



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CP. 1017 OF 2020

Under Section 241-242 of the Companies
Act, 2013

Urvashi Bharat Khater
...Petitioner

Vs.

Laxsons (India) Private Limited & Others
...Respondents

CP. 1018 OF 2020

Under Section 241-242 of the Companies
Act, 2013

Urvashi Bharat Khater
...Petitioner

Vs.

Laxsons Properties Private Limited
...Respondents

Order delivered on: 12.03.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)



Appearances

For the Petitioner : Mr. Nausher Kohli a/w Mr. Akash
Agarwal, Advocates i/b AMR Law
For the Res. No. 2 & 3 : Mr. Pulkit Sharma a/w Mr. Aman
Kacheria and Ms. Sakshi Dube, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition CP 1017/2020 is filed under Section 241-242 of the Companies Act, 2013 (“Act”) by Urvashi Bharat Khater (“Petitioner”) against Laxsons (India) Private Limited & Others seeking following reliefs:
 - (a) *For appropriate orders, reliefs and directions under Section(s) 241 and 242 of the Companies Act, 2013 to bring an end to the aforesaid acts of oppression and mismanagement perpetrated by Respondent Nos.2 and 3 and for necessary orders and reliefs in respect thereof, including as prayed for herein;*
 - (b) *For a declaration that the Impugned 169 Notice, Impugned Resolution, and the Impugned Notice and Agenda are illegal, non-est, null, void and not binding on the Petitioner and/or Respondent No. 1 Company;*
 - (c) *For a declaration that the Impugned Transfer of the Impugned Shares is illegal, non-est, null, void and not binding on the Petitioner and/or Respondent No.1 Company;*
 - (d) *For a declaration that Respondent Nos.2 and 3 cannot exercise any right, title and/or interest in respect of the Impugned Shares;*
 - (e) *For appropriate orders, reliefs and directions under Section(s) 241 and 242 of the Companies Act, 2013 restraining the Respondents from acting in pursuance of and/or taking any steps in furtherance to the Impugned Transfer and/or the Impugned Shares;*



- (f) *For appropriate orders, directions and injunctions ordering. directing and restraining Respondent Nos. 2 and 3 from encumbering, alienating, selling and/or mortgaging and/or creating a lien, charge and/or any encumbrance of any nature whatsoever on the assets and properties of Respondent No. 1 Company;*
- (g) *That this Tribunal be pleased to restrain Respondent Nos.2 and 3 by an order and injunction from convening or holding any general meeting or board meeting of Respondent No. 1 Company;*
- (h) *That this Tribunal be pleased to direct the Respondents to provide copies of all documents, Annual Returns, statutory filings, information, accounts and records of Respondent No.1 Company till date to the Petitioner;*
- (i) *That this Tribunal be pleased to restrain the Respondents, their agents, servants and/or any person claiming through them from in any manner obstructing, or hindering access to all the assets, offices, apartments, out-houses, documents, Annual Returns, statutory filings, information, accounts and records of Respondent No.1 Company which the Petitioner is currently denied access to;*
- (j) *That this Tribunal be pleased to restrain Respondent Nos.2 and 3 by an order and injunction from exercising any rights as a shareholder of Respondent No.1 Company and they be restrained from holding themselves out as shareholders of Respondent No. 1 Company;*
- (k) *That this Tribunal be pleased to remove Respondent Nos.2 and 3 as directors of Respondent No.1 Company and they be restrained from holding themselves out as directors of Respondent No. 1 Company;*
2. The Petitioner also filed another Company Petition C.P. 1018/2020 in the matters of Laxsons Properties Pvt Ltd. on 18.08.2020 seeking stay on operation of 169 Notice and Impugned Resolution; appointment of independent forensic auditor for investigation the affairs of the Respondent Company; and an Administrator for managing the affairs, besides other prayers which are similar in nature to the prayers in C.P. 1017/2020. The prayers made in C.P. 1018/2020 are as follows :



