IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA/ 78/ 2025
IN
CP NO. 157/241-242/ ND/2019
AND IN
CP NO. 157/241-242/ ND/2019

IN THE MATTER OF:

1. Mr. Nikhil Rai

Address: D-373, Defence Colony,

New Delhi- 110024

2. Mr. Nitin Singhal

Address: A-43, Shivalik,

New Delhi- 110017.

... Petitioners

Versus

1. M/s Vcare Technologies Private Limited

Address: I-10, Lagpat Nagar II,

New Delhi - 110024

2. Mr. Vishal Gupta

Address: 21 Sunder Nagar,

New Delhi - 110003

3. Mrs. Bhagwati Devi

Address: 21 Sunder Nagar,

New Delhi 110003

4. Startup Investments (Holding) Limited

Address: Ground Floor, No. GF-12A,

94, Meghdoot, Nehru Place,

New Delhi 110021

5. Mr. Sumit Khurana

... Respondents

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.07.2026

Present:

For the Applicant	:	Mr. Vidur Mohan, Mr. Kaushal Kumar Singh, Advs.
For Respondent No. 1-3	:	Mr. Gaurav Choubey Ms. Kanchan Dahiya, Mr. Hardik Aggarwal and Ms. Kanjani Sharma. Advs.
For Respondent No. 5	:	Mr.Dhruv Chawla, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This Company Petition CP 157/241-242/ND/2019 is filed under section 241 and 242 read with section 244 and section 408 of the Companies Act, 2013 by Petitioner No. l i.e. Mr. Nikhil Rai and Petitioner No.2 i.e. Mr. Nitin Singhal against M/s Vcare Technologies Private Limited and others seeking following reliefs:

a) *Order any resolution if passed therein be not given effect, without prior permission of this Hon'ble Tribunal;*

b) *Appoint the Registered Valuer as per the provisions of the Companies Act, 2013;*

c) *Remove the Respondent No.2 and No.3 from the position of Director in the Respondent No. 1 Company;*

d) *Injunction be passed restraining the company from holding its Extraordinary Meeting on 21/10/2019 or any time thereafter till the disposal of the company petition;*

e) *maintaining status quo ante as existed prior to holding of the EGM to be held on 21/10/2019;*
f) *Declaration that the purported notice dated 27/09/2019 allegedly issued under section 100 of the Companies Act, 2013 is illegal, null and void and not binding upon the Respondent No. 1 Company, its shareholders, directors and all concerned;*
g) *Direct the sale of the shares of the Respondent No. 1 held by the Respondent No.2 and No.3 to the Petitioner No. 1 and No.2.*
h) *Direct winding up of the Respondent No. 1.*
i) *Pass any other order(s)/ direction(s) that this Hon'ble may deem fit and proper in the interest of justice.*

2. **<u>Facts as averred by the Applicant</u>**

a. The Applicants submit that Applicant No. 1, Mr. Nikhil Rai, is a shareholder of Respondent No. 1 Company, holding 5,141 equity shares of ₹10 each, constituting 7.93% of its paid-up share capital. It is submitted that Applicant No. 1 was also one of the promoters and directors of Respondent No. 1 and resigned from the office of Director with effect from 01.06.2018. Applicant No. 2, Mr. Nitin Singhal is a shareholder of Respondent No. 1 Company, holding 2,170 equity shares of ₹10 each, constituting 3.35% of its paid-up share capital. It is submitted that the Applicants collectively hold 7,311 equity shares, representing 11.28% of the paid-up share capital of Respondent No. 1.

b. That **Respondent No. 1 i.e. M/s Vcare Technologies Private Limited** is a private limited company incorporated on 05.09.2000 under the provisions of the Companies Act, 1956, having its registered office at I-10, Lajpat Nagar-II, New Delhi–110024 having authorised share capital of ₹4,07,00,000/- (Rupees Four Crore Seven Lakh only), while its paid-up share capital is ₹3,05,40,080/- (Rupees Three Crore Five Lakh Forty Thousand and Eighty only). The Applicants further submit that **Respondent No. 2 i.e. Mr. Vishal Gupta**, is a promoter and shareholder of Respondent No. 1 Company, holding 37,859 equity shares constituting 58.39% of its paid-up share capital. It is further submitted that **Respondent No. 3 i.e. Mrs. Bhagwati Devi** is a Director of Respondent No. 1.

c. The Applicants submit that **Respondent No. 4, namely Startup Investments (Holding) Limited** (also known as "**Info Edge**"), is a shareholder of Respondent No. 1, holding 9,575 equity shares constituting 14.80% of its paid-up share capital. It is further submitted that Respondent No. 4 is a necessary and proper party to the present proceedings.

d. The Applicants submit that, as per the Memorandum of Association of Respondent No. 1, the principal objects of the Company, include carrying on the business of e-commerce and allied digital services, including the design and development of web pages, internet-based platforms, audio-visual and electronic presentations, e-mail and e-commerce solutions, as well as providing facilities for online sale and purchase of goods and services. It is further submitted that the objects of Respondent No. 1 encompass providing server infrastructure, web hosting, internet network technologies and related services, together with consultancy and technical services in the fields of data processing, project implementation, surveys, analysis, and the execution of turnkey projects.

e. The Applicant submitted that Respondent No. 1 entered into a Shareholders' Agreement dated 10.06.2016 with Applicant No. 1, Respondent No. 2, Respondent No. 4, Mr. Sumeet Singh and other initial investors, pursuant to the investment made by Respondent No. 4 in Respondent No. 1. It is further submitted that Respondent No. 4 subsequently entered into an Investment Agreement and a Second Shareholders Agreement, both dated 02.12.2016, for making further investments in Respondent No. 1.

f. The Applicant submitted that Clause 2.2 of the Shareholders' Agreement dated 10.06.2016, Clause 3.1.13 of the Investment

Agreement dated 02.12.2016, and Clause 2.2 of the Second Shareholders' Agreement dated 02.12.2016 provide that the shares held by the promoters shall remain pledged in favour of Respondent No. 4. It is further submitted that, as on the date of filing of the present Petition, Respondent No. 4 holds 9,575 equity shares of ₹10 each in Respondent No. 1.

g. The Applicants submitted that Applicant No. 1, who was a promoter and director of Respondent No. 1, entered into a MoU dated 13.02.2018 with Respondent No. 2 and Mr. Sumeet Singh to facilitate his exit from the management of Respondent No. 1 owing to disputes between Applicant No. 1 and Respondent No. 2 Under the said MoU, the promoters agreed to forgo their salaries due to financial constraints faced by the Company, with the outstanding salaries to be compensated upon future fund-raising and treated as investment on agreed terms. Pursuant thereto, Applicant No. 1 resigned from the Board of Respondent No. 1 with effect from 01.06.2018, which resignation was duly recorded by filing Form DIR-12 on 04.06.2018. It is submitted that notwithstanding his resignation as director, Applicant No. 1 continued to remain a shareholder of Respondent No. 1. The Applicants further submit that Applicant No. 1 equity vested on 31.03.2019 in terms of the MoU, the Shareholders Agreement dated 10.06.2016 and the Second Shareholders' Agreement dated 02.12.2016; however, the same has not been released by Respondent No. 4 till date.

h. That Respondent No. 1 is the parent company of Diro Inc., incorporated in the United States of America, which owns certain intellectual property rights registered in its name. Diro Inc. further has a subsidiary, Diro Labs (U.K.), which likewise holds intellectual property rights registered in its own name. The Applicants allege that there has been a lack of transparency in the affairs and records of the aforesaid group entities and that the same are being managed in an arbitrary manner. It is further submitted that Respondent No. 1 has recently incorporated another subsidiary, namely Internet Original Documents Inc., in the United States of America.

i. That in 2018, Respondent No. 2 proposed to pivot the business towards cryptocurrency and planned to tokenize Diro Foundation Pte. Ltd., Singapore ("Diro Singapore") through an Initial Coin Offering (ICO). In furtherance thereof, Diro Singapore secured investments of approximately US$ 2,00,000 from investors in early 2018 under Simple Agreements for Future Tokens (SAFTs) at a 90% discount to the proposed ICO price. Mr. Prateek Sharma additionally invested US$ 30,000 under a SAFT dated 16.03.2018 and introduced other investors who collectively invested a further US$ 1,00,000 under similar arrangements.

j. It is further submitted that Clause 4(f) of the SAFTs represented that Diro Singapore had, or would obtain, an exclusive licence to operate the Decentralized Identity and Access platform from Diro Inc. or its affiliates, failing which the investments would stand transferred to Diro Inc., Delaware, USA. The Applicant further submitted that, since Diro Singapore's bank account was not operational at the relevant time, the investments made in fiat currency were remitted to Diro Inc., USA.

