

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, (COURT NO.-I)
KOLKATA**

Company Petition No. 107/KB/2023

*A Petition under Section 58, 59, 213, 241, 242 and 244 of the
Companies Act, 2013 read with Rule 11 of the National Company
Law Tribunal Rules, 2016.*

IN THE MATTER OF:

UDAYAN SARKAR & ORS

.....Petitioners

Versus

ESSES AGRO BIOTICS PRIVATE LIMITED & ORS

.....Respondents

And

I.A No. 229/KB/2024

IN THE MATTER OF:

SYEDA SHAMIMA NASRIN

.....Applicant

Versus

UDAYAN SARKAR & ORS.

.....Respondents

And

I.A No. 228/KB/2024

IN THE MATTER OF:

SYEDA SHAMIMA NASRIN

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, (COURT NO.-I)
KOLKATA

IA No. 229/KB/2024
&
IA No. 228/KB/2024
&
IA No. 20/KB/2024
In
CP No. 107/KB/2023

.....Applicant

Versus

UDAYAN SARKAR & ORS.

.....Respondents

And

I.A No. 20/KB/2024

IN THE MATTER OF:

UDAYAN SARKAR & ORS.

.....Applicants

Versus

ESSES AGRO BIOTICS PVT. LTD. & ORS.

.....Respondents

Date of Pronouncement: 12.06.2026

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Cmde. Siddharth Mishra, Member (Technical)

Appearances (via Physical / Hybrid Mode):

For the Petitioner:

Mr. Shaunak Mitra, Adv.

Mr. Dripto Majumdar, Adv.

Mr. Debasish De, Adv.

Mr. Debanjana De, Adv.

For the Respondent No. 1:

Ms. Namrataa Basu, Adv.

For the Respondent No. 2:

Mr. A.K. Shrivastava, Adv.

Mr. Akash Sharma, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through physical / hybrid mode.
2. The Ld. Counsels of both the parties were heard *in extenso*.
3. There are three connected Interlocutory Applications which are detailed hereunder:
 - I. **I.A No. 229/KB/2024:** Demurer application filed by the respondents in C.P No. 107/KB/2023.
 - II. **I.A No. 228/KB/2024:** Application by the respondent seeking appointment of an Administrator.
 - III. **I.A No. 20/KB/2024:** Application by the petitioners seeking declaration of “Form AOC-4” and “MGT-7A” filed by the respondent no. 2 with RoC, Kolkata as null and void.

C.P No. 107/KB/2023

4. The Petitioner, Udayan Sarkar has preferred this petition under Section 58, 58, 213 241, 242, and 244 of the Companies Act, 2013 (“**Act**”) read with Rule 11 of the National Company Law Tribunal, 2016 (“**Nclt Rules**”) complaining of acts of oppression and mismanagement against respondent no. 2, 3 and 4 with respect to the affairs of the respondent no. 1 (“**Company/ R-1**”).

The Petitioners seek the following reliefs *inter alia*:

- a) *The Board of Directors of the Company be superseded and an Administrator and/or a Special Officer be appointed to take charge of the management and affairs of the company and all books, papers, records and documents of the company as well as its assets and properties;*
- b) *Alternatively, a committee be constituted by this Hon'ble Tribunal consisting of representatives of the petitioners to function as such Administrator Special Officer for the management and control of the affairs of the company on such terms and conditions as this Hon'ble Tribunal may seem fit and proper;*
- c) *Frame a scheme for management, administration and control of the affairs of the company on such terms and conditions as this Honble Tribunal may deem fit and proper;*
- d) *An order of injunction be passed restraining the respondent No. 2 from acting as an office bearer and/or director of the company;*
- e) *The respondent no. 2 be removed as a director of the company;*
- f) *Perpetual injunction restraining the respondents and each of them whether themselves, their men, servants, agents and or assigns from selling, dealing with, alienating, disposing of any of the assets whether movable or immovable of the respondent no. 1 company and all investments made by the company, in any manner whatsoever;*
- g) *Pass an order directing the board of the company to be reconstituted by removing the respondent no. 2 from the board of directors of the company;*

- h) Declaration that any resolution, if at all, passed in the alleged Board Meeting purportedly held on 24.01.2022, if any, relating to illegal appointment of the respondent no. 2 as a director in the Company is illegal, null and void and be delivered up for cancellation;*
- i) The resolution if at all, passed in the alleged Board Meeting purportedly held on 28.03.2022, if any, relating to alleged transfer of 10,040 equity shares held by Swapan Sarkar, since deceased in the respondent no. 1 company to the respondent no. 2 be declared illegal, null and void and be delivered up for cancellation;*
- j) The Minutes of the Board Meeting dated 13.11.2022 changing the authorized signatory of the company to the bank accounts maintained by the respondent no. 1 company be declared illegal, null and void and be delivered up for cancellation;*
- k) Appointment of the respondent no. 3 as an auditor of the company by the respondent no. 2 be declared as illegal, null and void and be delivered up for cancellation;*
- l) Injunction restraining the respondent no. 2 from giving any effect or further effect or exercising any right on the basis of or receiving any benefits in respect of the alleged transfer of shares and appointment in the board as impugned herein;*
- m) Injunction restraining the respondent no. 2 from transferring, alienating or creating any third party right or interest in respect of the 10040 equity shares of the respondent no. 1 company fraudulently transferred by her in her favour;*
- n) Respondent no. 2 be directed to compensate the respondent no.1 company for the loss and damage caused to the*

company;

