IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301 - RCP (Companies Act)/3/2025 (Old Case) CP 101 of 2019

Restore on (18-12-2025)
With
ITEM No.302 - IA 3 of 2020

Under Section 241-242, 244 & 59 of Co. Act, 2013

IN THE MATTER OF:

D-Vois SSV Broadband Pvt Ltd & Ors **.....Applicants**
V/s
Airlink Communications Pvt Ltd & Ors **.....Respondents**

Order delivered on: 09/10/2026

C O R A M:
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court vide, separate sheet.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT–I, AHMEDABAD

RCP No.03 OF 2025
With
IA No. 3 OF 2020 in CP 101 of 2019

(Old C.P. No./101/AHM/2019 Restored on 18.12.2025)

RCP No.03 of 2025

(Petition under Section 241 read with Section 242 and 244 of the Companies Act, 2013 and in the matter of Section 59 of the Companies Act, 2013.)

In the Matter of:

D-VoiS SSV Broadband Private Limited
Having registered office at No.
A/3 Landmark Society, Sec-14, Vashi,
Navi Mumbai, Maharashtra 400703.

...Petitioner

VERSUS

1. **Airlink Communications Private Limited,**
having registered office at
No. 1 & 2 Annapurna. Shopping Centre
1st Floor Adajan Patia Surat,
Gujarat 395009.

...Respondent No. 1

2. **Mr. Vipul Suryakant Shah**,
201, Lavkush Apartment,
Near Makanjipark, Jay Ambe Road,
Adajan Surat 395009.

...Respondent No. 2

3. **Mr. Harishbhai Champaklal Gandhi**
502, Dhara Apartment, Asha Nagar,
Navsari 396445, Gujarat,

...Respondent No. 3

4. **Registrar of Companies**,
ROC Bhavan, Opp Rupal Park Society,
Behind Ankur Bus Stop,

Naranpura, Ahmedabad-380013.

...Respondent No. 4

With

IA No. 3 OF 2020

(Under Section 241 read with Section 242 and 244 of the Companies Act, 2013 and in the matter of Section 59 of the Companies Act, 2013.)

1. **D-VoiS SSV Broadband Private Limited**
   Having registered office at No.
   A/3 Landmark Society, Sec-14, Vashi,
   Navi Mumbai, Maharashtra 400703.

2. **Mr. Ankit Sanjay Gupta**
   Room No. 2, Raj Bhavan,
   Plot No. 91 Sector 21, Near Agarwal Corner,
   Nerul, Thane, Navi Mumbai 400706

3. **Mr. Venkatramanan Subramaniam**
   D-505, Nagarjuna Meadows,
   Doddaballapur Main Road, Puttenahalli,
   Yelahanka, Bangalore North 560065

4. **Mr. Vishwanatha Holla**
   186 B, 1st Floor, 2nd Cross,
   14th Main, Hanumantha Nagar,
   Bangalore 560050

.... Petitioners

1. **Airlink Communications Private Limited**
   having registered office at No. 1 & 2
   Annapurna Shopping Centre 1st Floor
   Adajan Patia Surat, Gujarat 395009

2. **Mr. Vipul Suryakant Shah**
   201, Lavkush Apartment, Near Makanjipark,
   jay Ambe Road, Adajan Surat 395009

3. **Mr. Harishbhai Champaklal Gandhi**
   502, Dhara Apartment, Asha Nagar,

Navsari 396445 Gujarat

4. **Registrar of Companies**
ROC Bhavan, Opp Rupal Park Society,
Behind Ankur Bus Stop, Naranpura,
Ahmedabad-380013

....Respondents

Order Pronounced On: 09.10.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Petitioner : Mr. Arjun Seth, Adv. a.w.
Mr. Rushabh Shah, Adv
For the Respondent : Mr. Nandish Chudgar for
R1 to R3
None for R-4

O R D E R
(Per Bench)

1. This order is being passed in the Restored Company Petition No. 3 of 2025 (Old Case No. CP/101/AHM/2019) and the Interlocutory Application bearing I.A. No. 3 of 2020 filed therein. Over the course of the proceedings, the aforesaid application came to be filed by the parties, arising out of and relating to the same set of facts and underlying disputes involved in the Company Petition. In order to avoid duplicity of orders and in view of the

common facts and issues involved, this common order is being passed to dispose of the above-mentioned pending Company Petition and IA.

2. The present **Restored Company Petition No. 3 of 2025** (Old Case No. CP/101/AHM/2019), as amended pursuant to the order dated 18.12.2025, has been filed by D-Vois SSV Broadband Private Limited, through its authorised signatory, Ms. Laxmi Shiju, on 19.06.2026, under Sections 241, 242 and 244 read with Section 59 of the Companies Act, 2013, against Airlink Communications Private Limited and its Directors, along with the Registrar of Companies, Ahmedabad, seeking, inter alia, the following reliefs:

A. To grant an Injunction directing the respondents to re-instate Mr. Ankit Sanjay Gupta, Mr. Venkatramanan Subramanium and Mr. Vishwanath Holla, back to the post of Directors of ACPL board until the final order passed by this Hon'ble Court.

B. To give directions for urgent forensic audit and investigation of the respondent no. 1 company by any top firms, as the respondents cannot be trusted due to the malicious acts of the respondent nos. 1, 2 and 3.

C. To direct the Respondents to allow the person authorized by the petitioner for inspection of all the original records, books of accounts maintained by the Respondent Company and copies of the same to be provided to the person authorized by the Petitioner.