k. The Applicants submit that the investment of US$ 1,00,000 made by Mr. Prateek Sharma and the other crypto investors under the SAFTs was conditional upon Diro Singapore obtaining approval from Info Edge (India) Limited for decentralization of the platform by 15.05.2018. Clause 4(g) of the SAFTs provided that, in the event such approval was not obtained, the investment amount would be refunded within 10 working days. It is submitted that the requisite approval was not received due to unresolved issues concerning the legal structure of the proposed crypto venture. Consequently, it was agreed amongst the promoters on 10.05.2018, and confirmed through email correspondence, that the said investment of US$ 1,00,000 would be refunded if the condition relating to approval from Info Edge remained unfulfilled.

l. The Applicants submitted that on 25.05.2018, Diro Singapore raised a further investment of US$ 3,00,000 in Ethereum from Dragonex Network Co. Ltd. in a pre-ICO round under a SAFT providing for conversion into equity, a feature absent in the SAFTs executed with Mr. Prateek Sharma and the other investors. Consequently, the total funds raised for the proposed ICO aggregated to approximately US$ 6,00,000. It is further submitted that by August 2018, the ICO market had substantially declined owing to global regulatory concerns and Diro Singapore was unable to secure a bank account for receipt of ICO proceeds. In the absence of any clear roadmap for the ICO and approval from Info Edge regarding the proposed legal structure, Mr. Gautam Sabharwal, on 25.08.2018, requested Respondent No. 2 to refund the investment amount through a WhatsApp communication.

m. The Applicants submit that although Respondent No. 2 claimed that approval from Info Edge for the proposed ICO structure had been obtained, no documentary evidence thereof was furnished. Discussions were thereafter held with Mr. Prateek Sharma and the other investors, including a meeting in London on 05.10.2018, to explore conversion of their investments into equity; however, no consensus could be reached despite mediation efforts by Applicant No. 1 and subsequently by Mr. Kunal Bajaj. It is further submitted that in 2019, Respondent No. 1 received an investment proposal from Techstars, which necessitated a clear capital structure and resolution of the crypto-investment issue. In August 2019, Respondent No. 2 proposed conversion of the investors' claims into equity of Internet Original Documents Inc., a wholly owned U.S. subsidiary of Respondent No. 1, followed by further dilution through a rights issue. The said proposal was rejected by Mr. Prateek Sharma and the other investors, who maintained that they were entitled to a refund of their investments in accordance with the terms of the SAFTs.

n. The Applicants submit that they received notice of an Extraordinary General Meeting scheduled for 21.10.2019, wherein approval was sought for (i) the transfer of the assets and liabilities of Diro Inc., USA, to Internet Original Documents Inc., USA, and (ii) the disposal of stake in Internet Original Documents Inc. to settle the alleged debt of Respondent No. 2 in Respondent No. 1. It is further submitted that Respondent No. 2 circulated presentations outlining the proposed restructuring and invited investors to subscribe to shares of Internet Original Documents Inc. at a 90% discount to the earlier seed valuation. The Applicants further contend that the alleged debt of approximately ₹4 crore claimed by Respondent No. 2 is not borne out from the records, as the Annual Report for FY 2017-18 reflects unsecured loans from related parties of only ₹1,44,27,957/-, most of which were advanced prior to the investment made by Respondent No. 4.

o. The Applicants submit that the documents circulated with the EGM notice included a Google Sheet prepared by Respondent No. 2 reflecting an alleged promoter debt of ₹4.38 crore, comprising loans advanced by Respondent No. 2 before and after the investment by Respondent No. 4, unpaid salary claims, and a loan from Mr. Sumit Khurana. The Applicants contend that, under the understanding between the promoters and Respondent No. 4 at the time of execution of the Investment Agreement and Shareholders' Agreement dated 10.06.2016, when Respondent No. 1 was valued at ₹23 crore pre-investment, promoter loans and advances from related parties existing prior to Respondent No. 4's investment were not to be repaid out of the invested funds, and any such repayment was to be reimbursed to the Company by the promoters.

p. The Applicant submitted that the proposed conversion of pre-investment promoter loans of ₹1.29 crore and unpaid salary claims of Respondent No. 2 into equity of Internet Original Documents Inc. is contrary to the understanding existing at the time of Respondent No. 4's investment and is arbitrary and discriminatory, particularly when similar unpaid salary claims of Applicant No. 1 and other promoters have not been accorded equivalent treatment. It is further submitted that the proposed conversion of Respondent No. 2's alleged debt into shareholding in Internet Original Documents Inc. would unjustly enhance his control over the entity. The Applicants contend that the impugned restructuring is a calculated attempt by Respondent No. 2 to consolidate ownership and control over the group entities, including Diro Inc., USA and Diro Labs, U.K., which hold the intellectual property developed over the years under the guidance of Applicant No. 1.

q. The Applicants submitted that the actions of Respondent No. 2 are aimed at divesting Respondent No. 1 of its valuable assets and transferring them to Internet Original Documents Inc., thereby increasing his control and economic interest in the said entity to the detriment of Respondent No. 1 and its stakeholders. It is further submitted that the affairs of Respondent No. 1 are in a state of deadlock owing to disputes amongst the shareholders and that Respondent No. 2 is seeking to convert his own and his family's alleged loans into equity in the U.S. subsidiary on preferential terms. The Applicants contend that such conduct is oppressive, discriminatory and prejudicial to the interests of Respondent No. 1, resulting in gross mismanagement and erosion of the Company's substratum for the personal benefit of Respondent No. 2.

3. REPLY ON BEHALF OF RESPONDENT No. 1,2, & 3

a. The Respondents contend that the Petitioners grievance is confined to the approval of certain resolutions at the EOGM dated

21.10.2019 despite their objections thereto. The Petitioners admittedly received due notice of the meeting, participated in the proceedings, and were afforded an opportunity to place their objections on record. Mere disagreement with the commercial decisions approved by the majority shareholders, absent any illegality or procedural impropriety, does not constitute oppression or mismanagement under Sections 241 and 242 of the Companies Act, 2013. The Petition, therefore, does not disclose any sustainable cause of action.

b. The Respondents submitted that the Petitioners cannot be permitted to agitate issues in the present proceedings which were neither raised nor pursued before the EOGM, and on this ground alone the Petition is liable to be dismissed. It is further contended that the legal notice dated 18.10.2019, relied upon by the Petitioners, does not disclose any substantive objection to the proposed resolutions and merely seeks certain documents and records. The Respondents further submit that the Petitioners have suppressed a material email dated 21.10.2019, sent shortly before the EOGM, and the response thereto dated 23.10.2019. A perusal of the said correspondence reveals that most of the queries raised were unrelated to the EOGM or Respondent No. 1, while the request for deferment of the EOGM belies the Petitioners' subsequent assertion that any agreement to defer the meeting had been reached. It is further submitted that the objections concerning allotment of shares pertained to Internet Original Documents Inc., a separate entity not impleaded in the present proceedings and wholly owned by Respondent No. 1. Nevertheless, Respondent No. 2 had, by email dated 30.09.2019, extended an opportunity to all shareholders of Respondent No. 1, including the Petitioners, to participate in the proposed allotment. The Respondents contend that the Petitioners chose not to avail themselves of the opportunity and have instituted the present Petition solely to obstruct the Company's fund-raising efforts while seeking to preserve their shareholding without participating in the rights offer. It is further submitted that the impugned transactions neither created any new controlling interest nor altered the existing majority in favour of any person.

c. The Respondents submit that the principal grievance of Petitioner No. 1 pertains to an alleged claim for unpaid remuneration of Rs. 25 lakhs., which, being in the nature of a director's compensation dispute, falls outside the scope of proceedings under Sections 241 and 242 of the Companies Act, 2013. It is further contended that the present Petition is collusive in nature and has been instituted in concert with Respondent No. 5, as is evident from the fact that the Petitioners and Respondent No. 5 are represented through the same legal counsel, which is reflected in the legal notice dated 26.11.2019 issued on behalf of Respondent No. 5.

d. The Respondents submit that the principal challenge in the present Petition pertains to the allotment of shares in Internet Original Documents Inc., a company incorporated under the laws of Delaware, United States of America. It is contended that the said entity is neither a party to the present proceedings nor subject to the regulatory jurisdiction of this Hon'ble Tribunal. Accordingly, the Petition, insofar as it seeks to challenge actions relating to the said foreign entity, is not maintainable and is liable to be dismissed.

e. The Respondent submitted that the present Company Petition is a collusive proceeding instituted between the Company Petitioners and Respondent No. 5 (who was subsequently impleaded as a party). The collusive nature of the proceedings is evident from the fact that the Company Petitioners and Respondent No. 5 are represented by the same counsel, as is apparent from the legal notice dated 26.11.2019 issued on behalf of Respondent No. 5.

f. The Respondent No. 1 Company was incorporated on 05.09.2000 under the Companies Act, 1956. It presently has two Directors, namely

Respondent Nos. 2 and 3. The present shareholding of Respondent No. 1 Company is as follows:

Sl. No.	Name	No. of equity shareholding	Percentage %
1.	Vishal Gupta (Respondent No. 2)	37857	77.2 %
2.	Nikhil Rai (Petitioner No. 1)	5141	10.5%
3.	Sumeet Singh	2000	4.1%
4.	Nitin Singhal (Petitioner No. 2)	2170	4.4%
5.	Ankur Goyal	624	1.3%
6.	Pallavi Kaul	616	1.3%
7.	Nitin Aggarwal	598	1.2%
8.	Sumit Khurana	1	0.0%
9.	Hemant Pratap Singh	2	0.0%
		49,009	100%

g. The Respondents contend that two issues arise with respect to the shareholding of Respondent No. 1 Company. First, it is alleged that Petitioner No. 1 is not entitled to 5,141 equity shares, in respect of which arbitration is proposed. Secondly, Respondent No. 4 holds 15% Optionally Convertible Cumulative Redeemable Preference Shares (OCCRPS), which remain unconverted. It is further stated that, although Respondent No. 1 Company was incorporated to undertake e-business and allied activities, it had no significant business operations until 2016.

h. In October 2014, Respondent No. 1 commenced development of its product through its wholly owned subsidiary, Diro Inc., incorporated in Delaware, USA, which in turn established its step-down subsidiary, Diro Labs Limited, incorporated in the United Kingdom in May 2014. Both entities are stated to be owned and controlled by Respondent No. 1.

i. In 2016, Respondent No. 1 was engaged in the business of providing crowd-sourced directory services. During this period, Respondent No. 4 proposed to invest in the Company, pursuant to which a Shareholders' Agreement dated 10.06.2016 and an Investment Agreement dated 02.12.2016 were executed. At the time, the Board comprised Respondent No. 2 and Petitioner No. 1. It was further agreed that the Board would be reconstituted to include two promoter nominees, one investor nominee and one mutually agreed independent director.

j. It was further agreed that Mr. Kunal Bajaj would be appointed as the mutually agreed independent director. However, despite such understanding, the Board was never expanded. At the relevant time, Petitioner No. 1 was employed as the Chief Operating Officer and also served as a Director of Respondent No. 1. According to the Respondents, Petitioner No. 1 made no financial investment in the Company, and his shareholding arose solely under the Employment Agreement dated 08.06.2016, which provided for vesting of approximately 10.5% equity over a five-year period, subject to his continued employment.

k. The Respondents contend that, although the Employment Agreement dated 08.06.2016 contemplated vesting of approximately 10.5% equity over five years, subject to continued employment, the entire 5,141 shares were allotted to Petitioner No. 1 upfront in good faith. Since Petitioner No. 1 resigned on 01.06.2018, it is alleged that he became entitled to only 2,056 shares and is liable to return the remaining 3,085 shares. The Respondents further state that repeated requests for arbitration on this issue were declined by Petitioner No. 1. The allotment of 5,141 shares is stated to be reflected in the Annual Return as on 30.09.2018. It is further stated that, between June 2016 and December 2017, Respondent No. 1's crowd-sourced directory platform failed to achieve commercial success, resulting in severe financial constraints, due to which neither Petitioner No. 1 nor Respondent No. 2 drew any salary from January 2017 onwards.

l. The Respondents state that Respondent No. 4 invested ₹4 crore in Respondent No. 1 on 10.06.2016, while Respondent Nos. 2 and 3 infused ₹1.29 crore as interest-free unsecured loans. A further sum of ₹2.22 crore was subsequently advanced by Respondent Nos. 2 and 3 on the same terms for the Company's operations. It is alleged that Petitioner No. 1 made no investment in the Company, whereas Petitioner No. 2 invested ₹60 lakh towards subscription of shares.

m. The Respondents stated that Mr. Sumeet Singh, a founder-promoter and Chief Financial Officer of Respondent No. 1, who had been allotted 2,000 equity shares, suffered a heart attack in December 2017, adversely affecting the Company's operations. It is alleged that, thereafter, Petitioner No. 1 threatened to resign in breach of his Employment Agreement and misuse the Company's confidential information. As the existing business was commercially unviable, Respondent No. 2 incorporated Diro Foundation PTE Ltd., a separate entity owned by him and his associate. The Respondents further state that the Petitioners had, in principle, proposed transfer of Respondent No. 1's intellectual property to the said entity for consideration; however, no definitive agreement was ever executed.

n. The Respondents state that Diro Foundation PTE Ltd., an entity independent of Respondent No. 1, proposed to raise funds through an Initial Coin Offering (ICO) under the then prevailing Singapore regulatory framework. As the ICO failed, the proposed acquisition of Respondent No. 1's intellectual property could not materialise. It is further stated that an informal MoU dated 10.05.2018 was thereafter executed between Petitioner No. 1, Respondent No. 2 and Mr. Sumeet Singh, providing that employee dues would be paid upon successful fund-raising. The Respondents allege that the MoU was executed under duress, as

Petitioner No. 1 had threatened to resign in breach of the Shareholders' Agreement, potentially triggering its termination and recall of the investor's funds.

o. The Respondents stated that Petitioner No. 1 resigned as Director on 01.06.2018 without obtaining the investor's approval, allegedly in breach of the Shareholders' Agreement, the Employment Agreement and the MoU dated 10.05.2018. It is further alleged that Petitioner No. 1 failed to hand over the Company's records and confidential documents, which continue to remain in his possession, thereby breaching his confidentiality obligations. The Respondents further state that Respondent No. 1 thereafter discontinued its crowd-sourced directory platform and shifted its business focus to the development of "Internet Original Documents", a product requiring operations in the United States and the United Kingdom.

p. The Respondents submitted that repeated efforts to secure funding for the Company's product were unsuccessful due to the absence of an Indian market, the departure of Petitioner No. 1 and key employees, and Respondent No. 4's unwillingness to fund the revised business model. It is further alleged that, although Techstars, in association with Western Union, expressed interest in investing in May 2019, the investment was conditional upon the business being based in the United States. According to the Respondents, Petitioner No. 1 withheld his consent and demanded substantial payments, resulting in the loss of the investment opportunity.

q. The Respondents state that Internet Original Documents Inc. ("IOD Inc.") was incorporated in the United States on 07.08.2019 as a wholly owned subsidiary of Respondent No. 1 to develop and commercialise its new product. As prospective investors required the investee entity to be independent and not a subsidiary, it was proposed to dilute Respondent No. 1's shareholding by allotting shares to its existing shareholders. It was further proposed to transfer the intellectual property and liabilities of Diro Labs Limited to IOD Inc. and permit creditors of Respondent No. 1 to participate in a rights issue. Accordingly, an EOGM was convened on 27.09.2019 to consider these proposals.

r. That, on 30.09.2019, Internet Original Documents Inc. made a proportionate rights offer to all shareholders of Respondent No. 1, including the Petitioners, who did not subscribe to the offer. Thereafter, on 18.10.2019, the Respondents received a legal notice from the Petitioners seeking certain documents. Subsequently, the EOGM held on 21.10.2019 approved the allotment of shares in Internet Original Documents Inc., ratified the transfer of Diro Inc.'s assets and liabilities to the said company, and approved the transfer/sale of stake in Internet Original Documents Inc.

4. Reply on behalf of Respondent No.5, i.e. Mr.Sumit Khurana

a. The Respondent states that he was inducted as a shareholder of Respondent No. 1 pursuant to a resolution dated 08.03.2017 and presently holds one equity share. In 2017, upon the request of Respondent No. 2 for meeting the Company's short-term financial requirements, he advanced an unsecured loan of ₹40 lakh under a Memorandum of Understanding dated 10.04.2017, repayable within five months with interest at 22% per annum through banking channels. The MoU was to remain in force until the outstanding loan was fully discharged.

b. The Respondent states that the loan was personally guaranteed by Respondent No. 2 vide letter dated 10.04.2017 and became due on 10.09.2017. Despite repeated demands through meetings, WhatsApp messages and emails, Respondent Nos. 1 and 2 failed to repay the loan, instead giving repeated assurances and attributing the delay to proposed fund-raising through cryptocurrency, which never materialised. According to the

Respondent, the correspondence on record evidences persistent demands for repayment and false assurances by Respondent No. 2.

c. The Respondent states that, despite Respondent No. 1 having raised approximately USD 600,000 by June 2018, no attempt was made to repay the loan due to him. Instead, after the loan remained unpaid for over two years, he received notice of the EGM dated 21.10.2019, wherein the ₹40 lakh advanced by him was acknowledged as "Promoter Debt" payable by Respondent No. 1.

d. The Respondent further states that, along with the EGM notice, he received a certified copy of the resolution dated 23.08.2019 proposing to convert his ₹40 lakh loan into equity of the subsidiary, Internet Original Documents Inc.

e. The Answering Respondent contends that he neither consented to the conversion of his ₹40 lakh loan into equity of Respondent No. 1 or any of its subsidiaries, nor received any notice of the meeting dated 23.08.2019 at which such a resolution was allegedly passed. According to him, the MoU contained no provision permitting conversion of the loan into equity, no prior board resolution authorised such conversion, and the unilateral conversion was contrary to law. It is therefore alleged that the impugned transaction was devised solely to defeat the Respondent's legitimate claim for repayment of the loan.