- o) An order directing the respondent Nos. 2 and 3 to account for and to be made liable for all loss and damages suffered by the respondent No. 1 company;*
- p) The purported transfer of 10,400 shares held by Swapan Sarkar, since deceased to the respondent no. 2, be quashed, nullified and set aside;*
- q) Injunction restraining the respondent no. 2 from claiming any benefit or right or exercising any voting rights in respect of the transfer of shares challenged herein;*
- r) The register of members of the Company be suitably rectified in terms of the prayers herein;*
- s) Production before this Honble Tribunal of all relevant documents including notices convening meetings, resolution, minute books of the shareholders as well as the board and all other relevant documents, books and records connected with and concerning the change in shareholding of the company, alteration of the board of directors of the company, appointment of auditor and the books of accounts for perusal and examination and for effective adjudication of the issues involved in the present proceedings;*
- t) Mandatory injunction restraining the respondent no. 1 company from holding any meetings of its board of directors and/or shareholders without notice to the petitioners until disposal of the petition;*
- u) Injunction restraining the respondents and their servants, agents, assigns from in any manner altering and/or changing the shareholding of the company;*
- v) A Special Officer/Administrator be appointed to take charge*

and custody and control of the books, records and documents of the company with a direction to make an inventory and further direction to initial all such books, records and documents;

- w) An order of injunction be passed restraining the respondent no. 2 from opening or operating any bank account of the company;*
- x) Alternatively, a Special Officer be appointed to operate the bank accounts of the company;*
- y) The respondent nos. 2 and 3 be directed to submit the statements of accounts, including but not limited to ledger account and Tally Data of the company from 2019 till date;*
- z) An investigation be conducted into the management and affairs of the respondent no. 1 company;*
- aa) Direction be given for the petitioners to take inspection of the books of the respondent no. 1 company including the accounts of the respondent no. 1 company;*
- bb) Direction for closure and/or freezing of the bank accounts which are opened illegally and unlawfully by the respondent no. 2;*
- cc) A fit and proper person be appointed as a Receiver/Special Officer to look into the transactions of the company and sign the cheques for withdrawal of money from the said bank accounts of the company to run the day to day business of the company.*
- dd) Injunction restraining the respondents from using funds of the company for the purpose of the instant litigation;*
- ee) Injunction restraining the respondents from in any manner dealing with, transferring, selling or encumbering any assets*

*and properties of the company, movable and immovable,
tangible and intangible;*

ff) Ad-interim orders in terms of prayers above;

*gg) Appropriate reliefs be passed in accordance with Section
241 and 242 of the Companies Act, 2013;*

*hh) Such further order or orders be passed, direction or
directions be issued as this Hon'ble Tribunal may deem fit
and proper.*

Factual Matrix:

5. The Company was incorporated on 23.05.1996 with members of the Sarkar family being majority shareholders in the company. Late Swapan Sarkar, Udayan Sarkar ("Petitioner No. 1/ P-1") and Sanjoy Sarkar ("Petitioner No. 2/ P-2") were the original promoters of the company. Swapan Sarkar and P-1 were the first directors of the company. The company is a closely held family company of the Sarkars with the rights of members of the Sarkar family subject to equitable consideration. Late. Swapan Kumar Sarkar was the owner of 10050 nos. of equity shares in the company.
6. Swapan Sarkar, the majority shareholder of the Company was unwell due to old age related complications and Syeda Shamima Nasrin (Respondent No. 2/ R-2") was engaged as his caregiver in the year 2020.
7. The Petitioner, who are all members of the Sarkar Family holds 22.39% of shares in Esses Agro Biotics Private Limited ("Respondent No. 1/ R-1"). The present petition have been filed being aggrieved by the wrongful transfer of 10040 shares belonging to Late Swapan Sarkar's to R-2 allegedly on 28.03.2022. The transfer of shares is alleged to be nullity in law,

being vitiated by illegality, and is therefore void and incapable of being acted upon.

