.Y. 2017-18 while subsequently it reflects *NIL* in F.Y. 2018-19. Neither the Balance sheets nor its corresponding notes disclose any details of recipients of the advance, its purpose or the basis of subsequent reduction. These entries, viewed collectively, disclose an unexplained discrepancy in the accounting treatment of the loan funds.

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vi. The respondents have failed to produce any material explaining the utilization or accounting treatment of the loan despite sufficient opportunity. This omission assumes greater significance in the face of the outstanding loan against R-1 company as is evident from the statement of loan account (*Annexure 4 to Rejoinder*) as well the charge reflected in MCA Master Data. A corporate borrowing of this magnitude is ordinarily expected to leave a clear documentary trail. Once specific discrepancies in the books of accounts are identified, the persons responsible for maintaining such records are obligated to furnish a satisfactory explanation supported by cogent material evidence. However, in the present case, no such explanation is offered.

vii. In these circumstances, this Tribunal is of the opinion that the Respondents have failed to maintain transparency in the accounting treatment of the impugned loan. Although the material on record is insufficient to establish diversion or siphoning of funds for the benefit of R-2 & 3, it does establish unexplained discrepancies in the Company's financial records in accordance with Sections 128,129 and 134 of the Companies Act, 2013. However it may be added that R-2 & 3 are at the helm of the affairs of the company therefore becoming accountable to this, irrespective of the situation whether wrongful gains came to them or frittered away. Such conduct is *prima facie* prejudicial to the interests of the company and its shareholders.

IV-A Whether Petitioner No. 1 had knowledge of, and consented to, the sanction of the IDBI loan of Rs. 3.7 Crores?

i. The Petitioners have consistently contended that R- 2 and 3 procured the IDBI Bank term loan of Rs. 370 lakhs without the prior knowledge or consent of the shareholders, including Petitioner No. 1, and while doing so concealed the existence of the Family Settlement Deed dated 14.03.2016 and the alleged resignation of R-3. Upon examination of the record, this Tribunal finds that the Loan Sanction Letter dated 27.12.2017 *(Annexure-9 to the petition),* relied upon by the Petitioners themselves, bears the signature of Petitioner No. 1. However, *Annexure-11* to the petition, being the F.I.R. dated 13.08.2018 lodged by Petitioner No. 1, specifically alleges that his signature was obtained fraudulently and that he was shown as a co-applicant without his informed knowledge or consent.

ii. While the presence of Petitioner No. 1's signature ordinarily constitutes prima facie evidence of execution of the document, it cannot, in the facts of the present case, be treated as conclusive proof of his informed consent. The evidentiary value of the signature must be appreciated in conjunction with the contemporaneous F.I.R., which was lodged much prior to the institution of the present proceedings and specifically disputes the circumstances under which the signature came to be affixed. Although this Tribunal expresses no opinion on the criminal allegations contained therein, the prompt challenge to the transaction prevents the signature from being regarded as decisive proof of voluntary consent. Significantly, the Respondents have not offered any specific explanation regarding the circumstances in which Petitioner No. 1 executed the Loan Sanction Letter, beyond a general denial of the allegations.

iii. Accordingly, this Tribunal refrains from recording any definitive finding on the allegations of fraud or cheating, those issues being beyond the scope of the present proceedings and falling within the domain of the competent criminal court. However, for the limited purpose of adjudicating the present petition under Sections 241 and 242 of the Companies Act, 2013, it is held that the Respondents have failed to rebut the Petitioners' explanation regarding the circumstances surrounding P-1's signature on the Loan Sanction Letter. Consequently, the signature appearing on the said document cannot, by itself, be treated as conclusive evidence of informed consent to the sanction of the IDBI loan and it is also taken into consideration that the Petitioner No. 1 has disputed this very transaction at the earliest available opportunity and therefore, any conclusion regarding his informed consent regarding such loan stands Rejected. This issue, cumulatively with Issue No. IV stands answered in favour of the petitioners.

