

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOCHI BENCH**

**CP/24/KOB/2021**

*(Under Section 241 & 242 of Companies Act, 2013)*

**Order delivered on 17th January, 2022**

**Coram:**

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**

**Hon'ble Mr. Shyam Babu Gautam, Member (Technical)**

Thaniyulla Parambath Jahafar,  
Kinavu, Zealots Street,  
Mylambadi Amsom, Parayancheri Desom,  
Kozhikode Taluk.

...Petitioner.

Versus

1. Relax Zone Tourism Private Limited,  
Registered office at 27/1000A, Edakkalathil P.O.,  
Kuthiravattom, Kozhikode,  
Kerala- 673 016.
2. Mahesh Babu S.,  
Managing Director of Relax Zone  
Tourism Private Limited,  
5/3 Balamurugan Cross Street,  
Ganapathipuram, Chormepet,  
Kancheepuram- 600 044.
3. Edakalathil Sunderdas,  
Director of Relax Zone Tourism  
Private Limited,  
Edakalathil House,  
Kuthiravattom P.O.,  
Kotooli Amsom,  
Parayancheri Desom,  
Kozhikode, Kerala- 673 016.

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4. Edakkalathil Athul,  
Director of Relax Zone Tourism  
Private Limited,  
Edakalathil House,  
Kuthiravattom P.O.,  
Kotooli Amsom,  
Parayancheri Desom,  
Kozhikode, Kerala- 673 016
5. Puthenpurayil Kunjan Ravindran,  
Director of Relax Zone Tourism  
Private Limited,  
18/168, Sreedar, Sunday Road,  
Chevayur Post, Kozhikode,  
Kerala- 673 017.
6. Arun Gogul,  
Palakkal, Chamancheri,  
Kozhikode,  
Kerala- 673 304.

... Respondents

**Parties/Counsel present (through video conference)**

For the Petitioner : Shri. Shameem Ahmed, Advocate.  
For the Respondents : Smt. Sreepriya Kalarickal, PCS.

**ORDER**

***Per: Ashok Kumar Borah, Member (J)***

The present Company Petition bearing No. CP/24/KOB/2021 has been filed under Sections 241 and 242 of the Companies Act, 2013, by Thanियulla Parambath Jahafar (hereinafter called as “**Petitioner**”) against (1) M/s Relax Zone Tourism Private Limited, (2) Mr. Mahesh Babu S., (3) Mr. Edakalathil Sunderdas, (4) Mr. Edakkalathil Athul (5) Mr. Puthenpurayil Kunjan Ravindran, (6) Mr. Arun Gogul (hereinafter called as “**Respondents**”).

1. This Company Petition is filed for the following reliefs:
  - i. To declare that EGM proposed to be held/ held on 21.05.2021 for the removal of the 1<sup>st</sup> Petitioner from the directorship as illegal

and in contravention of Section 102(1)(a) and (b) and Section 169 (3) of the Act and as being prejudicial and oppressive to the Petitioner and to quash all the resolutions passed in the said EGM.

- ii. Issue an order upholding the right of the Petitioner to continue in the office of the director of the 1<sup>st</sup> Respondent Company.
- iii. To direct the Respondent No. 2 to Respondent No. 5 to submit all accounts related to Chennai operations of the 1<sup>st</sup> Respondent Company and to return the office infrastructure including the computers, printers, office stationery and to pay requisite sale consideration for the other office interior works, which are currently in use by the Respondent No. 2 to Respondent No. 4 for their personal business.

The brief facts of the case are as under: -

2. This Company Petition was filed in the context of EGM notice dated 26.04.2021 received by the Petitioner from the Respondents, in which the Respondents had proposed to convene an EGM on 21.05.2021 for the removal of the Petitioner from the directorship.