Submission on behalf of the Petitioner:

8. Ld. Counsel for the petitioner would submit that the transfer of 10400 shares held by Swapn Kumar Sarkar to R-2 is ex-facie illegal, null, void and illegal because R-2 has failed to disclose the minutes of the Board meeting held on 28.03.2022 wherein the share transfers were approved by the Company. Drawing attention to MGT-7A, Ld. Counsel would claim that no Board meeting was held on 28.03.2022 as evident from Form MGT-7A for Financial Year 2021-22 as uploaded by R-2 using her DSC.
9. Ld. Counsel would submit that Section 56 of the Act mandates that a company should not register a transfer of securities unless a proper instrument of transfer i.e., Form SH-4 is filed which is mandatory.
10. Ld. Counsel further submits that the instrument of transfer must be duly stamped, dated and executed by or on behalf of both the transferor as well as the transferee. But, none of these ingredients have been complied with in the present matter.
11. Ld. Counsel asserts that accordingly to the Article 15 of the Company's AoA a share transfer can only be effected- i) with the written consent of the Board and ii) upon an offer by the Board to other shareholders to acquire the proposed shares sought to be transferred. It is only when none of the shareholders are prepared to purchase the shares that the shares can be transfer to an outsider or to a new shareholders. That R-2 despite being a rank outsider and not related to the Sarkar family has completely usurped control and management of the company.
12. Ld. Counsel alleges that the signature of Late Swapn Sarkar

has been forged on the purported share certificate. Thus, this Hon'ble Tribunal under Section 242(2) of the Act, has jurisdiction to decide on the validity of the purported share certificate as well as the Form DIR-12 filed by the R-2 using/misusing Swapn Sarkar's DSC.

13. Ld. Counsel claims that the share certificate are only signed by one director i.e. Swapn Kumar in violation of section 46(1) of the Act read with Rule 5(3) of the Companies (Share Capital and Debentures Rules), 2014, which mandates that a share certificate should be signed by two directors. Further, the common seal of the company or the signature of an authorized signatory also does not appear on the purported share certificate.
14. Ld. Counsel contends that the Memorandum of Transfer of Shares on the share certificate shows the transfer to have taken place on 22.03.2022 i.e on the very same day when the share certificates were allegedly issued despite Late Swapn Sarkar being a shareholder since the company's incorporation.
15. Ld. Counsel submits that in the financial statement of the company for the F.Y 2021-22 (which have been signed by R-2) Late Swapn Sarkar's name appears as a promoter holding 10050 shares although the impugned share transfers were allegedly made on 28.03.2022.
16. Ld. Counsel alleges that in the absence of any consideration being paid by R-2 against the alleged transferee of 10400 shares, the impugned share transfers are a nullity. Further under section 11(e) of the Indian Stamp Act, 1899 read with Article 62(a) of Schedule IA (Stamp Duty on Instrument in West Bengal) stamp duty is necessary and without payment of stamp duty the impugned share transfer cannot be sustained and are in violation of the Act.

17. Ld. Counsel alleges that taking advantage of Swapan Sarkar's old age and ill-health, R-2 has derived salary as a staff member from the company during F.Y 2020-21. Moreover, R-2 has illegally appointed herself as an independent director on 24.01.2022 in derogation of the Act and the AoA of the company. Further no Board Meeting was held on 24.01.2022 as evident from Form MGT-7A for F.Y 2021-22 uploaded by R-2 using her DSC.
18. Ld. Counsel would submit that R-2 illegal and wrongfully removed the statutory auditor of the company and appointed S.K Sinha & Co (Respondent No. 3/ R-3) as the company's statutory auditor with effect from 02.06.2022 without knowledge or consent of the petitioners.
19. Ld. Counsel submits that there was labour unrest in the Company's manufacturing unit and to avoid escalation of the same, P-1 signed a Board Resolution dated 13.11.2022 for change of signatories in the company's bank account held with UCO bank wherein R-2 was substituted in place of Late Swapan Sarkar. However, the signing of the said Board Resolution does not amount to P-1's acceptance of R-2 as a director. By a letter issued 16.12.2022, P-1 has, *inter alia*, retracted his signature on the said Board Resolution.
20. Ld. Counsel alleges that R-2 has unlawfully withdrawn a sum of Rs. 16,52,000/- from the Company's bank account maintained with IndusInd Bank. In this regard, a police complaint was lodged by P-1 on 22.04.2025 at Patuli Police Station, pursuant to which an FIR came to be registered on 01.05.2025. R-2 was subsequently arrested and later released on bail on 26.09.2025. A charge sheet has since been filed by Patuli Police Station on 24.12.2025, and the criminal proceedings are presently pending adjudication. The conduct attributed to R-2 prima facie indicates

an intention to unjustly enrich herself at the expense of the Company. Without prejudice to the Petitioners' contention that R-2 is neither a valid shareholder nor a director of the Company, it is contended that, in light of her alleged wrongful and illegal acts and her lack of requisite expertise, she is unfit to hold a directorial position and cannot be entrusted with the affairs of the Company.

21. Ld. Counsel would lastly submit that realizing that R-2 has no defence for her oppressive, wrongful and illegal conduct, R-2, as a counterblast, filed C.P No. 74/2025, purportedly under section 241/242 of the Act, wherein frivolous allegations have been made. Further, similar acts of oppression and mismanagement have been committed by R-2 in respect of another company, namely, Mayurakshi Enterprises Private Limited, in respect of which C.P No. 279/2024 has been filed by the Petitioners which is pending before this Hon'ble Bench.