- a. *That pending the hearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to stay the effect, implementation and operation of the Impugned 169 Notice, Impugned Resolution, and the Impugned Notice and Agenda;*
- b. *In the event the Impugned Resolution and/or any other or similar resolution is passed removing the Petitioner as a Director of Respondent No. 1 Company, then pending the hearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to stay the effect, implementation and operation of the Impugned Resolution and/or any such or other resolution that may be passed by the Board of Directors and/or the Shareholders of Respondent No. 1 Company on the basis of the Impugned 169 Notice, Impugned Resolution, and the Impugned Notice and Agenda;*
- c. *That pending the hearing and final disposal of this Petition, the Respondents by themselves, their directors, employees, agents and/or any other person claiming through or under the said Respondents be restrained by an order and injunction from in any manner directly and/or indirectly taking any steps, coercive or otherwise, against the Petitioner and/or Respondent No. 1 Company;*
- d. *That pending the hearing and final disposal of this Petition, Respondent Nos.2 and 3 by themselves, their directors, employees, agents and/or any other person claiming through or under Respondent Nos.2 and 3 be restrained by an order and injunction from in any manner whatsoever, either directly and/or indirectly dealing with, disposing of, selling, transferring, alienating, encumbering, licensing, mortgaging, parting with possession and/or dealing with or creating any third party rights in respect of the assets of Respondent No. 1 Company;*
- e. *Pending the hearing and final disposal of the present Petition, this Hon'ble Tribunal be pleased to restrain Respondent Nos.2 and 3 by an order of injunction from changing the present shareholding structure of Respondent No. 1 Company and also the composition of the Board of Directors of Respondent No. 1 Company,*



- f. Pending the hearing and final disposal of this Petition, the Petitioner be permitted to solely and exclusively run the affairs of Respondent No. 1 Company and to take all steps necessary for conducting the business and affairs of Respondent No.1 Company including operating its bank accounts, convening and holding its board meetings and general meetings;
- g. That in the alternative, a Special Officer/ Administrator be appointed with a direction to run the affairs of Respondent No.1 Company and to operate the bank accounts and to take control of the books, records and documents of Respondent No. 1 Company,
- h. Pending the hearing and final disposal of the present Petition, this Hon'ble Tribunal be pleased to direct the Respondents to provide copies of all documents, Annual Returns, statutory filings, information, accounts and records of Respondent No.1 Company [Il date to the Petitioner;
- i. Pending the hearing and final disposal of the present Petition, this Hon'ble Tribunal be pleased to restrain the Respondents, their agents, servants and/or any person claiming through them from in any manner obstructing, or hindering access to all the assets, offices, apartments, out-houses, documents, Annual Returns, statutory filings, information, accounts and records of Respondent No.1 Company which the Petitioner is currently denied access to and Respondent Nos 2 and 3 should handover the keys of all such properties to the Petitioner.
- j. That pending the hearing and final disposal of this Petition, Respondent Nos.2 and 3 be restrained by an order and injunction from in any manner whatsoever, either directly and/or indirectly receiving any remuneration from Respondent No.1 Company;
- k. That pending the hearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to restrain the Respondents by an order and injunction from exercising any right, title and/or interest in respect of the Impugned Shares;



- l. That this Hon'ble Tribunal be pleased to restrain the Respondents by an order and injunction from convening or holding any general meeting or board meeting of Respondent No. 1 Company;*
- m. That pending the hearing and final disposal of the present Petition, Respondent Nos. 2 and 3 be directed to disclose on oath detailed particulars of all the amounts received by them from Respondent No.1 Company until date:*
- n. That pending the hearing and final disposal of the present Petition, this Tribunal be pleased to appoint an independent auditor to conduct a forensic audit so as to ascertain the detailed particulars of all the amounts received by Respondent Nos 2 and 3 from Respondent No. 1 Company until date,*
- o. That pending the hearing and final disposal of the present Petition, Respondent Nos.2 and 3 be directed to deposit all amounts received by them from Respondent No.1 Company until date;*
- p. That pending the hearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to pass an order directing Respondent Nos 2 and 3 to disclose on oath detailed particulars of all their moveable and immoveable assets/properties belonging to or owned by them, either singly and/or jointly and/or with any third party including bank accounts held by them singly and/or jointly:*
- q. That pending the hearing and final disposal of the this Petition, this Hon'ble Tribunal be pleased to direct Respondents to pay monthly remuneration to the Petitioner for her livelihood and an exclusive permanent residence of her own since the Petitioner is one of the Directors of Respondent No. 1;*
- r. That pending the bearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to direct Respondents to give all entitlements to the Petitioner in Respondent No. 1 Company including handover the Petitioner a well maintained sustainable car for her travelling since commuting by using public transport can be life threatening to the Petitioner especially in these unprecedented*



