IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. NO. 1300/MB/2020

Application U/S Sec 241(1) 242 & Sec 447 of the Companies Act, 2013.

In the matter of

KAILASH PARBAT HOTELS (INDIA) PRIVATE LIMITED

having its' Registered Office at Shop No.773, Section 17, Ulhasnagar, Thane, Maharashtra. Pin - 421003.

In the matter of

Mr. Kishore Kakumal Keswani …Applicant/Petitioner

Versus

Mr. Manohar Kakumal Keswani & Ors ... Respondents

Order pronounced on 22.10.2026

Coram:

Prabhat Kumar	Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Appearances:

For the Petitioner: Adv. Rina H. Pujara a/w Adv. Radhika Keswani

For Mrs. Pushpa Keswani & Deepak Keswani: Adv. Gaurav Sharma

For the Respondent No. 1 to 3: Adv. Shyam Kapadiya a/w Rohan Agrawal, Adv. A. Patel, Adv. Pavan Kulkarni and Adv. Harshad R. Vyas

BRIEF FACTS:

1. The present Company Petition CP 1300/2020 is filed on 02.11.2020 under Section 241(1), 242 and 447 of the Companies Act, 2013 ("Act") by **Mr. Kishore Kakumal Keswani**, ("Petitioner/Applicant") alleging commission of acts of oppression and mismanagement by Mr. Manohar Kakumal Keswani & Others

in the affairs of M/s Kailash Parbat Hotels (India) Private Limited for following major reliefs:

a) *This Hon'ble Tribunal may be pleased to hold and declare that the Respondent No.1 & 2 have conducted and are still conducting the affairs of the Respondent No.3 Company in a manner prejudicial and oppressive to the Applicant, Director Mr. Deepak Keswani, supporting members and the Company itself in terms of Section 241 of the Companies Act, 2013, AND, be further pleased to pass orders / directions or orders in the nature of directions in terms of Section 242 of the Companies Act, 2013:*

   i. *To restrain the Respondent No.1 & 2 from interfering with the conduct of the hotel business at Lonavala or obstructing smooth functioning of Hotel Kailash Parbat & Restaurant, Lonavala in any manner whatsoever, more particularly, by restraining them from passing any Resolution without the concurrence of the Applicant and Director- Mr. Deepak Keswani;*

   ii. *To direct the Respondent No.1 & 2 to effect necessary transfer of shares, or, reduction / expansion of its share capital in order to bring the equity share-holding of all the four Directors at equal parity of 25% each, commensurate with their admitted beneficial ownership of the Company;*

   iii. *To direct the Respondent No.1 to handover the charge of accounts, office administration and banking operations to the Applicant;*

   iv. *To restrain the Respondents from conducting the scheduled Extra Ordinary General Meeting dated 12/11/2020, and, in the event the meeting is held*

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prior to hearing of the present application, then, to declare it as null and void and quash the Resolutions that may have been passed in the EGM dated 12/11/2020;

v. *To order a forensic audit of the books of accounts of the Company over the period of last 5 years, and, thereafter pass just and necessary orders*

b) *This Hon'ble Tribunal may be pleased to convict the Respondents for fraud resulting in "wrongful gain" to themselves and "wrongful loss" to the Company, as well as, the Applicant and Director-members and punish them in accordance with law with imprisonment and fine as provided under Section 447 of the Companies Act, 2013;*

c) *This Hon'ble Tribunal may be pleased to award costs to the Applicant which are quantified at Rs.7.50 lacs, or, as the Tribunal may deem fit and proper;*

d) *This Hon'ble Tribunal is kindly requested to grant any other relief/s which have not been considered by the Applicant in the interest of equity, justice and good conscience and as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances.*

2. The Petitioner, Mr. Kishore Kakumal Keswani, is one of the founders and a Founding Director/Member of Kailash Parbat Hotels Pvt. Ltd., i.e. Respondent No. 3 herein. Respondent No. 1, Mr. Manohar Kakumal Keswani, and Respondent No. 2, Mr. Rajkumar Kakumal Keswani, are also Directors and Members of Respondent No. 3, namely, Kailash Parbat Hotels Pvt. Ltd.

3. The Respondent No. 3, **KAILASH PARBAT HOTELS (INDIA) PRIVATE LIMITED**, is a company incorporated on **23.05.1995** as a private limited company under the provisions of the Companies Act, 1956, bearing CIN: U99999MH1995PTC088670,

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and having its registered office at Shop No. 773, Section 17, Ulhasnagar, Thane, Maharashtra – 421003.

SUBMISSIONS OF THE PETITIONER:

4. The Applicant is one of the Directors of Respondent No. 3 Company and is the real brother of Respondent Nos. 1 and 2, who are also Directors of the said Company. The Petitioner further submits that Mr. Deepak Keswani, son of the eldest brother, Mr. Ashok Kakumal Keswani, is also a Director on the Board of Respondent No. 3 Company. Thus, at the relevant time, Respondent No. 3 Company had four Directors, namely, the Petitioner, Respondent Nos. 1 and 2, and Mr. Deepak Keswani, all belonging to the same Keswani family and forming part of the same family business structure.
5. The Applicant was primarily engaged in the business of transportation and logistics and intended to diversify its business by entering into the hotel industry. Considering the Mulchandani family's longstanding experience in the hotel business, the Petitioner joined hands with the Mulchandani family to establish Respondent No. 3 Company for setting up and operating a hotel business at Lonavala.
6. Initially, the Mulchandani Family subscribed to and held 66.66% of the equity shares, comprising 40,000 shares, while the Applicant's family, i.e. the Keswani Family, subscribed to and held 33.33%, comprising 20,000 shares. The contribution towards the share subscription was made from the resources of the Joint Hindu Family. It is further submitted that irrespective of the persons shown as members of the Company or the number of shares standing in their individual names, the beneficial ownership in 40% of the shares vested in the Joint Hindu Family of Late Shri

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Kakumal Keswani, father of the Applicant. The Shareholding pattern of Respondent No. 3 Company was as under:

The Mulchandani Family:	
Hiranand Mulchandani	17510 shares
Mahesh Mulchandani	12500 shares
Ramchand Mulchandani	9990 shares
Total	40000 Shares
The Keswani Family	
Kishore Keswani	5250 shares
Kalawanti Keswani	10050 shares
Laxmi Manohar Keswani	550 shares
Pushpa Ashok Keswani	550 shares
Geeta Kishore Keswani	2600 shares
Kakumal Keswani	1000 shares
Total	20000 Shares

7. The aforementioned initial share allotment reflected the beneficial interest of the Keswani Family, with substantial shares allotted in the names of its members, including the Applicant and his family members. It is further submitted that neither Respondent No. 2 nor his wife was named in the initial allotment.
8. The Applicant was appointed as a founding Director of Respondent No. 3 Company on 23.05.1995 along with members of the Mulchandani Family. It is the Applicant's case that the Mulchandani and Keswani Families made equal contributions towards acquisition of the assets for setting up the hotel at Lonavala, with a substantial portion of the Keswani Family's contribution coming from the joint family pool and the Applicant's

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personal resources. The Plot of land i.e. Plot No. 4, acquired for the said purpose, was leased to Respondent No. 3 for 29 years commencing from 1995. The Applicant further alleges that entries relating to the lease payments in the Company's financial accounts were fabricated by Respondent No. 1.

9. In 2002, the Mulchandani Family decided to exit Respondent No. 3 Company, pursuant to which the Keswani Family purchased all 40,000 shares held by them from the common Keswani Joint Family resources. It was agreed that the acquired shares would thereafter be distributed so as to maintain an approximately equal shareholding among the four Keswani brothers i.e. The Applicant, Respondent No. 1 & 2 and Mr. Ashok Kakumal Keswani, while retaining the existing shareholding of their parents. The Applicant alleges that Respondent No. 1, who was entrusted with the Company's books of accounts, finances, statutory compliances and shareholding records, was responsible for making the payment to the Mulchandani Family and effecting the transfer of the said shares. The Applicant further submitted that the relevant records, books of accounts and bank statements are in the power and possession of the Respondents.
10. The Applicant alleges that, although the 40,000 shares acquired from the Mulchandani Family were purchased from the common Keswani Joint Family resources with the understanding that the shareholding would be distributed equally amongst the four brothers and their immediate families, however, the said shares were fraudulently transferred in the names of Respondent Nos. 1 and 2 and their respective wives. It is further alleged that the Applicant and other family members had relied upon Respondent No. 1 to maintain the Company's records and therefore did not independently verify the Register of Members or books of accounts. According to the Applicant, the aforesaid discrepancies

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came to light in or around January 2020 upon enquiries made by Mr. Deepak Keswani, who allegedly discovered that not only the 40,000 shares acquired from the Mulchandani Family but also certain shares standing in the names of the parents had been transferred in favour of Respondent Nos. 1 and 2. The Applicant further alleges that fabricated Wills of the parents were also created in furtherance of the alleged acts, which, according to him, constitute oppression, mismanagement and fraud.

