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

ITEM No.304
CP 33 of 2020

Under Section 241 of Co. Act, 2013

IN THE MATTER OF:

Neetaben Prabhubhai Pate **.....Applicant**
V/s
Prabhu Creations Pvt Ltd & Anr **.....Respondent**

Order delivered on: 26/10/2026

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

CP No. 33 (AHM) of 2020

(A Company Petition filed under Section 241 of the Companies Act, 2013 to be read with Rule 81 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

Neetaben Prabhubhai Patel,
Residing at:-
19, Ketan Society,
Near Sardar Patel Colony,
Naranpura, Ahmedabad.

.... Petitioner

VERSUS

1. **Prabhu Creations Pvt. Limited**
   Having its registered office:
   Plot no. 5, Prabhdas Patel Industrial Park,
   Kalol-Mehsana highway,
   Village- Chandarda, Ta - Kadi,
   Dist - Mehsana.

2. **Shital Manish Patel - Director,**
   Residing at
   9, Anandpark Society,
   Near Devendra Park,
   Naranpura, Ahmedabad.

.... Respondents

Order pronounced on: 26.10.2026

C O R A M:

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

A P P E A R A N C E:

For the Petitioner: Mr. Monaal Davawala, Advocate.
For the Respondents: Mr. Arjun Sheth, Advocate for R-2.

O R D E R
(Per: Bench)

1. This Company Petition CP No. 33 of 2020 was filed on 11.08.2020 vide inward diary no. 6011, by the Petitioner Neetaben Prabhubhai Patel, under Section 241, of the Companies Act, 2013 with rule 81 of the National Companies Law Tribunal Rules, 2016 with the following reliefs: -

A. FINAL RELIEF

(i) *To pass appropriate orders under Section 241 of the companies act, 2013 to regulate the affairs of the company and to end oppressive acts complained thereof and also to pass appropriate directions under 241 of the Act thereby ending conduct of the affairs of company which are being conducted in manner prejudicial to public interest and the company and various stakeholders.*

(ii) *Pass an order thereby framing a scheme under section 241 of the Companies Act, 2013 in the Respondent no. 1 Company thereby the business can be managed by the Petitioners and the Respondents No. 2 together and further be pleased to direct the Respondent no.2 to place on record the minutes of the AGM/EOGM of Respondent no.1 Company;*

(iii) *Direct the Respondent no.2, to prove the bonafide, to produce all the statutory records viz. Sale Register, Bank Statement, stock register. Income & loss statement, fixed asset register, Balance Sheets etc. of the Respondent no.1 Company for last 10 years before this Hon'ble Tribunal and further be pleased to direct the respondent no. 2 to allow the petitioner to have access in premises of the Respondent no.1 and to have equal access in day to day affairs of the business of the Respondent no.1 Company;*

(iv) *That Your Honour may be pleased to pass an order of injunction against the Respondent no.2 under the scheme of Section 241 from interfering in the operation, control and management of the Respondent No. I company;*

(v) *Be pleased to direct the Respondent no.2 to account for all personal gains earned from the transactions executed on behalf of the Respondent no.1 Company and/or by using the name of the Company and to produce the accounts of the revenue generated from the business of the Respondent no.1 Company.*

(vi) *Scheme be framed, u/s. 241, to regulate the management and affairs of the company on such terms and conditions as this Hon'ble Tribunal may deem, fit and proper to end deadlock in the company*

(vii) *Pass such other/further order/ directions, which this Hon'ble Tribunal 'may" deem fit and proper in the facts and circumstances of the present case be granted;*

B. INTERIM RELIEF

(i) *Direct the Respondent no.2 not to act illegally and unlawfully against the interest of the Company;*

(ii) *Direct the Respondent no. 2 herein- to produce all statutory documents of the Respondent no.1 Company to the Petitioners herein and also direct the Respondent no.2 herein to convene the EOGM or AGM of the Respondent no.1 Company after serving of the Notices to the petitioners herein;*

(iii) *Direct the Respondents to maintain the status-quo of the board and shareholding of the Respondent No. 1 Company*;

(iv) *Restrain the Respondents from holding any Board Meetings, Annual General Meetings and Extra Ordinary General Meeting without prior permission of the Hon'ble National Company Law Tribunal.*

For the following Reason:

The Respondent no.1 Company i.e. Prabhu Creations Private Limited is, incorporated by the Petitioner and Respondent no.2 as per the idea given by the late father of the Petitioner herein. The object of the Company for the purpose it was incorporated was enshrined in the MOA and AOA of the Company. Its CIN is U17121GJ2006PTC049424. It is submitted that the issued, subscribed & paid up share capital of the Respondent no.1 Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- fully paid. It is submitted that petitioner and Respondent no.2 have been holding equal number of shares i.e. 50:50 of Share Capital. It is submitted that the Respondent no.2 has captured the entire business affairs of the Respondent no.1 Company by

force and in connivance with outsiders and has taken the charge of the business affairs of the company and have been conducting the business affairs prejudicial to the interest of the Petitioner. Not only that, the 'Respondent no.2 herein by force, coercion, threat of police and under inducement obtaining signatures on various papers and also doing her false signature while filing any relevant documents before various authorities without informing the petitioner and withholding all sorts of very important business information with her and therefore the petitioner herein is constrained to invoke the jurisdiction of this Hon'ble Tribunal u/s. 241 of the Companies Act 2013.

2. The Petitioner has placed the facts through this Petition in the following manner: -

2.1 The Petitioner, Neetaben Prabhubhai Patel, has preferred the present Company Petition as a Director and shareholder holding 50% of the shareholding of Respondent No. 1, viz. Prabhu Creations Private Limited, against Respondent No. 2, who is stated to be in control of the management and affairs of Respondent No. 1.

2.2 It is the case of the Petitioner that Respondent No. 1 was incorporated by her, along with Respondent No. 2, at the instance and with the help of her late father, Shri Prabhubhai Patel, and that till 2010, while she remained active; the affairs of the Company were conducted in accordance with the statutory provisions.

2.3 It is further submitted that thereafter Respondent No. 2, with the aid of her husband, captured the entire management of the Company, including its

registered office and the offices where its books of account are kept, and took over the family business behind the back of the Petitioner and her brother, Shri Mihirbhai Patel, while he was in the USA. It is stated that Shri Mihirbhai Patel had sent more than Rs. 4 crores from the USA to Respondent No. 2 and her late husband for the development of the family group companies, including Respondent No. 1.

2.4 It is the case of the Petitioner that a long-term lease deed dated 03.07.2011 was executed between Respondent No. 1 and its sister concern, Nishant Infrastructure Private Limited, whereby the land of the sister concern was leased to Respondent No. 1 for 30 years, i.e. from 03.07.11 to 02.07.40, at a lease rent of Rs. 25,00,000/- per annum with an increment of 10% every year, and Respondent No. 1 was to construct residential houses thereon. The lease rent payable for the period from 03.07.2011 to 31.12.2018 has been stated as under:

Sr. No.	Period of Lease Rentals	Amount (Rs.)
1	03.07.2011 to 02.07.2012	25,00,000.00
2	03.07.2012 to 02.07.2013	27,50,000.00
3	03.07.2013 to 02.07.2014	30,00,000.00
4	03.07.2014 to 02.07.2015	32,50,000.00
5	03.07.2015 to 02.07.2016	35,00,000.00
6	03.07.2016 to 02.07.2017	37,50,000.00
7	03.07.2017 to 02.07.2018	40,00,000.00
8	03.07.2018 to 02.01.2019	21,25,000.00

Sr. No.	Period of Lease Rentals	Amount (Rs.)
	Total	**2,68,75,000.00**

A copy of the said lease agreement dated 03.07.2011 has been placed on record as **Annexure D**.