circumstances of COVID-19; as per her entitlement in the Respondent No. 1 Company

- s. *That pending the hearing and final disposal of this Petition, this Hon'ble Tribunal be pleased to pass an order and injunction restraining Respondent Nos.2 and 3 by themselves, their employees, servants and/or agents or any person/entity claiming through and/or under them from dealing with, selling, transferring, alienating, disposing of, encumbering, mortgaging, hypothecating, creating a charge, parting with possession, inducting any third party and/or creating any third party rights, title or interest in any manner whatsoever or license in favour of anyone in respect of their moveable and immovable properties including but not limited to those which shall be disclosed by them on oath pursuant to the directions passed by this Hon'ble Court;*
3. The Respondent No. 1 company also filed an Company Application 307/2022 in C.P. 1017/2020 and Company Application 305 in C.P. 1018/2020 seeking vacation of order(s) dated 14.8.2020 and 10.12.2020 restraining the Applicant Company from dealing with the Applicant Company's assets and properties, save and except the day-to-day functioning of the Applicant Company, and for maintaining status quo as to the directorship, shareholding pattern of the Applicant company.
 4. All These matters are pending and are being dealt with hereinafter and disposed of by this common order.
 5. In both the Petitions, the Respondent No. 1 is the Company, and Respondent No. 2 and 3 are Ashwin Bharat Khatter and Ruchi Ashwin Khatter who are directors of the Respondent No. 1 Company as well as son and daughter in law of the Petitioner herein.
 6. The Petitioner submits that Respondent No.1 Company was incorporated in 1972 and is in the business of manufacturing, dealers, importer and exporter of all types of electronic and electrical goods. She married her late husband Mr. Bharat Khater on November 26, 1973. Of this wedlock, the Petitioner



and her late husband had two (2) sons viz. Mr. Avinash Bharat Khater and Mr. Ashwin Bharat Khater (Respondent No. 2). Amongst various businesses, the Petitioner and her late husband floated Respondent No.1 Company. The Petitioner was inducted as a Director of Respondent No.1 Company in 1987, whereas, after thirteen (13) years from the Petitioner's appointment, Respondent No.2 was inducted in 2000.

- 6.1. The Petitioner and her late husband enjoyed an extremely close and cordial relationship. The Petitioner actively assisted him in the pursuit of all of his business activities. The Petitioner has been actively involved as a director in various companies promoted by her late husband since 1987 and even participated in Board Meetings thereof. In fact, the Petitioner has received various accolades in respect of her participation in Respondent No.1 Company. Illustratively, the Petitioner has received an award "Lady Entrepreneurship Award" in 1995 from the hands of the then Honourable Finance Minister Mr. Pranab Mukherjee. The Petitioner and her late husband were independently residing at Avinash Bunglow No.1, Plot No.U-7, Gulmohar Cross Road No.4, JVPD Scheme, Vile Parle (W), Mumbai-400 049 since 1993 ("Bungalow").
- 6.2. At the relevant time, the Petitioner along with her late husband carried on their business through Respondent No.1 Company. Collectively, the Petitioner and Respondent No.2 hold 100% of the share capital of Respondent No. 1 Company.
- 6.3. Around 2000, Respondent No.1 Company diversified in the business of Real Estate by purchasing Plot of 993 Yards and developed this Plot, into an 11 Storey Building in Gulmohar Crossroad No. 4, Juhu Scheme, Mumbai. The Petitioner was actively involved in the construction of this Building. This Building was chosen as the "Best Building" in "Juhu Scheme", by the Times Property Journal, Mumbai, a Publication by the Times of India Group. This Building was named Vienna, which is after the Petitioner's Maiden First Name, i.e. Veena. Vienna earned large Revenues, for Respondent No.1 Company, when the Petitioner was a Director of Respondent No. 1 Company.



