SMT. AMARJEET KAUR V. M/S DEE TEE ELECTRONICS INDIA PVT. LTD.

1. Smt. Amarjeet Kaur
D/o Late Sh. Tarsem Singh,
W/o Sukjinder Singh,
R/o. 1020-D. Model Town Extn,
Ludhiana, Punjab – 141002.

…Appellant No. 1.

2. Smt. Amritpal Kaur @ Harjot Kaur
D/o Late Sh. Tarsem Singh,
W/o. Param Preet Singh,
R/o. Village – Bondli,
Ludhiana, Punjab – 141114.

…Appellant No. 2.

Versus

1. M/s Dee Tee Electronics India Pvt. Ltd.
Registered Office: Shop No.-G-9,
Ground Floor Vardhman Diamond Plaza,
Motia Khan, Paharganj, Delhi,
Central Delhi – 110015.

…Respondent No. 1.

2. Smt. Jasdeep Kaur
W/o Sh. Narender Pal Singh,
R/o S.I. – 35, Shastri Nagar,
Ghaziabad – 201002.
Uttar Pradesh.

…Respondent No. 2.

3. Sh. Narender Pal Singh
S/o Late Sh. Tarsem Singh,
R/o S.I.-35, Shastri Nagar,
Ghaziabad – 201002.
Uttar Pradesh.

…Respondent No. 3.

4. Smt. Prem Kaur
W/o Late Sh. Tarsem Singh,
R/o SK-124, Shastri Nagar,
Ghaziabad, Near Diamond Palace,
Uttar Pradesh.
Through: GPA Holder,
Mrs. Anju Dheeman,
W/o. Late Sh. Preet Pal Singh,
R/o SK-124, Shastri Nagar,

Ghaziabad, Near Diamond Palace,
Ghaziabad – 201002.
Uttar Pradesh.

…Respondent No.4
/ Performa
Respondent.

Case No: COMPANY APPEAL (AT) NO. 76 of 2022

Date of Judgement: 19th December, 2023

Judges:

[Justice Anant Bijay Singh]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

For Appellant: Mr. Sagar Chaturvedi, Advocate.
For Respondent: Mr. S.P. Singh Chawla and Mr. Kunal Surhotia, Advocates.

Facts:

Smt. Amarjeet Kaur (Appellant 1) and Smt. Amritpal Kaur (Appellant 2) filed the appeal against NCLT's order rejecting their plea to be impleaded in the company petition filed by Smt. Prem Kaur (Respondent 4) against M/s Dee Tee Electronics India Pvt. Ltd. (Respondent 1) and its directors Smt. Jasdeep Kaur (Respondent 2) and Sh. Narender Pal Singh (Respondent 3) alleging oppression and mismanagement. Late Sh. Tarsem Singh was earlier a shareholder in Respondent 1 company. Appellant 1 and 2 are his daughters. Respondent 3 is his son and Respondent 2 is Respondent 3's wife. After Sh. Tarsem Singh's death on 20.04.2016, his shares were transmitted. Respondent 4, his wife, holds 10,000 shares in the company. Respondent 4 filed the company petition u/s 241 and 242 of the Companies Act alleging oppression and mismanagement as her shareholding was slightly less than 10% threshold u/s 244 to file such petition. Five applicants, including Appellant 1 and 2 holding 500 and 1000 shares respectively, filed an application for impleadment to meet the minimum shareholding criteria. NCLT rejected the application without giving any finding regarding the shares held by Appellant 1 and 2. It observed that applicants have not produced any succession certificate or will to prove their entitlement over the deceased shareholder's shares.

Elaborate Opinions of the Court:

Appellants have rightly been called necessary party as they hold shares in the company, are legal heirs of the deceased shareholder and are concerned with the affairs of the company. Impleading them as party would enable effective adjudication of the issues raised regarding oppression and mismanagement in the pending company petition. Relevant judgements relied upon recognise the Tribunal's power to implead a necessary party at any stage of proceedings to

adjudicate the matter completely. Appellant's shareholding has not been disputed by Respondents. As different branches of the family hold shares in the company, it is proper that issues are resolved by hearing them. Court relied on Chennai bench judgement to hold that appellant's presence is required being shareholders and alleging mismanagement, hence impugned order rejecting their impleadment application is set aside.

