IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. No. 132 (MB) 2025

along with

C.A. No. 317 (MB) 2025

Under Section 241-242 of the Companies Act, 2013.

In the matter of

Rajkumar Namdev Gawde …Petitioner

Versus

Schnell Global Industries Private Limited & Ors. ...Respondents

Order pronounced on 11/09/2026

Coram:

Shri. Prabhat Kumar
Member (Technical)

Shri. Sushil Mahadeorao Kochey
Member (Judicial)

Appearances:

For the Petitioner : Adv. Prachi Wazalwar a/w Adv. Shawn Fernandes

For the Respondents: Adv. Tinaz kapadia a/w Adv. Mavali Jadhav

ORDER

Per: Coram

Case Citation: (2026) ibclaw.in 3461 NCLT

1. The Petitioner, Mr. Rajkumar Namdev Gawde**,** has filed the present company petition u/s 241, 242 of the Companies Act, 2013 alleging acts of oppression and mismanagement by Mr. Rajesh Valiparambil Ravi and Mr. Santosh Motilal Sankla (Respondent No. 2 & 3 respectively) in the affairs of Schnell Global Industries Pvt. Ltd. (Respondent No. 1 Company). The Petitioner in the company petition prays for the following:

a) To pass appropriate orders under Section 241 - 244 of the Companies Act, 2013, to put an end to the acts of oppression and mismanagement carried out by the Respondents;

b) To pass suitable orders under Section 241 and other relevant provisions of the Companies Act, 2013, to resolve the deadlock within the Respondent No. 1 Company;

c) To direct the Respondents to disgorge any funds diverted / siphoned out of the Respondent No. 1 Company by the Respondent Nos. 2 and 3 to its related parties;

d) To disqualify Respondent Nos. 2 and 3 to act as directors of the Respondent No. 1 Company;

e) To cancel the purported allotment done as per Right Issue;

f) To allow the Petitioner to acquire shares from Rights Issues in proportion to his original shareholding as on 13.01.2025 at the same valuation employed at the time of the Rights Issues.

g) To cancel the PAS-3 forms filed by Respondents with ROC;

h) To reinstate the shareholding to the shareholding of 13.01.2025 where Petitioner held 40% shareholding;

i) Any other further relief and remedy as deemed necessary in the nature and circumstances of the case, as this Hon'ble Tribunal deems fit.

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

2. Brief Facts:

2.1. Respondent No. 1 Company was incorporated on 31.03.2010 under the Companies Act, 1956. The registered office of the Respondent No. 1 Company is situated at CTS No. 1183, F.P. No. B C 557/A (P), Office No. 202, 2nd Floor, F.C. Road, Shivajinagar, Pune City, Maharashtra- 411005.

2.2. The authorised share capital of the Respondent No. 1 Company as on 31.03.2025 is Rs. 1,25,00,000/-. The authorised share capital is divided into 12,50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Company as on 31.03.2025 is Rs. 1,25,00,000/- comprising 12,50,000 equity shares of Rs. 10/- each.

2.3. The original subscribers to the Memorandum of Association of the Respondent No. 1 Company were as follows:

a. Rajesh Valiparambil Ravi (Respondent No. 2);
b. Manoj Subramanian Moolekudy;
c. Madhu Subramanian Moolekudy;
d. Mohandas Valiparambil Ravi; and
e. Ramakant Eknath Utturkar

2.4. The original shareholders and directors of the Respondent No. 1 Company discontinued its operations during the financial years 2013-2014 to 2016-2017. Consequently, the name of the Respondent No. 1 Company was struck off from the Register of Companies by way of public notice dated 11.07.2017.

2.5. The Respondent No. 1 Company was subsequently restored by this Tribunal vide order dated 08.07.2022 passed in C.P. No. 77/MB/2022. The Respondent No. 1 Company owns a piece of land situated at MIDC, Chakan Phase II, on which it is constructing a factory.

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

2.6. As on 31.03.2022 the shareholding pattern of the Respondent No. l Company was as follows:

Name of Shareholder	No. of Equity Shares of Rs. 10/- each held by shareholders
Rajesh Valiparambil Ravi (Respondent No. 2)	47,111
Manoj Moolekudy Subramanian	47,111
Bindu Madhu Moolekidiyil & its legal heir	47,111
Mohandas Valiparambil Ravi	500
Ramakant Eknath Utturkar	500

2.7. As on 31.03.2022 the composition of the Board of Directors of the Respondent No. l Company was as follows:

a) Manoj Moolekudy Subramanian
b) Kunjumon Valloor Kumaran

2.8. After the revival of the Respondent No. 1 Company, the part of the shares held by the erstwhile shareholders, were acquired by the Petitioner and Respondent No. 3 on 26.07.2022. Pursuant to the said transfers, the shareholding of the Respondent No. 1 Company was reconstituted as follows:

a) Petitioner: 40%;
b) Respondent No. 2: 10%; and
c) Respondent No. 3: 50%.

2.9. Rajesh Valiparambil Ravi (Respondent No. 2) was appointed as a Director of the Respondent No. 1 Company with effect from 26.07.2022 and held 14,233 equity shares of Rs. 10/- each in the Company. Santosh Motilal Sankla (Respondent No. 3) was also appointed as a Director with effect

IBC Laws | www.ibclaw.in

from 26.07.2022 and held 71,166 equity shares of Rs. 10/- each in the Company.

2.10. The Petitioner was appointed as an Additional Director of the Respondent No. 1 Company on 10.10.2022 and was subsequently appointed as a Director on 30.09.2023.

2.11. Accordingly, as on 31.03.2023, the Board of Directors of the Respondent No. 1 Company comprised:

a) Rajkumar Namdev Gawde (Petitioner);
b) Rajesh Valiparambil Ravi (Respondent No. 2); and
c) Santosh Motilal Sankla (Respondent No. 3)

2.12. On 17.05.2023, the Respondent No. 1 Company obtained possession of the aforesaid land from MIDC.

2.13. During the Board Meetings held on 20.12.2024 and 30.12.2024, Respondent Nos. 2 and 3 stated that the Respondent No. 1 Company was required to raise funds to meet urgent vendor liabilities of approximately Rs. 6.58 Crores, along with 18% GST, aggregating to approximately Rs. 7,76,44,000/-.

