

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) No. 238 of 2023

(Arising out of the Order dated 20 November, 2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA No.179/2023 in CP No. 99/CHD/HRY/2023]

IN THE MATTER OF:

1. **Adesh Kumar Gupta**
S/o Late Sh. Purshotam Das Gupta
CEO & Executive Director &
Shareholder of Libertyshoes Limited
Available at:
3, Purnima Farm, Chandan
Hola, Bandh Road,
Chattarpur, Delhi-110074
Email: adeshgupta@libertyshoes.com ...Appellant No.1

2. **T-Nine Logistics Private Limited**
Shareholder through its director
Kshitij Bansal, S/o Ravi Bansal
Available at:
Unit No. 3, First Floor,
MCD Building, Desh Bandhu Gupta Road
Pahar Ganj, New Delhi-110055
Email: adeshgupta@libertyshoes.com ...Appellant No.2

3. **Mr. Kanishk Gupta**
S/o sh. HK Gupta Shareholder
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana -132114
Email: adeshgupta@libertyshoes.com ...Appellant No.3

4. **Mr. Anmol Gupta**
Son of Sh. Adarsh Gupta
Available at 4/42, Punjabi Bagh, New Delhi
Email: adeshgupta@libertyshoes.com ...Appellant No.4

5. **Adesh Kumar Gupta HUF**
Through its Karta Adesh Kumar Gupta
Available at:
3, Purnima Farm, Chandan Hola,

Bandh Road, Chattarpur, Delhi-74
Email: adeshgupta@libertyshoes.com

...Appellant No.5

6. **Unthinkable Solution LLP Shareholder**

Through its Director Yogesh Kumar Agarwal
S/o Krishan Kumar Agarwal
Available at:
6th Floor, Metropolis Hissar Mall,
Opposite Vidyut Sadan, Delhi Road,
Hissar, Haryana, 1250053
Email: adeshgupta@libertyshoes.com;

...Appellant No.6

Versus

1. **Liberty Shoes Limited**

Through Company Secretary/
Managing Director/Directors
Having registered office At:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana HR, 132114 IN
Email: rajeevsharma@libertyshoes.com

...Respondent No.1

2. **Sunil Bansal**

Executive Director, Liberty Shoes Limited
Available At:
Liberty House, Railway
Road, Karnal-132001 (Haryana)

Also At:
Ground Floor, Building No. 8A, DLF
Cyber City, Phase-II, Gurugram, Haryana- 02
Email: sunilbansal@libertyshoes.com
support@hdfcbank.com,
sbi.04047@sbi.co.in, hj@kljindia.com
summetagarwal380@gmail.com

...Respondent No.2

3. **Adish Kumar Gupta**

S/o Late Sh. D.P. Gupta
Executive Director, Liberty Shoes Limited
Available at
Liberty House, Railway Road,
Karnal-132001 (Haryana)

Also at:
Ground Floor, Building No. 8A, DLF Cyber

City, Phase-II Gurugram, Haryana-02
Email: adishgupta@libertyshoes.com

...Respondent No.3

4. **Shammi Bansal**

Director
Available At:
Liberty Puram 13th Milestone GT Karnal
Road Kutail PO Bastara Karnal Haryana
HR 132114 IN
Email: shammibansal@libertyshoes.com

...Respondent No.4

5. **Gautam Baid**

Independent Director
Available at:
Liberty Puram 13th Milestone GT Karnal
Road Kutail PO Bastara Karnal Haryana
HR 132114 IN
Email: gautam@coasttocoast.in

...Respondent No.5

6. **Anand Das Mundhra**

Director
Available at:
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GT Karnal Road Kutail PO Bastara
Karnal Haryana HR 132114 IN
Email: anandmundhra@nursingsahay.com

...Respondent No.6

7. **Aditya Khemka**

Independent Director
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana HR 132114 IN
Email: aditya_khemka@adityagroup.com

...Respondent No.7

8. **Piyush Dixit**

Independent Director
Available at:
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GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: piyush.dixit@unicel.co.in

...Respondent No.8

9. **Ashok Kumar Rana**

Director-Legal
Available at:

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GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: legal_advisor@libertyshoes.com

...Respondent No.9

10. **Sujata**

Independent Director
Available at:
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GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: sujatavspk@yahoo.com

...Respondent No.10

11. **Munish Kakra**

CFO/CS
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: munish@libertyshoes.com

...Respondent No.11

12. **Anupam Bansal**

Shareholder
Available at:
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Karnal Haryana, HR 132114 IN
Email: anupam@libertyshoes.com

...Respondent No.12

13. **Ayush Bansal**

Shareholder
Available at:
Liberty Puram 13th Milestone GT Karnal
Road Kutail PO Bastara Karnal Haryana
HR 132114 IN
Email: rajeevsharma@libertyshoes.com

...Respondent No.13

14. **Pulkit Bansal**

Shareholder
Available at:
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Karnal Haryana, HR 132114 IN
Email: rajeevsharma@libertyshoes.com

...Respondent No.14

15. **Ruchir Bansal**
Shareholder
Available at:
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GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: rajeevsharma@libertyshoes.com **...Respondent No.15**
16. **Akshat Gupta**
Shareholder
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email rajeevsharma@libertyshoes.com **...Respondent No.16**
17. **Vivek Bansal**
Shareholder
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO Bastara
Karnal Haryana, HR 132114 IN
Email: vivekbansal@libertyshoes.com **...Respondent No.17**
18. **Raman Bansal**
Shareholder
Available at:
Liberty Puram 13th Milestone
GT Karnal Road Kutail PO
Bastara Karnal Haryana, HR 132114 IN
Email: ramanbansal@libertyshoes.com **...Respondent No.18**
19. **Manan Bansal**
Shareholder
Available at: Liberty Puram
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Bastara Karnal Haryana, HR 132114 IN
Email: rajeevsharma@libertyshoes.com **...Respondent No.19**
20. **Vaibhav Bansal**
Shareholder
Available at: Liberty Puram
13th Milestone GT Karnal Road
Kutail PO Bastara Karnal

Haryana HR 132114 IN
Email: rajeevsharma@libertyshoes.com

...Respondent No.20

21. **Sachin Gupta**

Shareholder
Available at: Liberty Puram
13th Milestone GT Karnal Road Kutail PO
Bastara Karnal Haryana, HR 132114 IN
Email: rajeevsharma@libertyshoes.com

...Respondent No.21

22. **Sumeet Agarwal**

Shareholder
Available at: Liberty Puram
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Bastara Karnal Haryana, HR 132114 IN
Email: summetagarwal380@gmail.com

...Respondent No.22

23. **Hemant Jain**

Shareholder
Available at: Liberty Puram
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Bastara Karnal Haryana HR 132114 IN
Email: hj@kljindia.com

...Respondent No.23

24. **State Bank of India**

Commercial Branch, First Floor Marvel
Tower, Newar Bus Stand Karnal-132001
Email: sbi.04047@sbi.co.in

...Respondent No.24

25. **HDFC Bank**

Branch 6/3, Safdarjund Enclave,
Deer Park, New Delhi-110029
Email: support@hdfcbank.com

...Respondent No.25

Present:

For Appellants : Mr. U.K. Chaudhary, Mr. Manish Kaushik, Mr. Ajit Singh Sahee and Mr. Anubhav Gupta, Advocates

For Respondents : Mr. Chinmay P. Sharma, Sr. Advocate with Mr. Aditya Sandilya, Mr. Aamir Zafar Khan, Mr. Krishnajtoti Deka, Mr. Irfan Hasieb and Mr. Abhishek Yadav, Advocates for R-1 to 4
Mr. Subornadeep Bhattacharjee, Advocate.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal under Section 421 of the Companies Act, 2013 against Impugned Order dated 20.11.2023 passed in CA No.179/2023 in CP No. 99/CHD/HRY/2023 titled as “Adesh Gupta & Ors. Vs Liberty Shoes Limited & Ors.” by the Hon’ble NCLT, Chandigarh Bench.

Submissions of the Appellant

2. Appellant No. 1 was the Key Managerial Personnel, CEO & Executive Director, and representative of promoter shareholders of Respondent No. 1/ M/s Liberty Shoes Limited. The Appellant had a lifelong association with M/s Liberty Shoes Limited.

3. It is contended between 2014 and 2023, as CEO and Executive Director on the Board of Respondent No. 1, Appellant No. 1, consistently issued emails advising and complaining about fund diversion, fraud, breaches of corporate governance, and non-compliance with statutory obligations. His advice was sometimes received positively, sometimes negatively. Despite this, Appellant No. 1 continued his efforts to ensure compliance and prevent fund and resource misuse, although his efforts were not always appreciated, particularly by the perpetrators. After multiple unsuccessful efforts to remove Appellant No. 1 by following the so-called procedure prescribed under Section 169 of the Companies Act and when Appellant No. 1 answered and proved all allegations levied to be false, the wrongdoers kept silent over such notice and

did not even take the same before the Board and now after one year again, a fresh notice by Mr. Sachin Gupta dated 02.09.2023 was circulated and included in Agenda Item of AGM held on 30.09.2023 to remove Appellant No.

1. There is no sustainable allegation at all in the said notice, the notice is sham, grounds are not explicit the said notice and the allegations are vague as it lacks clarity and Appellant No. 1 is removed as Executive Director of the Respondent No. 1 company based on such a sham notice.

