

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

Company Petition No. 405/KB/2017

***A Petition under Section 241, 242 and 244 of the Companies Act,
2013.***

IN THE MATTER OF:

Kishore Kejriwal & Anr.

.....Petitioners

Versus

Gold Silver Arts Private Limited & Ors.

.....Respondents

And

I.A No. 477/KB/2017

IN THE MATTER OF:

Gold Silver Arts Private Limited & Ors.

.....Applicants

Versus

Kishore Kejriwal & Anr.

.....Respondents

And

Cont. A. No. 449/KB/2017

IN THE MATTER OF:

Kishore Kejriwal & Anr.

Versus

Gold Silver Arts Private Limited & Ors.

.....Respondents

And

I.A No. 112/KB/2018

IN THE MATTER OF:

Gold Silver Arts Private Limited & Ors.

.....Applicants

Versus

Kishore Kejriwal & Anr.

.....Respondents

And

Intervention Petition No. 415/KB/2017

IN THE MATTER OF:

Kishore Kejriwal & Anr.

.....Petitioners

Versus

Gold Silver Arts Private Limited & Ors.

.....Respondents

And

I.A No. 42/KB/2023

IN THE MATTER OF:

Kishore Kejriwal & Anr.

.....Applicants

Versus

Gold Silver Arts Private Limited & Ors.

.....Respondents

And

I.A No. 118/KB/2022

IN THE MATTER OF:

Gold Silver Arts Private Limited & Ors.

.....Applicants

Versus

Kishore Kejriwal & Anr.

.....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. Sakya Sen, Sr. Adv.

Mr. Sunil Gupta, Adv.

Mr. Tanay Agarwal, Adv.

Mr. Ram Maroo, Adv.

Mr. Sourav Ganguly, Adv.

For the Respondent:

Mr. Rishav Banerjee, Adv.

Ms. Prerna Shaha, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through physical / hybrid mode.
2. The Ld. Sr. Counsel Mr. Sakya Sen and other Ld. Counsels of both the parties were heard *in extenso*.
3. There are six connected Petitions/Applications which are detailed hereunder:
 - I. **I.A No. 42/KB/2023:** This Interlocutory Application is filed by the Petitioners in C.P No. 405/KB/2017, seeking to recall the Order dated 24.01.2023 passed by this Tribunal.
 - II. **I.A No. 118/KB/2022:** This Interlocutory Application filed by the Respondents in C.P No. 405/KB/2017, seeks directions upon the Petitioners to provide all relevant documents, including original and photocopies of share certificates, to facilitate reconstruction of the share register of Respondent No. 1 Company and are also required to produce original or authenticated copies of share certificates to substantiate their claim of ownership of 78,166 shares issued prior to 01.04.1994.
 - III. **I.A No. 122/KB/2018:** This Interlocutory Application is filed by the Respondents in C.P No. 405/KB/2017, seeking an enquiry against the Petitioners into offences referred in Section 195(1) (b) of Cr.P.C for giving false evidence in relation to the present proceedings.
 - IV. **IVN. P No. 415/KB/2017:** This Petition is filed by the Petitioners in C.P No. 405/KB/2017 seeking addition of party and interim reliefs.
 - V. **CONT. A. No. 449/KB/2017:** This Contempt Application is filed by the Petitioners in C.P No. 405/KB/2017, seeking show cause notice to be issued to the Respondents under the Contempt of Courts Act, 1971, for willful and intentional

violation of order dated 10.08.2017 passed by this Tribunal.

- VI. **I.A No. 477/KB/2017:** Demurer application filed by the Respondents in C.P No. 107/KB/2023, seeking rejection of the main Company Petition on the ground of limitation.

C.P No. 405/KB/2017

4. The Petitioner, Kishore Kejriwal has preferred this petition under Section 241, 242, and 244 of the Companies Act, 2013 (“**Act**”) complaining of acts of oppression and mismanagement against respondent no. 2, 3, 4 and 5 with respect to the affairs of the respondent no. 1 (“**Company/ R-1**”). The Petitioners *inter alia* seek the following reliefs:

- a) *A scheme be framed for management and administration of the Company;*
- b) *Respondent No. 2 to 4 be removed as Directors of the Company and be restrained from acting or holding themselves out as Directors of the Company;*
- c) *Declaration that the Petitioner Nos. 1 and 2 hold 35,000 and 3,47,666 Equity shares respectively of and in the said Company before the Rights issue and consequently 52,500 and 5,21,499 Equity shares respectively of and in the said Company after the Rights issue.*
- d) *The purported transfer of shares on 31 March, 30th June, and 3rd September, 2014 be cancelled;*
- e) *The Register of members of the Company be rectified in terms of prayers (c) and (d) above;*
- f) *The Annual Returns filed with the Registrar of Companies/MCA for the years 2014 to 2016 and all documents in connection therewith be adjudged null and void;*
- g) *Injunction restraining the Respondents from giving any effect*

or further effect to the resolution passed at the Board meeting on 30th December, 2014 in any manner whatsoever,

- h) Injunction restraining the Respondents from dealing with and/or transferring and/or surrendering the tenancy Rights in the showroom situated at 9 Jagmohan Mullick Lane, Kolkata-700007 and the factory land situated at 13/15 Jadulal Mullick Road, Kolkata 700006 in any manner whatsoever;*
- i) Mandatory injunction calling upon the Respondents to disclose records, documents, books of accounts of the Company, all statutory records, register of members and minutes books;*
- j) Injunction restraining the Respondents from altering and changing the shareholding pattern of the Company in any manner whatsoever;*
- k) Injunction restraining the Respondents from conducting the affairs of the Company or intermeddling with the affairs of the Company;*
- l) Injunction restraining the Respondents from operating of the bank accounts of the Company;*
- m) An order of an investigator for conducting investigation into the affairs of the Company and upon submission of report, appropriate order be made under Sections 242 and 243 of the Companies Act, 2013;*
- n) A special officer/administrator be appointed over the affairs of the Company to take charge and custody of all books and records of the Company.*

5. Interim Reliefs sought, inter alia, are as follows:

- a) The facts and circumstances of the present case would clearly show that the Petitioners have a strong prima facie case and the balance of convenience is in favour of orders being passed as prayed for. This is a fit case where ex-parte ad-interim*

orders should be passed.

- b) The Petitioners have been reliably informed that there is an imminent threat of alteration of the shareholding structure of the Company.*
- c) There is also an imminent threat of all existing projects, /assets and properties of the Company being dealt with and the consideration there from being secreted by the Respondents to the detriment of the Petitioners and the Company.*
- d) The only assets of the Company are its business, goodwill, tenancy rights and the properties held and owned by the Company. If the same are dealt with, the Petitioners apprehend that the Company will be reduced to a mere shell and the right of the Petitioners will be irreparably prejudiced and the instant proceedings will be rendered infructuous.*
- e) Unless and until interim reliefs as prayed for are passed, your Petitioners will suffer irreparable loss, prejudice and detriment. There is extreme urgency in the matter and if notice of this application is served upon the Respondents, the Respondents will take steps to prejudice the Petitioners.*

Factual Matrix:

6. The Respondent No.1 Company i.e., Gold Silver Arts Private Limited was incorporated in or about 27th August, 1945. The Registered office of the Company is at 9, Jagmohan Mullick Lane, Kolkata-700007.
7. The Company is primarily engaged in the business of manufacturing and sale of gold and silver jewellery and articles.
8. The Company since the time of its incorporation, has been closely held family company promoted by Haricharan Garodia and Purushottam Das Kejriwal with initial shareholding of 625 and 375

shares respectively. There was implied arrangement and understanding between the Garodia and Kejriwal Family that the business would be carried on in the ratio of 62.5% and 37.5% for the benefit and welfare of the respective families.

9. The Business of the Company was managed and administered by Kejriwals with express, consent and approval of the Garodias who were stationed out of Kolkata since 1960s.
10. The business of the Company had grown, prospered and developed under the able management, guidance, administration and supervision of Kejriwal family till February, 2013 without any form of disputes having arisen between the two families.
11. The Petitioner Nos. 1 and 2 are the son and grandson of Purushottam Das Kejriwal, since deceased being the promoter and one of first subscribers to the MOA and AOA of the Company.
12. The Petitioner Nos. 1 and 2 as on March, 2013 were holding 43,000 and 3,47,666 Equity shares respectively in the Respondent No. 1 Company. After the Rights issue by the Respondent No. 1 Company in or about October, 2014, the Petitioner Nos. 1 and 2 came to hold 9,000 and 4,97,250 Equity shares respectively out of the total issued, subscribed and paid up Share Capital of the Respondent No. 1 Company comprising of about 11.25% of the total shareholding.
13. The Petitioners dispute the number of equity shares allotted to them pursuant to the Rights Issue conducted in October 2014. According to the Respondent No. 1 Company, the Petitioners hold 6,000 and 3,31,500 equity shares respectively. Their shareholding stood at 43,000 and 3,47,666 equity shares respectively as on 31 March 2013, and at 35,000 and 3,47,666 equity shares respectively as on 30 September 2014, i.e., at the time of the Rights Issue. Taking into account the shareholding reflected in the Annual Return as on 31 March 2013, along with the transfer of 8,000

equity shares by Petitioner No. 1, the Petitioners contend that their post-Rights Issue shareholding ought to be 52,500 and 5,21,499 equity shares respectively, constituting approximately 12.75% of the total shareholding of Respondent No. 1 Company.

Submission on behalf of the Petitioners

14. Learned Senior Advocate Mr. Sakya Sen appearing on behalf of the Petitioners would submit that serious disputes have arisen in relation to the Rights Issue conducted in October 2014, wherein the Respondent Company has incorrectly reflected their shareholding as 6,000 and 3,31,500 equity shares respectively, as against their actual holdings. It is contended that, based on the Annual Return as on 31 March 2013 and subsequent transfer of 8,000 shares by Petitioner No. 1, their rightful post-Rights Issue shareholding ought to be 52,500 and 5,21,499 equity shares respectively, constituting approximately 12.75% of the total share capital.
15. It is further submitted that both Petitioners were longstanding Directors of the Company until their removal on 30 September 2013, despite their combined shareholding of about 11.25% and full payment of all calls, thereby qualifying them to maintain the present petition under Section 244 of the Companies Act, 2013. The Petitioners allege that Respondent Nos. 2 and 3, upon intervening in the Company's affairs in early 2013, began interfering with management, levelling baseless allegations, and ultimately sought to assume control on the strength of majority shareholding, culminating in the removal of the Petitioners from directorship at the Annual General Meeting held on 30 September 2013.
16. The Petitioners contend that thereafter Respondent Nos. 2 to 4 conducted Board Meetings at New Delhi with the intent to exclude them from management, despite records being maintained at Kolkata. In relation to the Rights Issue, although the Petitioners

applied for their full entitlement and remitted the requisite amounts, the Company arbitrarily reduced their entitlement through communications dated 15 December 2014 and 30 December 2014, resulting in partial allotment and refund without justification, thereby depriving them of their legitimate share.

17. It is further alleged that upon inspection of statutory records obtained from the MCA portal, several discrepancies and irregularities were discovered, including non-disclosure of 86,500 equity shares in Annual Returns for successive years, and deliberate misstatements designed to favour the majority shareholders. The Petitioners submit that such filings are in violation of Sections 92 and 403 of the Companies Act, 2013. Additionally, the filing of Return of Allotment in Form PAS-3 was delayed and defective, lacking mandatory attachments, and subsequently re-filed, in violation of Sections 39 and 42 of the Act and applicable Rules. The purported Board Meeting for allotment of Rights Shares held at Noida is also alleged to be illegal and in contravention of statutory provisions governing maintenance of records.
18. The Petitioners further allege irregularities in Secretarial Compliance Reports, failure to issue loan confirmations and tax deduction certificates in respect of loans advanced by Petitioner No. 2, and denial of access to financial statements and notices of general meetings post-2016. It is contended that the financial statements from 2013 onwards are unreliable, as reflected in qualified auditor reports highlighting non-compliance with accounting standards.
19. The Petitioners submit that statutory requirements relating to proper recording of Board proceedings have been flouted, with resolutions being marked as "NIL," indicating fabrication of records. They further allege false and incomplete disclosures in statutory forms, particularly with regard to promoter and public

shareholding, in violation of Section 92 of the Act.

