

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

30.09.2026

Present: JUSTICE SHARAD KUMAR SHARMA, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

INDEVAR PANDEY, MEMBER (TECHNICAL)

Comp. App. (AT) No. 277 & 278 of 2026

(Arising out of Order dated 08.07.2026 passed by the (National Company Law Tribunal- Court No 1, Mumbai in Company Application No. 153 (MB)/ 2026 in CP No. 132 (MB) of 2026.)

IN THE MATTER OF:

Indian Motion Picture Producers Association

...Appellant

Versus

Sanjeev Kumar Singh and Ors.

...Respondent

Present:

For Appellant : Mr. Arvind Nayar, Sr. Adv., Mr. Savar Mahajan, Mr. Gaurav H. Sethi, Ms. Diksha Daddu, Mr. Ashok Sarogi, Mr. Akshay Joshi, Mr. Rahul Kapoor, Mr. Rahul Pawar, Mr. Kartik Nagpal, Advocates and CA Kamal Agarwal, Advocates.

For Respondent : Mr. Manoj Kumar Garg, Mr. Charan Pratap Singh, Mr. Shivam Garg, Advocates.

J U D G M E N T

Per Justice Sharad Kumar Sharma Member (Judicial)

The Appellant, claiming itself to be a company incorporated under the Companies Act, is before us aggrieved against the Impugned Order dated 08.07.2026, that has been rendered by the Learned NCLT, Mumbai Bench, in CA No. 153 (MB) of 2026, being the application preferred under Section 244(1)(b) of the Companies Act for the grant of waiver, in initiation of proceedings of CP No. 132 (MB) of 2026, the proceedings, which were intended to be initiated by the Respondents under Section 241, to be read with Section 242 of the Companies Act.

2. By virtue of the impugned order, a waiver has been granted under Section 244 (1) (b) of Companies Act, 2013, consequently resulting into the germination of the proceedings under Section 241 and 242, to be determined on merits.

3. The facts, that the Appellant has argued while questioning the Impugned Order. Primarily, the Ld. Counsel for the Appellant had attempted to impress upon as to at what stage the application for waiver under Section 244 (1) (b) of the Companies Act could be instituted to be for grant of waiver. What has been argued by the Learned Counsel for the Appellant is that, because of the fact that the Company Petition was instituted on 08.05.2026, its that when the Company Petition was instituted, the Respondent/Petitioner in the Company Petition had, in order to override any possible restrictions or objections being imposed, because of the implication of the provisions contained under Section 244, the petitioner/respondent

has already pleaded in the Petition that they satisfy the requisite conditions as contemplated under Section 244 of the Companies Act, 2013 for carrying out the motion of the Company Petition, by filing the same under the support of 1/5th members of the company, who had jointly signed and had given their consent for initiation of the proceedings.

4. The Respondent/Petitioner in the Company Petition, in order to override any probable objection to be taken by the opposite party to the Company Petition, that is, the Appellant herein, qua the maintainability of the Company Petition on any issue in context of the restriction imposed by Section 244 of the Companies Act, 2013 had pleaded in the company Petition, that there happens to be 10, 649 members as on 31.03.2025, besides which there are 30 committee members in the Respondent No.1 Company. It was pleaded that, out of the aforesaid total number of members as on 01.04.2022, there were, in all 977 voting members who were actually eligible to participate and vote in the election, comprising of only prime members, Associate Members and TV Programmer Members etc. while making reference to the said list of 01.04.2022. The Petitioner submitted that, as the Respondents in CP were holding higher position in the Respondent company and as they were misusing their position to their advantage and to the detriment of the interest of the Company, since the same being an apparent contravention to the covenant of the Article of Association under which the company was constituted and was functioning, the Respondent/Petitioners are shown to have procured consent from as many as 209 voting members for the purposes of taking any legal action

including in the shape of filing the Company Petition under Section 241 and 242 of the Companies Act, 2013. In reference thereto, in the Company Petition, the Respondent/Petitioner had relied upon the consent letter of all the 209 members. The said consent letter, which constituted as to be the part of the company petition, is being argued by the Ld. Counsel for the Respondent/Petitioner, is to be satisfying the statutory requirement to maintain the Company Petition, since having been carried by at the behest of 1/5th members of the Company.

5. The Appellant Company was shown to have been incorporated, as back as on 08.10.1938, under the provisions of Section 25 of the Companies Act, 1956, at the relevant point of time, it was being governed by the provisions of Section 8 of the Companies Act 2013, which prescribed for formations with general objects subsisted therein etc. the Appellant in the appeal has contended, that because it was engaged in promotion of film, art, culture, to regulate and facilitate activities in the Indian Films and Televisions Industry, it was pleaded that it was a Section 8 Company.

