



BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-IV

COMPANY PETITION/199/MB/2022

[An application filed under section 241-242 of the Companies Act, 2013]

In the matter of:

Mr. Hormouz Phiroze Aderianwalla & Anr.

....Petitioner

Versus

Del. Seatek India Pvt. Ltd. and Ors.

.... Respondent

AND

COMPANY PETITION/50/MB/2023

[An application filed under section 241-242 of the Companies Act, 2013]

Delzad Aspy Karani and Anr.

....Petitioner

Versus

Del. Seatek India Pvt. Ltd. and Ors.

.... Respondent

Order Delivered on 05.09.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

COMPANY PETITION/199/MB/2022

And

COMPANY PETITION/50/MB/2023

For the Petitioner:

Adv. Nausher Kohli a/w Adv.
Rustam Mulla, Adv. Sohan
Kinkhabwala i/b Desai Desai
Carrimjee & Mulla.

For the Respondent:

Adv. Prachi Wazalwar a/w Adv.
Armin Wandrewala and Adv. Arusha
Bapat.

The Petitioners have filed the Company Petition No 199/2022, challenging various illegal acts of oppression and mismanagement malafide carried out by Respondent Nos. 2 & 3 (*referred as R2 and R3*), in relation to the affairs of the Respondent No.1 (*referred as R1 Co.*). In the aforesaid matter the Respondent in other Company Petition No 50/2023 has also filed a cross petition alleging the same act of Oppression & Mismangement. To summarise the issue in nutshell and crystallize it better we deem it appropriate to deal with the issues first before delving into the facts peculiar to those petitions.

Company Petition No 199/2022

The present Company Petition is filed by the Petitioner/Applicant seeking following reliefs:

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-IV

COMPANY PETITION/199/MB/2022
AND
COMPANY PETITION/50/MB/2023

- a) *Declare that the affairs of Respondent No. 1 are being mismanaged by Respondent Nos. 2 and 3 and conducted in a manner that is prejudicial and oppressive to the interests of the Petitioners and Respondent No. 1;*
- b) *Impose the maximum permissible fine as per the provisions of the Companies Act, 2013, each upon Respondent Nos. 2 and 3 for breach of their fiduciary duties and obligations as directors of Respondent No. 1 as provided for under section 166 read with section 172 of the Companies Act, 2013;*
- c) *Declare that Respondent Nos. 2 and 3 are not fit and proper persons to hold office of director or any other office connected with the conduct and management of the Respondent No. 1 and pass an order removing Respondent Nos. 2 and 3 from their position as directors of Respondent No. 1,*
- d) *This Hon'ble Tribunal be pleased to restrain Respondent Nos. 2 and 3 by an order of permanent injunction from, either by themselves and/ or through any of their representatives, servants, agents, successors or assigns, selling, transferring, encumbering, alienating, dealing with. and / or creating any third party right, title or interest in the assets of Respondent No. 1 (including its bank accounts) in any manner whatsoever;*
- e) *Declare that no Board Meeting of Respondent No. 1 took place on 3rd January 2022, and that the purported Minutes of the Meeting prepared by Respondent Nos. 2 and 3, in relation to the said illegal and non-est meeting of 3rd January 2022, are illegal, fraudulent, and void ab initio;*

- f) *Declare that all purported resolutions mentioned in the illegal Minutes of the Meeting dated 3rd January 2022, are illegal and void ab initio and ought to be removed from all the records of the Respondent No. 1;*
- g) *Declare that no effect be given to the draft Minutes of Board Meeting Jated 23rd March 2022, circulated by the Company Secretary under her email dated 12th April 2022;*
- h) *Direct Respondent Nos. 2 and 3, to handover to the Petitioners, all assets including IPR and IT data, documents, information, and other data relating to the Respondent No. 1 in their possession;*
- i) *Declare that Respondent Nos. 2 and 3 are not entitled to any remuneration from Respondent No. 1 since FY 2016-17, and direct Respondent Nos. 2 and 3 to reimburse to Respondent No. 1, the remunerations and other payments / perquisites withdrawn by Respondent Nos. 2 and 3, since FY 2016-17;*
- j) *Direct Respondent Nos. 2 and 3 to sell and transfer their entire shareholding in Respondent No. 1 to the Petitioners in a time bound manner at the Fair Market Value to be determined by an independent valuer to be appointed by this Hon'ble Tribunal;*


Submissions from the Petitioner: -

1. The shareholding pattern of the Petitioners and the R2 and R3 in the R1 Co., is equal i.e. 50:50. It is in the nature of Quasi-Partnership Since the last 6 plus years (i.e. since about the year 2016), the R2 and R3 have completely abstained and absented themselves from gainfully participating in the affairs of the R1 Co. Although being non-contributive to the business and affairs of the R1 Co.,

the R2 and R3 continue to malafide and to the prejudice of the R1 Co., draw disproportionate remuneration, perquisites, allowances, dividends, profit share and other benefits out of the R1 Co., which are being generated solely and exclusively by the efforts of the Petitioners.