11. The shareholding pattern of Respondent No. 3 Company as on the date on which Mr. Deepak Keswani allegedly perused the records, as well as the period during which the alleged fraudulent transfers were carried out by the Respondents:

Sr. No.	Name	Original Allotment	Additions / Allotments	Present / Total Holding
i.	Mr. Kishore Kakumal Keswani (Applicant)	5,250	Nil	5,250
ii.	Mrs. Geeta Kishore Keswani (Wife of Applicant)	2,600	In 2002: 2,000	4,600
iii.	Mr. Deepak Keswani (Director)	Nil	Nil	Nil
iv.	Mrs. Pushpa Ashok Keswani (Mother of Mr. Deepak Keswani)	550	Nil	550
v.	Mr. Manohar Kakumal Keswani (Respondent No. 1)	Nil	In 2002: 9,990; In 2003: 5,000; In 2007: 510; In 2018: 5,025; In 2019: 500	21,025

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vi.	Mrs. Laxmi Manohar Keswani (Wife of Respondent No. 1)	550	2002: 4,000	4,550
vii.	Mr. Rajkumar Kakumal Keswani (Respondent No. 2)	Nil	In 2002: 6,500; In 2003: 4,000; In 2004: 3,250; In 2007: 2,240; In 2018: 5,025; In 2019: 500	21,515
viii.	Mrs. Sunita Rajkumar Keswani (Wife of Respondent No. 2)	Nil	2002: 2,510	2,510
ix.	Late Shri Kakumal Keswani	1,000	Nil	Nil
x.	Late Smt. Kalawanti Kakumal Keswani	10,050	Nil	Nil

12. Upon perusal of the aforesaid shareholding statement, the Applicant contends that Respondent Nos. 1 and 2, during the period from 2002 to 2007, transferred shares acquired from the Mulchandani Family in their own names and in the names of their respective wives, although the consideration for the said 40,000 shares was allegedly paid from the common Keswani Joint Family resources and the shares were intended to be distributed proportionately amongst the four sons of Late Shri Kakumal Keswani. It is further alleged that the shares standing in the names of Late Shri Kakumal Keswani and Late Smt. Kalawanti Keswani were also required to be distributed equally amongst their four sons. The Applicant further states that repeated requests for

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inspection of the Register of Members, share transfer deeds and other relevant records, but the Respondents have unlawfully deprived them of the legitimate right. On these allegations, the Applicant seeks setting aside of the alleged fraudulent share transfers effected during the period from 2002 to 2019.

13. The Applicant submitted that in 2012, an adjoining plot of land at Lonavala was purchased in the name of Respondent No. 3 Company for a consideration of Rs. 2.75 Crores, towards which all four branches of the Keswani Family contributed, with the Applicant contributing Rs. 1 Crore. According to the Applicant, it was decided that the land would either be purchased in the personal names of the concerned family members and leased to the Company or that the Company would issue additional shares against the contributions. However, the Applicant alleges that Respondent No. 1 treated the amounts infused by the family members as loans to the Company. The Applicant further alleges that Respondent No. 1, without authority of the Board or members, created a mortgage/charge over the assets of the Company in respect of a loan obtained by a third party, without prior notice or approval, though the said charge was subsequently vacated in the year 2007.

14. Upon allegedly discovering the aforesaid irregularities concerning the affairs of Respondent No. 3 Company and the Keswani Joint Family resources, the Applicant and Mr. Deepak Keswani sought explanations and remedial measures from the Respondents. It is stated that the Respondents did not satisfactorily respond to such requests. Thereafter, discussions regarding separation of the Joint Hindu Family commenced in or around January 2020, and several meetings were held with the intervention of family friends and relatives to explore an amicable resolution, but the discussions remained inconclusive. During the COVID-19 lockdown, the

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Applicant and Mr. Deepak Keswani further sought to examine the affairs and records of the Company. As the Respondents allegedly failed to provide the requisite documents, they approached the employees of the Accounts Department, the Chartered Accountant and the Company Secretary for access to the Company's records and documents. Thereafter, on 10.06.2020, the Applicant and Mr. Deepak Keswani visited the office of Respondent No. 3 to obtain copies of the Company's records and documents. As the records could not be examined within the available time, Mr. Deepak Keswani requested the office staff to prepare a list of the relevant files, which were accordingly identified and handed over for photocopying and subsequent return. The Applicant alleges that Respondent No. 1 thereafter arrived at the office at about 7:00 p.m. and created a disturbance, the said incident was captured on the office CCTV cameras.

15. The Applicant alleges that, after he and Mr. Deepak Keswani obtained access to certain Company records in June 2020, the Respondents undertook various acts which, according to the Applicant, were prejudicial to the affairs and interests of Respondent No. 3 Company such as:

    a. On 22.06.2020, Respondent Nos. 1 and 2, along with Mr. Abhishek Keswani (Son of Respondent No. 2), visited the hotel premises at Lonavala and removed various files, records, cheque books and cash from the Company's office, after allegedly disabling the CCTV cameras and Wi-Fi.

    b. The Respondents failed to make payments to suppliers, staff and creditors during the lockdown, compelling the Applicant and Mr. Deepak Keswani to meet certain expenses from their personal resources.

    c. The services of Mr. Jaikumar Pillai, the Senior Accountant, were terminated on 25.07.2020 without the knowledge or

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approval of the Board, despite his alleged role in main taining the hotel premises during the lockdown.

d. The Respondents contacted employees, security personnel and other staff members and discouraged them from participating in the proposed reopening of the hotel.

e. The Respondents fabricated a Board Resolution of a purported Board Meeting dated 27.07.2020, whereby the business operations of the hotel were stated to have been halted with effect from 01.08.2020, and that the said resolution was thereafter published through public notices in English and Marathi newspapers. According to the Applicant, neither he nor Mr. Deepak Keswani was given notice of the alleged Board Meeting or supplied with the agenda or proposed resolution.

f. The Respondent No. 1 issued threatening communications to suppliers, creditors and employees, including WhatsApp messages discouraging suppliers from making supplies to the Company, with the alleged intention of disrupting its business operations.

The Applicant contends that the aforesaid acts adversely affected the Company's business and its relations with employees, suppliers and creditors and constituted acts of oppression and mismanagement.

16. The Applicant further alleges that, during the period when preparations were being made for reopening the hotel, the Respondents arranged for the statutory auditors to visit the Lonavala premises on 26.07.2020, notwithstanding the prevailing lockdown restrictions and the extended statutory timeline for filing the audited financial statements. It is further submitted that the auditors were provided with the requisite assistance by the Company's Manager, Chief Accountant and other staff. The hotel

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was subsequently reopened in the first week of August 2020 by the Applicant and Mr. Deepak Keswani.

17. The Applicant further alleges that, thereafter, Respondent Nos. 1 and 2 issued communications to the Company's bankers, including Kotak Mahindra Bank, HDFC Bank and Kalyan Janta Sahkari Bank Ltd., seeking freezing of the Company's bank accounts on the basis of purported Board Resolutions. According to the Applicant, no valid Board Meeting was held for passing such resolutions. It is further alleged that similar purported Board Resolutions were relied upon in communications addressed to various statutory and governmental authorities seeking cancellation, suspension or termination of licences, permissions and utility services relating to the hotel. The Applicant contends that these acts were intended to disrupt the Company's operations and were prejudicial to the interests of the Company, its Directors and members.

18. The Applicant further alleges that the Respondents withheld payments due to suppliers, security agencies, employees, utility providers and statutory authorities, resulting in substantial outstanding liabilities. It is further submitted that, owing to the freezing of the Company's bank accounts, the Manager and Senior Accountant, by email dated 10.09.2020, requested Mr. Deepak Keswani to make payment of the MSEDCL electricity bill of Rs. 1,46,880/- from his personal account to avoid disconnection, with the amount to be subsequently reimbursed.

19. The Applicant further alleges that the Respondents approached various statutory and regulatory authorities, including the Food and Drug Administration, MSEDCL, Lonavala Municipal Council and the Police, with a view to suspending or cancelling the licences and permissions of the Company, allegedly relying upon purported Board Resolutions. The Applicant and Mr. Deepak Keswani state

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that they were consequently required to respond to the said authorities. It is further alleged that the Company's Chartered Accountants, Company Secretary and Tax Consultant declined to provide the requested records and expressed their unwillingness to intervene in the family dispute.