6. The Respondent/Petitioner, owing to certain acts of operation and mismanagement, which could be widely titled as

(i) of misuse and diversion of funds of IMMPA's.

(ii) The operational expenditure those were being incurred there was no disclosure/prior approval or intimation.

(iii) Improper/no circulation of notice, notes to the agenda and minutes of the executive committee meeting.

- (iv) Statement of accounts and balance sheet are not in consonance to Article 53 of Article of Associations.
- (v) Illegal appointment and holding of office by the two Senior vice Presidents.
- (vi) Illegal suspension and expulsion of Mr. Ratnakar Kumar, i.e. the Petitioner No. 4, and illegal suspension, expulsion of Petitioner No. 1 to 3 and such other acts for example that of restraining from registration of title by the name of Respondent No. 1 Company, were alleged to have contributed to the act of oppression and mismanagement, necessitating the filing of Company Petition and modulating the relief in the manner prayed for to quash and set aside the illegal and fraudulent suspension of the Petitioners/Respondent from the executive committee of Respondent No. 1, and to suspend the Respondent that is appellants herein from contesting the elections and further from participating in the affairs of the Respondent No. 1 company and 2 to invoke an investigation by attracting the provisions contained under Section 213 of the Companies Act, 2013.

7. According to the Appellant, they contended that the Company Petition at the behest of the Respondent/Petitioners, would not be maintainable owing to the fact that in the absence of waiver being independently sought by them by filing of an independent application with the Company Petition. The petition itself would not be maintainable and in relation thereto the appellants contended that its only when they had raised an objection on the

maintainability of the company petition, the application for waiver was filed subsequently only on 02.06.2026. Hence, it is submitted that in the absence of the application for waiver, being accompanied with or simultaneously filed with the proceedings of the Company Petition, the Company Petition would not be maintainable and any waivers sought thereafter would not be maintainable and in relation thereto. The Learned Counsel for the Appellant in support of this contention has made reference to the provisions contained under Section 244 of the Companies Act, 2013 itself, which is extracted here under:

244. Right to apply under section 241

“(1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

*Provided that the Tribunal may, **on an application made to it in this behalf**, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.*

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest,

may make the application on behalf and for the benefit of all of them.”

8. So far as the provisions contained under Section 244 of the Companies Act, is concerned, the instant case will not be falling under sub-Clause (a) of sub-Section 1 of Section 244, since it's not a company which is having share capital. The instant company petition in context of the issue of waiver would be maintained, being within the ambit of sub clause (b) of sub-section 1 of Section 244 i.e. the case which company is not having a share capital. What is being argued is that, if we scrutinize Clause (b) of sub Section 1 of Section 244 of the Companies Act, in relation to the company like the Appellant, which is the company not having a share capital. It will be not less than 1/5th of the total members who can initiate a proceeding for the grant of waiver for instituting the proceedings under Section 241 of the Companies Act.

9. The Learned Counsel for the Appellants while drawing our attention to the implication of proviso contained to sub-Section 1 (a) of Section 244 submitted that the Tribunal may grant a waiver subject to satisfaction of its conditions. What he intends to convey is that, an application for grant of waiver has had to compulsorily accompanied with the company petition itself or has to be simultaneously filed when the company petition is instituted, but not at a later stage. He submits that the very fact that the Respondent/Petitioner had filed the application for grant of a waiver at a later stage, the proceedings of the Company Petition would not be maintainable. The facts which could be borne out from the records are that, when the matter was taken up for the first time on 01.06.2026, the Counsel

for the Respondent/Petitioner, argued that because of the fact that the decision taken by the executive committee alleging removal of the Respondent/Petitioners herein from the executive committee would itself be an act of oppression and mismanagement. The Appellant had filed an objection on 03.06.2026 raising a preliminary objection contending thereof that the company petition is not maintainable due to implications of bar contained under Section 244 of the Companies Act. In relation thereto, a reference may be had to the 1st day proceedings that was carried before the Learned Tribunal on 01.06.2026. We note that in the proceedings of the Ld. Tribunal that was held on 01.06.2026, an objection pertaining to the maintainability does not find any reference. On the contrary the Learned Counsel for the Respondents had drawn the attention of this Tribunal to the contents of Para 4 of the order dated 01.06.2026 that is being construed by the Appellant that, they had taken an objection at the first available instance regarding the maintainability of the Company Petition owing to non-filing of the application for waiver, which according to them should have accompanied at the inception of the proceedings of the Company Petition. Para 4 of the order dated 01.06.2026 is extracted hereunder:

“4. The Petitioners have obtained consent from 209 members of Respondent No. 1 Company for filing the present company petition, and submit that the said members constitute more than 20% of vote share of the Respondent Company.”