- 6.4. On or about 2013, certain disputes arose between the Petitioner's elder son Mr. Avinash Khater on the one hand and the Petitioner's late husband and Respondent No.2 on the other. The Petitioner's elder son Mr. Avinash Khater sought for partition of the properties of the Khatter family seeking his share thereof. As a result, various legal proceedings were instituted in this respect. The aforesaid disputes culminated in the Deed of Family Settlement on January 9, 2015 ("DoFS"). On November 16, 2016, the Petitioner's late husband was diagnosed with liver cancer. Upon being diagnosed, Respondent Nos 2 and 3 moved into the Bungalow. Also, at this time, taking undue advantage of the Petitioner and late husband's ill health, Respondent No. 2 coerced both to sign and execute several documents in his favor.
- 6.5. Within approximately three (3) weeks of being diagnosed with liver cancer, the Petitioner's late husband passed away on December 10, 2016. As a result of her husband's unfortunate and sudden demise, the Petitioner entered into a state of depression and shock. The Petitioner was getting severe panic attacks at that time because of the shock of her husband's sudden demise.
- 6.6. Immediately upon the Petitioner's late husband demise, Respondent No.2 filed a Petition for Probate of alleged and purported will dated November 18 2016 allegedly executed by the Petitioner's late husband ("WII"). Pertinently, the Will was based twenty-two (22) days prior to the Petitioner's late husband's demise. The circumstances surrounding alleged execution of this alleged Will. are therefore wholly suspicious. This alleged Will appears to be a fabricated, concocted and illegal document procured through mala fide acts by Respondent No.2 so as to unilaterally usurp the assets of Respondent No. 1 Company and the Petitioner's late husband Mr. Bharat Khater.
- 6.7. Challenging the veracity and validity of the Will, the Petitioner was constrained to file a Caveat opposing the grant of Probate of the Will.



- 6.8. The Probate Petition No.222 of 2017 has been converted into a Suit being Suit No. 143 of 2018 and same is sub-judice pending adjudication before the Hon'ble Bombay High Court.
- 6.9. The Petitioner is the co-owner of the entire ground floor and first floor of a building named Bharat Bhuvan situated at Khar (W), Mumbai. From this property, Respondent No.1 Company obtains large sums of monies in the form of maintenance from various licensees on this premises. However, no particulars to the amount of monies collected and/or utilization has ever been shared with the Petitioner.
- 6.10. Despite there being no legal sanctity to the Will and subject to challenge being sub-judiced before the Hon'ble Bombay High Court, the Respondent No.2 with malafide intention applied to the Municipal Corporation and obtained permission of a Café in his own name, without any consent of the Petitioner. Moreover, Respondent No.2 gave the premises to Raaz Properties Pvt. Ltd. on leave and license basis without any consent of the Petitioner depriving her from her bonafide License Fees & Maintenance Fees entitlement to the premises. Accordingly, the Petitioner addressed a letter dated May 2, 2019, citing the above facts to the Municipal Ward Officer for revocation of such permission since Respondent No.2 was intermeddling with the assets and properties of Petitioner's late husband Mr. Bharat Khater.
- 6.11. In addition to the above, it has now come to the Petitioner's notice, that Respondent No.2 illegally transferred 15,97,799 Nos. of Bharat Khater Shares ("Impugned Shares") previously held by the Petitioner's late Husband in his favour ("Impugned Transfer"). In fact, Respondent No.2, in his Probate Petition has conceded and stated on oath that 15,97,799 no. of shares of Respondent No.1 Company held by the Petitioner's late husband are the properties of the Petitioner's late husband as on the date of the demise of Petitioner's late husband and continues to be so, on the date of the filing of the Probate Petition in 2017. This being so, it is wholly impermissible and illegal for the



Respondents to now exercise rights over these Impugned Shares which are subject matter of on-going proceedings before the Hon'ble Bombay High Court. The Impugned Transfer of the Impugned Shares are inter-alia sought to be challenged in this Petition.

