

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP (LLP) No. 22/43/JPR/2024

(Under Section 43 of the LLP Act, 2008 (which deals with the investigation of an LLP's affairs))

IN THE MATTER OF:

SHRI CHINMAY DANGAYACH

.... Petitioner

VERSUS

M/S RKM MERCHANDISE LLP & ORS.

...Respondents

MEMO OF PARTIES

SHRI CHINMAY DANGAYACH,
R/o 2/1, Shree Niketanam, Vidhyadhar Nagar,
Jaipur-302039, Rajasthan

...Petitioner

VERSUS

M/S RKM MERCHANDISE LLP,
R/o P. No. A-25, R.K. Puram, 200 Ft. By Pass,
Ajmer Road, Jaipur-302024,
Rajasthan

...Respondent No. 1

CP (LLP) No. 22/43/JPR/2024

Sd/-

Sd/-

SHRI DEEPAK PACHAURI,
R/o A-24, R.K. Puram, 200 Ft. By Pass,
Ajmer Road, Jaipur-302024, Rajasthan

...Respondent No. 2

SHRI PANKAJ BHARTI,
R/o 313, Rajni Vihar, Ajmer Road,
Heerapura, Jaipur-302029, Rajasthan

...Respondent No. 3

SHRI GOPAL PACHAURI,
R/o A-24, R.K. Puram, 200 Ft. By Pass,
Ajmer Road, Jaipur-302024,
Rajasthan

...Respondent No. 4

SHRI SANJAY PACHAURI,
R/o A-23, R.K. Puram, 200 Ft. By Pass,
Ajmer Road, Jaipur-302024,
Rajasthan

...Respondent No. 5

For the Applicant	:	Amol Vyas, Adv. Abhishek Purohit, Adv.
For the Respondents	:	Palash Srivastav, Adv. R-2 Vijit Saxena, Adv. R-2 Uddeshya Vijayvargiya, Adv. R-3 Yash Takkar, Adv. (R-4, 5)

Order Pronounced On: 02.07.2026

ORDER

1. The present Company Petition has been filed under Section 43 of the Limited Liability Partnership Act, 2008 by Shri Chinmay Dangayach, Designated Partner of M/s RKM Merchandise LLP, seeking investigation into the affairs of the Respondent No. 1 LLP. The petitioner has alleged that

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the affairs of Respondent No. 1 LLP are being conducted in a manner prejudicial to the interest of the LLP, its partners and stakeholders, and that the business of the LLP has been diverted and siphoned away by Respondent Nos. 2 to 5 through another entity, namely M/s Nimbarkji Export.

2. The relief sought in the Petition is that this Tribunal may declare that the affairs of Respondent No. 1 LLP, namely M/s RKM Merchandise LLP, be investigated and the Central Government may be directed to appoint one or more competent persons as inspectors to investigate the affairs of the LLP. Ancillary reliefs have also been sought for inspection of records, audit of balance sheets and appointment of an Administrator or Receiver to look after the affairs of Respondent No. 1 LLP.

3. **Pleading of the Petitioner**

- 3.1 The petitioner states that Respondent No. 1 LLP was incorporated on 15.02.2017 under the provisions of the Limited Liability Partnership Act, 2008, having its registered office at A-25, R.K. Puram, 200 Ft. Bypass Road, Ajmer Road, Jaipur, Rajasthan. The petitioner is one of the Designated Partners of Respondent No. 1 LLP and has contributed a sum of Rs. 19,25,000/- towards the capital of the LLP. In terms of the

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LLP Agreement, the petitioner claims to be entitled to 70% share in the net profits and losses of the LLP.

3.2 It is stated that upon incorporation, the LLP Agreement dated 22.02.2017 was executed amongst the partners. At the relevant time, apart from Respondent Nos. 2 to 5, Mr. Fateh Chand Pachauri and Ms. Bhasha Pachauri were also Designated Partners of Respondent No. 1 LLP. The petitioner states that the original business of the LLP related to solar energy and allied activities.

3.3 The petitioner further pleads that the LLP Agreement was subsequently reconstituted, and the object of Respondent No. 1 LLP was altered to include the business of manufacturing, trading, export and import of organic products, spices, blended spices, pulses, herbs, asafoetida, oilseeds and other agricultural commodities. The petitioner relies upon the reconstituted LLP Agreement to contend that the partners were restrained from engaging, directly or indirectly, in any business identical or similar to that of Respondent No. 1 LLP or in any activity adversely affecting the interest of the LLP.