2. Pursuant to the COVID-19 pandemic, the business of the R1 Co., was badly affected and in order to sustain the operations of the R1 Co., it was imperative that funds were immediately arranged to meet with the day-to-day expenses and operations of the R1 Co. In these circumstances, Petitioner No.1 (*referred as P1*) came in contact with one *Mr. Chadha*, who agreed to grant an unsecured loan to R1 Co., towards financing the projects of R1 Co., subject to Mr. Chadha being appointed as independent director / observer in the R1 Co. However, R2 and R3 created repeated roadblocks in this matter, pursuant to which no loan was received from Mr. Chadha and R1 Co was denied of a financing opportunity.
3. Vide an email dated 11.11.2021, R2 wrote to the auditors of the R1- *L.W. Kale & Co.* and P1, inter alia stating that he had allegedly come across certain questionable or suspicious transactions of the R1 Co., for financial year 2019-20, and requested the statutory auditors to opine on the authenticity of those transactions and whether the same were looked into by the auditors in course of their audit. The statutory auditors of the R1 Co vide an email dated 10.12.2021, unconditionally and unequivocally clarified, and confirmed that during the audit of the year 2019-20, the auditors had verified all the expenses including those pointed out by R2 as suspicious in his email dated 11.11.2021.

4. The auditors further clarified that all the expenses questioned and suspected by R2 were incurred wholly and exclusively for carrying out the business of the R1 Co. Despite this unequivocal clarification, the R3 vide email dated 11.11.2021 continued to make baseless allegations against the Petitioners and sought explanations in relation to transactions as identified by R2., which had already been confirmed to be legitimate and valid by the statutory auditors.
5. The applicant further submits that, vide email dated 28.12.2021, the R2 unilaterally and without consulting the Petitioners purported to inform the P1 that he had taken operational as well as financial matters of R1 Co., under his sole control and that he had unilaterally and without any authorization, made payments aggregating to the sum of Rs. 1,72,86,739 (Rupees One Crore Seventy Two Lakhs Eighty Six Thousand Seven Hundred and Thirty Nine Only) out of R1 Co., (which included a sum of Rs. 50,00,000/- to R2 himself as remuneration and Rs. 45,00,000/- to R3 as remuneration). By doing so, the R2 & R3 had upset the cash flow of R1 Co.
6. Since certain matters pertaining to statutory compliances were to be discussed, the P1 requested the Company Secretary of the R1 Co., to call for a Board meeting on 03.01.2022 at 4.30 p.m. via video conferencing. A notice of the Board meeting was circulated by the Company Secretary *vide* an email dated 01.01.2022 to P1 and R2. At the same time, the P1 *vide* his email dated 01.01.2022 provided a zoom link for the Board meeting to be held on 03.01.2022. In response to the said Board meeting notice, vide an email dated 02.01.2022 the R2 objected to convening of the said Board meeting on 03.01.2022, and objected to P1 scheduling the meeting and its agenda without discussing a mutually convenient time with R2.

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7. The R2 also informed the P1 that, the R2 had sought various financial documents from the consultants and employees of R1 which were not provided to him. The R2 informed that only after the financial documents had been provided to him, that P1 and R2 can have a Board meeting at a mutually acceptable time and date so that the Board meeting could be meaningful and meet all the agenda points.
8. On 03.01.2022, the Company Secretary also telephonically discussed and reconfirmed with the P1 that the proposed Board meeting to be held on 03.01.2022 had been cancelled, in light of the email dated 02.01.2022 of the R2. Accordingly, no meeting of the Board of Directors of R1 Co. took place on 03.01.2022.
9. The R2 and R3 disingenuously purported to forward to the directors of the R1 Co. and the Company Secretary, bogus, fraudulent, and illegal Minutes of a purported Meeting of the Board of Directors, purportedly held on 03.01.2022 (*minutes being circulated 52 days of the alleged board meeting*). The Petitioners were absolutely shocked to receive this email dated 24.02.2022 since as highlighted above, no meeting of the Board of Directors of the R1 Co. took place on 03.01.2022. The proposed meeting had been cancelled at the insistence of R 2. Accordingly, the said Minutes of the Meeting purported to be sent by R2 and R3 were nothing but fraudulent and a sham. The R2 also sought to inform the P1 and the accounts team of R1 that the R2 and R3 had already and unilaterally, submitted a letter to HDFC Bank, Dadar TT Branch requesting the bank to take notice of the resolutions passed in the illegal Board Meeting held on 03.01.2022, and change the signatories and mode of operation of the current bank account bearing No. 00842000004949 of R1 Co. The P1