3. It is stated that the Respondent Company was formed by a group of 5 friends and it was incorporated on 07.01.2016. The initial subscribers were Mr. Sunderdas (Respondent No. 3), Mr. Hamsa Poothukudiyil and Mr. Rajiv Malayil. The Respondent No. 3 Mr. Sunderdas was the Managing Director of the Company. The Authorised Capital was Rs. 10,00,000 (10,000 shares of Rs. 100 each) and Paid up capital was Rs. 1,00,000 (1000 shares of Rs. 100/- each). All the 3 subscribers holding 333 shares each.

4. It is stated that the Petitioner and 5<sup>th</sup> Respondent joined the company immediately after incorporation, i.e., on 23.01.2016 and initial subscribers transferred a part of their shares (shares in excess of 200) to Petitioner and

the 5<sup>th</sup> Respondent. After such transfer, all 5 shareholders were holding 200 shares each [Equal Shareholding among the 5 shareholders]. The Petitioner and 5<sup>th</sup> Respondent were also appointed on 25.01.2016 as directors immediately on the transfer of shares. One of the basic features of the 1<sup>st</sup> Respondent Company was that all the shareholders had equal shareholding and all the shareholders were participating in Management.

5. It is stated that on 20.02.2017, fresh allotment of 1500 shares made to the 5 shareholders. Even this allotment was made in equal proportions, 300 shares each to all the 5 shareholders and the basic feature of Quasi Partnership was maintained. On 01.08.2017, the 5<sup>th</sup> Respondent transferred 100 shares to Respondent No. 3 in an internal arrangement between them.

6. It is stated that in December 2017, the Respondent No. 3 brought his Son in Law Mr. Mahesh (Respondent No. 2) and his Son Mr. Atul (Respondent No. 4) to the Company as shareholders by transferring few of his shares and some shares of Mr. Rajiv Malayil (Initial Subscriber) as also of the 5<sup>th</sup> Respondent. Since the basic principle of the company was that all shareholders will be participating in the management as directors, Respondent No. 2 & 4 (Son- in -Law and Son of R3) were also appointed as directors. Thus, there were 7 (Seven) shareholders and all 7 (Seven) shareholders were also directors.

7. It is stated that the Company started operation by taking 3 villas on rent from the respective owners. In 2019, it was decided to buy out the villas from the owners, but company did not have required funds. All shareholders put money and owned the villas jointly in their personal capacity. It is stated that Mr. Rajiv Malayil did not have the funds and, therefore, he decided to exit the

Company. These shares were purchased by Mr. Rishi Jacob and he was inducted as a shareholder and director. Since then, all the shareholders had given the villas in their joint ownership for the business of the company

8. It is stated that fresh allotments of 1000 shares were made on 23.07.2019 and one Mr. Arun Gokul had also acquired shares in the company (6<sup>th</sup> Respondent). He was employed in a Government Undertaking, so he didn't want to become a director. After the allotment, Petitioner is having 17.5 % and is the single largest shareholder of the 1<sup>st</sup> Respondent Company.

9. It is stated that from 01.01.2018, Respondent No. 2 was appointed as the Managing Director and Respondent No. 3 stepped down as director. In January 2019, when Petitioner had gone abroad, without the knowledge of the Petitioner and without any sort of discussion in the Board of Directors, Respondent No. 2 who is stationed in Chennai decided to open an office for the Company at Chennai. The Respondent No. 2 executed the lease deed for the same in the month of January 2019 for a monthly rent of Rs. 23000/- and he had also incurred the initial office set up office of Rs 9.29 Lakhs.

10. It is stated that from April 2019 to Sept 2019, Respondents used to send the details of monthly expenses relating to Chennai office to the tune of Rs. 35000/- to 50,000/-. It is further stated that from October 2019, Respondents stopped sharing the expense details, however the rent and other staff related expenses were transferred from Kerala office. Thereafter in the wake of Covid-19 breakout in the month of March 2019, it was decided to shut down the Chennai office.