4. As a historical background, in 1954 the father of Appellant No. 1 (Late Mr. PD Gupta) started the business and laid the foundation of the Liberty Group with his brother Mr. DP Gupta. Much later, their nephew, Mr. Raj Kumar Bansal, was added to the business. Mother of Mr. Raj Kumar Bansal, i.e. sister of Mr. PD Gupta and Mr. DP Gupta, had left her matrimonial house to live with them thus, consequently, with time Mr. Raj Kumar Bansal was also added to the business. Thus, there are three promoter families. On 03.09.1986, Liberty Shoes Limited was incorporated. Appellant No. 1 was one of the Promoter Shareholders. The father of Appellant No. 1 was instrumental in the business and was one of the founding members. PD Gupta family had the highest percentage of shareholding (42.8%). DP Gupta and Raj Kumar Bansal families shared 28.5% of the total. In 1995, Liberty Shoes Limited was listed on the Bombay Stock Exchange. Late Sh. PD Gupta was the Company's Chairman and remained Chairman till his death in 2003. Appellant No. 1 served as Executive Director on the Board of Liberty Shoes Limited w.e.f. 2004 till now. Between 2001-03, the founders of the Company Late Sh. DP Gupta

(2001) and Late Sh. Raj Kumar Bansal (2002), Late Sh. PD Gupta (2003), died in quick succession.

5. In the year 2004, Appellant No. 1 was appointed as CEO of the Company in 2004. Appellant No. 1 and about 10 family members of the second generation of the founders took active roles in the company. The selection of Appellant No. 1 as CEO was on his merits and by vote. Since that date, Appellant No. 1 was appointed CEO by majority vote. Since becoming CEO of M/s Liberty Shoes Limited in the year 2004, Appellant No. 1 has been continuously making innovative, modern, and futuristic decisions. Thus, Appellant No. 1 is recognized as a dynamic leader and one of the most prominent business figures in the footwear and allied industry. Appellant No.1 even diversified into perfumes, exports, etc. The fame of Appellant No. 1 and the fortune of Liberty Group manifolded under the leadership of Appellant No. 1. Since 2004, Appellant No. 1 has had the largest role in managing the business. Appellant No. 1 owns 95000 equity shares in M/s Liberty Shoes Limited and has steered the company and the group companies and businesses to the present heights. Liberty Shoes and its group companies are household names in India and abroad, all due to the untiring efforts, and business acumen of Appellant No. 1. Appellant No. 1 holds an immense and enviable reputation. Appellant No. 1 is now a man of about 60 years and has worked honestly and diligently to establish his present reputation as an honest, diligent, visionary global leader who has steered his team. Due to the efforts of the promoters and Appellant No. 1, the Respondent No. 1 company

has grown to become one of the most recognizable brands in India and has diversified into various businesses. Appellant No. 1 and the shareholders and Directors through the Board of Directors, were managing the business of M/s Liberty Shoes Limited and its group companies. Gradually differences started brewing between the shareholders and Directors of M/s Liberty Shoes Limited. Despite the growing differences among Shareholders and Directors (essentially between PD Group, DP Group, and Bansal Group), Appellant No. 1 always used his maturity and as far as possible tried his best to run the affairs of the company in a compliant manner, used his best efforts to ensure that members of the Company did not take unfair advantage of the company, divert business, misuse funds, misapply funds, indulge in market manipulations, etc.

6. The Respondents have indulged in (a) insider trading, (b) misappropriation of monies obtained from the banks (c) misappropriation of funds of the company in wasteful expenditures (d) artificial inflation of the share value for insider trading benefits, (e) siphoning off massive sums of monies in related party transactions, (f) scheming and falsely portraying that Petitioner has been stripped off from the role of Executive Director/KMP in the presence of employees and vendors, all without adhering to proper legal procedures, with the intent of tarnishing and defaming his reputation, (g) colluding with each other for sending the Special Notice for removal of Petitioner in about three successive but failed attempts under Section 169 of the Companies Act to remove him as CEO and Executive Director by imposing

false allegations and then withdrawing them. On 30.9.23, on the basis of sham allegations that the company is not performing well as compared to its peers, without analyzing the facts and circumstances behind such performance, (i) indulging in oppressive conduct with the staff to ensure that the diligent, professional, and domain expert staff is removed and sycophants of the Respondents are only retained, (j) indulging in breach of the license agreement and shortfall of license fee leading to termination of Trademark Licence Agreement dated 03.04.2013 with Liberty Footwear Co.

7. The wrongdoers of the Company were unable to give any cogent answers to the violations pointed out by Appellant No. 1 under his aforesaid various emails, communications, etc. written to the Board. Appellant No. 1 in his communications has always been corrective, suggestive, and in the best interest of the Company and was based on facts. Appellant No. 1, being in charge, had to comply with his legal obligations being Key Managerial Personnel to point out illegalities/violations that came to his notice, however, the tone and tenor of Appellant No. 1 in his communications were never to disparage or demean or defame anybody. The emails and communications of Appellant No. 1 were always addressed to the relevant persons so that the same is strictly in the interest of the company. That various wrongdoings and identity of the wrongdoers apart from the Defendants, remain to be identified. The wrongdoers intend to obstruct information coming to Appellant No. 1 and working of Appellant No. 1 to identify and remedy the wrongs that are being committed in the company, M/s Liberty Shoes Limited.

8. Appellant No. 1 also, through various emails, unearthed and addressed the fraudulent activities, siphoning, diversion, and misappropriation of funds at the Gharaunda plant of M/s Liberty Shoes Limited by the Respondents, in particular, Respondent No. 3, who was responsible for the day to day management and functioning of the Gharaunda plant. Through the said emails, Appellant No. 1 called upon in various instances the Compliance Officer and Company Secretary, Legal Advisors, etc. to look into the matter and take action in the strictest terms against the guilty officials who have indulged in siphoning and diversion of funds to the tune of Lakhs of Rupees.

9. Since the last 4-5 years, there have been heightened disagreements between the members of the PD family, DP family, and Bansal family. Appellant No. 1 eventually advised engaging professionals to find a way to divide business or management rights so that disputes and differences are amicably resolved. Services of reputed consultant M/s Ernst and Young were engaged for the purpose in March 2020. Appellant No. 1 suggested the engagement of services of E&Y for the transformation/restructuring of M/s Liberty Shoes Limited and a larger family settlement. There were continuous individual and collective meetings of members of three founder families, stakeholders meetings, etc. by E&Y. Over three years, there were more than 100 meetings. M/s Ernst and Young after a detailed analysis, was ready to propose viable options, however, other stakeholders refused to meet and cooperate.

10. These differences are the only reason for removal of Appellant No. 1 and the stated reasons in Section 169 notices are false and there is no documentary evidence to support the allegations. Emails dated 03.05.2023 to 04.05.2023 establish that Appellant No. 1 made all efforts to appreciate the guidance of E&Y, however, other stakeholders were not cooperative. On 03.05.2023, Respondent No. 2 cancelled the family settlement meeting proposed by E&Y. In turn, the Respondents by way of defamatory and unauthorized communications declared that Appellant No. 1 was ousted from the position of CEO and Executive Director, while Appellant No.1 was not so ousted. The Respondents did not allow Appellant No. 1 to work and function as CEO. This disrupted the functioning of the Respondent No. 1 Company. This is an instance of gross mismanagement and adversely affecting the functioning of Appellant No. 1 as the CEO of Respondent No. 1. Respondents are well aware that any malicious communication may have the effect of disrupting the business of the company to irreparable levels. Respondents Nos. 2 and 3 published and circulated the defamatory communications with bad intent. The defamatory communications were deliberately circulated widely to ensure maximum damage to Appellant No. 1. Respondents have not acted in the best interests of the Respondent No. 1 Company and, in fact, have time and again hindered the growth and functioning of the Respondent No. 1 Company. Even earlier on 09.11.2022, Respondent Nos. 2-3 had conspired to show that there was an agenda item for the removal of Appellant No. 1, however, that agenda item was never a part of the meeting. Appellant

No. 1 replied to it in detail, the said attempt was illegal and was not taken by the Board.

11. Appellant No. 1's wife's 60th birthday was on 13.07.23. It was well known amongst all that Appellant No. 1 would be overseas from 10.07.2023 for about a week. Appellant No.1 returned on 15.07.2023. However, Appellant No. 1 joined his work effectively from 21.07.2023 when he read the alleged defamatory communication dated 10.07.2023. On 10.07.2023, Respondent No. 2 issued a frivolous show cause notice, which was widely circulated only to defame Appellant No. 1. It contains false facts and is targeted only to demean Appellant No. 1. The said show cause notice mentions about the management committee. There is no management committee formally constituted in the Respondent No. 1 Company. The said show cause notice is not authorized by the Board, it is the result of the personal vendetta of Respondent No.2. The accounts have been duly audited. The allegations are prima facie untrue, the Board has never raised any grievance on any conduct of Appellant No. 1.

12. Appellant No. 1 called out the said show cause notice as illegal, defamatory, and malicious by way of an email dated 21.07.2023. Appellant No. 1 was in a state of shock, reading the contents of the defamatory communication. Further, on 25.07.2023, Respondent No. 3 circulated a defamatory email stating all powers of Appellant No. 1 have been taken away. Appellant No.1 suffered grave and severe mental agony and harassment.

13. When the Respondents being majority shareholders and having a majority in the Board and consequently having a majority in the Board decisions, are themselves indulging in related party transactions, Appellant No. 1 cannot be blamed for lack of performance in a fiercely competitive market in which Respondent No. 1 Company operates. Thus, the rampant conduct of related party transactions by the Respondents in the Respondent No. 1 Company is also an instance of oppression and mismanagement. This conduct further underscores the oppressive environment within Respondent No. 1 Company. The Respondents systematically suppress diligent staff and exclusively favor those who align with their interests. This hostile work environment and preferential treatment are other fundamental factors contributing to the company's low performance. Therefore, it is clear that the Respondents' extensive engagement in related party transactions, coupled with alignment with the people of the same interest within Respondent No. 1 Company constitutes a form of oppression and mismanagement. That there has been siphoning of monies and diversion of funds through related party transactions. Transactions with related parties like LFO Liberty Fashion Outfits (Raman Bansal), Anything Skool Limited (Vivek Bansal), Total Print & Packing (Ayush Bansal), Core Innovative Designs LLP (wife of Anupam Bansal), etc. have led to financial embezzlements and siphoning of funds of hefty amounts. That the Respondents have not acted in the best interests of the Respondent No. 1 Company and in fact, have time and again hindered the growth and functioning of the Respondent No. 1 Company.