Arguments by Parties:

Arguments by Appellants:

They hold 500 and 1000 shares respectively in Respondent 1 company. Seeking impleadment to support the company petition and prayers made alleging oppression and mismanagement. Impleading them would take the total shareholding of petitioners beyond 10% criteria under Section 244. FIR alleging forgery and cheating has been filed against Respondents regarding illegal appointments. Impugned order wrongly rejected their application without considering their shareholding. Relying on Supreme Court judgement, their presence would enable complete adjudication.

Arguments by Respondents:

Application for impleadment filed to surreptitiously meet shareholding criteria under section 244. Appellants failed to point out any act of oppression against them while seeking impleadment. Limitation period for filing petition has lapsed. Hence, no cause of action survives for Appellants. Failed to produce any succession certificate or will to prove their entitlement over deceased shareholder's shares.

Sections:

The appeal and company petition have been filed under sections 241 and 242 of Companies Act, 2013 read with Rules 11 and 81 of NCLT Rules, 2016. Appellants sought impleadment to meet the 10% shareholding threshold prescribed under Section 244 to

file petitions alleging oppression and mismanagement. Respondents argued that Appellants don't have cause of action to file petition as limitation period under Section 434 has elapsed. NCLT has rejected impleadment application by relying on lack of documents under Section 56 regarding transmission and entitlement over deceased shareholder's shares.

Cases Referred and Relied Upon:

By Appellants:

P J Mathews v. C Mohanan Pillai (Comp App (AT) (CH) No. 22/2021): Tribunal has power to implead any person concerned with company's affairs to ensure effective adjudication. Anil Kumar v. Shivnath Mishra: Impleading Appellant would enable court to completely adjudicate issues in the company petition.

By Respondents:

Nita Dube v. Tej Kumar Book Depot: Seeking impleadment without alleging any oppressive act. Cyrus Investments v. Tata Sons: Limitation period lapsed so no cause of action available. Shanti Prasad Jain v. Kalinga Tubes: Need to establish legal entitlement over deceased shareholder's shares. LRMK Narayanan v. The Puthuthotam Estates: Succession certificate required to prove inheritance rights.

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Full Text of Judgment:

1. The present Company Appeal (AT) No. 76 of 2022 has been filed by Smt. Amarjeet Kaur (hereinafter referred to as Appellant No. 1) and Smt. Amritpal Kaur (hereinafter referred to as Appellant No. 2), who are the daughters of late Sh. Tarsem Singh who was a shareholder in M/s. Dee Tee Electronics India Pvt. Ltd. the Respondent No. 1 herein. Respondent No. 4

namely Smt. Prem Kaur, wife of late Sh. Tarsem Singh has filed Company Petition No. 129/2019 before the NCLT, Bench – IV, New Delhi under Sections 241 & 242 of the Companies Act, 2013, (hereinafter referred to as the `Act') read with Rules 11 & 81 of the NCLT Rules, 2016, against the acts of Oppression and Mismanagement by the Respondent No. 1 Company and its Directors, namely Smt. Jasdeep Kaur (Respondent No. 2) and Sh. Narender Pal Singh (Respondent No. 3). Respondent No. 3. Mr. Narender Pal Singh is son of late Sh. Tarsem Singh and Respondent No. 2 Smt. Jasdeep Kaur is the wife of Respondent No. 3.