Submission on behalf of the Respondents:

22. That Udayan Sarkar has historically held only **8.49% shareholding** in the R1 Company, and Late Swapan Sarkar never took any steps during his lifetime to enhance the same, which reflects upon the lack of merit in the present claim.
23. That Udayan Sarkar has falsely asserted an increase of his shareholding to **23%** on the basis of alleged transfers dated 01.04.2017 from certain individuals and entities in favour of his wife, son, daughter and one Suhasini Sarkar. But no such transfers were ever approved by the Board of Directors of the R1 Company, which at the relevant time comprised only Late Swapan Sarkar and Udayan Sarkar. It is alleged that no valid share transfer instruments (SH-4) were ever placed before or approved by the Board. The alleged transfers, therefore, are invalid and

cannot be relied upon.

24. Even if the claim of 23% shareholding is assumed for the sake of argument, the same does not withstand legal scrutiny in view of the subsequent acts relied upon by Udayan Sarkar.
25. That the claim of transfer of shares by Goutam Ghosh is wholly false and fabricated. The said individual, being a close associate of Late Swapan Sarkar, had never effected any such transfer.
26. That the alleged Board Meeting dated 29.08.2022, purportedly appointing the wife and daughter of Udayan Sarkar as directors, is fraudulent and non est in law. At the relevant time, Late Swapan Sarkar was critically ill and not in a position to attend any meeting. There are no valid minutes or attendance records bearing his signature to evidence such meeting.
27. It is contended that reliance placed on a purported Board Resolution dated 31.12.2020 is misconceived and untenable. Even assuming the said document to be genuine, the appointment of Additional Directors under such resolution would, in law, subsist only till the next Annual General Meeting, i.e., up to 30.09.2021. Consequently, the alleged appointments made on 29.08.2022 are clearly beyond the permissible period and invalid. Moreover, the said document surfaced for the first time only in the present proceedings, further casting serious doubt on its authenticity.
28. Ld Counsel submits that the P-1 has raised only two issues in the present petition, namely: (i) the appointment of R-2 as Director of R-1 Company on 24.01.2022; and (ii) the allotment of 10,400 shares to her by Late Swapan Sarkar, both of which have been impugned as invalid and void.
29. To respond to the challenge that the appointment of R-2 as

Director of R-1 Company on 24.01.2022 was without any Board Meeting or General Meeting and therefore void. It is submitted that, as on 24.01.2022, the Company had only two Directors, namely Late Swapan Sarkar and Udayan Sarkar, either of whom was competent to convene a Board Meeting or General Meeting. R-2 had no association with the Company prior to the said date and, therefore, the allegation against her in a petition alleging oppression and mismanagement is misconceived and not maintainable.

30. Further, reliance is placed upon Form DIR-12 filed by the Company claimed to be duly authenticated by the digital signature of Late Swapan Sarkar, which records the appointment of R-2 as an Executive Director, it is submitted that such appointment necessarily presupposes the holding of a valid General Meeting, for which requisite notices would have been issued in December 2021 and January 2022, at a time when R-2 was not connected with the Company. Accordingly, no allegation can be sustained against her.
31. It is alleged that the conduct of the P-1 clearly belies his present stand as P-1, being a Director, participated in a Board Meeting held on 31.01.2022 and signed the Audited Financial Statements of the Company for FY 2020-21 along with R-2 as Director, without raising any objection to her appointment. The P-1 neither convened any meeting to question the said appointment nor approached any statutory authority, including the Registrar of Companies, during the lifetime of Late Swapan Sarkar.
32. It is alleged that the Petitioner, in his own pleadings, admits to having voluntarily participated in a Board Resolution dated 13.11.2022, whereby R-2 was authorized as a joint signatory to the Company's bank account. It is alleged that this conduct is

wholly inconsistent with his claim that R-2 was never validly appointed as Director. In view of the above, it is submitted that the Petitioner has taken contradictory stands and the present challenge to the appointment of Respondent No. 2 is devoid of merit and liable to be dismissed.

33. Ld. Counsel submits that the challenge to the assignment of shares by Late Swapan Sarkar in favour of R-2 on 22.03.2022 is misconceived and devoid of merit. At the outset, it is contended that the Petitioner has sought to raise an issue regarding the alleged invalidity of duplicate share certificates on the ground of non-attendance at a Board Meeting. It is submitted that such a contention is beyond the pleadings, as there is neither any averment nor any prayer in the Petition seeking declaration of such share certificates as invalid. Accordingly, such submissions cannot be considered.
34. Attention of this Tribunal is drawn to Section 46 of the Act which governs the issuance of share certificates and recognizes the right of shareholders to obtain duplicate certificates in appropriate circumstances. It is submitted that the provision does not confer any enforceable right upon a Director to invalidate such issuance merely on account of non-attendance at a Board Meeting. The Petitioner's interpretation is therefore alleged to be erroneous and untenable.
35. Ld. Counsel submits that even assuming the absence of formal share certificates, the material on record reflects that Late Swapan Sarkar, being the holder of 10,050 shares in the Company, had conveyed 10,040 shares in favour of R-2 by endorsing and handing over the relevant documents on 22.03.2022. Such conduct constitutes a valid conveyance of movable property.