14. Appellant No. 1 was compelled to approach Hon'ble Delhi High Court, against Respondent Nos. 2 and 3 for their unlawful actions vide show cause notice dated 10.07.2023 and email dated 25.07.2023 (containing defamatory material against Appellant No. 1) and they were compelled to seek a post facto ratification (vide Board Resolution Dated 11.08.2023) to give a feeble defence to their unlawful actions of declaring that Appellant No. 1 is removed as Executive Director and CEO. It would be important to note here that post the defamatory emails, Appellant No. 1 participated in subsequent Board Meetings as Executive Director and CEO. That the Hon'ble Delhi High Court vide order dated 14.08.2023 restrained the Respondents from circulating the defamatory and unauthorized communications any further.

15. That owing to Appellant No.1 constantly reporting the misdeeds of the Respondents in running the affairs of the Respondent No. 1 Company, Respondent Nos. 1 and 2 connived with other wrongdoers for malicious reasons to cause injury and damage to Appellant No.1. The Respondents and wrongdoers connived to publish and circulate demeaning, wrong and false allegations against Appellant No. 1, the allegations are completely irrelevant and baseless, being unrelated and unnecessary. That the said false and wrong averments are merely made to cause mental distress and cruelty to Appellant No. 1, the defamatory communications are per se defamatory, all this shows that the intention of the Respondents is not good or welfare of the Respondent No. 1 Company but the ouster of Appellant no. 1 and attain unlawful gains.

16. The Notice mentions that the Company is not performing at par with other peer group competitors and that Respondent No. 21 has lost confidence in Appellant No. 1. That the performance of Respondent No.1 Company is not only the responsibility of Appellant No. 1 when the majority shareholders have indulged themselves in related party transactions through their closely held companies in which they have direct interest and the said companies have been made as vendors, sellers etc. to the Respondent No. 1 Company, clearly, given this mismanagement, the working and profitability of the company is affected. It is crucial to recognize that the responsibility for the company's performance does not solely rest on Appellant No. 1. That the allegation that Appellant No. 1 was not performing well in his role as CEO is utterly false as even Annual Report 22-23 discloses that there are significant related party transactions attributable to Respondents. When the Respondent No. 1 Company is burdened with related party transactions of such significant amounts, it cannot work like a competitive company. The Respondents are directly responsible for related party transactions and reap unlawful benefits from the same. The related party transactions are not done at arm's length basis rather the related party transactions are continually increasing and are being used as a tool to siphon off funds of the company. Further mindless expenses are being done in promotions, Bollywood fame brand ambassadors, etc. without the approval of the Board. Expenses of more than 35 crores were undertaken in such marketing activities without approval from the Board. That related party transaction of such high volumes is nothing but an

instance of oppression and mismanagement. The trade receivables from related parties have grown significantly, all this is due to the oppression by the Respondents. That there has been siphoning of monies and diversion of funds through related party transactions. Transactions with related parties like LFO Liberty Fashion Outfits (Raman Bansal), Anything Skool Limited (Vivek Bansal), Total Print & Packing (Ayush Bansal), Core Innovative Designs LLP (wife of Anupam Bansal), etc. have led to financial embezzlements and siphoning of funds of hefty amounts. As per the related party transaction policy of the Company, related party transactions are to be referred to the Audit Committee for their review and approval. However, it is pertinent to note that the members of the Audit Committee of the Company are only those who have indulged in the siphoning of monies in the name of related party transactions like Respondent No. 2.

17. Four shareholders who are KMP/Directors served a special notice dated 12.08.2023 but later realized that serving such notice will debar shareholders or directors with a vested interest in a resolution from voting on that particular agenda item during a meeting. Considering this, the promoters who issued the initial special notice, collectively holding 9.39% of the Company's capital, would likely abstain from voting. This scenario would make the passage of an ordinary resolution at the Shareholders meeting uncertain and challenging and thus, the same was not acted upon and another notice was served on Appellant no. 1 again without withdrawing the previous one, clearly implying that even in special notice dated 02.09.2023, the Board/KMP are

related parties and misusing the provisions of law and applying power tactics for their motives.

18. The grounds in the special notice must be imperative and be based on factual evidence and not mere assumptions or personal opinions. The special notice is itself void and lacks clarity also the explanatory statement does not contain the grounds thus the special notice and explanatory statement are defunct and the validity of such notice is highly questionable.

19. Reliance is placed in this regard on "***Escorts Limited Vs Union of India***", wherein the Bombay High Court has observed that when a notice for removal of a director has been served by some members, they should specify the grounds for his removal. The provisions of the grounds are imperative because the director concerned should be aware of them so that he can put forward his defense accordingly. The clear provisions of the grounds are therefore fundamental to the director's right to make a representation. In the notice circulated to the members for the general meeting containing the proposed resolution for the removal, there shall be an explanatory statement that should set out the specific grounds for the removal so that the shareholders can also apply their minds accordingly before voting on the resolution. It is necessary that any proposal for the removal of the director shall be moved in the interest of the Company and not for any mala-fide reasons. The performance of Appellant No. 1 has been excellent, it is only the efforts of Appellant No. 1 which have ensured the survival of the Company. It

lacks specific grounds and is replete with vague statements, including an assertion that Appellant No. 1 was underperforming and that shareholder Sachin Gupta has lost confidence in him. Such nebulous claims and unsubstantiated allegations hold no validity. Mr. Sachin Gupta/Respondent No. 21 is not warranted in questioning the proficiency and integrity of a person whose tenure has led the Company to reach great heights, without whom its survival would have been difficult. This notice overlooks the distinct areas of expertise that define Appellant No. 1 and neglects to acknowledge the proficiency he brings to each skill set. The allegation that Appellant No. 1 was not performing well in his role as CEO is utterly false and baseless. Appellant No. 1 is responsible for B2B, B2G, exports, lifestyle (perfumes) business and that these businesses generate 80% of the revenue for Respondent No. 1 and consume 20% expenses. The retail, wholesale, showrooms, e-commerce, fashion footwear, and B2C segments are handled by the other 6 directors and consume 80% of expenses and generate 20% of revenue and the said units are in losses and are money drain for the company. The businesses handled by Appellant No. 1 have grown immensely, generate cash profits, and do not have bad debts.

20. Appellant No. 1 was liable to remain Director by rotation representing Respondent No. 1 till March 2024. The Respondents attempted to remove Appellant No. 1, by levying false allegations, however, the Respondents were not able to remove Appellant No. 1 as the role and contribution of Appellant No. 1 are unparalleled and there is no valid and sustainable reason to initiate

the process of removal as per law. Appellant No. 1 has not been removed as per the procedure prescribed under Section 169 and other provisions of the Companies Act, 2013, the Defendants wrongfully intended to obstruct the functioning of Appellant No. 1 by serving repeated Section 169 notices. It is evident that the motivation behind these repeated notices is not genuine, but rather appears to be driven by a desire for vengeance against Appellant No.1. Appellant No. 1 had been an Executive Director and CEO of the company due to merits and consensus, the Appellant No. 1 is on the Board as Executive Director as representing promoter Appellant shareholders, the Appellant No. 1 cannot be removed as such.

21. The Appellants represent 5.83% shareholders and about 41.5% of the shareholding is held by the public. M/s Geofin Investments Pvt. Ltd. holding about 26% shareholding in the Respondent No. 1 company is also a Company of promoters in which the Appellants also have shares. As seen from these standards, the shareholding of the Appellants was substantial. Appellant No.1, being one of the five Executive Directors on the Board of 10 Directors, is entitled to proportionate representation.

22. On 21.09.2023, Appellants filed CP No. 99/CHD/HRY/2023. CA No.179/2023 seeking waiver of all the requirements of Section 244 (1)(a) & (b) was filed by the Appellants before the Hon'ble NCLT, Chandigarh Bench. The Appellants established by cogent evidence that Appellant No. 1 was responsible for limited verticals of business which were performing

exceedingly well. The other Directors were handling other verticals of the business where massive siphoning off of funds and massive related party transactions were going on. Appellants by cogent documentary evidence established that that the Respondents have indulged in various acts of oppression and mismanagement, namely: evident actions of oppression, mismanagement and illegalities being committed by the oppressive majority shareholders to the detriment of the public company (a) insider trading, (b) misappropriation of monies obtained from the banks (c) misappropriation of funds of the company in wasteful expenditures (d) artificial inflation of the share value for insider trading benefits, (e) siphoning off massive sums of monies in related party transactions, (f) scheming and falsely portraying that Petitioner has been stripped off from the role of Executive Director/KMP in the presence of employees and vendors, without adhering to proper legal procedures all with the intent of tarnishing and defaming his reputation, (g) colluding with each other for sending the special notice for removal of Petitioner in about three successive but failed attempts under Section 169 Companies Act to remove him as CEO and Executive Director by imposing false allegations and then withdrawing them, (h) colluding with each other to remove the Petitioner as CEO and Executive Director in the recent effort in the AGM to be held on 30.9.23, on sham allegations that the company is not performing well as compared to its peers without analyzing the true facts and circumstances behind such performance, (i) indulging in oppressive conduct with the staff to ensure that the diligent, professional, and domain expert staff

is removed and sycophants of the Respondents are only retained, (j) indulging in breach of the licence agreement and shortfall of license fee leading to termination of Trademark Licence Agreement dated 03.04.2013 with Liberty Footwear Co.