2.14. Thereafter, vide notice dated 09.01.2025, Respondent Nos. 2 and 3 convened a Board Meeting on 13.01.2025. In the said meeting, a proposal was made to issue 8,57,667 equity shares of Rs. 10/- each by way of a rights issue for meeting the working capital requirements of the Respondent No. 1 Company. Accordingly, an offer letter dated 13.01.2025 was issued requiring the offeree(s) to subscribe the offered shares after making payments by 24.01.2025. Upon completion of the offer period, the shares were allotted to Respondent Nos. 2 and 3, in terms of the subscription amounts received from them, at the Board Meeting held on 03.02.2025. The number of Shares allotted were in following manner:

Case Citation: (2026) ibclaw.in 3461 NCLT

Name of Shareholder.	No. of Shares Allotted.	Type/Class of Shares.
Rajesh Valiparambil Ravi (Respondent 2)	85,767	Equity Shares of Rs. 10/- each.
Santosh Motilal Sankla (Respondent 2)	7,71,900	Equity Shares of Rs. 10/- each.

2.15. Pursuant to the aforesaid allotment, the shareholding of the Respondent No. 1 Company was altered, whereby the Petitioner's shareholding was reduced from 40% to 5.69%, while Respondent Nos. 2 and 3 held 10% and 84.31%, respectively. The petitioner had not subscribed to the said right issue, however, the same is impugned in the present petition on ground of non-receipt of notice of relevant board meeting as well as offer letter for subscription to the right issue.

2.16. Pursuant to the first rights issue, the Board decided to increase authorised share capital of the Respondent No. 1 Company by Rs. 25,00,000/-, divided into 2,50,000 equity shares of Rs.10/- each in its meeting held on 14.02.2025, which was attended by Respondent Nos. 2 and 3, convened in terms of notice dated 06.02.2025. Thereafter, the resolution for increase in the authorised share capital of the Respondent No. 1 Company was passed with the approval of Respondent Nos. 2 and 3 in an Extraordinary General Meeting ("EOGM") held on 22.02.2025,

IBC Laws | www.ibclaw.in

Case Citation : (2026) ibclaw.in 3461 NCLT

convened in terms of notice dated 14.02.2025.

2.17. Thereafter, Respondent Nos. 2 and 3 convened another Board Meeting on 12.03.2025 by issuing notice dated 04.03.2025. In the said meeting, a further rights issue of 2,50,000 equity shares of Rs. 10/- each was proposed. Accordingly, an offer letter dated 12.03.2025 was issued by the Respondent No. 1 Company requiring the offeree(s) to subscribe the offered shares after making payments by 24.03.2025. Upon completion of the offer period, the shares were allotted to Respondent Nos. 2 and 3 pursuant to a resolution passed by circulation on 28.03.2025. The allotment was as follows:

Name of Shareholder	**No. of Shares Allotted**	**Type/Class of Shares**
Rajesh Valiparambil Ravi (Respondent No. 2)	2,25,000	Equity Shares of Rs. 10/- each
Santosh Motilal Sankla (Respondent 3)	25,000	Equity Shares of Rs. 10/- each

2.18. The allotment of Equity Shares of Respondent No.1 to Respondent No. 2 & 3 changed the shareholding and voting rights in following manner:

IBC Laws | www.ibclaw.in

Name	Rajkumar Namdev Gawde (Petitioner 1)	Rajesh Valiparambil Ravi (Respondent 2)	Santosh Motilal Sankla (Respondent 2)
Pre-allotment shareholding	56,933	1,00,000	8,43,067
Pre-allotment shareholding percentage	5.69%	10%	84.31%
Post-allotment shareholding	56,933	125,000	10,68,067
Post-allotment shareholding percentage	4.55%	10%	86.45%

Case Citation: (2026) ibclaw.in 3461 NCLT

2.19. Thereafter, a Special Notice dated 08.04.2025 was issued to the Petitioner under Section 169 of the Companies Act, 2013, proposing his removal from the office of Director of the Respondent No. 1 Company. Respondent Nos. 2 and 3 thereafter circulated, by email, notice dated 15.04.2025 convening an EOGM on 25.04.2025 to consider the proposed removal of the Petitioner. At the EOGM held on 25.04.2025, Respondent Nos. 2 and 3 passed a resolution approving the removal of the Petitioner from the office of Director of the Respondent No. 1 Company.

3. The Petitioner has filed Company Application No. 317 of 2025 seeking, inter alia, restoration of his shareholding to 40% of the paid-up share capital of the Respondent No. 1 Company and other consequential reliefs. The reliefs sought in the said Application are as follows:

a) To allow the present Application;

b) To restore the percentage of the Applicant to 40% of paid up share capital and to that extent allot shares to the Applicant at the same price at which the right issue was made and take the payment for the same from the Applicant.

c) To restore the percentage of the Applicant to 40% of the paid up capital by transferring the Applicant share of right issue to the Applicant.

d) In the alternative, to allow the Applicant to buy out the Respondent's 60% stake at the valuation provided by the Applicant and to buy the illegally allotted right shares at the value paid by the Respondent.

e) Pending the hearing and disposal of the petition, to direct Respondent to give Petitioner details of the money utilised by the company on a fortnightly basis.

f) Pending the hearing and disposal of this petition/application, to direct a representative of the Petitioner to be on the board of the

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

company to oversee the interest of the Petitioner.

g) In alternative, kindly order to maintain status quo ante 12.01.2025 with respect to shareholding and board composition of the R-1 Company.

h) To direct the respondents to not to deal with, dispose off or deal with or create any further encumbrance on the assets of Respondent No. 1 Company;

i) In the alternative, to direct the Respondent Nos. 2 and 3 to consider the offer of the Applicant of buy-out of the shares of the Respondent Nos. 2 and 3 at a value arrived at by a Court appointed independent Registered Valuer m accordance with the original shareholding pattern between the Applicant and Respondent Nos. 2 and 3.

3.1. In the Application, the Petitioner contends that Respondent Nos. 2 and 3 had created a false narrative regarding the requirement of funds by the Respondent No. 1 Company. Although Respondent Nos. 2 and 3 had stated that the Company required approximately Rs. 6.58 Crores plus 18% GST, towards urgent vendor liabilities, the two rights issues conducted between January 2025 and March 2025 resulted in raising only approximately Rs. 1,10,76,670/-.

3.2. The Applicant/ Petitioner submits that despite the Respondents claim that Respondent Company was in need of funds for meeting vendor payments, the amount raised from Rights issue has been actually used to repay the loan of Rs. 51,27,000.28 given by the Petitioner to the Respondent Company. This payment is made despite the fact that, the Applicant has never demanded repayment of the loans provided by the Applicant to the Respondent Company.

3.3. The Applicant has further submitted that he is ready and willing to subscribe to additional shares of the Respondent No. 1 Company at face

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

value so as to restore his shareholding to 40%. The Petitioner has also offered to pay Rs. 73,84,450/- or such other amount as may be determined by an independent valuer for acquisition of sufficient shares to restore his 40% shareholding based on the pre-rights issue valuation of the Respondent No. 1 Company.