20. The Petitioner further relies upon certain communications to contend that, notwithstanding the Respondents' alleged claim of majority shareholding, the four branches of the Keswani family were treated as having equal beneficial ownership of the Company. In this regard, reliance is placed upon a declaration of beneficial ownership submitted to Axis Bank, Ulhasnagar Branch, which shows that the petitioner, Mr. Deepak Keswani and Respondent No. 1 & 2 all four-director having equal (25%) controlling ownership interest in the Respondent No. 3. Petitioner also relied upon alleged communications of Respondent No. 1 with the Petitioner, Mr. Deepak Keswani, friends, family and relative, wherein the Respondent No. 1 has unequivocally acknowledged the equal beneficial ownership.

21. The Petitioner further alleges that Respondent No. 2 issued a notice dated 09.10.2020 proposing a Board Meeting, which was scheduled to be held on 17.10.2020 at the registered office via Zoom, at shop No.773, section 17, Ulhasnagar, Thane, with an agenda concerning the convening of an EGM for removal of the Petitioner and Mr. Deepak Keswani from the designation of Director. The Petitioner contends that the proposed removal was an attempt to consolidate control over the Company on the basis of the disputed share transfers. The Petitioner further submitted that he consequently convened a Board Meeting on 14.10.2020 to protect his interests and the interests of the Company and other stakeholders, which was attended by the Respondents through

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video conferencing, and that the Respondents abstained from voting.

22. The Petitioner further submitted that the Respondents thereafter purported to hold another Board Meeting on 17.10.2020 and issued notices for an EGM proposed to be held on 12.11.2020 for removal of the Applicant and Mr. Deepak Keswani as Directors. According to the Applicant, the said proceedings were based upon fabricated or invalid Board proceedings and were intended to secure control over the Company.

23. The Petitioner has further alleged various instances of mismanagement, including false or misleading filings with the Registrar of Companies, manipulation of the Company's accounts and declaration of losses, diversion of Company funds for personal purposes, and fraudulent or unauthorised entries in the books of accounts. The Petitioner also refers to an alleged incident in 2018 involving an employee who purportedly admitted to making false adjustments and misappropriating cash at the instance of the Respondents.

24. The Petitioner states that despite the alleged acts and obstacles created by the Respondents, the hotel continued its operations and that the Applicant and Mr. Deepak Keswani continued to make efforts towards protecting the Company's business, goodwill, employees and stakeholders. The Petitioner further relies upon an FDA inspection conducted on 16.10.2020, which, according to him, found the hotel compliant with the applicable safety requirements.

25. The Petitioner ultimately contends that the Respondents' acts have caused wrongful loss to the Company and to the Applicant and supporting members, while allegedly resulting in wrongful gains to the Respondents. The Petitioner has estimated the alleged loss at approximately Rs. 5 Crores in respect of himself and Mr. Deepak

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Keswani and approximately Rs. 15 Crores in respect of the Company. It is further stated that the Applicant, Mr. Deepak Keswani and Mr. Anil Keswani had not drawn salary from the Company since March 2020 and had instead contributed personal funds towards preservation of the Company's operations and payment of expenses. On these grounds, the Applicant seeks appropriate orders and directions to protect the Company, its members, employees, creditors, suppliers and other stakeholders and to bring an end to the alleged acts of oppression, mismanagement and fraud.

26. Further, the Applicant filed a Rejoinder dated 20.12.2020 to the Affidavit-in-Reply filed by the Respondents, wherein the Applicant denied the contentions raised by the Respondents and submitted that the Affidavit-in-Reply contains false, contradictory and misleading assertions. The Applicant reiterated that the Keswani family/HUF existed and that the shares acquired from the Mulchandani family were purchased from joint family resources and were intended to be held equally by the four brothers. It was further submitted that the Respondents had, at various instances, acknowledged the equal beneficial ownership of the four branches of the Keswani family, including through declarations made to the Bank and other communications. The Applicant further contended that the subsequent transfer of shares in favour of Respondent Nos. 1 and 2 and their respective wives was fraudulent, unlawful and contrary to the rights of the Applicant and other shareholders. The Applicant also disputed the genuineness of certain documents and signatures relied upon by the Respondents and alleged that the affairs, finances and records of the Respondent No. 3 Company were under the control of Respondent No. 1, resulting in acts of oppression, mismanagement and diversion/misuse of the Company's affairs. The Applicant accordingly submitted that the

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Respondents had failed to rebut the material allegations made in the Petition and prayed that the reliefs sought in the Petition be granted.

27. The Petitioner filed a further Sur-Sur-Rejoinder dated 29.04.2021, reiterating his challenge to the disputed share transfers and the alleged irregularities in the Company's affairs. In particular, he contended that the Respondents had not produced the relevant share transfer forms or deeds evidencing compliance with the requisite statutory procedure or notice to existing shareholders in respect of the shares acquired from the Mulchandani family. He also disputed the transmission of shares standing in the names of Late Shri Kakumal Keswani and Late Smt. Kalawanti Keswani, alleging that the Board meetings and resolutions relied upon by the Respondents were fabricated and that his signatures appearing thereon were forged.

28. In the Sur-Sur-Rejoinder, the Petitioner further reiterated that the hotel had resumed operations on 07.08.2020 following the relaxation of lockdown restrictions and alleged that the Respondents subsequently attempted to obstruct its functioning. With regard to the Company's bank accounts, he contended that the accounts had already been frozen by the Respondents and that the allegation that he deliberately failed to deposit the hotel collections was misconceived. He stated that collections received through Google Pay and Paytm were utilised towards legitimate and auditable business expenses and that the balance amounts were deposited into the Company's bank account. He also reiterated his allegations concerning the diversion of Company funds, misuse of the Power of Attorney relating to Plot No. 4, discrepancies in the lease rent entries and the alleged fabrication of share certificates and statutory filings. On these grounds, the Petitioner maintained that the Respondents had failed to establish the legality of the

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transactions and acts complained of and reiterated his prayer for appropriate reliefs.

SUBMISSIONS OF THE RESPONDENT:

29. The Respondent No. 1 has filed an Affidavit-in-Reply on behalf of the Respondents on 02.12.2020, wherein the Respondents have denied and disputed the contents and allegations made in the present Petition. Further, The Respondents denied the allegations of oppression, mismanagement, fraud and diversion of funds levelled by the Applicant, and contended that the Applicant has not approached this Tribunal with clean hands. The Respondents have, inter alia, submitted as under:

    29.1. The Petitioner, along with Mr. Deepak Keswani, was aware of the conduct of business and day-to-day affairs of Respondent Company and that the Respondents were actively involved in the management and operation of the Hotel. It is further submitted that the issues/ allegations pointed out by the Petitioner are time barred, beyond the period of limitations. As per MCA records, Respondent No. 1 & 2 are the Current Directors of Respondent No. 3 company, however, the Petitioner and the Mr. Deepak Keswani were Directors of Respondent Company earlier and ceased to be directors thereof from 12.11.2020.

    29.2. The Respondents denied that the Respondent Company formed part of the Keswani Hindu Undivided Family or that any HUF was involved in its affairs or shareholding, contending that the shares were held by the respective shareholders in their individual capacities. They submitted that the Mulchandani Group were the majority shareholders at the time of incorporation and had subscribed to the shares and participated in the

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management of the Hotel at the request of Respondent No. 1 and the Keswani family. They further stated that the Petitioner was considered for directorship at the personal request and recommendation of Respondent No. 1 and denied that the share consideration was paid from joint family resources or that the beneficial ownership of 40% of the shares vested in the HUF, asserting instead that the subscription amounts were contributed by Late Shri Kakumal Keswani and Respondent No. 1 from their respective personal funds.

29.3. The Respondents further submit that the acquisition of the shares of the Mulchandani Group was undertaken when the said shareholders decided to exit the business. Respondent Nos. 1 and 2 purchased the said shares, along with their respective wives, for consideration at market value from their own funds. It is further submitted that prior written notice regarding the proposed transfer was given to the Directors and shareholders of the Company and the relevant transfer entries were duly recorded in the share certificates.

29.4. The Respondents deny that the transfer or transmission of shares was fraudulent or carried out without the knowledge of the Applicant. It is further submitted that the Applicant had signed the relevant share certificates and the Respondents had followed the applicable procedure for giving effect to the transfer and transmission of shares. The Respondents also relied upon the Company's annual returns, share certificates, board resolutions and other records in support of their contention.

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29.5. In relation to the shares transmitted pursuant to the Will of Late Shri Kakumal Keswani and Late Smt. Kalawanti Keswani, the Respondents submit that such transmission was effected in accordance with the applicable provisions of the Companies Act and on the basis of the Will and requests for transmission. It is further submitted that the Petitioner was aware of the said transmission and had signed the relevant resolutions dated 14.04.2018 and 20.03.2019 and share certificates.