3.4 It is further pleaded that by virtue of the Supplementary LLP Agreement dated 04.07.2019, the petitioner was inducted as a partner of Respondent No. 1 LLP with the consent of the existing partners. The

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total capital contribution of the LLP was determined at Rs. 27,50,000/-, out of which the petitioner contributed Rs. 19,25,000/-, representing 70% of the capital contribution. Respondent No. 2, Shri Deepak Pachauri, and Respondent No. 3, Shri Pankaj Bharti, contributed 13% each, whereas Respondent No. 4, Shri Gopal Pachauri, and Respondent No. 5, Shri Sanjay Pachauri, contributed 2% each.

3.5 The petitioner relies upon Clause 16 of the Supplementary LLP Agreement and states that all manufacturing and trading activities of Respondent No. 1 LLP were to be carried out and managed by Respondent Nos. 2 and 3, who were entrusted with day-to-day functioning, operations and management of the LLP.

3.6 The petitioner further states that the audited financial statements and balance sheets of Respondent No. 1 LLP for the financial years ending 31.03.2021 and 31.03.2022 show that the LLP was carrying on substantial business operations and had significant assets and working capital. It is pleaded that as per the audited balance sheet as on 31.03.2021, the value of stock-in-trade and inventory lying at the factory premises was Rs. 3,81,54,319/-, and as on 31.03.2022, the value of stock-in-trade was Rs. 3,99,75,192/-.

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- 3.7 The petitioner states that Respondent No. 1 LLP had availed credit facilities from Union Bank of India, and the outstanding liability towards the said banking facility was Rs. 93,67,424/- as on 31.03.2021 and Rs. 94,84,389/- as on 31.03.2022. It is further pleaded that the petitioner and his associate concerns had advanced substantial financial assistance to Respondent No. 1 LLP by way of unsecured loans and financial accommodation, aggregating to Rs. 3,10,39,160/- as on 31.03.2022. According to the petitioner, the aggregate unsecured loans advanced by Respondent Nos. 2 to 5 were only Rs. 23,94,077/-.
- 3.8 The petitioner alleges that upon visiting the factory premises of Respondent No. 1 LLP, he discovered that substantial stock and inventory of the LLP had been disposed of. Upon enquiry, he came to know that Respondent Nos. 2 to 5 had sold the stock either through cash transactions or through another entity, namely M/s Nimbarkji Export, without the knowledge, consent or authorization of the petitioner and without accounting for the proceeds thereof in the books of Respondent No. 1 LLP.
- 3.9 The petitioner further alleges that Respondent Nos. 2 to 5 constituted a separate partnership firm under the name and style of M/s Nimbarkji Export on or about 14.08.2021, during the subsistence of Respondent

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No. 1 LLP and were actively managing its affairs. It is stated that the partners of Nimbarkji Export are the wives of Mr. Deepak Pachauri, Mr. Sanjay Pachauri and Mr. Pankaj Bharti, thereby indicating that the said entity is effectively controlled and managed by Respondent Nos. 2 to 5 and their immediate family members.

3.10 The petitioner further states that the registered office address of Nimbarkji Export is the same as that of Respondent No. 1 LLP, namely A-25, R.K. Puram, 200 Ft. Bypass Road, Ajmer Road, Jaipur. It is also pleaded that Mr. Pankaj Pachauri is associated with the management and affairs of Respondent No. 1 LLP and has also been authorized to act and deal on behalf of Nimbarkji Export.

3.11 The petitioner alleges that Respondent Nos. 2 to 5 caused Nimbarkji Export to be registered as a vendor with D-Mart. According to the petitioner, Respondent No. 1 LLP had earlier been engaged in supplying rock salt to D-Mart and had developed valuable business relations. The petitioner states that he is now unaware of the current status of such business dealings, particularly because the corresponding stock is no longer available at the factory premises.

3.12 It is further alleged that Respondent Nos. 2 to 5 are carrying on identical business activities through Nimbarkji Export and are

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unlawfully utilizing the goodwill, reputation, trade connections and market standing developed by Respondent No. 1 LLP. The petitioner also alleges that the packaging material, product presentation, trade dress and overall appearance of products marketed under Nimbarkji Export are deceptively similar to those of Respondent No. 1 LLP.

3.13 The petitioner also relies upon the stock statement allegedly furnished to Punjab National Bank for the quarter ending 31.07.2022, wherein the value of stock available with Respondent No. 1 LLP was declared to be approximately Rs. 3,47,85,639/-. The petitioner pleads that when he visited the factory premises during the year 2023, he found that no such stock was available and the proceeds of sale of such inventory had not been accounted for in the books of Respondent No. 1 LLP.

3.14 The petitioner alleges that after constitution of Nimbarkji Export, Respondent Nos. 2 to 5 systematically shifted the business activities, customer base, commercial operations and business opportunities of Respondent No. 1 LLP to Nimbarkji Export, resulting in substantial financial losses to Respondent No. 1 LLP and corresponding gains to Nimbarkji Export and persons associated therewith.

