IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

R.C.P. (CA) No. 3 (MB) 2024

Under Section 241-242 of the Companies Act, 2013 and Rule 11 & 48 of the NCLT Rules, 2016.

In the matter of

Mr. Ronny George (Since Deceased) through his legal heirs …Petitioners

Versus

M/s. The Professional Couriers Private Limited & Ors. ...Respondents

Order pronounced on 11/09/2026

Coram:

Shri. Prabhat Kumar	**Shri. Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)

Appearances:

For the Petitioner:	Adv. Rohit Gupta, Adv. Chandramouli Prabhakar i/b Adv. Ashish P. Agarkar, Adv. Laxman Yadav
For the Respondent:	Adv. Nousher Kohli, Adv. Jehan Fouzdar a/w Adv. Anjali Sharma

ORDER

Per: Coram

1. The original Petitioner, Mr. Ronny George, had filed Company Petition No. CP: 355/2017 before this Tribunal on 18.07.2017. During the pendency of the said Company Petition, the Original Petitioner passed away on 19.05.2019. Subsequently, the Company Petition came to be dismissed by this Tribunal *vide* order dated 05.04.2024 for want of prosecution. Ms. Maria George, wife of the Original Petitioner, filed Restoration Application No. 7/2025 seeking restoration of the Company Petition. The said Restoration Application was allowed by this Tribunal *vide* order dated 20.08.2025, and consequently, the present Company Petition came to be restored. In the original Company Petition, the Original Petitioner had alleged acts of oppression and mismanagement by Respondent Nos. 2 to 7 in the affairs of M/s. The Professional Couriers Private Limited (Respondent No. 1 Company/Respondent Company) and had, inter alia, sought the following reliefs:

   i. *Declare that Respondents 2-7 are not fit and proper persons to hold the position of directors of the 1st Respondent Company, having acted in a manner prejudicial to the interests of the Company and breaching their fiduciary duty that they owe the Company & the Petitioner herein;*

   ii. *Declare that the conduct of Respondents 2-7 is Oppressive, harsh & burdensome to the Petitioner as a minority shareholder of the Company;*

   iii. *To declare that the "Special Notice for Removal of Director" dt. 10.03.2017 signed by Respondents 2-7 as illegal, fraudulent & null & void, the same being oppressive to the Petitioner;*

   iv. *To declare the notice dt.31.03.2017 convening the EGM dt. 20th May 2017 as null and void, illegal and fraudulent, as the same being oppressive to the Petitioner and based upon the requisition of the non-est "Special Notice for Removal of Director" dt.*

10.03.2017 sent by Respondents 2-7;

v. *To Declare the Resolution dt. 20.05.2017 passed at the Extraordinary General Meeting of the 1st Respondent Company held at Mumbai removing the Petitioner as a Director of the Company as illegal, null & void;*

vi. *To Declare the consequent designation of Respondent No. 6's office as the Regional Office of TPC/Kerala Region & Respondent No. 6 as Regional Head of TPC/Kerala Region as illegal, fraudulent & void, the same being on account of the illegal and fraudulent removal of the Petitioner as a Director of the 1st Respondent Company;*

vii. *Restrain Respondents 2-7 from acting in any manner detrimental to the Interests of the Petitioner & other minority shareholders;*

viii. *To declare the alleged "Chargesheet" dt. 11.02.2017 as illegal, non-est & null and void;*

ix. *Direct the respondents to ensure that the conduct of the business of the Company is done in the best interests of all the branches/franchisees by adopting best economic practices which will be beneficial to interests of all the group companies;*

x. *Such Directions that this Hon'ble Tribunal may deem fit to bring to an end the matters complained of in this Petition;*

xi. *Direct Respondents 2-7 to pay the Petitioner the costs of the Petition;*

xii. *Pass any such further or other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of this case and thus render justice.*

2. <u>Brief Facts</u>:

2.1. M/s. The Professional Couriers Private Limited (Respondent No.

1/Respondent Company) was incorporated under the provisions of the Companies Act, 1956 on 01.09.1987. The registered office of the Company is situated at 1203/A, 12th Floor, Bhumiraj Costarica, Plot No. 1 & 2, Sector-18, Sanpada, Navi Mumbai-400705. The authorised share capital of the Company as on FY 2016-17 was Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each, and the issued, subscribed and paid-up share capital is Rs. 40,00,000/- divided into 4,00,000 equity shares of Rs. 10/- each.

2.2. The Original Petitioner, Mr. Ronny George, held 6,125 equity shares of Rs. 10/- each, constituting 15.31% of the total shareholding of the Respondent Company at the time of incorporation and currently holds approx. 14.53% shareholding of the respondent Company. He was one of the original Directors and remained on the Board of Directors of the Respondent Company from 01.09.1987 until his removal in 2017.