6.12. On May 29, 2018, a Memorandum of Understanding came to be executed by and between the Petitioner and her two (2) sons ("MoU").

6.13. In June 2019, Respondent Nos.2 and 3, Directors of Laxsons Systems Pvt. Ltd. ("Laxsons Systems") addressed a notice under section 169 (2) of the Act to the Board of Directors of Laxsons Systems stating that the members of Laxsons Systems has proposed to move an ordinary general meeting to remove the Petitioner from the office of the Directorship of Laxsons Systems. Accordingly, under section 169 (3) the Board circulated the Notice and Agenda of the board meeting and addressed such a notice to the Petitioner by giving her opportunity to give representation as to why she shall not be removed from the Board of Laxsons Systems. By a Board Meeting dated June 21, 2019 of Laxsons Systems Pvt. Ltd. the Petitioner was removed without stating any cogent reasons from the Directorship of Laxsons Systems as duly recorded in the Minutes of the Board Meeting.

6.14. In so far as the Petitioner's removal from Laxsons Systems is concerned, considering the helplessness and dire state of the Petitioner post her husband's demise, the Petitioner was unable to assail the aforesaid removal. However, upon the recent facts now coming to the Petitioner's knowledge, the Petitioner is in the process of assailing her removal from Laxsons Systems.

6.15. After illegally and maliciously removing the Petitioner from the Board of Laxsons Systems, taking undue advantage of the precarious and vulnerable situation of the Petitioner, Respondent Nos.2 and 3 continued and increased their harassment of the Petitioner to extort monies from her and illegally usurp all of the assets of inter alia



Respondent No.1 Company. The Respondent Nos.2 and 3 wrongfully restricted the Petitioner from entering her own Bungalow, where she is the co-owner and also her matrimonial house since 1990, by physically assaulting her. In view of such violent and aggressive behavior of Respondent No.2, the Petitioner filed a non-cognizant report before the Juhu Police Station citing the aggressive, irrational and vindictive behavior of Respondent No.2.

6.16. The Petitioner has now learnt that the purpose of removal of the Petitioner from Laxsons Systems was to unilaterally sell a Property of Laxsons Systems in Gorai. Having unilaterally ousted the Petitioner from Laxsons Systems, the Respondents proceeded to sell the said assets and appropriated the proceeds thereof. This brings forth the mala fide conduct and modus operandi of the Respondents. In addition, due to the illegal conduct of the Respondents, the Petitioner filed various complaints with various authorities.

6.17. Following the aforesaid, on August 5, 2020, the Petitioner was further shocked and surprised to receive a Notice and Agenda dated August 4, 2020 vide email for a Board Meeting of Respondent Company in both Company Petitions proposed to be held on August 14, 2020 ("Impugned Notice and Agenda"). Amongst various other agenda. reads the following:

"RESOLVED THAT pursuant to Section 169 of the Companies Act, 2013, Mrs. Urvashi Khater be and is hereby removed from the office of the Director in the Company with effect from the conclusion of the Extra-Ordinary General Meeting"

("Impugned Notice and Agenda")

6.18. Pertinently, the Petitioner has only received the Impugned 69 Notice, Impugned Resolution and/or the Impugned Notice and Agenda on August 5, 2020 and has still not received a physical copy of the same. In any event, without prejudice to her rights and contentions under applicable law, the Petitioner shall be filing a representation with the



Board of Directors and Shareholders of Respondent No. 1 Company, as may be advised. However, looking at the oppressive conduct of Respondent Nos. 2 and 3, the Petitioner seriously apprehends that the representation called for by Respondent Nos. 2 and 3 is a mere formality and would be treated as a mere piece of paper and the Respondent Nos. 2 and 3 have pre-determined mindset to remove the Petitioner as a Director to settle their personal score and vengeance and more particularly due to their various acts and omissions, as more particularly set out herein.