20. It is contended that Respondent Nos. 2 to 4 have engaged in continuous acts of oppression and mismanagement, including manipulation of financial records and diversion from established business practices, with the mala fide intention of coercing the Petitioners and other minority shareholders to divest their shares at undervalued prices. The Petitioners further allege that the Company's business is being systematically curtailed, including closure of longstanding operations, termination of experienced staff, cessation of core activities such as gold manufacturing, and shutdown of associated franchise operations.
21. The Petitioners express apprehension that the Respondents are attempting to wind up or sell the business, including disposal of valuable tenancy rights in respect of the Company's showroom and factory premises. It is further alleged that the Respondents have amended the Articles of Association to facilitate transfer of shares to third parties.
22. In conclusion, the Petitioners submit that, despite their substantial shareholding and contribution to the Company's growth, they have been wrongfully excluded from management by the majority shareholders, who lack adequate experience and are acting prejudicially to the interests of the Company. The Petitioners contend that the affairs of the Company are being conducted in a manner oppressive to them and detrimental to the Company's interests, leaving them with no alternative but to seek relief through the present petition, particularly in view of the imminent threat to the Company's business and assets.
23. The Petitioners have relied upon following Precedents to establish a case of oppression and mismanagement:
- I. **Dale & Carrington Invt. (P) Ltd & Another Vs. P.K. Prathapan & Ors., (2005) 1 SCC 212**, to contend that the

issue of additional shares without following proper procedure, without justification by majority shareholders to reduce the shareholding is neither Bonafide nor in the interest of the Company and has to be set aside. The relevant extract is as follows:

“29. In the present case we are concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor has it been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither was the allotment of additional shares in favour of Ramanujam bona fide nor was it in the interest of the company nor was a proper and legal procedure followed to make the allotment. The motive for the allotment was mala fide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

30. Even the Company Law Board found that the allotment of additional shares by Ramanujam to himself was an act of oppression on his part. The Company Law Board drew this conclusion solely for the reason that no offer had been made to the majority shareholders regarding issue of further share capital. The High Court accepted the finding of oppression. However, it placed it on a much broader base by taking into consideration various other factors. The High Court's finding is based on a much stronger footing. In fact, the High Court has gone on to conclude that Ramanujam has played a

fraud on the minority shareholders by manipulating the allotment of shares in his favour.

(Emphasis Added)

II. **Nanlal Zaver Vs. Bombay Life Assurance Company, 1950 SCC 137**, to contend that :

“It is well established that Directors of a Company are in a fiduciary position vis-à-vis the Company and must exercise their power for the benefit of the Company. If the power to issue further shares is exercised by the Directors not for the benefit of the Company but simply and solely for their personal aggrandisement and to the detriment of the Company, the Court will interfere and prevent the Directors from doing so. The very basis of the Court's interference in such a case is the existence of the relationship of a trustee and of cestui que trust as between the Directors and the company.”

(Emphasis Added)

III. **Pearson Education Inc. (formerly Prentice Hall Inc.) Vs. Prentice Hall India P. Ltd. (2007) 136 COMP CAS 294**, to establish that:

“172. Even though the company petition fails and the appeals succeed on the finding that the holding company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting of May 2, were held in accordance with law.”

(Emphasis Added)

IV. **Bharat Bhari Udyog Nigam Ltd. Vs. Jessop & Co. Ltd.**

Staff Association, reported as (2003) 4 COMP LJ 333

(CAL) (Para 23, 31 and 33 to contend that:

“23. Xxxxx the parties cannot be permitted to travel beyond their pleadings and make out a new case on the basis of supplementary affidavits. If this kind of procedure is adopted, then the value of pleadings will have no meaning; and it is likely to prejudice the parties as they may be misled because of the piecemeal presentation of facts by supplementary affidavits filed in the proceedings.”

However, 31. xxxxxx if subsequent development takes place after filing of the proceedings, then they can be taken into consideration provided they are germane to the issue.”

V. **Bachhaj Nahar Vs. Nilima Mandal (2008) 17 SCC 491** (Para 11-13), to contend that:

11. *The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.*

12. *The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its*

consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. *The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.*

(Mauritius) Co. reported as 2007 SCC OnLine Cal 589 (Para-46) :

46. *xxxxx*“when it is said that the case made out by the pleadings is to be considered, it is meant that the case made out in the petition, dealt with in the counter, and explained, clarified, and strengthened by the rejoinder, is only to be considered, not a case not made out in the petition or made out in the rejoinder for the first time.”

Submission on behalf of the Respondents

24. Per Contra Learned Counsel Mr. Rishav Banerjee for the Respondents would submit that the principal grievance of the Petitioners pertains to the alleged under-allotment of shares in the 2014 Rights Issue. It is contended that the shareholding figures relied upon by the Petitioners are based on Annual Returns prepared during the period when the Petitioners themselves were in management and control of the Company (1998–2013). Upon reassuming control in 2014, the Respondents found the Company’s records to be incomplete and disorganized, with several statutory records missing. On reconstruction of records, discrepancies and alleged irregularities attributable to the Petitioners’ period of management came to light, including alleged fraudulent allotments in earlier rights issues and diversion of business.
25. The Respondents submit that, during the 2014 Rights Issue, the Petitioners were repeatedly called upon to produce original share certificates to substantiate their claimed holdings. Despite multiple communications dated 15.12.2014, 30.12.2014, and subsequent reminders, the Petitioners failed to furnish such proof. In compliance with Section 46 of the Companies Act, 2013, the Respondents contend that allotment was restricted to shares duly verified from available records. It is further submitted that certain

documents produced by the Petitioners were found to be false, with share certificates already standing in the names of other shareholders.

26. The Respondents further state that only pursuant to orders of this Tribunal in July 2024, the Petitioners produced original share certificates, which revealed that their actual holdings were lower than originally claimed. Thereafter, the Respondents promptly effected transfer/allotment of proportionate shares to the Petitioners, which is duly reflected in the updated shareholding pattern filed before this Tribunal. It is thus contended that no prejudice or pecuniary loss has been caused to the Petitioners and that the primary cause of action no longer survives. The Respondents allege that the Petitioners have made false and exaggerated claims and have approached the Tribunal with unclean hands, thereby disentitling them from any equitable relief and rendering the petition liable to dismissal with costs.
27. The Respondents submit that the allegation regarding surrender of tenancy of premises at 9, Jagmohan Mullick Lane is misconceived. It is contended that the tenancy was surrendered in the ordinary course of business, prior to the filing of the petition, upon relocation to a more commercially viable premises. The Petitioners' contention that consideration ought to have been extracted from the landlord is characterized as untenable and contrary to law. It is thus submitted that surrender of tenancy does not constitute oppression or mismanagement.
28. The Respondents deny the allegation that the Company's business is being closed down. It is submitted that the Company has remained a going concern and has generated profits consistently, as evidenced by its audited financial statements and records placed on affidavit. Any temporary decline in performance is attributed to external factors, including market conditions and the COVID-19 pandemic, as well as alleged diversion of business

by the Petitioners. The Respondents assert that the Company continues to operate its factory, employ staff, and meet statutory obligations, thereby disproving the allegation of business closure.

29. The Respondents further allege that the Petitioners, while acting as Directors, engaged in competing and parallel businesses through separate entities, thereby diverting clients, profits, and business opportunities from the Company in breach of their fiduciary duties. It is submitted that such conduct amounts to conflict of interest, lack of fair dealing, and oppression of the Company and its shareholders. The Respondents rely on documentary evidence to substantiate these allegations and contend that the Petitioners' actions caused financial loss to the Company.
30. It is further contended that certain share allotments claimed by the Petitioners are themselves illegal, including allotments made during minority, and therefore cannot form the basis of any claim. The Respondents submit that the present petition has been filed with ulterior motives to harass and exert pressure upon them, despite the absence of any substantiated case of oppression or mismanagement.
31. In light of the above, the Respondents submit that no cause of action survives and no case under Sections 241–242 of the Companies Act, 2013 is made out. The Company Petition is therefore liable to be dismissed with exemplary costs.
32. The Respondents relied upon following Precedents to establish that no case of oppression and mismanagement could be made out:
- I. **Srikanta Datta Narasimharaja Wadiyar Vs. Sri Venkateswara Real Estate Enterprises (P.) Ltd [1991] 72 COMP CASE 211**, to contend that , it is a settled principle of law that, if the petitioners have approached the court with unclean hand and/or with a false case, the petitioners are

not entitled to any equitable relief from the Court/Tribunal.

- II. **Shri Kishore Kundan Sippy Vs. Samrat Shipping and Transport Pvt. Ltd.** reported in (2004) 118 Company Cases 472 (CLB), where in the Principal Bench of the Company Law Board in 2003 held that an act of running of a parallel business in line of the same business of the company amounts to an act of oppression and mismanagement . It is alleged that it is the petitioners who are guilty of oppression and mismanagement by running a parallel business in a similar line of business of the Respondent No. 1 Company.
- III. **Asoka Betelnut Vs. Chandrakanth - [1997] 88 Company Cases 274 (Madras)**, wherein the Hon'ble Madras High Court followed principles laid down Kalinga Tubes Ltd. v Shanti Prasad Jain [1964] 1 Comp LJ 117 and laid emphasis on the settled legal principle that the facts arising subsequent to the filing of the petition cannot be relied upon and the petition should be judged on the facts alleged therein and existing at the time of presentation of the petition.
- IV. **Sangramsinh P. Gaekwad Vs. Shantadevi P. Gaekwad (2005) 11 SCC 314**, where the Hon'ble Supreme Court held that Section 397 does not provide for a remedy for every act of omission or commission on the part of the Board of Directors. Reliefs must be granted having regard to the exigencies of the situation , and the court must arrive at a conclusion upon analysing the materials brought on records that the affairs of the company were such that it would be just and equitable.
- V. **Jaladhar Chakraborty Vs. Power Tools & Appliances Co. Ltd. - [1994] 79 COMP CASE 505 (Calcutta)**, it was held that a compulsory buy-out cannot be ordered unless oppression or mismanagement is first established, since the buyout remedy exists only to bring an end to matters

complained of under Sections 397 and 398.

I.A No. 42/KB/2023

1. The instant Interlocutory Application has been preferred by Petitioners in C.P No. 405/KB/2017, *inter alia*, praying for following reliefs:

- a) *The order dated January 24, 2023 passed by this Ld. Tribunal comprising of Hon'ble Smt. Bidisha Banerjee (Judicial Member) and Sri Balraj Joshi (Technical Member) be recalled and instant proceedings may kindly be taken up for final hearing as specially orders part heard matter.*
- b) *Such order or orders be passed and direction or directions be given, as this Hon'ble Tribunal may deem fit and proper.*
- c) *Cost.*

2. **Submission of the Applicants/Petitioners:**

- i. At the outset, it is submitted that the share certificates evidencing the shareholding of Petitioner Nos. 1 and 2 were duly placed on record before this Hon'ble Tribunal on 29th June, 2022. Despite the same, the Respondents filed IA No. 118/KB/2022 seeking production of such share certificates at a belated stage, when pleadings had already been completed and the matter was at final hearing. The said application is an abuse of the process of law and is liable to be rejected.
- ii. It is further submitted that the Respondents have suppressed material facts and misled this Hon'ble Tribunal. The share register reflecting the actual shareholding, extracts whereof were disclosed in the Company Petition as Annexure 'M', was never produced by the Respondents. An incorrect impression was created that the original share certificates were missing, whereas statutory records reveal

that the same remained in their custody.

- iii. The present application has been filed seeking recall of the order dated 24th January, 2023 passed by this Hon'ble Tribunal in IA (COMPANIES ACT) No. 118(KB)/2022, which was filed by the Respondents nearly two years after completion of pleadings and when the matter had already been marked as part-heard.
- iv. It is submitted that the said order dated 24th January, 2023 was obtained by practicing fraud upon this Hon'ble Tribunal, by making misleading submissions and without proper service upon the Petitioners. In the circumstances, the said order is liable to be recalled, and the matter be restored for final hearing as a part-heard matter.