10. The said para as extracted above is an expression recorded by the Tribunal, from the pleadings of the Respondent/Petitioner in the Company

Petition of having obtained the consent of 209 members of the Respondent company for filing the Company Petition, which itself constituted to be more than 20 per cent of the votes shares of the Respondent company. In fact, the narration given by the Ld. Tribunal in the order of 01.06.2026 is not recording of any objection by the Appellant regarding the maintainability of the Company Petition, rather its only an expression describing the pleadings raised that has been raised by respondent/petitioner in the Company Petition for the purposes of satisfying the conditions of sub Clause (b) of sub Section 1 of Section 244 of the Companies Act, of having requisite number of members of more than 20 per cent of voting shares to institute the proceedings of the Company Petition.

11. It's on the pretext of the observation made in Para 4 of the order dated 01.06.2026, which is being argued by the Appellant, that it ought to be treated, as if the Appellants have raised an objection qua the maintainability of the Company Petition from the perspective that it didn't satisfy the parameters contemplated under Section 244 1 (b). In fact this interpretation given by the Appellant is absolutely a misnomer, because the expression as extracted above is exclusively an expression in shape of consideration of pleading of the Respondent/Petitioners and it's not an expression of any objection having been raised by the Appellant qua the maintainability of the Company Petition on the premise of waiver.

12. It reflects that immediately after the passing of an order on 01.06.2026, the Appellants are said to have filed an objection in the shape of Interlocutory Application that was filed on 03.06.2026 and as per the said

application preferred by the Appellant/Respondent in the Company Petition, they claim themselves to be company incorporated under the provisions of the Section 25 of the Companies Act, 1956 and was acting as an Association of Producers in the Indian Film and Television Industry.

13. The Appellants projected that at the time when the company petition was preferred there were total 26,000 members out of said members it was claimed of the Appellant that only 1,250 members were eligible to vote and therefore it was pleaded that in order to maintain the company petition as per the provisions contained under Section 244 (1) (b) of the Companies Act of 2013, the Appellant was required to have support of at least minimum of 250 members, to be made eligible to maintain the company petition. It was submitted by the Appellant that 'Annexure E', filed in support of the company petition by the Respondent, it was extending the consent of 209 members holding them be eligible to maintain the Company Petition and alleged that the said consent may not be treated as to be a valid consent, as it was not an informed consent, which as per the appellant is mandatory for the purposes to maintain the Petition. Besides, it also records, that as per Appellant, the consenting 209 members, is a member which is much below the specified requirement of 250 members if compared as against the claim of the Appellant to be of having 1,250 members who were found to be eligible to vote. Hence, according to Para 11 of the application, they submitted that 209 members may not be a satisfactory consent as per Section 244 (1) (a) of the Companies Act, as in fact it should have been 250 members, but still they further elaborated to plead that out of 209 members, only 98 were

eligible to vote and the remaining 111 members have not paid annual fees, hence they ceased to be eligible members and thus prayed for that the Company Petition may be dismissed as not maintainable under Section 244(1)(b) of the Act.

14. Its under this situation, the Respondent/Petitioners are shown to have filed an application for the grant of waiver under Section 244(1)(b) and in relation thereto they had moved an application in that regard on 05.06.2026. In the application thus preferred, the Respondent/applicant, while reiterating the pleadings already taken by them, as observed above, in the Company Petition, had submitted that the Instant Application has been filed invoking Section 244(1)(b) out of utter precaution, seeking waiver under Section 244 of the Companies Act, and for the aforesaid purpose, it was pleaded that since there is an ambiguity as to how many members are there in Respondent No. 1 Company and there happens to be a discrepancy in regards to the exact number of members in Respondent No. 1 Company, it submitted that as per the constant case of Respondent No. 1 Company, the maximum no. of members can be 2,908 and according to the annual return submitted in Form NGT-7 for the Financial Year 2024-25, the Appellant No. 1 Company itself has annexed a list of its members as available with them on 31.03.2025, mentioning the number of Members as to be 10,649. Further, in order to elaborate, the Respondent/Petitioner submitted that owing to the circular as issued on 01.04.2022, the actual list of members who were found to be eligible to vote showed that, there were only 977 members and for the aforesaid purpose, a reference to the Circular

IMPPA/40/001/22 dated 01.04.2022 was issued, in relation to the election for 23 members. The circular has shown that there were 997 members, who had the voting rights at the relevant point of time and thus the procurement of consent of 209 members, if it is read in consonance to the Circular of 01.04.2022, would satisfy the threshold requirement of sub-Clause (b) of sub-Section (1) of Section 244 and hence prayer for grant of waiver was as a matter of precaution only.