6.19. The Respondents have already succeeded in removing the Petitioner from Laxsons Systems and thereafter further succeeded in alienating its assets and specifically the property at Gorai for their personal and wrongful gains. This new move by the Respondents of issuing the Impugned 169 Notice, Impugned Resolution, and the Impugned Notice and Agenda during such pandemic times is once again, the same. "modus-operandi", to illegally remove the Petitioner from Respondent No. 1 Company and thereafter alienate its assets and well and unilaterally appropriate the proceeds thereof. As stated earlier, the Petitioner shall take necessary steps protecting her legal rights in respect thereof, as may be advised.

6.20. Amongst other assets, Respondent No.1 Company owns 8th 9th, 10th, and 11th floors including the terrace on the 12th floor of a Building by the name of 'Vienna' located at 12, Gulmohar Crossroad No.4, Juhu Scheme, Mumbai 400 049 ("Vienna Building"). Since the aforesaid floors are owned by Respondent No, 1 Company in Vienna Building, there was no Board Resolution passed to let out premises on Leave and License Basis in 2018 for the 8th 9th, 10th and 11t Floors to one Mr. Jayant Sanghvi as the licensee and/or to anybody else.

6.21. It has recently come to the Petitioner's notice that in respect of the aforesaid premises of Vienna Building, there are arrears of over Rs. 25,00,000/- (Rupees Twenty Five Lakh only) ("Arrears"), payable to the Vienna Apartments Welfare Association. Despite the existence of the Arrears, the Respondents are refusing and failing to pay out the Arrears



thereby causing further liabilities on Respondent No.1 Company. In fact, the Vienna Apartments Welfare Association have addressed various reminders and complaints in regard to non-payment of Arrears. This amounts to gross mismanagement of Respondent No. 1 Company.

6.22. Moreover, the Laxsons House, Goregaon (East), which has been developed by Respondent No. 1 Company and the entire Land and the structure thereon which are currently owned by Respondent No.1 Company, Respondent No.1 Company without informing and making the Petitioner aware, let out the premises on the leave and license basis. Respondent No.2 unilaterally without informing the Petitioner, gave on a Leave & License basis the entire Ground Floor to M/s. Video Works and siphoned the license fees and the security deposit for Respondent No.2 and 3's personal gain without giving any benefit of the same to the Petitioner despite being aware that she is the Director of Respondent No.1 Company and is entitled as per her share.

6.23. Further, ever since the demise of the Petitioner's late husband, Respondent Nos.2 and 3 have been adamant and selling the assets of Respondent No.1 Company. This is the sole and only intention of Respondent Nos.2 and 3. It is also for this reason that Respondent Nos.2 and 3 and seeking to oust the Petitioner from Respondent No. 1 Company.

6.24. In respect of further acts of mismanagement, Respondent No. 1 Company was given a contract to maintain a building owned by the Khatter Family by the name of Bharat Bhuvan at 711 Linking Road, Khar (West), Mumbai ("Bharat Bhuvan"). In respect of Bharat Bhuvan, Respondent Nos 2 and 3 have cut-off the Water Supply of a Licensee Pradeep Strands, operating a Café, under the Brand of "Tea Villa Cafe". The Licensees closed the Cafe, due to the constant harassment by Respondent Nos.2 and 3 and closed the Cafe, in October 2019. In addition, there has been water leakage at multiple places in Bharat Bhuvan which was never attended to by Respondent Nos.2 and 3 in their capacity as Directors of Respondent No. 1 Company. Similarly, another Licensor M/s. Lloyds Luxuries Ltd., which operates the Brand "True fit



& Hill", has innumerable complaints and has made huge Financial claims against Respondent No.1 Company.