23. A notice by Mr. Sachin Gupta dated 02.09.2023 was circulated and included in the Agenda Item of AGM to be held on 30.09.2023 to remove the Appellant. There is no sustainable allegation at all in the said notice and the notice is sham. The grounds are not explicit in the said notice and the allegations are also vague as they lack clarity and that the Petitioner is being proposed to be removed as Executive Director of the Respondent No. 1-Company. No seven days (7 days) clear notice for board meeting dated 05.09.2023 (special notice moving agenda only on 02.09.2023) was circulated. The Appellants by way of cogent evidence established that Appellant No. 1 is liable to remain the Director by rotation representing the Appellants till March 2024. The AGM proposed to be held on 30.09.2023, which was proposed to remove Appellant No. 1 as a Director, was bad in law and was proposed to be conducted against Secretarial standards. Appellants established by cogent evidence that Appellant No. 1 by various emails such as an email dated 16.12.2022 wrote about the fraud and diversions of funds that took place at the Gharaunda Plant of M/s Liberty Shoes Limited and also called upon for immediate action against the guilty officials who have indulged in siphoning and diversion of funds to the tune of rupees 60 Lakhs and vide email dated 27.12.2022 stated that no action was taken against the

guilty officials. Appellants established by cogent evidence that Appellant No. 1 wrote various emails and pointed out all the instances of oppression and mismanagement alleged in the Petition continually to the board/shareholders/officers of the Company, however, no action at all was taken on the complaints of the Appellant No. 1. Appellants established, by cogent evidence, that the Respondent No. 12 / Mr. Anupam Bansal is responsible for siphoning off funds and usurping the role of CEO for the retail division. Mr. Anupam Bansal in connivance with Respondents indulged in insider trading to artificially inflate the share price for unlawful profits of his friends and family members. Shares worth several crores were purchased by the family and friends of Mr. Anupam Bansal at the same time interval and within the same time interval of about five months, the share prices almost tripled. Appellants established, by cogent evidence, that Appellant No. 1 red-flagged the issue of insider trading in board meetings when he observed that share prices in a short span had reached Rs. 375/- on 14.10.2022 from a mere Rs. 162 per share on 08.04.2022 and friends and family of Mr. Anupam Bansal invested heavily. To inflate the share price, the company gave dividends twice a year, which artificially inflated the share price. Appellants established by cogent evidence that owing to the constant breaches and defaults at the end of the Respondents, the Trademark License Agreement dated 03.04.2013 with Liberty Footwear Co. came to be terminated. The breaches and defaults at the end of the Respondents were, (a) delay in payment of license fee and interest on delayed payments; (b) failure to provide

audited annual accounts and allow inspection; and (c) outsource manufacturing without sub-license. Appellants established, by cogent, evidence that defamatory emails stating all powers of the Petitioner have been taken away were circulated against Appellant No. 1, while the Appellant No. 1 was Executive Director and CEO, under which Petitioner was compelled to approach Hon'ble High Court of Delhi, wherein vide order dated 14.08.2023 the Hon'ble High Court of Delhi restrained the Respondents from circulating the defamatory and unauthorized communications any further. Appellants claim that the agendas proposed by the Appellants were not included in the AGM. Appellant No. 1 was muted during the AGM and could not give effective representation. Appellants established, by cogent evidence, that the Respondents' extensive engagement in related party transactions coupled with aligning with the people of the same interest within Respondent No. 1- Company constitutes a form of oppression and mismanagement and has led to financial embezzlements and siphoning of funds of hefty amounts. Appellants sought a waiver of requirements mentioned in Sections 244(1) (a) and (b) of the Companies Act, 2013, to enable the Appellants-herein to file the Application under Section 241 of the Companies Act, 2013.

24. The Ld. National Company Law Tribunal vide its order dated 27.09.2023 directed the Respondents to conduct an AGM on 30.09.2023 following the law on the date and time fixed, however, it was directed that the decision taken in the said AGM shall not be acted upon till the next date of hearing. The AGM conducted on 30.09.2023 through video conferencing was

a sham as it did not give any opportunity to Appellant No. 1 to make his submissions. The microphone of Appellant No. 1 was muted and a message came that he is not registered as speaker in the meeting, e-voting was the only way to vote and e-voting for the meeting was closed two days before 30.09.23. Clearly, the Appellant No. 1 was condemned unheard. The written representation of Appellant No. 1 was not circulated to all, as emails of all shareholders are not available in Respondent No. 1 Company's records. Further, the email circulating the reply did not circulate the reply, it merely circulated an online link to reply. That further the said email contained a threatening message dissuading shareholders from opening the said link, as the message warned them of confidential documents and that the company shall not be responsible for opening the contents. Clearly with this threat, hardly voters would have opened the link. Thus, neither the representation was circulated nor did the Appellant No.1 get the opportunity to make representation.

25. Appellants claim that the skills of the Petitioner are recognized even in the annual report of 2023. On one hand, the notice u/s 169 alleges the non-performance of the Petitioner, on the other hand, the annual report acknowledges the skills and resource person in the Petitioner in every area required by the company. This established that the majority was attempting to prevent appropriate representation of the Appellants on the board and Appellant No. 1 was the only representative of the Appellants.

26. The Appellants placed reliance upon the judgment of Hon'ble NCLAT in the matter "***Manoj Bathla & Ors. v. Vishwanath Bathla & Ors.***" in ***Company Appeal (AT) No. 399 of 2018***, wherein the Hon'ble NCLAT upheld the waiver on the grounds of oppression and mismanagement indulged in by the respondents, even though the Petitioner was merely a 0.33% shareholder.

27. Appellant had filed the following before the NCLT:

27.1 CA No. 183/2023 in CP No. 99/CHD/HRY/2023 titled "Adesh Gupta Vs Liberty Shoes Limited & Ors." with the prayers of CA No. 183/2023 reproduced hereinafter: (a) pass an order allowing the present Application; (b) pass an order granting the leave to the Applicant to add additional facts and Grounds as stated under the present Application in C.P. No.99/CHG/HRY/2023; (c) pass such other and further orders or directions, as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.

27.2 CA No. 184/2023 in CP No. 99/CHD/HRY/2023 was filed praying for: (a) pass an order allowing the present Application; (b) pass an order calling or direct the calling of an annual general meeting of the Respondent No. 1 Company and give such ancillary or consequential directions as this Hon'ble Tribunal thinks expedient; (c) pass such other and further orders or directions, as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.

27.3 COCP (CA) No. 5/2023 in CP No. 99/CHD/HRY/2023 filed praying for: (a) pass an order allowing the present Contempt Petition; (b) pass order initiating contempt proceedings against the Respondents for wilful and deliberate disobedience of the order dated 27.09.2023 as passed by this Hon'ble Tribunal; (c) pass an order punishing the Respondents for having committed contempt by wilfully disobeying the order dated 27.09.2023 as passed by this Hon'ble Tribunal; (d) pass such other and further orders or directions, as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.

28. Impugned Order was passed in CA No.179/2023 in CP No. 99/CHD/HRY/2023 wherein the application filed by the Appellants/Petitioners under Sections 244(1)(a) and 244 (1)(b) of the Companies Act, 2013, seeking waiver of the requirements of the aforementioned Sections was dismissed by the NCLT and the CA No. 183/2023, 184/2023 & COCP (CA) No. 5/2023 in CP No. 99/CHD/HRY/2023 was held to be infructuous.

29. Appellant claims that the Impugned Order dated 20.11.23 passed in connection with CP No. 99/2023 suffers from serious legal infirmities as the waiver is refused based on the finding that the Petitioner has no prima facie case as the primary complaint in the Petition relates to the directorship of the Petitioner and hence the complaint is directorial. Refusal of the waiver based on prima facie case or the merit of the averments in the Petition is contrary

to the law settled by this Hon'ble Appellate Tribunal in **Cyrus Investments Private Limited vs Tata Sons Limited and Ors. (2017 SCC OnLine NCLAT 261)** where it is clearly stated that the Hon'ble Tribunal will not decide the issue of waiver based on a prima facie case or merits of the claim/complaint. Therefore, the issue relating to the directorial complaint could not have formed the basis for the refusal of waiver. For Grant of Waiver under Section 244 of the Companies Act, 2013, directorial complaint or prima facie case could not be looked into. Grant of Waiver under Section 244 of the Companies Act, 2013 cannot be dismissed on the presumption of dismissal of the Company Petition on merits. Adjudicating Authority under the Impugned Order dated 20.11.2023 erred in looking into the merits of the Company Petition No. 99/CHD/HRY/2023.

30. Hon'ble Appellate Tribunal in **Cyrus Investments Pvt. Ltd. and Ors. Vs Tata Sons Limited and Ors. (supra)** held in

Para 144 that "**Therefore, before the grant of waiver, the question of forming opinion by Tribunal on an application made under Section 241 and to pass any order as it thinks fit does not arise. If the Tribunal intends to decide the application under Section 241 on merit, it is required to waive the requirement as prescribed under sub-section (1) of Section 244**".

It was further held in Para 145 that "For the reasons aforesaid, we hold that the Tribunal cannot deliberate on the merit of a (proposed) application under Section 241, while deciding an application for 'waiver' under proviso to sub-section (1) of Section 244".