2.5 The Petitioner has contended that the said amount of Rs. 2,68,75,000/- was never accounted in the books of Respondent No. 1 and was allegedly taken away by Respondent No. 2 for personal purposes, and that the lease was executed without any Board Meeting or EOGM, without any authorising resolution and in the absence of the Petitioner. The Petitioner issued a legal notice dated 26.03.2019 in this regard, a copy whereof along with the reply of Respondent No. 2 has been placed on record as Annexure E (Colly.).

2.6 It is further submitted that Respondent No. 2 let out the warehouses/godowns of Respondent No. 1 to third parties without any authority and diverted the rent for her personal benefit, and that, after showing them as owned by the sister concern in 2015-16, she removed two of them from the list of the sister concern from 2017 and gave them on rent to a third party. Copies of the lease agreements of 2016 and 2018 have been placed on record as Annexure F (Colly).

2.7 It is the case of the Petitioner that Respondent No. 2 obtained a loan from the Central Bank of India by hypothecating the stock and current assets of Respondent No. 1, which was never accounted in its books and was diverted for personal purposes, and that the hypothecated stock was sold to third parties and the properties of the father of the Petitioner were sold, by allegedly forging her signatures, to repay the bank. Copies of the hypothecation agreements have been placed on record as Annexure G (Colly.).

2.8 It is further submitted that after the death of Shri Manish Prabhubhai Patel, the husband of Respondent No. 2 and brother of the Petitioner, in December 2014, Respondent No. 2 stopped the payment of profit and Directors' salary to the Petitioner and her mother and, in connivance with her daughter and son, allegedly sold and misappropriated the stock in trade, raw materials, finished goods, machinery, furniture and fixtures of Respondent No. 1 worth crores of rupees.

2.9 The Petitioner has submitted that since 2010 she has neither been shown the audited balance sheets nor called to any meeting of the Company, including Board Meetings for the appointment of auditors and approval of accounts; that the revenue of Respondent No. 1 has not been reflected in its Profit

and Loss Account; and that she has no access to the premises or records of the Company, as Respondent No. 2 has deployed bouncers at the premises and lodged police complaints against the Petitioner and her brother when they sought information.

2.10 It is further submitted that on 06.03.17 the Petitioner received a statutory notice from the Registrar of Companies questioning the running of the Company, and also received demands from secured, unsecured and sundry creditors of Respondent No. 1 for unpaid amounts. A copy of the said notice has been placed on record as Annexure H.

2.11 It is the case of the Petitioner that Respondent No. 2 executed agreements behind her back and transferred funds to the USA for her kith and kin, and has raised a doubt as to whether the statutory books and registers of the Company are being maintained. The Petitioner, by legal notice, called upon Respondent No. 2 to produce the records of the Company, including the stock register and the fixed assets register, and to permit inspection of the records of the last 10 years, to which Respondent No. 2 sent a reply, stated to be vague. Copies of the notice and the replies have been placed on record as Annexure I and Annexure J (Colly.), respectively.

2.12 The Petitioner has further stated that she has filed CP No. 25 of 2020 before this Tribunal against the same Director in respect of another sister company, Prachi Industries Limited, wherein notice has been issued, a copy whereof has been placed on record as Annexure K. It is further submitted that there is a complete loss of faith and confidence between the Petitioner and Respondent No. 2, and an apprehension that Respondent No. 2 may leave India and settle abroad.

2.13 It is the case of the Petitioner that, in the aforesaid circumstances, though the facts would justify the winding up of Respondent No. 1, the same would not be in the interest of the Company and its shareholders, and therefore she has approached this Tribunal under Section 241 and other applicable provisions of the Companies Act, 2013 read with Rule 81 of the National Company Law Tribunal Rules, 2016, seeking reliefs other than winding up, as prayed for in the petition.

3. That on issuance of the notice in the Company Petition, the Respondent No. 2 Mrs. Shital Manish Patel appeared and filed her affidavit in reply dated 09.07.2021 vide Inward Diary No. 5387, inter alia submitting as under: -.

3.1 The Respondent No. 2 raises an objection of limitation under Section 433 of the Companies Act, 2013, read with the Limitation Act, 1963. She contends that issues arising beyond three years before the filing of the petition are time-barred and states that her reply addresses the matters falling within the relevant three-year period.

3.2 The Respondent No. 2 submits that the present petition is interconnected with Company Petition No. 32 of 2020 and adopts the facts, averments and grounds contained in her earlier affidavit dated 17.04.2021, filed in the connected proceedings. A copy of the said affidavit is annexed as Annexure A, although the reply contains inconsistent references to Company Petition Nos. 30 and 32 of 2020.

3.3 The Respondent No. 2 states that the shareholding of Respondent No. 1 company is divided equally between the Petitioner and Respondent No. 2, each holding 50%. She further states that the Petitioner and Respondent No. 2 have been the only directors of the company since its incorporation on 22.11.2006. The company's master data is annexed as Annexure B.

3.4 The Respondent No. 2 states that the business of Respondent No. 1 was conducted by her late husband, Mr. Manish Patel, who died on 26.12.2014, and that the company's business had

closed around 2012–2013. She further states that the last audited financial statements, for the financial year 2011–2012, were signed by both the Petitioner and Respondent No. 2. The said financial statements are annexed as Annexure C.

3.5 The Respondent No. 2 submits that, after her husband's death, the family members agreed that she would discharge the debts incurred by Respondent No. 1 during his management of the business. She claims to have repaid those debts, including by selling her personal properties, and alleges that the other family members subsequently made false allegations against her. She relies on the supporting documents referred to in her earlier affidavit.

3.6 The Respondent No. 2 alleges that documents relating to the affairs of Respondent No. 1 were removed by Mr. Mihir Patel, the Petitioner's brother, who, according to her, was neither a shareholder, director nor employee of the company. She states that she filed a criminal complaint dated 28.12.2018 against him before the local police station. A copy of the complaint is annexed as Annexure D.

3.7 The Respondent No. 2 denies the Petitioner's averments in paragraphs 6.1 and 6.2 of the petition and states that they are unsupported by

documentary evidence. She denies the averments in paragraphs 6.3 and 6.4, relying on her earlier affidavit in the connected proceedings. Regarding paragraph 6.5, she states that the dues of Central Bank of India have been paid and that the bank issued a no-dues certificate.

3.8 The Respondent No. 2 denies the Petitioner's allegations concerning the non-production of company records. She contends that the documents are already in the Petitioner's possession because her brother allegedly removed them from the company's premises around December 2018. On this basis, she alleges that the Petitioner has approached the Tribunal without disclosing the true facts and opposes the relief sought for production of the documents.

3.9 The Respondent No. 2 denies the allegation that the Petitioner was not called for board meetings or general meetings. She states that the Petitioner is the company's other director and 50% shareholder and that no meeting could be held without her presence. She further contends that the Petitioner could also have called meetings herself and alleges that her failure to do so demonstrates neglect of her responsibilities.

3.10 The Respondent No. 2 denies the allegation that the Petitioner's salary was stopped. She states that the

company's business had closed around 2012–2013 and that the financial statements for the financial years 2010–2011 and 2011–2012 do not show payment of salary to a director. She also disputes the allegations concerning misappropriation of stock and contends that the relevant matters relate to a period more than eight years before the reply and are barred by limitation.

3.11 The Respondent No. 2 refers to the statutory notice received from the Registrar of Companies and questions the Petitioner's failure to respond to it, given her position as a 50% shareholder and director.

3.12 The Respondent No. 2 ultimately submits that the petition is liable to be dismissed, principally on the grounds of limitation and the denials and explanations set out in her reply. She prays that the Tribunal reject the reliefs sought by the Petitioner.

4. Vide order dated 08.02.2024, this Tribunal granted the Petitioner a last and final opportunity to file the rejoinder, if any. However, both the learned counsel submitted that there was a possibility of arriving at a settlement through mediation and sought time to take instructions from their respective clients. Tribunal directed both counsels to file a one-page summary of the issues involved in the petition.