3.15 The petitioner further alleges that from the books of account and ledger entries available to him, payments by way of salaries, remuneration and

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other expenses pertaining to persons associated with Nimbarkji Export have been made from the bank accounts and funds of Respondent No. 1 LLP. The petitioner specifically relies upon ledger accounts relating to Ms. Neha Pachauri and Ms. Bhasha Pachauri, which, according to him, indicate diversion and utilization of funds belonging to Respondent No. 1 LLP.

3.16 It is further pleaded that several employees originally employed by Respondent No. 1 LLP have been shifted and engaged in the business operations of Nimbarkji Export. The petitioner also alleges that Respondent Nos. 2 to 5 disposed of machinery and fixed assets belonging to Respondent No. 1 LLP without his consent and without accounting for the proceeds thereof, with the intention of making Respondent No. 1 a shell LLP.

3.17 The petitioner states that in view of serious financial irregularities, diversion of assets, siphoning of funds and other fraudulent acts allegedly committed by Respondent Nos. 2 to 5, he lodged FIR No. 629/2022 dated 15.12.2022 at Police Station Karni Vihar (West), Jaipur, under Sections 420 and 406 of the erstwhile Indian Penal Code, 1860.

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3.18 The petitioner further contends that Respondent Nos. 2 to 5 deliberately failed to make him an authorized signatory and operator of the bank accounts of Respondent No. 1 LLP, despite the terms of the Supplementary LLP Agreement and despite his 70% stake in the LLP.

4. **Pleadings of Respondent No. 2**

4.1 The Respondent No. 2, Shri Deepak Pachauri, has filed a reply opposing the petition. Respondent No. 2 states that there has never been continuity of objects in the manner sought to be portrayed by the petitioner. It is submitted that under the original LLP Agreement dated 22.02.2017, the business of the LLP was solar energy and related activities. Even under the LLP Agreement dated 25.04.2017, the principal object continued to be associated with solar energy and allied fields. According to Respondent No. 2, trading in spices, organic products and agricultural commodities came to be incorporated only under the LLP Agreement dated 26.12.2017.

4.2 The Respondent No. 2 states that the petitioner has sought to mislead the Tribunal by alleging that the business objects were substantially altered under the Agreement dated 25.04.2017 and by suppressing or downplaying the material significance of the Agreement dated 26.12.2017.

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- 4.3 The Respondent No. 2 further pleads that the petitioner himself was the largest contributor to the capital of Respondent No. 1 LLP, holding approximately 70% share in profits and losses. Owing to his dominant financial stake and position, all major decisions relating to the affairs, finances and business operations of the LLP were subject to his approval and concurrence. Respondent No. 2 states that his own role was merely supervisory and administrative in nature and confined to ensuring smooth day-to-day operations.
- 4.4 The Respondent No. 2 submits that the present petition has not been instituted bona fide and appears to have been filed at the behest of Mr. Rajesh Kumar Gupta, the uncle of the petitioner. According to Respondent No. 2, Mr. Rajesh Kumar Gupta, along with the petitioner and other family members, exercised substantial control and influence over the affairs of Respondent No. 1 LLP.
- 4.5 It is further pleaded that multiple WhatsApp groups were created and operated for coordinating and managing the affairs of Respondent No. 1 LLP. The members of such groups included the petitioner, Mr. Rajesh Kumar Gupta, their family members and other persons associated with the business of the LLP. Respondent No. 2 states that such WhatsApp groups demonstrate that the petitioner and his family

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were in control of personnel, business, management, accounting and other aspects of the LLP.

4.6 The Respondent No. 2 further pleads that on or about 27.09.2022, the petitioner addressed a communication to Punjab National Bank seeking a debit freeze upon the Cash Credit Account of Respondent No. 1 LLP bearing Account No. 1440250000499. According to Respondent No. 2, the debit freeze imposed on the cash credit account severely disrupted day-to-day operations and deprived the LLP of access to its working capital, causing its business to come to a standstill.

4.7 The Respondent No. 2 also states that Respondent No. 1 LLP had purchased substantial stock and inventory from Navjeevan Trade India Private Limited, a company stated to be owned and/or controlled by Mr. Rajesh Kumar Gupta. Respondent No. 2 alleges that the purchases from Navjeevan Trade India Private Limited resulted in substantial financial benefits being conferred upon a company closely associated with the petitioner's family, thereby demonstrating the involvement of the petitioner and his family in commercial and procurement decisions of the LLP.