It was further held that in Para 145 that the following factors which are dependent on the merits of a case cannot be looked into:

- (i) Prima facie case:
- (ii) Limitation:

- (iii) Allegation pertains to affairs of another Company
- (iv) Arbitration
- (v) Directorial Complaint
- (vi) Conduct of Applicant
- (vii) Acquiescence/ Waiver/ Estoppel

31. That the Hon'ble Appellate Tribunal in **Cyrus Investments Pvt. Ltd. and Ors. Vs Tata Sons Limited and Ors. supra** held that:

Para 160: "From the aforesaid summary of shareholding we find that except Mr. Ratan Naval Tata (at serial No. 22) having issued shareholding of 31.43% and Mr. Narotam S. Sekhsaria (at serial No. 44), having 17.01% shareholding capital of the company, none of the 49 member(s) are eligible to file an application under Section 241, individually having less than 10% of the shareholding".

Para 161: "That means in the context of present case, except that the minority shareholders join together, i.e. either six in numbers or such numbers of members whose joint shareholding will come up to 10% of the issued share capital of the Company, which will be also not less than 3 to 4 members, none of the 49 shareholders can file an application under Section 241 alleging 'oppression and mismanagement'. It will remain only in the hands of major shareholders, namely Mr. Ratan Naval Tata or Mr. Narotam S. Sekhsaria, who only have right and their prerogative to file such application."

Para 162: "One or the other minority shareholder cannot be asked or directed to form a group of 10% of the member(s) that means six person(s) in the present case, as it will be dependent on the prerogative of the other member(s)".

Para 163: "We are of the view that this is one of the exceptional and compelling circumstances, which merit the application for 'waiver' subject to the question whether (proposed) application under Section 241 relates to 'oppression and mismanagement".

32. Even in the present case as per the shareholding pattern of the promoters of the Respondent No.1 Company (Liberty Shoes Limited), it is seen that it is only M/s Geofin Investments Private Limited meets the threshold for

filing a Petition under Section 241 of the Companies Act, 2013. No other promoters have the requisite shareholding for preferring a Company Petition under Section 241 of the Companies Act, 2013. That this is one of the exceptional and compelling circumstances, which merited the grant of 'waiver'.

33. Furthermore, the issue relating to waiver was not the subject matter of the **Civil Appeal No. 440-441 of 2021** decided by the Hon'ble Supreme Court in the final judgment titled **Tata Consultancy Services Limited vs. Cyrus Investments Private Limited** was allowed based on the merits of the case and there was no issue relating to the grant of waiver as the order dated 21.9.2017 passed by the Hon'ble Appellate Tribunal regarding the grant of waiver was never challenged and therefore attained finality, and is now settled law.

34. It is therefore completely incorrect on the part of the Respondents herein to rely on the judgment of the Hon'ble Supreme Court as above. Even now this argument that the Petition relates to the directorial complaint and is hence not maintainable, is neither legally correct nor available to the respondents.

35. At least 32 emails were written by the Petitioner to the management and the board of directors between October 2019 and September 2023 before the filing of the petition. Hence, the averments in the petition relate to various acts of oppression and mismanagement and were brought to the notice of the

domestic forum, i.e., the Board of Directors of the Company before approaching the Hon'ble Tribunal. The entire argument of the Respondents herein is only confined to the merits of the case i.e., directorial complaint and it is being argued that the petition being of a directorial complaint will eventually be dismissed on merits hence there is no point in granting a waiver and in this regard, reliance is placed on the Supreme Court judgment. That the reply filed by the respondents considers the merits of the case which is prohibited by the judgment of the Hon'ble NCLAT at the stage of grant of waiver. Further, the Respondents in their Affidavit dated 13.04.2024 have revealed only 118 shareholders of Respondent No. 1 Company voted on the Resolution for removal of Appellant No. 1 as Director, whereas the total number of public shareholders in the Company is approx. 27,803 as of December 2023.

36. It is therefore prayed that this Hon'ble Appellate Tribunal may set aside the Impugned Order, grant the waiver to the Appellant/Original Petitioner, and direct the Hon'ble National Company Law Tribunal, Chandigarh to hear the petition on merits.

Submissions of Respondent No. 1/ Liberty Shoes & Ors.

37. Respondent No. 1/Company sent the notice of AGM and annual report to its shareholders, including Appellants No. 1 to 6, on September 8, 2023, providing a clear 21-day notice before the AGM. This notice included procedures for attending the AGM via VC/OAVM and the process of speaking during the AGM. The information was also published in all editions of

Jansatta and Financial Express, in compliance with the relevant MCA Circulars. Shareholders could access the digital platform using their credentials, such as DP ID, Client ID, PAN No., Phone No., and Email ID. Shareholders wishing to join the 21st AGM through the InstaMeet platform could only speak if they had registered with the company at least seven days before the AGM, as outlined in Note No. 22 of the AGM Notice. Respondents state that by September 23, 2023, the company received requests from nine shareholders to speak. After receiving these requests, the company provided the list of speakers to the service provider, M/s Link Intime India Pvt. Ltd., who issued URLs and serial numbers to the nine shareholders. None of the Appellants submitted any request to the Company or Link In time.

38. The Appeal challenges an NCLT Order dismissing the Appellants' Application for a waiver under Section 244(1)(b) of the Companies Act, 2013. The Respondents argue that the Appellants lack valid grounds for such a waiver and that the Petition is an attempt to retaliate for the lawful removal of the Appellant as CEO/Executive Director. The Appellants collectively hold 5.83% of the company's shares, with the primary Appellant holding only 0.56%. The Respondents highlight that these figures do not justify the relief sought under Sections 241 and 242 of the Companies Act.

39. Respondents detail various alleged misconducts by the Appellant, including unauthorized financial transactions, violation of board decisions, and mismanagement, which justified the Appellant's removal. The Appellant's

removal as Executive Director was ratified by an overwhelming majority of shareholders during the company's AGM. Respondents argue that this decision reflects the collective wisdom of the shareholders and should not be deemed oppressive.

40. Respondents emphasize that mere removal from a position cannot constitute oppression or mismanagement under Sections 241 and 242. They argue that the NCLT's Order was well-founded in rejecting the claims of oppression and mismanagement, and assert that there are no exceptional circumstances warranting a waiver of the statutory requirements under Section 244. The Tribunal found no evidence of oppression or mismanagement and correctly rejected the Appellants' claims. Respondents further contend that Section 244 serves to prevent frivolous and vexatious petitions by minority shareholders that could disrupt company operations. In this case, the Appellants' unsubstantiated allegations could result in significant harm to Respondent No. 1, a public listed company with 41.58% public shareholding.

41. Respondents argue that mere removal from a managerial position does not, by itself, constitute oppression or mismanagement under Sections 241 and 242 of the Companies Act, 2013. Citing relevant legal precedents, including a judgment from the Hon'ble Supreme Court of India, they argue that not every grievance of a shareholder or director amounts to oppression

or mismanagement. They maintain that the Appellant's removal was justified and that the petition is an abuse of the legal process.

42. Respondent No. 1, a public listed company, adheres to all statutory requirements, corporate governance guidelines, SEBI regulations, and company policies, maintaining transparency and accountability in its dealings. Respondents strongly deny any involvement in fraudulent activities or diversion of funds as alleged by the Appellants. They argue that the Appellants have failed to provide any evidence to support their claims, which appear to be an attempt to deflect attention from Appellant No. 1's misconduct.

43. Respondents state that the Appellant did not comply with the procedure for participating in the AGM through video conferencing as required by MCA guidelines. Despite being informed of the process, no timely request was made by the Appellants to participate as speakers, and therefore, the company could not facilitate their participation. Respondents argue that the Appellant's failure to follow the process is not the fault of the company. The NCLT found no merit in the Appellants' claim that their right to representation was denied during the AGM.

44. The Appellant has relied upon Paragraph 145 of the Judgment of this Hon'ble Appellate Tribunal in the case of **Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. (supra)** to argue that the Hon'ble Tribunal while deciding an application seeking waiver cannot touch upon the merits of the

case including evaluating that directorial complaint is the basis of the case. This argument is based upon a selective and self-serving reading and interpretation of Paragraph 145. Paragraph 145 cannot be read in isolation and has to be read in conjunction with Paragraphs 149 as well as 150 and more importantly Paragraph 151 of the Judgment. These passages from the Judgment clearly emphasize that the Tribunal has to form an opinion as to whether the grievances raised in a case are genuinely that of oppression and mismanagement and exceptional circumstances before grant of waiver. In other words, the Tribunal has to apply its mind for the formation of the opinion. Viewed from this standpoint, Paragraph 145 has to be regarded as obiter dicta and merely illustrative and needs to be reconciled with Paragraph 151 which sets out the actual conclusions set out in a point-wise manner.

45. Most pertinently, the Tribunal has to be afforded the full scope of authority under Proviso to Section 244 (1) which empowers the Tribunal to grant waiver. The use of the word 'may' in the Proviso makes it abundantly clear that the Tribunal can grant waiver at its 'discretion'. It is a settled position of law that the exercise of discretion must be based upon subjective application of mind and cogent reasoning. For this purpose, the Tribunal has to be afforded the requisite opportunity.

46. The Appellant's argument that in terms of Paragraph 145, the Tribunal is precluded from any kind of assessment of the case at the time of granting waiver runs contrary to the very provision viz., Proviso to Section 244 (1)

which casts a statutory obligation upon the Tribunal to decide whether waiver can be granted in the facts and circumstances of a case.

47. In this context, it is extremely important to highlight that in the case of ***I.D. Chugh & Ors. v. Vikram Kapur & Ors. reported in Company Appeal (AT) No. 229 of 2022***, this Hon'ble Appellate Tribunal has highlighted that a decision on the issue of waiver is judicial and has to be a reasoned order. While arriving at this legal exposition, this Hon'ble Appellate Tribunal in ***I.D. Chugh (supra) case*** relied upon Paragraphs 149 to 151 of *Cyrus Investments case (supra)*.

