IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

C.P. No. 240/KB/2019

A Petition under Section 241, 242 and 244 of the Companies Act, 2013.

IN THE MATTER OF:

1. **GOVIND KUMAR CHOUDHARY,** Rajat Enclave, Flat 6D, 58 Manik Bandyopadhayay Sarani, Kolkata, West Bengal-700040.
2. **MANISH JINDAL,** Silveroak Estate, Kali Park FL-T- 1/3B6, Tower- 1, Rajarhat, Kolkata, West Bengal- 700136.

…Applicants

Versus

1. **WHITESNOW INFRASTRUCTURE PRIVATE LIMITED,** 1/72, Cal, Jessore Road, Diamond Arcade, Kolkata-700055, West Bengal.
2. **NITESH HIMATSINGKA,** Diamond City North Block - 4, Flat - 1B 68, Jessore Road, Kolkata, West Bengal- 700055.
3. **JYOTI HIMATSINGKA,** Diamond City North Block - 4, Flat - 1B 68, Jessore Road, Kolkata, West Bengal- 700055.
4. **PURUSHOTTAM HIMATSINGKA,** Diamond City North Block - 4, Flat - 1B 68, Jessore Road, Kolkata, West Bengal- 700055.

5. **SAJJAN KUMAR SHARMA,** Diamond City North, Block - 19, 6C, 68, Jessore Road, Opposite Aditya Hospital, Shyam Nagar, Bangur Avenue, Kolkata, West Bengal - 700055.

6. **AADARSH TRADLINK LIMITED,** 27A, Waterloo Street, 1st Floor, Room No. 102, Near Nawab Sirajudolla Sarani, Kolkata, West Bengal -700069.

…Respondents

Coram:

Shri Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances (Via Physical/Hybrid Mode):

For the Applicants

Ms. Arani Guha. Adv.

Date of Pronouncement: 25.08.2026

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. BACKGROUND OF THE CASE

1.1. The instant petition has been preferred under Sections 241, 242 and 244 of the Companies Act, 2013 (hereinafter being referred to as 'the Act') complaining of acts of oppression and

mismanagement against Respondents No. 2, 3, 4 and 5 with respect to the affairs of the Whitesnow Infrastructure Private Limited, here as Respondent No. 1. The applicants inter alia seek the following reliefs:

a. *It is prayed to set aside the appointment of Mrs Jyoti Himatsingka (R3) and Mr. Purushottam Himatsingka (R4) as Directors of the Company as on 26.02.2018 by declaring their appointment as illegal, void ab initio and null and void;*

b. *And it is further prayed to set aside the appointment of Mr. Sajjan Kumar Sharma (R5) as Director of the Company by declaring their appointment as illegal, void ab initio and null and void;*

c. *And it is further prayed to set aside or cancel or declare all the resolutions passed in the board meeting held on 06.02.2018 including issue of Notice of EOGM 03.03.2018 as illegal, void ab initio and null and void;*

d. *And it is further prayed to set aside or cancel or declare all resolutions passed in EOGM held on 03.03.2018 as illegal, void ab initio and null and void;*

e. *And it is further prayed to set aside or cancel issue and allotment of 125,000 equity shares of the Company to Aadarsh Tradelink Limited, being Respondent no. 6 herein, and declare the allotment as illegal, void ab initio and null and void;*

f. And it is further prayed to pass orders to reverse the transaction of sale of assets of the Company during the financial year 2017-18 and restore the ownership of the Company on the sold assets or as may deem just and proper;

g. And it is further prayed to direct or order investigation of the affairs of the Company during the financial year 2016-2017, 2017-2018 and the current financial year including forensic audit of the financial transactions and conduct of the respondents for reporting of loss by manipulating books of account of the company or as may deem just and proper;

h. And it is further prayed to direct the Registrar of Companies, Kolkata, West Bengal to initiate penalty and/or prosecution against the Respondent directors of the Company for violation of the various provisions of the Act as prescribed therein or as may deem just and proper;

i. And it is further prayed to pass such other order/order direction/directions as may deem just and proper.

1.2. Respondent No. 1 (hereinafter being referred to as R1) was incorporated on 09.03.2016 by Mr. Promod Gopal Chowdhury and Ms. Radha Chowdhury, having an Authorised Share Capital of Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10/- each[1]. a company incorporated to do business of developing logistic

[1] Annexure – B.

venters, providing transport facilities and other allied services.

1.3. The Applicants (hereinafter being referred to as A1 and A2, respectively), Mr. Govind Kumar Choudhary and Mr. Manish Jindal, are the Directors and Shareholders of R1. They are alleging that material change has taken place in the management and control of R1 by the way of alteration in the Board of Directors, alteration of share capital and the ownership shares by way of further issues of shares on private placement. Thus, the affairs of the company are being conducted in a prejudicial manner to the interest of R1 and the Applicants.