4.8 The Respondent No. 2 denies that the stock was diverted or misappropriated by Respondent Nos. 2 to 5. He submits that

Respondent No. 1 LLP was dealing in spices and related commodities, which are perishable and susceptible to deterioration due to humidity and storage conditions. It is stated that due to the failure of the petitioner and persons associated with him to cooperate in inventory management and to ensure timely payment of rent and dues of the factory premises, the stock deteriorated and became unfit for consumption. Respondent No. 2 states that the owner/lessor of the factory premises ultimately disposed of the deteriorated and unusable stock lying at the premises.

4.9 The Respondent No. 2 denies that he, along with other respondents, started another firm in the name of Nimbarkji Export. It is pleaded that the petitioner is asking the Tribunal to go behind the identity of Nimbarkji Export without impleading the said firm. Respondent No. 2 also denies that the principal business of Nimbarkji Export is manufacturing and trading of spices. Reliance is placed upon Clause 2 of the Partnership Deed of Nimbarkji Export, which provides that the business of the firm shall include import, export, trading, real estate, commissioning services, consultancy services and allied business.

4.10 The Respondent No. 2 further pleads that no person by the name of Mr. Pankaj Pachauri has been impleaded in the proceedings, though the

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petitioner relies upon his alleged role in Nimbarkji Export. Respondent No. 2 states that the vendor registration form relied upon by the petitioner merely records the name of Mr. Pankaj Pachauri as a contact person and that being a contact person is not sufficient to justify an investigation under Section 43 of the LLP Act.

4.11 The Respondent No. 2 denies the allegations regarding copying of packaging material and states that a suit concerning alleged infringement of trademark and related issues is already pending before the Commercial Court, Jaipur Metropolitan-II. According to Respondent No. 2, such issues cannot form the basis for invocation of the extraordinary jurisdiction under Section 43 of the LLP Act.

4.12 The Respondent No. 2 further submits that the petitioner has relied upon an alleged stock statement dated 31.07.2022 but has not placed the same on record. Respondent No. 2 also pleads that many of the entries and transactions reflected in the ledgers relied upon by the petitioner pertain to periods prior to the constitution of Nimbarkji Export on 14.08.2021.

4.13 The Respondent No. 2 submits that neither the LLP Agreements governing Respondent No. 1 LLP nor the Partnership Deed of Nimbarkji Export contain any restriction prohibiting Ms. Neha

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Pachauri or Ms. Bhasha Pachauri from rendering services to Respondent No. 1 LLP or from receiving remuneration, salary or other lawful consideration for services rendered by them.

4.14 Respondent No. 2 further contends that the allegation that Respondent Nos. 2 to 5 prevented the petitioner from becoming an authorized signatory of the LLP is inherently improbable, as the petitioner was the 70% capital contributor and Respondent Nos. 2 to 5 were minority contributors.

4.15 Respondent No. 2 states that the petitioner has already filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, bearing Civil Misc. (NC) 59/2025 titled Chinmay Dangayach v. RKM Merchandise LLP and Ors., before the Commercial Court, Jaipur Metropolitan-II, on substantially the same facts. Respondent No. 2 submits that the present petition is being used to embroil this Tribunal and to get the Central Government to act as a proxy to collect material against Respondent Nos. 2 to 5.

4.16 Respondent No. 2 relies upon M/s Madras Club [CP/46(CHE)/2021], Rohtas Industries Ltd. v. S.D. Agarwal, and Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy to contend that

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investigation is an extraordinary power and should not be ordered on mere allegations or for private disputes between partners.

5. **Pleadings of Respondent No. 3**

- 5.1 Respondent No. 3, Shri Pankaj Bharti, has also filed a reply opposing the petition. Respondent No. 3 substantially reiterates the defence taken by Respondent No. 2 and further states that Respondent No. 1 LLP was incorporated on 15.02.2017 with Mr. Gopal Pachauri, Mr. Deepak Pachauri, Mr. Sanjay Pachauri, Mr. Pankaj Pachauri, Ms. Bhasha Pachauri and Mr. Fateh Chand Pachauri as partners.
- 5.2 Respondent No. 3 pleads that for the purpose of carrying on business operations and meeting working capital requirements, Respondent No. 1 LLP availed a cash credit facility from United Bank of India, which subsequently merged with Punjab National Bank. The partners furnished security in favour of the bank, including immovable property belonging to or acquired by Mr. Fateh Chand Pachauri and/or family members of the Pachauri group.
- 5.3 Respondent No. 3 states that in the years 2018 and 2019, Mr. Rajesh Kumar Gupta @ Rajesh Dangayach approached the existing partners and expressed his desire to acquire a substantial stake in Respondent No. 1 LLP. It is alleged that Mr. Rajesh Kumar Gupta, through his

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Chartered Accountant Mr. Shobhit Ghiya, forwarded a draft Supplementary LLP Agreement by email. According to Respondent No. 3, the draft contemplated that Mr. Rajesh Kumar Gupta and/or persons nominated by him would hold approximately 70% share and interest in Respondent No. 1 LLP.