11. It is further stated that on private enquiry, Petitioner and Mr. Rishi Jacob had come to know that Respondent No. 2 is having multiple business

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in Chennai as 'Tharani Developers' and the Respondent No. 2 was using the Chennai office for his personal business and he was not returning the infrastructure or to pay the cost of such infrastructure. Subsequently the Petitioner got a Board Meeting notice dated 06.01.2021 for his removal. There was no special notice or any requisition, but it was a unilateral action by Respondent No.2. In response to the Board Meeting notice, the Petitioner sent reply dated 14.01.2021 raising allegation against Respondent No. 2.

12. When the Petitioner came to know of the transfer of 3 villas purchased for the company, he along with Mr. Rishi Jacob moved Civil Suit OS 78/2021 and obtained an injunction. It is stated that the 2<sup>nd</sup> Respondent had again issued a notice of Board Meeting on 19.04.2021 for removing the Petitioner, based on a special notice received from the Respondent No. 3 and Respondent No. 5 and circulated it to all the directors including Petitioner. As per the notice of Board Meeting notice dated 19.04.2021 the company was to approve the special notice and then seek explanation from the Petitioner.

13. It is further stated that the Petitioner received EGM notice dated 26.04.2021 for holding the EGM on 21.05.2021 for removal of the Petitioner from the directorship. Hence this Company Petition was filed challenging the EGM Notice on the ground that the removal of Petitioner from the directorship will be oppressive and such removal is only in the context of certain queries raised by the Petitioner as also against the legitimate expectation of the Petitioner to be part of the management.

#### **Submission by the Respondents**

14. The Respondents filed their counter stating that as per the direction of this Tribunal vide Interim Order dated 20/05/2021 the Extra Ordinary

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General Meeting of the members of the company to remove the petitioner from the directorship was held on 21/05/2021 through video conference by duly adhering Covid-19 Protocol. Mr. Arun Gokul had transferred his entire 500 equity shares of Rs. 100 each to his father Mr. Sasikumar P on 16.04.2021, which has been approved in a duly held Board meeting of the Company on 07.05.2021.

15. The Promoters of the Respondent Company at the time of incorporation were Respondent No 3, Mr. Hamsa Poothukudi and Mr. Rajeev Malayil. One among them, Mr. Hamsa Poothukudi is still continuing as shareholder of the company and Mr. Rajeev Malayil transferred his shares and he is currently not associated with the Respondent Company. In the Board Meeting for transfer of shares the Petitioner has also a member. It is stated that the duties and responsibilities of Directors in a company does not have any inter connection with the number of shares held in a company by any shareholder. Companies Act has not imposed any restrictions to admit a person as a director with or without any shares. A director should act in a company as per the prevailing provision of Companies Act, 2013, as per the type of directorship he is holding either as an executive director or as non-executive director.

16. It is stated that the appointment of Respondent Nos. 2 and 4 as Directors, was done in a duly held EOG Meeting held on 14.12.2017, wherein the Petitioner himself was present and the meeting authorized the Petitioner to file the return before the Registrar of Companies. From Board Resolution it is evident that the appointment of Respondent No. 2 as Director and further as Managing Director has been proposed by the Petitioner himself, in the Board Meeting held on 21.12.2017 when the Petitioner was Chairman. It is

further stated that the Respondent Company had entered a lease agreement with the owners of 3 Villas for 9 (nine) years, the company is concerned and binding up only on the terms and conditions of lease agreement. The property bought by the shareholders are for their own benefit and for that purpose only they had leased out this property to the company for better management and income.

17. It is stated that the Chennai office had generated revenue of Rs. 4,52,442 in the year 2019-20, which is 45 times more of the revenue generated during 2018-19. Moreover, the Branch ended up with a profit of Rs. 71, 600 after considering a written off exceptional item of Rs.2, 07,000. The huge loss which is shown in the consolidated financial statement of the company during 2019-20 is because of the write off of non-recurring exceptional items and it is not a revenue loss. It is stated that the Chennai Office was started with the knowledge of the Petitioner, for the betterment of the business. The Respondent company had not incurred any such huge expenses for the Chennai Office as claimed by the Petitioner. Therefore, the allegation against Respondent No 2 of Rs. 9.29 Lakh is just an imaginary figure without any concrete evidence.