D. *To consider DSSV (Petitioner) as 74% shareholder of ACPL and direct the respondent no. 1, 2 and 3 to allow DSSV to enforce its rights as 74% shareholder so that DSSV is involved in all the major and minor acts and decision of the company.*

E. *To direct ACPL to incorporate DSSV as shareholder in the shareholder register of ACPL by rectifying its register and recording the same.*

F. *To remove the Respondent No. 2 and 3 from the post of the Directors of the Respondent No. 1 Company on account of their malicious acts of illegally removing the Mr. Ankit Sanjay Gupta, Mr. Venkatramanan Subramanium and Mr. Vishwanath Holla from their post of directorship.*

G. *To direct the respondents to comply with all the legal requirements to reinstate the Mr. Ankit Sanjay Gupta, Mr. Venkatramanan Subramanium and Mr. Vishwanath Holla as the directors of respondent no. 1 company.*

H. *To direct ACPL to assist DSSV to complete the requirements of post transferring of shares.*

I. *To direct Registrar of Companies, Ahmedabad or any concerned authorities in Ministry of Corporate Affairs, to investigate into all the companies in which the Respondent No. 2, 3 and the earlier shareholders are the Directors.*

J. *To take action against the Respondent No. 4 or any concerned authorities under Ministry of Corporate Affairs for removing the Mr. Ankit Sanjay Gupta, Mr. Venkatramanan Subramanium and Mr. Vishwanath Holla from the post of directors as deem fitted by this Hon'ble Bench.*

K. *To direct the Respondent no. 4 or any other concerned authorities under Ministry of Corporate Affairs to investigate in the matter of approving the DIR 12 filed by the respondents 1, 2 and 3 even when objections were raised.*

L. *Any other interim relief and pass such other order, as the Hon'ble Court may deem fit and proper in the circumstances of the case.*

3. Further, the **Interim Application No. 3 of 2020**, filed in the aforesaid Restored Company Petition No. 3 of 2025

(Old Case No. CP/101/AHM/2019), has been filed by D-Vois SSV Broadband Private Limited and its erstwhile Directors, Mr. Ankit Sanjay Gupta, Mr. Venkatraman Subramaniam and Mr. Vishwanath Holla, against Airlink Communications Private Limited, its Directors and the Registrar of Companies, Ahmedabad, seeking, inter alia, interim reliefs:-

A. *To grant an Interim relief directing the respondent 4 to re-instate the Petitioner no. 2, 3 and 4 back to the post of Directors of the Respondent No. 1 Company's board until the final order passed by this Hon'ble Court.*

B. *To direct the Respondent No. 4 to provide with the E-notings in respect of the DIR 12 filed by the Respondent No. 2 and 3 to remove the Petitioner No. 2, 3 and 4 from the position of directors since the DIR 12 were approved even when objections were raised by the said Petitioners.*

C. *To direct the Respondent no. 4 or any other concerned authorities under Ministry of Corporate Affairs to investigate in the matter of approving the DIR 12 filed by the respondents 1, 2 and 3.*

D. *The Hon'ble Tribunal would be pleased to order for forthwith release of the salary to the said employees pending the present application in the overall interest of justice.*

E. *To restrict the Respondent no. 1 to 3 from alienating any asset or property of the Respondent no. 1 company.*

F. *To restrict the Respondent no. 1 to 3 from syphoning of any funds from the Respondent No. 1 Company as the Petitioner No. 1 has invested huge amount of money in the Respondent No. 1 Company.*

4. Before proceeding to adjudicate upon the reliefs sought in the present Restored Company Petition No. 3 of 2025 and

Interim Application No. 3 of 2020, it is considered appropriate to set out the relevant background in brief, so as to facilitate adjudication of the issues arising in the present proceedings. The Petitioner in **RCP No. 3 of 2025** has submitted that: -

4.1 Respondent No.1, Airlink Communications Private Limited, is stated to be a company incorporated under the Companies Act, 1956 and having its registered office at No. 1 & 2 Annapurna Shopping Centre, 1st Floor, Adajan Patia, Surat, Gujarat. Its Master Data has been annexed as Annexure C. Respondent Nos. 2 and 3 are stated to be its directors, while Respondent No.4 is the Registrar of Companies, Ahmedabad.

4.2 The dispute arises principally out of an Advance Agreement dated 05.03.2019 entered into between the Petitioner and Respondent No.1, whereby the Petitioner agreed to provide an advance of Rs.4,00,00,000/- (Rupees Four Crores only) to Respondent No.1 to meet its cash-flow requirements, subject to the condition that the amount would be repaid on or before 25.03.2019. The said Agreement was duly stamped and registered vide ESBTR No. 16187662818074 dated 07.03.2019 and is annexed as Annexure D. The bank statement evidencing transfer of the said amount to Respondent No.1 is

annexed as Annexure E.

4.3 To secure repayment of the aforesaid advance with interest, Mr. Vipul Suryakant Shah, Sheth Brothers Wealth Creation LLP and Sheth Brothers Wealth Management LLP, described as the pledgors and guarantors, agreed to pledge 74% equity holding in Respondent No.1, comprising 18,57,400 equity shares of Rs.10/- each, in favour of the Petitioner. The relevant pledge arrangements and split share certificates are annexed as Annexure F.

4.4 The Advance Agreement also provided, inter alia, for interest at 2% per month in the event of delay/default and authorised the Petitioner, upon default, to invoke and transfer the pledged shares in accordance with the terms of the Agreement.

4.5 Respondent No.1 allegedly failed to repay the advance by the due date. Against the advance of Rs.4 crore, Respondent No.1 made payments aggregating to Rs.1,28,00,000/-, leaving a principal amount of Rs.2,72,00,000/-, besides interest, outstanding. The Petition gives the details of payments made on 26.03.2019, 27.03.2019, 06.04.2019 and 20.04.2019, which are supported by the payment details and bank statement annexed as Annexures H and I.

4.6 The Petitioner states that, despite repeated requests and assurances, Respondent No.1 failed to repay the outstanding amount. Thereafter, Respondent No.1

agreed to make a further payment of Rs.1,00,00,000/- and requested additional time. Three post-dated cheques bearing Nos. 551155, 551156 and 551157, each dated 25.03.2019 and drawn on Punjab National Bank, Station Road Branch, Surat, were presented but were dishonoured for the reason "Funds Insufficient". The cheque copies and return memos are annexed as Annexures G and J, while the corresponding bank statement is annexed as Annexure K.