5. Vide order dated 27.06.2024, the learned counsel for both sides submitted that they had no objection to the matter being referred to mediation or to the appointment of an independent mediator by this Tribunal, and both sides were directed to file affidavits to that effect.

6. In compliance of the order dated 27.06.24, the Petitioner filed her affidavit vide Inward Diary No. D-5307 on 08.07.24 and Respondent No.2 vide Inward Diary No. 1435, dated 11.07.24, consenting to the reference of the present dispute to mediation.

7. Vide order dated 11.07.2024, this Tribunal at the request of the contesting parties, referred the matter to mediation, appointing Mr. Rohit Kapoor, Ex-Member, NCLT, as the Mediator. The Mediator was directed to complete the mediation within 90 days from the date of the order, and was permitted to appoint an expert, if required, and to fix his own remuneration.

8. Respondent No. 2 thereafter filed a pursis dated 26.09.24 vide Inward Diary No. D-7348, stating that the Petitioner had withdrawn her consent to the mediation and that, therefore, no mediation proceedings took place between

the parties. Copies of the email correspondence exchanged between the learned advocates for the parties and the learned Mediator from 30.07.24 to 01.08.24 have been placed on record as Annexure A.

9. Vide order dated 21.11.24, this Tribunal noted that a new learned counsel had appeared for the Petitioner, having filed the Vakalatnama, and directed both sides to file their written submissions.

10. The Petitioner thereafter filed IA/102(AHM)2025 under Rule 11 of the National Company Law Tribunal Rules, 2016, seeking permission to file a rejoinder. Vide order dated 28.08.25, after hearing both sides, and notwithstanding the objection of Respondent No. 2 that the pleadings stood completed and written submissions had also been filed, this Tribunal, since the matter was yet to be heard, granted the Petitioner one opportunity to file the rejoinder within seven days, subject to a cost of Rs. 25,000/- to be deposited in the Prime Minister's National Relief Fund, and disposed of the said IA.

11. In compliance of the order dated 28.08.2025, the Petitioner filed her affidavit in rejoinder dated 07.10.25

vide Inward Diary No. D-6768, inter alia submitting as under: -

11.1 The Petitioner disputes Respondent No. 2's unilateral assertion that allegations relating to events beyond three years are time-barred. She submits that limitation must be adjudicated by the Tribunal and that the objection cannot, by itself, exclude consideration of the allegations.

11.2 The Petitioner alleges that the acts complained of constitute continuing oppression and mismanagement, involving diversion of the Company's funds for the benefit of Respondent No. 2 and her family. She contends that the reply concerning another company is irrelevant to the present proceedings.

11.3 The Petitioner alleges that Respondent No. 2 has failed to establish compliance with statutory requirements, including filing annual returns and income-tax returns and convening general meetings. She further alleges that the Company's financial dealings and records have not been properly disclosed or maintained.

11.4 The Petitioner alleges that lease rentals exceeding Rs. 2.68 crores were diverted without proper disclosure, that Company godowns were let to third parties and rent was privately collected, and that

hypothecated stock and machinery were sold while loan proceeds were diverted for personal purposes.

11.5 The Petitioner further alleges that approximately Rs. 4 crores contributed by her brother, Mihir Patel, from the USA have not been properly accounted for. The rejoinder states that proof of remittances from Mihir Patel to Manish Patel, husband of Respondent No. 2, is annexed to the affidavit.

11.6 The Petitioner alleges non-compliance with Sections 128, 129, 134, 173, 185 and 186 of the Companies Act, 2013, and states that general meetings were not held for over a decade and that audited accounts, books of account, minutes and shareholder registers were not made available or maintained. She also refers to notices issued by the Registrar of Companies concerning non-compliance.

11.7 The Petitioner refers to an FIR concerning the alleged sale of Shop No. 9 at Mani Prabhu Apartment by Respondent No. 2 through allegedly forged documents. She also alleges that, after the deaths of her father and brother, Respondent No. 2 controlled the Company's affairs and denied her access to its financial records and business information.

11.8 In reply to the Respondent's contentions, the Petitioner disputes the explanation regarding the Company's operations, financial statements, debts,

assets and documents. She alleges that Respondent No. 2 was involved in the Company's day-to-day affairs and that the Company's assets, inventories, machinery and pending litigation were not properly disclosed to her.

11.9 The Petitioner requests a forensic audit of the Company's accounts from 2012, production of statutory and financial records, including sale registers, bank statements, stock registers and fixed-asset registers, restoration of funds and assets allegedly diverted, restraint against further alienation or encumbrance of Company assets, and a scheme under Section 241 of the Companies Act, 2013, to regulate the Company's management and affairs. She also seeks appointment of a commissioner to examine the Company's assets, lease rentals, bank accounts and stock.

12. The Respondent No. 2, through her son and Power of Attorney holder, Mr. Nishant Manish Patel, filed an affidavit in Sur-Rejoinder dated 16.03.26 vide Inward Diary No. D-2193, inter alia submitting as under: -

12.1 It was submitted that the allegations of the property of Respondent No. 1 having been leased out and its godown having been let out to third parties are false, the Petitioner having produced no lease deed,

rent receipt, bank statement or other record of rental income, and that the godown, forming part of the assets charged to the Bank, was used only for storing the stock and machinery of the Company.

12.2 It was further submitted that the hypothecated stock and machinery were sold with the prior permission of the secured creditor and the entire proceeds were applied towards the dues of the Bank, the balance liability having been discharged by Respondent No. 2 and her children from their own resources. A copy of the no dues certificate dated 10.01.22 issued by the Central Bank of India, recording repayment of the credit facilities under a one-time settlement and closure of the account on 30.06.17, has been placed on record as Annexure B.

12.3 It was submitted that the alleged contribution of Rs. 4 crores is unsupported by any bank statement, resolution, loan agreement or ledger of Respondent No. 1, and that the remittances annexed to the rejoinder were made to Mr. Manish Patel personally and are not reflected in the books of Respondent No. 1; and that, even otherwise, any amount so infused was used for the business and liabilities of the Company.

12.4 It was further submitted that the plea of limitation is a statutory defence; that the Petitioner, being an equal shareholder and Director, was equally

responsible for the statutory compliances, and any lapse occurred due to financial distress and her lack of cooperation; that Respondent No. 2 managed the Company with the knowledge and consent of the Petitioner; that the police complaint was necessitated by the unauthorised removal of records by Mr. Mihir Patel; and that the allegations regarding bouncers, intimidation and the FIR are false and unrelated to the present dispute.

12.5 It was submitted that no case is made out for the appointment of a Court Commissioner, a forensic audit, restitution or restraint, and that the rejoinder is misconceived and an abuse of the process of law.

13. In compliance of the order dated 02.04.2026, the Petitioner filed her written submissions dated 08.07.2026 vide Inward Diary No. D-5655, inter alia submitting as under: -

13.1 It was submitted that it is undisputed that Respondent No. 1 was incorporated on 22.11.2006, that the Petitioner and Respondent No. 2 are its only Directors and equal shareholders, and that after the death of Mr. Manish Patel on 26.12.2014, Respondent No. 2 has been in sole control of its affairs; and that Respondent No. 2 has not specifically denied that no general meeting has been

held for over a decade, that no audited accounts have been prepared or shared since the financial year 2011-2012, that she has drawn salary since 2012, and that notices have been issued by the Registrar of Companies for non-compliance.

13.2 On limitation, it was submitted that acts of oppression and mismanagement are continuing wrongs, and reliance was placed on Esquire Electronics & Anr. v. Netherlands India Communications Enterprises Ltd. & Ors., Company Appeal (AT) No. 26 of 2016, decided on 15.02.17, and Aurosagar Estates Pvt. Ltd. v. M.C. Davar Holdings Pvt. Ltd., Company Appeal (AT) No. 100 of 2017. It was further submitted that, in any case, limitation runs from the date of discovery, and that the Petitioner, having been kept away from the records, learnt of the facts through the correspondence, the notices of the Registrar of Companies and the events surrounding the removal of documents in December 2018, all within three years of the filing of the petition on 11.08.20, and that Respondent No. 2 cannot take advantage of her own default.