2.3. During the pendency of the present Petition, Original Petitioner passed away on 19.05.2019. The original petitioner was survived by his widow Mrs. Maria Ronny and his Son Mr. Richard George Ronny, consequently, the shares held by him in the Company and other Group entities devolved upon the present Petitioners as his Legal Heirs. The Legal Heirs were brought on record *vide* Order dated 27.02.2026 in C.A. 277 of 2024.

3. The Respondent Company was incorporated by the Petitioner along with Mr. S. Ahmed Meeran (Respondent No. 2), Mr. P.M. Abraham (Respondent No. 3), Mr. Oommen Chacko (Respondent No.4), Mr. Thomas John (Respondent No. 5), Mr. Suresh Bharathan (Respondent No. 6), and Late Mrs. Padmavathi (Mother of Respondent No.7, Mr. Vadesseri Srinath, who subsequently joined the Board of Directors of the Company in her place, on 23.08.2006).

3.1. In or around 1986, Respondent Nos. 2,3,4, Mr. T. Balachandran and Mr. Survesh Mehta, who were associated with M/s. Coast Couriers Pvt. Ltd., exited from the said Company and conceived the idea of establishing an independent courier business. They invited other like-minded persons, including Mr. M. John and Mr. Rakesh Mehta, and commenced operations under the name "Coast International".

3.2. The courier operations commenced from 23.06.1986 from different locations, with the respective promoters managing the operations at Mumbai, Kolkata, Bangalore, Madras, New Delhi and Hyderabad.

3.3. In the initial stages, the promoters recognised the need to strengthen their network in South India, particularly in Kochi, and to develop inter-State operations between Tamil Nadu, Kerala and Karnataka.

3.4. At the relevant time, Mr. S. Ahmed Meeran (Respondent No. 2/Managing Director of the Respondent Company), was carrying on a ticketing and travel agency business under the name "M/s. Omega Travels" in Chennai. He met the Petitioner in connection with developing the Kerala operations. The Petitioner agreed to relocate to Kochi and establish the network in Kerala and also introduced Respondent No. 6 to Respondent No. 2.

3.5. The Petitioner thereafter left his employment as Marketing Executive with M/s. Gillanders Arbuthnot and devoted himself to developing the courier business in Kerala. He took responsibility for marketing, expansion of business operations and establishment of offices across Kerala and parts of Tamil Nadu, while Respondent No. 6 handled Finance and Accounts.

3.6. Owing to disputes with M/s. Coast Couriers concerning the use of the name "Coast" and disputes concerning certain promoters, the promoters decided, in their meeting held in Mumbai on 27.09.1987, to discontinue the association with the Mr. Survesh Mehta & Mr. Rakesh Mehta and

change the name of the business to "The Professional Couriers". The Respondent Company was incorporated on 01.09.1987, with the promoters subscribing to the Share Capital of the Company.

3.7. In 1999, the promoters decided to expand the business internationally. Accordingly, M/s Airpronto Couriers Private Limited, subsequently renamed M/s. Professional International Couriers Ltd., was incorporated to cater to the international segment. Respondent Nos. 2 and 3 were appointed as Directors on 26.04.1999, while the Petitioner and Respondent Nos. 4 to 7 were subsequently inducted on 26.08.1999.

3.8. An arrangement among the promoters was also recorded in an Agreement dated 14.08.1999 executed by the Petitioner, Respondent Nos. 2 to 6, Late Mrs. Padmavathi and Mr. Sumit Batabyal. The said Agreement records that the arrangement had been in existence since the year 1987 and had been operating satisfactorily, with each of the parties deriving substantial benefit therefrom, without causing any prejudice or jeopardy to the interests of the other parties. It was further agreed that, in order to enable the Respondent Company to meet its minimum operational expenses, each party would pay a fixed amount by way of franchise charge for the use and utilisation of the name “Professional Couriers”.

3.9. The Kochi operations of the Respondent Company were initially carried on through a partnership firm under the name and style of M/s. The Professional Couriers, Kochi, constituted by the Petitioner and Mr. Suresh Bharathan. Disputes arose between the Petitioner and Mr. Suresh Bharathan in or around 2013. In October 2013, the Kochi operations were divided into “Cochin-North” and “Cochin-South”. The Petitioner and his wife incorporated “The Professional Couriers (Cochin-North) Pvt. Ltd.”, while Mr. Suresh Bharathan and his family incorporated “The Professional Couriers (Cochin-South) Pvt. Ltd.” The earlier partnership firm, M/s. The

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Professional Couriers, Kochi, thereafter ceased business operations.