2. The present Appeal has been filed challenging the Impugned Order dated 19.01.2022 passed by the NCLT (National Company Law Tribunal, Bench – IV, New Delhi) in CA 04/ND/2021 in CP 129/ND/2019. In the said CA 04/ND/2021, the five Applicants therein namely Smt. Anju Dheeman wife of late Sh. Preet Pal Singh, Sh. Japneet Singh (Minor) son of late Sh. Preet Pal Singh, Ms. Bhavneet Deeman (Minor) daughter of late Sh. Preet Pal Singh, Smt. Amarjeet Kaur (Appellant No. 1 herein) and Sh. Amrit Pal Kaur (Appellant No. 2 herein) had prayed for impleadment and addition as Petitioner in the main Company Petition No. 129/ND/2019.

3. As noted in the Impugned Order dated 19.01.2022, the original Petitioner in CP 129/ND/2019 is falling short of the threshold of 10% and if the shareholding of the five Applicants in CA 04/ND/2021 is added, they will cumulatively hold 25,300 shares out of 1,04,200 shares whereas the original Applicant Smt. Prem Kaur in CP 129/ND/2019 holds only 10,000 shares, which is slightly less than the threshold of 10% shareholding required for filing Petition under Sections 241 & 242 as per provisions of Section 244 of the Act.

4. As noted in the Impugned Order, Sh. Tarsem Singh had died on 20.04.2016 and his son Sh. Preet Pal Singh had died on 20.01.2004. Smt. Prem Kaur is wife of Sh. Tarsem Singh. Smt. Anju Dheeman is wife of late Sh. Preet Pal Singh, deceased son of Sh. Tarsem Singh, and her children are Sh. Japneet Singh and Smt. Bhavneet Deeman. The Appellant herein are daughters

of Sh. Tarsem Singh and Respondent No. 3 is son of Sh. Tarsem Singh and Respondent No. 2 is wife of the son of Sh. Tarsem Singh.

5. The NCLT had rejected the prayer for impleadment of Smt. Anju Dheeman, Sh. Japneet Singh and Smt. Bhavneet Deeman on the ground that after the demise of late Sh. Preet Pal Singh, the said Applicants never applied for transmission of shares as envisaged under Section 56 of the Act. Apparently no finding has been expressed regarding the Appellants No. 1 &

2, except mentioning name of late Sh. Tarsem Singh in para 8. While rejecting the Application, NCLT had observed as under:

"8. Heard, record has been thoroughly perused. Admittedly, it is nowhere established that after the demise of Late Sh. Preet Pal Singh, the proposed applicants ever applied for transmission of shares on their names or their names were recorded in the register of members of the company. Further, the proposed applicants and the petitioner also failed to establish that apart from the present applicants, there is no other legal heir of the deceased shareholders. No succession certificate or any registered Will or probate has ever been placed on record to show the entitlement of applicants regarding the said shares of Late sh. Preet Pal Singh and Late Sh. Tarsem Singh respectively. Thus, there is no iota of evidence to establish that the present applicants are legally entitled to have those shares and have actually devolve upon them. (sic)

9. In view of the aforesaid discussions, this tribunal is of affirm view that the present applicants are failed to establish their rights over the said shares of deceased Mr. Preet Pal Singh, therefore, the applicants are not entitled to be impleaded at the arrays of petitioners. (sic) Resultantly, the present application for impleadment stands dismissed with no orders to costs."

6. In the instant Appeal, the Appellants have sought to be impleaded and added as party in C.P. No.129/2019, which is

still pending before NCLT. It is submitted that Appellant No. 1 is having 500 shares of nominal value of Rs. 10/- each in the Respondent No. 1 Company. It is submitted that Appellant No. 2 is having 1,000 shares of nominal value of Rs. 10/- each in the
Respondent No. 1 Company. It is submitted that Appellant No. 1 holds approximately 0.48% shares and Appellant No. 2 holds approximately 0.96% shares in the Respondent No. 1 Company, respectively.

