

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

IA No. 316/JPR/2020
of
CP No. 11/241-242/JPR/2018
And
IA No. 315/JPR/2020
of
CP No. 279/59-241-242-244/JPR/2019

Coram: SH. AJAY KUMAR VATSAVAYI, HON'BLE JUDICIAL MEMBER
SH. RAGHU NAYYAR, HON'BLE MEMBER TECHNICAL

(Under Section 242 of Companies Act, 2013 r/w Rule 82 & 11 of National
Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

CP No. 11/241-242/JPR/2018

Harman Singh Arora And Ors.
38 Ground Floor, Poorvi Marg, Vasant Vihar,
New Delhi, 110057

...Petitioners

VERSUS

Axestrack Software Solutions Pvt. Ltd. And Ors.
310 Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan- 302018

...Respondents

CP No. 11/241-242/JPR/2018
And
CP No. 279/59-241-242-244/JPR/2019

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And in IA No. 316/JPR/2020 of CP No. 11/JPR/2018

Mr. Rahul Yadav

310 Srigopal Nagar, 80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Applicant

VERSUS

Axestrack Software Solutions Pvt. Ltd. And Ors.

310 Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan- 302018

...Non-Applicant No. 1

Mr. Harman Singh Arora

38, Ground Floor, Poorvi Marg, Vasant Vihar,
New Delhi 110057

...Non-Applicant No. 2

Mr. Abhit Kalsotra

103, Tower 7, Unitech Escape,
Nirvana Country, Golf Course Road Extension,
Sector 50, Gurgaon,
Haryana – 122018

...Non-Applicant No. 3

Mr. Vignesh Sridharan

Flat No. 1A-104, Princeton Estate,
Sector 53, Gurgaon,
Haryana – 122002

...Non-Applicant No. 4

Mr. Vineet Singh

3180, Gate No. 5, Sector A, Pocket B & C,
Vasant Kunj, New Delhi – 110070

...Non-Applicant No. 5

Sd-

Mrs. Priya Choudhary

310 Srigopal Nagar, 80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Non-Applicant No. 6

Mr. Sahil Yadav

310 Srigopal Nagar, 80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Non-Applicant No. 7

AND

IN THE MATTER OF:

CP No. 279/59-241-242-244/JPR/2019

Priya Choudhary And Anr.

310 Srigopal Nagar,
80 Feet Road Gopalpura Bypass,
Jaipur, Rajasthan - 302018

...Petitioners

VERSUS

Axestrack Software Solutions Pvt. Ltd. And Ors.

310 Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan- 302018

...Respondents

And in IA No. 315/JPR/2020 of CP No. 279/JPR/2019

Ms. Priya Choudhary

310 Srigopal Nagar, 80 Feet Road,
Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Applicant No. 1

Sd-

CP No. 11/241-242/JPR/2018

And

CP No. 279/59-241-242-244/JPR/2019

Mr. Sahil Yadav

310 Srigopal Nagar, 80 Feet Road,
Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Applicant No. 2

VERSUS

Axestrack Software Solutions Pvt. Ltd. And Ors.

310 Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan- 302018

...Non-Applicant No. 1

Mr. Vignesh Sridharan

1A-104, Princeton Estate,
Sector 53, Gurgaon,
Haryana – 122002

...Non-Applicant No. 2

Mr. Vineet Singh

3180, Gate No. 5,
Sector A, Pocket B & C,
Vasant Kunj, New Delhi – 110070

...Non-Applicant No. 3

Mr. Harman Singh Arora

38 Ground Floor,
Poorvi Marg, Vasant Vihar,
New Delhi – 110057

...Non-Applicant No. 4

Mr. Abhit Kalsotra

103, Tower 7, Unitech Escape,
Nirvana Colony, Golf Course Road Extension,
Sector 50, Gurgaon
Haryana – 122002

...Non-Applicant No. 5

sd-

Mr. Rahul Yadav
310, Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Non-Applicant (Proforma) No. 6

Mr. Vinit Yadav
310, Srigopal Nagar,
80 Feet Road, Gopalpura Bypass,
Jaipur, Rajasthan – 302018