15. Filing of this application on 05.06.2026 by the Respondent/Petitioner is being taken averse by the Appellant, alleging that there cannot be an application for waiver subsequent to filing of the Company Petition, owing to the interpretation given by the Appellant No. 2, to the language used under the proviso to sub-Clause (b) of sub-Section (1) of Section 244 of the Companies Act. He submitted that there could not be a de facto rectification of the requirement of seeking a waiver by filing of an application, but as far as the instant case is concerned, it is depending upon its peculiar circumstances where, right from the inception of the proceedings of the Company Petition on 08.05.2026, in order to override the probable objection with regard to the maintainability of the Company Petition to satisfy the condition of Section 244 of the Companies Act, the Respondent/Petitioner themselves had made out a ground for attracting sub-Clause (b) of sub-Section (1) of Section 244, as contemplated under the proviso of the said provision so as to maintain the company petition. Since in the petition itself, this ground was already pleaded and even if it is presumed that the Respondent/Petitioner had precautionary later filed an application under

Section 244 of the Companies Act for the grant of the waiver after the observation made in the order of 01.06.2026, that itself would not be construed that the Company Petition lacked its competence to maintain itself due to the restrictions of Section 244 of the Companies Act. In relation thereto, it would be apt to extract Para 5 to 8 of the Company Petition itself, which deals with the stipulation of maintainability as objected by the Appellant.

“5. The Petitioners submit that as on 31/03/2025, there are in all 10,649 Members in the Respondent No. 1 Company. Also, as on 31/03/2025, there are 20 Committee Members in the Respondent No. 1 Company.

*Hereto annexed and marked "**Annexure C-Colly**" are the list of Members and Committee Members as on 31/03/2025, extracted from Form MGT 7.*

6. The Petitioners submits that as on 01.04.2022 there were in all 977 voting members who were eligible to participate and vote in the elections comprising of only Prime Members, Associate I Members and T.V Programme Members. The said voters list was prepared by the Respondent No. 1 Company.

*Hereto annexed and marked "**Annexure D**" is the copy of the voters list as on 01/04/2022 prepared by the Respondent No. 1 Company.*

7. The Petitioners submit that the Respondents holding higher position in the Committee are misusing the position to their advantage and acting in total contravention of AoA which are not only prejudicial to the interest of the Petitioners and Members but also in absolute violation of the provisions of the Companies Act, 2013.

8. The Petitioners submit that being aggrieved by the conduct of the Respondents, the Petitioners procured

consent and approval from 209 members for taking necessary legal action against the Respondents.

*Hereto annexed and marked "**Annexure E**" is the copy of the consent letter of 209 members."*

16. The Learned Tribunal, decided the CA No. 153 of 2026 filed by the Respondent/Petitioners on 02.06.2026, for the grant of waiver and while opposing the same the application preferred by the Appellant, being I.A. No. 175 of 2025, as filed on 03.06.2026 praying for dismissal of company petition as not maintainable under Section 244 of the Companies Act. The Tribunal, while considering the aforesaid aspect in relation to the two applications has recorded a specific finding in the light of the provisions contained under the Article of Association, which prescribed for the class of members as discussed in the impugned order. It had recorded that as per the records in fact on 01.04.2022, there were 977 eligible voting members, exactly, that would be apparent from the voters list that was preferred for the elections, and in view of the said voter list itself, which was accepted by the parties to the appeal, it would be deemed that at the relevant point of time, when the Company Petition was preferred on 08.05.2026, there were 977 members, who had the voting rights, and in case 209 members have voted and granted the consent to initiate a proceedings under Section 241/242 of Companies Act, and to take a legal action against the Appellant, it did satisfy the threshold requirement of the sub-Clause (b) of sub-Section (1) of Section 244. The Appellant, rather in the proceedings before the Ld. NCLT, had tried to create a clouded ambiguity as regards the actual number of members that was subsisting, alleging from the prospective thereof that

there were 10,649 members and the consent letter of 209 may not satisfy the requirement of sub-Clause (b) of sub-Section (1) of Section 244. However, there was no plausible reply extended by the Appellant qua the circular that was utilised for the purposes of conducting the elections, based on which the elections were conducted, which showed only 977 members were there who had the voting rights. Since the validity of the circular itself was not questioned by the Appellant, it cannot be said that the so-called plea taken by the Appellants in their objection/application for the dismissal of the Company Petition, as not maintainable is substantiated or by documentary evidence on record, rather it endorses the position of Respondents/Petitioners that no waiver is required for filing the company petition.