18. It is stated that the Audited Financial statements of 2019-20, which was duly adopted in the Annual General Meeting of the Company held on 02.10.2020, the Petitioner did not raise any objection while adopting the financial statements of 2019-20, and the same has been signed by him.

19. It is also stated that M/s Tharini Developers is the 2<sup>nd</sup> Respondent's family business. The GST Certificate of the business of Respondent No. 2 named Tharini Developers which shows a different address and the 2<sup>nd</sup>



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Respondent spends most of his time in the Chennai Branch of Respondent Company, hence he had given this address as contact point for his own business for easy access of the clients to his family business.

20. It is stated that the Board Meeting held on 16.01.2021 was conducted after duly serving notice to the members of the Board, in which the Petitioner and Mr. Rishi Jacob did not attend and no inconvenience informed by them. The board discussed and evaluated the performance of the Petitioner, as the Respondents were receiving many phone calls for payments from outside parties related to many expenses of the Respondent Company, wherein the petitioner was not responded and further his attitude of non-cooperation with Respondent Company made it difficult to go forward.

21. It is stated that the Respondents came to know about the Injunction Order only on 02.04.2021 through the e-mail sent by the petitioner. All the respondents were unaware about the court proceedings on 30.03.2021 as the Injunction Application was moved without serving notice to the Respondents. Hence the Respondent Company and other Respondents were not able to present in person to defend the case before the Kalpetta Munsiff Court. It is further stated that the petitioner only has 22% of stake, wherein 53% stake belongs to Respondent No. 6 Mr. Sasikumar, and without his knowledge the Petitioner filed a Civil Suit.

22. The Board of Directors sent a notice on 19.04.2021 for a Board meeting to be held on 26.04.2021 to all directors along with a copy of the special notice and this notice was sent to the Petitioner also. The Petitioner sent a representation letter on 24.04.2021 through e-mail to the company and all members. In the Board Meeting held on 26.04.2021, the Petitioner was also

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present, thereby he was given an opportunity of being heard. The resolution was passed by majority proposing the removal of petitioner. Further the notice of Extra Ordinary General Meeting with respect to the removal of the petitioner attaching the explanatory statement as per Section 102 of Companies Act 2013, and the special notice as per Section 169 of Companies Act 2013, were sent to all the members on the same day itself, complying all the relevant provisions of the Companies Act, 2013 for the removal of Petitioner.

23. It is stated that as per the Articles of Association of the Respondent Company, the Chairman of the company is named as one of the promoters Mr. Rajeev Malayil. Even there is no formal resolution for appointing the petitioner as Chairman of the company exists in the Company's Records as per Respondents' knowledge, but even then, generally the petitioner used to hold the Chairmanship irrespective of Board meetings. Even the requirement of calling Board meeting was duly communicated many times to the Petitioner, but he has not taken initiative to call the Board Meeting. It is also stated that the Petitioner was having control over the entire banking transaction of the Company, the statutory books like Minutes Book and Members Register of the Respondent company are under his custody. It is further stated that the original lease agreement entered between the owner of the villa Mr. Raghavan and the company for 9 years is also under the custody of the Petitioner. Respondent No. 4 is not a family member of Respondent No. 2.

24. It is stated that the company was managed by the petitioner till the date of EGM held on 21.05.2021, because:-

(1) he holds all the statutory documents like minutes book, members register etc,

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(2) all title deeds of the joint properties belong to the members of the Company is under petitioner's custody.

(3) all bank transactions related documents like cheque book, pass book, user name and password of online transactions is with him,

(4) all company's transactions related information was passed to the statutory auditor to complete the audit for the financial year 2017-18, 2018-19 and 2019-20 by the petitioner,

(5) The petitioner and Mr. Rishi, the other Director also made the Chennai office shut down even though it was a major income generating office of the Respondent Company.