...Non-Applicant (Proforma) No. 7

For the Petitioners
in CP No. 11/JPR/2028 &
the Respondents No. 2 to 5
in CP No. 279/JPR/2019

: **PSA Legal Counsellors**
14A & B Hansalaya,
15, Barakhamba Road,
New Delhi – 110001

For the Respondent No. 1 Company
in CP No. 11/JPR/2028 &
CP No. 279/JPR/2019

: **UKCA and Partners**
Advocates and Solicitors
E-2, Kailash Colony,
New Delhi-110048

For the Respondents No. 2 to 4
in CP No. 11/JPR/2028 &
the Petitioners in
CP No. 279/JPR/2019

: **Chir Amrit Legal LLP**
6th Floor,
Unique Destination,
Opp. Times of India,
Tonk Road, Jaipur-302015

Order Pronounced on:02.03.2021

Sd-

ORDER

Per: Shri Raghu Nayyar, Technical Member

**IA No. 315/JPR/2020 in CP No. 279/JPR/2019 and
IA No. 316/JPR/2020 in CP No. 11/JPR/2018**

1. The instant Applications bearing IA No. 316/JPR/2020 in CP No. 11/JPR/2018 and IA No. 315/JPR/2020 in CP No. 279/JPR/2019 are being disposed of by this common order together with the related petitions. The parties in the abovementioned matters have filed cross Company Petitions and are arrayed on opposite sides in respect of the same Respondent No. 1 Company, Axestack Software Solutions Pvt. Ltd. The position of the parties in both the matters is tabulated as under:

	Group 2	Group 1	Others
Parties	a) Mr. Harman Singh Arora b) Mr. Abhit Kalsotra c) Mr. Vignesh Sridharan d) Mr. Vineet Singh	a) Mrs Priya Choudhary b) Mr. Sahil Yadav	a) Mr. Rahul Yadav
CP No. 11/JPR/2018	Petitioner No. 1, 2, 3 & 4	Respondent No. 2 & 3	Respondent No. 4
CP No. 279/JPR/2019	Respondent No. 4, 5, 2 & 3	Petitioner No. 1 & 2	Proforma Respondent No. 6 *

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* Mr. Vinit Yadav is additionally Proforma Respondent No. 7 in CP No. 279/JPR/2019

#The grouping of shareholders has been drawn according to the Settlement Agreement placed on record.

2. IA No. 316/JPR/2020 in CP No. 11/JPR/2018 seeks following reliefs:

- (i) *Decree the Settlement Agreement dated January 20, 2020;*
- (ii) *Grant liberty to the Petitioners to withdraw the Company Petition No. 11/JPR/2018 in terms of settlement arrived at between the parties;*
- (iii) *In view of Clause 2.1 of the Settlement Agreement, grant waiver/exemption to the Petitioners and the Respondent No. 1 Company from penalty(ies) qua inadvertent violations committed in the shares allotments as mentioned under Para 5, and do all that necessary pursuant to the said allotments being null and void including but not limited to allowing rectification of register of Respondent No. 1 Company under Section 59 of the Act in accordance with the submission at Para 7 of the present application;*
- (iv) *In view of Clause 2.2 of the Settlement Agreement, grant waiver/exemption from compounding of irregular appointment of Petitioners No. 1 & 2 and Respondent No. 4 as Directors of Respondent No. 1 Company as mentioned under Para 10;*
- (v) *Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

Similarly, IA No. 315/JPR/2020 in CP No. 279/JPR/2019 also seeks the relief of decreeing the said Settlement Agreement, which is a common

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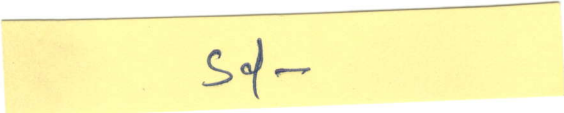
CP No. 11/241-242/JPR/2018

And

CP No. 279/59-241-242-244/JPR/2019

document in both the applications, and liberty to withdraw the corresponding Company Petition filed before this Tribunal.