4.7 According to the Petitioner, in order to protect its interest and secure the outstanding amount, three representatives of the Petitioner, namely Mr. Ankit Sanjay Gupta, Mr. Venkataraman Subramaniam and Mr. Vishwanath Holla, were appointed as directors of Respondent No.1 vide Board Resolution dated 30.04.2019. Their individual appointment letters of the same date are annexed as Annexures L and M.

4.8 The Petitioner further states that it subsequently came to know of financial difficulties in Respondent No.1. The Petitioner engaged Stragility Consulting Private Limited (SCL) to undertake due diligence of Respondent No.1. However, as alleged, when SCL visited the premises of Respondent No.1, its representatives were informed by Respondent Nos. 2 and 3 that the engagement of SCL was not valid and that it would not be permitted access to the books, records or other information of Respondent No.1. The

engagement letter dated 09.08.2019 is annexed as Annexure O.

4.9 The Petitioner also alleges that Respondent Nos. 2 and 3 obstructed the conduct of meetings of the Board of Directors. Various notices for Board meetings, adjournments and the resulting minutes are relied upon by the Petitioner and are collectively annexed as Annexures P, Q, R, S and T. The Petition records that several meetings could not be effectively conducted due to the absence/non-cooperation of Respondent Nos. 2 and 3.

4.10 In view of the alleged default and the conduct of Respondent Nos. 2 and 3, the Petitioner decided to invoke the pledge over the shares in terms of the Advance Agreement. Notices in this regard were issued and the Petitioner proceeded with invocation of the pledged shares. The relevant notices and proof of service are annexed as Annexures U and V.

4.11 The Petitioner states that, notwithstanding the aforesaid circumstances, Respondent Nos. 2 and 3 convened an EGM on 28.08.2019 and passed a resolution for removal of the Petitioner's nominee directors, namely Mr. Ankit Sanjay Gupta, Mr. Venkataraman Subramaniam and Mr. Vishwanath Holla, allegedly without giving them prior notice or an opportunity of being heard. The Petitioner further alleges that the EGM was held without its participation as the shareholder holding 74% of the

equity shares. The notice/minutes and related documents are annexed as Annexures W and X.

4.12 It is further alleged that Respondent No.1 filed DIR-12 dated 04.09.2019 with the Registrar of Companies for removal of the aforesaid directors. The Petitioner states that the affected directors came to know of their removal only upon receiving an email dated 13.09.2019 from the ROC concerning resubmission of the DIR-12. The relevant correspondence and DIR-12-related documents are annexed as Annexures Y and Z.

4.13 The Petitioner states that the affected directors thereafter raised objections before the Registrar of Companies, contending that they had neither been given proper notice of the EGM nor an opportunity to explain their position. The Petitioner alleges that, despite being aware of the objections, Respondent No.4 approved the DIR-12 and recorded the removal of the said directors. The relevant ROC correspondence and approved DIR-12 are annexed as Annexure AA.

4.14 The Petitioner further states that it lodged Serious Complaint Forms (SCF) before the ROC, Ahmedabad concerning the alleged acts of Respondent Nos. 1 to 3. A copy of the complaint along with its attachments and the acknowledgement thereof are annexed as Annexures BB and CC, respectively.

4.15 The Petition also refers to proceedings initiated in

connection with the affairs of Respondent No.1, including complaints/cases concerning alleged cheque dishonour and other statutory violations, particulars of which have been set out in the Petition. The Petitioner contends that the acts complained of have adversely affected its rights as a substantial shareholder and have necessitated intervention by this Adjudicating Authority.

5. The Respondent No. 1 Company and Respondent No. 2, Mr. Vipul Shah, filed their Affidavit-in-Reply on 17.03.2021 vide Inward Diary No. D-2721. The same is reproduced hereinbelow:

5.1. The Respondents have raised a preliminary objection as to the maintainability of the Application under Sections 241, 242 and 244 of the Companies Act, 2013, contending that the Application is essentially an attempt to recover an alleged outstanding amount of Rs.2.72 crore paid by D-Vois SSV Broadband Private Limited ("DSSV") to Airlink Communications Private Limited ("ACPL") under the guise of a proceeding alleging oppression and mismanagement.

5.2. It is further contended that the Applicants do not satisfy the statutory requirement of Section 244 as they are not registered shareholders/members of ACPL. According to the Respondents, the Applicants have not established the requisite shareholding or

membership in the Register of Members and, therefore, lack the statutory locus to maintain the proceedings under Section 241.

5.3. The Respondents have also alleged that the proceedings constitute an abuse of the process of the Tribunal, as the Applicants are seeking recovery of an alleged outstanding amount through proceedings under Sections 241-242 of the Companies Act, rather than pursuing the appropriate remedy for recovery of money.

5.4. On merits, the Respondents dispute the Applicants' characterization of the Rs.4 crore transaction as a mere advance made to meet ACPL's cash-flow requirements. It is their case that the amount was paid pursuant to a proposed joint venture/business arrangement between DSSV and ACPL, under which DSSV was to acquire 51% shareholding in ACPL and the remaining 49% was to be held by the promoters of DSSV. The Respondents rely upon the contemporaneous email correspondence exchanged in March 2019 in this regard.

5.5. The Respondents state that, pending finalisation of the joint-venture transaction, an Advance Agreement dated 05.03.2019 was executed and Rs.4 crore was paid by DSSV to ACPL. According to them, the proposed transaction contemplated acquisition of 51% shares of ACPL and the pledge of shares as security. They further state that the parties had

agreed upon a valuation of approximately Rs.35.70 crore for ACPL, subject to the terms of the proposed arrangement.

5.6. It is further submitted that, after the Applicants allegedly withdrew from the proposed joint venture and demanded repayment of Rs.4 crore, ACPL was facing a liquidity crunch and was unable to immediately repay the amount. The Respondents contend that DSSV thereafter commenced various proceedings and actions against the Respondents, resulting in disputes between the parties.