48. Most importantly, the observations made in Paragraph 145 in ***Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. (supra)*** pronounced in 2017 stand superseded by the subsequent Judgment of the ***Hon'ble Supreme Court in Tata Consultancy Services (supra)*** pronounced in 2021.

49. Further, the Tribunal is unequivocally duty-bound to enquire into the grounds for seeking waiver raised in a case and examining the material facts and circumstances projected by a party. During this exercise, it is not required to carry out a detailed analysis of the merits of the case but there cannot be a mechanical and 'hands-off approach' as sought to be argued by the Appellant as it would amount to failure on the part of the Tribunal to follow the mandate of the statutory provision as well as the law laid down by the Hon'ble Supreme Court and this Hon'ble Appellate Tribunal.

50. The Appellant's reliance on Section 166 to establish his inability to approach the Tribunal as a director with a case of oppression and mismanagement against the Company is mis- conceived for two reasons:

“(1) Section 166 (2) imposes a positive mandate and obligation upon a director of a company to promote the objects of the company for the benefit of its members as a whole and protect the interests of the company, its employees, and the shareholders. Section 166 (3) requires a director to exercise duties with due and reasonable care, skill, and diligence and exercise independent judgment.

(ii) There is no bar under Section 166 precluding a director from approaching the Tribunal or any court.”

51. In case the Appellant was serious about the allegations, it could have approached the Hon'ble Tribunal before the initiation of his removal from the position of director. The Appellant chose not to initiate any proceedings and eventually added allegations in the Company Petition to give it a hue of mismanagement to mask the real color of personal interest and vendetta.

52. In the present case, the Tribunal, while dealing with the issue of waiver, proceeded to examine the primary basis for seeking the waiver from the facts and circumstances of the case. Owing to the Appellant restricting its case before the Tribunal to challenging removal as a director as discussed above, the Tribunal's scope of the inquiry was also restricted to this issue. Accordingly, the grant of waiver was rejected on the ground that projecting personal interest by the Appellant in the form of a 'Directorial Complaint' is impermissible.

53. The NCLT in paragraphs 38 to 40 of the Impugned Order and the findings in paragraphs 44 to 48 are around the question of whether removal as a Director constitutes oppression and mismanagement. Further, could it be a legitimate 'just and equitable' ground for seeking waiver of the conditions laid down under Section 244 (1) (a) and (b) of the Companies Act, 2013 in terms of the Proviso appended to it?

54. In the case of **Hon'ble Supreme Court in Tata Consultancy Services (supra)** [Paragraphs 111 and 114] has definitively laid down the law that removal from directorship does not constitute a ground for seeking waiver. The Hon'ble NCLT has placed reliance on the above-mentioned Judgment [Paragraph 38] and has correctly rejected the Appellant's Application seeking the waiver.

55. Moreover, in the case of **Company Appeal (AT) (CH) No. 127 of 2022 in Jithendra Parlapalli Vs. Jithendra Parlapalli and Ors pronounced in 2023** this Hon'ble Appellate Tribunal refused to grant waiver on the premise that 'Directorial Complaint' cannot form the basis for filing a Petition under Section 241 & 242 of the Companies Act and therefore grant of waiver cannot be based upon such grievances.

56. The Respondents reject the Appellants' assertion of family disputes and clarify that the issues were solely with Appellant No. 1, who was responsible for mismanagement. The termination of the Trademark License Agreement

with Liberty Footwear Co. was due to breaches by the Appellants and is not an act of oppression.

57. The Respondents strongly deny any involvement in fraudulent activities or diversion of funds, as alleged by the Appellants. They contend that the Appellants have failed to provide any evidence to support their claims. The allegations appear to be an attempt to deflect attention from Appellant No. 1's misconduct.

58. This timing of filing also demonstrates that the Company Petition was purely motivated by vendetta and the Appellant was non-serious and non-committed regarding the allegations of mismanagement. The communications relied upon by the Appellant as evidence for alleged mismanagement pertain to the period before May 2023. The Appellant did not approach the Tribunal anytime thereafter.

59. In conclusion, Respondents assert that the Appellants' appeal lacks merit and should be dismissed. The NCLT's decision to dismiss the petition was based on a thorough assessment of the facts and applicable law. Respondents respectfully request that this Hon'ble Tribunal uphold the NCLT's Order and dismiss the Appeal in its entirety.

60. In conclusion, the Respondents assert that the Appellants' appeal lacks merit and should be dismissed. The NCLT's decision to dismiss the petition was grounded in a thorough assessment of the facts and applicable law. The

Appellants failed to meet the statutory requirements under Section 244 of the Companies Act, 2013, and could not substantiate their claims of oppression and mismanagement with credible evidence.

61. The NCLT correctly exercised its discretion in denying the waiver under Section 244(1)(b), recognizing that the Appellants' allegations were unsubstantiated and primarily driven by personal grievances rather than genuine concerns for the company. The Respondents respectfully request that this Hon'ble Tribunal uphold the NCLT's Order and dismiss the Appeal in its entirety.

Analysis

62. Heard both sides and perused the materials on record.

63. The issue that emerges in the facts of the instant case is whether the Appellants are entitled to the waiver of requirements under Sections 244(1)(a) and (b) of the CO Act 2013 so that they can apply under Section 241 of the Act for a case of oppression and mismanagement.

64. In their Appeal, the Appellants have prayed for setting aside the impugned order and ordering for waiving all the requirements mentioned under Sections 244(1)(a) and 244(1)(b) of the Companies Act, 2013, so that they can apply under Section 241 of the Companies Act, 2013. As an alternative they have prayed for relief for passing an order directing the NCLT, Chandigarh Bench to waive all the requirements mentioned under Sections

244(1)(a) and 244(1)(b) of the Companies Act, 2013, so that they can apply under Sections 241 of the Companies Act, 2013.

65. The Adjudicating Authority had dismissed the Company Petition on 20.11.2023. The Appellants are minority shareholders with a holding of about 5.83%. Appellant No. 1 is the Executive Director and a Key Managerial Person (KMP). The Appellant is one of the 5 Executive Directors and the Board of 10 Directors on the date of the petition.

66. There are stringent requirements for filing a Company Petition under Sections 244(1)(a) and 244(1)(b) Companies Act, 2013. But these can be waived under the proviso in the same Section for making an application under section 241 of the Companies Act, 2013. To better appreciate the legal provisions to handle such a situation and the powers of NCLT under Sections 244, 241, 242 of the Act are reproduced as under:

Requirements for Oppression & Mismanagement
and Waiver provision for waiver

“244. Right to apply under section 241.— (1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the **Tribunal may**, on an application made to it in this behalf, **waive all or any of the requirements** specified in clause (a) or clause (b) so as to enable the members **to apply under section 241**.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them. ”

Application for relief for Oppression & Mismanagement

241. Application to Tribunal for relief in cases of oppression, etc.—(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, **may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.**

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

XXX

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Powers of NCLT for relief for Oppression & Mismanagement

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;
- (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;
- (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.

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67. We note that in the instant case the Appellant claims that Respondents have indulged in various acts of oppression and mismanagement, some of which are listed as follows:

- “(a) insider trading,
- (b) misappropriation of monies obtained from the bank and misappropriation of funds of the company in wasteful expenditures and to artificially inflate the share value for insider trading benefits,
- (c) siphoning off monies in related party transactions,
- (d) scheming and falsely portraying that Petitioner has been stripped off from the role of Executive Director/KMP in the presence of employees and vendors, all without adhering to proper legal procedures - all with the intent of tarnishing and defaming his reputation,
- (e) Colluding with each other for sending the Special Notice for removal of Petitioner in about three successive but failed attempts under Section 169 Companies Act to remove him as CEO and Executive Director by imposing false allegations and then withdrawing them,
- (f) Colluding with each other to remove the Petitioner as CEO and Executive Director in the recent effort in the AGM to be held on 30.9.23, on sham allegations that the company is not performing well as compared to its peers without analyzing the true facts and circumstances behind such performance,
- (g) indulging in oppressive conduct with the staff to ensure that the diligent, professional, and domain expert staff is removed and sycophants of the Respondents are only retained,
- (h) indulging in breach of the licence agreement and shortfall of license fee leading to termination of Trademark Licence Agreement dated 03.04.2013 with Liberty Footwear Co.”

68. The Appellant also claims that he was to remain as the Director by rotation till March, 2024. But the AGM on 30.09.2023 had removed the Appellant as a Director. In the past also vide email dated 07.04.2022, Respondent No.11 wrote to the Appellant that certain shareholder had sent special notice under Section 169 of the Companies Act, 2013 dated 20.09.2023 and 21.09.2023, seeking the removal of Respondent Nos. 2 to 4

as Executive Directors of the Respondent No. 1 Company. On 25.07.2023, Respondent No.3 circulated a defamatory email stating that all powers of the Appellant have been taken away. The Appellant was compelled to approach Hon'ble High Court of Delhi, which vide order dated 14.08.2023, restrained the Respondents from circulating the defamatory and unauthorized communications. The Appellant contends that extensive engagement in related party transactions and alignment with the people of the same interest within Respondent No.1 Company constitutes a form of oppression and mismanagement, and led to financial embezzlements and siphoning of funds of hefty amounts. Through these submissions, the Appellant seeks the waiver of requirements mentioned in Sections 244(1)(a) and also (b) of the Act, so that he can file an application under Section 241 of the Act.