3. We have perused the joint Applications and the connected documents/papers filed therewith including the copy of Settlement Agreement concluded between the parties. For convenience we have used the facts of CP No. 11/JPR/2018, as it was filed earlier, before this Tribunal
4. The Petitioners had filed the aforesaid cross petitions i.e., CP No. 11/241-242/JPR/2018 ('Company Petition 1' or 'CP 1') and CP No. 279/59-241-242-244/JPR/2019 ('Company Petition 2' or 'CP 2') before this Tribunal alleging various instances of oppression and mismanagement against the Respondents in their respective company petitions. The above-mentioned CP 1 and CP 2 are collectively referred as Company Petitions for the sake of convenience.
5. As stated in the Application filed jointly, subsequent to the filing of above-mentioned CP 1, the Petitioners and Respondents have been in amicable talks with the help of friends, family and well-wishers for settlement of the disputes which cropped up between the parties during the course of business. Eventually after persistent efforts, the parties of their own free will have now succeeded in arriving at mutually acceptable terms for settlement. The said settlement has been reduced to writing in the form of a Settlement Agreement ('Agreement') dated 20.01.2020. A copy of the Agreement dated

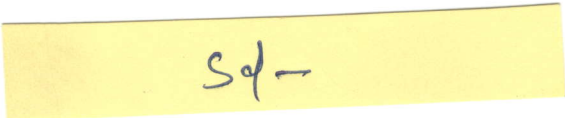
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January 20, 2020 is attached to the instant application as Annexure A-1 for placing on record.

6. Through the aforesaid Agreement between the parties, the Petitioners seek to withdraw the Company Petitions. In context of CP 1, Respondents have consented to withdraw their objections *qua* alleged wrongful share allotments and Petitioner No. 1 & 2 and Respondent No. 4 have also consented to withdraw their objections *qua* alleged irregular appointment as Directors made in the Respondent No. 1 Company.
7. As per the instant Application in CP 1, the Respondents in the present matter have stated that there has been inadvertent contravention of certain provisions of the Act *qua* allotment of shares to the parties in Respondent No. 1 Company. The relevant filing with the Registrar of Companies *qua* aforesaid share allotments have already been placed on record by way of CP 2 as Annexure-P2 (Colly).
8. It is stated in the instant Application that the Respondent No. 1 Company took cognizance of the aforesaid illegal share allotments and declared these allotments *void ab-initio* in the board meeting held on 30.07.2018. However, this Tribunal had granted *status quo ante vide* order dated 09.08.2018, in relation to directorship and shareholding of Respondent No. 1 Company as it existed prior to 30.07.2018, and had stayed the resolutions passed in the said board meeting for setting aside the wrongful share allotments.

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9. The above-mentioned order of this Tribunal dated 09.08.2018 was challenged at the Hon'ble National Company Law Appellate Tribunal, New Delhi ('NCLAT') in Company Appeal No. 323 of 2018, preferred by the Respondents. The Hon'ble NCLAT vide its order dated 01.10.2019 had set aside the order dated 09.08.2018 of this Tribunal. Consequently, the alleged irregular share allotments made by the Respondent No. 1 Company stand cancelled and hence at present, the actual paid-up equity share capital of the Respondent No. 1 Company, stands at INR 1,00,000/- (Rupees One Lac only) divided into 10,000 (Ten Thousand) equity shares of Rs. 10/- (Rupees Ten only) each.
10. After consideration of the instant application and the attached copy of the Agreement it is noted that the Petitioner No. 1 to 4 (also referred as "Group 2" in the Agreement) have withdrawn their objections *qua* the aforesaid alleged incorrect share allotments made to them by the Respondent No. 1 Company.
11. It is stated that apart from the aforesaid erroneous share allotments, there have been unintentional irregularities in appointment of certain parties as directors of Respondent No. 1 Company. Copies of relevant filings with the Registrar of Companies *qua* alleged appointment of Petitioners No. 1 & 2 and Respondent No. 4 as Additional Directors of the Respondent No. 1



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Company have already been placed on record by way of CP 2 as Annexure-P8 (Colly) and Annexure-P6, respectively