I.A No. 118/KB/2022

1. The instant Interlocutory Application has been preferred by Respondent No. 1 in C.P No. 405/KB/2017, *inter alia*, praying for following reliefs:
 - a) *That the Hon'ble Tribunal May direct the Respondents in the Application to provide Inter-alia with all relevant information and Documents (share certificate original and photocopy of both sides) in possession of the Respondents in the Application for the purpose of recreation of the share register of the respondent no 1 company.*
 - b) *That the Hon'ble tribunal may direct the Respondents in the Application to produce the share certificates (both sides) or Authenticated photocopies of the same to establish their claim of owning 78,166 shares with serial numbers between 1-5,00,000 issued before 1.4.1994.*
 - c) *The Applicant state that the Company Petition no 405/KB/2017 has been pending since 2017 and the*

*Applicant pray for an expeditious hearing of the Company
Petition and disposition of the Company Petition*

- d) *Direct the Petitioners in the main Company Petition no
405/KB/2017 to transfer the shares, subject matter of this
application, to the benefit of the Respondents/Applicant*
- e) *Such further orders and/or directions be passed as this
Hon'ble Tribunal deems it and proper.*

2. Contentions of the Applicant/Respondent:

- i. Respondent No. 1 Company is engaged in the business of manufacture and sale of gold and silver jewellery articles. The Company was promoted by Late Shri Haricharan Garodia and Late Shri Purushottam Das Kejariwal, who were also the original subscribers to the Memorandum and Articles of Association of the Company.
- ii. Upon incorporation, the shareholding of Late Shri Haricharan Garodia and his nominees was 67%, while that of Late Shri Purushottam Das Kejariwal and his nominees was 33%. As on 31st March, 1994, the majority shareholding remained with the Garodia family. Prior to 31st March, 1994, shares were issued in four tranches as follows:

Date of Allotment	No. Shares Allotted
01.03.1946	60,000
30.01.1947	60,000
17.03.1981	1,80,000
31.03.1994	2,00,000
Total	5,00,000

- iii. From its inception, the business of the Company was managed by Late Shri Haricharan Garodia. Mr. Kaluram Ladhania, an employee and confidant of the Garodia family who was appointed as a Director, looked after the day-to-day

operations of the Company along with Late Shri Purushottam Das Kejariwal, under the overall supervision of Late Shri Haricharan Garodia.

- iv. Thereafter, in the mid-nineties, Mr. Kishore Kejriwal and his son Mr. Sanjiv Kejriwal were inducted into the business and assumed control of the management of the Company. During this period, the Respondents in this application were in complete control of the affairs of the Company and were responsible for its management, including filing of Annual Returns and maintenance of statutory records.

3. Submission of the Learned Counsel for the Applicants/Respondent:

- i. Ld. Counsel submits that Kishore Kejariwal & his son, Sanjiv Kejariwal increased their shareholding by 22,500 shares to a total of 78,166 in place of 55,666 actually held by them. Upon inspection it was found that the Petitioners fraudulently stated the shareholding pattern in the Annual Return of the Company for the year 2006 and 2007 as represented in the following table:

Name of Shareholders	No. of Shares held	Garodia Family (Actual Share)	Kejriwal Family (Actual Share)
Garodia Family	3,12,500	3,35,000	
Shyam Sunder Kejriwal	54,666		54,666
Prakash Chandra Kejriwal	54,668		54,668
Kishore Kejriwal/ Sanjiv Kejriwal	78,166 (55666+22500)		55,666
Total of Kejriwal Family	1,87,500	3,35,000	1,65,000

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

**CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022**

% of Shares		67%	33%
-------------	--	-----	-----

- ii. Ld. Counsel would submit that the shareholding pattern stated in the Annual Return of the Company for the year 2006 and 2007 could never have been the case as the members of the Garodia family are in physical possession of the Share Certificates evidencing ownership of 3,35,000 Shares. Accordingly, the Kejariwal Family could only hold, in the aggregate 1,65,000 shares at this time.
- iii. Ld. Counsel submit that in the year 2008, Mr. Kishore Kejariwal and Mr. Sanjiv Kejariwal proposed augmentation of the Company's working capital from Rs. 5 lakhs to Rs. 30 lakhs by way of a rights issue in the ratio of 5:1. It was represented that the Kejariwal family held 37.5% shares and that Mr. Kishore Kejariwal, being one of the sons, was entitled to 12.5% of the rights entitlement. However, pursuant thereto, 3,12,500 shares were allotted to Mr. Sanjiv Kejariwal, whereas the combined entitlement of him and his father was only 2,73,330 shares (being $55,666 \times 5$), resulting in an excess allotment of 34,170 shares. Due to the information being received about misappropriation and mismanagement, the Applicant assumed Management control with effect from 1 st July 2013.
- iv. Ld. Counsel submit that to avoid detection of the above stated fraud the Respondents/Petitioners took away the shareholders register and other statutory registers. A diary about the missing shareholders register was lodged in october 2015 and a copy of the same is annexed as Annexure-C.
- v. Ld Counsel submit that in 2014, a further rights issue of 1:2 was undertaken, pursuant to which 17,085 shares were allotted on the 34,170 shares allegedly acquired in 2008.

However, upon examining the claim of rights entitlement on the purported holding of 78,166 shares (pre-01.04.1994), serious discrepancies arose, as the other brothers held only 54,668 and 54,666 shares respectively. Despite repeated requests over the past eight years, Kishore Kejariwal and Sanjiv Kejariwal have failed to produce photocopies of their shareholdings, clearly indicating concealment of material facts.

- vi. Ld. Counsel submit that in the year the Applicant, Mr. Balkrishna Garodia, undertook the exercise of physically collating all share certificates issued prior to 01.04.1994 belonging to the Garodia family to reconstruct the Share Register and Register of Members, which had been removed by the Petitioners to conceal fraudulent share transfers. The certificates were collected from various locations where family members reside.
- vii. Ld. Counsel submit that upon completion of this exercise, it was found that the Garodia family holds physical share certificates totaling 3,35,000 shares out of the 5,00,000 shares issued as of 31.03.1994. The remaining 1,65,000 shares are reasonably attributable to the Kejariwal family. Copies of the collated share certificates are annexed as Annexure D.
- viii. In light of the above, it has become necessary for the Applicant to reconstruct the Share Register of Respondent No. 1 Company due to clear instances of misappropriation and fraudulent manipulation of shareholding.
- ix. The Respondents/Petitioners have acted illegally and fraudulently by misrepresenting their shareholding in filings made before the Registrar of Companies while in control of the Company. Such conduct constitutes oppression, mismanagement, and fraud, depriving the Applicant of their

rightful shareholding and entitlement to rights issues.

- x. On 30.06.2022, Company Petition No. 405/KB/2017 was listed for hearing. Both parties expressed willingness to explore settlement, and time was granted by the Hon'ble Tribunal. The matter was subsequently listed on 05.08.2022 and 02.09.2022 but could not be taken up due to paucity of time. No progress has since been made toward settlement. Relevant orders are annexed as Annexure E.
- xi. The Applicant respectfully prays that this Hon'ble Tribunal direct the Petitioners to produce the original share certificates. Such directions would facilitate expeditious disposal of the Company Petition and address the grievances raised herein.

4. Reply-Affidavit of the Respondent/Petitioner No. 1

- i. Ld. Counsel would submit that the Respondent/Applicant has sought to invoke Rule 43 of the National Company Law Tribunal Rules, 2016; however, such reliance is wholly misconceived and untenable in law. The said provision does not confer any right upon a party to introduce new facts at this belated stage of the proceedings so as to alter or supplement the case set out in the reply affidavit. The power under Rule 43 is vested solely in the Hon'ble Tribunal to call for further information or evidence, and the exercise of such power lies within the discretion of the Bench in appropriate cases. The same cannot be invoked at the instance of a party. In any event, the documents sought to be produced are already on record before this Hon'ble Tribunal, and therefore, the present attempt is unwarranted and liable to be rejected.
- ii. Ld. Counsel would submit that the Respondents/Petitioners have already put on record their share certificates by way of supplementary affidavit dated 29.06.2022. From the perusal

of these certificates, it is evident that the P-1 is legally holding 27,000 shares and P-2 is holding 3,45,000 shares in the R-1 Company, which can also be substantiated from the relevant records disclosed by the petitioners in the company petition. A copy of the said affidavit dated 29.06.2022 is attached as Annexure-B.

- iii. Ld. Counsel would submit that the copy of the present application was not properly served upon the petitioners and purported mail sent to the applicant/respondent was not accessible despite several attempts.
- iv. Ld. Counsel would submit that the respondents have suppressed before the Tribunal the fact that necessary share certificates evincing Petitioners's title have been duly disclosed way back in June 2022. A copy said affidavit dated 30.06.2022 is attached as Annexure-C.
- v. It is submitted that, by way of their Reply/Supplementary Affidavit dated 27.06.2022, the Petitioners had already brought to the notice of this Hon'ble Tribunal that the Respondents/Applicants are seeking to impermissibly enlarge the scope of the present proceedings by introducing new and disputed facts at a highly belated stage, which were never pleaded in the past five years.
- vi. It is further submitted that the alleged disclosure of share certificates by the Respondents/Applicants is a calculated attempt to mislead this Hon'ble Tribunal. The Petitioners are in possession of original share certificates comprising 3,45,000 shares held by Petitioner No. 2 and 27,000 shares held by Petitioner No. 1. Insofar as 8,000 shares of Petitioner No. 1 and 2,666 shares of Petitioner No. 2 are concerned, the same have been lost, and complaints in that regard were duly lodged with the concerned police station. Copies of such complaints were already placed on record in the Company

Petition and have been reiterated in the Reply Affidavits filed on behalf of the Petitioners on 30.06.2022.

I.A No. 122/KB/2018

1. The instant Interlocutory Application has been preferred by Bal Krishan Garodia the Respondent No. 1 in C.P No. 405/KB/2017, against the Petitioners *inter alia*, praying for following reliefs:

- a) *Enquiry be made into offences referred to in Section 195(1)(b) of Cr. P. C. in relation to the present proceedings by the respondent for giving false evidence;*
- b) *Upon holding enquiry in terms of prayer (a) above, record a finding that the respondents have given false evidence and has committed offences under section 195(1)(b) of the Cr. P. C.;*
- c) *Make a complaint against the respondents in writing;*
- d) *Send the complaint recorded by this Hon'ble Court in terms of prayer (b) above to the Metropolitan Magistrate, Court, Kolkata;*
- e) *The respondents be directed to furnish security/ securities that may be sufficient by the Hon'ble Court for their appearance before the Court Metropolitan Magistrate Court, Kolkata;*
- f) *Upon failure of the respondents to furnish security in terms of prayer (e) above, the respondents herein be committed to prison:*
- g) *Alternatively, to prayer (f) above, the respondents be committed to custody and be produced before the Learned Metropolitan Magistrate, Kolkata;*
- h) *Ad interim orders in terms of prayers above;*
- i) *Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem, fit and proper.*

2. Case of the Applicant/Respondents

- i. Mr. Jishnu Chowdhury the Ld. Counsel for the applicant would submit that the contention of respondents herein that P-1 and P-2 are the owners of the shares mentioned in Paragraph "21" of the rejoinder (attached as Annexure- C) affidavit and the shares certificates have been lost, wholly false and incorrect since these shares have been transferred to the applicants herein and the applicants are in possession of some of the original share certificate (attached as Annexure- D) and the same shall be produced at the time of hearing of the company petition.
- ii. Ld. Counsel would further submit that R-1, herein, has affirmed the said affidavit and the R-2 has authorized the R-1 to file the reply affidavit. Therefore, the respondents herein are responsible for false evidence being deposed on affidavit knowing the same to be false.
- iii. Ld. Counsel submit that in such circumstances, it would be expedient and in the interest justice that an enquiry should be made into the offences referred to in clause (b) of sub section 1 of section 195 of the Cr.P.C., which has been committed by the respondents herein in respect of evidence given in this proceedings.
- iv. Ld. Counsel would further submit that this Tribunal may be pleased to record a order to this effect and thereafter make a complaint in writing and the same shall be forwarded to Magistrate Court for proper adjudication of the matter.

3. Reply of the Respondent/Petitioner

- i. Ld. Counsel for the respondent (Petitioner in CP) on the other hand would refute the contention that there is no such reason to doubt the veracity of the contents of paragraph 21

of the rejoinder affidavit and the same can be verified from the original share Register of Members produced before this Tribunal. It is further denied that the persons who are responsible for the aforesaid mentioned false evidence and perjurious statements are the respondents as alleged.

- ii. Ld. Counsel submits that the position of the shareholders as reflected in the annual return for 2013 will also be corroborated from the letters issued by the Board of the R-1 Company as on 07.10.2014 being Annexure-G to the Company Petition which records, inter alia, that the P-1 and P-2 are the owners of 43000 and 347666 equity shares respectively.
- iii. Ld. Counsel further submit that the original share register maintained by the R-1 Company be called for and the same will corroborate the statement that P-1 and P-2 are the owners of 43000 and 347666 equity shares respectively as on 30.09.2013.