13.3 It was submitted that the admissions of Respondent No. 2, namely the absence of statutory compliance since 2011-2012, the sale of the hypothecated stock and machinery without corresponding entries in the

books, the drawing of salary despite the Company being stated to be defunct and the shifting of the registered office to the residence of the Petitioner, satisfy the test laid down in Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535. It was contended that the no dues certificate dated 10.01.22 evidences only the closure of three bank facilities and does not account for the proceeds of the sale of the stock and machinery.

13.4 It was further submitted that Respondent No. 2, being the sole custodian of the records, cannot require the Petitioner to produce lease deeds or rent receipts, that her failure to produce the registers and bank statements from 2012 warrants an adverse inference and a forensic audit, reliance being placed on Rule 43(3) of the National Company Law Tribunal Rules, 2016, and that her own police complaint confirms that the records remained in her custody till December 2018.

13.5 It was submitted that Respondent No. 1 is a quasi-partnership, reliance being placed on Venus Petrochemicals (Bombay) Pvt. Ltd. v. Sunil M. Thakkar, Company Appeal (AT) No. 65 of 2022, decided on 14.08.24, and that the reliance of Respondent No. 2 on Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449, is misplaced. The Petitioner accordingly prayed for a

forensic audit of the accounts of Respondent No. 1 from the financial year 2011-2012, restitution of the funds and assets diverted, a restraint on Respondent No. 2 from alienating or encumbering the assets, production of the statutory records and a scheme under Sections 241-242 of the Companies Act, 2013 for the management of Respondent No. 1.

14. The Respondent No. 2 also filed her written submissions dated 05.08.2026 vide Inward Diary No. D-6520 and on 25.10.2026 through e-mode, inter alia submitting as under: -

14.1 The Respondent No. 2 submits that the Petition under Sections 241 and 242 of the Companies Act, 2013, is barred by limitation insofar as it challenges old transactions and events. Reliance is placed on Section 433 of the Act read with the Limitation Act, 1963, and the applicable residuary limitation provision.

14.2 The Respondent No. 2 relies upon Shefali Agarwal v. Stone Age Pvt. Ltd. & Ors., 2026 SCC OnLine NCLAT 613, decided on 14.05.2026; Esquire Electronics Inc. v. Nederland India Communications Enterprises, Company Appeal (AT) No. 26 of 2016, decided on 15.02.2017; and Kuldeep Singh v. Saini Cold Retreaders Pvt. Ltd. & Ors., 2019 SCC OnLine

NCLAT 147, decided on 18.03.2019, in support of the submission that stale claims and completed acts cannot be revived merely by alleging a continuing cause of action.

14.3 The Respondent No. 2 submits that the Petitioner has not established the requirements for relief under Sections 241 and 242 of the Companies Act, 2013. Reliance is placed on Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333, decided on 07.05.1981, regarding the need to establish oppressive conduct through the overall course of events.

14.4 The Respondent No. 2 further relies upon Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla, (1976) 3 SCC 259, decided on 10.10.1975, to submit that the just-and-equitable ground must be considered in the interests of the company and its shareholders as a whole, and that such relief should not be granted merely because of a dispute between groups.

14.5 The Respondent No. 2 submits that, following the death of her husband, she undertook the responsibility of clearing the Company's outstanding bank liabilities and also sold her personal properties for that purpose. She contends that the Petitioner was aware of the repayment efforts and the settlement of the Company's dues.

14.6 Regarding the hypothecated stock and machinery, Respondent No. 2 submits that the assets were disposed of with the secured Bank's knowledge and permission and that the sale proceeds were applied towards repayment of the Company's liabilities. She denies that any amount was diverted for personal benefit.

14.7 Regarding the purported lease deed dated 03.07.2011 between Respondent No. 1 and Nishant Infrastructure Private Limited for 30 years, Respondent No. 2 submits that it was not acted upon and was not registered. She further contends that no documentary evidence of rent payments or rental income has been produced and that the Petitioner did not raise this issue for several years.

14.8 The Respondent No. 2 denies the alleged misappropriation of Rs. 4 Crore stated to have been contributed by Mr. Mihir Patel. She submits that the Petitioner has not produced sufficient documentary evidence establishing the nature of the alleged contribution or showing that the amounts paid directly to Late Mr. Manish Patel were received by or credited to Respondent No. 1.

14.9 Regarding the alleged removal of statutory records, Respondent No. 2 submits that Mr. Mihir Patel removed the Company's documents from its premises in or around December 2018. She relies

upon the criminal complaint lodged before Nandasan Police Station on 28.12.2018 and denies responsibility for withholding the records.

14.10 The Respondent No. 2 submits that the allegations concerning non-convening of Board meetings and general meetings are not sustainable as pleaded. She contends that the Petitioner, being a 50% shareholder and director, could also call for meetings and that the financial statements for the financial year 2011–2012 were jointly signed by both parties.

14.11 The Respondent No. 2 denies the allegation of stopping the Petitioner's salary, submitting that the Company's business had closed around 2012–2013 and that the financial statements relied upon do not show payment of director's salary during the financial years 2010–2011 and 2011–2012.

14.12 The Respondent No. 2 refers to the advocate's notice dated 27.12.2019 and the reply dated 20.02.2020, submitting that the contents of the reply should be read as part of her submissions. She also contends that allegations concerning the alleged dispossession from a house, personal loans and the District Collector's order dated 26.02.2020 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, do not establish oppression or mismanagement under Sections 241 and 242.

14.13 In view of the above submissions and the judgments relied upon, Respondent No. 2 contends that the Petitioner has failed to establish a case for relief under Sections 241 and 242 of the Companies Act, 2013. She accordingly prays that the Company Petition be dismissed with costs.

15. We have heard the learned counsel for the Petitioner and the learned counsel for Respondent No. 2 and perused the material available on record.

16. The present Company Petition has been filed by the Petitioner, a Director and holder of 50% of the shareholding of Respondent No. 1, under Section 241 and other applicable provisions of the Companies Act, 2013 read with Rule 81 of the National Company Law Tribunal Rules, 2016, alleging oppression and mismanagement in the conduct of the affairs of Respondent No. 1 by Respondent No. 2, its only other Director and shareholder, and seeking reliefs other than winding up. During the pendency of the proceedings, Respondent No. 2 filed her reply, the Petitioner filed her rejoinder with the leave of this Tribunal, Respondent No. 2 filed her sur-rejoinder, and both the parties filed their written submissions. The

attempt to resolve the dispute through mediation did not fructify. No appearance has been made, nor any reply filed, on behalf of Respondent No. 1.

17. The case of the Petitioner, in substance, is that Respondent No. 1 was incorporated by her along with Respondent No. 2, and that its affairs were conducted in accordance with law till 2010, whereafter Respondent No. 2, with the aid of her late husband, Mr. Manish Patel, took over its management and, after his death on 26.12.2014, assumed sole control of the Company, its premises and its records. According to the Petitioner, Respondent No. 2, without the authority of the Board or the members, executed the lease deed dated 03.07.2011 with Nishant Infrastructure Private Limited, the lease rent whereunder, stated to be Rs. 2,68,75,000/- till 31.12.2018, was not accounted in the books of Respondent No. 1; let out its godowns to third parties and retained the rent; obtained a loan from the Central Bank of India against its stock and current assets and sold the hypothecated stock without accounting for the proceeds; and disposed of its stock in trade, machinery and other movable assets. It is further

alleged that the amount of more than Rs. 4 crores remitted by Mr. Mihir Patel for the development of the family companies was not applied for their benefit, that no meeting has been held and no accounts shown to the Petitioner since 2010, and that she has been denied access to the premises and records of the Company.