3.10. The Respondent Company initiated proceedings for removal of the Petitioner from the Board. A special notice concerning his proposed removal was forwarded to him by letter dated 13.03.2017. The Petitioner was called upon to make his representation and was requested to submit the same by 27.03.2017 for circulation to the members. Notice dated 31.03.2017 was thereafter issued for convening an EOGM on 20.05.2017. The resolution for removal was passed at the EOGM held on 20.05.2017, and the Petitioner was informed vide communication dated 22.05.2017 that he had ceased to be a Director with effect from 20.05.2017.

3.11. Following the Petitioner's removal, Mr. Suresh Bharathan was assigned authority and control over the regional affairs of TPC(P)L-Kerala as Regional Head.

4. **Submission of Petitioner**

4.1. Ld. Counsel for the Petitioner submits that the business of the Respondent Company was conducted on the basis of co-operation amongst the individual promoters/directors and their respective territories. Each constituent was expected to deliver consignments received from other constituents and return proof of delivery, irrespective of the volume or value of the consignments. Such inter-se cooperation formed an important part of the Company's business model during its formative years.

4.2. At the 4th All India Conference of the Respondent Company, decisions were taken regarding the appointment of new Directors and constitution of a Central Committee comprising, inter alia, the Petitioner, Respondent No. 3, Respondent No. 6 and Mr. Sumit Batabyal for guiding the future growth, operations, network and marketing activities of the Company.

4.3. The first formal full-fledged meeting of the Board of Directors was held on 27.05.1990 at Hyderabad. Subsequently, several conferences and meetings were held at different locations. In May 1994, it was decided that the members of the Central Committee would also be appointed as Directors. Consequently, the original co-venturers and shareholders were formally recognised as Directors. The Petitioner was entrusted with the portfolio of Planning, while Mr. Suresh Bharathan was given the portfolio of Director Finance (Expenses).

4.4. It is submitted that, under the Company's business model, revenue was credited to the station where a consignment was booked, irrespective of the location where the consignment was ultimately delivered. Consequently, significant costs were incurred by the Petitioner in Kochi for delivery of consignments without corresponding reimbursement or sharing of profits. This issue became particularly significant after 2010-11 as the Kerala market became saturated, and the issue was recorded in the 64th Board meetings held on 07.07.2015 to 09.07.2015.

4.5. It is further submitted that, the Petitioner thereafter proposed that compensation be provided for such transhipment and delivery activities. The issue was discussed at various Board meetings and was ultimately recorded in the 64th Board Meeting of the respondent company, wherein it was resolved that w.e.f. 01.08.2015, transhipment charges of Rs. 3/- per kg would be payable for parcels above 2 kg, such charges being claimable at the origin station by the regional hubs.

4.6. Ld. Counsel for the Petitioner submits that, the Petitioner thereafter submitted statements towards transhipment charges. Despite the Board decision, the Respondents failed to pay the amounts claimed. He also raised issues concerning sales tax difficulties arising from consignments received without proper invoices. The Managing Director subsequently

communicated with the Operations Offices on 25.05.2016 directing them to provide proper invoices/bills. Further it is alleged that, several packages to International destinations which were being booked in the name of "The Professional Couriers" brand were ultimately re-routed through cheaper & inefficient courier services by the Directors from Mumbai & Hyderabad, thereby creating a serious dent in the brand value and goodwill which has been built over the decades.

4.7. Ld. Counsel for the Petitioner submits that the Respondent Company has all the essential characteristics of a quasi-partnership. The Company originated from the joint venture of the original promoters who had been carrying on business together since 1986 and thereafter incorporated the Company in 1987 to continue the same business association. It is submitted that the business was founded upon a relationship of mutual trust and confidence among the original co-venturers, each of whom contributed to the establishment and development of the business in their respective territory. It is further submitted that there was an understanding that the promoter-shareholders would participate in the management of the Company and that the original promoters would continue to have representation on the Board.

4.8. It is further submitted that the founding promoters held equal or substantially equal shareholdings of 6,125 shares each, representing approximately 15.31% each, which demonstrates that the Company was founded on an arrangement of equality and mutual participation rather than majority-based corporate ownership.

4.9. The Ld. Counsel for the Petitioner relied upon the history of the Company's operations, including the territorial division of business, participation of the promoters in management, establishment of associated companies and the manner in which the business was conducted, to

contend that the relationship amongst the promoters was in substance one of mutual confidence akin to a partnership.

4.10. It is submitted that the Original Petitioner's removal as Director in 2017 destroyed the fundamental understanding that each of the original co-venturers would have continuing participation and representation on the Board. Accordingly, Respondent Nos. 2 to 7 acted together by using their collective voting strength to exclude one of the original co-venturers.