17. The Appellant had developed and had rather carved out a case by way of an exception and an afterthought contending there the consent of 209 members was alleged to be forged and thus submitted that the said aspect should have been considered by the forensic examination and said powers ought to have been exercised by the Ld. Tribunal, itself to verify the sanctity of list of consenting members. As far as this argument is concerned pertaining to the Tribunal's responsibility to send the list for forensic examination or signature expert agency, infact under the provisions contained under Evidence Act, as the benefit is being derived by appellant, hence the burden of proof lies upon the Appellant. If the Appellant was trying to plead that the list of consenting members do not reflect the correct figure or the list reflects the name of the members who have actually not

signed or are forged signature, in that eventuality it was the responsibility of the Appellant to have made an effort to call upon the forensic examination or a signature expert to verify the signatures of the list of consenting members, which has been taken as to be the basis by the Respondent/Petitioner to sustain the Petition under Section 241 and 242. No such burden as contemplated under Section 101 of the Evidence Act was ever discharged by the Appellant to get the list verified through the experts and hence the appellants cannot shift upon the burden of proof on the Tribunal itself, by contending thereof that the Tribunal ought to have exercised its suo moto jurisdiction to get the list of the consenting members verified. We are of the view that at that stage when the Respondent/Petitioner had supported the list of 209 members by virtue of the circular and more particularly when the contents of the circular and its veracity was not disputed by the Appellant there was no occasion for the Learned Tribunal to have verified the sanctity of the list on its own, and too by travelling beyond the prayer that was made by the Appellant in the proceeding in itself, in the light of the provisions contained under Section 101 of the Evidence Act, which reads as under:

“101. Burden of proof.

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgement that he is entitled to certain land in the possession of B, by reason of facts which he asserts and which B denies, to be true.

A must prove the existence of those facts.”

18. The burden of proof is required to be discharged by a person who desires the court to solicit an order or to proof of an existence of fact which he asserts that, those facts did exist. Since the appellant had not discharged his burden of proof qua the list of consenting members, they cannot contend that the circular of list of members who participated in their voting which had 997 members, was at all doubtful. The lists of consecutive members to the petition was drawn from these 997 members of the IMPPA Circular list. Another important feature that is required to be taken note of it is that if at all there was any sanctity in the stand taken by the Appellant, that there were some of the signatures of the members, which were appearing in the list of consenting members are fraudulent. In that eventuality too, yet again, the burden shifted upon the Appellant to have at least produced those members before the Tribunal, who could have at least established creation of a doubt on the list of consenting members as produced by the Respondent/Petitioner for the purpose of sustaining the maintainability of the Company Petition. No such responsibility was ever discharged by the Appellant. Hence, the Tribunal had no other option except to believe the circular of 01.04.2022, which was utilised for conducting the elections, showing the actual list of voting members as to be 977. Even so much so,

the Appellant had failed to produce any such member to record his statement to establish the fact as to whether the consent was not given or fraudulent signatures were appearing on the list. Owing to the aforesaid fact too, since there was no effort made for any independent examination of the documents of IMPPA in relation to the affidavit filed no contention of the Appellant could be accepted to doubt the consent letter of members.

19. In context thereof, too, the interpretation assigned by the Learned Tribunal to the provisions under Section 399(3) of the Companies Act, as to how there would be a derivation of the expression of consent in writing, which contemplates of not less than 100 members of the Company, as it has been settled in the ratio propounded in *M.C. Duraiswami Vs. Sakthi Sugars Ltd.*, (1978 SCC Online Mad 138). The Ld. Tribunal has also rightly interpreted the consent and the deciphered of the explanation given therein, which was obtained by the original petitioners which subscribed that members who have signed the notice of 14.04.2026 issued by IMPPA did accept the logic of drawing a proceedings and had observed to have extended consent to take an appropriate action as may be necessary.