29.6. The Respondents dispute the Applicant's assertion that the major contribution towards acquisition of the land and establishment of the Hotel was made by the Applicant or Mr. Deepak Keswani. It is submitted that Respondent No. 1 was actively involved from the inception in identifying the property, coordinating with the owners and local authorities, examining title-related matters and completing the transaction. The Respondents further submit that they thereafter coordinated with architects, interior designers and bankers for setting up the Hotel and were actively involved in its operation.

29.7. The Respondents further submit that, being the majority shareholders, they were primarily involved in the operational and financial management of the Hotel and handled the overall affairs and day-to-day operations of Respondent No. 3 Company. It is contended that the Applicant, being a minority shareholder, has filed the present Petition alleging oppression by the majority shareholders in an attempt to shield his alleged acts of wrongful gain, siphoning of funds and removal of books, records and documents belonging to Respondent No. 3

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Company. The Respondents further allege that the Applicant, in connivance with Mr. Deepak Keswani, has also sought to defame the name and reputation of the Respondents and has misused the remedies available under the Companies Act, 2013.

29.8. With regard to the adjacent plot purchased for the Hotel, the Respondents submit that the property was acquired in the name of the Company from contributions made by the Directors in the form of loans to the Company. Such contributions were duly reflected as loans in the books of account and annual financial statements of the Company, of which the Applicant was aware. The Respondents further submit that interest was paid on such contributions and that the Applicant also received the corresponding benefit along with the other Directors.

29.9. The records and books of account were maintained at the registered office of the Company. The Respondents, however, allege that the Applicant, along with Mr. Deepak Keswani, removed certain books, documents and records from the registered office without following due process. It is further submitted that the alleged removal was captured on CCTV and that a police complaint was lodged in that regard. The Respondents further rely upon communications exchanged thereafter and contend that several original documents of the Company remained unavailable on account of such removal.

29.10. The Applicant, while acting in his capacity as Director of Respondent No. 3 Company, received an amount of Rs. 28,00,000/- from the director management of Konark Group, in connection with the transaction

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relating to security for the loan/mortgage of the property and retained the said amount in his personal bank account. The Respondents further contend that the Applicant has not paid the said amount to the Konark Group till date and that such conduct, according to them, constitutes acts detrimental to the interests of the Company and its shareholders.

29.11. The Respondents further submit that the Applicant had demanded 40% of the shareholding and Mr. Deepak Keswani had demanded 25% shareholding from the Respondents, allegedly with a view to compel the Respondents to desist from acting against their alleged acts of blackmailing, fraud, mismanagement, abuse of powers and acts stated to be ultra vires. The Respondents further submit that the Applicant, along with Mr. Deepak Keswani, had demanded complete control over the operations, functions and day-to-day affairs of Respondent No. 3 Company, which, according to the Respondents, was sought on the ground of preventing further alleged damage to the name, reputation and goodwill of the Respondents.

29.12. With regard to the Hotel operations during the lockdown period, the Respondents submit that Respondent Nos. 1 and 2 had visited the Hotel premises for making payments to suppliers and obtaining financial and operational data, particularly as the requisite information was not being furnished by the concerned persons. It is further contended that such visits and collection of Company records were undertaken in their capacity as Directors and majority shareholders and cannot be characterised as oppressive or unlawful acts.

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29.13. During the lockdown the Respondent No. 3 Company was facing financial constraints and there was a lack of clarity regarding its funds, sales, purchases and outstanding liabilities. It is further contended that the Respondents had repeatedly sought the requisite financial data from the Applicant, Mr. Deepak Keswani and the accounting team, but the same was not furnished. The Respondents further stated that they infused an aggregate amount of Rs.10,75,000/- from their personal funds into the Company for meeting day-to-day expenses, including payments to suppliers, employees and utility service providers, and also paid GST filing expenses from their personal funds.

29.14. In respect of Mr. Jaikumar Pillai, the Respondents submit that he had been appointed to maintain and update the day-to-day entries relating to sales, purchases and expenses of the Hotel. It is contended that he failed to provide the financial information sought by the Respondents and was non-cooperative in the discharge of his duties. The Respondents further allege that an incident involving a cheque bearing a purportedly forged signature of Respondent No. 1 came to their knowledge and that, in view of the aforesaid circumstances, the termination of Mr. Pillai was undertaken on valid grounds and did not require any separate approval of the Board.

29.15. The decision to temporarily halt the Hotel operations during the COVID-19 lockdown was taken in good faith and in order to safeguard the interests of the Company, its employees and customers. It is further submitted that, at the relevant time, the management did not have

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adequate information regarding availability of funds, sales, purchases and outstanding liabilities, apart from the need to undertake repairs and implement requisite safety measures. The Respondents contends that there was also a deadlock in the Board, and therefore the decision to temporarily suspend operations was taken to address the prevailing financial and operational difficulties and was not intended to prejudice the Company or any stakeholder.

29.16. The Respondents had initiated the audit for the financial year 2019-20 and had decided for the auditors to visit the Hotel premises. It is contended that the audit could not proceed as the Applicant and Mr. Deepak Keswani allegedly instructed the concerned persons not to provide access to the books of account, bank statements and other relevant information to the auditors. The Respondents therefore contend that the difficulties in ascertaining the financial position of the Company were attributable, inter alia, to non-availability of financial records and lack of cooperation from the Applicant and persons acting on his behalf.

29.17. The Respondents submit that the Hotel resumed operations on 07.08.2020 under the management of the Applicant and Mr. Deepak Keswani. It is alleged that, subsequent thereto, the Company's bank accounts were frozen and only a nominal amount of Rs.11,000/- was deposited by the Applicant and Mr. Deepak Keswani from the sales collections over a period of more than 30 days. The Respondents further allege that customers were directed to make payments through digital wallets linked to the personal bank accounts of the Applicant,

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Mr. Deepak Keswani and/or Mr. Anil Keswani, instead of depositing the sale proceeds into the Company's bank accounts. The Respondents therefore contend that the freezing of the remaining bank accounts was undertaken to safeguard the funds and interests of Respondent No. 3 Company.

29.18. The communications addressed to suppliers and regulatory authorities were made with the object of protecting the Company from potential liabilities and informing the concerned stakeholders about the financial and operational difficulties faced by the Company during the lockdown. The Respondents further deny having threatened or intimidated the suppliers and contend that the delay in payment of suppliers, employees and utility service providers was primarily attributable to non-availability of funds and financial information.

29.19. In relation to the allegations concerning transfer and transmission of shares, the Respondents contend that all such transfers and transmissions were effected in accordance with the applicable provisions of the Companies Act, 1956/2013 and were duly reflected in the statutory records of the Company. It is submitted that the Applicant and Mr. Deepak Keswani had, on several occasions, signed the financial statements, share certificates, annual returns and Board Reports of the Company.

29.20. The Respondents had issued notice dated 09.10.2020 for convening a Board Meeting on 17.10.2020 for considering the proposal for convening an Extra-ordinary General Meeting. It is further contended that

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the meeting was convened with the requisite notice & agenda. Further, the Applicant and Mr. Deepak Keswani, having remained absent, left Respondent Nos. 1 and 2 to constitute the quorum. The Respondents deny the validity of the resolutions allegedly passed in the meeting dated 14.10.2020 and contend that the removal of Respondent Nos. 1 and 2 was undertaken without following due process. They further submit that the subsequent EGM was requisitioned and conducted in accordance with Section 169 of the Companies Act, 2013 and the applicable provisions relating to removal of directors.

29.21. The Respondents contend that no case of oppression or mismanagement is made out against them and that the affairs of Respondent No. 3 Company have at all material times been conducted in the interest of the Company, its shareholders, employees, suppliers and other stakeholders. It is submitted that the Respondents are the majority shareholders and have been managing and operating the Hotel in accordance with law and in the interest of the Company. The Respondents deny having committed any unlawful, fraudulent or oppressive act against the Applicant or the Company.

29.22. The Respondents hold the majority shareholding validly and that the Applicant's allegations of oppression and mismanagement are based on disputed and unsubstantiated assertions. They contend that the Applicant himself has alleged that he was responsible for the day-to-day affairs of the Company, while simultaneously alleging that the Respondents were managing its affairs in a manner prejudicial to the

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Company. The Respondents rely upon the audited financial statements and annual returns filed with the Registrar of Companies and contend that these records bear the Applicant's signatures. Accordingly, the Respondents submit that no case of oppression or mismanagement, unlawful deprivation of shareholding, or prejudice to the interests of the Company and its stakeholders is made out, and therefore the Petition and the reliefs sought therein deserve to be dismissed

30. Further, Respondent No. 1 filed the Sur-Rejoinder dated 10.03.2021 on behalf of the Respondents, wherein the allegations made by the Applicant were denied.