4. <u>Submissions of the Petitioner</u>:

4.1. Ld. Counsel for the Petitioner submits that the Petitioner and Respondent Nos. 2 and 3 had invested in the Respondent No. 1 Company with a mutual understanding that the affairs of the Company would be conducted on the principles of a quasi-partnership. It is submitted that the Petitioner had contributed more than Rs. 1 Crore by way of unsecured loans to the Respondent No. 1 Company for the purpose of acquiring and developing the MIDC land. It is further submitted that, since the Company was being managed as a quasi-partnership, the parties had always followed an informal mode of communication in respect of important business matters, primarily through verbal communication. No business decisions were ordinarily communicated or transacted through email.

4.2. Ld. Counsel for the Petitioner further submits that although the MIDC plot was originally allotted to the Respondent No. 1 Company and the Company had already paid Rs. 1,50,00,000/- towards the lease premium, certain complications arose in obtaining the lease. It is submitted that, pursuant to the order dated 17.03.2022 passed by MIDC approving re-allotment of the plot, the Company was required to pay a further premium of Rs. 3,14,82,000/- and execute the lease deed. Accordingly, the Petitioner and Respondent Nos. 2 and 3 mutually agreed to provide the required funds to the Company by way of unsecured loans. It is submitted that the parties advanced unsecured loans during FY 2022-2023, from which the lease premium was paid, and the lease deed was subsequently

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

executed by the Respondent No. 1 Company on 29.03.2023. Petitioner had lent by way of an unsecured loan an amount of Rs. 1,16,40,000/- during the FY 2022-2023 to the Respondent No. 1 Company.

4.3. It is submitted that, from January 2025 onwards, Respondent Nos. 2 and 3 issued and allotted an aggregate of 11,07,667 equity shares of the Respondent No. 1 Company through two rights issues. It is submitted that, in the first rights issue, Respondent Nos. 2 and 3 utilised the entire available authorised share capital of the Respondent No. 1 Company by approving the issue and allotment of 8,57,667 equity shares on 13.01.2025 and 03.02.2025, respectively.

4.4. It is further submitted that increase in Authorised share capital was undertaken with the intention of further diluting the Petitioner's shareholding in the Respondent No. 1 Company to below 5%.

4.5. Ld. Counsel for the Petitioner submits that immediately after the increase in authorised share capital, Respondent Nos. 2 and 3 proceeded with a second rights issue of 2,50,000 equity shares. The said issue and allotment further diluted his shareholding in the Respondent No. 1 Company to 4.55%.

4.6. Ld. Counsel for the Petitioner further submits that the two rights issues were undertaken by creating a purported urgency on account of alleged vendor payments and legal demand notices received by the Respondent No. 1 Company. It is submitted that, as recorded in the Board Meetings held in December 2024, the Company allegedly required approximately Rs. 6.58 Crores towards vendor payments, apart from GST thereon. However, Respondent Nos. 2 and 3 raised only Rs. 1,10,76,670/- through the two rights issues. The substantial difference between the alleged requirement of funds and the amount actually raised indicates that there

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

was no genuine requirement for such funds and that the rights issues were undertaken with the intention of diluting the Petitioner's shareholding to an insignificant minority.

4.7. It is further submitted that Respondent Nos. 2 and 3, in a unilateral Board Meeting held on 12.03.2025, proposed shifting the registered office of the Respondent No. 1 Company. The registered office was thereafter shifted to premises owned and occupied by Respondent No. 3. The said change was made with the intention of restricting the Petitioner's access to the premises from which the business of the Respondent No. 1 Company was being conducted.

4.8. Ld. Counsel for the Petitioner submits that Respondent Nos. 2 and 3 issued a Special Notice dated 07.04.2025 proposing the removal of the Petitioner from the Board of the Respondent No. 1 Company. Thereafter, on 08.04.2025, the Respondent No. 1 Company informed the Petitioner by email about the receipt of the Special Notice and the proposed Extraordinary General Meeting.

4.9. It is also submitted that communication by email was not the usual mode of communication followed by the Respondent No. 1 Company as was done in the case of meetings held in relation to right issues, his removal from the board, and increase in authorized capital.

4.10. Ld. Counsel for the Petitioner further submits that Respondent Nos. 2 and 3, who were responsible for the affairs and statutory compliances of the Respondent No. 1 Company, had been following a practice of informing the Petitioner about Board Meetings and General Meetings through informal communications rather than through formal written notices. This practice had given rise to a legitimate expectation that he would be informed in a similar manner about important matters concerning the

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

Company.

4.11. Ld. Counsel for the Petitioner submits that Respondent Nos. 2 and 3, under the pretext of raising funds for payment of vendors, have illegally diluted the Petitioner's shareholding in the Respondent No. 1 Company and, thereafter, removed him from the management of the Company. The acts of Respondent Nos. 2 and 3 are oppressive and prejudicial to his interests as a shareholder and director.

4.12. Petitioner in Rejoinder submits that, in February-March 2024, an amount of approximately Rs. 8.31 Crores was credited to the account of the Respondent No. 1 Company from an entity named SL Lumax Limited. This transaction contradicts the Respondents' contention that the Respondent No. 1 Company was facing an acute shortage of funds and urgently required capital infusion through the rights issues. It is submitted that, if the Company had received approximately Rs. 8.31 Crores in early 2024, there was no genuine or urgent requirement to raise only Rs. 1.10 Crores through the rights issues undertaken in January-March 2025.

4.13. It is further submitted that the Respondents issued the shares of the Respondent No. 1 Company at a substantially undervalued price. The shares were issued at their face value of Rs. 10/- per share, whereas their intrinsic value was Rs. 1,090.61/- per share. It is submitted that the issue of shares at such a substantial discount was prejudicial to the interests of the Respondent No. 1 Company and its existing shareholders and amounted to gross mismanagement of the affairs of the Company.

5. **Submissions of the Respondents:**

5.1. Ld. Counsel for the Respondents submits that on 17.03.2022, the Maharashtra Industrial Development Corporation ("MIDC") issued Order

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

No. ROP/BMT/L-1002 regularising the allotment of Plot A5, subject to payment of a penalty of Rs. 3,14,82,000/-. It is submitted that Respondent No. 1 Company paid the said amount on 27.02.2023 in accordance with the norms of MIDC, and the amount was adjusted against the payment made in 2010. Accordingly, the Respondent No. 1 Company secured its rights over the said plot without any contribution or involvement of the Petitioner.

5.2. It is submitted that the industrial plot was an asset of the Respondent No. 1 Company even before the Petitioner became a shareholder. The plot was regularised and preserved through the efforts and funds of the existing stakeholders. The Petitioner had no role in acquiring or reviving the said plot and, therefore, any claim to the contrary is incorrect and unfounded.