18. The Petitioner has further contended that the question of limitation is for this Tribunal to decide; that the acts complained of are continuing wrongs and that, in any event, she came to know of them only through the notice of the Registrar of Companies, the correspondence and the events of December 2018, within three years of the filing of the petition on 11.08.2020; and that Respondent No. 2, being in sole custody of the records, has neither produced them nor shown any statutory compliance since the financial year 2011-2012. In her rejoinder and written submissions, the Petitioner has also sought a forensic audit of the accounts of Respondent No. 1 from the financial year 2011-2012, the appointment of a Court Commissioner, production of the statutory records, restitution of the funds and assets allegedly diverted, a

restraint on alienation of the assets of Respondent No. 1 and a scheme for the management of its affairs.

19. Per contra, Respondent No. 2 has contended that the allegations relating to the period beyond three years prior to the filing of the petition, including those concerning the lease deed dated 03.07.2011, are barred by limitation under Section 433 of the Companies Act, 2013; that the business of Respondent No. 1 was conducted by her late husband and shut down in and around 2012-2013, her role thereafter being confined to discharging its debts; and that, as agreed in the family, she discharged the dues of the Central Bank of India, including from her personal properties, the hypothecated stock having been sold with the permission of the Bank and the proceeds applied towards its dues, to the knowledge of the Petitioner, who had jointly signed the letters addressed to the Bank. It is her further case that the lease deed, being unregistered, was never given effect to; that the alleged remittances were made to her late husband personally and not to Respondent No. 1; that the records of Respondent No. 1 were removed in December 2018 by Mr. Mihir Patel, the

brother of the Petitioner; and that the Petitioner, being an equal shareholder and Director who had signed the financial statements for the financial year 2011-2012, was equally entitled, and responsible, to convene meetings and ensure compliance. Respondent No. 2 has, therefore, sought dismissal of the petition with costs.

20. On a consideration of the pleadings and the material placed on record, the following position emerges as not in dispute between the parties: -

(i) Respondent No. 1 was incorporated on 22.11.2006, and the Petitioner and Respondent No. 2 are its only Directors, holding 50% of its shareholding each.

(ii) Mr. Manish Patel, the husband of Respondent No. 2 and brother of the Petitioner, who was managing the affairs of the family companies, passed away on 26.12.2014.

(iii) The last financial statements of Respondent No. 1 are for the financial year 2011-2012, which were signed by both the Directors.

(iv) The credit facilities availed by Respondent No. 1 from the Central Bank of India stand closed under a one-time settlement on 30.06.2017, as recorded in the no dues certificate dated 10.01.2022.

(v) Respondent No. 2 lodged a police complaint dated 28.12.2018 against Mr. Mihir Patel regarding the removal of the documents of Respondent No. 1.

(vi) The present petition was filed on 11.08.2020.

21. The rival contentions, on the other hand, centre around whether the allegations are barred by limitation; whether, and to what extent, Respondent No. 2 was in control of the affairs of Respondent No. 1 after 2010, and particularly after 26.12.2014; the receipt and application of the lease rentals, the rent from the godowns, the proceeds of the hypothecated stock and machinery and the amounts remitted by Mr. Mihir Patel; and the custody of the records of Respondent No. 1.

22. The Petitioner holds 50% of the issued share capital of Respondent No. 1 and thus satisfies the requirement of Section 244(1)(a) of the Companies Act, 2013, which entitles a member of a company having a share capital, holding not less than one-tenth of its issued share capital, to apply under Section 241. Her eligibility to maintain the petition has not been questioned by Respondent No. 2. Eligibility under Section 244 does not, however, by itself establish oppression or mismanagement, which must be independently established on merits, as held by this Tribunal in ***Mohammedsalim Habibbhai Memon v. SNA***

Infraprojects Pvt. Ltd. & Ors., RCP (Companies Act)/2/2025, decided on 07.10.2026.

23. In light of the pleadings, the written submissions and the rival contentions advanced by the parties, the following **issues** are framed for determination by this Adjudicating Authority: -

I. **Issue No. (1):**- Whether the present Company Petition, or any part of the allegations made therein, is barred by limitation under Section 433 of the Companies Act, 2013 read with the Limitation Act, 1963?

II. **Issue No. (2):**- Whether the Petitioner has established that the affairs of Respondent No. 1 have been conducted by Respondent No. 2 in a manner prejudicial or oppressive to the Petitioner or prejudicial to the interests of Respondent No. 1, within the meaning of Section 241 of the Companies Act, 2013?

III. **Issue No. (3):-** Whether the Petitioner is entitled to the reliefs sought, including those sought for the first time in the rejoinder and the written submissions, and, if so, to what extent?

IV. **Issue No**. (**4):-** Whether the facts of the case justify the making of a winding up order by this Tribunal on the ground that it is just and equitable that the company should be wound up?

24. Findings on Issue No. (1): Whether the present Company Petition, or any part of the allegations made therein, is

barred by limitation under Section 433 of the Companies Act, 2013 read with the Limitation Act, 1963?

(i) Section 433 of the Companies Act, 2013 provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal. No specific period of limitation being prescribed for a petition under Section 241 of the Act, such a petition is governed by Schedule (Part II -Other Applications) to the Limitation Act, 1963. Article 137 (Any other application for which no period of limitation is provided elsewhere in this Division) prescribes a period of three years from the date when the right to apply accrues. The Hon'ble NCLAT ***in Smruti Shreyans Shah v. The Lok Prakashan Ltd. & Ors.***, Company Appeal (AT) Nos. 25 and 32 of 2018, decided on 05.09.2019, has applied Article 137 to petitions under Sections 241 and 242 of the Act.

(ii) Section 22 of the Limitation Act, 1963 provides that, in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. The Hon'ble Supreme Court in ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan***, AIR 1959

SC 798, distinguished a continuing wrong, being an act which itself continues and creates a continuing source of injury, from a wrong which is complete once committed, though its injurious effect may continue. The principle that a continuing course of oppression is not barred by limitation, on which the Petitioner relies with reference to ***Esquire Electronics & Anr. v. Netherlands India Communications Enterprises Ltd. & Ors*** Company Appeal (AT) No. 26 of 2016, and ***Aurosagar Estates Pvt. Ltd. v. M.C. Davar Holdings Pvt. Ltd.***, Company Appeal (AT) No. 100 of 2017, applies to acts which are themselves continuing, and does not revive completed transactions. As held by this Tribunal in **Mohammedsalim Habibbhai Memon** RCP (Companies Act)/2/2025), a completed transaction does not become a continuing act merely because its consequences continue. Each act complained of has, therefore, to be examined on its own.

(iii) The present petition was filed on 11.08.2020. The Petitioner has herself pleaded that she came to know of the alleged malpractices on receiving the statutory notice dated 06.03.2017 issued by the Registrar of Companies (Annexure H to the petition). It is not the date of knowledge but when cause of action arises. Even if limitation were to be reckoned from the date

of such knowledge, the period of three years expired on 06.03.2020. The Petitioner can derive no benefit from the orders of the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No. 3 of 2020, which excluded the period from 15.03.2020 onwards, since the period of limitation in the present case had expired before that date. The submission of the Petitioner that she learnt of the facts only within three years of the filing of the petition is, thus, contrary to her own pleading.

(iv) Tested on this basis, the following allegations are clearly barred by limitation: (a) the execution of the lease deed dated 03.07.2011, more than nine years before the filing of the petition, during a period when the Petitioner was a Director of Respondent No. 1, admittedly active in its affairs till 2010, and a signatory to its financial statements for the financial year 2011-2012; (b) the sale of the hypothecated stock and machinery and the settlement of the dues of the Central Bank of India, which stood concluded with the closure of the credit facilities under a one-time settlement on 30.06.2017. The letters dated 15.11.2015, 07.01.2017, 01.03.2017 and 20.03.2017 addressed to the Bank in the course of the said settlement bear the joint signatures of the Petitioner and Respondent No. 2 [at pages 93 to 98 of the reply], a fact which the Petitioner has not denied in

her rejoinder. The Petitioner was, therefore, aware of these transactions as they took place; and (c) the remittances of more than Rs. 4 crores by Mr. Mihir Patel, which, as per the documents annexed to the rejoinder, were made in the years 2006 and 2007.