4.11. Ld. Counsel for the Petitioner submits that, in a quasi-partnership, continued participation in management constitutes a legitimate expectation arising from the understanding among the shareholders. Therefore, exclusion of one of the founding co-venturers from the Board, while the other promoter groups continue to participate in management, constitutes oppressive conduct. Further, in a quasi-partnership, the right to participate in management through a seat on the Board is not a detachable "directorial" privilege divorced from membership; it is an incident of the membership interest itself, the legitimate expectation that attaches to the shares of a co-venturer.

4.12. Ld. Counsel for the Petitioner further submits that the Petitioner's removal was not founded on any bona fide corporate reason but was a retaliatory measure adopted because the Petitioner insisted upon payment of transhipment charges and raised concerns regarding the Company's operations.

4.13. It is further submitted that the withdrawal of his Company e-mail access, re-designation of his territory under another promoter and description of his departure on the Company's website as a "retirement" demonstrate a concerted attempt to erase his association with the Company and to present his removal inaccurately to stakeholders.

4.14. It is submitted that the chargesheet dated 11.02.2017 levelled allegations of dishonesty and indiscipline against the Original Petitioner, but the allegations were unsupported by prior correspondence. The Petitioner replied *vide* letter dated 26.02.2017, which was not answered by the Respondents. The chargesheet was merely a device to provide an appearance of justification to a decision which had already been taken to remove him from the Board. The opportunity given to him to make a representation against the proposed removal is therefore alleged to have been a mere formality undertaken to comply with the statutory procedure.

4.15. Ld. Counsel for the Petitioner submits that the Board itself had approved transhipment/load-handling charges at its 64th Board Meeting held on 07.07.2015 to 09.07.2015. Despite such approval, the Respondents allegedly failed to pay approximately Rs. 8 lakhs claimed by the Petitioner's centre.

4.16. It is further submitted that, while the legitimate claims of the Original Petitioner remained unpaid, the Respondents approved a payment of Rs. 25,000/- towards the operational expenses of the Kochi operations after his removal. Such differential treatment is unfair and lacked probity.

4.17. Ld. Counsel for the Petitioner submits that, since the Company is a quasi-partnership, the rights and legitimate expectations attached to the Original Petitioner's position as an original promoter are not merely personal rights but form part of the rights of his family. Therefore, his Legal Heirs ought not to be treated as ordinary shareholders without representation while other promoter branches continue to enjoy promoter status and representation on the Board.

5. **Submissions of the Respondents:**

5.1. Ld. Counsel for the Respondents submit that the Petitioners have failed to

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plead any surviving enforceable right, continuing act of oppression or mismanagement affecting them, or any legal basis demonstrating how the cause of action originally asserted by the Original Petitioner survives his demise. The Petition is founded principally upon his alleged removal from directorship and exclusion from the management of the Respondent Company, grievances which were personal to him in his capacity as a Director. The substantive reliefs originally sought were directed towards restoring his position and participation in the management of the Company and, upon his demise, have become incapable of effective adjudication. The Petition therefore deserves to be dismissed in *limine*.

5.2. It is submitted that an order permitting substitution of the legal heirs does not, by itself, result in the survival of every cause of action originally asserted by a deceased litigant. The Petitioners have neither pleaded nor established which of the rights asserted in the Petition are heritable, how such rights devolved upon them, or what independent entitlement they possess to seek the reliefs originally claimed by the Original Petitioner. The Petition was instituted by the Original Petitioner in his capacity as a promoter-director, principally challenging actions alleged to have affected his personal position and participation in the management of the Company.

5.3. It is further submitted that the rights relating to participation in management, attendance at Board Meetings, involvement in policy decisions, exercise of managerial functions, and continuation in office as a Director are personal to the holder of such office and do not devolve upon legal heirs by succession. Significantly, the Petitioners have not pleaded any continuing infringement of shareholder rights, such as loss of voting rights, denial of dividends, dilution of shareholding, or any other continuing prejudice to their rights as shareholders. The dispute, therefore,

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concerns the Original Petitioner's position as a Director and his participation in the management of the Company, rather than any continuing infringement of rights capable of surviving in favour of the substituted Petitioners.

5.4. In the absence of any pleaded or established surviving cause of action, subsisting enforceable right, or continuing act of oppression or mismanagement affecting the Petitioners, there is no legal basis for continuation of the present proceedings after the demise of the Original Petitioner. The Amended Petition is consequently liable to be dismissed.

6. **Findings & Analysis:**

6.1. We have heard the Ld. Counsels and perused the material available on record.

6.2. At the outset the present Petition having being filed by the deceased Petitioner against his removal as director on the ground that such removal constitutes an oppressive act by the respondents. After demise of the Petitioner, this prayer is rendered infructuous. However, it was argued by the legal heirs of the Original Petition substituted to prosecute present petition that one of them be directed to be inducted as a representative of deceased petitioner on the board of the Respondent Company in consonance with unwritten understanding amongst the promoters, which is apparent from the historical facts pertaining to Respondent Company's birth and operations thereafter.