5.3. Ld. Counsel for the Respondents submits that Respondent No. 3, Mr. Santosh Motilal Sankla, was approached to arrange funds for payment of the MIDC dues. Respondent No. 3 accordingly invested approximately Rs. 3,14,82,000/- from his own funds towards clearance of the MIDC dues, against which he was subsequently allotted equity shares in the Respondent No. 1 Company. It is submitted that the Petitioner was not inducted into the Company on account of any financial or other contribution made by him. The Petitioner sought to be inducted into the company only after Respondent No. 3 had secured the MIDC plot through his own funds.

5.4. It is submitted that the Petitioner’s 40% equity stake was given as a goodwill gesture and was not in commensuration with any substantial financial contribution or expertise provided by him. The Petitioner subsequently contributed an aggregate amount of Rs. 1,53,06,000.28 to the Company in various tranches between 20.02.2023 and 02.04.2024. However, the MIDC penalty had already been paid in full from the funds

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

of Respondent No. 3 in February 2023 to protect the plot. The Petitioner was thus allotted a 40% equity stake which was disproportionate to his actual financial contribution.

5.5. Ld. Counsel for the Respondents submits that, after becoming a shareholder in July 2022, the Petitioner was appointed as an Additional Director of the Respondent No. 1 Company on 11.10.2022. It is submitted that the Respondents thereafter regularised his appointment as Director at the next shareholders' meeting. The Petitioner's subsequent prolonged absence and lack of cooperation resulted in loss of confidence of the majority shareholders and ultimately led to the decision to remove him from the Board.

5.6. It is submitted that, following the regularisation of Plot A5 in 2022, the Respondent No. 1 Company was required to develop an industrial building on the said plot within the time prescribed by MIDC. Construction of the project commenced in April 2024. During 2023 and early 2024, the Petitioner was repeatedly requested, through the usual modes of communication, to contribute his proportionate share towards the expenses of the project. However, despite several reminders and interventions by family members and common acquaintances, the Petitioner neither provided the required funds nor gave any meaningful response. It is further submitted that the Petitioner gradually stopped responding to calls made by Respondent Nos. 2 and 3 on his official contact number and made no financial contribution towards construction of the factory building.

5.7. It is further submitted that, as the deadline prescribed by MIDC for construction was approaching and the Petitioner had not contributed towards the project, Respondent No. 3 was required to step in and provide the necessary funds. Accordingly, Respondent No. 3 infused

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

approximately Rs. 5 Crores from his personal funds during 2024 to commence and continue the construction work on Plot A5.

5.8. Ld. Counsel for the Respondents submits that, towards the end of 2024, the Board of Respondent No. 1 Company decided to raise additional funds through a rights issue to meet the remaining project expenditure. It is submitted that the rights issue provided an equal opportunity to all existing shareholders, including the Petitioner, to subscribe to the shares in proportion to their existing shareholding and thereby maintain their percentage of ownership. Petitioner was informed of the said meetings and the proposed issue of shares but chose neither to attend the meetings nor to raise any objection.

5.9. It is submitted that, since the Petitioner did not subscribe to his entitlement under the rights issue, Respondent Nos. 2 and 3 subscribed to and were allotted the unsubscribed portion of the shares. The allotment was made only to meet the urgent funding requirements of the Company and was in the interest of the Company. It is submitted that the said process was not mala fide.

5.10. Ld. Counsel for the Respondents submits that, by 2025, the Petitioner's conduct had become an impediment to the functioning of the Company. Important decisions were allegedly being delayed or complicated due to his lack of response and participation. It is submitted that his continued presence on the Board also created a possibility of deadlock and disruption in the management of the Company. Consequently, Respondent Nos. 2 and 3, being the majority shareholders, lost confidence in the Petitioner's ability to act in the best interests of the Company.

5.11. It is further submitted that the removal of the Petitioner from the office of Director was carried out in accordance with Section 169 of the Companies

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

Act, 2013 and the applicable rules. The Petitioner was given due notice and an opportunity to participate in the process before the resolution for his removal was considered and passed.

5.12. Ld. Counsel for the Respondents submits that, in order to establish oppression under Section 241 of the Companies Act, 2013, the Petitioner must demonstrate that the conduct complained of was burdensome, harsh and wrongful and lacked probity or fair dealing. It is submitted that, in the present case, all material decisions were taken after giving due notice to the Petitioner and in accordance with law. Therefore, there was no mala fide conduct on the part of the Respondents.

5.13. Ld. Counsel for the Respondents submits that the actions taken by Respondent Nos. 2 and 3 were in the interest of the Respondent No. 1 Company and enabled the Company to continue its operations and complete the industrial project. It is submitted that the project on Plot A5 is now nearing completion and that a Building Completion Certificate (BCC) was obtained from MIDC in 2025. It is further submitted that the statutory compliances of the Company have been undertaken, including filing of the annual returns and financial statements for the financial years 2022-2023 and 2023-2024.

5.14. It is submitted that the amount of approximately Rs. 8.31 Crores received from SL Lumax Limited was not a free infusion of funds into the Respondent No. 1 Company. The amount was received pursuant to a Memorandum of Understanding entered into between the Respondent No. 1 Company and SL Lumax Limited for execution of specific project-related work. The said work was subsequently sub-contracted to Labhya Engineering for Rs. 7 Crores plus applicable GST, aggregating to Rs. 8.31 Crores including GST. It is submitted that the actual margin or profit earned by the Respondent No. 1 Company from the transaction was only

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

nominal and proportionate to the contractual arrangement.

5.15. It is further submitted that, despite the Company being in need of funds, the Petitioner had withdrawn an amount exceeding Rs. 1 Crore from the Respondent No. 1 Company. This conduct is contrary to the Petitioner's allegation that the Respondents alone were responsible for the financial position of the Company.

5.16. Ld. Counsel for the Respondents submits that the Petitioner's reliance on an intrinsic value of Rs. 1,090.61/- per share is legally and mathematically incorrect. It is submitted that the Petitioner has arrived at the said value by considering only the assets of the Company while ignoring the liabilities and debt appearing on the other side of the balance sheet. Such calculation does not represent the true value of the shares and is therefore misleading.

6. **Findings & Analysis:**

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

6.2. The Petitioner has filed the present Company Petition alleging that Respondent Nos. 2 and 3, being Directors of Respondent No. 1 Company, undertook certain actions contrary to the established course of conduct and the practice consistently followed between the parties. It is submitted that the notices of the Board Meetings and the Annual General Meeting were communicated solely through email, contrary to the practice followed between the parties, in order to prevent petitioner from subscribing to the rights shares offered to him in terms of his entitlement in terms of Section 62 of the Companies Act, 2013 and thereby enriching themselves to subscribe Petitioners shares of rights shares at face value, which was substantially lower than even its book value. The principal allegations are as follows:

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

a) Dilution of the Petitioner's shareholding in Respondent No. 1 Company by undertaking rights issues on two occasions within a short span of time.
b) Unilateral shifting of the registered office of Respondent No. 1 Company to premises owned and occupied by Respondent No. 3.
c) Removal of the Petitioner from the Board of Respondent No. 1 Company.