f. The Respondent contends that the explanatory statement envisaged recovery of Respondent No. 2's outstanding dues of ₹4 crore through transfer of the stake in Internet Original Documents Inc., rendering the proposed ratification of the resolution dated 23.08.2019 legally untenable. During the EGM held on 21.10.2019, Respondent No. 2 allegedly asserted that the resolutions would be passed irrespective of objections and proposed that the Respondent convert his loan into equity of IOD-USA for a future buy-back, instead of repaying the debt. The

Respondent further relies on the EGM transcript to contend that Respondent No. 2 admitted to preparing the resolutions himself due to the Company's inability to engage a Company Secretary.

g. The Answering Respondent stated that, by emails dated 21.10.2019, Respondent No. 2 distanced himself from the impugned resolutions and expressly acknowledged the outstanding debt, undertaking to repay the same and to record such commitment before this Hon'ble Tribunal. The transcript of the EOGM further reflects Respondent No. 2's conduct towards the Respondent's claim. Thereafter, on 22.10.2019, this Hon'ble Tribunal directed maintenance of status quo with respect to the shareholding, assets and liabilities of Respondent No. 1 and its subsidiaries. The Respondent further states that, being the personal guarantor, Respondent No. 2 had issued five cheques towards repayment, which were presented for encashment on 01.11.2019.

h. The AGM notice dated 29.10.2019, enclosing the financial statements for FY 2017–18, failed to disclose the Respondent's ₹40 lakh loan. Accordingly, the Respondent, by email dated 19.11.2019, sought an explanation for the omission; however, no response was received from Respondent No. 2.

i. The Respondent alleges gross mismanagement on the ground that the financial statements for FY 2017–18 and FY 2018–19 were placed for approval after considerable delay, contrary to the statutory timelines. It is further alleged that the minutes of the AGMs were never produced before this Hon'ble Tribunal, demonstrating that Respondent No. 2 was managing Respondent No. 1 to the detriment of the minority shareholders. Owing to the continued failure to repay the outstanding loan, the Respondent issued a legal notice dated 26.11.2019, which also evoked no response.

5. Rejoinder of Applicant on reply to R1 R2 and R3

a. That the present Rejoinder is being filed in response to the Reply submitted by Respondent Nos. 1, 2 and 3 to the Contempt Application preferred by the Petitioners/Applicants. It is respectfully submitted that the Reply contains several false, misleading and incorrect averments, which are specifically denied and controverted herein. Save and except what is expressly admitted in this Rejoinder, all the averments, contentions and allegations made in the Reply stand denied.

b. The Respondents have failed to explain how the shareholding of Respondent No. 1 in Internet Original Documents Inc. ("IOD"), admittedly its wholly owned subsidiary as affirmed by Respondent No. 2 in his Affidavit dated 28.09.2020, stood reduced from 100% to 94.12% during the Financial Year 2019–20. Significantly, in Paragraph 7 of their Reply dated 06.11.2023 to the present Contempt Application, the Respondents have categorically admitted that IOD is no longer a wholly owned subsidiary of Respondent No. 1.

c. Respondent No. 2, in his Affidavit dated 28.09.2020, categorically stated that no share certificates had been issued in favour of Mr. Per Jirstrand. However, in Paragraph 7 of the Reply dated 06.11.2023 to the present Contempt Application, the Respondents have taken a contradictory stand by stating that Mr. Per Jirstrand was appointed as CEO of IOD on 03.07.2020 and was allotted a 12% shareholding. Since the alleged allotment took place only on 03.07.2020, the Respondents have failed to explain how Respondent No. 1's shareholding in IOD had already reduced from 100% to 94.12% during the Financial Year 2019–20.

d. Respondent No. 2, in his complaint dated 14.09.2021 before the Hon'ble Bar Council of Delhi against the erstwhile counsel for the Petitioners/Applicants, unequivocally stated that this Hon'ble Tribunal's order dated 22.10.2019 directed maintenance of complete status quo with respect to all assets and liabilities of Respondent No. 1. However, in the Reply dated 06.11.2023 to the present Contempt Application, the Respondents have taken a diametrically opposite stand by contending that the status quo order did not extend to the functioning of its subsidiaries. This inconsistent and self-contradictory stand clearly demonstrates that Respondent No. 2 is approbating and reprobating to suit his convenience, reflecting his mala fide conduct.

6. IA (78/2025)

a. This is an application under rule 11 of the National Company Law Tribunal Rules, 2016 read with section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023, preferred by respondent no. 1 in the main company petition (applicant no. 1 herein) against the petitioners in the main company petition, who are the respondents herein with the following prayer:

i. Initiate complaint against the R1, R2 and R3 under Section 215 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (Section 195 Cr. P. C.) for offences punishable under Sections 182 (b), 193, 196, 198 and 209 of Indian Penal Code, 1860.

ii. Dismiss the Company Petition 157 of 2019 with costs in lieu of commission of fraud before the Hon'ble Tribunal.

iii. Direct the Respondents to pay full restitution, actual and realistic costs incurred by the Applicants in defending this malicious litigation.

iv. Pass any such other orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

b. The present Application i.e. IA (78/2025) is filed against Mr. Nikhil Rai, Mr. Nitin Singhal and Mr. Sumit Khurana (hereinafter collectively referred to as the "Respondents") seeking initiation of proceedings under Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for offences committed during the proceedings in Company Petition No. 157/241-242/ND/2019. In the said Company Petition, Mr. Nikhil Rai and Mr. Nitin Singhal are Petitioner Nos. 1 and 2, respectively, while Mr. Sumit Khurana is Respondent No. 5.

c. It has been submitted by the Applicant herein that after filing of the Company Petition, Respondent Nos. 1 and 2, with a view to obtaining an ex parte status quo order, relied upon false and fabricated evidence, thereby attracting the offences set out hereinabove. The Applicants further submit that the Respondents also made several false statements before this Hon'ble Tribunal, some of which were recorded in the ex parte order dated 22.10.2019. The present Application places on record material demonstrating the falsity of those statements.

i. The ex parte order dated 22.10.2019 records the submission of the Respondents that "the Respondents were in negotiation with Applicant No. 2, who had orally agreed to defer the meeting scheduled on 21.10.2019." This statement is demonstrably false. The email dated 18.10.2019 sent by Applicant No. 2 unequivocally states that the Extra-Ordinary General Meeting ("EOGM") would not be postponed and would be conducted as scheduled (Annexure A). Further, the email dated 21.10.2019 at 1:38 p.m. sent by Respondent No. 1 seeking postponement of the EOGM itself establishes that no such oral agreement existed. The contemporaneous record, therefore, conclusively disproves the Respondents statement recorded in the order dated 22.10.2019.

ii. The ex parte order dated 22.10.2019 further records the Respondents submission that the oral objections raised during the EOGM were neither recorded nor were any minutes prepared, as no Company Secretary was present. This statement is demonstrably false. The transcript of the audio recording of the EOGM (already on record as Annexure D to the Applicants' Application for Vacation of Stay filed on 21.02.2020) clearly establishes that the proceedings were being contemporaneously recorded (Lines 411–418 and 447–461) and that the minutes were prepared in consultation with the Company Secretary.

iii. The ex parte order dated 22.10.2019 records the Respondents' submission that Agenda Items 1 and 2 of the EOGM contemplated the transfer of assets, liabilities and patents of a wholly owned subsidiary, thereby prejudicing their shareholding and rights. This statement is factually incorrect. A plain reading of Agenda Items 1 and 2 shows that the proposed transfer was only to another wholly owned subsidiary of Applicant No. 1 and not to any third party. Consequently, there was no divestment or loss of assets, liabilities or intellectual property of Applicant No. 1, rendering the Respondents' representation misleading.

d. It is further stated that the documentary evidence placed on record conclusively establishes the falsity of the statements made by Respondent Nos. 1 and 2 before this Tribunal. The Applicants submit that these false representations were deliberately made to secure the ex parte status quo order dated 22.10.2019, which was granted in substantial reliance thereon, causing serious prejudice to Applicant No. 1 and constituting the offences alleged in the present Application.

e. Further, the order dated 22.10.2019 also relies upon an email sent by Respondent No. 3. The Applicants submit that the said email contained false and misleading statements regarding the proceedings of the EOGM and was intentionally produced before this Hon'ble Tribunal to falsely portray misconduct on the part of Applicant No. 2 and obtain the interim relief.

f. It has been contended that the transcript of the audio recording of the EOGM clearly demonstrates that the contents of the email relied upon by the Respondents before this Hon'ble Tribunal were false and misleading. The Applicants submit that the said email was deliberately fabricated and produced to mislead this Hon'ble Tribunal into granting the ex parte order dated 22.10.2019. Further, the dissent notes authored by the Respondents themselves, annexed hereto, conclusively establish that the dissent was duly recorded during the EOGM.