36. Ld. Counsel vociferously claims and submits that R-2 is the wife of Late Swapan Sarkar and therefore the transfer is expressly permissible under the Articles of Association of the Company, which allow transfer of shares to spouse or immediate family members and therefore the transaction is fully protected and cannot be impugned.
37. Ld. Counsel argues that shares, being movable property, can be validly assigned or conveyed by the holder. Such conveyance need not necessarily take the form of a sale transaction. The concept of “transfer” encompasses various modes, including assignment, gift, or transmission. The requirement of consideration and execution of Form SH-4 arises primarily in the context of a sale between willing parties at arm’s length, and not in cases of voluntary conveyance without consideration. In the present case, the transaction was not a commercial sale but a voluntary assignment by Late Swapan Sarkar in favour of R-2. The same was further reflected in the statutory filings, including the Annual Return filed on 28.03.2022 using the digital signature of Late Swapan Sarkar. Accordingly, it is contented that the absence of consideration or SH-4 does not render the transaction invalid.
38. It is further submitted that the Petitioner has no locus to challenge the said assignment, as the shares in question were exclusively held by Late Swapan Sarkar. There is no allegation or material to establish fraud or forgery. On the contrary, the Petitioner was aware of the said assignment during the lifetime of Late Swapan Sarkar and chose not to raise any objection at the relevant time. In view of the above, it is submitted that no case is made out under Sections 241 and 242 of the Companies Act, 2013, and the present Petition is liable to be dismissed.

Rejoinder on behalf of the Petitioner:

39. To refute the allegations of the respondents Ld. Counsel for the petitioner would submit that R-2 has taken mutually destructive and irreconcilable stands regarding the manner in which she allegedly acquired 10,040 shares of Late Swapan Sarkar, thereby rendering her defence wholly unreliable. That in her reply affidavit, R-2 has, on the one hand, asserted that Late Swapan Sarkar directly transferred shares in her favour, thereby making her the majority shareholder while on the other she alleges that 10,040 shares were transferred to her on 22.03.2022. However, no supporting documents, including Board Minutes or any instrument of transfer such as Form SH-4, have been produced in support.
40. Ld. Counsel submits that in the reply affidavit, R-2 has stated that Late Swapan Sarkar, out of love and affection, transferred all his 10,050 shares in her favour. This plea clearly suggests a transaction in the nature of a gift without consideration, which is inconsistent with the earlier case of a transfer of 10,040 shares.
41. Ld. Counsel refers to the further inconsistencies that arise from subsequent applications filed by R-2. It is submitted that the R-2 has in I.A. No. 228/KB/2024, alleged that 10,040 shares were assigned to her, while the remaining 10 shares were transmitted upon the death of Late Swapan Sarkar on 31.08.2022. However, in I.A. No. 229/KB/2024, she has claimed that 10,040 shares vested in her by way of transmission on 28.03.2022, which is ex facie untenable, as transmission can occur only upon the death of a shareholder.
42. Ld. Counsel would assertively submit that these shifting stands—ranging from transfer, to gift, to assignment, and even pre-death transmission—are legally incompatible and

demonstrate a lack of any consistent or credible case. Further, upon these contradictions being pointed out, R-2 has sought to argue that the shares were gifted to her which contention is also untenable in law, as no gift deed has been produced. Further, even in the case of transfer of shares without consideration, compliance with statutory requirements, including execution of Form SH-4 and payment of applicable stamp duty under the Indian Stamp Act, 1899, remains mandatory.

43. In view of the above, it is submitted that the case of R-2 is based on contradictory and legally unsustainable pleas, and her claim to the shares of Late Swapan Sarkar is liable to be rejected.
44. Ld. Counsel submits that the claim of R-2 regarding transmission of shares of Late Swapan Sarkar is legally untenable and contrary to the record. It is contended that Late Swapan Sarkar, at the time of his demise, was survived by his legally wedded wife and daughter ("Petitioner No. 3/ P-3"). The alleged marriage of R-2 with Late Swapan Sarkar is void in law under the provisions of the Special Marriage Act, 1954. In such circumstances, R-2 cannot claim any right to transmission of shares. Further, the birth certificate of P-3 which is attached to the rejoinder clearly shows Late Swapan Sarkar is the father of P-3.
45. Ld. Counsel submits that the appointment of R-2 as Director/Independent Director of R-1 Company on 24.01.2022 is illegal, void ab initio, and liable to be set aside. It is contended that no notice of any Board Meeting or General Meeting was ever served upon the Petitioner. It is well-settled law, as laid down by the Hon'ble Supreme Court in *Sri Parmeshwari Prasad Gupta v. Union of India*, that notice to all directors is mandatory for a valid Board Meeting, and any resolution passed in the absence of such

notice is invalid. Respondent No. 2 has failed to produce any proof of notice or service thereof.