12. It is submitted that the Respondent No. 1 Company in the board meeting dated 30.07.2018, as referred herein before, had also resolved to set aside the appointment of Petitioners No. 1 & 2 and Respondent No. 4 as directors of Respondent No. 1 Company since they were never regularised as Directors in the ensuing Annual General Meeting ('AGM') as per Section 161 of the Companies Act, 2013 ('Act'). However, this Tribunal had granted *status quo ante vide* order dated 09.08.2018, as stated herein earlier.
13. The Hon'ble NCLAT vide its order dated 01.10.2019 has set aside the said status quo order dated 09.08.2018 of this Tribunal. As a result of the aforesaid NCLAT order, Petitioners No. 1 & 2 and Respondent No. 4 were removed as Directors of the Respondent No. 1 Company. As per the instant application, Respondent No. 4 was subsequently re-appointed as a Director of Respondent No. 1 Company on 15.02.2020 in accordance with law.
14. In clause 2.2 of the Agreement the Petitioners No. 1 & 2 have also withdrawn their objections *qua* their removal from Directorship of Respondent No. 1 Company in the Board Meeting dated 30.07.2018 and hence at present the Board of Directors of Respondent No. 1 Company consists of 2 Directors only i.e., Mrs Priya Choudhary and Mr Rahul Yadav (Respondent No. 2 & 4).

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15. The instant application has been filed in the backdrop of Sections 241 - 242 of the Act read with Rule 11 & 82 of the NCLT Rules, which are as under -

“11. Inherent Powers - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

82. Withdrawal of Application filed under section 241 —

(1) An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall not be withdrawn without the leave of the Tribunal.

(2) An Application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.”

Rule 11 of the NCLT Rules supplements extensive powers of the Tribunal to decide applications under Sections 241 - 242 of the Act for safeguarding the interests of the Company, its shareholders and the public in general. Appropriate interim and final orders in matters of Sections 241-242 may not be shackled by other provisions of the Act. Sections 241-242 correspond to Sections 397-398 and 402 of the Companies Act, 1956, under which there are many precedents in such regard.

16. The Hon'ble Supreme Court in case of *Cosmosteels Private Ltd. & Ors. vs. Jairam Das Gupta & Ors.* reported in AIR 1978 SC 375; while considering whether reduction of share capital of a Company can be ordered under Section 402 without following the procedure laid down for the purpose under Sections 100 to 104 of Companies Act, 1956, observed –

“The scheme of Sections 397 and 406 appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia, lifting the ban on company purchasing its shares under Court’s direction, is conferred on the Court.”

17. Further, Hon’ble High Court of Calcutta in case of *Pramod Kumar Mittal vs. Andhra Steel Corporation Ltd. and Ors.* reported in (1958) 58 Comp Cas 772 (Cal); while discussing about the range of power of Courts under Section 402 on applications under Section 397/398 of Companies Act, 1956, observed –

“Under Section 397 and 398 read with Section 402, power has been conferred upon the court ‘to make such orders’ as it thinks fit. The power conferred upon the court by the abovementioned sections is very wide and the object or objects sought to be achieved by the exercises of such power have been stated in Sections 397 and 398. As we read Sub-clauses (a) and (g) of Section 402 of the Act, we have no doubt in our mind that the intention of the Legislature under the abovementioned sections was to confer wide and ample powers upon the court for the regulation of the conduct of a company’s affairs and to provide for any other matter which the court thinks just and equitable to provide for in the interest of the corporate body and the general public.”

18. The Hon’ble High Court of Bombay also in case of *Bennet Coleman and Co. vs. Union of India and Ors.* reported in (1977) 47 Comp Cas 92 (Bom); observed –

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“Under section 397 read with section 402 power has been conferred on the court "to make such orders as it thinks fit" if it comes to the conclusion that the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up "with a view to bringing to an end the matters complained of". Similarly, under section 398 read with section 402 power has been conferred upon the court "to make such orders as it thinks fit" if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, "with a view to bringing to an end or preventing the matters complained of or apprehended". Both the wide nature of the power conferred on the court and the object or object sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398.”