vehemently objected to preparation of fake, fraudulent and bogus Minutes of Meeting by R2 & R3, and inter alia called upon the Company Secretary to initiate appropriate actions against R2 and R3.

10. Since matters relating to statutory compliances still remained outstanding, the P1 by an email dated 16.03.2022, convened a Board Meeting on 23.03.2022 at the registered office at R1 Co.,. However, due to ruckus and outbursts of R2 & R3, no fruitful discussions qua statutory compliances, took place at the Board Meeting. The Company Secretary in connivance with R2 & R3 circulated bogus draft Minutes of Board Meeting of 23.3.2022, which was vehemently objected by the Petitioners.
11. On or about 18.04.2022, the R2, malafide called upon the office staff to leave the office, and thereafter, without permission, went into the office cabin of P1 and sought to carry out certain clandestine activities therein. Upon being made aware of the same by the office staff, by email dated 18.04.2022, the P1 objected to the R2 entering the office cabin of P1.
12. Since December 2021, the Petitioners have been complaining about the IT System of R1 being unsafe and unsecured, and that emails of Petitioners are being tracked viewed by unauthorized persons and suggested transitioning of the IT System to a better secured platform, however R2 and R3 continue to create roadblocks in the said matter. The R2 and R3 have illegally and unlawfully removed the Minutes Book maintained by R1 out of the office of R1, without intimation to Petitioners.



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13. With a view to end the stalemate, the Petitioners have repeatedly suggested two options to Respondent Nos. 2 and 3: (a) buy-out and (b) dissolution of R1. The Petitioners even recommended a name of a reputed independent valuer to undertake valuation of R1. However, the R2 & R3, objected to appointment of the valuer.
14. Due to prevailing deadlock created by R2 and R3, no financial statements of R1 Company, have been filed with the Registrar of Companies, for the Financial Years 2020-2021, 2021-2022, 2022-2023, and 2023-2024. No statutory filings, with statutory authorities such as Income Tax Department, GST Department, etc. have taken place for the above period. Further, no board meetings/general meetings of R1 Company, have been held after 23.03.2022 (i.e. for about 27 months).
15. Presently, there is a complete stalemate and deadlock in Respondent No. 1. by reason whereof, no decisions are being taken and the day-to-day operations of Respondent No. 1 are on the verge of coming to a stand-still. Various statutory filings have also remained pending, and the Respondent No. 1 is likely to be subjected to penalties.
16. The applicant submits that, there are litigations filed and pending against R1 Co., which have remained unattended. The bankers of R1 Co., have also reduced credit limits of R1 Co.,.
17. Vide order dated 01 March 2023, this Court directed that-

In the last hearing in CP-199/2022, this Bench had allowed the Petitioner's group in this CP to file unsigned Financial Statement for the year ended

31.03.2021 and 31.03.2022 with the bankers and also ask both the groups to furnish name of registered valuers for undertaking valuation of share of the Company. The Petitioner in this Company Petition has suggested Baker Tilly India Business Advisory and Consulting Services Private Limited Mumbai and the Petitioner in the Company Petition No 50/2023 has suggested Mis Shah Gupta & Company Mumbai. In view of this, both the groups may seek valuation of share of the Company for the purpose of making an offer for purchase of shareholding of the other group in the Company. The Petitioner in this Company Petition shall make available all information, records and books of accounts as may be required by the registered valuer nominated by the Petitioner in Company Petition No. 50/2023.

18. The Petitioners have filed the valuation report dated 25.07.2023 of Baker Tilly India Business Advisory and Consulting Services Private Limited, Mumbai ("Baker Tilly"), served copy upon the Respondents, and the same is recorded in the order dated 03.08.2023 of this Tribunal. The Respondent Nos. 2 and 3 have not filed any valuation report. Furthermore, Respondent No. 2's Company filed an Application bearing No. 154 of 2024, challenging the valuation report of Baker Tilly, and the said was dismissed by this Tribunal, vide order dated 16.05.2024.

