

From:
Prof. Jagdeep Chhokar

And

Venkatesh Nayak

(Hereinafter, “**Representationists**”)

To,
The Government of India
Through
The Home Secretary,
Ministry of Home Affairs,
Government of India,
at North Block,
New Delhi – 110001
E-mail: hshso@nic.in

And

The Secretary,
Ministry of Corporate Affairs,
Government of India,
at Shashtri Bhawan,
New Delhi – 110001
E-mail: secy.mca@nic.in

Dear Sir/Madam,

SUBJECT: Representation Seeking Action under Section 271(b) r/w Section 272(1)(f) of the Companies Act, 2013 - against M/s Sudarshan TV Channel Ltd.

1. This letter is a representation (hereinafter, “Representation”) urging you to initiate proceedings for winding up before the jurisdictional National Company Law Tribunal (hereinafter, NCLT) against **M/s Sudarshan TV Channel Ltd.** (hereinafter, "the Company"), under Section 271(b) r/w Section 272(1)(f) of the Companies Act, 2013 (hereinafter, "the Act").
2. Section 271(b) and Section 272(1)(f) are extracted hereinbelow for your ready reference: (Emphasis Supplied)

271. Circumstances in which company may be wound up by Tribunal.—A company may, on a petition under Section 272, be wound up by the Tribunal,—

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Section 271 enforced w.e.f. 15-12-2016

272. Petition for winding up.—(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(a) the company;

- (b) any contributory or contributories;
- (c) all or any of the persons specified in clauses (a) and (b);
- (d) the Registrar;
- (e) any person authorised by the Central Government in that behalf; or

(f) in a case falling under clause (b) of Section 271, by the Central Government or a State Government.

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under Section 271, except on the grounds specified in clause (a) of that section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

Section 272 enforced w.e.f. 15-12-2016

(Emphasis Supplied)

ABOUT THE REPRESENTATIONISTS

3. The Representationists are citizens of India. Neither of them is a shareholder, nor depositor nor debenture holder, nor have any direct or indirect pecuniary or financial interest in the Company or any competitor of the Company.
4. Representationist No.1, Prof. Jagdeep Chhokar has a PhD in the field of management. He has been a professor and Dean at the Indian Institute of Management, Ahmedabad, and has also taught at various institutions abroad. He is one of the founding members of the Association for Democratic Reforms, an organisation that has advocated and litigated for political and electoral reforms. He is also a founding member and Chairperson of the Udaipur-based *Aajeevika Bureau* which works on issues related to migrant labourers. Prof. Chhokar and ADR are recipients of reputed awards for their public service contributions.
5. Representationist No.2, Mr. Venkatesh Nayak, is the Programme Coordinator, Access to Information Programme, with an international NGO. He is a transparency rights activist and a co-convenor of the National Campaign for the People's Right to Information. He has authored public education documents on the basic structure of the Indian Constitution, issues of social justice, electoral reforms, efficacy of public audit mechanisms, citizens' right to information and fact-finding mission reports on human rights violations. was a member of the Sub-Committee appointed by the Policy Advisory group of SCOPE (Standing Conference of Public Enterprises) to advise Public Sector Undertakings (PSUs) for implementing the RTI Act. He conducts training and capacity building workshops on using RTI laws for NGOs and the media in Commonwealth countries and has assisted appellants pro bono to present their case before the Central Information Commission in India. He also undertakes strategic litigation before Information Commissions

and the Courts to expand the scope of the transparency regime in India. He was presented with the Best RTI activist award by the Anti-Corruption Academy, New Delhi in April 2018.

6. Both Representationists are making this Representation in their **personal capacity**.

ABOUT THE COMPANY

7. The Company _____ claims to be in the business of Broadcasting & Information Supply. It holds the license to operate a channel by the name of “Sudarshan News”. The Managing Director of the Company is one Mr. Suresh Chavhanke, who is also the face and the Editor-in-Chief of the Sudarshan News channel. Ostensibly, Mr. Chavhanke and his family own the controlling and majority stake in the Company. Its registered address is in Village-Shirdi, Taluka-Rahata Shirdi City, Ahmednagar, Maharashtra.

A select few public documents filed with the Registrar of Companies, under the 2013 Act showing the above details are annexed herewith and marked collectively as **ANNEXURE-1**.