25. It is stated that there is no restriction under any of the provisions of the Companies Act in removing a director when he is the largest single shareholder of the company. It is also stated that no partnership basis shall be allowed in a company, as it functions as per the Memorandum of Association/Articles of Association by strictly adhering to the provisions of Companies Act 2013. It is further stated that no Board Meeting had been called without giving due notice to all directors. Hence seeking relief by the Petition invoking Section 242 of Companies Act 2013, is void ab initio. The sine qua non for invoking Section 241 is that the affairs of the Company should have been conducted or are being conducted in a manner oppressive or prejudicial to some of the members. There is no single instance brought out by the Petitioner to show that the rights of members were oppressed or prejudiced. The entire company is under the control of petitioner, as he is the person restricts other directors to conduct the business of the company.

**FINDINGS**

26. We have heard the learned counsel for both the parties and perused the entire case records/documents. We have also gone through the evidences on record. As directed by this Tribunal vide order dated 20.05.2021 the learned PCS for Respondents has produced the following documents: -

- i. Duly signed copy of the EGM resolution held on 21.05.2021 in regard to the removal of Mr. Thaniyulla Parambath Jahafar from the post of Director.
- ii. Video Recording of EGM held on 21.05.2021 in a pendrive.

27. We have also gone through the procedure adopted by the Respondents in conducting the EGM held on 21.05.2021 in which it is resolved that pursuant to the provisions of Section 169 and other applicable provisions of the Companies Act, 2013 and the rules framed thereunder, Mr. THANIYULLA PARAMBATH JAHAFAR (DIN: 07410845) be and is hereby removed from the office of Director of the Company with effect from the date of the meeting. There were differences of opinion from members Mr. Jahafar, and Mr. Rishi Jacob on different matters, opportunity of being heard served to all members present at the meeting. Since the resolution is an ordinary resolution, chairman directed to conduct the voting as per Section 114 of Companies Act, 2013 on show of hands, wherein 5 members out of 8 members casted the vote in favour of the resolution, but Mr. Rishi opposed the same and insisted on poll. Owing to differences of opinion final decision was taken on the basis of voting, while five members who presented at the meeting comprises of 53.7% favoured the decision whereas three members who objected it comprising

shareholding of 46.25 %. Therefore, the resolution passed in favour of majority decision.

28. In order to arrive at a decision in the matter, we have framed the following issue: -

- Whether the removal of the Petitioner from the Directorship will be oppressive or prejudicial to the interests of the company so as to attract Section 241-242 of the Companies Act?

29. With regard to the above issue framed, we have gone through Section 169 of the Companies Act, 2013, which deals with the removal of Directors.

**Section 169: Removal of directors.**

*“169. (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:*

*<sup>1</sup>[Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:]*

*<sup>2</sup>[Provided further that] nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.*

*(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.*

*(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.*

*(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—*

*(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and*

*(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it."*

30. A reading of the above provision shows that to remove a director from the Company, the Company has to comply with the procedure under Section 169 of the Companies Act, 2013.

31. In this respect we have gone through Exhibit A20 submitted by the Petitioner himself which is a special notice sent by the 3<sup>rd</sup> and 5<sup>th</sup> Respondents to the Board of Directors for convening an Extra Ordinary General Meeting of the shareholders of the 1<sup>st</sup> Respondent Company, with a Resolution proposing the removal of Petitioner/ Director of 1<sup>st</sup> Respondent Company by complying with Section 115 of the Companies Act 2013.

32. With respect to special notice, it is profitable to quote Section 115 of the Companies Act, 2013 which reads: -

**Section 115: Resolutions requiring special notice.**

*115. Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one per cent. of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.*