(v) Insofar as the Petitioner pleads that these acts were concealed from her, the plea does not advance her case. Section 17 of the Limitation Act, 1963 postpones the commencement of limitation only until the fraud or concealment is discovered, or could with reasonable diligence have been discovered. On her own pleading, the Petitioner had such knowledge by 06.03.2017; and being a Director, she was entitled at all times to inspect the books of account of Respondent No. 1 under Section 128(3) of the Act.

(vi) The allegations regarding the non-holding of meetings, the non-preparation and non-filing of the financial statements and annual returns, and the denial of access to the records of Respondent No. 1 stand on a different footing. The Petitioner was one of the two directors that constituted Board of Directors of the Company. Section 179 of the Companies Act, 2013 dealing with the Powers of Board among other things require the Board to approve financial statements. Section 92(4) of the Companies Act, 2013 requires a company to file a copy of annual return with the Registrar. The Petitioner being a

director of the Company was equally responsible (along with Respondent No.2) that the Respondent No.1 complies with all the requirements and obligations as prescribed in the Companies Act, 2013. These defaults, if established, recur with each financial year and each statutory due date, and are not barred by limitation. Likewise, the letting out of the godowns under the agreement of 2018 and the legal notices exchanged between the parties fall within the period of three years prior to the filing of the petition. These are examined on merits under Issue No. (2).

(vii) Hence, Issue No.(1) is answered accordingly by holding that the present Company Petition is barred by limitation insofar as it relates to the execution of the lease deed dated 03.07.2011, the sale of the hypothecated stock and machinery and the settlement of the dues of the Central Bank of India, and the remittances made by Mr. Mihir Patel, and that it is within limitation insofar as it relates to the recurring statutory defaults, the denial of access to the records and the acts within three years prior to its filing.

25. Findings on Issue No. (2): Whether the Petitioner has established that the affairs of Respondent No. 1 have been conducted by Respondent No. 2 in a manner prejudicial or



oppressive to the Petitioner or prejudicial to the interests of Respondent No. 1, within the meaning of Section 241 of the Companies Act, 2013?

(i) The Hon'ble Supreme Court ***in Shanti Prasad Jain v. Kalinga Tubes Ltd.***, AIR 1965 SC 1535, relied upon by the Petitioner, held that the conduct complained of must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. In ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.***, (1981) 3 SCC 333, the Hon'ble Supreme Court explained oppression as conduct which is burdensome, harsh and wrongful. In ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.***, (2021) 9 SCC 449, the Hon'ble Supreme Court held that relief under Section 242 can be granted only where the Tribunal is of the opinion that the affairs of the company have been or are being conducted in a manner prejudicial or oppressive to any member or prejudicial to the interests of the company, and that, though the facts would justify winding up on the just and equitable ground, winding up would unfairly prejudice the members. The burden of establishing these requirements by specific and cogent material lies on the petitioner, as observed by this Tribunal in

Hardeep Singh Gill v. Glulam Technologies Pvt. Ltd. & Ors., C.P. No. 51 of 2019, decided on 07.04.2026.

(ii) Even apart from limitation, the allegation regarding the lease rentals does not disclose any diversion of the funds of Respondent No. 1. Under the lease deed dated 03.07.2011, Respondent No. 1 was the lessee, and the rent was payable by it to Nishant Infrastructure Private Limited. The sum of Rs. 2,68,75,000/- is, on the Petitioner's own case, a computation of the rent payable under the deed till 31.12.2018, and not of any amount received by Respondent No. 1. It was, if anything, a liability of Respondent No. 1, and its non-reflection in the books of Respondent No. 1 cannot, by itself, show that the funds of Respondent No. 1 were diverted. The Respondent claims that the lease agreement was not given effect. The lease rental payment could have been the expenses of the company and not an income. Non-recording of expenses has not prejudiced the company in any manner. No bank statement, ledger or other material has been placed on record to show that any rent was paid or received under the said deed, and the plea of Respondent No. 2 that the deed was never given effect to remains uncontroverted by any material. It is also noted that the yearly amounts set out in the table in the petition add up to Rs. 2,48,75,000/-, while the rejoinder and

the written submissions of the Petitioner put the figure at about Rs. 2.58 crores. The affairs of Nishant Infrastructure Private Limited being the subject matter of C.P. No. 32 of 2020, we express no opinion thereon.

(iii) As regards the godowns, the Petitioner relies upon two lease agreements of 2016 and 2018 [Annexure F (Colly.)]. On her own case, however, the godowns were shown in 2015-2016 as owned by Nishant Infrastructure Private Limited, and two of them were thereafter let out from its list. No title document, fixed assets register or financial statement of Respondent No. 1 has been placed on record to show that the godowns let out under the said agreements belonged to Respondent No. 1, or that the rent thereunder was receivable by it. The allegation, therefore, remains unsubstantiated insofar as Respondent No. 1 is concerned.

(iv) The sale of the hypothecated stock and machinery, apart from being barred by limitation, has been explained by Respondent No. 2 as having been made with the permission of the Bank, the proceeds being applied towards its dues. The no dues certificate dated 10.01.2022 records that the credit facilities availed by Respondent No. 1 were repaid under a one-time settlement and the accounts closed on 30.06.2017. The Petitioner has, in her rejoinder,

accepted that Respondent No. 2 was entrusted with the task of discharging the debts of Respondent No. 1 after the death of Late Mr. Manish Patel, and she herself joined in the correspondence with the Bank indicating that she was a party to a decision for sale of stock and other assets and repayment of loans of the Bank. She has placed no material on record to show the quantity or value of the stock and machinery sold, the price realised, or any part of the proceeds having been diverted or undervalued or she was not a part of the decision taken. The contention that the certificate does not account for the entire proceeds is, therefore, a matter of conjecture. The allegation that the properties of Late Prabhubhai Patel were sold by forging the signatures of the Petitioner concerns properties which are not shown to belong to Respondent No. 1, and an allegation of forgery of this nature cannot be adjudicated in the present proceedings.

(v) On the Petitioner's own pleading, the amount of more than Rs. 4 crores was sent by Mr. Mihir Patel as a loan or deposit to Respondent No. 2 and her late husband for the development of the family business. The documents annexed to the rejoinder show remittances to Late Mr. Manish Patel personally, and no material shows that any part of the amount was received by Respondent No. 1 or reflected in its

books. Mr. Mihir Patel is neither a member of Respondent No. 1 nor a party to the present proceedings. Whatever be its merit, the claim is a personal or family claim for the recovery of money, which falls outside the scope of Sections 241 and 242 of the Act. Likewise, the grievances regarding the stoppage of payments to the Petitioner and her mother, the police complaints and the alleged deployment of bouncers are personal grievances or matters for the appropriate forum, and do not, by themselves, constitute oppression in the conduct of the affairs of Respondent No. 1. These facts suggest that the relations between petitioner and respondent broke down to such an extent that business of the company cannot be carried on, which was otherwise closed since financial year 2012-2013.

(vi) It is the common case of the parties that no financial statements of Respondent No. 1 have been prepared after the financial year 2011-2012 and that no meeting of its Board or members has been held for several years. These are serious defaults and both the directors (Petitioner and Respondent No.2) cannot blame each other for the cause of defaults The obligations to convene meetings, prepare the financial statements and file the statutory returns are those of the Board of Respondent No. 1, which comprises only the Petitioner and Respondent No. 2.