69. Appellant contends that only as a counterblast, the Respondents have attempted to remove the Appellant from the Board and are trying to control the company with the intent to further their unlawful actions. This was done through a notice by one Mr. Sachin Gupta dated 02.09.2023, which was included in the Agenda item of AGM to be held on 30.09.2023 to remove the Appellant. There is no sustainable allegation in the said notice and is claimed to be a sham.

70. Per contra, the Respondents claim that the Appellants do not meet the requirements of Sections 244(1)(a) of the Act, which mandates that a Member or Members holding not less than 1/10th of the issued share capital or

representing not less than 1/10th of the total number of members can file a petition under Sections 241 and 242 of the Act. Therefore, they have filed an application under Section 244(1)(b) of the Act seeking permission to file the main petition.

71. Further, the Respondents claim that the Appellant is found guilty of various instances of misconduct and mismanagement of the affairs of the Company, which are noted as below:

i. Violation of resolution dated 04.02.2022 modifying the authority to joint signatories towards cheques amounting to INR 5 lacs or above and issuing 16 cheques of INR 5 lacs each and one cheque for INR 4.71 lacs for the purchase of a Mercedes car for his personal use.

ii. Violation of resolution dated 10.11.2022 that no payments shall be made by Respondent no. 1 on behalf of partnership firms by issuing various cheques in the month of April/May/June 2023 for the expenses of Liberty Footwear Co. and Liberty Group Marketing Division, run by himself along with other partners of the firm, from the account of the company.

iii. Indulging in Insider Trading by advising his brother and promoter shareholder of the company to sell his shares during the trading window closure period via email dated 07.10.2023

iv. Employing 6 people at the payroll of Gharounda Unit at a monthly payout of INR 2 lacs at the place of SS Industries at Panipat (a vendor) under the name of quality inspection, a process which has never been adopted by the Company for any vendor.

v. Paying an advance of INR 185 lacs to SS Industries, Panipat in April-July 2021 for a supply of materials, which has never been received and the vendor has raised false invoices on the company under petitioner's instructions to defraud this amount from the company.

vi. Refusal to sign Audited financial statements, other statutory documents, and Stock Statements for the last two years, in violation of his roles and responsibilities as the CEO and Executive Director of the company as mandatorily required under Section 134 of the Companies Act, 2013.

vii. Paying INR 60-70 lacs to E&Y hired by the Petitioner for restructuring the business of the company, without any prior approval of the Board.

viii. Setting up a venture of perfume division in Liberty Shoes Ltd. and investing INR 10 crores of the Company's profit with minimal profit and siphoning off the investment in the process.

ix. Unlawful transfer of an amount of INR 2,70,72,604/- to M/s Deepak Kumar & Sons, M/s S.S. Industries, and M/s Mansarovar Industries at Panipat in violation of the resolution dated 16.06.2023.”

72. On 08.09.2023, the Respondent No.1 Company circulated a notice dated 05.09.2023 for AGM along with a special notice dated 02.09.2023 received from Respondent No.21 for removal of the Appellant in compliance on Section 102(5) read with Section 169 of the Companies Act, to which the Appellant replied via letter dated 18.09.2023. Further, on 20.09.2023 special notices were also sent to Respondent No. 21 by Appellant Nos. 2, 3, and by Sh. Harish Kumar Gupta, father of Appellant No. 3 on 21.09.2023, under Section 169 of the Act seeking removal of Respondent Nos. 2, 3 and 4 as Executive Directors / Directors of Respondent No. 1. This was rejected by Respondent No.1 / Company on the ground that they were not issued in conformity with Sections 169, 115 and Rule 23(2) of the Companies (Management and Administration) Rules, 2014, which require the special notice to be issued by not less than 14 days before the AGM. NCLT vide its order dated 27.09.2023 declined to stay the AGM and ordered that the decision taken in the AGM was not to be acted upon till the next date of hearing. Accordingly, AGM was conducted on 30.09.2023 through video conferencing, in which an overwhelming majority of the shareholders voted

in favour of removing the Appellant as Director / Executive Director of the Respondent No.1. This was also notified to the NSE and BSE on the same date.

73. We note that the Appellant had lost in the voting in the AGM and has been removed from Director/Executive Directorship by an overwhelming majority of both the promoter and public shareholders of the Company. The Respondents contend that the only purpose of filing the present petition before the NCLT was to continue as the Executive Director of the Respondent No.1 Company. Therefore, no reason exists to grant a waiver to the Petitioner to persist with the petition. On the contrary, the Appellant contends that they are being faced with frivolous and defamatory attempts to remove him and disparage his reputation at the hands of Respondents. The skills of the Appellants were recognized even in the annual report of 2023. On the other hand, the notice under Section 169 is alleging the non-performance of the Appellants. The Appellants also contend that in the AGM conducted on 30.09.2023, the Appellant's microphone and video were switched off by the Respondents deliberately depriving him of his right to call for a poll as a member as per Clause 9 of the Secretarial Standards.

74. The Appellant has relied upon this Tribunal's judgment in ***Cyrus Investments Private Limited & Anr. vs. Tata Sons Limited & Ors. (supra)***. In its support, it has specifically relied upon paras 149, 150, 151 and 152 which are extracted as follows:

“149. The Tribunal is required to take into consideration the relevant facts and evidence, as pleaded in the application for waiver and (proposed) application under Section 241 and required to record reasons reflecting its satisfaction.

150. The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether allegation pertains to ‘oppression and mismanagement’ of the company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.

151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits ‘waiver’ of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-

- (i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.
- (ii) Whether (proposed) application under Section 241 pertains to ‘oppression and mismanagement’? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to ‘oppression and mismanagement’ of the company or its members and/or is frivolous, it will reject the application for ‘waiver’. Otherwise, the Tribunal will proceed to notice the other factors.
- (iii) Whether similar allegation of ‘oppression and mismanagement’, was earlier made by any other member and stand decided and concluded?
- (iv) Whether there is an exceptional circumstance made out to grant ‘waiver’, so as to enable members to file application under Section 241 etc.?

152. The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming opinion as to whether application merits ‘waiver’.”

[Emphasis supplied]

In the above matter, it was held that in an application for waiver from the qualifying requirements in Section 244 of the 2013 Act, it is not open for the Tribunal to examine the merits of the proposed application seeking reliefs against oppression and/or mismanagement. In other words, in deciding whether a relaxation from the thresholds is warranted, it would not be open to the Tribunal to examine whether a prima facie case for oppression and/or mismanagement is made out. This Tribunal had held that the NCLT ought to have regard to the following factors in deciding a waiver application:

- (a) Whether the applicants are member(s) of the company in question. If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright;
- (b) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors;
- (c) Whether similar allegation of oppression and mismanagement', was earlier made by any other member and stand decided and concluded; and
- (d) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241

etc. This exceptional circumstance could be the economic values of the shares, nature of the shareholding pattern etc.

75. We note that the above-mentioned judgment is not helpful for the Appellant's case. While dealing with an application for a waiver under Section 244, the NCLT is very much empowered to make a preliminary assessment to determine whether the Petition falls within the purview of Sections 241 and 244. While the NCLAT in the **Cyrus Investments (supra)** case did hold that the merits of the case should not be considered at the waiver stage, but this does not preclude the NCLT from determining whether the Petition falls within the ambit of Sections 241 and 244. We note that in the instant case, the waiver was refused based on the finding that the Petitioner has no prima facie case as the primary complaint in the petition relates to the directorship of the Petitioner, and hence the complaint is directorial.

76. Furthermore, the judgment of **Hon'ble Supreme Court in Tata Consultancy Services (supra)**, helps us to decide the present case. The relevant paragraphs are extracted as follows:

“111. In fact the real reason why the complainant companies thought fit, quite tactfully, not to press for the reinstatement of CPM is that the **mere termination of Directorship cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Sections 241 and 242.** A useful reference can be made in this regard to the decision of this Court in Hanuman Prasad Bagri & Ors. vs. Bagress Cereals Pvt. Ltd.

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114. Therefore, the fact that the removal of CPM was only from the Executive Chairmanship and not the Directorship of the company as on the date of filing of the petition and the fact that in law, **even the removal from Directorship can never be held to be an oppressive or prejudicial conduct, was sufficient to throw**

the petition under section 241 out, especially since NCLAT chose not to interfere with the findings of fact on certain business decisions.

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118. An important aspect to be noticed is that in a petition under Section 241, the **Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not.** The **question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.**

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132. **In any event the removal of a person from the post of Executive Chairman cannot be termed as oppressive or prejudicial. The original cause of action for the complainant companies to approach NCLT was the removal of CPM from the post of Executive Chairman. Though the complainant companies padded up their actual grievance with various historical facts to make a deceptive appearance, the causa proxima for the complaint was the removal of CPM from the office of Executive Chairman.** His removal from Directorship happened subsequent to the filing of the original complaint and that too for valid and justifiable reasons and hence NCLAT could not have laboured so much on the removal of CPM, for granting relief under Sections 241 and 242.

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163. **It is significant that Sections 241 and 242 of the Companies Act, 2013 do not specifically confer the power of reinstatement, nor we would add that there is any scope for holding that such a power to reinstate can be implied or inferred** from any of the powers specifically conferred.”

[Emphasis supplied]

77. Hon’ble Supreme Court has noticed that mere termination of Directorship cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Sections 241 and 242. In a petition under Section 241, the Tribunal cannot ask whether the removal of a Director was legally valid and/or justified. The important question is whether such a removal tantamounts to an oppressive or prejudicial conduct. The Hon’ble Supreme Court in the above matter has made it clear that mere

removal/termination of the Director cannot be projected as something that would trigger the just and equitable Clause (2) to grant relief under Sections 241 and 242 of the Act. It is noted that the removal of the CEO / Executive Director at the AGM was not a motion by the management of the Company, but by another shareholder of the Company i.e. Respondent No.21.