5.7. The Respondents state that, notwithstanding the disputes, DSSV initially appointed Applicant Nos. 2 to 4 as Directors of ACPL, pursuant to individual appointment letters dated 30.04.2019, with the stated purpose of overseeing recovery of the amount advanced and furthering the proposed joint venture. According to the Respondents, the arrangement subsequently broke down and the parties' relationship became contentious.

5.8. The Respondents allege that DSSV and its management thereafter initiated various proceedings, including criminal complaints under Section 138 of the Negotiable Instruments Act and complaints before the Economic Offences Wing, Mumbai, against ACPL and its Directors. It is also stated that DSSV filed the present proceedings alleging oppression and mismanagement.

5.9. With regard to the proposed Board Meeting/EGM, the Respondents contend that Applicant Nos. 2 to 4 were duly issued notices and that the Board/EGM proceedings were undertaken in accordance with the applicable procedure. They dispute the allegation that the meetings were convened clandestinely or without authority and rely upon the correspondence exchanged with the Applicants in August 2019.

5.10. The Respondents further contend that the Applicants had themselves sought to convene meetings at Bangalore, despite the registered office of ACPL being situated at Surat, and that the conduct of the Applicants demonstrated their intention to interfere with the affairs of the Company. The Respondents rely upon their letter dated 06.08.2019 objecting to the proposed Board Meeting at Bangalore and stating that such meeting would not have legal validity.

5.11. It is stated that the Board ultimately passed a resolution dated 30.08.2019 for removal of Applicant Nos. 2 to 4 as Directors of ACPL, and Form DIR-12 was thereafter filed with the Registrar of Companies, Gujarat. The Respondents deny that such removal was illegal or contrary to law.

5.12. The Respondents deny the allegation that DSSV, being a shareholder of ACPL, was entitled to notice of the EGM. They contend that DSSV was not a registered shareholder/member of ACPL, and consequently there was no obligation to serve notice

of the EGM upon DSSV in the manner alleged by the Applicants.

5.13. The Respondents also deny the allegation that the Applicants were not served with notice of the EGM dated 28.08.2019, contending that the relevant notices and communications were duly issued. They further dispute the authenticity and legal effect of the alleged Board/EGM proceedings relied upon by the Applicants.

5.14. In response to the allegation regarding DIR-12 filed on 04.09.2019, the Respondents deny that the filing was false, artificial or a "dramatic shock". They maintain that the removal of the Applicants was pursuant to valid corporate action and that the statutory filing was consequential thereto.

5.15. The Respondents further deny the Applicants' allegations regarding their inability to inspect the books and records of ACPL, the alleged failure to convene Board Meetings, and the alleged misuse of the funds advanced by DSSV. They contend that these allegations are incorrect, unsupported or contrary to the contemporaneous correspondence and conduct of the parties.

5.16. The Respondents rely upon various contemporaneous documents, including emails exchanged in March 2019 concerning the proposed joint venture, correspondence relating to incorporation of D-Vois Airlink Private Limited, the

NOC dated 05.03.2019 issued by ACPL regarding availability of the proposed name, and the correspondence/notices concerning the Board Meeting dated 12.08.2019.

5.17. On the basis of the aforesaid submissions, the Respondents contend that the present proceedings are not maintainable under Sections 241-242 read with Section 244 of the Companies Act, 2013, and that the reliefs sought by the Applicants are liable to be rejected.

6. Respondent No. 3, Mr. Harishbhai Champaklal Gandhi filed its Affidavit-in-Reply on 13.03.2020 vide Inward Diary No. D-3435. The same is reproduced hereinbelow:

6.1. Respondent No. 3 states that he is a Director of Respondent No. 1 Company and is conversant with the facts of the matter. At the outset, he raises a preliminary objection to the maintainability of the Application, contending that, as on the date of filing, the Petitioners were not members/shareholders of Respondent No. 1 Company and, therefore, lacked the requisite locus under Sections 241-242 read with Section 244 of the Companies Act, 2013.

6.2. It is further contended that the Application is a coloured attempt to recover the amount of Rs.2.72 crore, allegedly advanced by the Petitioners, by giving the dispute the colour of oppression and

mismanagement. According to Respondent No. 3, the appropriate remedy for recovery could not be pursued under Sections 241-242 of the Act.

6.3. Respondent No. 3 denies that the Rs.4 crore paid by DSSV to ACPL was merely an advance for meeting the cash-flow requirements of ACPL. It is stated that the parties had entered into negotiations for a proposed joint venture, pursuant to which DSSV intended to acquire 51% shareholding in ACPL, and the transaction was supported by the Advance Agreement dated 05.03.2019.

6.4. It is submitted that DSSV and its representatives had undertaken due diligence of ACPL and had agreed to proceed with the proposed transaction. Respondent No. 3 contends that, if the Advance Agreement is considered in its entirety, the same constituted a commercial arrangement between the parties and cannot be treated as an unconscionable agreement merely because the proposed transaction subsequently failed.

6.5. Respondent No. 3 states that, pursuant to the proposed arrangement, the Petitioners were appointed as Directors of ACPL. According to him, the appointment was made pursuant to the understanding between the parties and in furtherance of the proposed joint venture. He alleges that the Petitioners subsequently acted in breach of the trust reposed in them and took steps against

the Respondents.

6.6. With regard to the pledge of 74% equity shares of ACPL, Respondent No. 3 submits that the pledged shares were intended to secure the payment made by DSSV and that the arrangement was not intended to create any permanent transfer of control. He disputes the Petitioners' interpretation of the value and nature of the pledged shares and contends that the Petitioners were aware of the consequences of acquiring such shares.

6.7. It is further stated that the Advance Agreement contemplated repayment of the amount advanced and provided for security by way of pledged shares and post-dated cheques. Respondent No. 3 disputes the Petitioners' contention that the transaction, by itself, constitutes oppression or mismanagement.

6.8. Respondent No. 3 states that ACPL had made part-payments towards the amount advanced and that the balance amount of Rs.2.72 crore, along with interest, remained outstanding. He disputes the allegation that ACPL deliberately failed to repay the amount and contends that the proceedings are essentially directed towards recovery of the outstanding amount.