V. **Whether the sale of the Company's property situated at Kharguli Hills was un-authorized, mala-fide and prejudicial to the interests of the Company and its shareholders?**

i. The petitioners contend that R-2, pursuant to the Board resolution dated 21.04.2022, proceeded to sell an immovable property of the R-1 Company situated at Kharguli Hills being a plot of land measuring 2 Kathas 10 Lechas covered by Dag No. 94, Patta No. 250 of Village- Ramsahill Grant under Guwahati Revenue Circle having two structures constructed upon it. It is stated that various objections were raised by the petitioners before the statutory authorities opposing such sale. It is further alleged that the property is mortgaged to IDBI Bank against an outstanding liability of Rs. 4 Crores (approx.) was sold without obtaining requisite statutory approvals in a manner prejudicial to the interests of the R-1 Company. The principal grievance is that the Agreement for Sale dated 21.04.2022 records the Sale Consideration as Rs. 4,35,00,000/- whereas the subsequent sale deed dated 25.05.2022 for the same property records the consideration as only Rs. 50,00,000/-. According to the petitioners, the differential amount was never accounted for in the books of Account of R-1 Company.

ii. The Respondents have furnished no explanation regarding the substantial difference between the consideration amounts mentioned in the Agreement for sale and Deed of Sale nor has any documentary evidence been produced to justify the transaction.

iii. Upon perusal of the documents placed on record, this Tribunal finds that the dispute is not merely that of adequate consideration but raises serious concern regarding the transparency and the *bonafides* of such transaction. The Agreement for Sale dated 21.04.2022 and the subsequent Sale Deed dated 25.05.2022 both relate to the same property but record differing sale considerations of Rs

4,35,00,000/- and Rs. 50,00,000/- respectively. This drastic reduction in the consideration within a span of one month remains wholly unexplained.

iv. In normal circumstances, the adequacy of a consideration falls within the purview of commercial wisdom and does not warrant judicial interference. However, this present case concerns two contemporaneous records executed by the Respondents reflect significantly different sale considerations in respect of the same property. No material has been placed on record regarding re-negotiation or re- settlement or any other circumstance explaining such reduction. This unexplained inconsistency raises a serious concerns regarding the fairness of such transaction.

v. This position is further aggravated by the admitted fact that the property is under mortgage to IDBI bank with an outstanding of Rs. 4 Crores (approx.). While the agreement for sale corresponds to the value of the property securing such a substantial amount of such borrowing, the consideration recorded in the Sale Deed bears no nexus to the aforesaid agreement or the outstanding secured liability. In these circumstances, this Tribunal is inclined to draw adverse inference to such conduct of the Respondents.

vi. Therefore, this Tribunal holds that the Respondents have failed to establish that the sale of the R-1 Company's immovable property situated at Kharguli Hills, Guwahati was conducted in a *bonafide* and transparent manner. The discrepancy between the Agreement for Sale and the subsequent Sale Deed, coupled with the absence of any explanation, renders the transaction prejudicial to the interest of the R-1 Company and its shareholders. Such conduct lacks probity, fairness, transparency and fairness in the management of the Company's affairs and constitute mismanagement within the meaning of Section 241 of the Companies Act, 2013.

vii. This finding is only confined to the aspect of corporate governance regarding such transaction for the purpose of the present proceedings. This Tribunal refrains from expressing any opinion upon the validity of such deeds, title or any civil or criminal liabilities arising therefrom, which are the matters of other statutory authorities empowered under law. Therefore this issue stands answered in favour of the Petitioners'.