19. It is a trite law that where there is equal shareholding/director representation amongst the shareholders, and there is a deadlock in relation to day-to-day management of the company, it is imperative that one group buys out the shareholding of the other to resolve the deadlock. The applicant has relied on to the judicial pronouncements in the cases of

(i) *M.S.D.C. Radharamanan vs M.S.D. Chandrasekara Raja and Another,*
reported in 2008 (6) SCC 750;

(ii) *Vidharbha Bottles Pvt. Ltd. vs. Devilal Hardeolal Jaiswal and Others,*
reported in 2016 (3) MHLJ 849; and

(iii) *MS.D. Chandrasekar Raja vs Jayabharath Textiles Pvt. Ltd. and Ors.,*
reported in 2017 (SCC Online NCLT 7338)

20. In view of the aforementioned settled legal position, it is humbly prayed that the long prevalent deadlock, stalemate in R1 Co., be resolved and brought to end, and for that purpose, the Petitioners may be permitted to purchase the shareholding of R2 and R3, in R1 Co.

Reply

21. The Respondent No.2 (R2) is a qualified Deep Sea Commercial Diver and possess expertise in this business. Being aware of this fact, the Petitioners, who were acquainted to Respondents since more than 20 years prior to incorporation of R1 Co., approached with the proposal to join in R1 Co., for the purpose of undertaking the business as stated above the said offer was accepted. Further, the Petitioners represented that they would handle the day-to-day operations of R1 Co., and suggested the R2 and R3 to fully concentrate on work and Petitioner No. 1 handles business development and finances, it would enable me to devote more time on execution and would also lead to exponential growth of Respondent No. 1.

22. Upon incorporation of R1 Co., both parties were allotted shares of R1 Co., (such that 50% shareholding is held by P1 and his wife i.e. P2, and the balance 50% is held by me and my wife i.e. R3).



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23. While the day-to-day operations and the other backend activities were to be handled exclusively by P1, keeping in mind good governance practices and to ensure that both parties have an equal say in the affairs of R1 Co., it was agreed that R1 Co. would have only four directors i.e. P1 and P2 representing their 50% shareholding and R2 and R3 representing 50% shareholding in R1 Co. The intention to do this was to ensure that all decisions in R1 Co., are taken transparently and with the concurrence of both sides and that both sides have equal control on the affairs of R1 Co.,. Accordingly, on the basis of the above, the R2 proceeded with execution of the contracts awarded to Respondent No. 1.
24. Since Respondents were involved in the execution of projects and it is the Petitioners who were the decision makers with respect to the day to day operations, finances and office administration of R1 Co., the Respondents in good faith, execute and sign all documents as required by P1 and would also sign all balance sheets and accounts of R1 Co.,.
25. Insofar as the business of R1 Co., is concerned, it was progressing seamlessly and this is evident from the fact that for a period from 2003 till 2021, the respondents single handedly executed approximately 265 projects on behalf of R1 Co.,.
26. During this period, R1 Co., incorporated an entity in Abu Dhabi, United Arab Emirates under the name and style of Seatek Oil & Gas Services LLC (hereinafter referred to as "Seatek (Abu Dhabi)"). This entity was incorporated on 19.07.2012.



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27. Similarly, R1 Co., also commenced operations in Qatar from 2016 by establishing a branch in Qatar (hereinafter referred to as "Seatek (Qatar)") when it was awarded a contract by Qatar Petroleum for Marine Maintenance Services.
28. The Respondents further submits that, a wholly owned subsidiary had also been incorporated by R1 Co., in Mauritius viz. Seatek Offshore Private Ltd. in 2006 when it commenced international business.
29. It is submitted that, however, in or around August 2021, during one of visits of the Respondent to Ahmedabad to meet one of R1 Co. The respondents were shocked to learn from the client that R1 Co does not have 4 but has 5 Directors. Upon further inquiry and upon inspecting the government records, the respondents were surprised to learn that a 5th director viz Mr. Rajiv Chadha was inducted to the board of directors of R1 Co. From the records available, Mr. Rajiv Chadha was appointed as a director in R1 Co. on 02.08.2021.
30. On account of the above, the respondent constrained to address an email on 24.08.2021 to P1 and also address the same email to this Mr. Chadha expressing anguish at the manner in which Mr. Chadha was illegally appointed to the Board of Respondent No. 1 without knowledge and consent.
31. The P1 justified the same stating that the R1 Co., allegedly in financial stress and is in need of funds. Since the explanations provided by Petitioner No. 1 were unsatisfactory, it led the respondents to investigate into the day-to-day affairs and the financial operations of R1 Co., to ascertain whether the Respondent No. 1 was actually in financial stress or not. Further, the