6.9. With regard to the post-dated cheques, Respondent No. 3 states that the cheques were issued as security in connection with the transaction and disputes the Petitioners' allegation regarding their

dishonour and the circumstances in which they were presented. He further contends that the subsequent proceedings under Section 138 of the Negotiable Instruments Act form part of the disputes between the parties.

6.10. Respondent No. 3 denies that, after the cheques were dishonoured, the Petitioners were assured that the amount would be repaid within a specified period. He contends that the Petitioners' subsequent conduct was contrary to the understanding between the parties.

6.11. With respect to the appointment of Applicant Nos. 2 to 4 as Directors, Respondent No. 3 states that their appointment was part of the proposed arrangement and that the Petitioners themselves had agreed to their induction on the Board. He disputes the allegation that their appointment conferred an unconditional or permanent right to continue as Directors.

6.12. Respondent No. 3 alleges that, instead of proceeding with the agreed arrangement, the Petitioners sought to exercise control over ACPL and its affairs. He specifically refers to their attempts to convene meetings at Bangalore, whereas the registered office and records of the Company were at Surat, and states that the Respondents repeatedly requested that Board Meetings be held at Surat.

6.13. Respondent No. 3 denies that the Petitioners were

prevented from participating in Board Meetings. He states that notices were issued and that the Petitioners either failed to attend or sought to convene meetings at a place other than the registered office.

6.14. It is further alleged that the Petitioners attempted to invoke the pledge of the shares and transfer the pledged shares pursuant to the Advance Agreement. Respondent No. 3 disputes the legality of the manner in which the Petitioners sought to exercise the alleged rights under the pledge and contends that the Petitioners had not complied with the applicable statutory requirements for transfer and registration of shares.

6.15. Respondent No. 3 disputes the alleged Board Meeting dated 12.08.2019 at Bangalore and the resolutions said to have been passed therein, contending that the Petitioners had no authority to unilaterally convene such meeting and that the proceedings were contrary to the principles of corporate governance.

6.16. With respect to the EGM dated 28.08.2019, Respondent No. 3 denies that Applicant Nos. 2 to 4 were deprived of an opportunity to represent themselves. It is contended that notice of the EGM was served and that the Petitioners deliberately chose not to make their representation before the meeting.

6.17. Respondent No. 3 also disputes the contention that DSSV was entitled to notice of the EGM as a shareholder, asserting that DSSV was not a registered member/shareholder of ACPL and that, therefore, the question of service of notice upon DSSV did not arise.

6.18. It is stated that the resolutions for removal of Applicant Nos. 2 to 4 were thereafter acted upon and Form DIR-12 dated 04.09.2019 was filed with the Registrar of Companies. Respondent No. 3 denies that the filing was illegal or that the Petitioners were unaware of the proceedings leading to their removal.

6.19. Respondent No. 3 disputes the allegations concerning the conduct of the Registrar of Companies and states that the statutory authorities acted in accordance with the documents and filings placed before them. He further refers to the complaints filed by the Petitioners before the ROC and other authorities and submits that the same do not establish oppression or mismanagement.

6.20. Respondent No. 3 also refers to the criminal proceedings/complaints filed by DSSV, including proceedings under Section 138 of the Negotiable Instruments Act and before the Economic Offences Wing, Maharashtra, and contends that the Petitioners have approached the Tribunal with an attempt to convert a commercial/payment dispute

into proceedings under Sections 241-242 of the Companies Act.

6.21. On the basis of the aforesaid submissions, Respondent No. 3 contends that the Application is not maintainable, that the Petitioners lack the requisite membership/shareholding to invoke Sections 241-242, and that the allegations do not establish oppression or mismanagement. Accordingly, he seeks dismissal of the Application with costs.

7. Mr. Ankit Sanjay Gupta, Applicant No. 2 and authorised representative of Applicant Nos. 1, 3 and 4, filed a Rebuttal Affidavit/Rejoinder in response to the Affidavit-in-Reply filed by Respondent Nos. 1 and 2. The contents thereof are reproduced hereinbelow:-

7.1. The Petitioners denied the averments made by Respondent Nos. 1 and 2 and reiterated the pleadings and contentions raised in the Petition. It was further contended that Respondent No. 2 had no authority, supported by any Board Resolution, to file the reply on behalf of Respondent No. 1 Company.

7.2. The Petitioners denied that the Petition filed under Sections 241, 242 and 244 of the Companies Act, 2013 was not maintainable or was instituted merely for recovery of outstanding dues. It was submitted

that the Petition concerns acts of oppression and mismanagement and seeks enforcement of the rights arising from the Advance Agreement dated 05.03.2019.

7.3. The Petitioners reiterated that Petitioner No. 1/DSSV had advanced a sum of Rs.4 Crores to Respondent No. 1/ACPL towards its working-capital requirements. The said advance was secured by pledge of 18,57,400 equity shares of Respondent No. 1 Company in favour of Petitioner No. 1. A promissory note dated 05.03.2019 and post-dated cheques were also executed in connection with the said transaction.

7.4. Relying upon the terms of the Advance Agreement dated 05.03.2019, particularly Clause 9 thereof, the Petitioners contended that upon failure of Respondent No. 1 to repay the advance within the stipulated period, Petitioner No. 1 was entitled to invoke the pledge and transfer the pledged shares in its own name or otherwise dispose of the same towards satisfaction of the outstanding advance and interest. The Petitioners further contended that the pledgors and guarantors had authorised Petitioner No. 1 to undertake the necessary steps for transfer of the pledged shares.

7.5. The Petitioners denied the contention that Petitioner No. 1 was not a shareholder/member of Respondent No. 1 Company and, therefore, had no locus. It was

contended that the Advance Agreement conferred upon Petitioner No. 1 the right to become a member upon transfer of the pledged shares and, accordingly, the Petitioners sought appropriate directions for registration of its name in the register of members.