6.25. In view of the aforesaid facts and the grounds stated hereinbelow, it shall become evident that Respondent Nos.2 and 3 have indulged in acts and omission that are oppressive towards the Petitioner. Respondent Nos. 2 and 3 have acted in violation of the provisions of the Act and have committed various illegal acts of mismanagement of Respondent No.1 Company that are prejudicial to the interest of Respondent No. 1 Company and its members.

7. The Respondent No. 2 has filed Reply dated 8.9.2022 and Written Submission dated 14.12.2022 stating that the transfer of 15,97,799 and 400 shares of LIPL and LPPL respectively, in his favour and Proposal of removal of Petitioner as a director of the Respondent No. 1 companies at a meeting proposed to be convened on 14.8.2020 is the subject matter of impugned petitions.

7.1. It is settled law that for reliefs pertaining to rectification of the register of members, the process u/s 59 is envisaged under the Companies Act and these petitions have not been filed u/s 59. In this regard, the petitioner has suppressed the Board Resolution of LIPL dated 13.7.2017 signed by the Petitioner, share certificates bearing the endorsement of the Petitioner, Securities Transfer Forms duly executed by the Petitioner in respect of such transfer, and Annual Returns of LIPL filed with the Registrar of Companies. These documents having been signed by the Petitioner clearly indicate that the transfer of shares in favor of Respondent No. 2 was consented by the Petitioner. Accordingly, the Court may refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. Furthermore, when the petitioners have consented to and even benefited from the company being run in a way which would normally be regarded as unfairly prejudicial to their interest or they might have shown no interest in pursuing their legitimate interest in being involved in the company.



- 7.2. Moreover, on 29th May, 2018, a Memorandum of Understanding was executed between inter alia the Petitioner and Respondent No. 2, wherein at Recital E thereof, the Petitioner has unequivocally agreed, acknowledged and accepted the Will. Further in a summary suit No. 12 of 2021 filed by him against his brother Avinash Khater, seeking reliefs against him in respect to the rights and obligations arising from the said MOU, the Petitioner, who is a defendant therein, has not denied the execution and/or existence and/or validity of the MOU.
- 7.3. The Petitioner's challenge to her proposed removal has been rendered purely academic owing to the August 14 meetings being cancelled and the notices in relation thereto being withdrawn by the Respondent No. 1 companies, upon the Petitioner's request on 30.8.2020 to which the Respondents promptly acceded.
- 7.4. The Petitioner has been acting complexly against the interests of the Company including causing hinderances in the Company earning an income, therefore the removal of the Petitioner from the Company was warranted.
- 7.4.1. The Petitioner actively ensured that the Respondent No. 1 Company fails to conduct its business and earn an income by chasing away / threatening potential licensees. The negotiations with M/s Magus Pvt Ltd and M/s Renaissance Pvt Ltd. did not fructify.
- 7.4.2. The Respondent Company filed a suit before Hon'ble Bombay High Court against Vienna Developers Pvt Ltd., a company owned by Avinash Khatter, to recover a sum of approx.. 6.30 crores under the MOU and the Petitioner has sought to oppose this Summary Suit opting to thwart Respondent No. 1 from receiving its owed monies.
- 7.4.3. The Petitioner has also written several threatening letters to Vienna Association and the Greater Bombay Society calling upon them to not permit Respondent No, 1 to enter into leave and license agreements / sale agreements in respect of the properties owned by it in these societies.