46. It is further submitted that, in the absence of the P-1, there was no quorum for any Board Meeting as required under Section 174(1) of the Companies Act, 2013 and Article 48 of the Articles of Association. At the relevant time, the Company had only two directors, and therefore no valid meeting or resolution could have taken place without the presence of both.
47. Ld. Counsel submits that no Board Meeting was, in fact, held on 24.01.2022, as is evident from the statutory filings, including Form MGT-7A for the financial year 2021-22. Moreover, no Board Resolution approving the appointment has been disclosed either in the pleadings or in Form DIR-12. It is also contended that the appointment is in violation of the Articles of Association, which require a person to hold a minimum qualifying shareholding to be eligible for directorship. Respondent No. 2 did not fulfil such requirement on the date of her alleged appointment, rendering the same invalid.
48. Further, the appointment of a director can ordinarily be made only in a General Meeting in terms of Section 152(2) of the Act. Even the power of the Board to appoint an Additional Director under Section 161(1), as reflected in the Articles, is limited to holding office up to the next Annual General Meeting. The impugned appointment does not satisfy these statutory requirements.
49. It is also submitted that the concept of "Independent Director" is inapplicable to a private limited company in terms of Section 149(4) read with the applicable rules. In any event, R-2 does not satisfy the statutory criteria prescribed under Sections 149(6) and 150 of the Act. Further, even assuming a marital relationship

with Late Swapan Sarkar, such relationship would itself disqualify her from being appointed as an Independent Director. In view of the above, it is submitted that the appointment of R-2 as Director/Independent Director is a nullity in law, and all actions taken pursuant thereto are liable to be set aside.

Supplementary Re-joinder on behalf of the Petitioner:

50. The P-1 submits that a Rejoinder Affidavit was filed on behalf of Petitioner Nos. 1 to 5 to the Affidavit-in-Reply of Respondent No. 2; however, due to inadvertence, no specific response was made to a document appearing at running page 26 of Annexure "B" thereto, being the purported Minutes of a Board Meeting allegedly held on 22.07.2022.
51. The Petitioner now specifically addresses the said document and submits that the same is fabricated, false, and devoid of any evidentiary value. It is categorically denied that any Board Meeting of Respondent No. 1 Company was ever convened or held on 22.07.2022 or on any other date as alleged. It is submitted that the said document has been manufactured with the intent to falsely project the existence of Board proceedings and to usurp control over the affairs of the Company. The purported Minutes are alleged to contain interpolated signatures of Late Swapan Sarkar and are therefore liable to be rejected in toto. In view of the above, the said document is wholly denied and disputed, and no reliance can be placed upon it.

I.A NO. 229/KB/2024

1. The instant Interlocutory Application has been preferred by Respondent No. 2 in C.P No. 107/KB/2023, *inter alia*, praying for following reliefs:

- a) *To dismiss the Petition impugned which is non-maintainable u/s 241 and 242 of the Companies Act;*
- b) *To impose cost on the petitioners for wasting the precious time of the Hon'ble Kolkata Bench;*
- c) *To direct the Petitioner to pay cost towards the legal expenses incurred by the Respondent No. 2;*
- d) *Any other direction that the Hon'ble Bench may deem fit and proper for the proper adjudication of issue.*

I.A NO. 228/KB/2024

1. The instant Interlocutory Application has been preferred by Respondent No. 2 in C.P No. 107/KB/2023, *inter alia*, praying for following reliefs:

- a) *To appoint an Administrator for restarting/ resuming the operations of the factory of the R1 Company and other operations of the R-1 Company's business immediately;*
- b) *Direction to all the Bankers of the R1 Company to allow operations in the accounts for all credits and debits which are necessary for running the operations of the Ri Company;*
- c) *Direction to prohibit all personal expenses from the Bank Accounts of the R1 Company other than dividends till the disposal of the Petition and IAs by this Hon'ble Bench;*
- d) *To impose such terms and conditions on the Respondent No.2 and others for allowing the aforesaid prayers for appointing an Administrator and allowing Banking transactions of the R1 Company necessary for its operations;*
- e) *In the alternative the Respondent No. 2 who is the majority shareholders of the R-1 Company holding more than 77% of the shares in the R-1 Company may be allowed to remove*

Udayan Sarkar holding a mere 8.49% shares in the R-1 Company from the position of Director of the R-1 Company who misconducted only by reason of being director of the R-1 Company by forcing freezing of the Bank Accounts of the R-1 Company leading to the closure of the operations of the R-1 Company jeopardizing the interest of Respondent No. 2, other stakeholders of the R-1 Company along with workmen who depend totally on the R-1 Company for their livelihood and the R-1 Company is not only on the verge of losing its valuable customers- State of West Bengal (Electricity Board and others) and private parties but also staring its imminent liquidation;

- f) Any other direction that the Hon'ble Bench may deem fit and proper for the proper adjudication of issue.*

I.A NO. 20/KB/2024

1. The instant Interlocutory Application has been preferred by the Petitioners in C.P No. 107/KB/2023, *inter alia*, praying for following reliefs:

- a) Pass appropriate and necessary orders thereby declaring the purported forms including Form AOC-4 and MGT-7A filed by the respondent no. 2 with the ROC, Kolkata together with its attachments as null and void and non-est in the eye of law;*
- b) Pass appropriate and necessary directions thereby directing delivery up and cancellation of the purported forms including Form AOC-4 and MGT-7A together with its attachments filed by the respondent no. 2 with the ROC, Kolkata;*
- c) An order thereby restraining the respondent no. 2 and her men and agents from acting in furtherance of and/or from*

giving any effect to the purported forms including Form AOC-4 and MGT-7A together with its attachments filed by the respondent no. 2 with the ROC, Kolkata;

- d) An order thereby restraining the respondent no. 2 from acting as a shareholder and/or a director of the company;*
- e) An order thereby restraining the respondent nos. 2 and 3 and their men and agents from filing any documents with the ROC, Kolkata pertaining to the company;*
- f) Ad-interim orders in terms of the prayers above;*
- g) Costs;*
- h) Such further order or orders be passed and/or direction or directions be given as to this Hon'ble Tribunal may deem fit and proper.*

2. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinders, Written Submissions and Applications along with the documents enclosed therein.

3. **THE DISCERNIBLE FACTS**

- I. The grievance of the Petitioners in CP 107/KB/2023 are of many fold- (i) Wrongful and Illegal transfer of 10040 shares of Late Swapan Sarkar to R-2 (ii) Appointment of R-2 as an independent director (iii) Illegal removal of Statutory Auditor of the R-1 company and appointment of R-3 as a Statutory Auditor (iv) Siphoning of Funds from R-1 Company. (v) R-2 being a outsider has completely usurped control and management of the company.
- II. The respondent no. 2 have challenged the maintainability of CP 107/KB/2023 on the grounds: (i) That the petitioner hold merely 8.49% of shares in R-1 company (ii) That R-2 is

legally wedded wife of late Swapan Sarkar (iii) That the petitioner has failed to make out a case of Oppression and Mismanagement.

4. LEGAL LACUNAE

- I. R-2 claims to be the wife of deceased Swapan Sarkar, but there is nothing on record to show that Swapan Sarkar (since deceased) had divorced his 1st wife before entering into any Martial Relationship with R-2. Under section 5(i) of Hindu Marriage Act, 1955, a Hindu male cannot marry for the second time during the life time of his 1st wife therefore the second marriage is void.
- II. If R-2 is not a legally wedded wife of the deceased and therefore she cannot claim that the shares have devolved on her upon the death of Swapan Sarkar as no document evincing the same is placed on record.
- III. Shares of Swapan Sarkar cannot get transmitted to R-2 in exclusion of claim of the first wife (presumed to be legally wedded) i.e., Shila Sarkar and his daughter i.e., Suhasini Sarkar. Thus claim of R-2 is untenable.
- IV. As per Article 15 of Company's AOA the shares could be for only to family member, R-2 being neither a family member nor a relative could not have been transferred such shares. Any transfer in violation of the AOA is bad. For the same reason the shares could not have been gifted to R-2 in exclusion of family members.
- V. Section 46(1) of the Act read with Rule 5(3) of NCLT Rules, 2016, relates to improper issuance of share certificate, specifically when a certificate is not signed by two directors or fails to detail the paid-up amount. Violating of Section

46(1) of the Act is maintainable.

VI. Violation of Section 11(e) of the Indian Stamp Act, 1899 read with Article 62(a), which stipulates that stamp duty is necessary and without payment of stamp duty the impugned transfer are in violation of the Act, is also evident.

5. THE FACTUAL INCONSISTENCIES NOTED IN THE CASE AT HAND:

- i. Although R-2 claims that she is the holder of the shares that originally were subscribed to Swapam Sarkar (since deceased), the manner in which she got conferred with the right to hold such shares is shrouded in mystery.
- ii. Whether such alleged transfer of shares is by way of “transfer” or “gift” by Swapam Sarkar during his lifetime or by way of “transmission” or “devolution” after his death is not established.
- iii. In terms of AOA shares could not be transferred to anyone other than family members. Hence alleged share transfer to R-2 by Swapam Sarkar (Since deceased) in exclusion of family members is in violation of AOA and therefore null and void.
- iv. No valid SH-4 is on record.
- v. The illegal withdrawal a sum of Rs 16,52,000/- from the Company’s Bank account and consequent arrest hints heavily at the conduct of the R-2.

6. OUR INFERENCE:

- I. The transfer of 10,050 shares of Swapam Sarkar (since deceased) to R-2 is illegal, opposed to AOA, legal and statutory provisions.

- II. Such being the position it is held that R-2 has wrongly usurped the Control and Management of the Company which is oppressive to the existing shareholders of the Company.
- III. This Tribunal is of the view that an independent and impartial person needs to be appointed by this Tribunal as the Administrator of the Company to ensure that the Company continues as a going concern. The appointment of an Administrator is expected to ensure the smooth running of the affairs of the Company at this juncture as the current board of directors are involved in disputes and are supposedly unable to make a favourable decision for the smooth running of the company.