5.4 Respondent No. 3 states that since the cash credit facility was secured by property belonging to the existing partners, it was initially proposed that Mr. Gopal Pachauri and Mr. Sanjay Pachauri would continue as nominal partners with 2% each share until alternative security was provided by the petitioner or his side. Accordingly, after the Supplementary Agreement dated 04.07.2019, the petitioner came to hold 70% share, Respondent Nos. 2 and 3 held 13% each, and Respondent Nos. 4 and 5 held 2% each.

5.5 Respondent No. 3 specifically pleads that immediately after becoming the majority partner, the petitioner, Mr. Rajesh Kumar Gupta, their Chartered Accountant Mr. Shobhit Ghiya and other family members of the petitioner created multiple WhatsApp groups for managing the affairs of Respondent No. 1 LLP. According to Respondent No. 3, these WhatsApp groups dealt with accounts, books, management,

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trading, sales, purchases, appointment of employees and workers, finances and other affairs of the LLP.

5.6 Respondent No. 3 states that after the petitioner became partner, all meetings of the LLP began to be conducted at the office of Mr. Rajesh Kumar Gupta, who is the uncle of the petitioner and, according to Respondent No. 3, the person managing the LLP from behind the veil. Respondent No. 3 pleads that this demonstrates that the petitioner and his family immediately took complete control over the management and affairs of the LLP.

5.7 Respondent No. 3 further alleges that the petitioner and his family decided to expand the business of the LLP to various cities and States, including Delhi, Uttar Pradesh, Kolkata, Guwahati and Gujarat. Such expansion required large capital expenditure on salaries, transportation, warehousing, losses arising from return of expired or damaged stock, short supply and other operational expenses. Respondent No. 3 states that the outbreak of COVID-19 and the lockdowns in 2020 and 2021 adversely affected the business of the LLP.

5.8 Respondent No. 3 further pleads that in the year 2021, the LLP started exporting wheat flour outside India. According to Respondent No. 3, for some time the business of the LLP ran smoothly, but thereafter the

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petitioner, his uncle and family members started taking over the complete business, operations and management of the LLP, oppressing the minority partners and causing loss to the LLP.

5.9 Respondent No. 3 also relies upon the letter dated 27.09.2022 allegedly written by the petitioner to Punjab National Bank seeking debit freeze of the cash credit account of the LLP. According to Respondent No. 3, because of the debit freeze, the LLP was unable to pay salaries, purchase raw material, pay rent, meet supplier dues and conduct business operations. It is alleged that the debit freeze resulted in the account becoming NPA and exposed the family property of Respondent Nos. 2 to 5 to bank action.

5.10 Respondent No. 3 further pleads that it was Respondent Nos. 2 to 5 who arranged funds from personal sources and obtained loans to clear the dues of the LLP outstanding in the cash credit account. According to Respondent No. 3, this conduct shows that the respondents had no mala fide intention to defraud the creditors of the LLP.

5.11 Respondent No. 3 specifically alleges mismanagement by the petitioner and his associates. It is pleaded that after 2019, the petitioner and his family took complete possession of all books, registers and records of the LLP. It is alleged that all books, registers, profit and loss accounts,

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balance sheets and records were managed and prepared by the petitioner's Chartered Accountant, Mr. Shobhit Ghiya, under the supervision and control of the petitioner and his family members.

5.12 Respondent No. 3 further alleges that all purchases and sales of stock, merchandise, machinery and other assets of the LLP were done under the supervision and control of the petitioner and his family members. Respondent No. 3 relies upon WhatsApp chats and other documents in support of this allegation.

5.13 Respondent No. 3 also alleges that the petitioner and his family purchased large quantities of stock and inventory for the LLP from Navjeevan Trade India Private Limited, which is stated to be connected with Mr. Rajesh Kumar Gupta. It is alleged that such purchases were made from LLP funds at inflated prices, causing loss to the LLP and corresponding benefit to entities associated with the petitioner's family. Respondent No. 3 relies upon ledger accounts and invoices of Navjeevan Trade India Limited.

5.14 Respondent No. 3 further alleges that appointment of employees and workers in the LLP was also under the supervision and control of the petitioner and his family members. Reliance is placed on WhatsApp group chats and appointment letters allegedly issued by the petitioner.