7. It is submitted that Company Petition No. 129/2019 has been filed bringing out acts of Oppression and Mismanagement by the Respondent No. 1 Company and its Directors, namely Respondents No. 2 and 3 thereby seeking relief for removing and disqualifying the Directors who have been illegally appointed. It was pleaded that joining of the Appellants will enable the Tribunal to effectually and completely adjudicate upon and settle all the questions involved in the C.P. No. 129/2019. It was submitted that their Application CA No. 04/2021 was rejected by NCLT without giving any observations or dealing with the shares held by the Appellants 1 and 2. It was submitted that the Appellants want to become necessary parties as Petitioners
in C.P. No. 129/2019 to support the Petition and the Prayers made therein. It was submitted that if they are allowed to join Petitioner in C.P. No. 129/2019, their ownership of shares clubbed with the shares held by Smt. Prem Kaur well together constitute more than 11% shares in the Respondent No. 1 Company, which will make the Applicants in C.P. No. 129/2019 competent to prosecute the said Company Petition without waiver Application.

8. It was submitted on behalf of the Appellants that the acts of Oppression and Mismanagement have been committed by the Respondents No. 2 and 3 as the Additional Director appointed another Additional Director without calling or intimating the Shareholders about any General Meeting and both the Additional Directors illegally changed their designation as Director on the

very next date of their appointment as Additional Director. It was submitted that the Respondent has done illegal appointment and also the offence of forging the documents against which FIR No. 15/2022 has been registered in P.S., Paharganj under Section 420/34 of IPC. It was submitted by the Appellants that any person concerned with the affairs of the Company can be arrayed as a party to the proceedings, if such addition is likely to facilitate an effective, efficacious, just and fair adjudication of the case. The Appellants relied upon the Judgement of Chennai Bench passed by this Tribunal in the case of `P J Mathews' Vs. `C. Mohanan Pillai', in Comp. App. (AT) (CH) No. 22/2021.

9. In their Reply and Written Submissions, Respondents No. 1 to 3, have submitted that the Application CA No. 4/ND/2021 was filed surreptitiously by the Applicants for impleadment to enable them to clear the threshold shareholding prescribed in Section 244 while their waiver Application under proviso of Section 244 was pending. It was submitted that the Appellants have failed to satisfy the basic requirement of Sections 241 and 242 of the Act which is pointing out any oppressive act alleged to be committed by the Respondents while seeking impleadment. It was submitted that impleadment has been sought at a time when the Limitation period has already lapsed and they are barred to file the main Petition as such no cause of action has even arisen in favour of the Appellants. The Respondents have relied upon the following Judgements in support of their contentions:

- `Nita Dube & Anr.' Vs. `Tej Kumar Book depot Pvt. Ltd. & Ors.', 2018 SCC Online NCLAT 27148.
- `Cyrus Investments Pvt. Ltd.' Vs. `Tata Sons Ltd.', C.A. No. 26 of 2017, in C.P. No. 82 of 2016
- `Shanti Prasad Jain' Vs. `Kalinga Tubes Ltd.', AIR 1965 SC 1535.
- `L.R.M.K. Narayanan' Vs. `The Puthuthotam Estates', 1991 SCC OnLine Mad 445.
- `Aurosagar Estates Pvt. Ltd.' Vs. `M.C. Dawar Holdings Pvt. Ltd.', 2017 SCC OnLine NCLAT 372.

• `Arvind Bali' Vs. `Union of India, Ministry of Corporate Affairs and Videocon Telecommunications Limited', Comp. App. (AT) No. 110 of 2021 or (2021) ibclaw.in 642 NCLAT.
• `Aruna Oswal' Vs. `Pankaj Oswal & Ors.', Civil Appeal No. 9340 of 2019.
• `Jithendra Parlapalli' Vs. `Wirecard India Private Limited & Ors.', IA/644/2020 in CP/289/2020.

10. In the Rejoinder filed on behalf of the Appellants, it has been submitted that the Appellants lawfully hold the shares of the Respondent No. 1 Company, that they have brought out the Oppression and Mismanagement by the present Directors, including fact of lodging of FIR No. 15/2020 under Section 420/34 IPC in PS Paharganj, which is pending and investigation is in progress; that the CA No. 04/2021 was rejected by NCLT, New Delhi vide Order dated 19.01.2022 without giving any observation and without dealing with the shares held by the present Appellants; that the Appellants along with proforma Respondent No. 4, on impleadment will be competent to prosecute C.P. No. 129/2019 without waiver Application. The Appellants relied upon the
Judgement of the Hon'ble Supreme Court in `Anil Kumar' Vs. `Shivnath Mishra', (1995) 3 SCC 147, to support their contention that their impleadment will be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the Company Petition No. 129/2019.