7.6. The Petitioners denied the Respondents' version regarding the proposed joint venture and the alleged valuation of Respondent No. 1 Company. It was reiterated that the sum of Rs.4 Crores was advanced as a short-term financial facility and that the pledged shares constituted security for the said advance. The Petitioners also relied upon the financial and audit records to contend that Respondent No. 1 Company was facing substantial financial liabilities.

7.7. The Petitioners contended that Respondent Nos. 1 to 3 failed to repay the said advance in accordance with the agreed terms and that the cheques issued towards repayment were dishonoured with the endorsement “Insufficient Balance”. It was therefore submitted that the Petitioners became entitled to exercise their rights under the Advance Agreement and the pledge arrangement.

7.8. The Petitioners relied upon the Board Resolution dated 12.08.2019 whereby the Board of Respondent No. 1 approved transfer of 18,57,400 pledged shares in favour of Petitioner No. 1. It was contended that

the said resolution was validly passed and was in accordance with the powers available under the Companies Act, 2013 and the Advance Agreement.

7.9. The Petitioners disputed the legality of the subsequent proceedings for removal of Petitioner Nos. 2 to 4 as Directors. It was contended that the notice dated 30.07.2019 for convening the EGM was defective and that the EGM allegedly held on 28.08.2019, in the absence of proper notice, was illegal and contrary to the provisions of the Companies Act, 2013.

7.10. The Petitioners further alleged that Respondent Nos. 2 and 3 had acted prejudicially to the interests of Respondent No. 1 Company and its stakeholders, including by obstructing access to the books and records of the Company and by preventing proper due diligence into its affairs. The Petitioners relied upon the appointment of an independent auditor for examining the financial affairs of Respondent No. 1 Company.

7.11. The Petitioners denied that the present Petition was an abuse of the process of law or suffered from suppression of material facts. It was submitted that the material facts concerning the advance, pledge of shares, repayment defaults, Board Resolution and subsequent corporate actions had been disclosed in the Petition and required adjudication by this Tribunal.

7.12. The Petitioners relied upon the Audit Report for the financial year 2018-19, the Directors' Report and the order of the Hon'ble Gujarat High Court in SCA No. 10702 of 2020, filed as Annexures A, B and C respectively, in support of their contentions.

7.13. The Petitioners accordingly reiterated that Petitioner No. 1 has an enforceable right under the Advance Agreement and pledge arrangement in respect of the pledged shares and is entitled to appropriate directions for registration of its name as a member of Respondent No. 1 Company.

8. In compliance with the order dated 20.09.2022, the Petitioner filed its written submissions on 10.10.2022 vide Inward Diary No. D-5390, wherein it relied upon the following judgments:

i. *Kanhiyalal Jhanwar vs pandit Shirali and co. and ors. I n CS No. 2834 of 1949 MANU/WB/0200/1953.*
ii. *Serum Institute of India Ltd. V/s. Inderjit Properties Pvt. Ltd and Ors. CP No. 68 of 2004 and CA no. 356 of 2004 MANU/CL/0105/2004*
iii. *Bengal Silk Mills Co. Ltd In the High Court of Calcuttaa MANU/WB/0218/1941*

9. In compliance with the order dated 20.09.2022, Respondent Nos. 1 and 2 filed their written submissions on 01.05.2023 vide Inward Diary No. D-1603, wherein they relied upon the following judgments: -

i. *Aruna Oswal vs. Pankaj Oswal*
ii. *Mahalaxmi Joginder Singh Kahaan vs. Guruda Keepers India P. Ltd.*
iii. *R. Balakrishnan & ors vs. Vijay Dairy and farm Products P. Ltd. & ors.*
iv. *Thimme Gowda & ors. Vs. SPR Sugars P. Ltd.*
v. *V.N. Sunanda Reddy vs. S.S. Organics Ltd.*

10. In compliance with the order dated 20.09.2022, Respondent No. 3 filed its written submissions on 12.06.2023 vide Inward Diary No. D-2073, wherein it relied upon the following judgments:

i. *Cyrus Investments Pvt Ltd & Anr v Tata Sons Ltd. & Ors 2017 SCC OnLine Nclat 261 – Para 27*
ii. *Sk. Abdul Sabir v. Nirmal (p) Ltd. (21 CLA 444) (CLB-KOLKATA) 2013 SCC OnLine CLB 27 – Para 5(e)*
iii. *Kishori Lal Agarwal v. Alliance Engineers (118 CLA 406). – MANU/CL/0050/2013 - Para 7, 10.*
iv. *J.P. Srivastava and Sons Pvt. Ltd. and Ors. vs. Gwalior Sugar Co. Ltd. and Ors. MANU/SC/0927/2004 – Para 48*
v. *John S Dorai v Church of South India Trust Association and Ors. 2020 SCC OnLine NCLT 34. – Para 56*
vi. *Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (2005) 11 SCC 314 – Para 143*
vii. *S. P Chengalvaraya V Jagannath (Dead) By L.Rs. And Ors MANU/SC/0192/1994 – Para 47, 8.*
viii. *Hasvantbhai Chhanubhai Dalal v Adesinh Mansinh Raval FA NO. 1539 of 2015 – Para 93*
ix. *Sunil Chandra Ghosh v Hemendra Kr Deb 1984 SCC Online Cal 193- Para 8*

x. *TS Kotagi v Tahsildar, Gadag AIR 1985 KANT 265 – Para 14*

xi. *Cooverji Umersey v. Mawji Vaghji AIR 1937 BOM 26 – Para 3*

xii. *Bahubali Shantilal Shah and Ors. vs. The Lok Prakashan Limited and Ors. MANU/NC/0068/2021 – Para 27*

11. On 01.12.2023, Petitioner, filed a to place on record a certified copy of I.A. No. 929/2020 and the annexures thereto, filed by the Resolution Professional in CP(IB) No. 324/7/NCLT/AH/2019, for placing the same on record in the present Company Petition. The documents were filed to apprise this Tribunal of the proceedings concerning alleged fraudulent, wrongful and preferential transactions involving Respondent No. 1 Company and R.K. Infratel Limited, wherein Respondent No. 1 was arrayed as Respondent No. 8 and transactions amounting to Rs. 293.82 lakh were reported by the Transaction Auditor as wrongful transactions under Section 66 of the IBC and as involving circular/round-tripping transactions.