Respondents stumbled upon the fact that P1 is siphoning off funds from R1 Co.,. Therefore, the R2 immediately addressed an e-mail on 25.09.2021 to Petitioner No.1, bringing this fact to his light.

32. Upon receiving this e-mail, Petitioner No. 1 suddenly started casting aspersions on the performance and putting all the blame on the Respondents for the alleged difficulties that Respondent No. 1 Company was in. The Petitioner No. 1 addressed emails to Respondents alleging that they have not purportedly contributed anything towards the company. Further, the Petitioners suggested that both parties part ways and also called upon R1 to give them a proposal to exit from Respondent No.1.

33. It is further submitted that, the request for inspection of financial data and records was met with strong opposition by the Petitioners and the accounts team of Respondent No. 1 Company. In fact, even the auditors of Respondent No. 1 company ie. L.W Kale & Co, were supporting the Petitioners in preventing the Respondents from gaining access to the financial data pertaining to Respondent No. 1. During this entire period, ie. between 29.11.2021 till January, 2022, there was strong opposition from the side of the Petitioners in sharing financial data of Respondent No. 1 with the respondents.

34. However, upon the aforesaid communications addressed by me Petitioner No. 1, for the first time forwarded Respondents communication dated 31.12.2021 whereby the petitioners sought to schedule a meeting of the board of directors of Respondent No. 1 on 03.01.2022. The Respondent requested the Petitioners to reschedule this meeting. However, since the Petitioners had, even in the past, defrauded, and further since the request was not even considered by the

Petitioners, the Respondents logged into the meeting through the link forwarded by the Petitioners in order to prevent the Petitioners from continuing their fraudulent design and to place on record any objections. However, the Petitioners did not log into the meeting and therefore, since there was a meeting already scheduled by the Petitioners themselves, the same was conducted and the minutes thereof were circulated.

35. While this deadlock existed between the Petitioners and Respondent Nos. 2 and 3, where, on one hand the Petitioners were alleging financial difficulties being faced by Respondent No. 1 and were constantly calling upon Respondent Nos. 2 and 3 to exit from Respondent No. 1 and on the other hand, Respondent No. 2 and 3 were constantly requesting the Petitioners to share all data in relation to Respondent No. 1 with us, in or around August 2021 onwards.

36. Upon perusing the data, R2 and R3 was completely surprised to observe the contents. From the data recovered, that the petitioners have, in collusion with four of the employees of Respondent No. 1 i.e. (i) Mr. Mandar Apte (General Manager), (ii) Mr. Manpreet Jassi (Equipment Technician), (iii) Mr. Pawan Kale (Accountant) and (iv) Mr. Shrikant Durgawale (Head Administrator) and LW. Kale & Co. (the Auditor) set up entities in Dubai, United Arab Emirates (UAE) and in Qatar with a view to systematically defraud the Respondents including Respondent No. 1 and siphon off funds and business.

37. From the facts narrated hereinabove and particularly the acts of the Petitioners in

(i) appointing Mr. Chaddha as a Director of Respondent No. 1 Company;

(ii) siphoning off funds and business of Respondent No. 1 to entities eventually controlled by the Petitioners,

(iii) attempts by the Petitioners through the Employees and the auditors of Respondent No. 1 to prevent Respondent Nos. 2 and 3 from accessing the accounts and records of the Respondent No. 1 and;

(iv) attempts made by the Petitioners to buy out Respondent Nos. 2 and 3's stake in Respondent No. 1 Company is bogus.

38. It is apparent that it is the Petitioners who have conducted acts of oppression and mismanagement and therefore, are not entitled to any of the reliefs as prayed for in the present petition.

Company Petition No 50/2023

This petition under Section 241-242 of the Companies Act, 2013 is filed by the petitioners seeking certain relief against the act of oppression and mismanagement of Respondents.