8. The documents also show that the revenue from the activity of the news broadcasting through its Sudarshan News channel constitutes 100% of the revenue / turnover of the Company and that it has no other business or revenue generating activity. This is despite the main object of the Company as per its latest Memorandum of Association not pertaining to News broadcasting.

BRIEF FACTUAL BACKGROUND & THE GROUNDS ON WHICH ACTION IS SOUGHT AGAINST THE COMPANY

9. This Representation seeks to bring to the notice of the Government of India, through your office, the facts pertaining generally to the programming in the abovesaid TV Channel operated by the Company and more particularly to the contents of the programme *Bindaas Bol* telecast on *Sudarsban News* and to call upon you to discharge your statutory and constitutional duty to maintain the rule of law by employing statutory devices available to you to uphold the letter and spirit of the Constitution that envisions equal treatment of people belonging to all communities and respect for human dignity and to prosecute acts and omissions that constitute an affront to the same.

10. In particular, we would like to bring to your notice the contents of the programme *Bindaas Bol* which has been telecast on the 11th, 12th, 13th and 14th of September 2020, as well as a promotional clip of forty nine seconds published by the anchor of the said show on the channel operated by the Company, as well as on Twitter and other social media platforms, presumably on behalf of the Company, on 27th August 2020. The show attempts to convey – in violation of every canon of credible journalism and of the truth – that the Indian Muslim minority is involved in an act of terror by means of infiltrating the civil services. We call upon you to move the relevant jurisdictional National Company Law Tribunal to initiate the winding up of the Company, in the terms you are empowered to under Section 271(1)(b) read with Section 272(1)(f) of the Companies Act, 2013.

Links to the promo clip, and parts of the programme aired thus far, the transcripts and notes thereon are collectively included and annexed to this Letter as **ANNEXURE-2**.

11. The Representationists also separately complained to the Ministry of Information & Broadcasting against the promo trailer of the *Bindasbol* programme aired on the 27th August 2020.

The e-mail complaints are annexed to this Representation and marked as **ANNEXURE-3**.

12. By an Order dated the 15th of September 2020 in *Firoz Iqbal Khan v. Union of India, Writ Petition (Civil) No. 956/2020*, the Hon'ble Supreme Court found the contents of the said programming to be so objectionable as to issue orders injuncting further broadcast of the programme. A restraint order against media such as that one from the highest constitutional court is a very rarely used power, as you are aware.

13. The Supreme Court found the said programming objectionable in *two* respects: *firstly*, the publication of patently false information in the guise of news, and, *secondly*, the existence of a deliberate design to persecute a minority which is constitutionally entitled to the dignity and equal regard which is afforded to all Indians. As to the *first*, it found that the said programming was riddled with “*not just palpably erroneous but [which] have been made in wanton disregard of the truth*”. On the *second*, it found an “*intent, object and purpose*” to “*vilify the Muslim community*”.

A copy of the Order dated the 15th of September 2020 in *Firoz Iqbal Khan v. Union of India, Writ Petition (Civil) No. 956/2020* is annexed to this Representation as **ANNEXURE-4**.

14. In fact, Sudarshan News indulges in a consistent and continuing pattern of hate, rising to what the Supreme Court has termed vilification. In addition, it routinely applies the same *modus* of circulating verifiably false statements designed and intended to provoke hatred and threaten public order.

A few such instances are available at <https://www.altnews.in/sudarshan-news-and-its-history-of-dangerous-communally-divisive-misinformation/> and <https://millichronicle.com/2019/03/kerala-court-slaps-rs-50lac-defamation-notice-against-sudershan-tv-for-fakenews/>. True readable copies of those reports are annexed herewith and marked collectively as **ANNEXURE-5**.

15. Our complaint and the constitutional and statutory provisions which should impel you to act without delay are discussed in greater detail in the remainder of this Representation:

Abuse of the Corporate Form

16. As you are no doubt aware, the company is a fictional entity and a vehicle created by statutory law by which natural people are able to limit their liability (both civil and criminal), avail of numerous statutory benefits by which they can more easily do business and maximise the profits they derive from this business. When natural persons avail of the special allowances that the corporate vehicle accords to them, they are under a general and continuing obligation to refrain from acting in any manner that would subvert the very Constitution that founds and enables the various laws and State machineries by which the corporate vehicle is created. Moreover, unlike natural persons, legal persons such as corporations enjoy no fundamental rights such as freedom of speech.