6.3. The Original Petitioner has filed the present Company Petition alleging that Respondent Nos. 2 to 7, being Directors of Respondent Company, have undertaken certain acts which are oppressive to the Original Petitioner. The principal allegations are as follows:

a) The Petitioner alleges that the "Chargesheet" dated 11.02.2017 levelled serious allegations of dishonesty and indiscipline against the Original Petitioner, without any prior notice or correspondence in relation thereto, and was thereafter used as the basis for his removal from the office of Director.

b) Denial of legitimate dues. Despite the Board's own approval of transhipment / load handling charges at the 64th Board Meeting held on 7th - 9th July 2015, reiterated in the communication dated 05.07.2016, the Respondents refused to pay the sums (approx. Rs. 8 lakhs) due to Mr. Ronny George's centre, while simultaneously sanctioning, by their inter-se correspondence dated 13.02.2017, payment of Rs. 25,000 towards "operational expenses" for the Kochi operations.

c) Removal of Original Petitioner from the office of director of the respondent company, withdrawal of his company e-mail id through which even statutory communications were received, the re-designation of his territory under Respondent No. 6.

6.4. Indubitably, transshipment/load handling charges are the obligation of each Respondent in their personal capacity arising from the mutual arrangement, though such arrangement had imprimatur of Respondent Company. Accordingly, non-payment of such transshipment/load handling charges cannot held to be an act of oppression arising in the affairs of Respondent Company merely because such mutual arrangement was agreed on its common platform.

6.5. It was argued on behalf of the Petitioners that the Respondent Company is a quasi-partnership. Further, the Respondents have neither negated this contention nor supported. As the Petitioner's claim pertain to representation on the board of the Respondent Company in place of

deceased original petitioner, who had been director of the Respondent Company since incorporation and was removed on frivolous grounds, which was challenged by him in the present petition. Ordinarily, the directorial disputes do not constitute act of oppression, however, it is held that these disputes may merit consideration in case the company is in nature of a quasi-partnership entity. Accordingly, determination of the character and nature of the Company is essential for adjudication of the present matter. Hence, we proceed to examine whether the principles governing a quasi-partnership would be applicable to the Respondent Company.

6.6. It is observed that an arrangement amongst the promoters was recorded in an Agreement dated 14.08.1999 executed by Petitioner and Respondent Nos. 2 to 6, wherein, inter alia, the following was recorded:

"AND WHEREAS all the eight parties are carrying on business separately under the name and style 'THE PROFESSIONAL COURIERS either in their proprietary capacity or in partnership operating in various parts of the country with various offices running under them and are mutually co-operating with each other in their best interest and to their best advantage.

AND WHEREAS for the purpose of promoting a sense of unity and mutual dependence on each other, a company was incorporated on 01.09.1987 bearing No. 44530 of 1987 called "THE PROFESSIONAL COURIERS PRIVATE LIMITED", viz., the party herein under the Companies Act 1956 with its registered office located in Bombay.

AND WHEREAS though the said company was incorporated and all the parties have been carrying on their respective businesses as

couriers as proprietors or in partnership as described above with total independence and without the intervention of any other party in the business of each of them.

AND WHEREAS all the parties have been independently establishing their own agents separately working under them attached to their businesses without any connection with other parties.

AND WHEREAS the said company was merely acting as a common link in order that all parties stay together and do not conduct themselves in such fashion to affect the interest of the other parties.

AND WHEREAS the income generated out of the business belongs to the respective party running the business and the other parties have no right or interest in the same.

AND WHEREAS this arrangement has been continuing since the year 1987 and has been working very satisfactorily with each party deriving utmost benefit without any jeopardy to the interests of the other parties.

AND WHEREAS the parties have agreed to continue the said arrangements without any change which stood the test of time.

AND WHEREAS the parties have felt it expedient to reduce into writing the present arrangement, their inter-se relationship, and the role of the said company, in order that no doubts will arise in future in relation to any of these matters;

……

4. The parties further declare that "THE PROFESSIONAL COURIERS PVT LTD.", which is a company incorporated under the Companies Act, 1956, has no connection with the independent business carried on by the parties 1 to 8 under the name "THE PROFESSIONAL COURIERS" and that the said company was promoted to act as a link between all the parties and in order to give a corporate status which each of the parties exploited in their best interests without any prejudice to the proprietary/partnership businesses carried on by each of the parties as described in clause - 1.