On the material before us, the responsibility for these defaults cannot be fastened on Respondent No. 2 alone. The Petitioner signed the financial statements for the financial year 2011-2012, the last to be prepared; she joined Respondent No. 2 in the correspondence with the Bank up to 2017; and there is no material to show that, before her legal notice, she at any time called for a meeting of the Board, sought the preparation of the accounts or requisitioned a general meeting under Section 100(2)(a) of the Act. Respondent No. 2, on the other hand, has stated in her sur-rejoinder that she managed the affairs of Respondent No. 1 with the knowledge and consent of the Petitioner, while denying in her written submissions that she was in control of its business after 26.12.2014 beyond clearing its dues. Neither party has placed on record material from which the extent of the responsibility of the other can be determined.

(vii) Even accepting that Respondent No. 2 was in charge of the day-to-day affairs of Respondent No. 1, the Petitioner has not shown that the defaults were directed against her proprietary rights as a shareholder. Her shareholding of 50% remains intact; no allotment, transfer or dilution of shares, and no exclusion from any meeting actually held, has been alleged.

(viii) The Petitioner, by her legal notice, called upon Respondent No. 2 to produce the records of Respondent No. 1 and to permit their inspection. Respondent No. 2 has pleaded that the records were removed from the premises of Respondent No. 1 in December 2018 by Mr. Mihir Patel, for which she lodged the police complaint dated 28.12.2018 (Annexure D to the reply). The Petitioner, on the other hand, has stated that Mr. Mihir Patel acted on her behalf and that Respondent No. 2 acknowledged the receipt of the documents at Nandasan Police Station, [though no copy of such acknowledgement has been placed on record]. The Petitioner's own case that the documents were taken by her brother on her behalf is not consistent with her grievance that she has been denied access to the records. The custody of the records is, in any case, a disputed question of fact which cannot be resolved on affidavits in the present proceedings. The right of the Petitioner, as a Director, to inspect the books of account and other books and papers of Respondent No. 1 under Section 128(3) of the Act remains available to her.

(ix) Section 241(1)(a) of the Act is not confined to conduct oppressive to a member; it extends to the conduct of the affairs of a company in a manner prejudicial to the interests of the company. The absence of financial statements, not preparing and filing annual

returns and non-conduct of meetings for over a decade is, by its nature, prejudicial to the interests of Respondent No. 1, and we so note. The question, however, is whether this prejudice arises from the conduct of the affairs of Respondent No. 1 by Respondent No. 2, which is the case pleaded, and whether it warrants the reliefs sought. The last financial statements are admittedly for the financial year 2011-2012, and the case of Respondent No. 2 that the business ceased in and around 2012-2013 has not been displaced by any material. On this record, the defaults appear to be the consequence of the cessation of the business, the death of Late Mr. Manish Patel, who was managing it, and the breakdown of relations between the only two Directors, each of whom had equal power to act. They are not shown to flow from any course of conduct of Respondent No. 2 directed against the interests of Respondent No. 1, such as the diversion of its funds or assets, which, as found above, has not been established.

(x) Further, relief under Section 242 of the Act can be granted only where this Tribunal is of the opinion both that the affairs of the company have been or are being conducted as stated in clause (a) of Section 242(1), and that, though the facts would justify winding up on the just and equitable ground,

winding up would unfairly prejudice the member or members, as required by clause (b). The two requirements must be read together, as held in ***Tata Consultancy Services Ltd. v. Cyrus Investments Ltd***. (2021) 9 SCC 449.The Petitioner has pleaded that the facts would justify the winding up of Respondent No. 1, but has placed no material to show how the winding up of a company which, on the material before us, has carried on no business for over a decade would unfairly prejudice her, beyond the bare assertion that it would not be in the interest of the Company and its shareholders. It has not been demonstrated that how the winding up would unfairly prejudice to the Petitioner and why the company needs to continue while it is not carrying out any business for more than a decade.

(xi) Hence, Issue No.(2) is answered accordingly by holding that, though the admitted statutory defaults of Respondent No. 1 are prejudicial to its interests, the Petitioner has not established that the affairs of Respondent No. 1 have been conducted by Respondent No. 2 in a manner oppressive to the Petitioner or prejudicial to the interests of Respondent No. 1 so as to warrant relief under Sections 241 and 242 of the Companies Act, 2013.

26. Findings on Issue No. (3): Whether the Petitioner is entitled to the reliefs sought, including those sought for the first time in the rejoinder and the written submissions, and, if so, to what extent?

(i) Apart from the reliefs prayed for in the petition, the Petitioner has, in her rejoinder and written submissions, sought a forensic audit of the accounts of Respondent No. 1 from the financial year 2011-2012, the appointment of a Court Commissioner, production of the statutory records, restitution of the funds and assets allegedly diverted, a restraint on alienation of the assets of Respondent No. 1 and a scheme for the management of its affairs. These reliefs, to the extent they are not founded on the petition, cannot be granted. It is settled that a relief not founded on the pleadings cannot be granted, as held by the Hon'ble Supreme Court in **Trojan & Co. Ltd. v. RM.N.N. Nagappa Chettiar**, AIR 1953 SC 235, and a rejoinder or written submissions cannot be used to set up a new case. The Petitioner has not sought to amend the petition. Otherwise also, the business of the company remains closed since 2012-2013, stock and assets have been sold, no financial statements are prepared after financial year 2011-2012, therefore, there is nothing for forensic audit

and no useful purpose would be served by appointment of a Court Commissioner also.

(ii) The reliefs prayed for in the petition are, in the main, directed against Respondent No. 2 and premised on the allegations of diversion and exclusion: a scheme for the joint management of Respondent No. 1, an injunction restraining Respondent No. 2 from interfering in its management, and an account of her personal gains. These allegations not having been established, the said reliefs cannot be granted. A forensic audit, likewise, cannot be directed as a roving inquiry in the absence of specific material indicating irregularity in identified transactions within the period of limitation.

(iii) The petition also seeks the production of the statutory records of Respondent No. 1, access to its premises and the convening of its general meetings. The custody of the records is disputed, each side attributing it to the other, and no material has been placed to show what records of Respondent No. 1 presently exist or with whom. A direction for their production would, in these circumstances, rest on no finding as to custody, and could not be effectively enforced. The right of the Petitioner, as a Director, to inspect the books of account of Respondent No. 1 under Section 128(3) of the Act, and the obligations of both its Directors in respect of its meetings and

statutory filings, which are enforceable under the Act, remain unaffected.

(iv) Hence, Issue No. (3) is answered accordingly by holding that the Petitioner is not entitled to the reliefs sought, subject to the clarifications set out hereinbelow.

27. Findings on Issue No. (4): Whether the facts of the case justify the making of a winding up order by this Tribunal on the ground that it is just and equitable that the company should be wound up?

(i) We have considered facts of the case as available in the pleadings and particularly the Petitioner and Respondent No.2 are the two directors of the company and each hold equal (50%) share capital of the company, the financial statement are not prepared starting 01.04.2012, the business is closed since 2012-2013, stock and assets are sold to clear bank dues. It is unclear what assets remains with the company as no information has been provided by either party. The company has committed default in filing its financial statement or annual returns with the Registrar, it has not been shown that it is filing tax returns, no board meetings have taken place for last many years, the company does not have any business, both the shareholders have grievances against each other, there is a police compliant by

Respondent against the brother of the Petitioner for removing records of the company in December 2018.

(ii) The Page 109 of the Petition is a copy notice under section 248 of the Companies Act, 2013 (letter No. 248 (1)/2017 dated 06.03.2017) issued by the Registrar of Companies and notes that the company has failed to commence its business within one year of its incorporation or the company is not carrying on any business or operations for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 and the company was show caused why the name of the company be not removed from the register of companies.

(iii) The Page 108 to 135 of the Reply of the Respondent No.2 is a copy of audited financial statement of the company, R-1, for the financial year 2011-2012. This is dated 13.08.2012 and signed by both the directors. This shows that share capital of the company is of Rs 100,000. Share application money pending allotment is of Rs 9,72,03,566, long term-borrowings were of Rs 1,40,65,500, and trade payables were of Rs 2,33,85,718. This resulted into total liabilities of Rs 13,49,32,5050. The assets comprised of tangible assets of Rs 2,10,89,645, capital work in progress of Rs 8,25,06,540,

inventories of Rs 2,01,05,000, trade receivable of Rs 40,09,776, and short-term loans and advances of Rs 47,91,174. Net block of assets show that company had plant and machinery and factory building. The company had revenue from operations of Rs 4,66,115 and profit before tax of Rs 84,622.