11. Through our Order dated 20.11.2023, we had given liberty to the both sides to file Written Submissions/Additional Written Submissions, not exceeding five pages, alongwith relevant case laws, if any, within one week. However, till date no such Written Submissions/Additional Written Submissions have been filed in compliance to the said directions.

12. We have heard both the Parties and have perused the records of this case including the Judgements cited. It is apparent that NCLT had made no comments regarding shareholding

of Appellants No. 1 and 2, who were Applicants No. 4 and 5 in CA No. 04/2021. We also note that Respondents have not challenged or disputed the assertion of the Appellants No. 1 & 2 that they are Shareholders of Respondent No. 1 Company. Further, we find that the Company is owned by the family members of late Sh. Bachchan Singh, who was father of Mr. Tarsem Singh, Mr. Bagh Singh and Mr. Kuldeep Singh. The shareholding pattern as on 31.03.2018 as recorded in the NCLT Order dated 19.01.2022 is as under:

S. No	Name of the Shareholders and Father's/ Husband's Name	Address of the shareholders	No. of Shares	Nominal Value per share
1.	Tasreem Singh S/o Bachan Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	6,800	Rs. 10/-
2.	Bagh Singh, S/O Sh. Bachan Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	15,300	Rs. 10/-
3.	Amarjit Kaur	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	500	Rs. 10/-
4.	Kuldeep Singh S/o Sh. Bachan Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	1700	Rs. 10/-
5.	Sarabjeet Kaur D/o Sh. Kuldeep Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	800	Rs. 10/-
6.	Preet Pal Singh S.o Sh. Tarsem Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	1000	Rs. 10/-
7.	Amritpal Kaur D/o Sh. Tarsem Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	1000	Rs. 10/-
8.	Narender Pal S/o Sh. Tarsem Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	1100	Rs. 10/-
9.	Jasdeep Kaur D/o Tarlochan Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	5000	Rs. 10/-
10.	Tarsem Singh(HUF)	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	6000	Rs. 10/-
11.	Prem Kaur W/o Sh. Tarsem Singh	SK-124, Shastri Nagar, Ghaziabad, U.P-201011	10,000	Rs. 10/-
12.	AGP Bio-Energy Pvt. Limited	FF-45, Mangal Bazar, Laxmi Nagar, Delhi	5000	Rs. 10/-
13.	Trupti Balaji Hi-Tech Pvt. ltd	FF-45, Mangal Bazar, Laxmi Nagar, Delhi	50,000	Rs. 10/-
		TOTAL	1,04,300	

:

The NCLT Order records at S. No. 3 & 7 above that Appellants herein are Shareholders of Respondent No. 1 Company.

13. It is apparent that each branch of the family is represented in the Company and for resolution of any dispute, it will be better that each branch of the family is represented in the proceeding and is heard. We feel no prejudice shall be caused to anyone if the impleadment application is allowed. Wherever the Court is of the opinion that by adding any party, it would be in a better position to effectually and completely adjudicate upon the controversy, it is proper to exercise judicial discretion in impleading the said party. The Appellants herein are daughters of late Mr. Tarsem Singh and sister of Respondent No. 3, against whom allegations of Oppression and Mismanagement have been made. The Appellants have a defined subsisting, direct and

substantive interest in resolution of the controversy and are necessary and expedient to be impleaded in the said Petition. At this juncture, we like to refer to the Order of Chennai Bench of this Tribunal in the matter of `P J Mathews & Ors.' Vs. `C. Mohanlal Pillai & Anr.' in Comp. App. (AT) (CH) No. 22/2021. The relevant portion of the said Order is reproduced below:

"18. To be noted, that any person 'concerned with the affairs of the Company' can be arrayed as a 'party' to the proceedings, if such adding, as Respondent would facilitate an 'effective', 'efficacious', 'just and fair adjudication' of the case. It must be borne in mind that on the date of the filing of the Petition, the Respondent must either be a 'Shareholder' or 'Director' of the Company. However, if a person is a proper and necessary party, he can be arrayed as a 'party' in a given proceedings.
19 It is relevantly pointed out that a 'Tribunal' has the requisite power to add or strike out a party at any stage of a given proceedings, in the considered opinion of this 'Appellate Tribunal'. Further, in Law, to bring a person as a Party/Respondent/Defendant in a given case/legal proceedings is not a 'Substantive Right' but one of 'procedure' and the 'Tribunal' in this regard, is to exercise its sound judicial discretion. To determine whether a 'person' is to be impleaded or otherwise, cannot depend mainly on the aspect as to whether he has an interest in the property, but whether a right of a person would get affected, if not impleaded in a given pending legal proceedings before the 'Competent Forum'. As a matter of fact, the 'Tribunal' can permit even the impleadment of third party, if his/its presence is necessary for adjudication of the subject matter in issue.
20. It is to be pointed out that to resolve the controversies/issues concerning the main Company Petition in a satisfactory manner, a party may be arrayed as one of the Respondents, of course, based on the facts and circumstances of a particular case. Moreover, it is not necessary that 'any

relief' should be asked against a 'proper party' sought to be impleaded or arrayed as one of the parties to the pending litigation. A 'proper party' is added to avoid plurality of given proceedings and to protect its interest. To put succinctly, a person who is not a party has no right to be impleaded against the Petitioner/Plaintiff's wishes in a given pending legal proceedings. But the rider is that if a person is proper and necessary party, he can be added as a party, either as one of the 'Petitioners' or as one of the 'Respondents', as the case may be.

21. Be that is it may, in the instant case on hand, the fact that First Respondent/Applicant being a shareholder of the 9th Respondent/Company (First Respondent in the main Company Petition CP 21/KOB/2020) is not in dispute. It cannot be brushed aside that in the main Company Petition, the Appellants/Petitioners had alleged 'mismanagement' and 'oppression' in the Company. Suffice it for this Tribunal to make significant mention that 'on the date of filing of the Petition', the First Respondent/Applicant being a shareholder of the 9th Respondent/Company (First Respondent/Company in the main Company Petition CP/21/KOB/2020) and this Tribunal bearing in mind an important fact that the Appellants/Petitioners in the main Company Petition had come out with allegation of mismanagement and oppression in the Company etc, this Tribunal comes to a consequent conclusion that the First Respondent/ Applicant is really a person 'concerned with the affairs' of the Company and without his presence, no effective order can be passed by the 'Tribunal' in a complete, comprehensive and satisfactory manner. Therefore, the 1st Respondent/Applicant's impleadment as Respondent No.23 in the main Company Petition No.21/KOB/2020, as ordered by the National Company Law Tribunal, Kochi Bench in the 'Impugned order' dated 15.03.2021 in CA/23/KOB/2021 is legally tenable. Viewed in that perspective, the 'instant Appeal' is devoid of merits."

14. The Appellants are Shareholders of the Respondent No. 1

Company and are family members of the other Shareholders. They are concerned with the affairs of the Company and their arraignment as party to the proceedings would facilitate an effective, efficacious, just and fair adjudication of the case. We hold that they are proper and necessary party and their impleadment will assist in arriving at the correct decision in C.P. No. 129/ND/2019 pending with NCLT.

15. In view of the above discussion, the instant Comp. App. (AT) No. 76/2022 is allowed and the Impugned Order dated 19.01.2022 passed by the NCLT (National Company Law Tribunal, Delhi Bench – IV in CA-04/ND/2021 in CP No. 129/ND/2019) is set aside. We direct impleadment of Appellants No. 1 & 2 in C.P. No. 129/ND/2019. No order as to costs.