4. Affidavit in Reply Applicants/Respondents

- i. It is submitted that Annexure "M" to the Company Petition is denied as being the correct share ledger of the Company, the same being a fabricated document containing incorrect entries, particularly in respect of the shareholding of Kishore Kejriwal and Sanjeev Kejriwal. The contents of the police diary annexed as Annexure P-3 to the Rejoinder Affidavit are also denied as incorrect and unreliable. It is asserted that the original Register of Members was removed by the Petitioners, as recorded in the contemporaneous complaint dated 18.10.2015, and is not in the possession of the Respondents; hence, no question of its production arises. It is further submitted that any such register, if now produced, is likely to be interpolated and fabricated. The allegations regarding misplaced shares of 4,000 and 666 equity shares

are denied, and it is asserted that the said shares do not belong to the Petitioners. All allegations regarding falsity of statements made by the Respondents are denied.

- ii. It is further submitted that the annual returns filed pursuant to the AGM dated 30.09.2013, insofar as they relate to the shareholding of Kishore Kejriwal and Sanjeev Kejriwal, cannot be relied upon, having been filed at the behest of the Petitioners. The authenticity and veracity of documents filed with the Registrar of Companies are disputed, and reliance on the letter dated 07.10.2014 is specifically denied.
- iii. It is reiterated that the share register was illegally removed by the Petitioners and any document produced by them is unreliable. The allegations regarding the Petitioners' shareholding are denied. It is further denied that the present application is mala fide, mischievous, or liable to be dismissed.
- iv. It is lastly submitted that the allegation that the Company's business suffered due to closure of the showroom at 9, Jagmohan Mullick Lane is false. The audited financials for the year ending 31.03.2018 demonstrate that profits increased from Rs. 12.21 lakhs in 2016-17 to Rs. 23.46 lakhs in 2017-18 owing to cessation of loss-making operations and remedial measures. The Petition is motivated and seeks reliefs detrimental to the Company's business while benefiting the Petitioners' competing interests. Further, the Company's growth remains constrained due to the subsisting status quo order, which restricts access to banking facilities.

IVN. P. NO. 415/KB/2017

1. This Petition has been preferred by Petitioners in C.P No.

405/KB/2017, *inter alia*, praying for following reliefs:

- a) *The Landlord viz. Estate Sewprasad Poddar Owner: Dwarkadas Shankarlal Motilal Kishorilal Poddar and Manish Saraf be added as party respondents in the said C.P. No. 405/KB/2017;*
- b) *An order of injunction be passed restraining the Respondent No.1 Company from handing over possession to the Landlord viz., Estate Sewprasad Poddar Owner: Dwarkadas Shankarlal Motilal Kishorilal Poddar (proposed to be added as Respondent as per prayer (a) above);*
- c) *An order of injunction restraining any third party to be inducted in possession of the tenanted showroom;*
- d) *A Special Officer be appointed to make inventory of the show room situated at 9, Jagmohan Mullick Lane, Kolkata 700007 and to take formal symbolical possession thereof.*
- e) *An order of injunction be passed restraining Respondent the Company, their men, agents, servants or assigns either by from themselves and/or through their assigns making any construction repairing, addition, alteration work at the said show room in question in any manner whatsoever and/or from changing the nature and character of the said show room at 9, Jagmohan Mullick Lane, Kolkata 700007.*
- f) *Ad interim order in terms of prayers (a) (b), (c), (d) and (e) above.*
- g) *Such further or other order or orders be passed and/or direction or directions be given as this Learned Tribunal may deem fit and proper.*

2. Submission on behalf of the Petitioners

- i. It is submitted that despite the status quo orders dated 10.08.2017 and 17.08.2017 passed by this Hon'ble Tribunal

restraining the Respondent No. 1 Company from surrendering or transferring tenancy or handing over possession of the tenanted showroom, the Respondents have acted in wilful violation thereof by removing assets, records, furniture, computers, and even the signboard from the premises with a view to facilitate unlawful surrender of tenancy. Photographs taken before and after the said order clearly evidence such acts and are annexed as Annexures “D” and “E”. The Petitioners were constrained to lodge representations dated 24.08.2017 and 02.09.2017 with the Officer-in-Charge, Posta Police Station, and to issue notice dated 02.09.2017 calling upon the Respondents to comply with the Tribunal’s order; however, the violations have continued unabated.

- ii. It is further submitted that the Respondents, in collusion with the landlord, are seeking to defeat the subsisting orders by effecting an illegal surrender of tenancy and inducting a third party, namely Manish Saraf, with a substantial financial consideration. Such steps have been undertaken post the order dated 10.08.2017 and are aimed at rendering the proceedings infructuous. The Respondent Company, while continuing in possession, is attempting to create third-party rights and alter the nature of the tenancy, warranting immediate restraint and impleadment of the landlord and the proposed inductee as necessary parties.
- iii. It is submitted that the conduct of the Respondents also stands contradicted by their own records. While the Directors’ Report dated 05.09.2017 states that there were no material changes affecting the financial position, the notice of AGM dated 06.09.2017 reflects a change in the registered office, thereby demonstrating inconsistency and lack of bona fides. In law, no valid surrender of tenancy can occur without

complete relinquishment of possession, which admittedly did not take place as on 10.08.2017. The tenancy, therefore, continues to subsist in favour of the Respondent Company.

- iv. In the circumstances, it is necessary to preserve the status prevailing as on 10.08.2017 by restraining the Respondents from parting with possession, creating third-party interests, or carrying out any alteration or renovation at the premises. It is further expedient that a Special Officer be appointed to take inventory and symbolic possession of the showroom to safeguard the assets and tenancy rights pending adjudication. Unless appropriate interim reliefs are granted, the Petitioners will suffer irreparable loss and the orders of this Hon'ble Tribunal will be rendered nugatory.

3. Affidavit-In-Opposition on behalf of the Respondent No. 1, 3 and 4

- i. It is submitted that the tenancy rights of the Respondent Company were validly surrendered in favour of the landlord on 03.08.2017, i.e., prior to the interim order dated 10.08.2017, and consequently, the Company had ceased to be in possession of the premises. The allegations that no documents evidencing such surrender exist or that the Respondents have misled this Hon'ble Tribunal are wholly baseless. On the contrary, it is the Petitioners who have obtained orders by suppressing material facts. The Respondents have filed a detailed reply affidavit as well as an application for dismissal of the Company Petition on multiple grounds. Allegations regarding any writ petition involving one Manish Saraf are denied for want of knowledge and, in any event, are irrelevant to the present proceedings. Upon lawful surrender, the landlord is entitled to deal with the premises in any manner, and the Petitioners have no locus to challenge the same.

- ii. It is further submitted that the Respondents have not removed any assets, records, or movable items from the premises in violation of the Tribunal's orders, nor have they acted in contempt thereof. The photographs relied upon by the Petitioners are illegible, undated, and of doubtful authenticity, and do not evidence any wrongful act. The representations made to the police authorities and the notice dated 02.09.2017 are false, mala fide, and intended to prejudice the Respondents. All allegations of removal of signboards or assets during the subsistence of the status quo order are specifically denied.
- iii. It is denied that the Respondents have acted in collusion with the landlord or any third party, or that any arrangement exists for induction of a third party such as Manish Saraf or for receipt of any financial consideration. Such allegations are vague, unsubstantiated, and made with mala fide intent. The surrender of tenancy was lawful and not in violation of any order of this Hon'ble Tribunal. The Company is no longer in possession, and no third-party rights have been created at its instance. The Petitioners' prayer for impleadment of the landlord or any third party is misconceived and beyond the scope of proceedings under Sections 241 and 242 of the Companies Act, 2013. No grounds exist for grant of injunction or any interim relief, and the present application is an abuse of process.
- iv. It is further submitted that the reference to the registered office at 9, Jagmohan Mullick Lane in the financial statements for 2016-17 is a clerical error. The registered office had already been changed on 25.07.2017 and duly intimated to the Registrar of Companies. There is no misrepresentation in the Director's Report. In view of the prior surrender of tenancy and delivery of possession, the

Company has no subsisting rights in the premises, and the question of preserving possession or appointing a Special Officer does not arise. Allegations regarding repairs or alterations are outside the knowledge of the Respondents and, in any event, irrelevant. The application is devoid of merit, based on vague and afterthought allegations, and is liable to be dismissed.

4. Affidavit-In-Reply on behalf of the Petitioners

- i. It is submitted that the Respondents had no involvement in the business of the Company since inception until February 2013, and it was only thereafter that they assumed control, following which the business declined and was ultimately brought to a standstill, including closure of the Titan showroom in June 2017 and cessation of gold and silver business operations in 2017. The contention that the Petitioners had no contribution to the business is denied. The Respondents' own assertion regarding surrender of tenancy clearly establishes that the business has been shut down, thereby substantiating the Petitioners' case.
- ii. It is further submitted that the alleged surrender of tenancy did not occur prior to the interim order dated 10.08.2017, and any purported surrender thereafter is illegal, void, and in violation of the said order. As on the date of the order, the Company was in actual physical possession of the showroom, and there was no complete surrender in law. The Petitioners deny any suppression of facts and reserve the right to address the Respondents' dismissal application at the appropriate stage. The Petitioners, being shareholders, have the locus to challenge such surrender, as the tenancy constitutes a valuable asset of the Company, and its relinquishment adversely affects the value of their shareholding and results in closure of the Company's only

place of business.

- iii. It is submitted that the Respondents have acted in breach of the Tribunal's order, as evidenced by photographs demonstrating removal of assets and signboard even after 10.08.2017. The authenticity of such photographs is supported by contemporaneous indicators, and the allegations disputing them are denied. The representations made to the police authorities and the notice dated 02.09.2017 are bona fide, and the Respondents' failure to respond thereto further supports the Petitioners' case.
- iv. It is further submitted that the Respondents have failed to disclose any justification for surrendering such a valuable asset without consideration, which itself indicates mala fide intent and possible personal benefit. The denial of any financial benefit is not credible. In view of the Respondents' admission of surrender post the interim order, the presence of the landlord is necessary for effective adjudication, and impleadment is warranted. The allegations that the Petitioners are acting mala fide or that the application is an abuse of process are denied.
- v. It is lastly submitted that the purported change of registered office on 25.07.2017 constitutes further mismanagement. The claim that possession was handed over on 03.08.2017 is denied, as no supporting document has been produced and possession continued with the Company as on 10.08.2017. The Respondents are taking inconsistent and dishonest stands to circumvent the Tribunal's order. Allegations of lack of knowledge regarding ongoing renovation are also denied. The application is bona fide and necessary for protection of the Petitioners' rights.

CONT. A. NO. 449/KB/2017

1. The Contempt Application has been preferred by Petitioners in C.P No. 405/KB/2017, *inter alia*, praying for following reliefs:

a) *Rule may be issued by this Hon'ble Tribunal, calling upon the Contemnors/Respondents to show cause as to why they shall not be committed to prison and/or punished and/or suitably dealt with under the Contempt of Courts Act, 1971, for their willful, deliberate, intentional and contumacious violation of the solemn order dated 10th August, 2017 passed by this Hon'ble Tribunal in the said C.P No. 405/KB/2017 in the following manner:*

- i. *By not acting in compliance with the order passed by this Hon'ble Tribunal;*
 - ii. *By removing from the tenanted showroom all its assets, records, computers, furniture, nameplate/signboard and other movable items which were lying in the said showroom and was belonging to the Respondent company with a view to illegally and wrongfully hand over possession upon surrendering the tenancy.*
- b) *Rule may be made absolute after perusing the show cause, if any.*
- c) *Ad interim order directing the Contemnors/Respondents to act in strict compliance with the said order dated 10th August 2017 and not to disturb with the tenancy rights of the Respondent Company existing as on the date passing of the said order.*
- d) *Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble may deem fit and proper.*

2. Facts of the Case:

- i. The principal grievance of the Petitioners against Respondent

Nos. 2 to 5 pertains to acts of alleged mismanagement and oppression, particularly their attempt to permanently close down the business of Respondent No. 1 Company. The Company had flourished under the active management and participation of the Petitioners and/or their predecessors from 1945 to 2013. It is the Petitioners' case that since 2013, when the Respondents allegedly took control of the Company by clandestinely ousting the Petitioners from the Board, they have shown no interest in carrying on its business. This is reflected in the Company's performance and the declining sales turnover in its accounts.