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5.15 Respondent No. 3 raises a specific plea regarding unauthorized loans and credits. It is stated that Clause 16 of the Supplementary LLP Agreement dated 04.07.2019 provided that no partner could take any loan or credit in the name of the LLP without written consent of all other partners and that any partner acting in breach thereof would be solely liable.

5.16 Respondent No. 3 alleges that the petitioner, without informing the other partners, opened another bank account in the name of the LLP and made himself the sole authorized signatory. It is alleged that the petitioner carried out unauthorized transactions of approximately Rs. 2.24 crore through the said bank account without intimation to or consent of the other partners.

5.17 Respondent No. 3 further alleges that the petitioner raised unauthorized loans aggregating to Rs. 3,94,41,049/-, including Rs. 1,83,70,220/- from N.R. Corporation, stated to be connected with Mr. Rajesh Gupta, and Rs. 2,10,70,829/- from other creditors associated with or introduced by the petitioner. It is alleged that such loans were raised without prior written consent of the other partners.

5.18 Respondent No. 3 also alleges that the petitioner utilized Rs. 1,13,49,591/- from LLP funds without intimation to or consent of the

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other partners. Respondent No. 3 further pleads that Nav Jeevan Trade India Limited is owned or controlled by the petitioner's uncle, Mr. Rajesh Gupta, and his family members, and that the petitioner purchased stock from such entity at inflated prices, thereby causing illegal loss to the LLP and illegal gain to himself and his family members.

5.19 Respondent No. 3 also alleges unauthorized use of Respondent No. 1 LLP's trademark "Fresh & Real" by Nav Jeevan Dairy Farms, allegedly associated with the petitioner and his family members. According to Respondent No. 3, this caused loss to the business and reputation of Respondent No. 1 LLP.

5.20 Respondent No. 3 further pleads that the petitioner has already filed FIR No. 629/2022 against the respondents on similar allegations and that investigation by one State agency is already pending. It is contended that the present petition is an abuse of process and seeks a parallel investigation into the same issues.

5.21 Respondent No. 3 further states that the petitioner has already invoked civil remedies and filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court,

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Jaipur Metropolitan-II, and therefore the present petition is liable to be dismissed.

6. **Pleadings of Respondent No. 4 and 5**

- 6.1 Respondents Nos. 4 and 5, Shri Gopal Pachauri and Shri Sanjay Pachauri, have filed their reply opposing the petition. Their defence is broadly similar to the defence taken by Respondent No. 3, with specific emphasis that they were only nominal partners with 2% share each and had no role in the day-to-day management and affairs of Respondent No. 1 LLP after the induction of the petitioner.
- 6.2 Respondents Nos. 4 and 5 state that Respondent No. 1 LLP was incorporated on 15.02.2017 and that an LLP Agreement was executed on 22.02.2017. The LLP was further reconstituted on 25.04.2017 when Shri Krishna Bhargava was inducted as the seventh partner. It is also pleaded that the LLP had opened a cash credit account with United Bank of India, later merged with Punjab National Bank, and that immovable property purchased by Mr. Fateh Chand Pachauri or belonging to the family of Respondents Nos. 4 and 5 was mortgaged as security for the cash credit facility.
- 6.3 Respondents Nos. 4 and 5 plead that in 2018-2019, Mr. Rajesh Kumar Gupta @ Rajesh Dangayach approached the existing partners and

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showed interest in becoming associated with Respondent No. 1 LLP. They state that because the bank security stood in the name of the answering respondents or their family, it was agreed that Respondent Nos. 4 and 5 would remain as nominal partners with 2% share each until the petitioner and his uncle arranged replacement security.

6.4 Respondents Nos. 4 and 5 state that after the petitioner became 70% partner, he and his family members started managing the affairs of the LLP. They further state that they had no role in the operation and management of Respondent No. 1 LLP and were merely nominal partners, expected to be removed once replacement security was arranged.

6.5 Respondents Nos. 4 and 5 also plead that they are engaged in their separate business, namely Pachauri Electric Works, for earning their livelihood, and were not involved in the affairs of Respondent No. 1 LLP.

6.6 Respondents Nos. 4 and 5 further allege that on 27.09.2022, the petitioner sent a letter to Punjab National Bank stating that he was 70% owner of the LLP and asking the bank to debit-freeze the cash credit account. According to them, due to the debit freeze, the account of the

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LLP became NPA and the bank-initiated proceedings that threatened the family property mortgaged as security.

6.7 Respondents Nos. 4 and 5 allege that the petitioner's actions caused the business and operations of the LLP to shut down and caused loss to the LLP and to the respondents.

6.8 Respondents Nos. 4 and 5 further allege that the petitioner misused their signatures and that FIR No. 280/2023 has been lodged against the petitioner, which is stated to be under investigation.