1.4. The Respondent No. 2, 3, 4 and 5 are Directors and Shareholders of R1 and Respondent No. 6 is Adarash Tradelink Limited (hereinafter being referred to as 'R6'), a limited company incorporated under the Companies Act, 1956 also being a shareholder of R1.

2. SUBMISSIONS OF THE APPLICANTS

2.1. After A1 and R2 were appointed as non-executive directors of R1 on 12.07.2016[2], and the then existing directors Mr. Promod Gopal Chowdhury and Ms. Radha Chowdhury resigned as directorship of the Company w.e.f 15.07.2016[3]. Subsequently, A2 was appointed as

[2] Annexure – C.
[3] Annexure – D.

non-executive director on 02.08.2016.[4] Thus, subsequent to the above changes in the directorship of the company, there were only the three directors till the subsequent legal changes made on 26.02.2018 and 26.05.2018.

Sl. No.	Name of the directors	Date of appointment
1.	Nitesh Himatsingka	12.07.2016
2.	Govind Kumar Choudhary	12.07.2016
3.	Manish Jindal	02.08.2016

2.2. Further, the shares of the company held by Mr. Pramod Gopal Chaudhary and Ms. Radha Chaudhary were transferred and recorded in the name of new directors as the details given below:

Sl. No.	Name of the Shareholder	Number of Shares	Shareholding Percentage
1.	Nitesh Himatsingka	3400	34%
2.	Govind Kumar Choudhary	3300	33%
3.	Manish Jindal	3300	33%
		10000	100%

[4] Annexure – E.

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2.3. It is submitted that, financed by ICICI Bank Limited, four bulkers and a car was acquired by the Company on 23.09.2016 and 09.11.2016, respectively, the purpose of its business. Subsequent to this purchase, R2 started using them for the purposes of the business of R6 unilaterally without any agreement setting terms and conditions for the use.

2.4. It is further alleged that R2 has been taking operational and financial decisions unilaterally and misused the assets including operating bank accounts of the company without consulting other directors.

2.5. It is submitted that the Applicants had approached R2 and raised dear concern taking decisions arbitrarily. The Applicants received assurance from R2 that he would stop arbitrary decision-making and obtain the consent of all the directors and accordingly the financial statement for financial year 2016 and 17 were approved on 26.12.2017. However, R2 continued misusing the assets of the company which resulted in lack of trust and dispute among the directors. Later, A1 and A2 decided to part ways with R2.

2.6. It is submitted that R2 suo moto appointed[5] R3 and R4 as executive directors of the company on 26.02.2018 without calling any board meeting and/or general meeting. The Board meeting held on

[5] DIR-12 forms annexed as Annexure – F.

26.02.2018, vide which the decision for appointment was taken, was illegal as the Applicants were not served notice for the said meeting. Thus, the fact that they were authorized by a resolution[6] passed in the same meeting by the Board of Directors ('BoD') is untenable. The said meeting was also not disclosed in the AOC-4 Form[7] filed on 30.10.2018, which means the meeting so held on 26.02.2018 was factually not held, making the consent of the BoD for appointment non-existent.

2.7. It is further submitted that the strength of the meetings is fallaciously shown as six for the meetings held from 15.07.2017 to 06.02.2018 when there can only be three active Directors as only on 26.02.2018, R3 and R4 were appointed as Executive Directors. Following, the illegality of their appointments, it is further submitted that signing any official forms or resolutions by them and being appointed as a member of the Private Placement Committed is illegal and should be void ab initio. Accordingly, appointment of R3 and R4 are not in compliance with Secretarial Standards -1 (SS-1), section 173(3), section 118(10), section 152(2) and section 161(1) of the Companies Act, 2013.

2.8. It is submitted that that FORM No. SH-7[8] was filed, under the declaration of R3, for alteration of share capital on 27.03.2018

[6] Annexure – F, at Page F5.
[7] Annexure – K, at Page K34.
[8] Annexure – G.

and that such alteration was illegal. Vide the Form SH-7, it is submitted that the decision to increase the share capital, from Rs. 1,00,000 (Rupees One Lakh) to Rs. 13,50,000 (Rupees Thirteen Lakhs and Fifty Thousand) was approved in an Extra-Ordinary Meeting General Meeting ('EOGM') held on 03.03.2018. It is submitted that the agenda for increasing of the share capital is mentioned in the Notice of EOGM and the Explanatory Statements[9].

2.9. It is further submitted that the Forms i.e Form SH-7 and MGT-14 what digitally signed under declaration by R3 which was illegally done R3. In Form MGT-14[10], R3 made declaration that "I am authorized by the board of directors of the company wide resolution number one dated 06.02.2018 to sign this form…." Which is defective as her illegal appointment itself was made on 26.02.2018. Further, the meeting held on 06.02.2018, as per MGT-14, is also illegal as no notice for holding of meeting was served upon the Applicants.