- ii. Since 2013, the business of the Respondent Company has exhibited a consistent declining trend. The gold and silver articles business of its sister concern was discontinued with effect from the financial year ending 31 March 2015. The intention of the Respondents to permanently close down the business is further evidenced by the gradual depletion of inventory between 2012 and 2016, as detailed in the Company Petition. Additionally, most of the experienced staff were terminated, and the gold business was virtually discontinued from 2017 onwards. The Petitioners apprehend that Respondent Nos. 2 to 4, being aware of the substantial value of the tenancy rights in respect of the shop premises at 9, Jagamohan Mullick Lane, Kolkata-700007 and the factory land at 13/15, Jadunath Mullick Road, Kolkata-700006, may seek to transfer or surrender such rights to derive financial benefit. As these tenancy rights constitute the only significant tangible asset of the Company, any such action would render the Company asset-less and reduce it to a shell entity, thereby eroding the value of the shares and causing prejudice to the Petitioners. On these grounds, the Petitioners sought interim relief in Company Petition No.

405/KB/2017.

3. Submission of behalf of the Applicants/Petitioners:

- i. The Petitioners submit that the petition was first moved before the Hon'ble Tribunal on 10th August, 2017. Upon hearing the Petitioners, the Tribunal was satisfied that a prima facie case had been made out and passed an interim order directing the parties to maintain status quo with regard to the tenancy rights of Respondent No. 1 Company.
- ii. The Learned Advocate for the Petitioners, upon obtaining a copy of the order dated 10.08.2017, duly communicated the same to the Contemnors/Respondents, who acknowledged receipt thereof.
- iii. On the returnable date, i.e., 17th August, 2017, the Respondents appeared and contended that the Respondent Company was no longer in possession of the tenanted showroom at 9, Jagamohan Mullick Lane, Kolkata-700007. The said contention was denied by the Petitioners. The Respondents failed to produce any document in support of their claim. Accordingly, the Hon'ble Tribunal directed filing of affidavits and extended the interim order.
- iv. Despite receipt of the order, the Contemnors/Respondents failed and/or neglected to comply with the same. The Petitioners' Learned Advocate-on-Record, by communication dated 2nd September, 2017, informed the Contemnors/Respondents that they were removing articles, goods, furniture, computers, etc. from the tenanted showroom and had also removed the signboard and nameplate of the Respondent Company affixed at the entrance, which existed as on 10th August, 2017. The said signboard/nameplate was removed on or about 27th August, 2017.

- v. The Petitioners further submit that they have come to learn that substantial repair, renovation, addition, and alteration works are being carried out in the said tenanted showroom with the intent to change its nature and character.
- vi. The Contemnors/Respondents were fully aware of the order dated 10th August, 2017, yet have willfully, deliberately, and contumaciously violated the same.
- vii. The Petitioners submit that the possession as on 10th August, 2017 ought to be preserved. On that date, the tenancy subsisted in favour of the Respondent Company, which was in actual physical possession of the premises. The subsequent claim of surrender of tenancy is untenable, as no such surrender occurred on the said date. In law, surrender of tenancy requires complete relinquishment of possession, which did not occur on 10th August, 2017.
- viii. The Petitioners submit that the Contemnors/Respondents have, in an illegal and unauthorized manner, attempted to overreach and circumvent the order dated 10th August, 2017, thereby committing gross contempt of this Hon'ble Tribunal.

I.A NO. 447/KB/2017

1. This Interlocutory Application has been preferred by Respondents in C.P No. 405/KB/2017, *inter alia*, praying for following reliefs:
 - a) *Applicants humbly pray that the company petition being C. P. No. 405 of 2017 be dismissed and/or rejected by this Hon'ble Tribunal;*
 - b) *Stay of all further proceedings in C. P. No. 405 of 2017, till adjudication of this instant application by this Hon'ble Tribunal;*
 - c) *Stay of operation of the ex-parte ad-interim order dated 10th August, 2013 passed by this Hon'ble Tribunal in C. P. No. 405*

of 2017, till adjudication of this instant application;

- d) Any other interim order as this Hon'ble Tribunal may deem fit and proper;*
- e) Such further order or orders be passed, direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

2. Submission of the Applicants/Respondents:

- i. Ld. Counsel submit that the allegations forming the basis thereof predominantly pertain to a period beyond three years prior to the filing of the Company Petition, including the Board Meeting dated 22nd April, 2013 and events occurring between March and September, 2013.
- ii. The Petitioners have also challenged the transfer of shares dated 31st March, 2014 and 30th June, 2014 and have sought consequential reliefs in respect thereof.
- iii. It is submitted that the present petition was filed on or about 7th August, 2017, nearly four years after the Annual General Meeting held on 30th September, 2013, at which the Petitioners were removed and/or voted out as Directors of the Company, which constitutes the primary cause of action.
- iv. In view of Section 433 of the Companies Act, 2013, the provisions of the Limitation Act, 1963 are applicable to proceedings before this Hon'ble Tribunal.
- v. In the aforesaid facts and circumstances, the present Company Petition is ex facie barred by limitation and is liable to be rejected on this ground alone.
- vi. The present application is confined to the issue of limitation. The Applicants crave leave to file a detailed reply to the merits of the allegations, if required.
- vii. It is further submitted that the question of maintainability, including limitation, ought to be decided as a preliminary issue. Pending such adjudication, all further proceedings in

the Company Petition deserve to be stayed.

3. Affidavit on behalf of the Respondents/Petitioners:

- i. It is denied that the allegations in the Company Petition pertain predominantly to a period beyond limitation. The principal challenge of the Petitioners relates to the rights issue initiated by letter dated 7th October, 2014 and approved by Resolution dated 30th December, 2014, whereby the Petitioners' shareholding was allegedly diluted.
- ii. It is submitted that the grievances arising out of the said rights issue, including the alleged reduction of the Petitioners' shareholding from 12.75% to 11.25%, constitute the main acts of oppression and mismanagement complained of, all of which fall within the period of limitation.
- iii. It is further submitted that another principal act of alleged mismanagement is the closure of the Company's business from the showroom at 9, Jagmohan Mullick Lane, Kolkata-700007 in or about August, 2017, along with steps taken for surrender of the tenancy rights therein, being a valuable asset of the Company. The petition was filed immediately upon knowledge of such acts.
- iv. In the circumstances, the cause of action is based on continuing and subsequent acts of alleged oppression and mismanagement occurring after October, 2014, and the present petition is within limitation.
- v. The inclusion of share transfers dated 31st March, 2014 and 30th June, 2014 does not render the entire petition time-barred, particularly when such transfers are not the primary basis of relief and were cited illustratively.
- vi. The principal reliefs sought relate to declaration of shareholding as it stood prior to the Resolution dated 30th December, 2014 and adjudication of the Petitioners' rights

as minority shareholders in light of subsequent acts of alleged mismanagement, including closure of business and surrender of tenancy rights.

- vii. It is reiterated that the Petitioners are no longer seeking reinstatement as Directors. The surviving cause of action pertains to the acts of the Respondents in or about August, 2017, namely closure of the Company's business and alleged transfer of tenancy rights of a valuable asset.
- viii. The Petitioners seek, inter alia, a declaration of their shareholding as it stood immediately prior to the rights issue approved on 30th December, 2014, and adjudication of their rights on that basis. It is therefore denied that the Company Petition is barred by limitation or liable to be rejected on that ground.

4. Reply-Affidavit on behalf of the Applicants/Respondents:

- i. Ld. Counsel denied that there has been any wrong doing or malpractice regarding reduction of the shareholding of the petitioners.
- ii. Ld. Counsel submit that the tenancy of shop at Jagmohan Mallick Lane has been surrendered and such act of cannot be term as an act of oppression and mismanagement.
- iii. Ld. Counsel specifically deny that there is any act of oppression or mismanagement after October, 2014 and further deny that the company petition as a whole cannot be barred by limitation.
- iv. Ld. Counsel deny the submission of the respondent that the business has been closed down or that most valuable assets of the company has been transferred as alleged at all.
- v. Ld. Counsel further submits that the Petitioners have no subsisting cause of action and are not entitled to any of the reliefs sought in the Company Petition, which is liable to be

dismissed as being barred by limitation.

5. We have considered the rival contentions and perused the materials on record.

6. THE DISCERNIBLE FACTS

- i. The grievance of the petitioners in CP 405/KB/2017 is three fold- (i) That lesser numbers of shares was allotted to the Petitioners in the right issue made by the Respondent No. 1 Company in 2014 (ii) Surrender of tenancy right in respect of Premises No. 9, Jagmohan Mullick Lane, wherein the Respondent No. 1 was a tenant (iii) Closure of Business by Respondent No. 1 Company and no profits are being made.
- ii. The Respondent 1 to 4 have challenged the maintainability of CP 405 on the grounds: (i) That the main CP is barred by limitation (ii) That the petitioners has failed to make out a case of Oppression and Mismanagement in CP 405 (iii) That the Petitioners being the Directors of Respondent No. 1 Company were carrying on parallel business which was harming the business of the Company.

7. ANALYSIS AND FINDINGS

- 7.1.** We have heard the Ld. Senior Counsels/Counsels for the parties and perused the materials available on record. We have given our thoughtful consideration to the pleadings and submissions.
- 7.2.** The Companies Act, 2013 does not define the terms “Oppression and “Mismanagement”. The legislature has given no straitjacket formula to determine what defines Oppression and Mismanagement conclusively. Thus, each case must be decided on its own facts, circumstances and merits encircling it.
- 7.3.** Based on the rival contentions advanced by the parties, the primary issues for determination by this Tribunal are as follows:

- 1) Is the Main Company Petition barred by Limitation?
 - 2) Whether the Petitioners are entitled to shortfall shares/additional shares claimed in the petition? And Can the Petitioners claim their right to the shortfall shares or can the petitioner claim ownership of the shares?
 - 3) Were the Petitioners being the Directors of Respondent No. 1 Company were carrying on parallel business which was harming the business of the Company?
 - 4) Is a Case of Oppression and Mismanagement made out?
- 7.4. In the circumstances, it is also apt to refer to the applicable provisions governing the right issue, which is set out below:

62. Further issue of share capital. —

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely: —

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days [or such lesser number of days as may be prescribed] and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the share holders and the company;

(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report 2 [of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed].

*(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode **having proof of delivery** to all the existing shareholders at least three days before the opening of the issue.*

Issue 1 (LIMITATION)

- 7.5.** The Respondents have raised the defence of Limitation in the Main Company Petition, claiming that these claims are barred by limitation and hence are not maintainable.
- 7.6.** In **Surinder Singh Bindra v. Hindustan Fasteners (P) Ltd., AIR 1990 Delhi 32**, the Hon'ble High Court of Delhi was of the following opinion:

"It is thus clear that there have to be continuous acts complained of continuing up to the date of the petition showing that the affairs of the company are being conducted in a manner oppressive to some part of the members or in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company. Examined in this view, it, therefore, cannot be said that the events which occurred three years prior to the date of filing of the petition cannot be looked into if those events form continuous acts complained of, continuing up to the date of the petition. Therefore, though I am of the view that the provisions of article 137 of the Schedule to the Limitation Act, 1963, are applicable to a

petition under section 397 and/or section 398 of the Act, I am in respectful disagreement with the view expressed by the aforesaid Calcutta High Court decision that the events prior to the period of three years of the date of filing of the petition cannot be looked into.”

These can be looked into if they form part of a continuous process continuing up to the date of petition showing that the affairs of a company are being conducted in a manner stipulated in sections 397 and 398 of the Act. This, in fact, is the requirement of these, provisions. Further, if the acts complained of form part of the same transaction constituting oppression or mismanagement, these acts can also be looked into even if they occurred three years prior to the institution of the petition. Same will be the case if the conduct arising from even a single wrongful act in a given case is such that its effect will be a continuous course of oppression or mismanagement though the wrongful act occurred three years earlier to the date of filing of the petition. It is something akin to the terminology “continuing cause of action”. Whether events complained of form part of continuous acts or not or form part of the same transaction constituting oppression or mismanagement or effect of a particular wrongful act is a continuous course of oppression or mismanagement or the wrongful act is stale or is an isolated event, would all be different questions to be determined. To this extent, therefore, the preliminary objection regarding maintainability of the present petition on the ground of limitation is overruled, This exercise about the applicability of the provisions of the Limitation Act, 1963, to the application under sections 397 and 398 of the Act, would now appear to be academic as, after the Companies (Amendment) Act, 1988, applications under these sections lie before the Company Law Board.”