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12. The Petitioners filed an Interim/Miscellaneous Application in the Restored Company Petition seeking interim relief against the alleged acts of the Respondents, particularly in

relation to the convening of the EGM dated 28.08.2019, removal of Petitioner Nos. 2 to 4 from the office of Directors and filing of Form DIR-12 with the Registrar of Companies. The factual background pleaded in the present IA is substantially the same as that set out in the Restored Company Petition, including the Advance Agreement dated 05.03.2019, pledge of shares, alleged default in repayment, invocation of the pledge and transfer of the pledged shares. Hence, the same is not being repeated herein and shall be read as part of the facts recorded above.

13. We have considered the pleadings and documents placed on record, including the Affidavits-in-Reply filed on behalf of Respondent Nos. 1 and 2 and Respondent No. 3, the Rejoinder filed by the Petitioner, the written submissions filed by the Petitioner, Respondent No. 1 and 2 and 3, and the Pursis dated 01.12.2023 along with the documents annexed thereto.

14. Having considered the pleadings, affidavits, rejoinder, written submissions and documents referred to in paragraph 13 above, this Bench finds that the controversy

essentially arises from the Advance Agreement dated 05.03.2019, the alleged non-repayment of the advance, the pledge of shares, the subsequent claim of transfer thereof, and the consequential corporate actions concerning the nominee Directors.

15. The documents relied upon by the Petitioner include Annexure-C containing the Master Data of Respondent No.1; Annexure-D, the Advance Agreement dated 05.03.2019; Annexure-E, the bank statement evidencing payment; Annexure-F, the pledge/share-security documents; Annexures-G and J, the post-dated cheques and return memos; and Annexures-H and I, the payment particulars and bank statement evidencing part-payments.

16. The Petitioner has further relied upon Annexures-L and M concerning appointment of its nominees as Directors, Annexure-O being the engagement letter of Stragility Consulting Private Limited, and Annexures-P to T comprising notices, correspondence, adjournments and minutes concerning the proposed Board Meetings; Annexures-U and V concern invocation of the alleged

pledge and proof of service.

17. The subsequent corporate action is sought to be challenged principally on the basis of Annexures-W and X relating to the EGM dated 28.08.2019; Annexures-Y and Z concerning Form DIR-12 and the communications surrounding it; Annexure-AA concerning the ROC correspondence and approved DIR-12; and Annexures-BB and CC concerning the Serious Complaint Form and its acknowledgement.

18. The rejoinder also refers to the Audit Report for Financial Year 2018-19, Directors' Report and the order of the Hon'ble Gujarat High Court in SCA No.10702 of 2020 as Annexures-A, B and C thereto, while the Pursis dated 01.12.2023 places on record the certified copy of I.A. No.929/2020 and its annexures concerning the insolvency proceedings and alleged transactions involving Respondent No.1 and R.K. Infratel Limited.

19. The principal objection of Respondent Nos.1 to 3 is that the Petitioner was not a registered member of Respondent No.1 and that the alleged pledge or contractual right to obtain shares cannot, by itself, confer the status of a

member for invoking Sections 241 and 242 read with Section 244 of the Act. The Petitioner, on the other hand, relies upon the alleged invocation and transfer mechanism contained in Clause 9 of the Advance Agreement.

20. Section 241 is a statutory remedy available to a member satisfying the requirements prescribed by the Act, while Section 244 prescribes the eligibility for an application under Section 241, subject to the statutory power of waiver. In ***Aruna Oswal v. Pankaj Oswal & Ors***., Civil Appeal Nos.9340, 9399 and 9401 of 2019, decided on 06.07.2020, (2020) 15 SCC 1, the Hon'ble Supreme Court held that entitlement to disputed shares cannot ordinarily be adjudicated in Section 241/242 proceedings so as to manufacture the statutory qualification.

21. The Petitioner relies upon ***Kanhiyalal Jhanwar v. Pandit Shirali & Co. & Ors.,*** CS No.2834 of 1949, MANU/WB/0200/1953; ***Serum Institute of India Ltd. v. Inderjit Properties Pvt. Ltd. & Ors.***, CP No.68/2004, CA No.356/2004, MANU/CL/0105/2004; and ***Bengal Silk Mills Co. Ltd.***, MANU/WB/0218/1941, for the proposition that equitable and corporate remedies may be

fashioned where conduct affects the company's affairs; however, none dispenses with the statutory threshold under Section 244.

22. The Respondent Nos.1 and 2 rely upon *Aruna Oswal v. Pankaj Oswal & Ors.*, supra; *Mahalaxmi Joginder Singh Kahaan v. Guruda Keepers India Pvt. Ltd.*; *R. Balakrishnan & Ors. v. Vijay Dairy & Farm Products Pvt. Ltd. & Ors.*; *M. Thimme Gowda & Ors. v. SPR Sugars Pvt. Ltd. & Ors.*, [2008] 142 Comp Cas 152 (CLB); and *V.N. Sunanda Reddy v. S.S. Organics Ltd. & Ors.*, [2010] 155 Comp Cas 497 (CLB), essentially to contend that statutory membership and demonstrable corporate wrongdoing are foundational requirements. The principle in **Thimme Gowda** concerns equitable company-law relief in a closely held company, whereas **Sunanda Reddy** concerned challenge to allegedly unauthorised corporate proceedings and statutory filings.

23. The Respondent No.3 relies upon *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors.*, 2017 SCC OnLine NCLAT 261; *Sk. Abdul Sabir v. Nirmal (P) Ltd.*, 2013 SCC OnLine CLB 27; *Kishori Lal Agarwal v. Alliance Engineers*, MANU/CL/0050/2013; *J.P. Srivastava & Sons Pvt. Ltd. v.*

Gwalior Sugar Co. Ltd. & Ors., Civil Appeal No.6951 of 2004, decided 26.10.2004; *John S. Dorai v. Church of South India Trust Association & Ors.*, 2020 SCC OnLine NCLT 34; and *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314, concerning the nature of oppression, equitable jurisdiction, statutory eligibility and the necessity of establishing conduct warranting relief. The NCLAT records Cyrus Investments as a company-law judgment dated 09.02.2017.