(iv) Neither party has produced complete financial statements, audited accounts or a reliable statement of assets and liabilities for the period after 01.04.2012 onwards. The absence of such information, despite the passage of many years, is itself a serious concern because it prevents the shareholders, creditors and the Tribunal from ascertaining the Company's present position and the manner in which its affairs have been dealt with.

(v) The material on record indicates that Respondent No. 1 has not carried on its business for more than a decade and has not complied with important statutory requirements during that period. The parties have also failed to demonstrate that the Company has resumed business, generated revenue, maintained regular corporate governance or taken concrete steps to restore its operations. The prolonged cessation of business, coupled with the absence of reliable financial and statutory records, weighs materially in favour of the conclusion that the

Company is no longer functioning as an effective going concern.

(vi) No sufficient material has been produced by either party to establish that Respondent No. 1 presently has a viable business, a realistic plan for revival, or the financial and operational capacity to resume its business.

(vii) Section 242 of the Companies Act states that:-

> *"**242. Powers of Tribunal.** -*
> *(1) If, on any application made under section 241, the Tribunal is of the opinion—*
> *(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and*
> ***(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.***
> *(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—*
> *(a) the regulation of conduct of affairs of the company in future;*
> *(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*
> *(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;(Effective from September*

9,2016)

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director , any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;(Effective from September 9,2016)

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-

section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees."

(viii) We also reproduce the Section 271 of the Companies Act, 2013.

> ***"271. Circumstances in which company may be wound up by Tribunal.—***
> *A company may, on a petition under section 272, be wound up by the Tribunal,—*
> *(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;*
> *(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;*
> *(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;*
> *(d)* ***if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or***
> ***(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.***

(ix) Section 271 of the Companies Act, 2013, identifies the circumstances in which a company may be wound up by the Tribunal on a petition under Section 272. These include the circumstances in

which the Tribunal is of the opinion that it is just and equitable that the company should be wound up. The failure to file financial statements or annual returns for the immediately preceding five consecutive financial years is also specifically addressed under Section 271(d). The available record indicates prolonged statutory non-compliance.

(x) In the present case, the relevant circumstances include the cessation of business for more than a decade, the absence of financial statements after the financial year 2011–2012, prolonged non-compliance with statutory requirements, the lack of reliable information concerning the Company's current assets and liabilities, the absence of evidence of a viable business or a concrete revival plan, and the continuing dispute between the only two shareholders, who each hold 50% of the share capital. These circumstances, considered cumulatively, raise serious doubts as to whether Respondent No. 1 can function as a going concern or whether its continued corporate existence serves any effective commercial purpose.

(xi) In such circumstances, and in the interest of justice and fairness to all stakeholders, and with a view to bringing to an end the matters complained of though oppression is not established, this Tribunal is of the view that it is just and equitable course is to wind up

the Respondent No.1 company in terms of judgment of **Supreme Court** rendered in ***Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwala 1976 AIR SC 565***, and we order accordingly.

28. Accordingly, it is hereby ordered as follows: -

a) This Tribunal directs the winding up of Respondent No.1 Company – **Prabhu Creations Private Limited**.

b) In view of the same, this Tribunal hereby appoints Mr. Sanjay Vijay Jeswani, Insolvency Professional, having Registration No: IBBI/IPA-001/IP-P-02891/2024-2025/14432, email ID: jeswanisanjay007 @gmail.com, as the **Provisional Liquidator** of the Respondent No.1 Company until further orders of this Tribunal or completion of the winding-up process, subject to periodic reporting as required under the Companies (Winding Up) Rules, 2020.

c) The Provisional Liquidator shall be entitled to the remuneration prescribed under regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

d) The remuneration of **Rs. 50,000/-** per month to the Provisional Liquidator, plus actual expenses incurred, shall be paid from the assets of Respondent No.1 Company in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016, or as determined by this Tribunal until the winding-up

committee is constituted under Section 277(4) of the Companies Act, 2013. In case of incapacity of the company to pay fee, both petitioner and respondent shall share the expenses and fee of the Provisional Liquidator.

e) The Provisional Liquidator is directed to file a declaration as required u/s 275(6) of the Companies Act, 2013, within seven days of his appointment.

f) The Provisional Liquidator shall publish a notice of the winding-up order of the Respondent No.1 Company in one English daily newspaper and one Vernacular (Gujarati) daily newspaper with wide circulation in the State of Gujarat, within fourteen days of the date of this order, in Form WIN 6 of the Companies (Winding Up) Rules, 2020.

g) The Provisional Liquidator shall also notify all shareholders and creditors of the winding-up order beyond newspaper publication to ensure transparency.

h) The Provisional Liquidator shall invite, verify, and adjudicate claims from creditors of Respondent No.1 Company in accordance with the Companies (Winding Up) Rules, 2020, and submit a report on the same to this Tribunal within 90 days of this order.

i) The directors and other officers of the Respondent

No.1 Company are directed to comply with Section 274(3) and submit the report within a period of thirty days of this order. The books of account of the Respondent No.1 Company shall also be compiled and audited up to the date of the order of the provisional liquidator appointed under this order. In case of any practical difficulty or for any other reason, the books of account cannot be compiled or audited, the matter be brought to the notice of this Tribunal.

j) This Tribunal hereby directs that a copy of this order be sent to the Registrar of Companies, Ahmedabad, under Section 277(1) of the Companies Act, 2013, read with the Companies (Winding Up) Rules, 2020, within seven days from the date of passing of this order by Registered Post, Speed Post, Courier Service, or electronic means, with a copy to the Provisional Liquidator.

k) From the date of this order of winding-up of the Respondent No.1 Company and appointment of the Provisional Liquidator, no suit or legal proceedings shall be commenced or if pending at the date of winding-up order, shall be proceeded with, by or against the Respondent No.1 Company, except otherwise stated herein or with leave of this Tribunal and subject to such terms as the Tribunal may be imposed.

l) The Provisional Liquidator is directed to file an application within three weeks from the date of this order before this Tribunal for the constitution of the winding-up Committee in accordance with the provisions of Section 277(4) of the Companies Act, 2013

m) The Provisional Liquidator is further directed to submit the report in terms of Section 281 of the Companies Act, 2013 within 60 days from this order.

n) The order shall be deemed to have a notice of discharge to the officers, employees, and workmen of the Respondent No.1 Company.

o) The existing management of the company is directed to extend full cooperation to the Liquidator to carry out duties under the relevant provisions of the Act.

p) The Provisional Liquidator is also directed to strictly follow relevant provisions of the Companies Act, 2013, and rules framed thereunder for winding up of the Company.

q) The Liquidator is permitted to initiate appropriate action in accordance with provisions of the Act to take control of the management of the Company and to take custody or control of all properties, effects and actionable claims to which the company is or appears to be entitled to, and take such steps and measures, as may be necessary, to protect and

preserve the properties of the Company and to avoid misuse of its properties.

r) The Petitioner Company shall file a copy of this order with the Registrar of Companies within 30 days from the date of this order, as required under Section 277 of the Companies Act, 2013.

s) Liberty is granted to any party to apply to this Tribunal for any further directions, if required, in the course of the winding-up process.

29. With the above directions, Accordingly, **C.P. No. 33 (AHM) of 2020** is **disposed of** in the aforesaid terms. Pending applications, if any, stand disposed of. No order as to costs.

-S/D-
SANJEEV SHARMA
MEMBER (TECHNICAL)

-S/D-
SHAMMI KHAN
MEMBER (JUDICIAL)

Megha/LRA