For removal of doubts, it is hereby declared that any of the above parties 1 to 8 can carry on the business under the name of the "THE PROFESSIONAL COURIERS" without any connection or relationship with the said company, although the parties do agree that they should mutually co-operate with each other in the same manner as in vogue at present in order that their businesses are not affected in any manner and there should be no detriment or disrepute caused by the name of Professional Couriers which is commonly used by all the parties.

6. In order that the said company is able to meet its minimum expenses, each of the parties agree to pay the fixed sum as stated in the schedule annexed to and forming part of the agreement by way of Franchise charges for the utilisation of the name of Professional Couriers. The Franchise charges may be revised by the company from time to time.

11. In case of the absence of any of the partner by the gods act i.e., death, the legal heir of the party shall be appointed as the party to

operate the business in the same areas."

6.7. The Hon'ble Supreme Court, in ***Hind Overseas vs. Raghunath Prasad Jhunjhunwala [(1976) 3 SCC 259],*** referred to the judgment in ***Ebrahimi and Westbourne Galleries Ltd.*** and discussed the tests for determining whether a company can be regarded as a quasi-partnership. The relevant observations are as follows:

"17. Before we proceed further we may refer to a recent decision of the House of Lords in Ebrahimi and Westbourne Galleries Ltd. (briefly Ebrahimi's case) wherein after reviewing all the earlier cases it was held as follows:

The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is the Courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own that there is room in company law for recognition of the fact that behind it, or amongst it there are individuals with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party disregard the obligation he assumes by entering a company, nor the Court to dispense him from it. It does, as equity always does, enable the Court to subject the exercise of legal rights to equitable considerations: considerations that is of a personal

character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way. The superimposition of equitable considerations requires something more which typically may include one or probably more of the following elements:

(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company:

(ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business:

(iii) restriction upon the transfer of the members' interest in the company so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

18. The respondents have laid great emphasis on the ratio of the above decision. It is true that Section 222(f) of the English Companies Act, 1948 which the House of Lords was considering corresponds to Section 433 (f) of the Act. In the above decision the House of Lords had to deal with a private limited company consisting of three members, the petitioner therein, being one of the three. Lord Wilberforce delivering his reasoned speech has himself noted that it is a fact of cardinal importance that since about 1945 the business had been carried on by the appellant and Mr. Nazar as partners, equally sharing the management and the profits. It was also noticed that the company made good profits, all of which were

distributed as directors' remuneration. No dividends have ever been paid, before or after the petition was presented.

19. In Ebrahimi's case (supra) the company which was first formed by the two erstwhile partners, Ebrahimi and Nazar, was joined by Nazar's son, George Nazar, as the third director and each of the two original shareholders transferred to him 100 shares so that at all material times Ebrahimi held 400 shares, Nazar 400 shares and George Nazar 200 shares. The Nazars father and son, thus had a majority of the votes in general meeting. Until the dispute all the three remained directors. Later on an ordinary resolution was passed by the company in general meeting by the votes of Nazar and George Nazar removing Ebrahimi from the office of director. That led to the petition for winding-up before the Court.

20. The following features are found in Ebrahimi's case:

(1) There was a prior partnership between the only two members who later on formed the company.

(2) Both the shareholders were directors sharing the profits equally as remuneration and no dividends were declared.

(3) One of the shareholders' son acquired shares from his father and from the second shareholder, Ebrahimi, and joined the company as the third shareholder each - director with two hundred shares (one hundred from each).

(4) After that, there was a complete ouster of Ebrahimi from the management by the votes of the other two directors, father and son.

(5) Although Ebrahimi was a partner, Nazar had made it perfectly

clear that he did not regard Ebrahimi as a partner but regarded him as an employee in repudiation of Ebrahimi's status as well as of the relationship.

(6) Ebrahimi through ceasing to be a director lost his right to share in the profits through directors remuneration retaining only the chance of receiving dividends as a minority shareholder. Bearing in mind the above features in the case, the House of Lords allowed the petition for winding-up by reversing the judgment of the Court of appeal and restoring the order of Plowman, J.

21. None of the parties questions the principles as such adumbrated by the House of Lords in Ebrahimi's case (supra) or even those in the earlier Yenidje's case (supra) and indeed these are sound principles depending upon the nature, composition and character of the company. The principles, good as they are, their application in a given case or in all cases, generally, creates problems and difficulties."

6.8. Thus, the three principles given in the case *Ebrahimi (supra)*, as recognised by the Hon'ble Supreme Court in the aforesaid judgment, for determining the characteristics of a quasi-partnership in a company, are as follows:

i. The Company was formed or continued on the basis of a personal relationship;
ii. There was an understanding that all or some of the shareholders would participate in the conduct of the business; and
iii. There was a restriction on the transfer of a member's interest in the Company.