2.10. It is further submitted that as per resolution passed in the board meeting the and the notice of EOGM the meeting authorized to be held on 06.02.2018. However, the explanatory statement next to the said notice of EOGM, the date mentioned is 06.03.2018. It is evident that the dates mentioned on the notice

[9] Annexure – I.
[10] Annexure – H.

of EOGM and explanatory statement to the notice of EOGM[11] are forged documents, fabricated and back dated.

2.11. It is further submitted the Board Meeting held on 06.02.2018 was held without quorum as the Applicants were not served any notice in compliance with the Act, thus were absent. Thus, held in contravention of section 174(1) read with Rule 5(b) of Companies (Meetings of Board and its Powers) Rules, 2014 and SS-1 and therefore the submitting illegal and void ab initio.

2.12. It is submitted that R2 is an interested party and should not have voted on the Resolution to issue and allot preferential basis to R6, as per the provisions of Section 184(2) and SS-1. It is submitted that R2 is the Promoter – Managing Director of R6 and that 100% of equity shares of R6 is held by R2 along with his relatives. The Explanatory Statements of the EOGM held on 06.02.2018 has not disclosed R2 being an interested party, thus, the voting as well as the resolution should be held as illegal and void ab initio. Copy of company master data, list of signatories, list of shareholders as on 31st March, 2018 and 31 March, 2017 and voting power or shareholding percentage of R6 is accumulatively mark annexed[12].

[11] Annexure – I.
[12] Annexure – J.

2.13. It is submitted that the reason recorded in the Resolution as well as the Explanatory Statement for the EOGM[12] for increase in authorized capital and allotment of equity shares on preferential basis to R6 cannot hold. It is further submitted that explanatory statement to the notice of EOGM for increase in authorized share capital is not in accordance with a legal provision and the alteration of capital clause of memorandum of association of the company cannot be the reason or explanation to increase the authorized capital of the company, has violated the provisions of section 102(1) that is illegal and void ab initio.

2.14. It is stated that R6 had paid excess in advance to R1 in accordance to an agreement of sell of goods, thus, in the event that the excess advance became refundable, and R1 not being in a position to pay the same decided to issues R6 equity shares in R1. It is the case of the Applicants that this reason is false as there is no record of such sale agreement during the FY 2016-17 and 2017-18. Further the Applicants contend that the necessary valuation report by a registered valuer is neither attached nor disclosed the intrinsic value at which shares have been issued was valued by the registered valuer, in accordance with the first proviso of Rule 14(2)(a) of the Companies (Prospectus and

[12] Annexure – I.

Allotment of Securities) Rule 2014. And in PAS-3 filed on 27.03.2018, it is mentioned that a valuation report has not been obtained[13].

2.15. It is further submitted that the regulatory disclosures were made in a fraudulent manner. In the disclosure for '*intention of promoters, directors or key managerial personnel to subscribe to the offer*', it is stated that R6 '*has express interest to subscribe*'.[14] It is further stated the consent was not obtained for this issuance from A1 and A2 who were the majority shareholders and directors holding 66% of the pre-issue shares of the company.

2.16. According to section 62(1)(c) read with Rule 13(1), Rule 13(2)(b) and Rule 14(2)(a) of the Companies Act, 2013 the privacy replacement of security can be done provided if it is authorized by the special resolution passed in the general meeting. The proposed offer of securities or invitation to subscribe securities needs to be previously approved by the shareholders of the company by way of a special resolution for each of the office or invitations. However, in absence of having no issues of notice for board meeting, without quorum, without issuance of notice of EOGM in accordance with the legal provision, incomplete and wrongful details in the explanatory statement annexed to the

[13] Annexure – N2.
[14] Annexure – I5.

notice of EOGM, notice of EOGM not issued to the applicants, EOGM purportedly held without quorum, did the fear of violation with respect to private placement of insecurities. Hence, alleged passing of special resolution at the EOGM dated 03.03.2018 is illegal, void ab initio and liable to be declared null and void.

2.17. It is further submitted that the filing of Form SH-7[15] and MGT-14[16] and GNL-2[17], is illegal as it is signed by R3. Form PAS-4[18] and PAS-5[19] is illegal as it is signed by R3 and R4.

2.18. It is further submitted that R5 has been illegally appointed as a Director of R1. It is contented that in Form DIR-12[20], the date of appointment is the date of the board meeting held on 26.05.2018, the notice of which was not served to the Applicants. Thus, the meeting is not tenable in law along with the approval of R5 being appointed as a Director. It is further mentioned that in DIR-12[21] as well as in his consent form[22], the email stated for R5 is whitesnowinfrstructure@gmail.com, which is the email belonging to R1.