(Emphasis Added)

- 7.7.** Placing reliance on the above judgement this Court observes that, as held by the Hon'ble High Court of Delhi, past events predating three years from the date of filing a petition under Sections 397 and 398 of the Companies Act, 1956, can still be considered if they form part of a continuous act of oppressive or prejudicial management. We note the critical finding that while the provisions of Article 137 of the Limitation Act, 1963 undeniably apply to such petitions, acts older than three years are not barred from judicial consideration if they are inextricably part of a continuing series of acts or a single transaction that continues to have oppressive or prejudicial effects up to the date of the petition. Consequently, the defense of limitation cannot be relied upon to shield historical corporate misconduct when such actions constitute an ongoing, unbroken chain of oppression and mismanagement that persists up to the institution of the present proceedings.
- 7.8.** Upon an intrinsic examination of the facts and sequence of events, this court is of the opinion that the events were in a sequence and hence this construes a continuous cause of action.

Determination as to Issue 2

- 7.9.** The petitioners allege that they were allotted reduced shares after the rights issue declared by the Company in December 2014. In a Notice dated 7th October 2014 issued by the respondent No.3 the petitioners holding 43,000 and 3,47,666 equity shares respectively and called upon them for subscribing to rights issue of 15 lakh equity shares or Re. 1/- each at a premium of 1.38 per share in the Ratio of 2:1 for the existing shareholders and their entitlement was stated to be 21,500 and

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

**CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022**

1,73,833 rights shares respectively. This can be seen in the following documents placed on record:

(i) An Application Form in reference with Notice dated 7th October 2014 by the Petitioners sent to them by the Respondent No 3, inviting application for entitlement to 21,500 and 1,73,833 Number of Shares proportionate to its shareholding of 43,000 and 3,47,666 shares in a 2:1 Ratio:

146

Application form

Last date for receipt of application: 31st October, 2014

Issue of 15,00,000 equity shares of Rs. 1 each at par aggregating Rs. 15 Lacs to the equity shares holders on right basis in the ratio of 2 : 1 equity shares for every equity shares held on 30th September, 2014, pursuant to the Board resolution passed in its meeting held on 30th September, 2014

Date _____
To,
The Board of Directors,
Gold Silver Arts Pvt. Limited,
Kolkata.

Dear Sir,

Ref: Notice DATED 7th October, 2014, regarding the decision of Board of Directors in its meeting held on 30th September, 2014 to increase the capital by issue of 1500000 equity shares of Rs. 1 each by right offer to share holders as on book closure date 30th September, 2014

1. I/we hereby accept and apply for allotment of the below mentioned Equity shares in response to the letter of offer dated 7th October, 2014 OFFERING the Equity shares to me/us on right basis.

2. I/we also apply for below mentioned additional equity shares and agree to accept these shares as may be decided by the Board of Directors

3. I/we agree to accept the "Equity Shares" allotted to me/us and to hold such shares upon the terms and conditions as laid down by the Board of Directors and subject to the provisions of the Companies Act, 2013, Memorandum & Articles of Association of the Company, and all the applicable laws, rules and guidelines.

4. I/we authorize you to place my/our name(s) on the REGISTER of members.

1 Name of the Share holder(s): Satyaj Kumar Karwal

2 Number of equity shares held : 347666

3 Number of right share entitled : 173833

4 Number of additional shares applied for

5 Total Number of Shares applied for

6 Amount payable with application by a/c payee cheque / DD in favor of the company. Rs. 1 per share applied for.

7 Payment/local cheque/DD details

Sole/first applicant Second joint applicant Third joint applicant

Signature(s) as per specimen recorded with the Company

Regd. Office:

Kishor K. Karwal

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

CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022

(ii) A letter dated 27.10.14 tendering the exact amount payable towards rights issue to acquire 1,73,833 shares in the company.

From:

Date: 27th October'14

147

Sanjiv Kumar Kejriwal
19, B.K.Paul Avenue
Kolkata-700 005

To
The Board of Directors,
M/s Gold Silver Arts Pvt Ltd.
9,Jagmohan Mullick Lane,
Kolkata 700007

Sub: Application for Right Issue

Dear Sir,

With reference to Letter of offer dated 7th October,2014 in the matter of Right Issue of the Company please find attached herewith A/c Payee banker's Cheque no.291426 dated 27/10/2014 drawn on ING Vysya Bank Ltd.Bank,Minto Park, Branch, Kolkata for Rs .4,13,723/- (Rupees Four Lacs thirteen thousand seven hundred twenty three only) towards full application money (including Premium of Rs 1.38 per Share) on 1,73,833 Equity shares of the Company .

You are requested to allot the shares as requested.

Thanking you.


(Sanjiv Kumar Kejriwal)

Enclose: Banker's Cheque no.291426 for rs.413723/-

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

CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022

(iii) Similar Communication from Kishore Kumar Kejriwal (Petitioner Number 1). addressed to the BOD showcasing his rights entitlement of 21500 shares because he holds 43000 shares:

(150)

Application form

Date for receipt of application: 31st October, 2014

Issue of 15,00,000 equity shares of Rs. 1 each, aggregating Rs. 15 Lacs to the equity shares holders on right basis in the ratio of 2:1 to increase the capital by issue of 1500000 equity shares of Rs. 1 each by right offer to share holders as on book closure date 30th September, 2014.

Date: 28/10/14

To:
The Board of Directors,
Gold Silver Arts Pvt. Limited,
23, Park Street, Mullick Lane,
Kolkata - 700004

Dear Sir:

Ref.: Notice / OFFER letter dated 7th October, 2014, regarding the decision of Board of Directors in its meeting held on 30th September, 2014 to increase the capital by issue of 1500000 equity shares of Rs. 1 each by right offer to share holders as on book closure date 30th September, 2014.

- I/we hereby accept and apply for allotment of the below mentioned Equity shares in response to the letter of offer dated 7th October, 2014 OFFERING the Equity shares to me/us on right basis.
- I/we also apply for below mentioned additional equity shares and agree to accept these shares as may be decided by the Board of Directors.
- I/we agree to accept the "Equity Shares" allotted to me/us and to hold such shares upon the terms and conditions as laid down by the Board of Directors and subject to the provisions of the Companies Act, 2013, Memorandum & Articles of Association of the Company, and all the applicable laws, rules, and guidelines.
- I/we authorize you to place my/our name(s) on the REGISTER of members.

1. Name of the Share holder(s): Kishore Kumar Kejriwal

2. Number of equity shares held : 43000

3. Number of right share entitled : 21500

4. Number of additional shares applied for NIL

5. Total number of Shares applied for 21500

6. Amount payable with application by a/c payment (cheque / DD in favor of the company). Rs. 1 per share applied for. Rs. 51170/- (including Premium)

7. Payment/local cheque/DD details DD No. 291427 Dt. 28/10/14 on ING VYSYA BANK FOR Rs. 51170/-

Kishore Kumar Kejriwal *Naiz* *Srujan*

Sole/joint applicant Second joint applicant Third joint applicant

Signature(s) as per specimen recorded with the Company

Head Office:

Certified to be true Copy
[Signature]
Advocate



Kishore K. K.

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

CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022

(iv) A letter dated 28.10.14 tendering the exact amount payable towards rights issue to acquire 21,500 shares in the company :

From:

Date: 28th October'14

Kishore Kumar Kejriwal
19, B.K.Paul Avenue
Kolkata-700 005

To
The Board of Directors,
M/s Gold Silver Arts Pvt Ltd.
9, Jagmohan Mullick Lane,
Kolkata 700007

Sub: Application for Right Issue

Dear Sir,

With reference to Letter of offer dated 7th October, 2014 in the matter of Right Issue of the Company please find attached herewith A/c Payee banker's Cheque no.291427 dated 28/10/2014 drawn on ING Vysya Bank Ltd. Bank, Minto Park, Branch, Kolkata for Rs .51170/- (Rupees Fifty One thousand One hundred and Seventy only) towards full application money (including Premium of Rs 1.38 per Share) on 21500 Equity shares of the Company .

You are requested to allot the shares as requested.

Thanking you.

Kishore K. Kejriwal

(Kishore Kumar Kejriwal)

- Enclose: 1. Banker's Cheque no.291427 for rs.51170/-
2. Duly Filled Application Form
3. Photocopy of Pan Card



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

**CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022**

7.10. Further on 30.09.2013 the number of shares with the Petitioners were evidently depicted as 43000 and 3,47,666 as would appear from the chart extracted hereunder:

GOLD SILVER ARTS PVT. LTD.

LIST OF SHAREHOLDERS AS ON 30.09.2013 (AGM HELD)

<u>Name</u>	<u>Fathers/Husband Name</u>	<u>%</u>	<u>No. of EqShares</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>PIN</u>
Hari Charan Garodia	Lt. Muralidhar Garodia	0.85%	25500	49/1/1, Colton Street	Kolkata	West Bengal	700007
Chameli Devi Garodia	Lt. Hari Charan Garodia	0.60%	18000	49/1/1, Colton Street	Kolkata	West Bengal	700007
Shyam Sunder Kejriwal	Lt Purusottam Das Kejriwal	3.57%	107000	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Bal Krishan Garodia HUE	Karta Bal Krishna Garodia	0.14%	4250	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Bal Krishan Garodia	Lt. Hari Charan Garodia	0.00%	70	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Archana Gupta	Bal Krishan Garodia	6.12%	183500	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Shruti Garodia	Bal Krishan Garodia	6.12%	183500	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Pushpa Devi Kejriwal	Shyam Sunder Kejriwal	4.26%	127666	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Arun Kumar Garodia	Lt. Narayan Prasad Garodia	0.55%	16400	66, Espace, Nirvana Country	Gurgaon	Haryana	122018
Narayan Prasad Garodia	Lt. Hari Charan Garodia	0.02%	450	R-11, Greater Kailash Phase I	New Delhi	New Delhi	110048
Shyam Sunder Kejriwal	Lt Purusottam Das Kejriwal	0.67%	20000	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Meenakshi Garodia	Bal Krishan Garodia	6.12%	183500	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Aparna Garodia	Bal Krishan Garodia	7.06%	211830	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Manjari Garodia	Bal Krishan Garodia	5.62%	168500	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Chandra Garodia	Bal Krishan Garodia	0.00%	100	E-45, Sector 40, Gautambudhiha Nagar	NOIDA	UttarPradesh	201301
Kishore Kumar Kejriwal	Lt Purusottam Das Kejriwal	1.43%	43000	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Prakash Kejriwal	Lt Purusottam Das Kejriwal	12.24%	367168	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Sanjiv Kumar Kejriwal	Kishore Kumar Kejriwal	11.59%	347666	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Sushila Devi Garodia	Lt. Narayan Prasad Garodia	9.75%	292525	B-198 Sushant Lok One	Gurgaon	Haryana	122002
Meera Garodia	Arvind Garodia	0.83%	25000	B-198 Sushant Lok One	Gurgaon	Haryana	122002
Usha Devi Garodia	Arun Kumar Garodia	9.08%	272400	66, Espace, Nirvana Country	Gurgaon	Haryana	122018
Nilesh Kejriwal	Shyam Sunder Kejriwal	3.75%	112500	19B, B.K.Paul Avenue	Kolkata	West Bengal	700005
Arvind Garodia	Lt. Narayan Prasad Garodia	9.65%	289475	B-198 Sushant Lok One	Gurgaon	Haryana	122002
Total		100.00%	3000000				

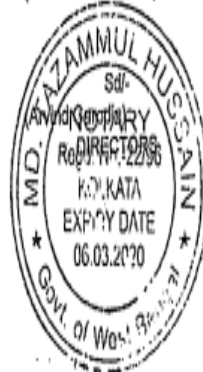
*Company
with
MR-2014
17/95*

SUMMARY OF HOLDINGS

Body Corporates	0	0%
Directors and relatives	3000000	100%
others	0	0%
	3000000	100%

For GOLD SILVER ARTS PVT LTD

Sd/-
(Bal Krishan Garodia) dt. 19.10.2013



dt. 19.10.2013

Shyam Sunder Kejriwal

Certified to be true Copy

Advocate

7.11. But in the Annual Returns of the year 2014-2015 the number of Shares held by the petitioners have been shown as 6000 and 331500, shares held. Both of these documents have been signed by the Respondents clearly there is a grave inconsistency in how suddenly within a year after the Respondents assumed [RM1.1]charge of the company both the petitioners got their shareholding reduced.