19. Further, in the matter of *Lakhani (India) Limited* (C.P. No. 73 of 2006), the Hon’ble Company Law Board (CLB) Principal Bench, used its wide power under Section 402 of the Companies Act, 1956 and took into consideration a Memorandum of Family Settlement and Arrangement on 20.05.2008 thus

Sd/-

putting an end to long-standing disputes and differences. The Hon'ble CLB inter-alia observed –

“(3) Both the brothers are authorized, by this order, to reconstitute the Boards of the Companies coming under their control notwithstanding quorum requirements.

(4) Since as per my directions, no Board Meetings of the entities of the Group have been held, these entities have defaulted in complying with certain statutory requirements. All the defaults are condoned and no statutory authority shall take cognizance of the defaults. However, these defaults should be remedied at the earliest.”

20. The Hon'ble Delhi High Court in the case of *Sanjay Gambhir v. DD Industries Ltd.*, reported in (2013) 177 Comp Cas 99 (Del), observed as under: -

“As far as the power of the CLB to grant interim relief under Section 403 is concerned, it is power incidental to the power to order substantial reliefs as set out in Section 402. The width of the power is indicated by the words "any interim order which it thinks fit" and "such terms and conditions as appear to it to be just and equitable." The power is not limited by other provisions of the statute. Section 402 in fact begins with the words "Without prejudice to the generality of the powers of the Tribunal...". There is nothing to indicate that while exercising the powers under Sections 402 or 403 of the Act the CLB has to necessarily account for the mandatory requirements of other provisions like Sections 169 or 186 of the Act. The language in fact appears to indicate to the contrary. It permits the CLB to pass orders as long as it is in the interests of the proper conduct of the affairs of the company and it is "just and equitable" to pass such order. Whether in

fact the order is justified will of course depend on the facts of each case."

21. In view of the various orders passed by different judicial fora, it can be stated without doubt that this Tribunal has ample powers while dealing with applications filed under Section 241-242 for the purpose of safeguarding the interests of the company and its shareholders and the public in general. Such powers encompass passing of orders that may include exemption or waiver of certain parameters of the Act for larger interests.
22. The instant application is an apt case for exercise of powers in order to bring a quietus to the issues inter-se the parties and for overall interests. IA No. 315/JPR/2020 in CP No. 279/JPR/2019 is a congruent application, similarly arising out of the common issues and seeks withdrawal of CP 2, pivoted on the common Settlement Agreement.
23. On careful perusal of the abovementioned facts, documents placed on record and judgments passed by various judicial authorities, while deciding in the interests of the Company and its stakeholders; this Tribunal orders the following:
 - (i) The Settlement Agreement dated 20.01.2020 is taken on record and liberty is granted to the Applicants in IA 316/JPR/2020 and IA No. 315/JPR/2020 to withdraw the corresponding Company Petitions, i.e. CP No. 11/JPR/2018 and CP No. 279/JPR/2019;

Sd/-

- (ii) In view of antecedent circumstances of the cross-petitions under Sections 241-242 of the Act and the amicable mutual settlement by and between the parties, it is in order that a conclusion is reached in the matter. In view of the powers of the Tribunal in such matters as enunciated in judicial precedents in this regard, IA No. 316/JPR/2020 and IA No. 315/JPR/2020 are disposed of along with the corresponding CPs in terms of the aforesaid mutual Settlement Agreement dated 20.01.2020;
- (iii) No action shall be taken against Respondent No. 1 Company or its past / incumbent directors or officers or shareholders by the concerned Regional Director, Ministry of Corporate Affairs, or the Registrar of Companies, or any other authority, in respect of any transgressions with regard to the improper share allotment or irregular appointment of Directors hitherto. This exemption shall be only limited to the specific past issues of share allotment and directors appointment.
- (iv) The Petitioners are at liberty to seek marking as defective the previous filings with the Registrar of Companies in respect of the erroneous share allotments and incorrect appointment of directors; as a consequence of which the said returns/filings



shall stand nullified. Appropriate modifications / rectification may be made in relevant statutory registers and related records.

- (v) Accordingly, cross-petitions CP No. 11/JPR/2018 and CP No. 279/JPR/2019 also stand disposed of in terms of the directions as stated hereinabove.

Sd-

SH. RAGHU NAYYAR,
MEMBER (Technical)

Sd-

SH. AJAY KUMAR VATSAVAYI
MEMBER (Judicial)