7. **ORDERS:**

In the aforesaid backdrop the following orders are passed:

- I. Therefore, invoking the powers of this Tribunal under Section 242(4) of the Companies Act, 2013 and in the light of all the above contentions by both parties, this Tribunal appoints **Shri Rishab Aggarwal** as an **Administrator** having E-mail: mail@rishabaggarwal.com and Mobile No: **9810057173**, to control and manage the affairs of the Company (Esses Agro Biotics Private Limited) for an initial period of 3 months commencing from the date of his acceptance of his appointment.
- II. Upon the appointment of the Administrator, the Board of the Company shall continue to operate under the direct control and supervision of the Administrator. The Board of Directors shall provide the required details and hand over the documents of the Company to the Administrator within 7 days of his assuming charge.

- III. The Administrator shall discharge all functions including administrative and operational functions in the Company effectively to ensure that the Company continues as a going concern while discharging its obligations to its clients through the existing Board of Directors. All the employees of the Company are directed to report to the Administrator as per the existing hierarchy. In case of a difference of opinion between the Administrator and the Board of Directors on any matter relating to the discharge of the functions, the opinion/view/ stand of the Administrator shall prevail.
- IV. The Administrator shall be paid a monthly remuneration/compensation of **Rs. 2 lakh per month** plus the applicable taxes by the Company. The Administrator will also be entitled for reimbursement of out-of-pocket expenses on an actual basis and reimbursement of actual travel expenses. The Administrator shall submit a monthly report regarding the activities carried on in the Company to the Tribunal.
- V. The Administrator may take help and/or appoint an assistant/ consultant/employee as he may deem fit and proper on such fee/ remuneration/compensation as may be determined by the Administrator which shall be paid by the Company herein. However, the Administrator shall not pass any dismissal/termination order of employees without prior permission and approval of this Tribunal. The Administrator shall not borrow any funds, or dispose of, or alienate, or create any kind of charge on any of the assets of the Company without prior permission and approval of this Tribunal.

- VI. Further the applicants and respondents and their representatives shall render utmost cooperation and assistance to the Administrator and his staff/consultants/employees in the discharge of his functions as well as the scope of work entrusted in this order.
- VII. The Company shall make to the Administrator or his staff a full and free/complete disclosure of records of the company, including Books of Accounts/Financial Statements, Contracts, Agreements, and the like relating to the affairs of the company.
- VIII. Until disposal of the main Company Petition, the Applicants/Respondents and the Administrator shall not (except in the ordinary course of business): a) Sell or otherwise dispose of or encumber the Company's assets. b) Incur liabilities. c) Distribute funds from the Company. d) Enter into any contracts. e) Change the nature of business. f) Alter or increase the paid-up share capital or issue further shares. g) Enter into any related party transactions. h) Make investments in other bodies corporate.
- IX. The Administrator shall examine or cause to be examined and make a report(s) to the Tribunal on all the acts/resolutions/ decisions/ agreements taken, passed, executed by Company or any of Company's past and present directors to facilitate the impugned issues and for this purpose may carry out or cause any special audit/transaction audit/fund flow audit/full-fledged forensic audit and the like, and report back so as to assist this Tribunal to pass appropriate order(s) on the main Company Petition and related Company Applications, if

any.

- X. Not limited to the matters specifically mentioned hereunder, the Administrator shall investigate the matters of oppression and mismanagement, fraud, collusion, concealment of books of accounts, diversion and siphoning of funds, unauthorized sale of land/properties, etc. which are alleged against the company and/or the Board of Directors who manage the company. The Administrator shall analyse the entire state of affairs of the company and should also render proper compliances to the orders of this Tribunal. The administrator shall file a 3 months' composite Report on the affairs of the Company as well as on his investigation of the allegations mentioned above.
- XI. The Administrator shall enjoy complete immunity from any kind of civil and criminal proceedings in regard to the affairs of the Company and while discharging his functions and duties as Administrator.
- XII. The Board Meetings and other general meetings of the Company as required under the law shall be convened and conducted by the Board of Directors under the Directions of the Administrator.
- XIII. The Administrator is given liberty to seek such directions or guidance from the Tribunal for the effective discharge of his function by filing appropriate reports before this Tribunal including on the continuance or otherwise of the status quo orders passed by this Tribunal earlier.
- XIV. Company is directed to ensure all compliances before the relevant statutory authorities including but not limited to filings under the Companies Act, 2013, under the supervision and superintendence of the Administrator.

8. The Administrator is directed to file an acceptance-cum-consent letter to the above order before this Tribunal within a seven days from the date of receipt of the copy of this Order.
9. The Administrator as well as parties may approach this Tribunal if they feel that intervention of the Tribunal is required in a particular situation.
10. **Accordingly, all the interlocutory applications being no. IA 229 of 2024, IA 228 of 2024 and IA 20 of 2024 are hereby disposed of by this common order.**
11. Post the Company Petition on **17.09.2026**.
12. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties, their counsel and the Administrator for information and to take necessary steps.
13. Let the certified copy of the order be issued upon compliance with requisite formalities.

(Cmde. Siddharth Mishra)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 12th day of June, 2026.

S.T (LRA)