30.1. In respect of the transfer of shares of the Mulchandani family, the Respondents submitted that the said shares were voluntarily sold by the Mulchandani family to Respondent No. 1 during the years 2002, 2003 and 2007, after following the applicable procedure, and that the consideration of Rs. 38,00,000/- was paid from the personal funds of Respondent No. 1, as evidenced by the bank statements.

30.2. With regard to the transmission of shares pertaining to Shri Kakumal Keswani and Smt. Kalawanti Keswani, the Respondents submitted that the said shares were bequeathed under the registered Will dated 08.03.2010 and, upon their demise, Respondent No. 1 made the requisite application for transmission along with the death certificates, original share certificate and copy of the Will, pursuant to which the Board Resolution dated 14.04.2018 was passed. It was further submitted that the Articles of Association did not prescribe any specific additional documentation for such transmission and that

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the Applicant's allegations regarding forgery of the Board Resolution and non-probate of the Will were misconceived.

30.3. As regards the temporary halt of the Hotel operations, the Respondents submitted that the same was necessitated by the financial strain suffered by the Company during the COVID-19 lockdown, unpaid suppliers, the need for upgradation of the Hotel and compliance with the Government-prescribed safety guidelines, and that the temporary halt was effected pursuant to the Board Resolution dated 27.07.2020 and was not intended to permanently shut down the Hotel.

30.4. In respect of freezing of the Company's bank accounts, the Respondents submitted that all the Directors were signatories to the Company's bank accounts and that the Applicant and Mr. Deepak Keswani had collected monies from customers through cash, Paytm and GPay, while only a small portion of the collections was deposited in the Company's bank accounts; therefore, apprehending misuse of the authority vested in the Applicant as a signatory, Respondent No. 1 submitted that he was constrained to issue directions for freezing the accounts.

31. A Company Application **COMPANY APPLICATION/ 20(MB)/2026** has been filed on 28.01.2026 by the Petitioner, under Rule 11 r/w rule 32 of the National Company Law Tribunal Rules, 2016, against the Respondent No. 1, Respondent No. 2, Respondent Company, Mrs. Laxmi Keswani, Mrs. Sunita Keswani, Mrs. Pushpa Keswani, Mrs. Geeta Keswani, Mr. Mahesh Mulchandani, Mr. Hiranand Mulchandani, and Mr. Ramchand Mulchandani, for placing on record Independent Legal

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Assessment Report dated 02.01.2026 of shareholding, statutory filings, and related legal issues in respect of Kailash Parbat Hotels (India) Private Limited issued by Independent Expert - Mr. Shrey Patnaik, Advocate, Patnaik & Co. Thereafter, an Interlocutory Application **COMPANY APPLICATION/ 73(MB)/2026** was filed on 19.03.2026 by Petitioner stating that Company Application No. 20 of 2026 be taken on record and heard as part and parcel of C.P. No. 1300(MB)/2020 and that the reliefs sought therein be considered while adjudicating the main Company Petition.

FINDINGS & ANALYSIS:

32. We have considered the pleadings, documents and submissions of the parties and have examined the allegations of oppression and mismanagement in the light of the statutory framework contained in Sections 241 and 242 of the Companies Act, 2013.

33. Indubitably, the Petitioner holds 5,250 equity shares out of the total 60,000 equity shares of Respondent Company, which is below 10% of issued share capital of the Respondent Company. The Petitioner has also placed on record the written consent of two other members, namely, Mrs. Geeta Kishore Keswani and Mrs. Pushpa Ashok Keswani, holding 2,600 and 550 equity shares respectively, thereby claiming 14% together with the consenting members to maintain the present Petition. Without going into the issue whether the consent meets the requirement of Section 244(2) of the Companies Act, 2013, it is noteworthy that the number of Members of the Respondent Company were 7 at the date of filing of the Petition, accordingly, the Petitioner being one of them constitutes more 1/10th of total number of its Members. Hence, the Petitioner is entitled to file this Petition under Section 244(1)(a) of the Act in his individual capacity only dehors these consents.

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34. The principal dispute between the parties concerns the shareholding of Respondent Company. The Petitioner has raised objection to (a) the manner in which the shares held by Mulchandani family were acquired by Respondent No. 1 & 2 to his exclusion despite he having funded such acquisition by advancing monies to R1 & R2 and their wives for such acquisition; and (b) the transmission of shares held by their parents namely Smt. Kalawanti Keswani and Shri Kakumal Keswani on their demise under a purported Will which is alleged to be a fraudulent document. Besides this, the Petitioner has challenged his as well as Deepak Keswani's removal as Directors of the Respondent Company.

35. The Respondent Company was initially owned by Mulchandani Family (60%) and Keswani Family (40%). It is not in dispute that the share transfer from Mulchandani family to Keswani Family members took place in three Tranches i.e. 25,000 shares in the Year 2002; 9000 shares in the Year 2003; and 6000 shares in the Year 2007 and the payments against the purchase of those shares were made from the Bank Account of the Respective Transferee i.e. Respondent 1 & Respondent 2 and their wives as well as wife of the Petitioner. Out of the 25,000 shares purchased in the Year 2002, 2000 shares were transferred in the name of Petitioner's wife, 2510 shares in the name of R2's wife, 4000 shares in the name of R1's wife, 6500 shares in the name of R2 and remaining 9990 shares to R1. Further, out of acquisitions of shares in the year 2003 & 2004, 5510 shares were transferred in the name of R1 and remaining 9490 shares in the name of R2. Prior to such transfer consequent of purchase of shares from Mulchandani Family, 20,000 shares held by Keswani Family were held by the following Members :

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Kishore Keswani	5250 shares
Kalawanti Keswani	10050 shares
Laxmi Manohar Keswani	550 shares
Pushpa Ashok Keswani	550 shares
Geeta Kishore Keswani	2600 shares
Kakumal Keswani	1000 shares
Total	20000 Shares

36. It is contended by the Petitioner that Clause 11 of Article of Association of Respondent Company states that no share shall be transferred to any person who is not a member of the Company so long any member is willing to purchase the same at the fair value. Accordingly, it is submitted that the purchase of these shares in the name of R-1, R-2 and their wife's was not only contrary to the provisions of Article in the absence of the shares of Mulchandani family having been first offered to the existing members, i.e. the Petitioner or his wife or their parents who were only members from Keswani family prior to purchase of shares from Mulchandani Family.

37. The relevant clause 11 Article of Associations of the Respondent Company provides that:

> *"11. (a) Subject to what is stated herein above and further save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the Company so long any member is willing to purchase the same at the fair value which shall be determined as hereinafter provided.*

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(b) Every In order so ascertain whether any member is willing to purchase a share at the fair value, the person proposing to transfer the same (hereinafter called. "the Retiring Member") shall give notice in writing together with the relative Share Certificates to the Board that he desires to sell the same. sale notice, shall specify the distinctive numbers of the share which the retiring member desires to sell and every notice shall constitute the Company the agent of the Retiring Member for the sale of such shares at the fair value. No sale notice can be withdrawn except with the sanction of the Board.

(c) If the Board shall within two Calendar month after service of sale notice find member willing to purchase any share comprised therein (hereinafter described as "a purchasing member") it shall give notice thereof to the retiring member. The retiring member shall be bound upon payment of the fair value to transfer to the Purchasing Member and he shall be bound to complete the purchase within seven days from the service of such last mentioned notice.

The Board shall with a view to finding a purchasing member for any shares comprised in a sale notice, distribute among the existing members, or to nearly as may be in proportion to their holding of shares in the Company shall limit the time within which such offer if not accepted will be deemed to be declined and the Board shall. make such arrangement as regards the findings of the purchasing member for any share not accepted by a member to whom they shall have been

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offered as aforesaid within the time so limited, as they think fit."

38. It is noted that Respondent No.1 and Petitioner were Director prior to purchase of shares from Mulchandani family starting from 2002, however, neither of the Respondent or their wives were existing members at that time. However, it is relevant to note Petitioner's pleading at Para 5.M of the Petition, after referring to decision of Mulchandani Family to part ways in 2002 at Para 5.L, whereby he has stated that "*In view of the aforesaid, it was decided to invest funds from the Keswani joint family resources to buy out the stake / shares held by the Mulchandani Family, instead of bringing another investor / partner on board……. The payment to the Mulchandani Family for the purchase of 40,000 shares was made out of the common Keswani joint family resources*." It is further stated at Para 5.N that "*Therefore, in family meeting it was decided that the shares purchased from the Mulchandani Family would be transferred in a manner so as to achieve and almost equal stake of each of the four brothers…..*." Further, at Para 5.S the Petitioner has once again reiterated that the consideration was paid from the common joint family resources, accordingly the shares ought to have been transferred proportionately.