- a) Declare that the affairs of Respondent No.1 are being mismanaged by Respondent Nos. 2 and 3 and conducted in a manner that is prejudicial and oppressive to the interests of the Petitioners and Respondent No.1.*
- b) Impose the maximum permissible fine as per the provisions of the Companies Act, 2013, upon Respondent Nos. 2 and 3 for breach of their fiduciary duties and obligations as directors of Respondent No. 1 as provided for under Section 166 read with Section 172 of the Companies Act, 2013;*

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- c) *Declare that Respondent Nos. 2 and 3 are not fit and proper persons to hold office of director or any other office connected with the conduct and management of the Respondent No. 1 and pass an order removing Respondent Nos. 2 and 3 from their position as directors of Respondent No. 1,*
- d) *This Hon'ble Tribunal be pleased to restrain Respondent Nos. 2 and 3 their representatives, servants, agents, successors or assigns, or any person claiming by, through or under them by an order of permanent injunction from selling, transferring, encumbering, alienating, dealing with, and/or creating any third party right, title and interest in the assets of Respondent No 1 (including its bank accounts) in any manner whatsoever,*
- e) *Direct Respondent Nos. 2 and 3, to handover to the Petitioners, all assets including IPR and IT data, documents Information, and other data relating to the Respondent No. 1 In their possession;*
- f) *This Hon'ble Tribunal be pleased to direct Respondent Nos. 2 and 3 to disclose on oath their annual returns, all their bank account details, their bank statements, details of assets held by them and documents relating to acquisition,*
- g) *This Hon'ble Tribunal be pleased to direct Respondent Nos. 2 and 3 to disclose on oath annual returns, all bank account details, all bank statements, details of assets and documents relating to acquisition of these assets by the following entities/persons:-*
- I. DP Sea Diving LLC, Dubai;*
 - II. Seatek Oil and Gas Services LLC/Seatek Energy;*
 - III. Seatek Oil and Gas WLL, Qatar,*

IV. *Mandar Apte; and*

V. *Manpreet Jassi*

- h) This Hon'ble Tribunal be pleased to direct a forensic audit to be conducted into the affairs of Respondent No. 1 company not only with the following entities but also with such other;*
- i) Declare that Respondent Nos. 2 and 3 are not entitled to any remuneration from Respondent No. 1 and direct Respondent Nos. 2 and 3 to reimburse to Respondent No.1, the remuneration, illegal gratification, and other payments/ perquisites withdrawn by them.*
- j) This Hon'ble Court be pleased to direct Respondent Nos. 2 and 3 to return the amounts siphoned off by them from Respondent No. 1 company through the Employees and the aforesaid entities and as per the report to be submitted by the forensic auditor to be appointed by this Hon'ble Court, this Hon'ble Tribunal be pleased to direct a valuer to be appointed after completion of forensic audit and thereafter be pleased to direct Respondent Nos. 2 and 3 to sell and transfer their entire shareholding in Respondent No. 1 to the Petitioners in a time bound manner after taking into consideration and adjusting for the siphoning off funds as may be observed by the forensic auditor in the report submitted by it to this Hon'ble Tribunal,*
- k) For cost of the present Company Petition;*
- l) Such other and further reliefs as this Hon'ble Tribunal deems fit*



39. The Petitioners have filed the Company Petition No 50/2023, challenging various illegal acts of oppression and mismanagement malafide carried out by Respondent Nos. 2 & 3 (referred as R2 and R3), in relation to the affairs of the Respondent No.1 (referred as R1 Co.). The shareholding pattern of the Petitioners and the R2 and R3 in the R1 Co., is equal i.e. 50:50. It is in the nature of Quasi-Partnership.

40. Petitioner No. 1 is a qualified Deep Sea Commercial Diver and possesses expertise in this business, being aware of the same, Respondent No. 2 who were acquainted to Petitioners since more than 20 years prior to incorporation of Respondent No. 1 approached the Petitioners with the proposal to join in Respondent No. 1. The Petitioners and the Respondent No. 2 and 3 incorporated the Respondent No.1. The Petitioners collectively hold 50% of the issued, subscribed and paid up share capital of Respondent no.1 and balance 50% is held collectively by Respondent No. 2 and 3.

41. It is submitted that, however, in or around August 2021, during one of visits of the Respondent to Ahmedabad to meet one of R1 Co. The respondents were shocked to learn from the client that R1 Co does not have 4 but has 5 Directors. Upon further inquiry and upon inspecting the government records, the respondents were surprised to learn that a 5th director viz Mr. Rajiv Chadha was inducted to the board of directors of R1 Co. From the records available, Mr. Rajiv Chadha was appointed as a director in R1 Co. on 02.08.2021.