7.12. Further, while on one hand the shareholding of the petitioners reduced, simultaneously the shareholding of the respondents increased as would appear from the following chart:

List of Shareholders as on 30.09.2013		List of Shareholders as on 30.09.2014		List of Shareholders as on 31.03.2015	
Name	No of Equity Shares	Name	No of Equity Shares	Name	No of Equity Shares
Hari Charan Garodia(Since Deceased)	25,500				
Chameli Devi Garodia(Since Deceased)	18000				
Shyam Sunder Kejriwal	1,07,000				
Bal Krishnan Garodia HUF	4250				
Bal Krishnan Garodia (R3)	70		107120		369122
Archana Gupta	183500		183500		285000
Shruti Garodia	183500		221000		336500
Pushpa Devi Kejriwal	127666				
Arun Kumar Garodia (R4)	16400		16400		16400

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

**CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022**

Narayan Prasad Garodia	450				
Shyam Sunder Kejriwa;	20000				
Meenakshi Garodia	183500		221000		336500
Aparna Garodia	211830		249330		336500
Manjari Garodia	168500		221000		336500
Chandra Garodia	100				
Kishore Kumar Kejriwal(P1)	43000		6000		9000
Prakash Kejriwal	367166		324500		486750
Sanjiv Kumar Kejriwal(P2)	347666		331500		497250
Sushila Devi Garodia	292525		370075		5477264
Meera Garodia	25000		25000		37500
Usha Devi Garodia	272400		279700		279700
Nilesh Kejriwal	112500				
Arvind Garodia(R2)	289475		357375		519514
<u>TOTAL</u>	<u>30,00,000</u>		<u>2913500</u>		<u>4413500</u>

7.13. Interestingly from the list of shareholder , 86500 shares are still missing, however right entitlement there of amounting to 43250 has been wrongly appropriated by respondents no.3, who as per their own admission was earlier holding 107120 shares as on 30/09/2014. So, his right entitlement on the basis of 2:1 ratio would be 53560. Thus as per their document his holding after rights issue could not have exceeded 1,60,680(107120 + 53560).

Apparently the rights issue on missing 86500 has also been attributed to respondent no. 3. A calculation of his holding taking into consideration that 43250 would stand at $107120+53560+43250=203930$. Strangely return filed after rights issue reflects his holding as 369122 is far in excess of his actual entitlements, which is bad.

7.14. The NCLAT in **Institute of Gastro & Kidney Care Pvt. Ltd. v. Dr. Kedarnath Panda**, (2022) ibclaw.in 481 NCLAT, held that

*“52. Section 62 of the Companies Act, 2013, relates to an ‘increase of Share Capital’, of course, within the ‘Authorised Capital’. In reality, it is aimed to include a matter, where the ‘Directors’ determined to ‘increase the Capital’ by issuing further ‘Shares’ within the ‘Authorised Limit’, as per the decision of the Hon’ble Supreme Court in **Nanalal Zaver And Another vs Bombay Life Assurance Co. Ltd. and others, reported in AIR 1950 SC.***

53. The purpose of Section 62 of the Companies Act, 2013, is to increase the ‘Capital’ for the needs of the Company, the proportionate allotment is coincidental to increase of ‘Subscribed Capital’. The ‘Articles of Association’ of a Company generally / ordinarily specify in the Regulation about the aspect of ‘Rights Issue’. As a matter of fact, Section 62 of the Companies Act, 2013, embodies in ‘Statutory Form’ the rudimentary notions as among the ‘Shareholders’ inter se and governing them, with power to allot ‘Shares’.

54. It is for the Directors to determine how may ‘Shares’ and of what ‘Value’, they will issue the ‘Shares’. The enhancement of ‘Capital’ is purely a matter of an internal Administration of the Company and the Courts do not interfere in such matter in

normal course, as per decision **R. Khemka V Deccan
Enterprising (P) Ltd. 1998 16 SCL (A.P.)**

55. Whether the decision, is in the interest of the company or 'Bonafide' or not can only be ascertained from each and individual, given set of facts, as opined by this 'Tribunal'. It cannot be forgotten that just an allegation of 'Malafide' or 'absence of Bonafide' will not suffice. It requires proof, more than a mere averment.

56. In terms of the ingredients of Section 62 of the Companies Act, 2013, the Directors have to offer further 'Shares' issued, to the 'Shareholders' who are on the 'Register of Companies' and not to anyone else, and in fact, the 'Offer' must be in the same proportion to all the 'Shareholders'. It is to be remembered that there shall be no discrimination among them."

xxx

58. Section 62 of the Companies Act, 2013 recognises the 'Shareholders Right' to renounce the 'Shares' offered to him as his 'Right'. In fact, the 'Right of Renunciation' is a 'Statutory Right' and not an 'absolute one', as the term 'unless the Articles of Company otherwise provide'.

59. Undoubtedly, the 'Rights Issue' principle stems from the aspect of preemption rights, and that any 'New Shares' issued by a company is to be offered to the 'Existing Shareholders' in proportion to their holding of old shares i.e., on pro-rata basis.

60. If the increase of 'Capital' was found to be necessary for genuine business purpose, the company as per Section 62 of the Companies Act, 2013, could raise further 'Capital' from public, as per decision in **Prem Seth V National Industrial Corporation Ltd., reported in (1959) 96 Comp Cas at Page 575 (Del).**

64. At this juncture, this `Tribunal' worth recalls and recollects the decision in **Jabalpur Tea Co. Ltd. V Bengal Dooars National Tea Co. Ltd., reported in (1984) 55 Comp Cas 160 (Cal)**, wherein it is observed and held that an `allotment' made to increase the `Shareholding' so as to reduce a `Majority Shareholder' to `Minority' is not `valid'.

65. Also, this `Tribunal' aptly points out that the decision in **S Varadharajan V Udhayem Leasings & Investments (P) Ltd., reported in (2005) 125 Comp Cas at Page 853**, wherein it is observed that if any `Issue of Shares' solely to gain control over the company is not permissible.

66. It is pointed out that if it is proposed to issue `Shares' to the `Existing Members' (as distinguished from `Shareholders'), it is desirable to pass a `Resolution' having regard to the decision in **Kedarnath Agarwal's case, reported in (1963) 33 Comp Cas 102.**

(emphasis added)

Analysis for Issue 2

- 7.15.** Upon evaluating the evidentiary matrix and the corporate records placed on record, the Court proceeds to analyse the interconnected issues of whether the Petitioners are entitled to the shortfall or additional shares claimed, and whether they can legally assert ownership over the same.
- 7.16.** The Petitioners contend they were allotted reduced shares after the rights issue declared by the Company in December 2014, pointing to a Notice dated 7th October issued by Respondent No. 3 which explicitly recognized Petitioners No. 1 and 2 as holding 43,000 and 3,47,666 equity shares respectively, and called upon them to subscribe to a rights issue of 15 lakh equity shares of Re. 1/- each at a premium of Rs. 1.38 per share in a 2:1 ratio, fixing their entitlements at 21,500 and 1,73,833 rights shares respectively.

- 7.17.** This Court notes that while the initial shareholding structure as of September 30, 2013, confirmed these exact holdings of 43,000 and 3,47,666 shares , the Annual Returns for the subsequent year 2014-2015 paradoxically reflect the Petitioners' holdings as having been severely diminished to 6,000 and 3,31,500 shares.
- 7.18.** Both sets of conflicting documents bear the signatures of the Respondents, revealing a grave, unexplained inconsistency where, within a year of the Respondents assuming charge of the corporate management, the Petitioners' shareholdings were abruptly reduced while the shareholdings of the Respondents increased without any apparent justification.
- 7.19.** Furthermore, a meticulous review of the comparative shareholding tables spanning September 2013 to March 2015 exposes profound math and procedural irregularities, notably that 86,500 shares remain completely unaccounted for from the shareholder lists, and the corresponding right entitlement of 43,250 shares appears to have been wrongly appropriated by Respondent No. 3.
- 7.20.** This Court finds that on the basis of Respondent No. 3's own admitted holding of 1,07,120 shares as of September 30, 2014, his lawful right entitlement under the 2:1 ratio could not have exceeded 53,560 shares, bounding his maximum legitimate post-issue holding to 1,60,680 shares yet, by apparently absorbing the rights issue of the missing 86,500 shares, his calculated holding of 2,03,930 shares was further inflated, culminating in a filed return that strangely reflects his holding at 3,69,122 shares an amount far in excess of his actual entitlements.
- 7.21.** Backed by these documented discrepancies, the Court is satisfied that a prima facie case of manipulation of the share register has been established. Consequently, the Court holds

that the artificial reduction of the Petitioner's shares lacks legal backing, thereby entitling the Petitioners to seek restoration of their original shareholding levels, and a valid claim to the ownership of the shortfall shares and their consequential rights entitlements.

Issue 3

Were the Petitioners being the Directors of Respondent No. 1 Company were carrying on parallel business which was harming the business of the Company?

7.22. It is nobody's case that since the Petitioners were running a parallel business they could be wrongfully deprived of their rights to the shares.

Issue 4 on Whether there is an Oppression and Mismanagement?

7.23. The terms "Oppression" and "Mismanagement" have not been defined specifically in The Companies Act, 2013, but some cases like **Shanti Prasad v. Kalinga Tubes, reported at 1965 SCC Online SC 15: (1965) 2 SCR 720** elucidates "**oppression**" as a conduct that is burdensome, harsh and wrongful involving lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. Further a mere lack of confidence between majority and minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of affairs of the company. "**Mismanagement**" involves inept or unfair conduct harming the economic interests of company members.

7.24. To gather the correct implication of the term "Oppression and Mismanagement" now at this juncture it will be relevant to see when Section 241 can be invoked,

7.25. In Suresh Kumar Sanghi v. Supreme Motors Ltd. [1988] 54

Comp. Cas. 235 (Delhi), the Delhi High Court observed that "relief under section 398 [now Section 241] can be obtained only if :

- (i) the affairs of the company are being conducted in a manner prejudicial to public interest,
- (ii) if the affairs are being conducted in a manner prejudicial to the interest of the company, or
- (iii) if there is material change which has taken place in the management or control of the company in the manner set out in the said section, and that by reason of such change it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company."

It was further observed that section 398 [now section 241] comes into play only when there is actual mismanagement or apprehension of mismanagement of the affairs of the company.

7.26. In the case at hand the alleged acts of Oppression and Mismanagement are the following:

- a) Reduced shares allotted to the petitioners after rights issue declared by the Company in December 2014.
- b) No interest has been paid or provided on the share application money.
- c) The company has not also furnished full details of the shares even to auditors and the Auditors have disowned the Stated Percentage of Shareholding.

- d) Gross illegality committed in filing of annual returns for three successive years from 2014-2016.
- e) The business of the company both in the Manufacturing sector as well as in the trading sphere is declining.

Allegation (a)

- 7.27.** The act of continuous refusal by company to register shares with an ulterior motive of retaining control over affairs of the company **in Kumar Exporters (P.) Lid v. Naini Oxygen and Acetylene Gas Ltd. [1986] 60 Comp. Cas. 984(All.)**, though refusal once by the company may not be oppressive, but a continuous refusal by the company to register the shares with an ulterior motive of retaining the control over the affairs of the company may be a case where the CLB (now Tribunal) is obliged to interfere and grant relief under section 397 (now Section 241).
- 7.28.** In **Piercy v. Mill(s) & Co. [1920]1 Ch. 77**, it has been held that the act of Issue of further shares which benefits a section of the shareholders may form the subject-matter of a petition under this section if it can be proved that the idea of issuing further shares was to benefit one group to the detriment of the other.
- 7.29.** In **Needle Industries (India) Ltd., & Ors vs Needle Industries Newey (India) 1981 AIR 1298** it was held that it is a general principle to be observed by the directors that further issue of shares must be made for the benefit of the company and it does not matter if in the process the directors themselves also benefit. What is considered objectionable is the use of their fiduciary powers mainly for an extraneous purpose like maintenance or acquisition of control over the affairs of the company.
- 7.30.** In **Gluko Series (P) Ltd., In re, (1987) 61 Comp Cas 227** case it was held that if the issue of shares disturbs the existing majority of the shareholders and if it is not *bona fide*, it will

amount to oppression and mismanagement, and the court will grant relief.

- 7.31.** From the above-mentioned cases it is evident that we must look directly at the underlying intent and the resulting impact it has on the Corporate Body and its activities. While the directors possess the power to manage the share capital, this power should be exercised for the sole benefit of the company, when management uses these power to refuse new shares to others or usurp them to preserve therein own interests it is a blatant abuse of their power and it is the duty of court to intervene in this case.