6.3. At the outset, it is noted that the Petitioner holds 4.55% shareholding in Respondent No. 1 Company on the date of filing of the present Petition. However, the Petitioner has pleaded that he held 40% of the shareholding until additional shares were allotted by way of right issue u/s 62 of the Companies Act, 2013 to Respondent No. 2 & 3. It is noted that, as on date of filing of present petition, there were 3 shareholders of the Respondent Company. Accordingly, basis pleadings in the Petition which are not disputed by the Respondents also, the Petitioner constitutes more than 1/10th of total number of members as on date of filing of present petition.

6.4. The Ld. Counsel for the Petitioner has alleged that his shareholding in the Respondent No. 1 Company was deliberately diluted by conducting two rights issues within a short period. Whereas, Ld. Counsel for the Respondents submitted that the additional equity shares were issued to raise funds required for completion of the project and payment of vendors, and the right shares were offered to the existing shareholders, including the petitioner, in proportion to their respective shareholding, however, the petitioner didn't subscribe to offered shares.

6.5. It is not in dispute that the Respondent Company had issued notice(s) dated 17.12.2024, 27.12.2024, 09.01.2025, 29.01.2025, 06.02.2025, and 04.03.2025 of the board meeting(s) of Respondent Company held on 20.12.2024, 30.12.2024, 13.01.2025, 03.02.2025, 14.02.2025, and

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

12.03.2025 as well as offer for subscription of the right shares on both occasions on the email ID of the Petitioner available with Respondent Company, and neither the relevant board meetings were attended by the Petitioner as Director nor he subscribed to the rights shares. Further, there is nothing on record to show when the notice was issued for the board meeting held on 28.03.2025 for allotment of equity shares. Further, neither Petitioner has pleaded that the minutes of these meetings of these meetings were received by them nor the Respondent Company has placed any evidence to show that the minutes of these meetings were supplied to the Petitioner, except that the minutes of subsequent meeting evidences that the minutes of preceding meeting were circulated. It is also not in dispute that the shares of Respondent Company under both right issues were offered at a face value and the offer of unsubscribed portion of right issue on account of non-subscription by the Petitioner was also offered at face value.

6.6. It is case of the Applicant that, since July 2022 till December 2024 the affairs and business of Respondent No.1 were conducted only through verbal discussions and informal modes of communication. Owing to this established course of conduct, the Petitioner was never accustomed to receiving communications through email and consequently was not in the habit of regularly checking emails for communications relating to the affairs of Respondent No.1. Any contention that Notices were communicated solely through email would therefore be contrary to the longstanding practice of verbal communication consistently followed by the Parties.

6.7. It is not in dispute that service of notice(s) through email is legally permissible mode of service under Section 20(2) of the Companies Act, 2013, and the notice(s) served through email to the petitioner had landed

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

in his email box. The Petitioner has disputed the service through this mode merely on the ground of earlier practice of verbal communication followed by the Respondent Company for notifying the dates of the meeting to the Shareholders / Members. Since the service of notice by email is a permissible mode of communication, in our considered view, such service constitutes sufficient service and binds the Petitioner. The Petitioners contention that sudden change in the mode of service had left him ignorant about the meetings in the absence of verbal communication as he was not in habit of accessing email account on regular basis cannot be accepted for a reason that the Petitioner, being aware of Board meetings having been convened at regular intervals as a Director of the Respondent Company since more than 2 years, ought to have alarmed when he was not in receipt of notices for board meeting after a gap of three months since the last verbal communication. Nonetheless, we find merit in the contention of the Petitioner that the sudden change in the mode of service of notice of the meetings, where such important decisions effecting his financial interests were to be taken, may be laced with ill motive on the part of Respondents to ensure non-participation of the Petitioner, but such ill motive, even if that be so cannot per-se lead to an inference that the decision of the board to issue right shares to the exclusion of the Petitioner at his back was malafide even if it was in the interest of Respondent Company. Accordingly, it is relevant to notice surrounding factors as well to ascertain whether such acts of the Respondent were in fact malafide.

6.8. It is noted that the Board of Directors of the Respondent Company had resolved to issue 8,57,667 equity shares at face value @ Rs.10 on right issue (First Rights Issue) in the Board Meeting held on 13.01.2025 and issued an offer letter to the existing Shareholders asking them to subscribe the shares between 17.01.2025 to 24.01.2025, and thereafter the

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

subscribed shares allotted in the board meeting held on 03.02.2025. The consideration towards unsubscribed portion of first right issue therefore was by the Respondent No.2 and 3 and the unsubscribed portion shares were allotted in the board meeting held on 03.02.2025. The relevant part of the minutes of the board meeting dated 13.01.2025 is reproduced hereunder:

> *"RESOLVED FURTHER THAT if no form of acceptance Is received from shareholders on or before 24th January 2025 along with payment, the offer shall be deemed to have been declined, and the unsubscribed portion of the offered shares shall be deemed to be offered to remaining interested shareholders and they shall deposit subscription amount within three working days from the closure of original offer*."

6.9. It is noted that the Board of Directors of the Respondent Company had resolved to issue 2,50,000 equity shares at face value @ Rs.10 on right issue (Second Rights Issue) in the Board Meeting held on 12.03.2025 and issued an offer letter to the existing Shareholders asking them to subscribe the shares between 17.03.2025 to 24.03.2025. Further, the offer letter dt. 12.03.2025 stated that "*The unsubscribed portion of shares if any shall be allotted/ disposed off by the Board of Directors in a manner thought fit by the Board of Directors: For this issue if no form of acceptance is received from shareholders on or before 24.03.2025 along with payment, the offer shall be deemed to have been declined, and the unsubscribed portion of the offered shares shall be deemed to be offered to remaining interested shareholders and they shall deposit subscription amount within two working days from the closure of original offer i.e. by 26.03.2025."* Accordingly, the consideration towards unsubscribed portion of Second right issue therefore seems to have been paid on 26/27.03.2025 as can be

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

inferred from the changes in balances as per Bank Statement for preceding and succeeding period on record, though the Bank Statement from the period from 26.03.2025 to 01.04.2025 is not before us. Thereafter, the subscribed as well as unsubscribed shares allotted on 28.03.2025 by circular resolution to Respondent Nos. 2 & 3 in proportion of 1:9.