[15] Annexure – G.
[16] Annexure – H.
[17] Annexure – M.
[18] *supra*.
[19] *supra*.
[20] Annexure – O.
[21] *supra*.
[22] Annexure – O, at Page 05.

2.19. It is further submitted that Form AOC-4, which was signed by R4 on 30.10.2018[23], is illegal and untenable as the Financial Statements for the year 2017-18 was approved in a board meeting held on 22.08.2018. It is contended that the meeting itself if illegal as no notice of this meeting was served upon the Applicants. In addition to this, the meeting held on 29.09.2018, where the financial statements and the board reports were adopted is illegal as no notice for this meeting was served upon the Applicants. There are a few violations of section 173(3), section 101(1) and section 101(3) of the Act.

2.20. It is further submitted that, vide the financial statements[24], it is evident that all assets of R1 have been sold and no revenue is being generated. The statements have been signed by R1 and R4. It is contented that it is astonishing that R6 has invested Rs. 12,50,000/- in R1, who has no revenue and is clearly running in loss. It is clear that only to reduce the shareholding of the Applicants, R6 has fraudulently acquired the shares.

2.21. It is further submitted that the dates of board meetings in the Director's Report[25] and MGT-7[26] filed do not match. The discrepancies are as below:

[23] Annexure – K, at Page K15.
[24] Annexure – L.
[25] Annexure – K, at Page K.
[26] Annexure – P, at Page P11.

	Dates as recorded in the Director's Report.	Dates as recorded in MGT-7 filed with the ROC.
1	--	16.05.2017
2	15.07.2017	--
3	--	27.09.2017
4	--	26.12.2017
5	30.12.2017	--
6	--	12.01.2018
7	15.01.2018	15.01.2018
8	06.02.2018	06.02.2018
9	--	26.02.2018
10	03.03.2018	03.03.2018
11	19.03.2018	19.03.2018

2.22. It further submitted that after allotment of shares to R6, the shareholding pattern of R1 was revised as follows:

Sl. No.	Name of the Shareholder	Number of Shares	Shareholding Percentage
1.	Nitesh Himatsingka	3400	2.52%
2.	Govind Kumar Choudhary	3300	2.44%
3.	Manish Jindal	3300	2.44%
4.	Adarsh Tradlink Limited	125000	92.59%
		135000	100%

2.23. The Applicants have relied upon following precedents to establish a case of oppression and mismanagement:

a. ***Mrs. Proddaturi Malathi Vs. SRP Logistics (P) Ltd. [2018] 96 taxmann.com 565 (NCLAT),*** where it has been held that:

*"**24.** Thus, as per sub-clause (c) of subsection (1) of section 62, if the shares are to be issued to any person who is not included in clause (a) or clause (b) it can be done provided the pricing of such shares is determined by the valuation report of a registered Valuer. The provision is further subject to such conditions as may be prescribed. Admittedly, in the present manner, there is nothing to show that any report of registered Valuer was taken to issue shares on preferential basis at par to R2 or at par to R4 who was an outsider. Again the Resolution adopted in the EOGM dated 25-11-2016 would require a Board of Directors Resolution whether to issue the shares 'at par or at premium'. There is nothing to show that there was any deliberation or decision in the Board Meeting of 26-11-2016 to issue the shares at par or at premium.*

***32.** If notice as required by rule 13(d) of the Rules of 2014 has not been issued along with the disclosures as mentioned in the rule, preferential allotments cannot be made as permitted by section 62(1)(c). The Notice is mandatory and*

compliances required as per the rule would have to be shown as done before the General Body Meeting. The respondents have not shown either compliances or issue of such Notice along with disclosures nor service of such Notice on the appellant."

b. ***Hotel Bisra (P) Ltd., In re [2017] 83 taxmann.com 395 (NCLT-Kolkata),*** where it has been held that:

*"**38.** The omission to give notice of meeting was held to be oppression. Not sending notices to shareholder/directors and passing resolutions therein is held oppressive to members and constitute mismanagement of companies.*

***39.** Therefore, in the light of the contentions, it is concluded that there is a clear case of oppression against the petitioner. The meetings that were convened by the Board of Directors haye not been properly notified to the petitioner and resolutions therein were passed in absence of the vote of the petitioner thereby constituting statutory violation. Also notices that were allegedly served by the respondents onto the petitioner were not proper."*

c. ***Mrutyunjay Kar Vs. Purbanchal Petroleum (P) Ltd. [2017] 83 taxmann.com 142 (NCLT - Kolkata)***, where it has been held that:

*"**29.** The appointment of R3 was done in absence of any meeting or a valid quorum because the petitioner had never been notified about the same. R2 being the only director and*

shareholder of the company cannot constitute a valid board or a general meeting. Therefore, the appointment of R2 as Managing Director and R3 as director, without having any valid Board and general meeting is illegal to the extent that it violates the Articles of Association of the company and the Act.