VI. Whether the alleged procedural and statutory non-compliances in the conduct of the affairs of Respondent No. 1 relating to Annual General Meetings, circulation of annual accounts, service of notices, and shifting of the registered office, amounts to oppression and mismanagement?

i. The petitioners have alleged that the R-2 & 3 have failed to convene genuine AGMs for F.Y. 2017-18 & F.Y. 2018-19, withheld statutory notices from the Petitioners, filed AGMs in MCA Portal as mere paper formalities, failed to comply with Clauses 36 and 38 of the Articles of Association requiring 21 days' notice and circulation of accounts and the shifting of registered office done with an ulterior motive. The Respondents vide their reply submitted that the AGMs for all financial years were duly held complying with all the provisions of the Act and such allegations are merely after thoughts.

ii. This Tribunal finds three distinct points for consideration pertaining to the allegations of the petitioners namely holding of AGMs, proof of service of notice for calling of AGMs with circulation of accounts and the shifting of registered office. Each of these elements require a separate assessment and discharge of burden of proof and its shifts wherever required.

iii. Upon the question of the validity of AGMs of F.Y. 2017-18 and F.Y. 2018-19, the petitioners themselves have admitted that AGM particulars of the concerned years were filed and are available in MCA portal. Statutory filings accepted on official record of the Registrar of Companies carry a presumption of regularity under Section 119 (e) of the Bhartiya Sakshya Adhiniyam (erstwhile Section 114 of the Indian Evidence Act, 1872). Such allegations of invalidity cannot be sustained on mere assertions but must be supported by cogent evidence demonstrating deliberate non-compliance with the statutory provisions thereof. Moreover, the grievance of the petitioners relating to AGMs appears to relate not to the absence of statutory compliances but the character of such statutory filings terming them "*mere paper formalities*" which is not tenable in law.

iv. The challenge to shifting of the registered office is too devoid of merit. Shifting of offices being an administrative act cannot amount to oppression or mismanagement unless shown to be effected with an ulterior motive or to have caused prejudice to the Company. No such material has been placed before this Tribunal to ascertain the same. The shift of address was between two closely situated localities of the same city i.e. from Fancy Bazar, Guwahati to Athgaon, Guwahati, therefore renders such plea devoid of merits. Neither any loss due to such shift has been demonstrated nor has any deprivation of any legal or proprietary right of any of the shareholders been established.

v. Reliance has been placed upon *Hanuman Prasad Bagri & Ors. Vs. Bagress Cereals Pvt. Ltd. & Ors.*[1] wherein it was held that

"the Division Bench was of the view that shifting of the registered office by itself may not be a reason or a ground to be raised in a petition under Section 397 or 398 of the Act as long as the company did not suffer much loss on account of the shifting and shifting back and no case was made out to show that such exercise was undertaken to put an oppressive pressure and pain upon the Petitioners……

…….Therefore we find no merit in this petition. The same shall stand dismissed. No costs.".

vi. However, upon the question of the service of notice for calling of AGMs and circulation of accounts, this Tribunal is of the view that when a significant proportion of the shareholders allege non-compliance of Clauses 36 and 38 Articles of Association in the nature of ineffective service of notices and accounts, the burden of proof shifts from the Petitioners to Respondents, to prove such service. But here, the Respondents have duly failed to produce any relevant particulars to prove such dispatch and service apart from general denial despite ample opportunities afforded to them. Having no other alternative, this Tribunal accordingly holds that the Respondents have failed to prove compliance of Section 101 and 136 of the Act along with Clauses 36 and 38 of the Articles of Association and this specific challenge, relating to the proof of service of notice and circulation of accounts is accepted in favour of Petitioners.

vii. Therefore, for the reasons recorded above, this Tribunal holds that the challenge to the conduct of AGMs as well shifting of registered office is rejected in favour of the Respondents. However, the challenge on proof of service of notice for calling AGMs and circulation of annual accounts is accepted in favour of the petitioners.