6.10. It is noted that the Respondent Company had collected the sum of Rs. 85,76,670 from Respondent No. 2 and 3 in 2 tranches i.e. from 17.01.2025 to 24.01.25 and thereafter from 25.01.2025 to 28.01.2025. Though the bank statement for second period is not on record, however, it is presumed that the payment of Rs.34,30,670 was received for allotment of unsubscribed portion during this period. Nonetheless, the bank statements for the succeeding period reveals that the money collected pursuant to said right issue came to be first utilize on 20.02.2025 when a payment of Rs.50 lakhs was made to Labhya Manufacturing Private Limited and thereafter on 13.03.2025 and 21.03.2025.

6.11. Further, in relation to utilisation of proceeds of Second Right issue, it is noted that Rs. 10 Lakhs and Rs. 5 Lakhs were transferred to another account of the Respondent Company on 02.04.2025 and 30.04.2025.

6.12. From the above, the following facts emerge indicating the surrounding circumstances, in which the Right issue were offered, to decide whether such right issue was a bona fide act on the part of the Respondent Company, even if it is assumed that raising of further capital is always in the interest of the Company and the Respondent Directors had acted in a bona fide interest in the interest of Company.

a. The Right Issue was contemplated for making payment to the pressing Creditors as recorded in the meeting dt. 20.12.2024 & 30.12.2024;
b. The Petitioner was issued Notice on E-mail ID for the meetings on or

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

after 20.12.2024, which was in variance to the earlier practice of conveying the schedule of meeting orally as well;

c. The petitioner was issued notices for the meeting dt. 20.12.2024, 30.12.2024, 13.01.2025 and 03.02.2025 for a period shorter than 7 days;

d. The Petitioner had not attended any of these Meetings namely the meeting held for offering shares for the first time, the allotment of shares in consequence of such first offer, meeting held for increasing the authorized capital of the Respondent Company on 14.02.2025, and meeting held for offering shares for the Second time;

e. Allotment of Shares in consequence to Second Offer of Right shares by Circular Resolution on 28.03.2025 pertaining to originally subscribed shares and shares subscribed against unsubscribed portion after expiry of two working days from closure of Second Right Offer on 24.03.2025;

f. The right shares were offered at Rs. 10 each while book value of the shares of the Respondent Company was 306.87 and the Respondent Company was primarily holding one immovable property, the value of which may certainly have varied upwards. Further, the Respondent Company had not incurred any loss.

6.13. In this context it is relevant to note that (i) the notice(s) for board meeting dated 20.12.2024 and 30.12.2024, where the need for fund requirement was discussed, and (ii) the notice(s) for board meeting dated 13.01.2025 and 03.02.2025, where the Resolution for issuing share on right basis was passed and allotment of such right share was made, were issued at a notice of 3/4 days, which is shorter than 7 days as mandated in Section 173 of the Companies Act, 2013. The said section further provides that a meeting may be called at shorter notice to consider urgent business, provided that at least one independent director, if any, is present, and if no independent

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

director is present, the decisions taken at such meeting shall be circulated to all directors and shall become effective only after ratification by at least one independent director.

6.14. It is noted that the Central Government, vide notification dated 11.02.2021, has relaxed private companies the minimum mandatory period of 15 days prescried under Section 62(1)(a)(i) of Companies Act, 2013 to 7 days. Similarly, vide notification dated 05.06.2015, the minimum notice period of 21 days for a general meeting as prescribed in Section 101 of the Companies Act, 2013 is not applicable to a private company and the Articles of Association of the Respondent Company prescribes a period of 7 days of notice for the said purpose.

6.15. It was also argued that the Articles of Association of the Respondent company provides for convening a meeting at a shorter notice of even One day. It is relevant to note that Section 6 of the Companies Act, 2013 provides that any provision contained in the memorandum, articles, agreement or resolution shall, to the extent it is repugnant to the provisions of the Act, be void. Accordingly, while the Articles of Association prescribe a shorter notice period for convening Board Meetings, such provision has to be read subject to Section 173 of the Companies Act, 2013. In the present case, the notices for the relevant Board Meetings were issued through email to the Petitioner on 09.01.2025 and 04.03.2025 respectively, i.e., prior to the meetings held on 13.01.2025 and 12.03.2025.

6.16. In the present case the Respondent Company, being a private limited company, didn't have an independent director accordingly, a shorter notice could only been issued with the consent of all the Directors, particularly one who alleges to have receive no proper notice or the

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

decision taken in such meeting would have been circulated for ratification of such absentee director, in case it is presumed that such ratification is permissible in case of companies where there is no independent director also. As we have noted above, the funds collected from first right issue remained unutilized for about a month and the funds collected from Second Right Issue were utilized for transferring of funds to Respondent Company on 02.04.2025 & 30.04.2025 and balance proceeds remained in the same Account till August, 2025, when the closing balance was Rs. 780189.48. Accordingly, it can neither be said that there was an urgency necessitating calling of these board meetings at a shorter notice nor that the Company was in urgent needs of the funds to discharge its obligations to the pressing Creditors as has been made out to be the reasons for offering shares to the existing shareholders in the Board Meeting dt. 20.12.2024 and 30.12.2024.

6.17. The Petitioner, on the issue of the validity of a meeting irregularly convened, has placed reliance upon number of decisions. The principles laid down in the said decisions are considered and dealt with in the following paragraphs:

6.18. In the case of ***Sri Parmeshwari Prasad Gupta v. Union of India, 1973 SCC OnLine SC 222,*** wherein it was held that *"it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953."* It is noted that in this case the contention was raised that the telegram and the letter terminating the service of the Appellant by the Chairman was in pursuance to the invalid resolution of the board of directors passed on December 16, 1953 to terminate his

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

services, and the Hon'ble Court after noticing that the said action of the Chairman was ratified by the Board in their meeting held on December 23, 1953. The such ratification led to be conclusion that such termination was having subsequently ratified was proper, however, in the present case there is no evidence on record indicating ratification of issuance of shares on right basis, and allotment of shares, including unsubscribed portion attributable to the Petitioners right, pursuant thereto. Accordingly, this judgment is not applicable to the present case.

6.19. Further, reliance was placed on the decision of Calcutta High Court in the case of ***Joginder Singh Palta v. Time Travel Pvt. Ltd., 1982***, wherein it was held that *"irregularity in convening meeting cannot be a ground for injunction."* It is noted that the Hon'ble High Court rejected the contention of the Petitioner stating that *"the Petitioner's submission that there had been some irregularities in the conduct as also in convening the said meeting cannot be a ground for an order of injunction inasmuch as the company is at liberty to remove those irregularities at the next meeting of the company and cure such irregularities and set at naught the order."* In the present case it is not case of the Respondent that the exclusion of the Petitioner from the right issue arising from alleged non-service of notice was cured even after noticing on the closure of offer period that the Petitioner had not subscribe their shares by issuing a communication to this effect on the next date of such closure to inquire if the Petitioner had consciously decided to abstain from subscription or such non-subscription is result of lack of knowledge in this relation on his part.