33. *The respondents have in their reply to the present petition, failed to furnish any proof of notices that were served upon the petitioner either for carrying out the appointments of R2 for the position of the managing director and R3 as the director of the company, or for the further allotment of shares."*

3. SUBMISSIONS OF THE RESPONDENTS

3.1. It is submitted that A1 approached R2 and expresses his interest to join the business relating to supply of civil construction materials and had requested the latter to join as a shareholder and director for his good credit.

3.2. It is submitted that to purchase four bulkers and a car, R1 gave his personal guarantee for a loan advanced from the ICICI Bank. Thus, to pay off this loan, several loans from R6 were advanced to R2, through the years of 2016 to 2021[27]. It is stated that the

[27] Annexure – C of the Reply.

bulkers were sitting ideal due to no business and the car was being used on daily rental under Ola Cabs.

3.3. It is stated that every statutory form and compliances were looked after and executed by A1 and Mr. Deepak Dokania, who was introduced by A1 to R2. It is submitted that due to R2's market credibility, A1 suggested that R2's DSC should be used for statutory fillings and compliances, which was agreed upon by the latter. Thus, all the compliances and fillings were compiled and prepared by A1 and R2 merely used to sign as asked.

3.4. It is submitted that no notice has ever been issued for meetings held, it was always verbally informed. The meeting held on 26.02.2018 was called by A1 himself, where R3 and R4 were appointed as directors. The appointment of R5 was also suggested by A1. Thus, all forms and compliances regarding the appointment of directors was prepared by A1 and merely signed by R2. Similarly, the DSC of R3 and R4 were being used when R3 was unavailable.

3.5. It is submitted that it was A1 who suggested to issue R6 equity shares because R1 has no funds to repay the loan advanced by R6, and thus, called an EGM to increase the authorised share capital of R1. It is stated that notice for EGM was issued on 06.02.2018 and the meeting was held on 03.03.2018. It is further submitted that it was A1 who suggested that the idle bulkers be sold to R6

as a part of repayment of the outstanding dues. It is further denied and disputed that there was any agreement to sell with R1, thus, the bulkers and the car were still properties of R1.

3.6. It is further submitted that in October, 2018, the Applicants wanted to resign and transfer their entire shareholding to R2 which the latter did not agree too.

3.7. It is further submitted that R5 and R3 has resigned from directorship on 18.01.2019 and 28.12.2020, respectively.[28]

3.8. It is further submitted that after filing the instant petition, A1 approached R2 with a settlement agreement[29], whereby it was agreed that they would settle this matter in the event R2 agreed to pay Rs. 5 Lakhs to each of the Applicant. It is stated that they had agreed but retracted the same.

3.9. It is further submitted that A2's appointment letter dated, 01.08.2016 is fraudulent as the letter was signed by the erstwhile directors, Mr. Promod Goyal Chowdhury, who had already retired and his resignation was in effect from 15.07.2016.

3.10. It is the case of the Respondents that this petition has been filed with malicious intent, with the only intent to extort money, thus should be dismissed.

[28] Annexure – E.
[29] Annexure – F.

4. SUBMISSIONS OF THE APPLICANTS VIDE REJOINDER

4.1. It is submitted that the reply is misleading and false and concocted with malicious intent.

4.2. It is submitted that all directors are equally responsible for the statutory compliances. Mr. Dokania was also the auditor in R6[30], which was held by R2 and his relatives.

4.3. It is submitted that R2's DSC was never used by the Applicants and making such allegations shows how irresponsible R2 claims to be.

4.4. It is further submitted that they had agreed for mutual settlement and shared on 11.02.2020 but the payment vide demand draft was issued on 10.03.2021.[31] Thus, issuing the payment after a year shows that the Respondents did not wish to settle.

4.5. Further the Applicant has reiterated the facts as pleaded in the present petition which are not reproduced here for sake of brevity.

4.6. Non-issuance of notice stands already admitted in the reply filed. Thus, the meeting held and the decision to adopt and approve the financial statements of the financial year 2017-2018 taken there at, is contrary to law.

[30] Annexure – A of the Rejoinder.
[31] Annexure – C.

4.7. At this juncture, this Tribunal takes note of the Valuation Report which was directed to be undertaken vide an order, dated 07.01.2025, in **I.A. No. 79/KB/2024**. The report, taken on record vide **I.A No. 162/KB/2025**, dated 06.05.2025, states that even after repeated correspondence to R1, no information was received from him, as requested by the appointed valuer. Thus, the valuer prepared the report based on available information in public domain and the balance sheets of FY 2017-2018, which were provided by the Ld. Counsel of the Applicants.