g. The Applicants have submitted that the Respondents fabricated the email dated 21.10.2019 containing false statements regarding the conduct of the EOGM, with the intent of falsely portraying that Applicant No. 2, as Chairman, had improperly conducted the meeting. The said email was deliberately prepared and relied upon before this Hon'ble Tribunal on 22.10.2019 to obtain interim relief. The premeditated nature of this conduct is evident from the audio recording of the EOGM, which demonstrates that Applicant No. 2 conducted the proceedings despite the Respondents threats and objections.

h. The Applicants further submit that the Respondents acted in concert to prejudice the interests of Applicant No. 1. Despite being fully aware of the ex-parte status quo order dated 22.10.2019, Respondent No. 3 presented a cheque of Applicant No. 1 Company for encashment and thereafter instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881, while deliberately suppressing the existence of the said order, which prevented the Company from honouring the cheque.

i. Further, the complaint selectively omitted Respondent No. 1, although he was also a signatory to the dishonoured cheque, thereby revealing a mala fide attempt to harass the directors of Applicant No. 1. Significantly, the same counsel represented the parties in both the Company Petition and the proceedings under Section 138 of the Negotiable Instruments Act, making the suppression of the order dated 22.10.2019 before the Magistrate deliberate and indicative of an abuse of the legal process.

j. The Applicants submit that a comparison of the ex parte order dated 22.10.2019 with the transcript of the EOGM audio recording unequivocally demonstrates that the Respondents obtained the said order by making false statements, suppressing material facts and relying on fabricated evidence. Such conduct amounts to perjury, fabrication of evidence and deliberate misrepresentation before this Hon'ble Tribunal, warranting an inquiry under Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Having approached this Hon'ble Tribunal with unclean hands and perpetrated fraud upon the Tribunal, the Respondents are disentitled to any relief in Company Petition No. 157/241-242/ND/2019, which is liable to be dismissed in terms of the law laid down by the Hon'ble Supreme Court in *K.D. Sharma v. Steel Authority of India Ltd. & Ors.*, (2008) 12 SCC 481.

ANALYSIS AND FINDINGS

7. We have heard the Ld. Counsel on behalf of the Petitioner and further perused the averments made in the Petition, reply filed by the Respondents, rejoinder presented by Petitioner.

8. The present petition has been filed under Sections 241 and 242 of the Companies Act, 2013, alleging oppression and mismanagement in the affairs of the Respondent No. 1 Company. The Petitioners collectively hold 11.28% of the equity share capital of Respondent No. 1 Company. Petitioner No. 1, a former Director and technical expert of the Company, resigned from the Board on 01.06.2018 pursuant to the Memorandum of Understanding dated 13.02.2018, owing to the change in the Company's business direction and the alleged acts of mismanagement by Respondent No. 2. The present Petition has been instituted alleging acts of oppression and mismanagement by Respondent Nos. 2 and 3 in the affairs of Respondent No. 1 Company.

9. The Petitioners challenge the proposed conversion of loans allegedly advanced by Respondent No. 2 into equity of Internet Original

Documents Inc. ("IOD"), then a wholly owned subsidiary of Respondent No. 1; the proposed rights issue resulting in dilution of the Petitioners' shareholding and enhancement of Respondent No. 2's holding from 58.39% to approximately 80%; the conduct of the EOGM dated 21.10.2019, which is alleged to have been held in violation of the Companies Act, 2013 by proceeding without a qualified Company Secretary, refusing to record dissenting notes, and being conducted in an oppressive manner; and the transfer of the assets and liabilities of Diro Inc. to IOD, allegedly undertaken to conceal the mismanagement of the proposed Initial Coin Offering of Diro Foundation Pte. Ltd., Singapore.

10. The Petitioner contends that on 27.09.2019, Respondent No. 2 issued a notice convening an Extraordinary General Meeting ("EOGM") for 21.10.2019 to consider, inter alia, the proposed restructuring of Respondent No. 1 Company. Although Petitioner No. 1 objected to the proposed EOGM and was allegedly assured that it would be postponed, the notice was never withdrawn. Consequently, Petitioner No. 1 issued a legal notice dated 18.10.2019 seeking, inter alia, the statutory audit reports and other relevant records of Respondent No. 1 Company, which were not furnished by the Respondents.

11. The Petitioners have alleged that Respondent Nos. 2 and 3 have acted oppressively and mismanaged the affairs of Respondent No. 1 Company, particularly in relation to the EOGM dated 21.10.2019. It is contended that Respondent No. 2, in the documents circulated with the EOGM notice, represented that he had advanced an unsecured loan of ₹4 crore to the Company, which, if true, would be contrary to Section 73(2) of the Companies Act, 2013. It is further alleged that Respondent No. 2 arbitrarily included his unpaid salary and the loan advanced by Respondent No. 5 as part of the said unsecured loan, thereby misrepresenting the financial position of the Company.

12. The Petitioners further alleged that, through the resolutions passed at the EOGM, Respondent No. 2 proposed to convert his alleged loans into equity of Internet Original Documents Inc. ("IOD"), a newly incorporated

U.S. subsidiary of Respondent No. 1, at a substantial discount, thereby diluting the Petitioners' shareholding and increasing his own holding from 58.39% to approximately 80%, effectively enabling him to acquire control over the Company's intellectual property. It is further alleged that the Respondents sought to transfer the assets, intellectual property and the step-down subsidiary, Diro Labs UK, from Diro Inc. to IOD without obtaining the mandatory consent of Respondent No. 4 under the Shareholders' Agreement. The Petitioners also contend that, despite assuring postponement of the EOGM, Respondent No. 2 proceeded with the meeting on 21.10.2019 in violation of law, without a qualified Company Secretary, without recording dissenting notes, and in an oppressive manner.

13. The Petitioners contend that the proposed restructuring was undertaken without obtaining the mandatory prior written approval of Respondent No. 4 as required under Clause 6 of the Shareholders' Agreement dated 10.06.2016. Although Respondent No. 2 claimed during the EOGM that such approval had been obtained, no written approval was produced despite repeated requests. Even the email dated 25.09.2019 filed by the Respondents merely sought Mr. Kunal Bajaj's approval and does not evidence any consent. The Petitioners further submit that the proposed conversion of Respondent No. 2's alleged loans into equity of Internet Original Documents Inc. was also contrary to Section 62(1)(c) of the Companies Act, 2013, as no valuation by a registered valuer was undertaken.

14. The Petitioners contend that the proposed restructuring is intended to enable Respondent No. 2 to obtain effective control over the intellectual property of Respondent No. 1. It is submitted that, under Clause 96.1.10 of the Shareholders' Agreement dated 10.06.2016, the intellectual property developed by Respondent No. 1 is required to vest in Respondent No. 1 or its wholly owned subsidiaries, subject to the consent of Respondent No. 4. However, Respondent No. 2 allegedly sought to transfer the assets, liabilities and intellectual property of Diro Inc. and its wholly owned subsidiary, Diro Labs UK, to Internet Original

Documents Inc., a newly incorporated entity in which the Petitioners' shareholding would stand substantially diluted, thereby placing the intellectual property beyond the effective control of Respondent No. 1.

15. The Petitioners alleged that the proposed rights issue in Internet Original Documents Inc. ("IOD") was undertaken without any valuation by a registered valuer and at a 90% discount, enabling Respondent No. 2 to convert his alleged promoter debt into equity without any fresh investment, while excluding Petitioner No. 1's unpaid salary from similar treatment. It is contended that these acts, coupled with the breach of the MoU dated 13.02.2018 (reconfirmed on 10.05.2018), the unlawful conversion of Respondent No. 5's loan into Respondent No. 2's personal equity, and the failure to record dissenting notes at the EOGM, constitute continuous acts of oppression and mismanagement, lacking in probity and fairness and prejudicial to the proprietary rights of the Petitioners as shareholders.

16. The Petitioners submit that, despite the status quo order dated 22.10.2019 directing maintenance of the shareholding, assets and liabilities of Respondent No. 1 Company and its subsidiaries, the Respondents wilfully violated the same by altering the shareholding of Respondent No. 1 and its wholly owned subsidiary, including the transfer of Respondent No. 2's shares to Mr. Nitin Agarwal. Accordingly, the Petitioners have instituted Contempt Application No. 09 of 2023 under Section 425 of the Companies Act, 2013. It is further contended that the interim order continues to operate until expressly vacated by this Hon'ble Tribunal and did not lapse merely because it was not extended on subsequent dates.

17. The Respondents has averred that Petitioner No. 1 joined Respondent No. 1 as its Chief Operating Officer under the Employment Agreement dated 08.06.2016 and was a signatory to the Shareholders' Agreement and Investment Agreement executed with Respondent No. 4. The Respondents contend that, under Clause 2.2.1 of the Shareholders' Agreement, 90% of Petitioner No. 1's shares were subject to phased release from the ESOP Trust over a period of five years. However, Petitioner No. 1 resigned after approximately two years without obtaining the prior written consent of Respondent No. 4, allegedly in breach of Clauses 6.1(j) and 13.1 of the Shareholders Agreement.