6.20. Further, the Petitioner's reliance on the decision in case of ***Moolsha Investment Private Limited and Girja Holding Private Limited.v. M/s S. Kumar Enterprises AND Shambhulal Kasliwal v. M/s S. Kumar Enterprises*** is misplaced as in that case this Tribunal has held that the

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

delivery of notice cannot be held to be insufficient when such notice is served in accordance with practice/custom of a closely-held family company after finding that the Notices were served by handwritten delivery note bearing the signatures of Petitioner's representative in accordance with practice being followed to serve the notices in that manner. However, in the present case, it is the case of the Petitioner that the Notices for the meetings held on or after 20.12.2024 were served on his E-mail ID whereas the earlier Notices were used to be conveyed orally to the Petitioner.

6.21. Further, the decision in the case of ***K. Meenakshi Amma vs. Sreerama Vilaas Press and Publications, 1991*** is distinguishable on the facts as in that case the Appellant was present in the meeting, whereas, it is not the case here.

6.22. Further it is noted that in ***Bently-Stevens v Jones and others [1974] 2 ALL ER 653 : [1974] 1 WLR 638***, it is stated that *"court declined to issue an injunction holding that the irregularities can all be cured by going through the proper processes and the ultimate result would inevitably be the same."* The Hon'ble Court held so for the reason that *the irregularities can all be cured by going though the proper processes and the ultimate result would inevitably be the same*. Though, in the present case, though the irregularity in relation to resolutions passed for offer of shares on right issue and allotment in consequence thereof could be regularized considering that the Respondents constitute majority of Directors of the Respondent Company, but the hasty manner in which these meetings were convened certainly indicates the mala-fide on part of the Respondents and may also lead to probable inference that the Respondents, by doing so, intended to exclude the petitioner from having knowledge of such right issue so as to enable him to exercise the same.

IBC Laws | www.ibclaw.in

6.23. It is also pertinent to note that in the case of ***Macdougall. vs. Gardiner [L.R.] 1 Ch.D.13(2)***, it is held that *"In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the Company are entitled to do legally, there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes. It is not better that the rule should be adhered to that if it is a thing which the majority are the masters of, the majority in substance shall be entitled to have their will followed? If it is matter of that nature, it only comes to this, that the majority are the only persons who can complaint that a thing which they are entitled to do has been done irregularly; and that, as I understand it, is what has been decided by the cases of Mozleyv Alston and Foss v. Harbottle. In my opinion that is the rule that is to be maintained. Of course, if the majority are abusing their powers, and are depriving the minority of their rights that is an entirely different thing, and there the minority are entitled to come before this Court to maintain their rights; but if what is complained of is simply that something which the majority are entitled to has been done or undone irregularly, then I think it is quite right that nobody should have a right to set that aside, or to institute a suit in Chancery about it , except the company itself."*

6.24. Further, Section 175 of the Companies Act, 2013 authorizes the Board of Directors to pass a resolution by way of circulation after serving the resolution together with necessary papers to them by prescribed mode, which includes service by email, however, it also provides that "*where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be*

Case Citation: (2026) ibclaw.in 3461 NCLT

decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board." Section 175(2) also requires that the resolution by circulation so passed shall be noted at a subsequent meeting of the board made a part of minutes thereof. Ordinarily the company had not transacted any other business by circulation as is noted from the details of various meetings placed before us, accordingly, the decision to allot shares under second right by way of circular resolution was another act done in haste while the Company had utilize the proceed of the said issue only on 02.04.2025 for the first time when it transferred the money to its another bank account.

6.25. A right issue provides the existing shareholders an opportunity to subscribe to further shares in proportion to their existing shareholding and thereby maintain their percentage holding, hence, there can be no breach of any shareholder right. Ordinarily, a shareholder who declines to subscribe to the issue cannot later allege "oppression" merely because his percentage holding diminishes as a result. However, in view of above discussion, it is necessary to examine whether the power to issue fresh equity shares on right basis was exercised for a proper purpose and in the interest of the Company. Hon'ble Supreme Court in *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan (2005) 1 SCC 212,* wherein the Hon'ble Court also noted application of said doctrine in Needle Industries. In the said case, the Hon'ble Supreme Court explained the said doctrine stating that "*20. The principle deduced from these cases is that when powers are used merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company, the same cannot be upheld*". The Hon'ble Court in the said decision further observed the decision in *The Tea Brokers (P) Ltd. and Others v. Hemendra Prosad Barooah, (1998) 5 Company Law Journal 463* and quoted at Para 23 the observations of Justice A.N. Sen in it "*It is well settled that the directors may exercise*

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

their powers bona fide and in the interest of the company. If the directors exercise their powers of allotment of shares bona fide and in the interest of the company, the said exercise of powers must be held to be proper and valid and the said exercise of powers may not be questioned and will not be invalidated merely because they have any subsidiary additional motive even though this be to promote their advantage. An exercise of power by the directors in the matter of allotment of shares, if made mala fide and in their own interest and not in the interest of the company, will be invalid even though the allotment may result incidentally in some benefit to the company."

6.26. It is noted that the Proper-purpose doctrine was evolved by courts in Commonwealth countries including England and Australia and affirmed in *Dale & Carrington* (Supra), wherein it was said that *"21. Courts in the Commonwealth countries including England and Australia have emphasized that the duty of the Directors does not stop at "to act bonafide" requirement. They have evolved a doctrine called the 'proper purpose doctrine' regarding the duties of company directors. In Hogg v. Cramphorn, (supra), explicit recognition was given to the proper purpose test over and above the tribunal bonafide test…."*. The Hon'ble Court in that case further observed that "*Further it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors malafide, the said act must ordinarily be considered to be an act of oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run and affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors*

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

of the company". The Hon'ble Court further noted that "*28. It will be seen from the judgments in Needle Industries (supra) and Tea Brokers (supra) that the courts in India have applied the same tests while testing exercise of powers by directors of companies as in other Commonwealth countries*".

6.27. In the present case the Petitioner, constituting 1/3 of the board of directors, was admittedly served the said resolution by way of email, however, it is contended that he had no knowledge of such resolution as he was not accessing the said email account regularly, hence he had no occasion to object to passing of such resolution by way of circulation and to require the board of directors to consider such resolution in the regular meeting of board. Further, the subsequent board meeting was held on 08.04.2025 whereat the Respondents had considered removal of Petitioners are Director and issued a notice dated 08.04.2025 for his removal. Thereafter, a notice dated 15.04.2025 was issued for convening EOGM dated 25.04.2025 for consideration of the removal of Petitioner.