4.8. This Tribunal further notes that vide **I.A No. 138/KB/2025**, the appointed forensic auditor submitted that the forensic audit report could not be completed on the account pf '*non-co-operation and non-furnishing of the required documents by the Respondents*'.

5. ANALYSIS AND FINDINGS

5.1. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present application on its merits, specifically within the ambit of points involved in the instant application.

5.2. The main issues that this Tribunal finds pertinent to deliberate on are:

i. Does non-issuance of notice effect the legality of the meetings held and resolutions approved in them?

ii. Does the appointment of R3, R4 and R5 as directors in the company a valid appointment?

iii. Is a case of Oppression and Mismanagement made out?

5.3. The Companies Act, 2013 does not define the terms "Oppression and "Mismanagement". The legislature has given no straitjacket formula to determine what defines Oppression and Mismanagement conclusively. Thus, each case must be decided on its own facts, circumstances and merits encircling it.

5.4. This Tribunal is the opinion that before delving into the merits, the relevant sections should be reproduced. Section 62 of the Code is extracted below:

*'**62. Further issue of share capital. –** (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered–*

xxxxx

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in

clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report [of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed].'

5.5. Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 is extracted below:

'13. Issue of shares on preferential basis

xxxxx

(2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:—

xxxxx

(d) ***The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act****:*

(i) the objects of the issue;

(ii) the total number of shares or other securities to be issued;

(iii) the price or price band at/within which the allotment is proposed;

(iv) basis on which the price has been arrived at along with report of the registered valuer;

(v) relevant date with reference to which the price has been arrived at;

(vi) the class or classes of persons to whom the allotment is proposed to be made;

(vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;

(viii) the proposed time within which the allotment shall be completed;

(ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;

(x) the change in control, if any, in the company that would occur consequent to the preferential offer;

(xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;

(xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer;'

5.6. It is noted that one of the main contentions of the Applicants is the non-issuance of notice for the board meetings held, as well as the EOGM dated 06.02.2018. In this case, the Respondents have failed to put any evidence on record to show that notice was served on the Applicants. The latter has further contented that all meetings convened was 'verbally communicated' and that no notice for meetings exists before or after the only notice ever served on 17.08.2018, a copy of which has also not been put on record.

5.7. At this juncture, we find it pertinent to look at the settled law on notice of meetings. Section 173 of the Act states the following:

'173. Meetings of Board.—

xxxxx

(3) A meeting of the Board ***shall be called by giving not less than seven days' notice in writing to every director*** *at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:*

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that

at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

(4) ***Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty*** *of twenty-five thousand rupees.'*

5.8. The Hon'ble Supreme Court has held in the case of ***Shailja Krishna v. Satori Global Ltd. and Ors., (2025) ibclaw.in 344 SC*** that in absence of notice, entire proceedings of a meeting can be vitiated. The relevant portion is extracted below:

*'**48.** First, on the issue of notice, clauses 30 and 61 of the AoA read with Section 286 of the 1956 Act, unequivocally mandate that notice of every board meeting must be served on all Directors. Specifically, clause 30 stipulates that "twenty-one days' notice specifying the place, day and hour of a General Meeting shall be given to the members of the company". Mr. Mehta contended that the Appellant, who continued as a Director during the relevant period, was never served with notice of either of the meetings dated 15.12.2010 or 17.12.2010. Moreover, such*

notices and/or proof of service of such notices were never produced on record before the NCLT. Not only that, the minutes of the meetings were also not produced. Hence, the requirement of notice being mandatory, non-service thereof renders the meetings invalid. Reliance placed by Mr. Mehta on ***Sri Parmeshwari Prasad Gupta v. Union of India*** *is relevant here as it was held that absence of notice vitiates the entire proceedings of a board meeting.'*

5.9. Further in the case of ***Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543***, the Hon'ble Supreme Court held that no issuance of notice will deem the meeting illegal. The relevant portion is extracted below:

*'**10.** Now, it cannot be disputed that notice to all the Directors of meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting and that as, admittedly, no notice was given to Mr Khaitan, one of the Directors of the Company, the resolution passed terminating the services of the appellant was invalid.'*

5.10. Hence, it is a settled law that notice is statutorily mandatory and non-issuance of the same can deem the resolutions and proceedings of the meetings vitiated. The grave nature of this non-compliance can be seen from the fact that non-compliance attracts a penalty under Section 173(4) of the Act. It is further

noted that the Articles of Association of R2 is silent on the procedure for issuance of notice for holding of board meetings.

5.11. In the case, the AoA is silent, we shall rely on the parent Act. It is further observed that the Respondent has failed to place any documents on record to establish the issuance of notice for the EOGM held on 06.02.2018. Thus, note that in the event no notice has been issued to the Applicants, the meeting held and the resolutions taken thereat shall be vitiated.