18. The Respondents contend that the Memorandum of Understanding dated 13.02.2018, relied upon by the Petitioners as a settlement, never acquired legal validity as the matters covered therein required the prior written approval of Respondent No. 4 under Clauses 6 and 13.1 of the Shareholders' Agreement. The MoU itself acknowledged that any arrangement between the promoters affecting the Shareholders' Agreement required Respondent No. 4's approval. As no such approval or subsequent ratification by Respondent No. 1 was obtained, the Respondents submit that the Petitioners cannot derive any rights under the MoU and that Petitioner No. 1 resigned in breach of the binding contractual arrangements.

19. The Respondents contend that Petitioner No. 1's resignation was in breach of the governing agreements and exposed Respondent No. 1 to significant contractual and financial consequences, including the risk of termination of the Shareholders' Agreement and the investment made by Respondent No. 4. It is further submitted that the Petitioners' actions caused substantial losses to Respondent No. 1, and the disputes arising therefrom are presently pending in arbitration.

20. The Respondents contend that, under Clause 6.3 of the Employment Agreement and Clause 3.1.10 of the Shareholders' Agreement, all intellectual property developed by the promoters or employees vested exclusively in Respondent No. 1, and the Petitioners have no proprietary interest therein. It is further submitted that the proposed restructuring merely contemplated transfer of assets, including intellectual property, between two wholly owned subsidiaries of Respondent No. 1, and did not amount to disposal or siphoning of assets. The Respondents also state that the earlier "Phonebooks" project had failed, its intellectual property had expired without renewal, and the project stood abandoned.

21. The Respondents contend that, following the departure of Petitioner No. 1 and the Company's financial distress, including its inability to pay salaries from January 2017, Respondent No. 1 required restructuring to revive its business and attract investment. It is submitted that the proposed restructuring was intended to address the Company's debt burden and was therefore placed before the shareholders through the EOGM dated 21.10.2019. The Respondents further allege that the Petitioners sought to exploit the situation by raising unwarranted demands and obstructing the restructuring process.

22. The Respondents submit that, during the EOGM, Respondent No. 2 clarified that the proposed restructuring was subject to, and had received, the approval of Respondent No. 4, which was read out to the shareholders. Upon the Petitioners seeking a copy of the approval, they were informed that the same would be furnished upon request. The Respondents further state that the written approval has been placed on record and, therefore, deny the Petitioners allegation that no approval of Respondent No. 4 was obtained or disclosed.

23. Upon perusal of the case record, it is observed that the Applicants in the main Petition have made several false and misleading statements before this Tribunal, some of which came to be recorded in the ex-parte order dated 22.10.2019. The Respondents have placed on record material evidence which prima facie demonstrates that the statements so recorded, based on the representations made by the Respondents, are factually incorrect and misleading.

24. The Counsel appearing for Applicants statements were recorded in the ex-parte order that *"the Respondents were in negotiations with Applicant No. 2, who had orally agreed to defer the meeting scheduled for 21.10.2019"* is factually incorrect and contrary to the contemporaneous record. In support thereof, the Respondent have placed on record the email dated 18.10.2019 issued by Applicant No. 2, which unequivocally states that the Extraordinary General Meeting (EOGM) would not be postponed and would be conducted as scheduled. Further we observe that the email dated 21.10.2019 at 1:38 p.m. sent by Applicant no. 1 requesting postponement of the EOGM itself demonstrates that no agreement had been reached between the parties for deferring the meeting. The contemporaneous documentary evidence, therefore, prima facie disproves the Applicants representation that Respondent No. 2 had orally agreed to postpone the EOGM.

25. It has been alleged by the Applicants that the objections raised during the EOGM were not recorded and that no minutes were prepared as no Company Secretary was present at the meeting. However, the Respondents have placed reliance on the transcript of the audio recording of the EOGM, which prima facie indicates that the minutes were being duly recorded and that the proceedings were conducted in consultation with the Company Secretary. The said transcript was already placed on record by the Applicants on 21.02.2020 as Annexure D to the Application for Vacation of Stay.

26. That the order dated 22.10.2019 places reliance on an email dated 21.10.2019, the contents whereof are alleged to be false and misleading. According to the Respondent, the contemporaneous transcript of the audio recording of the EOGM belies the contents of the said email and demonstrates that the representations made therein did not correctly reflect the proceedings of the meeting. The Applicants have further placed on record the dissent notes, stated to have been authored by the Respondents themselves, to substantiate their contention that the dissent raised during the EOGM was duly recorded. It is, therefore, the Applicants case that the email dated 21.10.2019 did not present a true and correct account of the proceedings and was relied upon while obtaining the ex-parte order dated 22.10.2019.

27. Upon a comprehensive consideration of the pleadings, documents placed on record, and the submissions advanced by the parties, this Tribunal is of the considered opinion that the Petitioners have failed to establish any act of oppression or mismanagement within the meaning of Sections 241 and 242 of the Companies Act, 2013. The allegations levelled by the Petitioners are unsupported by cogent evidence and pertains to commercial and managerial decisions taken by the Board in the interest of the Company, which do not warrant interference by this Tribunal in exercise of its equitable jurisdiction.

28. The material on record demonstrates that the impugned restructuring measures were undertaken after obtaining the requisite approvals and were intended to address the financial exigencies of the Company. The Petitioners have failed to demonstrate that the affairs of the Company were conducted in a manner oppressive to any member or prejudicial either to the interests of the Company or to public interest. Mere dissatisfaction with business decisions or disagreement with the commercial wisdom of the management cannot, by itself, constitute oppression or mismanagement.

29. Furthermore, no material has been brought on record to establish any continuous course of burdensome, harsh or wrongful conduct against the Petitioners or any act resulting in prejudice to the Company so as to invoke the jurisdiction of this Tribunal under Sections 241 and 242 of the Act. The reliefs sought are, therefore, devoid of merit.

30. This Tribunal further finds that the Petitioners have not approached this Tribunal with complete candour. Material facts have either been suppressed or presented in a misleading manner, and several allegations made in the petition have not been substantiated by credible evidence. A litigant invoking the equitable jurisdiction of this Tribunal is required to approach the Court with clean hands. A party guilty of suppression of material facts or misrepresentation is not entitled to equitable relief.

31. Accordingly, this Tribunal holds that the Petitioners have failed to establish any case of oppression and mismanagement warranting interference under Sections 241 and 242 of the Companies Act, 2013. Consequently, **I.A. No. 78/2025 stands allowed**, and **Company Petition No. 157/241-242/ND/2019 stands dismissed**. All pending interlocutory applications, if any, also stand disposed of. There shall be no order as to costs.

Sd/- | **Sd/-**

ATUL CHATURVEDI
MEMBER (TECHNICAL)

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

CONTEMPT APPLICATION NO. 09 of 2023

IN

CP NO. 157/241-242/ND/2019

IN THE MATTER OF:

1. Mr. Nikhil Rai

Address: D-373, Defence Colony,

New Delhi- 110024

2. Mr. Nitin Singhal

Address: A-43, Shivalik,

New Delhi- 110017.

... Petitioners

VERSUS

1. M/s Vcare Technologies Private Limited

Address: I-10, Lagpat Nagar II,

New Delhi - 110024

2. Mr. Vishal Gupta

Address: 21 Sunder Nagar,

New Delhi - 110003

3. Mrs. Bhagwati Devi

Address: 21 Sunder Nagar,

New Delhi 110003

... Respondents

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.07.2026

Present:

For the Applicant	:	Mr. Vidur Mohan, Mr. Kaushal Kumar Singh, Advs.
For Respondent No. 1-3	:	Mr. Gaurav Choubey Ms. Kanchan Dahiya, Mr. Hardik Aggarwal and Ms. Kanjani Sharma. Advs.
For Respondent No. 5	:	Mr. Dhruv Chawla, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present Contempt Petition i.e. Contempt Application No. 09 Of 2023 has been filed by the Applicants i.e. Mr. Nikhil Rai and another under Section 425 of the Companies Act, 2013 read with Sections 2 and 12 of the Contempt of Courts Act, 1971 with the following prayer:

(a)Pass an order holding the Contemnors/Respondents guilty of contempt for willful violation of the interim order dated 22.10.2019, passed by this Hon'ble Court in CP NO. 157/241- 242/ ND/2019 titled Mr. Nikhil Rai & Anr. v. V care Technologies Pvt. Ltd. &Ors.; and further detain them to civil prison for a period that this Hon'ble Tribunal deems fit and proper;

(b) Pass an order for costs in filing of this present petition;

(c) Any other order (s) that this Hon'ble Court may deem fit and proper in the interests of justice.