6.9 Respondents Nos. 4 and 5 also plead that the petitioner has lodged FIR No. 629/2022 against the respondents on similar allegations and that investigation is already being conducted by the police. They contend that a further investigation through an order under Section 43 would amount to duplication and abuse of process.

6.10 Respondents Nos. 4 and 5 deny the allegation that they have any role in the alleged diversion of stock or business of the LLP. They plead that all affairs of the LLP, including purchase and sale of stock and inventory, were under the control and supervision of the petitioner and his family members.

6.11 Respondents Nos. 4 and 5 also plead that the petitioner is the majority partner and that all records of the LLP were in his possession.

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According to them, the petitioner is responsible for maintenance of books, records and filing of audited reports before the Registrar.

6.12 Respondents Nos. 4 and 5 further contend that any covenant restraining partners from carrying on lawful trade or business would be hit by Section 27 of the Indian Contract Act, 1872, read with Article 19(1)(g) and Article 301 of the Constitution of India.

6.13 Respondents Nos. 4 and 5 deny being partners or shareholders in Nimbarkji Export and state that they cannot answer on behalf of the said partnership firm. They also deny that the stock of Respondent No. 1 LLP was sold or diverted by them.

6.14 Respondents Nos. 4 and 5 pray that the petition be dismissed with exemplary costs.

7. Analysis and findings

7.1 We have heard the Counsels and have perused the material on record.

Section 43 of the LLP Act, 2008 empowers investigation into the affairs of an LLP where evidence suggests that the business of the LLP has been conducted with intent to defraud creditors, partners or any other persons, or for a fraudulent or unlawful purpose, or in a manner oppressive or prejudicial to the interest of the LLP or its stakeholders.

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- 7.2 The jurisdiction under Section 43 is fundamentally investigative in nature and the Tribunal is not expected to record a conclusive finding of fraud. The purpose of investigation is to ascertain the true state of affairs where the available material discloses circumstances giving rise to a reasonable suspicion that the affairs of the LLP may not have been conducted in a lawful, transparent or bona fide manner.
- 7.3 The respondents have repeatedly stated that the petitioner has approached this Tribunal after much delay and several proceedings like FIR and civil proceedings are already pending between the parties. Mere pendency of civil/criminal proceedings cannot by itself be a ground to reject the prayer for investigation if the material placed before the Tribunal otherwise discloses circumstances warranting independent scrutiny.
- 7.4 Both parties have alleged against each other. The petitioner alleges that Respondent No. 2 was entrusted with day-to-day management of Respondent LLP and that during such management they constituted another concern namely Nimbarkji Export through their family members and thereafter diverted business, stock and goodwill, customers, employees and commercial opportunities from Respondent No. 1 (LLP) to this entity. The petitioner has specifically relied upon: -

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- i) The constitution of Nimbarkji Export during the subsistence of Respondent No. 1 LLP;
- ii) Common family connections and;
- iii) Alleged registration of Nimbarkji Export as vendor with D-Mart;
- iv) Disappearance of inventory reflected in balance sheets and stock statements.
- v) Alleged payments of salaries and expenses to persons connected with Nimbarkji Export from the funds of Respondent No. 1 LLP and;
- vi) Alleged disposal of machinery and fixed assets without accounting for sale proceeds.

7.5 The audited financial statements relied upon by the petitioners indicate stock values running into several crores of rupees. The petitioner has specifically pointed out that inventories reflected in balance sheets and stock statements are allegedly not traceable at the factory premises. These allegations, if true, would undoubtedly raise serious concern regarding affairs of the LLP.

7.6 It is to be noted that Respondent No. 1 LLP has not filed any separate reply. Respondent Nos. 2 to 5, being the remaining partners/designated

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partners, have filed their replies and the matter has been heard on the basis of the pleadings available on record.

7.7 The Respondent Nos. 2 to 5 have not merely denied the allegations but have put forward an entirely different version of events. According to the respondents, after induction of the petitioners as a 70% partner in July 2019, the actual control of the LLP passed into the hands of the petitioners, his uncle Rajesh Kumar Gupta and their associates.

7.8 The Respondent Nos. 2 to 5 have specifically alleged that multiple entities/groups were created through which the petitioners and his family-controlled purchases, sales, employees, accounting, finance and day to day management of the LLP. Respondents have further alleged that meetings of the LLP were conducted from the office of Shri Rajesh Kumar Gupta and that books of accounts, balance sheet and financial records were maintained by persons associated with the petitioner.