33. The Managing Director sent an e-mail dated 19.04.2021 stating that a meeting of the Board of Directors of the Company will be held on 26<sup>th</sup> April 2021, Monday at 11.00AM at Hotel Alakapuri, M M Ali Road, Palayam, Kozhikode, Kerala- 673 002 to discuss certain business. The Petitioner, sent a representation letter on 24.04.2021 through e-mail, to the Respondent Company and all members stating that he will be attending the Board Meeting scheduled on 26<sup>th</sup> April 2021 through online platform and therefore request them to make proper arrangements for a very clear (Audible and Visible- free from technical glitches) participating opportunity. He further requested them to video record the entire Board Meeting and retain original video of the Board Meeting. In the Board Meeting held on 26.04.2021, the Petitioner was also present thereby given an opportunity of being heard. A Resolution was passed by majority proposing removal of Petitioner for the members approval in an EGM. Further the notice of Extra Ordinary General Meeting with respect to the removal of the Petitioner attaching the explanatory statement as per Section 102 of the Companies Act, 2013, and the special notice as per Section 169 of Companies Act, 2013, sent to all the members on the same day itself.

34. In this respect, a decision rendered by the Hon'ble Supreme Court in **TATA Consultancy Services Limited Vs. Cyrus Investments Pvt. Ltd. and Ors.** (Civil Appeal Nos. 440-441 of 2020) may be referred to. The relevant point of that judgement is quoted hereunder: -

*“16.28 An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot*

*grant a relief under Section 242 unless the removal was oppressive or prejudicial.*

*16.29 There may be cases where the removal of a Director might have been carried out perfectly in accordance with law and yet may be part of a larger design to oppress or prejudice the interests of some members. It is only in such cases that the Tribunal can grant a relief under Section 242. The Company Tribunal is not a labour Court or an administrative Tribunal to focus entirely on the manner of removal of a person from Directorship. Therefore, the accolades received by CPM from the Nomination and Remuneration Committee or the Board of Directors on 29.6.2016, cannot advance his case.*

*16.31 As we have pointed out above, the validity of and justification for the removal of a person can never be the primary focus of a Tribunal under Section 242 unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members. In fact, the post of Executive Chairman is not statutorily recognised or regulated, though the post of a Director is. At the cost of repetition, it should be pointed out that CPM was removed only from the post of (or designation as) Executive Chairman and not from the post of Director till the Company Petition was filed. But CPM himself invited trouble, by declaring an all-out war, which led to his removal from Directorship*

*16.47 But it must be remembered that the origin of just and equitable clause is to be traced to the Law of Partnership which has developed, according to the House of Lords, “the conceptions of probity, good faith and mutual confidence”. Having said that, **Ebrahimi** pointed out that the reference to quasi partnerships or “in-substance partnerships” is also confusing for the reason that though the parties may have been partners in their ‘Purvashrama’, they had become co-members of a company accepting new obligations in law. Therefore, **“a company, however small, however domestic, is a company and not a partnership or even a quasi-partnership”**.*

*17.17. It is significant that Sections 241 and 242 of the Companies Act, 2013 do not specifically confer the power of reinstatement, nor we would add that there is any scope for holding that such a power to reinstate can be implied or inferred from any of the powers specifically conferred.*

*17.18 The following words at the end of sub-section (1) of 242 “the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit” cannot be interpreted as conferring on the Tribunal any implied power of directing reinstatement of a director or other officer of the company who has been removed from such office. These words can only be*



*interpreted to mean as conferring the power to make such order as the Tribunal thinks fit, where the power to make such an order is not specifically conferred but is found necessary to remove any doubts and give effect to an order for which the power is specifically conferred. For instance, sub-section (2) of Section 242 confers the power to make an order directing several actions. The words by which sub-section (1) of Section 242 ends, supra can be held to mean the power to make such orders to bring an end, matters for which directions are given under sub-section (2) of Section 242.*

*17.19 The architecture of Sections 241 and 242 does not permit the Tribunal to read into the Sections, a power to make an order (for reinstatement) which is barred by law vide Section 14 of the Specific Relief Act, 1963 with or without the amendment in 2018. Tribunal cannot make an order enforcing a contract which is dependent on personal qualifications such as those mentioned in Section 149(6) of the Companies Act, 2013. Moreover, it has been held in the case of **Vaish Degree College** (supra) that the general rule is that a contract of personal services is not specifically enforceable unless a person who is removed from service is (a) a public servant who has been dismissed from service in contravention of provisions of Article 311 of the Constitution of India; (b) dismissed under Industrial Law seeking reinstatement by Labour or Industrial Tribunal; and (c) terminated in breach of a mandatory obligation imposed by statute by a statutory body. The Court observed:-*