17. It is in recognition of this general duty and the increasing incidence of derogation from it that, in 2002, the Government of India under the then Prime Minister Atal Bihari Vajpayee first brought an amendment to the Companies Act, 1956. By this enactment, grounds like to those contained in the clauses which restrict the rights to free speech as well as to conduct business guaranteed in Article 19(1) were made a circumstance in which a company would deserve to be wound up. The relevant provision runs as follows:

“433. Circumstances in which company may be wound up by Tribunal. – A company may be wound up by the Tribunal,-

...

(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;”

A copy of The Companies (Second Amendment) Act, 2002 is annexed to this Representation as **ANNEXURE-6**.

18. In continuing awareness of instances of abuses of the corporate vehicle to profit from patent violations of the Constitution, Parliament saw fit to include this ground in Section 271(1)(c) of the new Companies Act, 2013, and to retain it after amending the provision in 2016.

A copy of the Sections 271 and 272 as they stood prior to amendment are annexed to this Representation as **ANNEXURE-7**.

A copy of Section 255 and the Eleventh Schedule [PARA 9] to Act 31 of 2016 by which the amendment to section 271 was carried out is annexed to this Representation as **ANNEXURE-8**.

19. The relevant provision of **Section 271 and 272** of the **Companies Act, 2013**, as it stands after amendment in 2016 have been extracted hereinabove at Para 2.

20. These provisions of the 2013 Act afford a unique and targeted remedy against abusing the allowances made in law to companies. Other remedies available to the Representationists, including through activating the criminal justice system through complaints bringing police authorities' attention to offences under the Indian Penal Code, 1860 operate in a different field to allow in the form of punitive fines and imprisonment. They would not operate to decisively discontinue the abuse of the Companies Act to service the systematic assaults on basic features of the Constitution. The purpose of this Representation is not to urge you to take this course.

21. The use of the corporate vehicle by the shareholders and management of Sudarshan TV Channel Limited to inflame and incite citizens of one community against others by circulating patent mis-truths and threaten national integrity, public order and indeed the security of the State, - is sufficient on its own to activate the State's duty to initiate to discontinue the abuse of the Companies Act by moving the relevant authority to initiate winding up proceedings. Additionally, the Supreme Court in its 15.09.2020 order cited above recognises that the *Bindaas Bol* programme aired on *Sudershan News* is an assault on constitutional values which constitutional authorities ought to regard with "grave disfavour":

"The edifice of a democratic society committed to the rule of law under a regime of constitutional rights, values and duties is founded on the co-existence of communities. India is a melting pot of civilizations, cultures, religions and languages. Any attempt to vilify a religious community must be viewed with grave disfavour by this Court as the custodian of constitutional values. Its duty to enforce constitutional values demands nothing less."

Indians' rights under article 19(1)(a) to access true & correct news & information

22. In our capacity as citizens of India, the Representationists have a right under Article 19(1)(a) of the Constitution to have access to information regarding matters of public importance. This right has been treated by the Supreme Court as being an incident of democracy in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 at page 320 where it was held that “[t]he right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy”. It is worth pointing out that the Representationist No.1 is a founding member of the Association for Democratic Reforms, that appears in the cause title of the said case.

23. Further, in the context of broadcasting, which involve communication over airwaves which are public property, it is listeners’ rights rather than private and wholly profit-led broadcaster and speaker’s rights which are of consequence. This position would hold good even where the speaker takes on the guise of a journalist and the host that of the press. These principles have been affirmed in *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161 at page 292 where it was held as follows at paragraph 194: (Emphasis Supplied)