20. A very peculiar stand has been taken by the Appellant during the course of argument, which does not repose much confidence as such when he argues that in the notice of 14.04.2026, as preferred on the basis of the consent extended by the members the Petitioner No. 4 vide its notice of 19.06.2024, while referring to the list of consenting members it was argued by the Appellant that the consent was obtained by misrepresentation and the members who had not applied their mind to the other alleged act of act

of suppression and mismanagement. This argument is not on a sound foundation nor its running on any concrete basis, rather it leads to the contrary interpretation that in fact there had been a letter by the consenting members, who had signed to initiate proceedings, which is being attempted to be argued otherwise, that the consenting members have not applied their minds. But the inference of the same has to drawn in favour of applicants, to the contrary that when these two applications which were being considered by the Ld. Tribunal being CP 153 (MB) 2026 and Company Application No 175/MB/2026, at least some members should have come forward to deny the contents and sanctity of the letter. If we go into the factual entirety of the dispute restricted to the provisions contained under Section 244 of the Companies Act, it rather satisfies the guiding principles of “Cyrus Investments”, as laid down in its Para 140 governing the principles for grant of waiver and more particularly if we scrutinize the impugned order it justifies the test as prescribed under Para 140 of the Cyrus Investments, for the grant of waiver, which in the instant case, cannot be faulted of. The Para 140 of Cyrus investments Judgment is extracted hereunder:

“140. For the aforesaid reasons we hold that the Tribunal while deciding an application for 'waiver' under proviso to sub-section (1) of Section 244 to enable the members to apply under Section 241 cannot decide the following issues: -

- (i) Merit of the case*
- (ii) Issues dependent on merit based on claim and counter claim, such as:*
 - a. Whether a prima facie case has been made or not*
 - b. Whether the petition is barred by limitation,*

- c. Whether it is a case of arbitration,*
- d. Whether allegation relates to/ pertains to another company (Third party).*
- e. Whether allegations are in the nature of directorial complaint.*
- f Whether the applicants' conduct disentitled them from seeking relief*
- g. Whether the proposed application under Section 244 is barred by acquiescence or waiver or estoppel.”*

21. If we analyse the finding recorded by the Learned Tribunal, it did prove the fact to justify the exercise of its discretion to initiate the proceedings under Section 241 and 242 of the Companies Act and while dealing with the specific pleading the Ld. Tribunal had taken into consideration the apparent act of mismanagement and oppression which were apparently made out for the purposes of grant of waiver. Thus the Tribunal had rightly exercised its discretionary powers well within the principles laid down by the judgment of *Cyrus Investments* and also well within the ambit of statutory provisions contemplated under the proviso to Section 244(1)(b) of the Companies Act, 2013. Owing to the fact that there is an utter failure on part of the Appellant to establish the fact about the consent having been extended by the members to the strength of its voting members and since there was no effort made by the Appellant to prove it otherwise. We too don't have other option except to accept the listing of consenting members taken as to be the basis to satisfy the condition of Section 244(1)(b) of the Companies Act, 2013 which in itself was pleaded in the company Petition. There is no apparent legal or factual anomaly in the impugned order which could call for any interference by us. Hence, the

company appeal lacks merit and the same is dismissed. Accordingly, all Interlocutory Applications too would stand closed.

22. We look into the issue on its subjective consideration, we think that, on a plain reading of the provisions of Section 244 (1) (b) of the Companies Act, 2013 along with its provisions in totality, what it contemplates, is that the framer of law didn't contemplate the said provisions was to act as or contemplated that the said provisions was to be used as a deterrent recourse to judicial remedies, and that is why law doesn't contemplate complete bar, as it would have been violative of the rights guaranteed by Article 14 of Constitution of India, i.e. equal right to judicial remedies. The intention of the restrictions contained under Section 244(1)(b) of Companies Act, 2013 is not to provide a platform to the opposite party to the proceedings to challenge maintainability, when the provision apart from being discretionary is intended to aim to be regulatory too, to avoid and to weed out frivolous litigation, unless the Tribunal is prima facie satisfied that the conditions of right to peruse a judicial remedy, for which as per our opinion a restrictive interpretation has not be given rather a purposive interpretation is be to attached to the provisions, which also requires consideration of the entire controversy in the light of facts each case, has to be prima facie test as on the pedestal of restrictions of Section 244(1) (b) of Companies Act, 2013. We are of the view that entirety of pleadings needs determination, so that provision may not be mis applied as if it intends to curb proceedings unless conditions are satisfied, and that is why the

applicability of the provisions has to be tested by Adjudicating Authority under its discretionary powers.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

MT