39. The aforesaid pleadings in the petition itself contradicts the claim of the Petitioner that the transfer from Mulchandani Family was contrary to provisions of Article 11 of the Articles of Association as the right of pre-emption as embodied therein was seems to have been discussed amongst the family members and the family members had decided to proceed with the aforesaid purchase implying that the Keswani family shareholders, particularly the Petitioner herein, had consented and waived the right of pre-emption as embodied in Article 11. It is also pertinent to note that the Petitioner has not placed on record any notice having been

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issued to Mulchandani family expressing his intent to purchase their shares.

40. Further, the Petitioner has also challenged the transfer of shares in the name of R-1, R-2 and their wives as being contrary to the understanding / family decision, as particularly set out in Para 5.N and 5.S of the petition on the ground that the consideration for the purchase of these shares was paid out of common joint family pool, and specifically R-1, R-2 and their wives paid the consideration to Mulchandani family out of the money transferred by Petitioner from his bank to their bank account had transferred money to these person.

41. It is noted that the Petitioner was a Director of the Respondent Company since May 1995 and Mr. Deepak Keswani was appointed as Director on August 1998 along with the Respondent No.1 also. Further, Respondent No.2 appointed as Director in December 2012. The Petitioner has made out his case on this ground alleging breach of trust committed by Respondent No.1 and 2 by transferring majority of shares purchase from Mulchandani family in their name taking advantage of Petitioner's tolerance of their behaviour out of love and respect to them. It is also noted that later on the Petitioner altered his position during the course of proceedings and started asserting the transfer of shares to R-1, R-2 and their wives to be illegal and which ought to accrue to him. Further, the Petitioner attempted to alter the basic fabric of this petition by deleting reference to Mr. Deepak Keswani, who was pleaded to have contributed a lot in the growth of Respondent Company by his guidance and support to the Petitioner.

42. Indubitably, Mr. Deepak Keswani is not pleaded to be an illiterate or ignorant person neither the Petitioner has been. The Petitioner has founded allegation of breach of trust on the premise that the Respondent No.1 and 2 had kept assuring him time and again that

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the family wealth belongs to all four brothers and shall be shared accordingly. At the outset, these claims, de hors, any documentary evidence or contemporaneous correspondence / communication amongst the family members do not merit acceptance in a legal proceeding merely on the basis of self-serving claim of a party. It is also relevant to note that Smt. Pushpa Keswani, the wife of the deceased brother, had not raised any such claim during the proceedings before this Tribunal.

43. Further, this Tribunal came across one complaint dated 30.10.2025 bearing title "*COMPLAINT UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 (READ WITH THE COMPANIES ACT, 1956 & 2013)* filed with CBI Hyderabad, which was taken note of by this Tribunal in its order dated 20.03.2026 as follows:

> "8……. *The said complaint is received via email dated 3.12.2025 from K Sivasubramani , and said email states that "Please find enclosed herewith an email complaint dated 31.10.2025 lodged by Shri Kishore Kumar Keswani, Founder-Director, Landlord, Kailash Parbat Hotels(India Pvt. Ltd.), Ph: 98906666600, Email: kishorekkeswani@gmail.com." The said complaint request for urgent Investigation and Attachment of Benami Shareholdings and Fraudulent Assets of Mr. Manohar Keswani, Mr. Rajkumar Keswani, Laxmi Keswani , due to misuse of judicial proceedings in NCLT Mumbai and conspiracy with broker cum Advocate (the name of Advocate is deleted by us), and associates to windup the company, Ongoing Collusion and Liquidation Racket within NCLT Mumbai, in order to benefit from the proceeds of the crime." This fact evidences that denial by the*

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Petitioner on 08.12.2025 is contrary to the Email dated 3.12.2025. Nonetheless, we consider that the Investigative Agencies shall be dealing with the complaint in accordance with the law to provide succour to the petitioner, if any required."

44. The Petitioner has quoted call transcripts in the said complaint whereby R-1 had assured Petitioner that "*It's just a formality. Don't worry — it's all equal between us brothers.*" Accordingly, the Petitioner had alleged that the shares held by R-1, R-2 and their wives as benamidar and the beneficial owner of proportionate shares has to be other brother's family, and hence, the petitioner had sought investigation in such benami shareholding. Though the Petitioner had denied filing any such complaint as is also recorded in above order, the said denial was contrary to facts on records. Accordingly, if the shares transferred to R-1, R-2 and their wives are held by them as benamidar of other factions of Keswani Family, this tribunal does not have jurisdiction to examine this aspect. Further, it can also not be said that the present case, involving acquisition and transfer of shares solely in the name of R-1, R-2 and their wives in contradiction to the family understanding to have it acquired and transferred proportionately in favour of all four brother factions, is a prima facie case of fraud having been perpetrated by R1- and R-2 on other factions when other two factions, namely the Petitioner and the deceased brother, were duly represented on the board of Respondent Company during relevant times i.e. period well before the year from which acquisition started till it got concluded after recording of the transfer pursuant thereto.

45. In case of **Adesh Kumar Gupta and Ors. v. Liberty Shoes Ltd., *(2024) ibclaw.in 606 NCLAT***, it is held that "*Section 241 is not intended to address such personal grievances,*

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but is meant to protect the interests of the company and its shareholders against genuine acts of oppression and mismanagement." Further, in the case ***of Needle Industries (India) Limited vs. Needle Industries Newey (India) holding limited AIR 1981 SC 1298*** it is held that for relief under Section, a conduct which lacks in probity, conduct which is unfair to and which causes prejudice to the Petitioner in the exercise of this legal and proprietary rights as a shareholder must be shown to exist. It was also held in Sumitomo Corroboration vs. CDC Financial Services (Mauritius) Limited (2008) 4 SCC 91 that provisions of Section 397, 398 of the 1956 Act (now Section 241 of 2013 Act) can be invoked only if the disputes, even among the shareholders or allegations against each other, relate to the affairs of a Company. Further, it was observed in Rao (V.M.) vs. V. V. Rajeshwari Ramakrishnan (1987) 61 Com Cases 20, 66 (Mad-DB) that the oppression complained of must affect a person in his capacity of character as a member of the Company; harsh or unfair treatment in any other capacity is outside the purview of section.

46. The dispute raised by the Petitioner in the present petition in relation to shareholding centres around the alleged breach of trust on part of Respondent No. 2 & 3 by acquiring the shares in their personal & wives name by using common family fund, accordingly, such dispute is more in nature of private disputes amongst the family member(s) for division of wealth, if the contention of petitioner is to be accepted. Such dispute does not arise in petitioner's capacity as shareholder. The remedy to claim rightful share in the properties acquired out of common family funds lies before the Civil Court, and such claim can not said to be an act of oppression in the affairs of a company, even though, denial of right share in family wealth may prejudice one of family faction.

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47. In view of the aforesaid discussion, this Tribunal does not find any merit in the case of Petitioner to impugn the transfer of shares from Mulchandani Family to R-1, R-2 and their wives. Nonetheless, such transfer can also not been impugned on the ground of limitation as the last acquisition took place in 2007 and the Petitioner as well as other effected faction (if the claim of Petitioner is to be believe that the shares in the Respondent Company were to be held proportionately by all the four family factions) being represented on the board of the Respondent Company as a director could have diligently discovered such transfer, if the same was not either in accordance with Clause 11 of the Articles or contrary to the family decision / understanding in relation to control and ownership of Respondent Company. Having said so we consider it appropriate to clarify that our findings shall not have any bearing on the investigation into allegation of benami holding by R-1, R-2 and their wives, which is otherwise required to be invested by the Petitioner by Enforcement Directorate and CBI pursuant to his separate complaints before them.

48. As regards the Petitioner's allegation that the transmission of shares from the deceased parents in favour of Respondent Nos. 1 and 2, pursuant to the Board Resolutions dated 14.04.2018 and 20.03.2019, was fraudulent in the absence of any Will forming the basis for such transmission, it is noted that the Respondents have submitted that the transmission of shares held by their deceased parents was effected pursuant to the registered Wills executed by them. The said Wills have not been challenged by the Petitioner. It is further noted that the Articles of Association of the Respondent Company do not prescribe any specific procedure for the transmission of shares held by a shareholder in his or her sole name. However, Clause 1 of the Articles of Association provides

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that Table A in Schedule I to the Companies Act, 1956, shall apply to the Company. In the absence of any specific provisions in the Articles in relation to transmission of shares held by a sole shareholder, Clause-25(1) of said Table-A shall apply which provides that "*On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares*". Further, Clause-26(1) thereof provides that "*Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either - (a) to be registered himself as holder of the share; or (b) to make such transfer of the share as the deceased or insolvent member could have made.*" Since the deceased parents had not died intestate, their properties to the extent dealt with in the registered will shall have to be succeeded by the persons named therein in the manner set out therein. Accordingly, we do not find any merit in challenge to the transmission of shares in favour of Respondent No.1 and 2 pursuant to said registered will(s).