[1] AIR 2001 SUPREME COURT 1416

VII. Whether, on the cumulative effect of the acts complained of, a case of oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013 is made out against the Respondents?

i. Having heard the rival submissions at length and considering the findings recorded on the preceding issues, this Tribunal is required to determine whether the acts found established, when viewed cumulatively, reveal a continuous course of conduct of oppression against the petitioners and mismanagement of the affairs of the R-1 Company within the meaning of Section 241 of the Companies Act, 2013.

ii. The jurisdiction of this Tribunal under Sections 241-242 is not confined to examining isolated acts. This Tribunal also must consider the cumulative effect of the established conduct to determine whether it reflects a pattern of mismanagement that is harsh, burdensome and lacks probity or otherwise prejudicial to the interests of the company and its shareholders. Reliance is placed on *Needle Industries (India) Ltd., & Ors vs Needle Industries Newey (India).*[2] wherein the Apex Court held that –

"…..The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed……"

iii. In the present case, this Tribunal has already rejected the Petitioner's challenge to the status of R-3 as director, the allegations relating to the invalidity of Annual General Meetings and the shifting of registered office. Likewise, the Family Settlement Deed dated 14.03.2016 has been held to possess only a limited evidentiary value. The petitioners have failed to establish its implementation and the clauses relating to allocation of immovable properties have also been held to be beyond the jurisdiction of this Tribunal.

iv. However, three findings of considerable significance have emerged from the evidence on record. Firstly, the Respondents have failed to satisfactorily explain

[2] 1981 AIR 1298

the accounting treatment accorded to the loan funds amounting to Rs. 3.70 Crores sanctioned by IDBI Bank as the Balance Sheets for the period ending on 31.03.2018 shows loan from Bank at Rs. 3.70 Crores but on the other hand shows NIL on this account for the period ending on 31.03.2019. The statutory financial statements reveal some other material discrepancies which remain wholly unexplained despite ample opportunities. The Respondents have failed to reconcile the accounting entries or furnish any explanation whatsoever regarding the utilization of loan proceeds. The contemporaneous dispute regarding the validity of the signature of P-1 appearing on the loan sanction letter too strengthens the adverse inference already drawn by this Tribunal in Issue (IV).

v. Secondly, this Tribunal has found serious irregularities surrounding the sale of the R-1 Company's assets situated at Kharguli Hills, Guwahati. The Agreement for sale dated 21.04.2022 recording a sale consideration of Rs. 4,35,00,000/- and a registered Sale Deed dated 25.05.2022 recording a sale consideration of only Rs. 50,00,000/- in respect of the same property. The Respondents have also failed to offer any sort of explanation tenable in law or any material thereof in the nature of re-negotiation, settlement or any document justifying such transaction. The fact that the sold property was under mortgage to IDBI Bank, further strengthening the adverse inference drawn by the Tribunal regarding such transaction.

vi. Thirdly, the Respondents have failed to refute the allegations of non-service of the 21 days' notice as well as non-circulation of annual accounts as mandated by Clauses 36 and 38 of the Articles of Association of R-1 Company as well as Section 101 and 136 of the Act. Accordingly, this Tribunal has held the same against the Respondents.

vii. Viewed independently, each of the aforesaid findings raise serious concern regarding the manner of conducting the affairs of the company and when viewed collectively, establishes a pattern of lack of transparency, accountability, dishonest alienations and financial irregularity in the management of the affairs of the R-1 Company. Such conduct not only is prejudicial to the interests of the R-1 company but also proves detrimental to the shareholders relying upon such financial reports in furtherance of their commercial wisdom.

viii. Moreover, the circumstances surrounding the sale of the Company's significant asset situated at Kharguli Hills, Guwahati raise serious concerns about the manner of corporate governance regarding alienation of the company's assets. The substantial amount of discrepancy between the sale consideration in the Preceding Agreement for Sale and the Subsequent Deed of Sale of the same property coupled with the fact of such sale of a mortgaged property creates a legitimate inference of prejudice, mismanagement and bad faith regarding the affairs of the company.

ix. In view of the above, this Tribunal is satisfied that the petitioners have succeeded in establishing a *prima facie* case of oppression and mismanagement within the meaning of Section 241 of the Act. This conclusion is founded upon the established manipulated and concealed nature of financial statements, prejudicial sale of the R-1 Company's asset situated at Kharguli Hills, Guwahati and the violations of Clauses 36 and 38 of the Articles of Association of R-1 Company, all being detrimental to the interests of R-1 Company and its shareholders.