*“17. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions — (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.”*

*17.20 The position in law that a contract of personal services cannot be enforced by Court is a long-standing principle of law and cannot be displaced by the existence of any implied power, though none is shown in the present case. This is described as the Principle of Legality:-*

*“As statutes are not enacted in a vacuum, it is assumed that long standing principles of constitutional law and administrative law are not displaced by use of merely general words. This is styled as the principle of legality. In the words of SIR JOHN ROMILLY: “The general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the previous policy untouched.” Since every new law involves some change the above statement of LORD ROMILLY must be applied with caution and should be normally confined to cases where ‘the abrogation of a long standing rule of law is in question’. There are many presumptions which an interpreter is entitled to raise which are not readily displaced merely by use of general words, e.g., an intention to bind the Crown or an intention to exclude the supervisory jurisdiction of superior courts will not be inferred merely by use of general words. It is an application of the same principle that unless there be clearest provision to the contrary, Parliament is presumed not to legislate contrary to rule of law which enforces ‘minimum standard of fairness both substantive and procedural’. Thus, a statutory power though conferred in wide terms has certain implied limitations; provisions excluding challenge to an order have no application when the order is a nullity and a provision excluding an appeal against an order of a criminal court does not bar an appeal against an order which the court had no power to make. For the same reason, unless the statute expressly or by necessary implication provides otherwise an administrative decision does not take effect before it is communicated to the person concerned.”*

35. In the aforementioned judgement of Hon’ble Supreme Court, it is clearly stated that under Sub-Section (1) of Section 242 of the Company Act, 2013 “the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit” cannot be interpreted as conferring on the Tribunal any implied power of directing reinstatement of a director or other officer of the company who has been removed from such

office and also stated that even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.

36. We also found that the management of business affairs in a company is not a sole duty of a Director, the results of company's performance is a team work of Board of Directors. Therefore, the statement of Respondents regarding the loss of company during 2019-2020, even though the Audited Financial Statements of 2019-2020 had signed by the Petitioner himself, shows the behaviour and nature of the Petitioner, to escape from the responsibilities of a Director and his fiduciary duties as a Director.

37. It is seen from the records that the removal of the Petitioner from the Directorship of the respondent Company was done following all the mandatory requirements in accordance with law and that we could not find any oppression and mismanagement in the Company in doing so.

38. To sum up, after analysing the issue framed, we are of the considered opinion that one of the crucial rights which Companies Act, 2013 gives to the shareholders is the right to remove the Directors of the Company, if they are not acting in consonance with the Articles of Association of the Company, but only utilizing their powers for their benefits. Therefore, the said removal of the Petitioner from the Directorship is not an illegal act done against the Petitioner and the Petitioner failed to prove any continuing oppressive acts on the part of the Company or its management. Hence this Tribunal cannot hold that the removal of the Petitioner is an oppressive act, in view of the dictum laid down in the **TATA Consultancy Services Limited (Supra)**.

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39. On verification of the documents produced in sealed cover by the Respondents, we could find the EGM held on 21.05.2021 resolved to remove the petitioner from the office of the Director of the Respondent Company with effect from that date for the reasons stated in earlier paragraphs.

40. Hence, we do not find any reason to entertain this Company Petition and grant any of the reliefs prayed for. The Company Petition No. 24/KOB/2021 is dismissed, without costs.

41. In view of the dismissal of the Company Petition, all the Interlocutory Applications pending stand disposed of.

Dated this the 17<sup>th</sup> day of January, 2022

Sd/-  
**(Shyam Babu Gautam)**  
**Member (Technical)**

Sd/-  
**(Ashok Kumar Borah)**  
**Member (Judicial)**

Rajasree