49. As regards decision of Respondents to suspend Hotel operations temporarily during the COVID-19 lockdown, the Petitioner alleged to be oppressive. The Respondents have attributed the decision to the prevailing pandemic, financial constraints, non-availability of financial and operational data, unpaid liabilities and the requirement of safety measures. It is case of the Petitioner the Hotel could have been reopened under the applicable Government guidelines and that the subsequent conduct of the Respondents was intended to obstruct the functioning of the Hotel. The question is whether the decision was taken bona fide in the interest of the

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Company or was part of a course of conduct intended to prejudice the Applicant or alter control of the Company. We are of considered view that such decision was in the realm of commercial prudence of the management and cannot be held to be oppressive in nature even though such decision may have had effect of financial loss to the Respondent Company because this Tribunal cannot dictate the manner in which a business is to be run by the management unless such business decisions are shown to be biased or unfair.

50. During the pendency of present petition, the Petitioner and Mr. Deepak Keswani were removed as Director from the Board pursuant to extra-ordinary general meeting held on 12.11.2020, convening of which is impugned in the present petition by seeking stay thereon. Since this matter was listed first time on that day only, accordingly, the Petitioner as well as Mr. Deepak Keswani challenged the said removal.

51. This matter came up on board on 12.11.2020 for first time, and after hearing the parties and considering the urgency in the matter, this Tribunal passed an Interim Order which reads as follows :

> *"4…..Accordingly, this Bench hereby orders the continuance of operations of the hotel after restarting, as it was run before discontinuance of operations due to COVID-19 pandemic. No interference will be made in the operation of the hotel by any party which is not involved in the day-to-day operations of the hotel.*
>
> *5. All the decisions concerning directorship, shareholding and operation of the hotel, if any, taken in the EGM which is being held today, shall be inoperative till further orders of this Bench.*
>
> *6. The operation of the Bank Accounts of the Hotel will be restored to its original position as it was before COVID-19*

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pandemic. The Bank will continue to allow operations of the Bank account by the existing signatories with the existing limits without any change, as they were there before the last changes intimated to them by majority shareholders."

52. The Respondent No. 1 & 2, namely, Mr. Manohar Keswani and Mr. Rajkumar Keswani, filed Interlocutory Application **COMPANY APPLICATION/1195MB)/2020** on 26.12.2020, seeking directions to restrain the Petitioner and Mr. Deepak Keswani from misinterpreting or misusing the aforesaid interim order dated 12.11.2020 passed by this Tribunal in C.P. No. 1300(MB)/2020 and from interfering with their control over the day-to-day affairs of Kailash Parbat Hotels (India) Private Limited.
53. Since, the affairs of the Respondent Company were being managed by Respondents at that time, though the Petitioner and Mr. Deepak Keswani were in control of the Hotel premises and operation thereof, the Petitioner filed Interlocutory Application **COMPANY APPLICATION/ 33(MB)/2021** on 22.02.2021, seeking directions to restrain Original Respondent Nos. 1 and 2 from operating or transacting through the Company's bank account in any manner whatsoever during the pendency of the present proceedings, and for return of Rs. 13,99,500/- alleged to be fraudulently withdrawn by them on 10.02.2021 from HDFC Bank besides forensic audit and against exclusion of Petitioner and Mr. Deepak Keswani as directors.
54. This Tribunal, vide an order dated 3.9.2021 passed in CA 105 of 2021, appointed Mr. Mukesh Verma as administrator directing the operation of the Bank Accounts of the Company jointly by the petitioner and Respondents from Bank Accounts with the approval of Administrator to conduct the business of the hotel. Further, the Petitioner herein was directed to re-deposit the cash withdrawn from Companies Bank account immediately forthwith, however,

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the prayer for granting a status quo in relation to DIR-12 filed by the Respondent Company relating to removal of Petitioner and Mr. Deepak Keswani as Director was declined and they were allowed to participate in the operations of the Hotel. The said order was passed by this Tribunal after observing that the Petitioner and Mr. Deepak Keswani were conducting the Hotel business and they have not been allowing the majority to conduct the business thereof leading to a complete deadlock between the parties.

55. The Respondent No. 1 & 2, namely, Mr. Manohar Keswani and Mr. Rajkumar Keswani, filed Company Application **COMPANY APPLICATION/ 374(MB)/2021** on 21.10.2021, seeking initiation of contempt proceedings against the Petitioner i.e. Mr. Kishor Keswani and another director Mr. Deepak Keswani, for alleged wilful disobedience of the directions issued by this Tribunal vide order dated 03.09.2021 in C.A. No. 105/2021 in C.P. No. 1300(MB)/2020 alleging their failure to redeposit Rs. 40 lakh withdrawn from the Company's bank account, conducting hotel operations without due coordination with the appointed Administrator, collecting hotel sales proceeds through their personal bank accounts, and non-deposit of sales revenue exceeding Rs. 2 crore for the period from 01.04.2021 to 17.10.2021 into the Company's bank account. The Petitioner filed his affidavit in reply dated 18.02.2022 stating that the same is not maintainable due to procedural defects and that the allegations of non-compliance with the order dated 03.09.2021 are misconceived as the direction regarding re-deposit of monies was already complied with, denied withdrawing or siphoning any Company funds, and contended that the use of a personal bank account for online collections was necessitated by the freezing of the Company's bank accounts and was duly disclosed to the Administrator.

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56. An Interlocutory Application **COMPANY APPLICATION/ 160(MB)/2022 w**as filed on 06.04.2022 under Rule 11 of the NCLT Rules, 2016, by Mr. Mukesh Verma, the Administrator appointed by this Tribunal vide order dated 03.09.2021 in respect of Kailash Parbat Hotels Private Limited ("KPHPL"), against Petitioner, Respondent No. 2, Respondent No. 3, Mr. Deepak Keswani the fourth director of Respondent Company, and Mr. Jay Kumar Pillai alleging serious difficulties being faced by him in managing the day-to-day affairs of the Hotel due to lack of transparency and non-cooperation from the parties in control, resulting in difficulties relating to timely payment of salaries, vendors and suppliers, and statutory compliances, continuing disputes and alleged interference by the parties despite filing of regular status reports before this Tribunal, and apprehending his safety while visiting the Hotel.

57. An Interlocutory Application **COMPANY APPLICATION/ 340(MB)/2022 was** filed on 04.05.2022 under Rule 11 of the NCLT Rules, 2016, by Petitioner against Mr. Mukesh Verma/The Administrator, Respondent No. 2, and Respondent No. 3), seeking release of payments to vendors/employees as per list enclosed thereto and such payment in future also on regular basis, authority in favor of Petitioner to draw cheques for these purposes and to collect revenue in cash for meeting these expenses in emergency, and appointment of an auditor.

58. This Tribunal passed an interim order dated 03.02.2022 in Company Application No. 414 of 2021 in C.P. No. 1300(MB)/2020, the relevant part of which is reproduced hereinbelow:

> *"3. This Bench has taken a serious note on the criminal complaints filed against the Administrator who is an Officer*

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appointed by this Bench. This has been conveyed clearly to Ld. Sr. Counsel appearing from both sides.

4. This Bench directs both sides to improve their conduct so that the economic assets of the Company is in operation without any hurdle. The Administrator is directed to file a report within 15 days about the status of the improvement in the conduct of both sides.

5. This Bench is very clear in case both the sides are quarrelling with each other which is hampering the business of the Company, this Bench will not have any other alternative except to restrict both the sides in conducting the business and Administrator will be given sole charge for running the business till the pendency of the petition.

6. As far as the signatory of the Bank Account is concerned, henceforth, as agreed by both the sides, the Bank ex-signatory power will be solely vested with the Administrator and the Bank will be given the E-mail ID and mobile number of the Administrator for running the Bank Account.

7. If there is any deficiency in flow of information with respect to sales, collections, orders etc., the Administrator will device a standard format of reporting today itself and circulate with both the sides so that flow of information is coming in routine on daily basis to both the sides.

8. The Administrator will also ensure that the cheques are signed by him only after both the sides have agreed in writing for making the payment.

9. As far as the cash collection is concerned, the same has to be deposited next working day in the Bank Account, without any fail. Nobody in the Company is authorized to retain the cash or making expenditure in cash. All the expenses are to be paid through Banking Channel.