8. The records further reveal that the Petitioners' application seeking interim relief was considered and rejected by this Tribunal *vide* order dated 21.07.2022.

9. It is, however, significant to note that the present Petition was instituted on 02.03.2022. During the pendency of these proceedings, Respondent No. 1 Company, acting through Respondent Nos. 2 and 3, executed an Agreement for Sale dated 21.04.2022 in respect of the Company's property situated at Kharguli, Guwahati, followed by the execution of the registered Sale Deed dated 25.05.2022. Thus, the alienation stood completed before the matter came up for its effective hearing on 09.06.2022 and before this Tribunal passed the order dated 21.07.2022 on the Petitioners' application for interim relief. The Respondents had also not entered appearance before this Tribunal when the transaction was completed. The impugned alienation was, therefore, an accomplished act before any adjudication on the interim application.

10. Another significant fact that has come to the attention of this Tribunal is that there is an FIR dated 27.06.2023 tendered by the General Manager of IDBI Bank regarding the sale of the mortgaged property. The FIR was registered by BS & F Zone, CBI and

investigated by Anti-Corruption Branch of the Central Bureau of Investigation (CBI) located in Mawdiangdiang, Shillong, Meghalaya under the FIR No. RC0202024A0001. In such FIR, the names of R-1, R-2 & 3 along with P-1 has been arrayed as accused persons in respect to the sale of the same mortgaged property as dealt with in issue (V). Such fact was obtained from the public domain maintained by the CBI and neither the Petitioners nor the Respondents have apprised this Tribunal of the same.

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11. Moreover, before proceeding to the specific directions as below, this Tribunal considers it necessary to record its observations for the appointment of an administrator and a special audit as an appropriate relief. Section 242 of the Companies Act, 2013 provides the powers to the Tribunal to give such directions as are necessary to meet the ends of justice and to correct and regulate the conduct of a company's affairs, as prayed for, in a manner proportionate to the findings thereof.
12. This Tribunal is satisfied that the facts found at issue (IV), (VI-A), (V) and (VI) i.e. unexplained discrepancies in books of accounts, un-informed inclusion as co-applicant, violations of Clauses 36 and 38 of the Articles of Association as well as Section 101 and 136 of the Act, deliberate undervaluation and disposal of company's mortgaged assets reveal a repetitive misconduct to warrant judicial intervention.
13. In view of the findings recorded upon the issues of mismanagement and lack of probity and transparency in maintenance of the Company's financial records as well as the affairs of the R-1 company, this Tribunal is satisfied that R-2 & 3 have acted in a manner prejudicial to the interests of R-1 Company. It is further opined that such R-2 & 3 have lost the confidence of the shareholders of the R-1 Company, necessary to continue in the management. Therefore, to bring an end to the matters complained of, as mandated by Section 242, this Tribunal considers it just and equitable to suspend R-2 & 3 namely Sudhir Kumar Sogani and Nidhi Devi Sogani from the office of the Directors of the R-1 Company i.e. Sogani Commercials Private Limited.
14. Consequent upon such suspension, to avoid the administrative vacuum, this Tribunal is of the view that the R-1 company must be afforded an independent administrator to restore the R-1 Company's management to a duly elected Board and cause a special audit of the R-1 Company to ascertain the true financial position. Such administrator

shall manage the daily affairs, preserve its assets and records and exercise all the powers for proper administration of the company in accordance with law.