Allegation (b), (c), (d),

- 7.32.** In this regard, the observation of the statutory auditor under heading "Basis for Qualified opinion" at Clause "e" of the Audit Report dated 5th September 2015 for the year ending 31st March, 2015 are noteworthy which are set out herein below as follows: -

"c) During the year the Company has allotted 15 lacs Equity Shares of Re 1/= each at a premium of Rs. 1.38 per share on 30th December, 2014. A sum of Rs. 149743.78 received towards share application money was realized subsequent to allotment of such shares. The Board of Director in their meeting held on 20th April. 2015 has taken note of such fact and ratified the same. Further in absence of updated shareholder's register, we are unable to comment on the allotment of shares."

d) No interest has been paid or provided on delayed refund of share application money.

"e) The details of the Shareholders holding more than 5% shares in the Company stated in Note 2(b) are as stated by the Management and could not be verified by us in absence of proper details furnished to us."

7.33. To decide upon this issue, it is pertinent to look upon the current jurisprudence by relying on a judgement given in **T.P. Anilkumar and Ors. v. Indus Motor Company Pvt. Ltd. and Ors.**, [\(2025\) ibclaw.in 1640 NCLT](#),

"157. The forensic auditors have pointed out various procedural irregularities, which have remained unaddressed, except for the respondents' reliance on the Duomatic principle and the alleged delay on the part of the minority shareholders. As for the financial withdrawals, the funds have already been returned, on some occasions, returned with interest. However, such a defence is untenable, particularly when it is the mandatory duty of the executive management to ensure strict compliance with all applicable secretarial norms and statutory requirements.

158. It is clarified that the Forensic Audit Report, though not to be treated as conclusive or determinative of the issues under adjudication under Sections 241 and 242 of the Companies Act, 2013, nonetheless possesses its own evidentiary value. It may be considered for the limited purpose of corroborating the respective allegations and defences of the parties, and for any other ancillary purpose necessary for ensuring a fair and just adjudication of the present proceedings."

Allegation 'e'

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

**CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022**

7.34. To look into the issue whether the business of the company both in the Manufacturing sector as well as in the trading sphere is declining, it is pertinent to look into the Financial statements of the years 2013-2015,

Particulars	March'24	March'23	March'22	March'21	March'20	March'19	March'18	March'17	March'16	March'15	March'14	March'13
Sales of Products	425.08	572.93	564.87	219.01	235.72	323.38	439.02	847.85	883.21	881.76	557.92	917.38
Other operating revenue	53.7	77.62	48.90	28.52	70.57	100.81	116.85	111.39	189.20	214.12	156.58	164.32
Other Income	1.32	0.10	0.11	0.09	0.08	7.18	3.07	1.19	0.72	0.92	3.05	0.86
Total	480.10	650.65	613.88	247.62	306.37	431.37	558.94	960.43	1,073.13	1,096.80	717.55	1,082.56
Purchase	350.35	543.3	596.76	163.45	214.34	386.56	465.40	751.67	751.08	753.58	493.87	745.81
Inventories	495.71	481.54	442.36	328.29	320.98	289.04	179.72	94.18	96.68	136.55	202.46	194.16
Trade Receivable	9.75	12.31	23.74	9.86	16.22	19.18	43.64	33.02	18.89	28.04	25.79	30.81
Loan and Advance	12.81	13.15	12.18	12.29	13.43	13.07	14.00	17.88	17.25	24.15	25.12	27.61
Long Term Loan & Advance	0	0	0	2.37	5.37	5.38	5.38	1.96	6.90	6.72	191.48	208.18
Profit Before Tax	9.79	8.39	7.77	1.42	8.69	13.92	23.46	12.22	11.77	14.01	10.45	9.79
Important Note:												
Inventories	March'24	March'23	March'22	March'21	March'20	March'19	March'18	March'17	March'16	March'15	March'14	March'13
Finished Goods	494.87	480.69	441.52	327.26	319.95	286.47	176.63	90.40	93.39	117.26	181.84	169.46
Diamond and other Branded Jewellery	0.18	0.18	0.18	0.36	0.36	1.90	2.43	3.78	1.90	17.29	17.75	21.75
Stores and Spares	0.67	0.67	0.67	0.67	0.67	0.67	0.67	-	1.39	2.00	2.87	2.95
Total	495.72	481.54	442.37	328.29	320.98	289.04	179.73	94.18	96.68	136.55	202.46	194.16
Purchase	March'24	March'23	March'22	March'21	March'20	March'19	March'18	March'17	March'16	March'15	March'14	March'13
Gold and Silver Ornaments/Silver	350.35	543.3	596.76	163.45	214.34	386.56	465.40	751.67	751.08	753.58	493.87	745.81
Total	350.35	543.3	596.76	163.45	214.34	386.56	465.40	751.67	751.08	753.58	493.87	745.81
Revenue from Operation	March'24	March'23	March'22	March'21	March'20	March'19	March'18	March'17	March'16	March'15	March'14	March'13
Silver	425.08	572.93	564.87	219.01	228.01	276.25	386.36	619.40	613.68	508.19	238.40	293.95
Gold	-	-	-	-	7.15	46.55	50.79	221.53	251.07	372.81	314.51	604.40
Coin Sale	-	-	-	-	0.01	0.59	1.87	5.89	-	-	-	-
Daimond /Hammerplus Jewellery	-	-	-	-	0.55	-	-	1.02	18.45	0.76	5.01	19.02
Total	425.08	572.93	564.87	219.01	235.72	323.39	439.02	847.84	883.20	881.76	557.92	917.37
Making Charges in Silver Products	(53.7)	77.67	48.9	(28.25)	70.17	100.20	114.64	104.77	181.22	198.94	133.67	(134.72)
Making Charges of Gold & Others	1.32	0.1	0.11	0.08	0.39	0.61	2.22	6.60	7.98	15.18	22.91	29.83
Total	55.02	77.77	49.01	28.52	70.56	100.81	116.86	111.37	189.20	214.12	156.58	164.55

7.35. The above financial statements clearly indicate that the company has been in a downward spiral with gold sales plummeting from a massive 604.40 in 2013 down to absolutely nothing for the past four years, even their silver business is struggling to hold ground, as silver sales have dropped significantly from their peak of 619.40 in 2017 down to 425.08 in 2024. which for silver has shrunk to nearly a quarter of what it used to be, proving that their factory floors are nowhere near as busy as they once were.

7.36. In **AIR Asiatic Ltd., Re[1994]3 Comp. LJ 294**, it was held that where neither the duly constituted Board of directors nor the petitioner who was allowed a trial to run the company was able to make any headway towards improving the lot of the company and there were also many irregularities in the conduct of affairs

which had eroded the substratum of the company, the CLB (now Tribunal) asked the Central Government to consider taking appropriate action under section 433/439 [now Section 271/272] in case the newly constituted Board of directors also failed in reviving the company within a reasonable time, this erosion of companies substratum was held as an act of mismanagement.

7.37. Upon reviewing the records, the Court finds that a clear case of Oppression and Mismanagement has been made out against the respondents. In ***Shanti Prasad Jain* [(1965) 2 SCR]** referring to ***Elder v. Elder and Watson Ltd.*, 1952 SC 49** it was categorically held that the conduct complained of must relate to the manner of management of the affairs of the company and must be such so as to oppress a minority of the members including the petitioners qua shareholders. The Court, however, pointed out that that law, however, has not defined what oppression is for the purpose of the said section and it is left to the court to decide on the facts of each case whether there is such oppression.

7.38. In ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.*, (2008) 3 SCC 363**, it was held that:

“**14.** In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to:

(a) *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [(1981) 3 SCC 333]

(b) *M.S. Madhusoodhanan v. Kerala Kaumudi (P) Ltd.* [(2004) 9 SCC 204]

(c) *Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan* [(2005) 1 SCC 212]

(d) *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* [(2005) 11 SCC 314]

(e) *Kamal Kumar Dutta v. Ruby General Hospital Ltd.* [(2006) 7 SCC 613]

From the above decisions, it is clear that oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is *mala fide* and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be *fully permissible under law but may yet be oppressive* and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is *mala fide* or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is *basically a question of fact* and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.”

7.39. In this case, the respondents used their management powers for an improper, selfish purpose: to take away the petitioners' rightful shares in the company and sideline them from the

management. This wrongful intent is clearly visible in the unfair reduction of the petitioners' share allotments after the December 2014 rights issue, which directly violates the ruling in the *Needle Industries* case that new shares must only be issued for the genuine benefit of the company, not to manipulate who holds the majority voting power. Here, the company's own statutory auditor raised a red flag, pointing out that the share application money was improperly kept floating for four months after allotment, no interest was paid on delayed refunds, and the respondents actively hid the true shareholding details from the auditors. Because these continuous, harmful actions have directly damaged the petitioners' financial rights and ownership as shareholders, the Court holds that the petitioners are fully entitled to legal relief under Sections 241 and 242 of the Companies Act, 2013.

ORDER

8. In view of the foregoing discussions, pleadings, documents placed on record, findings recorded hereinabove and in exercise of powers under Sections 241, 242 And 243 of the Companies Act, 2013, this Tribunal is of the considered view that a case of oppression and mismanagement has been clearly established against the Respondents. The affairs of Respondent No.1 Company have been conducted in a manner lacking transparency, fairness and probity and have resulted in serious prejudice to the Petitioner.
9. Accordingly, **CP No.405/KB/2017** stands allowed in part with the following directions:
 - a) It is hereby declared that Petitioner No. 1 and Petitioner No. 2 hold **35,000** and **3,47,666** Equity shares respectively in the Respondent Company prior to the Rights issue. Consequently, post the Rights issue, their respective

shareholdings stand verified and declared as **52,500** and **5,21,499** Equity shares in the Company.

- b) The purported transfer of shares executed on **31st March 2014, 30th June 2014, and 3rd September 2014** are hereby cancelled and set aside, being non-est and invalid in the eyes of the law.
- c) The Respondent Company is directed to rectify its Register of Members to reflect the shareholdings of Petitioner Nos. 1 and 2 in compliance with directions (a) and (b).
- d) The Annual Returns filed by the Company with the Registrar of Companies (RoC) / Ministry of Corporate Affairs (MCA) for the financial years **2014 to 2016**, along with all corporate documents, forms, and returns connected therewith, are hereby adjudged null, void, and of no legal effect.
- e) An injunction is granted restraining the Respondents, their agents, or anyone acting on their behalf, from giving any effect or further effect, in any manner whatsoever, to the resolutions passed at the Board meeting held on **30th December 2014**.
- f) 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 **Mr. Prasanta Kumar Mohanty**, Address: **Plot NO N-6/243,IRC Village, Jayadev Vihar Bhubaneswar - 751015**, email: **prasanta721@gmail.com**, Phone No: **7823983461** as the Administrator of the Company (Gold Silver Arts Private Limited) for an initial period of 3 months

commencing from the date of his acceptance of his appointment.

- g) 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.
- h) 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.
- i) The Administrator shall be paid a monthly remuneration/compensation of **2 Lakhs** 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.
- j) 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.

- k) 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.
- l) 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.
- m) 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.
- n) 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.

- o) 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.
- p) The Administrator shall enjoy complete immunity from any kind of civil and criminal proceedings already launched or to be launched in or outside the country against the company and its directors for all acts done prior to their appointment as an administrator. Further, any act done by the Administrator in good faith, after their appointment and within the scope of their duties, shall not be subject to any civil or criminal proceedings.
- q) 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.
- r) 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.

- s) 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.
- t) The Administrator is directed to file an acceptance-cum-consent letter to the above order before this Tribunal within a week from the date of receipt of the copy of this Order.
- u) The Administrator as well as parties may approach this Tribunal if they feel that intervention of the Tribunal is required in a particular situation.
- v) Appropriate directions under Section 242 of the Companies Act, 2013 are issued in the operative portion of this order to bring an end to the matters complained of and to safeguard the assets and management of the Company.

10. Accordingly, in view of the above discussions **CP No.405/KB/2017** stands **allowed** in part and list the **CP No.405/KB/2017** for further consideration on **17/09/2026**.

11. Since the administrator is appointed, consequently, all the interconnected applications being **CONT. A./449 (KB) 2017, IA/477 (KB) 2017, IVN.P/415 (KB) 2017, IA/122 (KB) 2018, IA/42 (KB) 2023, IA/118 (KB) 2022**, are being **dismissed** as **infructuous**.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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

CP/405 (KB) 2017
CONT. A./449 (KB) 2017, IA/477 (KB) 2017,
IVN.P/415 (KB) 2017, IA/122 (KB) 2018,
IA/42 (KB) 2023, IA/118 (KB) 2022

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Cmde. Siddharth Mishra)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 12th day of June 2026

S.T (LRA)/RKM(LRA)