42. On account of the above, the respondent constrained to address an email on 24.08.2021 to P1 and also address the same email to this Mr. Chadha

expressing anguish at the manner in which Mr. Chadha was illegally appointed to the Board of Respondent No. 1 without knowledge and consent.

43. The P1 justified the same stating that the R1 Co., allegedly in financial stress and is in need of funds. Since the explanations provided by Petitioner No. 1 were unsatisfactory, it led the respondents to investigate into the day-to-day affairs and the financial operations of R1 Co., to ascertain whether the Respondent No. 1 was actually in financial stress or not. Further, the Respondents stumbled upon the fact that P1 is siphoning off funds from R1 Co.,. Therefore, the R2 immediately addressed an e-mail on 25.09.2021 to Petitioner No.1, bringing this fact to his light.

44. Upon receiving this e-mail, Petitioner No. 1 suddenly started casting aspersions on the performance and putting all the blame on the Respondents for the alleged difficulties that Respondent No. 1 Company was in. The Petitioner No. 1 addressed emails to Respondents alleging that they have not purportedly contributed anything towards the company. Further, the Petitioners suggested that both parties part ways and also called upon R1 to give them a proposal to exit from Respondent No.1.

45. However, upon the aforesaid communications addressed by me Petitioner No. 1, for the first time forwarded Respondents communication dated 31.12.2021 whereby the petitioners sought to schedule a meeting of the board of directors of Respondent No. 1 on 03.01.2022. the Respondents logged into the meeting through the link forwarded by the Petitioners in order to prevent the Petitioners from continuing their fraudulent design and to lace on record any objections. However, the Petitioners did not log into the meeting and therefore, since there

was a meeting already scheduled by the Pentioners themselves, the same was conducted and the minutes thereof were circulated.

46. It is submitted that, Mr. Mandar Apte incorporated a Company in Dubai, UAE in the name and style of "D.P. Sea Diving Equipment LLC". It is pertinent to note that upon enquiry, it became evidently clear that Mr. Mandar Apte is the "Managing Partner" of D.P. Sea Diving Equipment LLC while continues to remain employed with Respondent No.1 as the General Manager.

47. An investment of INR approx. 5.48 crores (AED 27,38,860) was made using the funds of Seatek (Abu Dhabi) with Advance Recruiting Systems (ARS), UAE. Subsequently, the Petitioners have found out that as per the books of Respondent No. 1 Company, the said amount has been written off as on 31st March 2020 as per the direction given by Respondent No. 2 without consulting or discussing the same with Petitioner No.1.

48. Mr. Mandar Apte has also withdrawn funds from Seatek (Abu Dhabi) under the pretext of reimbursement of expenditure for Mauritius and Bahrain project from December 2018 to October 2019 and was also paid extraordinary salary of AED 60,000 per month without any discussions or approval of the Board of Directors. The quantum of such withdrawals is -INR 2.20 crores (AED 1.1Mn).

49. The entire magnitude of the fraud which Petitioner No.1 is sure of is much greater, can be unraveled only upon a thorough investigation by the police authorities pursuant to the complaint filed by Petitioner No.1 with Economic Offences Wing.

50. As stated above, on account of the aforesaid criminal complaint filed by the Petitioners, as a counter blast, Respondent Nos. 2 and 3 filed Company Petition No. 199 of 2022 praying for reliefs which are contrary to the true and correct record borne out above.

51. Respondent Nos. 2 and 3 have left no stone unturned to pressurize the Petitioners to sell their shareholding at bogus valuations by filing Company Petition No. 199 of 2022 and by demonstrating false urgency therein. Therefore, if Respondent Nos. 2 and 3 are successful in this design of theirs, irreparable loss and harm will be caused to the Petitioners. Further, Respondent Nos. 2 and 3 are still continuing acts of oppression and mismanagement in Respondent No. 1 company and are defrauding Respondent No. 1 company.

Reply

52. The R2 & R3 have filed the *Affidavit in reply* dated 09.02.2023, to the present Company Petition and Company Petition No. 50 of 2023, on the same set of allegations as contained in aforementioned proceedings, only with a *malafide* intention of stalling the determination of the present Company Petition.

Findings and Directions:

53. This bench has perused the documents/pleadings available on record and considered the arguments of both the sides.

54. The Petitioner in this Company Petition (Hereinafter referred to as "Aderianwalla Group") is holding 50% shares of the Company and the remaining 50% are held by one M/s Delzad Aspy Karani and others. The other Shareholders group has also filed another Company Petition No.