2. Facts of the case as averred by the Applicant are as follows:

a. The Company Petition has been filed by the Petitioners challenging the resolutions passed at the Extra-Ordinary General Meeting dated 21.10.2019 of V Care Technologies Pvt. Ltd. ("Respondent No. 1 Company"). It is alleged that the impugned resolutions were passed in violation of statutory safeguards and constitute acts of oppression and mismanagement. The

Petitioners further contend that Respondent No. 2 sought to pass the impugned resolutions with the intent to dilute the Petitioners shareholding and defeat their rights in the Company. The sought resolution is as follows:

i. *Ratify the transfer of all assets and liabilities of* ***DIRO*** *Inc, (USA), a wholly owned subsidiary of the Company to Internet Originals Inc (USA), a wholly owned subsidiary of the Company and in this regard, pass the following resolution as Special Resolution.*

ii. *Transfer or sell or otherwise dispose of the stake in Internet Originals Inc., (USA), a wholly owned subsidiary of Vcare technologies Private Limited and in this regard, pass the fallowing resolution as Special Resolution.*

b. The Petitioner has submitted pursuant to the filing of the Company Petition, this Tribunal, vide interim order dated 22.10.2019, had passed the order as follows:

> *"Considering the submission made and after perusing documents on record, along with emails which the learned counsel has handed over being the objections lodged by the shareholders present in EOGM, we are of the view that the rights of the shareholders as well as assets and the properties of the respondent no. 1 company and its subsidiary needs to be safeguarded. We direct the status quo to be maintained with respect to the shareholding, assets and liabilities of the respondent no. 1 company and subsidiary/ wholly owned companies of respondent no. 1.* "

c. That vide email dated 12.01.2023, Respondent No. 2 invited the Petitioners to attend the Annual General Meeting ("AGM") for consideration and adoption of the Financial Statements of Respondent No. 1 Company for FY 2019-20, FY 2020-21 and FY 2021-22. Upon examining the Consolidated Balance Sheets, the

Petitioners discovered that the Respondents had acted in violation of the interim order dated 22.10.2019 by failing to maintain status quo in respect of the shareholding of Respondent No. 1 Company in its subsidiary, Internet Original Documents (US). The Petitioners further submit that Respondent No. 2 also transferred his shareholding in Respondent No. 1 Company to Mr. Nitin Agarwal, in contravention of the said order. tabular sheet showing the same is set forth below:

Financial Year	Shareholding of Respondent no. 1 in Internet Original Documents (US)	Shareholding of Respondent No. 2 (Vishal Gupta) in Respondent No. 1 Company	Shareholding of Mr. Nitin Agarwal in Respondent No. 1 Company
2019-20	94.12%	70%	N/A
2020-21	94.12%	70%	N/A
2021-22	87.62%	58.27%	12.93%

d. That the Petitioner No. 1, vide dissent note dated 03.02.2023, objected to the email dated 12.01.2023 issued by Respondent No. 2, specifically pointing out that the transfer of Respondent No. 2's shareholding in Respondent No. 1 Company to Mr. Nitin Agarwal was in clear violation of this Hon'ble Tribunal's interim order dated 22.10.2019.

e. The Petitioners further submit that the Respondents, despite having full knowledge of and being bound by the order dated 22.10.2019, have deliberately and wilfully disobeyed the same, thereby interfering with the administration of justice and rendering themselves liable for action under Section 12 of the Contempt of Courts Act, 1971 read with Section 425 of the Companies Act, 2013.

3. Reply on Behalf of Respondents

a. The Respondents contend that they have not violated the interim order dated 22.10.2019 passed by this Hon'ble Tribunal. The allegation of contempt is founded solely on the Financial Statements of Respondent No. 1 Company for FY 2019-20, FY 2020-21 and FY 2021-22 and the shareholding chart annexed as Paragraph 6 of the Contempt Petition. According to the Respondents, neither the Financial Statements nor the alleged changes reflected therein establish any wilful or deliberate disobedience of the Tribunal's order. Consequently, it is submitted that the essential ingredients of civil contempt are absent and the present petition is devoid of merit.

b. The Respondents submit that the chart reflects two changes in shareholding. As regards the transfer of shares by Respondent No. 2, it is contended that the interim order dated 22.10.2019 did not restrain any change in the personal shareholding of Respondent No. 2. The order directed maintenance of status quo only with respect to the shareholding, assets and liabilities of Respondent No. 1 Company and its subsidiary/wholly owned companies. Accordingly, the transfer of Respondent No. 2's personal shareholding is stated to be outside the scope of the said order.

c. The Respondent No. 2 transferred a portion of his personal shareholding to Mr. Nitin Agarwal during FY 2021-22, which is duly reflected in the Balance Sheet for the said financial year. It is the Respondents' contention that such transfer does not, in any manner, contravene the interim order dated 22.10.2019, as the said order did not restrain Respondent No. 2 from dealing with his personal shareholding.

d. The second change reflected in the FY 2021-22 Balance Sheet pertains to the reduction in Respondent No. 1's shareholding in Internet Original Documents Inc. ("IODs"), a U.S.-incorporated company and erstwhile wholly owned subsidiary of Respondent

No. 1. The Respondents submit that, pursuant to the appointment of Mr. Per Jirstrand as Chief Executive Officer on 03.07.2020, IODs allotted 12% of its shareholding to him under a contractual vesting scheme. Under the terms of his employment agreement, Mr. Jirstrand is entitled to receive up to 20% of the shareholding over a period of four years. Accordingly, the reduction in Respondent No. 1's shareholding is stated to be a consequence of the vesting arrangement and not a violation of the Tribunal's order dated 22.10.2019.

e. It has been further submitted that the Petitioners have erroneously assumed that Respondent No. 1's shareholding in Internet Original Documents Inc. was reduced. In fact, no shares held by Respondent No. 1 were transferred or reduced. The change in percentage holding resulted solely from the allotment of new shares to Mr. Per Jirstrand under the vesting scheme, while the number of shares held by Respondent No. 1 remained unchanged.

f. The Respondent stated that the interim order dated 22.10.2019 directing maintenance of status quo with respect to the shareholding, assets and liabilities of Respondent No. 1 Company and its subsidiary/wholly owned companies must be construed in its proper context. The order does not prohibit the ordinary course management or day-to-day functioning of Internet Original Documents Inc. Accordingly, the appointment of a Chief Executive Officer and the allotment of shares to him pursuant to a contractual vesting scheme formed part of the company's bona fide business operations and cannot be construed as a violation of the said order.

g. The Respondents submit that no case of wilful disobedience of the order dated 22.10.2019 is made out and the present Contempt Petition is liable to be dismissed. It is further contended that the Petitioners have prolonged the proceedings by relying on incorrect and suppressed facts, despite the Respondents having filed applications for early hearing, vacation of the interim order, and a detailed counter affidavit. According to the Respondents, the present proceedings are intended only to delay the adjudication of the main Company Petition.

4. **Rejoinder on behalf of Applicant**

   a. The Petitioner has submitted that the Respondents have failed to explain the reduction in Respondent No. 1's shareholding in Internet Original Documents Inc. ("IOD"), which was admittedly a wholly owned subsidiary, from 100% to 94.12% as reflected in the Financial Statements. The Respondents have also admitted in their Reply dated 06.11.2023 that IOD is no longer a wholly owned subsidiary of Respondent No. 1. Further, while Respondent No. 2, in his affidavit dated 28.09.2020, categorically stated that no share certificates had been issued to Mr. Per Jirstrand, the Reply dated 06.11.2023 states that Mr. Jirstrand was appointed as CEO of IOD on 03.07.2020 and was allotted a 12% shareholding, thereby revealing a material inconsistency in the Respondents stand.

   b. The Petitioners further submitted that, although Mr. Per Jirstrand was appointed as CEO of IOD on 03.07.2020, the Respondents have failed to explain how Respondent No. 1's shareholding stood reduced from 100% to 94.12% in FY 2019-20. The Petitioners contend that the Respondents' attempt to distinguish between a reduction in shareholding and the allotment of new shares is misconceived, as the allotment itself resulted in the dilution of Respondent No. 1's shareholding.

   c. It is submitted that the Respondents have wilfully disobeyed the interim order dated 22.10.2019 by failing to maintain status quo with respect to Respondent No. 1's shareholding in its subsidiary, Internet Original Documents (US). Such deliberate violation constitutes civil contempt, rendering the Respondents liable under Section 12 of the Contempt of Courts Act, 1971 read with Section 425 of the Companies Act, 2013.

d. The Respondents have admitted that, during FY 2021-22, Respondent No. 2 transferred a portion of his shareholding to Mr. Nitin Agarwal, reducing his holding from 70% to 58.27%, while disputing that such transfer violated the order dated 22.10.2019. The Petitioners submit that this constitutes a clear admission of acts contrary to the status quo order. The Respondents have further admitted that Internet Original Documents Inc. ("IOD"), admittedly a wholly owned subsidiary of Respondent No. 1, allotted 12% shareholding to its CEO, Mr. Per Jirstrand, with a further entitlement of up to 20% under a vesting arrangement. However, this stand is contrary to Respondent No. 2's affidavit dated 28.09.2020, wherein it was categorically stated that no share certificates had been issued to Mr. Jirstrand and that IOD continued to be a wholly owned subsidiary of Respondent No. 1. These inconsistent stands demonstrate that Respondent No. 2 is approbating and reprobating, thereby undermining the credibility of the Respondents' defence.