“From the standpoint of Article 19(1)(a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster — whether the broadcaster is the State, public corporation or a private individual or body. ... For the purpose of ensuring the free speech rights of the citizens guaranteed by Article 19(1)(a), it is not necessary to have private broadcasting stations, as held by the Constitutional Courts of France and Italy. Allowing private broadcasting would be to open the door for powerful economic, commercial and political interests, which may not prove beneficial to free speech right of the citizens — and certainly so, if strict programme controls and other controls are not prescribed. The analogy with press is wholly inapt. Above all, airwaves constitute public property. While, the freedom guaranteed by Article 19(1)(a) does include the right to receive and impart information, no one can claim the fundamental right to do so by using or employing public property. Only where the statute permits him to use the public property, then only — and subject to such conditions and restrictions as the law may impose — he can use the public property, viz., airwaves. In other words, Article 19(1)(a) does not enable a citizen to impart his information, views and opinions by using the

airwaves. *We must reiterate that the press whose freedom is implicit in Article 19(1)(a) stands on a different footing. The petitioners — or the potential applicants for private broadcasting licences — cannot invoke the analogy of the press. ...*”

24. An implicit and irrefutable element of this right is the right to receive news and information which is scrupulously checked for its truth. At the very least, citizens are entitled to expect that facts broadcast on television by large media entities are not of a kind which are judicially described as “*not just palpably erroneous but [which] have been made in wanton disregard of the truth*”. This right is doubly engaged when the information is being communicated to us in the guise of ‘news’, by an entity representing to the Hon’ble Supreme Court that it is engaged in journalism and the revelation of facts by an “*investigative exercise*” intended to “*convey information to the public*”.

[See page 6 of the Order dated 15th October 2020 in ***Firoz Iqbal Khan v. Union of India, Writ Petition (Civil) No. 956/2020*** for the quotations in this paragraph.]

25. This right to receive accurate information important particularly when it relates to the quality and competence of those tasked with administrative responsibilities within the state, the progress of India’s minorities (which is an end to which the Constitution has particular regard) and the fairness of government recruitment processes.

26. As shown above, the content that is broadcast by Sudarshan News TV creates a hostile public culture and environment which directly confronts the ‘decency and morality clause’, and specifically, constitutional morality itself as understood from Article 19(2) because it normalises religious discrimination against a particular minority community in India using outrageous methods of slander and abuse. And, by making disparaging and distasteful remarks,

Sudarshan News TV subordinated a community as a whole, violated their group dignity and the constitutional requirement of equality and of respecting group identity *inter alia* especially of vulnerable minority groups and of the inherent dignity of all persons.

27. In sum, Sudarshan TV's repeated broadcast of malicious falsehoods that have the potential to impact public order, in addition to being in violation of constitutional morality and an affront to the values of national integrity and fraternity and demand immediate redress. These broadcasts occur in the cover of the limited liability corporate vehicle which is a creation of a statute. It is worth reiterating herein that you are under an affirmative constitutional duty to prevent this abuse of this statutory vehicle to realise ends anathematic and abhorrent to our Constitution.

28. The statutory scheme detailed above shows that the Representations have a disability in the law from approaching the jurisdictional NCLT by themselves and are constrained to approach the same through either the Government of India or any State Government.

29. **The Central Government is urged to duly consider the contents of this Representation and to initiate proceedings for winding up in the jurisdictional National Company Law Tribunal, of the Company, M/s Sudarshan TV Channel Limited, under Section 271(b) read with 272(1)(f) of the Companies Act, 2013 for its commission of acts prejudicial to public order, constitutional morality and indeed to the sovereignty, unity and integrity of India.**

30. **The Central Government is further urged to apply to the jurisdictional NCLT under Section 273(b) read with 273(e) to make the Representationists a party in such a Petition filed under Section 271(b)**

enabling them to make submissions supplementing your submissions for winding up of the Company, in the interests of justice.

31. **The Central Government is further urged to apply to the jurisdictional NCLT under Section 273(b) read with 273(e) to direct the Company not to make any corporate structural changes including any merger, acquisition or amalgamation and to make no change in its list of shareholders or their shareholding; and not to contract any significant liability including by borrowing from banks, or by issue of bonds or debentures during the pendency of the Petition under 271(b).**

32. The Representationists desire to and undertake to make oral submissions (including on the content of the programmes) before you in support of this Representation either by being present in your office or through video conferencing, if and as directed by you. This Representation is bona fide and the Representationists have no oblique motive or any other concealed interest in making this Representation. The “Serious Complaint Form” available on the MCA website is also filled and filed in the name of the Representationist No.1 along with this Representation – for ease / convenience of processing and out of abundant caution.

Thanking you.

Yours Sincerely,