24. The remaining authorities cited by Respondent No.3, namely *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1; *Hasvantbhai Chhanubhai Dalal v. Adesinh Mansinh Raval,* FA No.1539 of 2015; *Sunil Chandra Ghosh v. Hemendra Kr. Deb,* 1984 SCC OnLine Cal 193; *T.S. Kotagi v. Tahsildar, Gadag,* AIR 1985 Kant 265; *Cooverji Umersey v. Mawji Vaghji,* AIR 1937 Bom 26; and *Bahubali Shantilal Shah v. The Lok Prakashan Ltd. & Ors.*, MANU/NC/0068/2021, have also been considered. **Chengalvaraya Naidu** emphasises that fraud upon a court vitiates judicial acts, while **Sangramsinh P. Gaekwad** reiterates that oppression jurisdiction is

equitable and must rest upon established facts and legal rights.

25. In ***J.P. Srivastava & Sons Pvt. Ltd. v. Gwalior Sugar Co. Ltd. & Ors.***, Civil Appeal No.6951 of 2004, decided on 26.10.2004, the Hon'ble Supreme Court considered the statutory requirements governing oppression proceedings and adopted a substance-oriented approach to procedural compliance; nevertheless, the decision does not authorise a Tribunal to disregard a substantive statutory eligibility requirement.

26. On the material before us, the payment of Rs.4.00 crore, part-repayment of Rs.1.28 crore, alleged balance of Rs.2.72 crore, dishonour of cheques and the pledge/security arrangement are matters arising from the contractual and commercial relationship between the parties. The existence and enforceability of the alleged transfer of 18,57,400 shares, however, remain contested and are not shown on the present record to have resulted in registration of the Petitioner as a member of Respondent No.1.

27. The mere assertion that invocation of the pledge entitled

the Petitioner to become the holder of 74% shares cannot, without completion and recognition of the legally requisite transfer and registration, be treated as equivalent to membership for Section 244. The statutory register of members remains material for determining the status asserted by the Petitioner, and the present proceedings cannot be converted into a summary adjudication of a disputed contractual/share-transfer title so as to satisfy Section 244.

28. The allegations concerning the EGM dated 28.08.2019 and the removal of Petitioner Nos.2 to 4 as Directors are consequential to the Petitioner's asserted status and contractual rights. Even assuming that questions arise concerning notice, opportunity or the filing of DIR-12, the same cannot confer upon Petitioner No.1 a membership qualification which it did not possess at the relevant stage; nor can the Tribunal grant relief founded solely upon a disputed share title while the statutory threshold remains unsatisfied.

29. Now we consider prayers in the Petition relating to considering the Petitioner as 74% shareholder of ACPL

and seeking a direction to ACPL for incorporating the Petitioner as a shareholder in the shareholder register of ACPL by rectifying its register and recording the same. We consider these prayers independent of prayers concerning sections 241-142 of the Companies Act, 2013.

30. The above prayers hinges and are based on the Advance Agreement dated 07.03.2019 (Pages 28 to 37 of the Petition). Advance Agreement provides for advance of Rs 4,00,00,000 by DSSV to ACPL and this advance was repayable by 25.03.2019. The Agreement had a provision for a penal interest @2% per month and was secured by demand promissory note (Exhibit A), four post dated cheques, and pledge of shares in favour of the DSSV. This Agreement refers to DCPL (includes its subsidiary DSSV) has entered into a non-binding Term Sheet dated 06 March 2019 with Airlink for transfer of assets and or retail and wi-fi internet services business at Surat and Navsari to DCPL. The Respondents have referred to joint venture but neither party has provided a copy of this Term-Sheet.

31. Paragraph 6 of the Advance Agreement refers to pledge of shares as a security towards timely repayment of advance.

32. The Petition notes that ACPL defaulted in payment of advance by the due date and after many request ACPL made part payment of Rs 1,28,00,000. The post-dated cheques were presented to the bank but returned unpaid and proceedings under section 128 of the Negotiable Instruments Act were initiated by the Petitioners.

33. The above facts indicate that the transaction was that of an advance of money and the repayment was secured by promissory note, pledge of shares, and post-dated cheques. Therefore, this is not a simple case of transfer of pledged shares due to failure of the ACPL to pay the whole amount advanced.

34. We are not inclined to agree with the contentions of the Petitioner for direction concerning transfer of pledged shares as it is not a case of application of section 59 of the Companies Act, 2013 because the name of the Petitioner was neither entered in the register of members nor name has been omitted therefrom nor a clear case for its entitlement of entering the name in the Register of Members is made out.

35. Consequently, the reliefs seeking recognition of **D-Vois SSV Broadband Private Limited** as a **74% shareholder**, rectification of the register under Section 59, reinstatement/removal of Directors, forensic investigation, inspection, restraint upon alienation or funds, and consequential directions to the Registrar of Companies cannot be granted in the present proceedings in the absence of the requisite statutory locus. The allegations may give rise to contractual, civil, criminal, statutory or other remedies as may independently be available in accordance with law, but those remedies cannot enlarge the jurisdiction under Sections 241-242.

36. Accordingly, **Restored Company Petition No.03 of 2025** (Old C.P. No.101/AHM/2019) is **dismissed**, without adjudicating upon the ultimate merits of the parties' competing contractual claims concerning the Rs.4.00 crore transaction, pledged shares or monetary liability. No opinion is expressed on proceedings pending before any other competent forum; all contentions therein remain open, and parties shall bear their own costs. All pending applications, if any, stand disposed of.

37. In view of the dismissal of the main Company Petition, **IA No. 3 of 2020**, seeking interim reliefs therein, does not survive and is accordingly **dismissed** as infructuous. No order as to costs.

38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Aditi Jain/LRA