5.12. In the event the meeting was legal, this Tribunal would have gone into the deliberation on the issues of statutory compliance of the private placement offer for R6. As the resolutions to issue a private placement offer of equity shares for R6 is vitiated, the entire process of the shares is deemed not tenable in law.

5.13. It is the case of the Respondents that A1 had taken the responsibility to handle the statutory compliances and the DSC of the Respondents were used for authentication. This contention has been raised without any document on record; thus, we cannot consider the same.

5.14. Now coming to issue no. 2 that to set aside the appointment of R3, R4 and R5 as directors of the company. It is contented by the Applicants that R3, R4 and R5 have been illegally appointed. As deliberated above, the non-issuance of notice for meetings,

is a clear violation of Section 173(4), Section 101, Section 102 and Clause 1.3 of the Secretarial Standard – I. In view of the aforesaid provisions, the resolutions passed at the meetings held on 26.02.2018 and 26.05.2018, having been conducted in clear violation thereof, are liable to be held vitiated, which, in turn, would render the alleged appointments illegal. However, this Tribunal shall not go into the merits on this issue for R3 and R5 as it has been admitted in the Reply submitted that they have resigned from their respective directorships. Whereas, for R4, as of now, he has also resigned from his directorship. In view of the aforesaid, this issue is rendered infructuous and does not warrant any further adjudication. For convenience, Clause 1.3 of the Secretarial Standard – I is extracted below:

"1.3 Notice

1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Notice.

Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting."

5.15. Now coming to issue no. 3 that whether this case makes out as a case of oppression and mismanagement. The terms "Oppression" and "Mismanagement" have not been defined specifically in The Companies Act, 2013, but some cases like **Shanti Prasad v. Kalinga Tubes, reported at 1965 SCC Online SC 15: (1965) 2 SCR 720** explains "oppression" as a conduct that is burdensome, harsh and wrongful involving lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. Further a mere lack of confidence between majority and minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of affairs of the company. "Mismanagement" involves inept or unfair conduct harming the economic interests of company members. The relevant portion of ***Shanti Prasad v. Kalinga Tubes (supra)*** is extracted below:

"In Harmer's case [(1958) 3 All E.R. 689; (1959) 29 Comp. Cas. 305 (C.A.).] , it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that "the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression." It was also held that "the result of applications under section 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision." The circumstances must be such as to warrant the inference that" there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the conduct complained of "should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fairplay on which every shareholder who entrusts his money to a company is entitled to rely. .. But. apart from this,

the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by section 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not. .. come within section 210. It is not lack of confidence between shareholders per se that brings section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves ... at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

5.16. In the case of ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd., (2008) 3 SCC 363***, it was held that:

'14. In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to:

(a) Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. [(1981) 3 SCC 333]

(b) M.S. Madhusoodhanan v. Kerala Kaumudi (P) Ltd. [(2004) 9 SCC 204]

(c) Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan [(2005) 1 SCC 212]

(d) Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad [(2005) 11 SCC 314]

(e) Kamal Kumar Dutta v. Ruby General Hospital Ltd. [(2006) 7 SCC 613]

From the above decisions, it is clear that oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.
(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome,

harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.'

5.17. Pursuing the issue of sale of the assets of R1, the financial statements of FY 2017-2018[32] shows that all assets have been sold off. It is the case of R1 that the financial statements have been prepared by the A1 but has not put any documents to prove the same. Thus, by the annexure, it is reasonable to infer that that tangible assets have been sold off or disposed of. It is further stated that the meeting, dated 29.09.2018, was held without any notice to the Applicants. It is further stated by the appointed Valuer in the Valuation report that assets were disposed of, sold to R6. The Forensic Audit Report also could not be complete due to non-cooperation of the Respondents. Hence, the sole document on record for this Tribunal to consider for

[32] Annexure – L.

existence of sale is the financial statements. It is the case of the Respondents that the assets are still owned by the R1 and it is the prayer of the Applicants, that the sale of the assets should be reversed. Thus, this Tribunals is of the view that according to the financial statements of FY 2017-2018, the assets have been sold. It is further observed that the financial statements were signed by R3 and R4, whose appointments shall stand vitiated as the board meetings were held without any issuance of notice. Consequently, any official documents signed by them cannot be recognised as valid in the eyes of law. In view of the foregoing, this Tribunal is of the considered opinion that the financial statements, having been authenticated by persons whose appointments are themselves without authority, cannot be relied upon, and accordingly, the sale of the assets is liable to be, and is hereby, reversed.

5.18. On the issue of the financial statements, it is the case of the Applicants that the AOC-4 form for submitting the audit financial statements for the FY 2017-18 and director's report was signed by R4 on 30.10.2018. Further an AGM was held on 29.09.2018 wherein the financial statements were adopted. As already established in our findings hereinabove, a meeting held without issuance of due notice is liable to be held illegal, and the resolutions passed thereat stand vitiated. It has also been noted hereinabove that the appointment of R5 as a Director of R1 was

itself illegal. In these circumstances, R5 had no actual authority to sign the statutory forms or file on behalf of R1. It is further held that the adoption of the statements also shall be held as illegal as the AGM held on 29.09.2018 is void due to non-issuance of notice to the Applicants.