78. In this case, it is noticed that there are ongoing complaints and counter-complaints between the Appellants and the Respondents even prior to the filing of the Company Petition. But the Company Petition was filed by the Appellants around the time when a proposal was in circulation for the removal of Appellant No.1 as Director / Executive Director along with a notice for AGM. Even the interim relief sought in IA No. 5855 of 2023 in this Appeal is for staying the decision taken in the Annual General Meeting (AGM) dated 30.09.2023 with respect to removal of the Appellant No.1 as an Executive Director of the Respondent No.1, apart from various other interim reliefs.

79. This brings the Appeal of oppression and management under cloud as most of the issues raised herein pertain to removal as Director / Ex-Executive Director and the Company Petition of Directorship appears to be padded up as that of oppression and mismanagement.

80. Further the Adjudicating Authority has noted that a question arises whether a CEO, who has been one of the 5 Executive Directors on a Board of 10 Directors can allege instances of oppression and mismanagement. Various events have been noted by the NCLT, which indicate instances of oppression

and mismanagement by Appellant No.1 himself. Some of these events are as follows:

- i. Violation of resolution dated 04.02.2022 by issuing 16 cheques of INR 5 lacs each and one cheque for INR 4.71 lacs for the purchase of a Mercedes car for his personal use.
- ii. Violation of resolution dated 10.11.2022 by issuing various cheques for the expenses of Liberty Footwear Co. and Liberty Group Marketing Division, run by himself along with other partners of the firm, from the account of the company.
- iii. Indulging in Insider Trading by advising his brother and promoter shareholder of the company.
- iv. Employing 6 people at the Gharounda Unit under the name of quality inspection, a process never adopted by the Company.
- v. Paying an advance of INR 185 lacs to SS Industries, Panipat for supply of materials, which was never received and raising false invoices on the company to defraud the amount from the company.
- vi. Refusal to sign Audited financial statements, other statutory documents, and Stock Statements for the last two years, in violation of his roles and responsibilities as the CEO and Executive Director of the company.
- vii. Paying INR 60-70 lacs to Ernst & Young hired by the Petitioner, without any prior approval of the Board.
- viii. Setting up a venture of perfume division in Liberty Shoes Ltd. and investing INR 10 crores of the Company's profit and siphoning off the investment in the process.
- ix. Unlawful transfer of an amount of INR 2,70,72,604/- to M/s Deepak Kumar & Sons, M/s S.S. Industries, and M/s Mansarovar Industries at Panipat in violation of the resolution dated 16.06.2023.”

81. The Appellants on the other hand, have alleged various acts of oppression and mismanagement by the Respondent himself which were noted earlier.

82. Appellant No. 1 was one of the key management person at the helm of the affairs of the company and his pursuing allegations of oppression and mismanagement on the eve of his removal raises questions. If he was having any case of oppression and mismanagement at the hands of the contesting Respondents or other Directors, then he could have preferred such petition under Sections 241 and 242, much prior to his removal as CEO / Executive Director on 30.09.2023.

83. In fact, Appellant No.1 was himself the CEO for a long time. Had he taken timely action, things would not have reached such an impasse. During the immediate period before filing of the petition, he could have taken necessary action with respect to either filing of the complaint of oppression and mismanagement or any other action under the law.

84. The Respondents contend that the grievance of oppression can only be raised against the management of the Company, but in the present case, a shareholder - Respondent No.21 issued a special notice under Section 169(3) of the Act seeking removal of the Appellant as Director/Executive Director of Respondent No.1 Company, which make it clear that events to his removal at the AGM were not set in motion by the management of the Company, but by another shareholder.

85. Respondents have relied upon ***I.D. Chugh & Ors. v. Vikram Kapur (supra)*** and claims that NCLT's orders have to be a reasoned order and the decision of this Tribunal in the case of ***Cyrus Investments Pvt. Ltd. & Anr.***

(Supra) stands superseded by the subsequent Judgment of the **Hon'ble Supreme Court in Tata Consultancy Services (supra)** pronounced in 2021.

Relevant extracts of **I.D. Chug (supra)** are as follows:

“In this regard, we may refer to a decision of this Tribunal in the case of Cyrus Investments Pvt. Ltd. & Anr. (Supra) in which it has been held that “the Tribunal is required to decide the question whether application merits ‘waiver’ of all or any of the requirements as specified in clauses (a) and (b) of subsection (1) of Section 244 to enable such member(s) to file application under Section 241 and such order of ‘waiver’ being judicial in nature, cannot be passed by Tribunal, in a capricious or arbitrary manner and can be passed only by a speaking and reasoned order after notice to the (proposed) respondent(s)”. **The decision taken by this Tribunal in the aforesaid case i.e. Cyrus Investment Pvt. Ltd. (Supra) has never been challenged before the Hon’ble Supreme Court and thus attained finality.**”

Contentions of the Respondents cannot be accepted basis this Judgement and it doesn't help them. **Tata Consultancy Services (supra)** was allowed based on the merits of the case and there was no issue relating to the grant of waiver as the order dated 21.09.2017 passed by the Hon'ble Appellate Tribunal regarding the grant of waiver was never challenged and therefore attained finality, and is now settled law

86. Appellant has tried to rely upon **Manoj Bathla & Ors. v. Vishwanath Bathla & Ors (supra)** which may not be applicable in this case as the facts are distinguishable in this case. In that case, this Tribunal upheld the waiver granted on the grounds of oppression and mismanagement indulged in by the Respondents, even though the Petitioner was merely a 0.33% shareholder. It was noted that:

“When the status of Respondent No.1 being a shareholder with 25% shareholding Company Appeal (AT) No. 399 of 2018 at the time of incorporation of the Company and also being one of the founding Directors of the Company is admitted, it cannot be contended that he ceased to be a "member" upon reduction of his share capital and that too when the transfer of shareholding is alleged to be clandestine and product of fabrication and forgery.”

87. Furthermore, this Tribunal in the case of **Jithendra Parlapalli Vs.**

Jithendra Parlapalli and Ors (supra) had held that:

“It cannot be forgotten that a 'Directorial Complaint', cannot be a basis for filing a 'Petition', under Section 241 & 242 of the Companies Act, 2013, as 'complaints', in such a 'Petition', should relate to the 'Rights', in the 'status/capacity' of a 'Member'”

88. Appellant relies upon the conclusion in **Cyrus Investments Private Limited vs Tata Sons Limited and Ors. (supra)**, that there is a situation in the instant case also, that until and unless the minority shareholders join together, shareholding will not come up to 10% of the issued share capital of the Company and the threshold for filing a Petition under Section 241 of the Companies Act, 2013 will not be met. Except for M/s Geofin Investments Pvt. Ltd. no other promoter has the requisite shareholding for preferring a Company Petition under Section 241 of the Companies Act, 2013. Appellant claims that this is an exceptional and compelling circumstance, which merits the grant of waiver. In the context of the contents of the Company Petition, we find that it is predominantly related to the removal of the Director. Such justification as in **Cyrus Investments Private Limited vs Tata Sons Limited and Ors. (supra)**, may not be applicable in this case. Therefore, this comparison has to be rejected.

89. The Appellants have also raised some technical grounds. He claims that sufficient notice was not given for the agenda. It is also claimed that the grounds for removal as a director were not mentioned in the notice. This doesn't cut much ice in the background of the instant case as most of them are frivolous.

90. Appellants have also claimed that they have sent a large number of emails pointing out instances of oppression and mismanagement. We have gone through the emails and also the timing of the company petition. It is noticed that some of the emails could be a little older but the company petition mainly revolves around the removal of the Director. For this reason alone, we cannot consider this to be sufficient ground for the grant of waiver.

Conclusion:

91. The Appellants with a total shareholding of 5.83%, do not meet the requirement as per Section 244(1)(a) and 244(1)(b). The Appellant's argument that this case presents exceptional circumstances meriting the grant of a waiver is not convincing. Perusal of the materials on record and the circumstances of the petition and the Appeal do not indicate any exceptional circumstances. The threshold for granting a waiver under Section 244 is high and is intended to be an exception rather than the rule. The NCLT's decision indicates that the Appellant has not demonstrated such exceptional circumstances that would justify bypassing the statutory requirement of a minimum shareholding for the filing of a petition under Section 241.

92. The Petition, as highlighted in the impugned order, revolves significantly around the Appellant's removal as a Director and the related grievances. Section 241 is not intended to address such personal grievances, but is meant to protect the interests of the company and its shareholders against genuine acts of oppression and mismanagement. The NCLT was, therefore, correct in refusing the waiver based on its assessment that the Petition does not substantiate a case of oppression and mismanagement as envisaged under the Companies Act.

93. NCLT's decision is grounded in the specific facts and circumstances of the case, particularly the nature of the complaints raised by the Appellant, which are predominantly directorial. NCLT's assessment that the Petition is primarily based on directorial complaints was not only proper but necessary to ensure that the provisions of the Companies Act are not misused. We find that the Appellant's allegations of oppression and mismanagement are closely tied to personal grievances regarding directorial disputes, which are not intended to be addressed under Section 241.

Orders

94. In light of the foregoing analysis, we conclude that the NCLT acted within its jurisdiction and in accordance with the principles of law while denying the waiver under Section 244 of the Companies Act, 2013. The Appellant's contentions, based on the ***Cyrus Investments (supra)*** case, do not sufficiently undermine the validity of the NCLT's decision. We do not find any infirmity in the orders of the NCLT. The appeal along with the IA is

therefore dismissed, and the impugned order dated 20.11.2023 is upheld. No orders as to costs.

**[Justice Yogesh Khanna]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
September 20, 2024**

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