e. The Respondents have expressly admitted in Paragraph 7 of their Reply that Internet Original Documents Inc. ("IOD") is no longer a wholly owned subsidiary of Respondent No. 1 and have explained the manner in which such change occurred. The Petitioners reiterate the submissions made hereinabove in this regard.

f. The contention that the order dated 22.10.2019 did not interfere with the normal functioning of IOD is not disputed. However, the said order unequivocally directed maintenance of status quo with respect to the shareholding, assets and liabilities of Respondent No. 1 and its subsidiary/wholly owned companies, including IOD. The admitted dilution of Respondent No. 1's shareholding is therefore in direct contravention of the said order.

g. The Petitioners further deny the Respondents' allegations that they have delayed the proceedings, obtained the interim order by suppression or misrepresentation, or misused the COVID-19 pandemic. The Petitioners remain ready for expeditious disposal of both the Contempt Application and the main Company Petition. The Respondents allegations are wholly bald, baseless and unsupported by any material.

ANALYSIS AND FINDINGS

5. We have heard the Ld. Counsel on behalf of the Petitioner and further perused the averments made in the Petition, reply filed by the Respondents, rejoinder presented by Petitioner.

6. Before dealing with the merits of the case, it is pertinent to refer to the Order dated 22.10.2019, passed by this Tribunal, of which contempt is alleged, which reads as follows:

> *"CP No. 157/241-242/ND/2019 is filed by two petitioners holding 11.28% shareholding, under Section 241-242 of the Companies Act, 2013. The learned counsel for the petitioners state that EOGM of the Company was stated to be held on 21st October 2019 as per notice dated 27.09.2019 issued by respondent No. 2 and 3 who are the directors. The petitioners were in negotiation with the respondent No. 2, who had orally agreed to defer the holding meeting on 21.10.2019. Believing the respondent No. 2, this application was not moved before the proposed EOGM on 21.10.2019 but respondent No. 2 convened the EOGM on 21st October 2019. The petitioners attended the meeting and they had orally objected to the convening of the said EOGM. The learned counsel further states that oral objections raised by petitioners was not recorded neither any minutes were prepared as there was no*

Company Secretary was present in the meeting. Therefore, petitioner No. 1 and another member Mr. Sumit Khurana, have lodged their objections with convening/holding to the said EOGM and also to business being transacting in the meeting. Learned counsel further states that since the meeting is already held, the interim prayers "a" and "b" as mentioned in the petition has become infructuous and learned counsel pressed for prayer "A" of the final relief. It is further submitted that if the relief is not granted, as prayed today orally, it will grossly prejudice shareholding and rights of the petitioners, as agenda items No. 1 and 2 as mentioned in the notice of EOGM relates to the transfer of assets and liabilities and/or selling/disposing of patents of wholly owned Subsidiary company of respondent No. 1. Considering the submission made and after perusing documents on record, along with emails which the learned counsel has handed over being the objections lodged by shareholders present in EOGM, we are of the view that the rights of the shareholders as well as assets and the properties of the respondent No. 1 Company and its subsidiary needs to be guarded. We direct the status quo to be maintained with respect to the shareholding, assets and liabilities of the respondent No. 1 Company and subsidiary/wholly owned companies of Respondent No. 1."

7. Civil contempt, as defined under Section 2(b) of the Contempt of Courts Act, 1971, means wilful disobedience to any judgment, decree, direction, or order of a court. Thus, two essential ingredients are sine qua non for establishing civil contempt, namely;

i. Disobedience of any judgment, decree, directions, orders, or other process of the Court.

ii. Disobedience or breach must be wilful, deliberate, and intentional

8. The Hon'ble Supreme Court in ***Ram Kishan v. Tarun Bajaj*, reported in *(2014) 16 SCC 204***, has held that the expression "wilful" introduces a mental element and signifies a conscious, deliberate, and intentional act done with full knowledge of its consequences, excluding accidental or bona fide non-compliance. It has also been held that casual, inadvertent or negligent acts do not constitute wilful disobedience and that punishment for contempt cannot be imposed where non-compliance is on account of genuine or compelling circumstances. The same is extracted below:

> *"9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/ contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but mat by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. <u>The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt.</u> It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. (Vide : V.G. Nigam v. Kedar Nath Gupta, AIR 1992 SC 2153; Chhotu Ram v. Urvashi Gulati, AIR 2001 SC 3468; Anil Ratan Sarkar v. Hirak Ghosh, AIR 2002 SC 1405; Bank of Baroda v. Sadruddin Hasan Daya, AIR 2004 SC 942; Sahdeo alias Sahdeo Singh v. State of U.P., (2010) 3 SCC 705; and National Fertilizers Ltd. v. Tuncay Alankus, AIR 2013 SC 1299)*

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12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "willful". <u>The word "willful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Willful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability.</u> willful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". willful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."

9. The present Contempt Application has been preferred alleging wilful disobedience of the interim order dated 22.10.2019 whereby this Tribunal directed maintenance of status quo with respect to the shareholding, assets and liabilities of Respondent No.1 Company and its subsidiary/wholly owned companies. The principal allegations are that (i) the Respondent No.2 transferred a portion of his shareholding in Respondent No.1 Company to Mr. Nitin Agarwal; and (ii) the shareholding of Respondent No.1 in its subsidiary, Internet Original

Documents Inc. (USA), stood diluted consequent to allotment of shares to its Chief Executive Officer.

10. Insofar as the transfer of shares by Respondent No.2 is concerned, the Respondents have consistently maintained that the interim order dated 22.10.2019 directed maintenance of status quo with respect to the shareholding, assets and liabilities of Respondent No.1 Company and its subsidiary/wholly owned companies and did not impose any restraint upon the personal shareholding of Respondent No.2 in Respondent No.1 Company. It has further been explained that the transfer in favour of Mr. Nitin Agarwal pertained exclusively to the individual shareholding of Respondent No.2 and not to the shareholding of Respondent No.1 Company. Whether such interpretation of the interim order is ultimately accepted or rejected in the main proceedings is a matter to be determined therein; however, the said interpretation cannot, by any stretch, be characterised as manifestly untenable or demonstrative of wilful disregard of the authority of this Tribunal.

11. The second allegation relates to the reduction in the percentage shareholding of Respondent No.1 in Internet Original Documents Inc. (USA). The Respondents have categorically explained that there was no transfer or alienation of any shares held by Respondent No.1. According to them, the apparent reduction in percentage holding occurred solely because fresh shares were issued by the subsidiary company to its Chief Executive Officer, Mr. Per Jirstrand, pursuant to a contractual employee vesting arrangement designed to incentivise and retain key managerial personnel. It has further been asserted that the subsidiary company is incorporated under the laws of the United States of America and the issuance of shares formed part of its ordinary commercial functioning. Thus, according to the Respondents, while the percentage shareholding of Respondent No.1 stood diluted, its existing shareholding was never transferred or divested.

12. The contention of the Applicants that any reduction in percentage holding ipso facto amounts to contempt cannot be accepted. The order dated 22.10.2019 is required to be construed in the context in which it was passed. The Respondents have pleaded that the said order was never intended to completely paralyse the day-to-day functioning of the subsidiary company or prevent it from taking bona fide commercial decisions, including appointment and incentivisation of its Chief Executive Officer through an employee stock vesting arrangement.

13. It is well settled that contempt jurisdiction is exercised sparingly and the burden lies upon the Applicant to establish, beyond any reasonable doubt, that there has been a wilful, deliberate and intentional disobedience of a clear and unequivocal judicial direction. We observe that the acts were duly reflected in the statutory financial statements and disclosures placed before the shareholders, including the Applicants. The absence of any clandestine conduct or concealment further militates against the allegation of deliberate disobedience.

14. In view of the aforesaid discussion, this Tribunal is of the considered opinion that the Applicants have failed to establish any clear, conscious and deliberate violation of the interim order dated 22.10.2019. The issues raised involve competing interpretations of the interim order as well as disputed questions relating to corporate transactions, all of which are matters to be adjudicated in the pending company petition. The essential ingredient of wilful disobedience, which constitutes the very foundation of proceedings under Section 425 of the Companies Act, 2013 read with the Contempt of Courts Act, 1971, is conspicuously absent.

15. Accordingly, no case for initiation of contempt proceedings is made out. The Contempt Application is, therefore, dismissed.

Sd/-	**Sd/-**
ATUL CHATURVEDI **MEMBER (TECHNICAL)**	**MANNI SANKARIAH SHANMUGA SUNDARAM** **MEMBER (JUDICIAL)**