- 7.4.4. The Respondent No. 1 company has liabilities of around 22 crores and owing to the constant interference of the Petitioner, the Company is facing financial hardships and there are several difficulties being faced by Respondent No. 1 in meeting its monthly EMIs.
- 7.5. An action under oppression and mismanagement to succeed, there must be continuous acts on the part of members, continuing upto the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders 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 the company's affairs, and such oppression must involve an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.
- 7.6. Assuming whilst denying that the Petitioner was actively involved in the affairs of the Respondent No. 1 Company, then, in such case it cannot lie in the mouth of the Petitioner to state that she was unaware of the impugned share transfers in his favour. The Petitioner has contended otherwise before Hon'ble Bombay High Court that she has "never been actively involved in the financial affairs and day to day business of the Company".
- 7.7. Respondent No. 2's fears that the Petitioner was being misled by Avinash, with whom the Petitioner is residing after having moved out from her matrimonial residence voluntarily, into taking actions adversarial to Respondent No. 2 were confirmed by an e-mail dated 17.10.2020 enclosing an email of 19.8.2020 addressed by the Petitioner's Advocates in these proceedings specifically to Avinash, which shows that, by the said e-mail, the Advocates for the Petitioner were not only seeking Avinash's 'comments and factual inputs' on the Reply filed by the Respondents herein, but were also referring to a video conference to discuss the matter with Avinash i.e. the present Petition.



Pertinently, the Advocates end their e-mail by stating that they shall share the e-mail to be addressed to the Respondents with Avinash for his "Approval".

8. Heard learned Counsel and perused the material on record.
 - 8.1. The Respondent Companies were incorporated by the Petitioner and her deceased husband and later on her son also joined the companies. The other son of the Petitioner has already parted his ways for independent pursuit and was given his due share in the family wealth, which included properties owned by Companies, of whose ownership lies with the family. It is the case of the Respondent son that these petitions have been filed at the behest of his brother Avinash who has already share in the family wealth and is in control of some of the companies earlier jointly owned by the family.
 - 8.2. The Petitioner's allegation regarding proposed resolution for her removal as director of both the companies no longer survives after the relevant resolution and notice for calling of meeting where such resolution was proposed to be adopted has been recalled by the Respondent Companies. It is undisputed fact that the Petitioner is still director in both the Respondent Companies.
 - 8.3. As regards Petitioner's allegation regarding she being ousted from her matrimonial residence, the applicant has submitted that she vacated that house out of her own choice to reside with her other son. Nonetheless, this issue is not connected with the affairs of the Respondent Company and it seems that this averment is solely to demonstrate the conduct of the Respondent No. 2 & 3, accordingly we do not consider this averment relevant for adjudication of present matter.
 - 8.4. Coming to the alleged fraudulent transfer of shares owned by the Petitioner's deceased husband, the applicant has placed on record evidences to claim that such transfer was consented by the Petitioner despite the ownership of these shares being sub-judice on account of challenge to the Will of the deceased husband. On perusal of these evidences, it clearly follows that the Petitioner was not only fully aware of the transfer but also played active part in such transfer exercise. No



evidence has been brought on record to suggest that her signature on the transfer deed and endorsement on share certificate in favor of Respondent No. 2 was taken fraudulently. Accordingly, we are of the considered view that this allegation of oppression is an after thought. However, we make it clear that the Respondent No. 2's claim to the shares of Respondent Company owned by the deceased father shall be subject to the decision in the said title suit before Hon'ble Bombay High Court and the records of the Company shall be rectified accordingly, if required.

8.5. The Respondent No. 2 has pointed out that the Respondent Companies owe a lot of money to its lenders and for settling these debts, the disposal of properties is necessitated. Accordingly, he had been doing so. We do not find any wrong in this decision taken by the Board considering that the Petitioner has not made any allegation in the Petition that any sum representing sale proceeds of the properties has been siphoned off by the Respondent for their own personal advantage or benefit.

8.6. There are counter allegations against each other by the parties impeding the business of the Respondent Companies, which may be causing prejudice to its interest. The Petitioners have also suppressed the documents evidencing existence of her consent for transfer of deceased's shares in favor of Respondent No. 2. It is trite law that this Tribunal u/s 241 & 242 exercises an equitable jurisdiction. Accordingly, we have no hesitation to hold that these petitions, in nature of family dispute for share of properties owned by the Respondent Companies, is not maintainable and merits dismissal.

9. In view of the above, we dismiss CP 1017/2020 & CP 1018/2020 and dispose of accordingly. CA 307/2022 and CA 305/2022 are accordingly dismissed.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)