6.9. Applying the principles laid down in the aforesaid judgments to the facts

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of the present case and, in particular, to the Agreement entered into between the parties in 1999, it is clear that the Respondent Company is in the nature of a quasi-partnership.

6.10. With regards to the removal of the Original Petitioner from the office of Director of the Respondent Company, it is observed that, under Section 169(2) of the Act, a special notice dated 10.03.2017 for removal of the Original Petitioner as Director of the Respondent Company was issued by Respondent Nos. 2 to 7 to the Respondent Company. The said notice was forwarded by the Respondent Company to the Original Petitioner on 13.03.2017. *Vide* the said letter dated 13.03.2017, the Respondent Company provided an opportunity to the Original Petitioner to make a representation against the proposed resolution for his removal. The representation was required to be submitted on or before 27.03.2017 for circulation amongst the members of the Company.

6.11. Further, Respondent Nos. 2 to 7 requested the Board of Directors of the Respondent Company to convene an Extraordinary General Meeting (EOGM) *vide* notice dated 10.03.2017. The Respondents held 33,750 equity shares of the Company, representing 84.36% of its share capital. *Vide* the said notice, the Respondents proposed to pass an ordinary resolution for removal of the Original Petitioner from the office of Director of the Respondent Company.

6.12. The Respondent Company thereafter issued a notice dated 31.03.2017 convening an EOGM on 20.05.2017 for removal of the Original Petitioner from the office of Director of the Respondent Company. The Original Petitioner did not make any representation in respect of his proposed removal as Director. At the said EOGM, the shareholders passed a resolution removing the Original Petitioner from the office of Director of the Respondent Company with effect from 20.05.2017.

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6.13. Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement, as required under Section 102, need be annexed to the notice of an extraordinary general meeting convened by the requisitionists, and that the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting. However, the said provision is applicable where the Board fails to act within 21 days and the requisitionists proceed to call and hold the meeting themselves under Section 100(4) of the Companies Act, 2013. In a case where the Board accepts the requisition and convenes the EGM, an explanatory statement under Section 102 is required to be annexed to the notice in respect of all items of special business.

6.14. In the present case, it is noted that no explanatory statement was annexed to the notice convening the EOGM for removal of the Original Petitioner from the office of Director of the Respondent Company. Further, the notice specifically stated as follows:

> *"No Explanatory Statement pursuant to Section 102 of the Companies Act, 2013 in respect of the Special Business is required to be annexed to this notice as the meeting is called on requisition of shareholders and it is not a resolution proposed by the company and the company is acting on the special notice given by the required number of members under the Companies Act, 2013."*

6.15. In view of the aforesaid, it is observed that there was no proper service of notice upon the members of the Respondent Company. Hence, we are of the view that the EOGM convened for removing the Original Petitioner from the office of Director of the Respondent Company was invalid.

6.16. In ***Needle Industries (India) Ltd. & Ors. vs. Needle Industries Newey (India) Holding Ltd. & Ors. [1981 (3) SCC 333],*** the Hon'ble Supreme

Court observed that oppression is conduct which is burdensome, harsh and wrongful or which results in a lack of probity. The relevant extracts are as follows:

> *"Coming to the law as to the concept of 'oppression' under section 397 of our Companies Act follows closely the language of section 210 of the English Companies Act of 1948. Since the decisions on section 210 have been followed by our Court, the English decisions may be considered first. The leading case on 'oppression' under section 210 is the decision of the House of Lords in Scottish Co-op. Wholesale Society Ltd. v. Meyer. (1) Taking the dictionary meaning of the word 'oppression', Viscount Simonds said at page 342 that the appellant society could justly be described as having behaved towards the minority shareholders in an 'oppressive' manner, that is to say, in a manner "burdensome, harsh and wrongful". The learned Law Lord adopted, as difficult of being bettered, the words of Lord President Cooper at the first hearing of the case to the effect that section 210 "warrants the court in looking at the business realities of the situation and does not confine them to a narrow legalistic view". Dealing with the true character of the company, Lord Keith said at page 361 that the company was in substance, though not in law, a partnership, consisting of the society, Dr. Meyer and Mr. Lucas and whatever may be the other different legal consequences following on one or other of these forms of combination, one result followed from the method adopted, "which is common to partnership, that there should be the utmost good faith between the constituent members". Finally, it was held that the court ought not to allow technical pleas to defeat the beneficent provisions of section 210 (page 344 per Lord Keith; pages 368-369 per Lord Denning).*
>
> *In an application under section 210 of the English Companies Act, as*