5.19. In the instant case, the alleged acts of Oppression and Mismanagement are the following:

a. The R3, R4 and R5 were illegally appointed as Directors of R1 without any notice served to the Applicants. However, as noted hereinabove, the said Respondents have since resigned from their respective directorships.

b. The EOGM held on 06.02.2018 was held without any notice being served on the Applicants and the decision to increase the share capital is illegal.

c. The decision to allot equity shares to R6, making it the largest shareholder and reducing the Applicants to a minority, is illegal since as discussed above no notice of the meeting where this decision was taken was served and accordingly the decision taken in said meeting is void.

d. Form PAS-3 is filed fraudulently citing a sham meeting held on 06.02.2018.

e. All the fixed assets of the R1 were illegally sold without any notice to the Applicants.

f. The AGM, dated 29.09.2018 for the adoption of the financial statements for the FY 2017-2018 were held without any notice, thus shall be held to be vitiated and illegal.

5.20. The act of continual holding of meetings without issuance notice to the Applicants is considered an oppressive act, also held in the case of ***Hotel Bisra (P) Ltd., In re [2017] 83 taxmann.com 395 (NCLT-Kolkata),*** that without any proper intimation of board meetings is an act of oppression. The said decision was carried in appeal before the Hon'ble NCLAT, Delhi, in ***Adbhut Vincom Pvt. Ltd. v. Hotel Birsa Pvt. Ltd., (2017) ibclaw.in 243 NCLAT,*** upheld the part of the judgement where oppression has been alleged and upheld.

5.21. It is also admitted by the Respondents themselves that no notice has ever been issued for meetings, it has always been 'verbally communicated'. Thus, this Tribunal is inclined to hold that even if a meeting was held on 06.02.2018, where the decision to increase the share capital of R1 and allot the equity shares to R6 was taken, would be held illegal and the resolutions taken vitiated.

5.22. In light of the discussion, all acts and actions in pursuance of decisions taken in the board meetings and EOGM, dated 26.02.2018, 03.03.2018, 26.05.2018, 22.08.2018 and 29.09.2018 are deemed illegal and shall be vitiated.

5.23. In the light of the above discussion, this Tribunal finds that this is a case of 'oppression and mismanagement'. The non-issuance of notice for board meeting is a statutory non-compliance. It further restricts the aggrieved from being a part of the decision-making process and thus, is oppressive. In this case, the decisions taken in the alleged un-notified board meetings have reduced the shareholding of the Applicants in R1, making them minority shareholders, making it a crystal-clear case of oppression.

5.24. In the absence of any evidence from the Respondents and the admission that notice for board meetings were never given, this Tribunal is inclined to hold that the petitioners are entitled to relief under Sections 241 and 242 of the Companies Act,2013.

6. ORDERS

6.1. In view of the above discussions, pleadings, documents placed on record, findings recorded and in exercise of powers under Sections 241, 242 And 243 of the Companies Act, 2013, this Tribunal is of the view that a case of oppression and mismanagement has been clearly established against the Respondents. The affairs of Respondent No.1 Company have been conducted in a manner lacking transparency, fairness and probity and have resulted in serious prejudice to the Applicants.

6.2. While issuing directions, this Tribunal notes that at present, R2, R3, R4 and R5 has resigned from the directorship of R1.

6.3. Accordingly, **C.P. No. 240/KB/2019** is **allowed** and **disposed of** with the following directions:

a. It is hereby declared that all resolutions passed in the board meetings dated 26.02.2018, 26.05.2018, 22.08.2018 and 29.09.2018, and the EOGM dated 03.03.2018 are vitiated as they are void ab initio due to non-issuance of notice.

b. It is hereby declared that the decision to increase the share capital is set aside, thus, further making the allotment of shares to Respondent No. 6 null and void.

c. It is hereby declared that the shareholding of the Applicants shall stand restored to the original shareholding, that is, 3300 shares each in favour of the Applicants, as held prior to the vitiated allotment.

d. The Respondent Company is directed to rectify its Register of Members to reflect the shareholdings of the Applicants.

e. It is hereby declared that sale of assets of R1 is set aside.

f. A copy of this Order is directed to be served upon the Registrar of Companies, West Bengal, who is directed to take necessary action as may be required in accordance with law.

6.4. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties, their counsel and the Administrator for information and to take necessary steps.

6.5. Let the certified copy of the order be issued upon compliance with requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order signed on the 25th day of August, 2026.

T.Roy (LRA)