15. Accordingly, this Tribunal is of the view that the suspension of the present directors, appointment of an independent administrator, an independent special audit to verify the true position of financial affairs coupled with directions for calling an EGM to re-constitute a new Board of Directors is accordingly the relief best tailored to the present findings. This Tribunal leaves the rest upon the commercial wisdom of its members to take decisions best suited for the interests of the company as prayed for.

ORDER

16. In view of the abovementioned observations, this **CP/9/GB/2022** is partly **Allowed** with the following directions:

    a. In exercise of the powers conferred under Section 242(2)(h) of the Companies Act, 2013, Shri Sudhir Kumar Sogani (Respondent No. 2) and Smt. Nidhi Devi Sogani (Respondent No 3) are hereby suspended from the office of Directors of Sogani Commercials Private Limited with immediate effect.

    b. **Mr Biman Debnath, PCS** is hereby appointed as an Independent Administrator in the Board of Directors of the Respondent No.1 Company with immediate effect.

    c. The Administrator shall be entitled to a remuneration of Rs. 1,00,000/- (Rupees One Lakh only) per month, including applicable taxes and reimbursement of actual out-of-pocket expenses, which shall be borne by Respondent No. 1 Company. In the event of default by Respondent No. 1 Company for whatsoever reasons, the Petitioners shall be jointly and severally liable to pay such remuneration. The Administrator shall hold office for an initial period of 90 days, which may be extended by the Company and its shareholders, if required.

    d. The Administrator shall, within 7 (seven) days of assuming charge, appoint an independent firm of Chartered Accountants to conduct a Special Audit of the accounts and affairs of Respondent No. 1 Company for the period commencing from FY 2017–18, during which the Company availed a term loan of Rs. 3.70 Crores from IDBI Bank, and ending with FY 2022–23, being the financial year in which the mortgaged property was sold. The Special Audit shall be completed within 60 (sixty) days from the date of appointment of the Auditor.

e. The remuneration of the Special Auditor shall be fixed by the Administrator at a reasonable amount and shall be borne by Respondent No. 1 Company. In the event of default by Respondent No. 1 Company for whatsoever reasons, the Petitioners shall be jointly and severally liable to pay such remuneration.
f. Upon receipt of the Special Audit Report, the Administrator shall convene and preside over an Extraordinary General Meeting of the members of Respondent No. 1 Company within 21 days, in accordance with the provisions of the Companies Act, 2013 and the Articles of Association, for the purpose of re-constituting a new Board of Directors. The Special Audit Report shall be placed before the members at the said meeting and handed over to the newly constituted Board for such action as may be permissible in law.
g. The Administrator shall submit to this Bench a first progress report upon completion of 30 days from the date of assuming office, a second progress report upon completion of 60 days, and a final report upon completion of 90 days from the date of assuming office.
h. Respondent Nos. 2 and 3 and all officers of Sogani Commercials Private Limited shall extend full cooperation to the Administrator and the Special Auditor and shall produce all books of account, statutory records, documents and information as may be required for effective implementation of this Order.
i. The newly constituted Board of Directors and the members of Respondent No. 1 Company shall be at liberty to institute any other proceedings necessary depending upon the outcome of such special audit.
j. The Administrator shall stand discharged upon completion of the aforesaid directions and upon the newly constituted Board assuming charge of the affairs of the Company.
k. It is made clear that the Administrator shall not incur any personal, civil or criminal, liability in respect of any act, omission, default or liability of Respondent No. 1 Company arising prior to the date of his assumption of charge. The Administrator shall also not be personally liable for any act done in good faith in the discharge of his duties pursuant to this Order and in accordance with law.

17. Accordingly, with the above directions, this **CP/9/GB/2022** is disposed of.
18. No order as to costs.

19. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
20. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
21. File be consigned to records.

Sd/- **Yogendra Kumar Singh** **Member (Technical)**	**Sd/-** **Rammurti Kushawaha** **Member (Judicial)**

Signed this on 7th day of August, 2026.

Farhan Masood Zaman (LRA)