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under section 397 of our Companies Act, before granting relief the court has to satisfy that to wind up the company will unfairly prejudice the members complaining of oppression, but that otherwise the facts will justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. The rule as regards the duty of utmost good faith, on which stress was laid by Lord Keith in Meyer, (supra) received further and closer consideration in Ebrahim v. Westbourne Galleries Ltd.,(1) wherein Lord Wilberforce considered the scope, nature and extent of the 'just and equitable' principle as a ground for winding up a company. The business of the respondent company was a very profitable one and profits used to be distributed among the directors in the shape of fees, no dividends being declared. On being removed as a director by the votes of two other directors, the appellant petitioned for an order under section 210. Allowing an appeal from the judgment of the Court of Appeal, it was held by the House of Lords that the words 'just and equitable' which occur in section 222 (f) of the English Act, corresponding to our section 433 (f), were not to be construed ejusdem generis with clauses (a) to (e) of section 222 corresponding to our clauses (a) to (e) of section 433. Lord Wilberforce observed that the 'words' just and equitable' are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own; and that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure."

6.17. In ***Venus Petrochemicals (Bombay) Private Limited & Ors. vs. Sunil M. Thakkar [Company Appeal (AT)(Ins) No. 65/2022],*** the Hon'ble NCLAT considered the concept of oppression and mismanagement, particularly in

the context of a company having the character of a quasi-partnership. In the aforesaid case also, the Company was held to be in the nature of a quasi-partnership and the primary issue concerned the removal of directors. The following observations are relevant for consideration:

"96. We also note that the shareholders invest their money for several reasons including anticipation of the dividends or enhancement of the value of shares or by way of participating control and management in the conduct of the affairs of the Corporate Debtor. Undoubtedly, in the present case the Corporate Debtor is a private limited company and obviously shares are not listed in a stock exchange thus the legitimate expectation of the members of the company is either dividend or is in control of the company.

97. We already held that the distribution of dividend or otherwise, is the financial and the corporate decision of the company and cannot be treated as oppressive act. However, the participation in the affairs of the management can be legitimate aspiration of members holding substantial equity share in the Corporate Debtor and in this background, the Appellant No. 2 by using the casting vote overrules will of 50% of shareholding of the Respondents to take the control of the Corporate Debtor and pass on the same to sons which fall in the arena of oppressive act of set of shareholders."

6.18. In the present case, by virtue of his removal as Director of the Respondent Company, the Original Petitioner had been deprived of his legitimate expectation of representation and participation in the management of the Company. The Respondent Company was promoted with the object of acting as a common link between all the parties, so that the interests of the respective parties were represented and protected and no party acted in a manner adverse to the interests of the others. The promoters were

accordingly appointed as Directors to ensure representation of the respective regions in which they operated.

6.19. It is further noted that the Original Petitioner remained a Director of the Respondent Company from its incorporation in 1987 until 2017, and that there was equal status amongst the co-venturers. Further, prior to incorporation of the Respondent Company, the Respondent No. 2-6 and Respondent no.7's Mother along with Petitioner were carrying on the same business in different form and constitution, which became the basis of incorporation of Respondent Company. Being a co-venturer and promoter of the Company, the Original Petitioner had a legitimate expectation of continued participation in and involvement in the management of the company.

6.20. In the case of ***Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd. and others {2021} 9 SCC 449,*** held that *"118. An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial."*

6.21. It is pertinent to note that, in this context that on the demise of Respondent No.7's mother, who was also co-venturer, Respondent No. 7 was inducted as a director in her place; all the initial promoters have equal shareholding in the Respondent Company, which is acting as a link to the franchise business operated by this promoters and operating under a common trade name; and the agreement dated 14.08.1999 recognises succession rights of

the franchise business carried on by the promoters under the umbrella of the respondent company, can certainly lead to an inference that all these promoters had to have a right of representation on the board of the respondent Company. It is noted that the grounds of removal made out by respondents are not substantiated, however, it is made clear that we are not concerned with the sufficiency of evidence to prove the charges against deceased petitioner a present. In these circumstances and having regard to the principles laid down in *Needle Industries (supra*) and *Venus Petrochemicals (supra*), we hold that the acts of the Respondents are harsh and burdensome, lack probity and fairness, and amount to oppression of the Petitioners.

6.22. In view of the aforesaid arrangement, the role of the Original Petitioner, and the subsequent appointment of his legal heirs to operate the business in the same area, the Petitioners' prayer for appropriate directions to bring an end to the matters complained of needs consideration. Since the Original Petitioner has passed away, his appointment as a Director of the Respondent Company is no longer possible. It is therefore, appropriate, in order to bring an end to the matters complained of, that a representative of the Original Petitioner's faction be appointed as a Director of the Respondent Company.

6.23. In terms of the above, RCP No. 3/2024 is allowed and disposed of.

Sd/-	**Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)

/AJ/

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