6.28. As noted above, that the shares of Respondent Company were offered on right basis at face value of Rs.10 each while its book value was Rs.306.87 as on 31.03.2025 and its fair market value would have been higher than it considering that the Respondent Company is capital was wholly invested in an immovable property situated in Pune. It was argued by the Respondents that the Petitioner was obligated to infused additional fund for completing the construction over the plot held by the Respondent Company and the Petitioner instead of infusing additional funds had sought to withdraw their loans to the Respondent Company, thereby making Respondent No.2 and 3 to bring additional funds by way of loans to carry on and complete the ongoing construction over such plot. It is further stated that, due to insistence of the Petitioner, the Respondent Company had to refund a sum of Rs.7.83 lakhs in FY 2024-25 and 51.27

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

lakhs in FY 2025-26.

6.29. Admittedly the development of the industrial plot owned by the Respondent Company required additional infusion of the funds and those funds were infused by the Directors and their relatives from time to time, however, there is nothing on record that the financial needs and funding thereof was discussed by the Directors any time prior to board meeting dated 20.12.2024, whereat for the first time the need was felt to mobilize further funds to meet outstanding obligations of about 5.95 crores due to one Labhya Manufacturing Company Private Limited. It is further noted that as against this tentative project requirement the board had only decided to mobilize a sum of Rs.110.76 lakhs in terms of both the right issue. The cash flow placed by Respondent No.2 on the direction of this Tribunal that Respondent No.2 and 3 had infused Rs.255 lakhs in FY 2025-26 out of which Rs.51.27 lakhs were returned to Petitioner and the remaining was utilized towards fund requirement for construction of building, part of which was also met by availing extended credit from the Creditors. These facts demonstrate that the Company was in fact in need of the additional resources, however, the Directors could have propose mobilization of additional funds by issuing shares at its fair value thereby protecting the intrinsic value of shares of a Shareholder on one hand and also giving a raise to the Respondents in the ownership of Respondent Company, who had brought an additional funds which certainly were not in the ratio of the original shareholding of party before us.

6.30. The chronology of this events starting from first right issue resulting into dilution of Petitioner to 5.69% from 40%, then increasing authorized capital of the Respondent Company, then second right issue and culminating into removal of Petitioner as Director all over in span of about 4 months makes it probable that all these events were part of pre-

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

meditated design of the Respondent No.2 and 3 to marginalize the Petitioner's stake in the Respondent Company and also affecting the net intrinsic value of the shares held by the Petitioner in the Respondent Company considering that there were substantial reserves in the Respondent Company on account of it having earned substantial profits in the year March 2024 and the net asset value of the Company mainly comprised of the value of the immovable property owned by it. Accordingly, the Petitioner had an indirect interest in the said immovable property, even though it is considered that the shareholder does not have any direct interest or ownership in the properties owned by a Company. On these grounds we are of considered view that impugned allotment under both the right issues deserve to be set aside on the ground of those allotments having been made with the sole objective of decimation of the Petitioners interest in the Respondent Company.

6.31. However, it is also pertinent to take into consideration that the Respondent Company may have certainly required additional funds after filing of the present petition as well to fund the construction activities over the immovable properties held by it, which were mobilize through the borrowing from Directors, and the Respondent Company may not be in a position to refund the amounts received against those allotments. Further, setting aside of those allotments may also cause prejudice to the Respondents, who have been infusing funds in the Respondent Company as loans to enable it to complete its construction activities.

6.32. During the pendency of present matter, the Petitioner filed an Application No.317 of 2025 to deposit the money equivalent to deposit the subscription money for subscribing to his rights entitlement under both the issues, which were in the absence of alleged non-subscription of the Petitioner, were offered to Respondent No.2 and 3 and subscribed by them, accordingly, we feel that setting aside of the allotment of shares on

IBC Laws | www.ibclaw.in

Case Citation: (2026) ibclaw.in 3461 NCLT

the right issue shall not be equitable. Accordingly, we consider it appropriate to direct the Respondent Company to offer such number of shares to the Petitioner within 30 days as to being his equity shareholding to the 40% of total share capital after such offer at the face value, to be enhanced by an interest factor of 15% per annum compounded annually from the dates the subscription money was required to be paid under each right issue till the date these additional shares are offered to the Petitioner. The Petitioner shall deposit the money with the Respondent Company within 1 week.

6.33. Since the Petitioner has asserted 40% share in the Respondent Company, which had required substantial infusion of funds to complete its construction activities, and the Petitioner had not infused the money in proportion to their asserted interest, which caused the Respondent No.2 and 3 to mobilize additional funds from their sources, we are of considered view that it shall be equitable to order interest @ 15% p.a. compounded annually on the funds lying to the credit of Petitioner and Respondent No.2 and 3 or their relatives / associates as on 01.04.2024, including the funds further infused thereafter. The interest so determined shall be credited to the account of respective person in the books of the Respondent Company and the Board of Directors of the Respondent Company shall be entitled to issue shares at the fair value of shares of the Respondent Company, to be determined by the registered valuer, towards settlement of these balances, in case the Petitioner does not infuse his pro-rata share of borrowings/loans due to these persons from the Respondent Company by 31.03.2027.

6.34. As regards removal of Petitioner as Director of the Respondent Company by the majority shareholders, we have not found the Respondent Company to be a quasi partnership in nature as the Petitioner had not brought equivalent money to fund the financial needs of the Respondent

IBC Laws | www.ibclaw.in

Case Citation : (2026) ibclaw.in 3461 NCLT

Company, and the Respondent No.2 and 3, even without the allotment under impugned right issues, had 60% share in the Respondent Company, accordingly, they were entitle to pass a resolution for removal of Petitioner as Director. Further, the Petitioner was afforded a right of representation as required under Section 169(3) of the Companies Act, 2013, at his registered email address, and the Petitioner did not submit any written representation in response to the said notice. Accordingly, it is observed that the statutory procedure prescribed under Section 169 of the Companies Act, 2013 was followed. Hence the procedure for removal of the Petitioner was in accordance with the law as well as the legal principles laid down in the case of *Macdougall v. Gardiner (supra).*

6.35. Further, mere change of the registered office within same city does not cause any prejudice to a shareholder or the company, unless the access to such registered office is denied to the member. Since the decision to shift the registered office within city limits can be taken by the board in terms of Section 12(5) of Companies Act, 2013, and the board took such decision, we are of considered view that no order is called for in relation to shifting of the registered office.

6.36. In terms of the above, CP No. 132/2025 is allowed and disposed of. Further, CA No.317 of 2025 stand disposed of in terms of the above.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)

/AJ/

IBC Laws | www.ibclaw.in