7.9 The Respondent No. 3 has alleged that unauthorized transactions of approximately Rs. 2.24 crore and unauthorized monthly loans aggregating to approximately Rs. 3.94 crore and utilization of LLP funds was without consent of other partners. Respondent 3 has further alleged that purchases were routed through entities associated with the

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petitioner's side and that the LLP trademark and goodwill were utilized by concerns connected with the petitioners and his family.

7.10 Thus, what emerges is that both sides have levelled serious allegations involving diversion of business, diversion of goodwill, inventory, unauthorized financial transactions, related party transactions, misuse of LLP funds, mismanagement of records and mismanagement of the affairs of the LLP.

7.11 This Tribunal is of considered view that the existence of such mutually destructive allegations is by itself a relevant cause for investigation into the affairs of LLP.

7.12 This Tribunal is not conducting a trial nor would it be appropriate nor possible at this stage to finally determine who was in actual control of the LLP after July 2019, who operated the bank accounts, who maintained the books of account, whether inventory reflected in the balance sheet actually existed, what happened to the stock allegedly available at the factory premises, whether Nimbarkji Export received business customers or inventory from LLP i.e. the Respondent No.1. Whether unauthorized loans were raised, whether LLP funds were diverted or whether any partner obtained unlawful gain at the expense of the LLP.

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7.13 All these questions can be thoroughly answered only through examination of books of account, bank statements, stock registers, GST records, vendor records, purchase and sale invoices, employee records and related financial materials.

7.14 Such an enquiry is beyond the scope of ordinary adjudication on affidavits and pleadings. The petitioner has produced material indicating the existence of another entity operating from the same address and allegedly engaged in a similar line of business. On the other hand, respondents themselves have produced material indicating that the petitioner and his associate exercised substantial control over the affairs of the LLP and may have undertaken unauthorized financial transactions.

7.15 This Tribunal ultimately cannot record the truthfulness of these allegations without investigation. The material placed on record discloses sufficient circumstances suggesting that the affairs of the LLP require examination by an independent authority.

7.16 This Tribunal is of the considered view that dismissal of the petition at this stage would effectively require acceptance of one version and rejection of the other without any independent examination of the underlying records. This is not the intent of Section 43 of the LLP Act.

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The purpose of investigation is to precisely ascertain the true state of affairs where serious allegations have been raised and where the existing records does not permit a definitive conclusion.

7.17 This Tribunal finds that the materials placed on record disclose circumstances warranting investigation into the affairs of Respondent No.1 LLP.

7.18 It is further clarified that Tribunal is not recording any finding that any respondent has committed fraud. It is equally clarified that no finding is being recorded that the petitioner is free from blame. This order proceeds solely on the basis that the material placed on record raises substantial questions regarding the management and affairs of Respondent No.1 LLP which require independent investigation.

8. **Conclusion**

8.1 This Tribunal is satisfied that circumstances exist warranting investigation into the affairs of Respondent No. 1 LLP under Section 43 of LLP Act, 2008. Accordingly, it is directed that the affairs of Respondent No. 1 LLP be investigated in accordance with Section 43 of the LLP Act, 2008. The Central Government (Ministry of Corporate Affairs) shall appoint Inspectors in accordance with law within a period of 45 days from the date of the order. The Inspectors so appointed to

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carry out such investigation into the affairs of M/s RKM Merchandise LLP and submit the report within a period of 90 days. The investigation may *inter alia* examine: -

1. Maintenance of books of accounts of the LLP.
2. Movement and disposal of stock and inventory reflected in financial statements.
3. Operation of bank accounts of the LLP.
4. Transactions between Respondent No.1 LLP and entities connected with any of the partners.
5. Alleged diversion of business customers, employees or goodwill.
6. Alleged unauthorized loans and financial transactions.
7. Utilization of LLP funds.
8. Alleged transfer or disposal of machinery, fixed assets and inventory.
9. Any matter connected with the affairs of the LLP considered necessary by the Inspectors.

8.2 The partners, designated partners, employees, accountants, auditors and all persons connected with the affairs of M/s RKM Merchandise LLP shall extend full cooperation and furnish such records, information and assistance as may be required by the Inspectors. It is also clarified that

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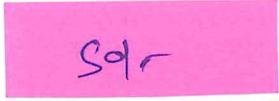
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all observations in this order are *prima facie* in nature and shall not prejudice the rights and contentions of any party in any civil, criminal, arbitral or other proceedings. The copy of the order be forwarded to the Central Government (Ministry of Corporate Affairs) within a period of 3 days from the date of the order.

- 8.3 The Company Petition bearing CP (LLP) No. 22/43/JPR/2024 is thus **allowed & posted for compliance on 26.11.2026.**


**REETA KOHLI,
JUDICIAL MEMBER**


**KAVITA BHATNAGAR
TECHNICAL MEMBER**