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10. For the period the Administrator has rendered his services and till the time he is withdrawn from the administration of the Company, he will be paid of Rs.1.50 lakh per month by the Company, in addition to his out of pocket expenses with respect to visiting the hotel premises of the Company."

59. A Contempt Application **CONTEMPT APPLICATION/ 7(MB)/2022** was filed on 08.09.2022 by Respondent No. 1 against Petitioner, and Mr. Deepak Keswani alleging wilful and deliberate breach, violation and disobedience of the aforesaid Order dated 03.02.2022. It is alleged therein that Petitioner and Mr. Deepak Keswani have continued to operate the affairs of the hotel without the requisite transparency and approvals. It is alleged that they have (i) failed to furnish the requisite sales, purchase, invoice and supporting documents, (ii) incurred capital expenditure without obtaining the necessary prior approval of the Respondent No. 1, (iii) utilised Hotel resources for personal purposes and the Administrator, (iv) siphoned through bogus invoices and manipulation of figures, (v) replaced hard drive of hotel computer to conceal actual revenue, and (vi) failed to deposit substantial cash revenue generated from the hotel business into the company's bank account, despite repeated requests and reminders from Respondent No. 1 and the Administrator.

60. Thereafter, 26.09.2022, this Bench passed an order in CA 98 of 2022 CA 189 of 2022 appointing another Administrator namely Mr. Manohar Y Mankar as the Administrator in place of recused Administrator for acting on the similar duties as to be taken over by him and continue the regular activities without any interruption and smooth running of the Hotel after accepting the said name proposed by Petitioner. Thereafter on 18.10.2022, this Tribunal replaced Mr. Manohar Y. Mankar by Mr. R. B. Deshmukh

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Principle District and Sessions (Retd.) to act as an Administrator on the mutual consent of both the parties as conveyed by their Counsel.

61. On 28.03.2023, this Bench allowed the prayer of the Petitioner vide IA 670 of 2020 for withdrawal of money to make payment to the employees, statutory authorities and its vendors which despite having sufficient balance in the bank account in terms of its order dated 20.03.2023, and also allowed the Petitioner to file an application for further release of payments for appropriate order(s) to the Bankers till the time this Bench nominates one person as Administrator.

62. However, despite this Tribunal's efforts to resolve the matter, there was a complete disharmony between both the factions which led this Tribunal to record on 15.12.2022 that this is a fit case for winding up in view of deadlock in the management of the company. After being informed by the parties that Hon'ble NCLAT had appointed a mediator in the matter, this Tribunal asked the parties to suggest a name of the valuer on 20.01.2023.

63. Since there was no Administrator to run the affairs and the deadlock was continuing, this Bench appointed Mr. Pradip Kumar Das as Administrator on 10.05.2023, however, the said Administrator also expressed his unwillingness to continue and filed an Application IA 160 of 2023 seeking to recuse from the duties of the Administrator, which was allowed and this Tribunal appointed Mr. K.P. Raghuwanshi IPS (Retd.) as Administrator. It is further noted from order dated 18.12.2023 that the said Administrator had also sought discharge vide Application IA 242 of 2023 and the resignation of Mediator was also accepted by this Tribunal vide order dated 14.11.2024. Thereafter, the parties had suggested some Mediator as recorded vide order dated 06.05.2024, and it was recorded in the order dated 18.07.2024 on the basis of

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submissions of the parties that the mediation is in concluding stage and sought two weeks' time to file mediation report, however, the said mediation was reported as failed as recorded in the order dated 28.08.2024.

64. It follows from the above that the consistent effort of this Tribunal to have the matter resolved to ensure the carrying on the affairs of Respondent Company without prejudice to the interest of any of the parties failed time and again, and in all cases, the appointed Administrator sought their relieving from the engagement for the reasons best known to them, though in some case, they had informed about intimidation and threat to them.

65. Besides this, the parties made allegations of forceful entry and control against each other, though Petitioner remains in control of Hotel business of the Respondent Company as on date and have been collecting revenue accruing to such business in the accounts other than Respondent Companies account without even accounting it for after such collection. This Tribunal had time and again required Petitioner to furnish the account of such collection as well as the expenses if any incurred by them out of such collection for accounting thereof in the books of Respondent Company. However, the complete details of such collection are still not on record. On the contrary the Petitioner had filed one Application CA 52 of 2025 for directions for payment of certain dues besides another Application CA 329 of 2025 for reimbursement of certain amounts paid by his wife to pay certain dues of the Respondent Company. Another CA 410 of 2023 was also filed on 11.07.2023 by the Petitioner seeking directions to Respondent No. 1, Respondent No. 2, Mr. Deepak Keswani, and Mr. Anil Keswani for the protection and preservation of the assets and business of the Company.

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66. Another Interlocutory Application **COMPANY APPLICATION/ 59(MB)/2024** was filed on 29.02.2024 by Respondent No. 1 & 2 together with Respondent Company against the Petitioner and arraying Commissioner of Income Tax, Commissioner, Goods and Services Tax, and HDFC Bank as Respondent No. 2 to 4 alleging Petitioner continuing in control of the affairs of Respondent Company and failing to comply with the directions of this Tribunal regarding deposit and accounting of the Company's revenue, and reiterating that substantial cash revenue, statutory dues and tax compliances remain unaccounted for leading to suspension / cancellation of the GST registration of the Respondent Company. Further, Another Interlocutory Application **INTERLOCUTORY APPLICATION/ 25(MB)/2025** has been filed on 04.01.2025 Respondent No. 1, under Rule 11 of the National Company Law Tribunal Rules, 2016, against the Petitioner seeking preponement of the hearing of Company Application No. 59 of 2024, and also to seek directions to the Petitioner to pay the demands /penalties raised by the Income Tax Department with respect to the demand notice and show cause notices addressed to the Respondent No. 1 in respect of Respondent Company.

67. As regards allegation of siphoning of funds levelled against each other by both the parties, this Tribunal had issued directions from time to time to both the parties to make good the amounts withdrawn from the Respondent Company, if due from them. However, these directions were not complied with in its spirit and effect by the Petitioner. This Bench had to observe in its daily order dated 20.04.2026 that the Petitioner devised a novel method to circumvent the order of freeze by accepting the receipts of the from the Respondent Companies operations in their personal account. It is not in dispute that the amounts accruing to the Respondent Company from its operations were collected by the

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Petitioner since their control thereof after freeze of the accounts particularly and those amounts along with corresponding expenditure if any incurred during the operations of the Respondent Company have not yet been accounted for by the Petitioner. This in itself indicates the inequitable approach of the Petitioner towards the Respondent Company as well as its other shareholders, which as per Petitioners original admission hold 75% of Respondent Company. It is trite that such person cannot invoke an equitable jurisdiction under Section 241-242 vested in this Tribunal for seeking equitable relief.

68. Further, it is trite that the majority rule is to be respected and a shareholder does not have inherent right to be a director of a Company unless otherwise agreed amongst the shareholders in this relation. Since, the Petitioner and Mr. Deepak Keswani have been removed as Director of the Respondent Company in accordance with the majority vote after following the due procedure, we are of considered view that the said removal cannot be set aside by this Tribunal as being oppressive. Nonetheless, the directorial disputes cannot be a basis for filing a 'Petition', under Section 241 & 242 of the Companies Act, 2013 as held in case of Adesh Kumar Gupta (Supra) after taking note of decision in the case of ***Jithendra Parlapalli Vs. Jithendra Parlapalli and Ors. Company Appeal (AT) (CH) No. 127 of 2022*** and ***Cyrus Investments Private Limited vs Tata Sons Limited and Ors Civil Appeal No. 440-441 of 2021***. Hence, we do not consider it appropriate to interfere in the removal of Petitioner and Mr. Deepak Keswani from the Board of Directors of Respondent Company.

69. In terms of the above Company Petition 1300 of 2020 is dismissed and disposed of. All pending Interlocutory Applications including but not limited to COMP.APPL/ 20(MB)2026 COMP.APPL/73(MB)2026 COMP.APPL/ 1195(MB)2020

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COMP.APPL/ 33(MB)2021 COMP.APPL/ 374(MB)2021 COMP.APPL/ 160(MB)2022 COMP.APPL/ 340(MB)2022 COMP.APPL/ 410(MB)2023 COMP.APPL/ 59(MB)2024 COMP.APPL/ 52(MB)2025 COMP.APPL/ 329(MB)2025 IA/25(MB)2025 CONT.A./7(MB) 2022 COMP.APPL/72(MB)2026 IA(COMPANIES.ACT)/79(MB)2026 IA(COMPANIES.ACT)/ 207 /(MB)2026 in the present Company Petition stand disposed of.

SD/-
Prabhat Kumar
Member (Technical)

SD/-
Sushil Mahadeorao Kochey
Member (Judicial)

Vipul Ghate

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