CP/50(MB)/2023. Both the groups have made allegation against each other and have alleged illegal operations of the other group. The Petitioner in CP No. 50/2023 (Hereinafter referred to as "*Karani Group*") have alleged mismanagement of affairs of the Company by the Petitioner group in CP/199(MB)2022.

55. After the perusal of material on record, both the parties agreed to nominate one valuer each for the valuation of shares of the company. The petitioner in CP No. 199/2022 has suggested Baker Tilly India Business Advisory and Consulting Services and the petitioner in CP No. 50/2023 has suggested M/s. Shah Gupta & Company. The Petitioner in CP No. 199/2022 filed on record the valuation report dated 25.07.2023 from M/s. Baker Tilly India Business Advisory and Consulting Services and the copy of the same was served upon the respondents. In between the proceedings both the parties were exploring for settlement and sought adjournments accordingly. Even after giving ample opportunities, the Respondent Nos. 2 and 3 in CP No. 199/2022 chose not to file the valuation report. Furthermore, the Respondent No. 2 filed an Application bearing No. 154 of 2024, challenging the valuation report of Baker Tilly, stating that "*valuation derived by Baker Tilly India Business Consulting Services Pvt. Ltd. (report submitted on 25.07.2023) is based on financials as on 31.12.2022 which is incorrect as the valuation of the shares should have been determined on the basis of financial statements as on the date of report. The valuer has not taken into consideration the financial statements, bank statements of R1 company situated in India, its Qatar branch, its Mauritius branch and C-Tech Oil and Gas Services LLC, Abu Dhabi, complete list of contract on hand in India and abroad along with current operational status and complete divisional stocks of all assets and borrowings. Hence, this valuation is not sustainable under law*". The said IA was dismissed by this Tribunal, vide

order dated 16.05.2024 stating that “*this bench is not inclined to interfere into the valuation report submitted by the valuer. Moreover, the bench is of the opinion that valuation report is a technical document and this bench does not have the expertise to decide on the correctness or otherwise of such a report*”. As there is an absolute deadlock in the functioning of the company which is adversely impacting even the statutory compliances, we are constrained to rely on the valuation report tendered by the petitioner herein owing to the non- availability of the valuation report of the respondent.

56. In cases of equal shareholding and director representation among shareholders, where a deadlock arises in the day-to-day management of the company, it is a well-established principle that the deadlock should be resolved by one group purchasing the shares of the other. The applicant has relied on judicial pronouncements in the following cases to support this principle:

(i) M.S.D.C. Radharamanan vs M.S.D. Chandrasekara Raja and Another, reported in 2008 (6) SCC 750;

(ii) Vidharbha Bottles Pvt. Ltd. vs. Devilal Hardeolal Jaiswal and Others, reported in 2016 (3) MHLJ 849; and

(iii) MS.D. Chandrasekar Raja vs Jayabharath Textiles Pvt. Ltd. and Ors., reported in 2017 (SCC Online NCLT 7338)

57. In view of the aforementioned settled legal position, we are constrained to deal with this matter and arguments placed on record because already there seems to be deadlock between the petitioners and the respondents. The respondents have contested the valuation report but have failed to place on record their own independent valuation report, they have also not co-operated with the petitioners to get valuation report by mutual consent. Owing to these

circumstances we are constrained to fall back on valuation report placed on record by the Petitioners. Both the parties have also not undertaken to follow through any other mode of resolution or settlement and the only way out is the buy-out/sell-out proposition based on the valuation report shared by the petitioners. The Petitioners and respondents are 50:50 shareholders of the company. Accordingly, the value per equity share of the Company as on 31.12.2022 is Rs.26,179. In view of the above discussion and findings, this Bench is of the considered view that, the petitioners be directed to purchase the shareholding of R2 and R3, in R1 Co within *six* months, accordingly the respondents shall exit the Company.

58. We deem it appropriate to clarify that, the said direction of buying out the shareholding of the R2 and R3 is passed keeping in view the deadlock in the company and considering the fact that the warring factions before us can no longer do business together. Needless to say, the direction is passed in the interest of the respondent company alone without delving into the allegations of Oppression levied by both sides.

59. With the above directions, both the Company Petitions i.e. CP No. 199/2022 and CP No. 50/2023 alongwith pending IA/CA stand *Disposed off*.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
05.09.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)