

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

TP/32/(MB)2010

IN THE MATTER OF:

**SECTION 111 OF THE COMPANIES
ACT, 1956**

AND

IN THE MATTER OF:

**SHRI DILIPKUMAR SHRIVASTAVA
... Petitioner**

Versus

**THE CHAMPION INDIA
INDUSTRIES PRIVATE LIMITED
... Respondent No. 1**

AND

**SHRI SHYAMKUMAR
SHRIVASTAVA
... Respondent No. 2**

AND

**SHRI SANDEEP SHYAMKUMAR
SHRIVASTAVA
... Respondent No. 3**

AND

**SHRI SUDEEP SHYAMKUMAR
SHRIVASTAVA
... Respondent No. 4**

AND

SMT. SUDHA SHYAMKUMAR

SHRIVASTAVA

... Respondent No. 5

AND

***MINERALS & METALS, A
REGISTERED PARTNERSHIP
FIRM***

... Respondent No. 6

AND

***SUDEEP BUSINESS SERVICE
CENTRE***

... Respondent No. 7

AND

***SHYAM MINERALS & METALS
PVT. LTD.***

... Respondent No. 8

AND

***SRIVASTAVA EXPORTS &
TRADING PVT. LTD.***

... Respondent No. 9

AND

RITU SANJAY NARAIN

... Respondent No. 10

Order pronounced on 18.06.2026

Coram:

Sh. Prabhat Kumar
Member (Technical)

Sh. Sushil Mahadeorao Kochey
Member (Judicial)

Appearances:

For the Petitioner : Adv. Rohit Gupta a/w Adv. Prakhar Tandon
For Respondent No. 4 to 7 : Adv. Pradeep Sanchiti a/w Adv. Karl Shroff and
Adv. Shriya Mehta

BRIEF FACTS:

1. The present Company Petition has been filed in February 2010 by the Petitioner under Section 111 of the Companies Act, 1956 seeking rectification of the Register of Members of Respondent No. 1 Company, namely **THE CHAMPION INDIA INDUSTRIES PRIVATE LIMITED**, along with consequential reliefs against alleged acts of oppression and mismanagement committed by Respondent Nos. 2 to 5, being the elder brother of the Petitioner and his sons. It is alleged that Respondent Nos. 2 to 5, by perpetrating fraud upon the Petitioner and fabricating records, unlawfully divested the Petitioner of his shareholding comprising 3552 equity shares of Rs.100/- each in Respondent No. 1 Company and purportedly transferred the same in favour of Respondent No. 6, a partnership firm belonging to the family of Respondent No. 2, without consideration, without execution of any valid instrument of transfer, and in contravention of the mandatory provisions of Section 108 of the Companies Act, 1956. The Petitioners have prayed following reliefs :
2. The Respondent No. 1 Company was incorporated on 22.10.1947 as a company limited by shares under the provisions of the Companies Act, 1956. It is submitted that the said Company was originally incorporated under the name and style of '**The Champion Engineering Works Limited**'. Thereafter, on 12.05.1961, the Company was converted into a Private Limited Company. Subsequently, on 25.08.2001, the name of the

Company came to be changed to '**The Champion India Industries Private Limited**' (hereinafter refer as 'the said company').

3. Respondent No. 2 is the elder brother of the Petitioner. Respondent Nos. 3 and 4 are the sons of Respondent No. 2, whereas Respondent No. 5 is the wife of Respondent No. 2. Respondent Nos. 6 and 7 are partnership firms in which Respondent No. 2 and his family members are partners. Respondent Nos. 8 and 9 are companies wherein family members of Respondent No. 2 are acting as Directors. Respondent No. 10 is the daughter of Respondent No. 2.
4. The Registered Office of the said Company is situated at Nirmal, 16th Floor, Central Wing, Nariman Point, Mumbai – 400021, Maharashtra. It is submitted that the Company is engaged in the business of engineering and property development.

SUBMISSIONS OF THE PETITIONER:

5. It is submitted that Respondent No. 1 Company was originally taken over from Shri Radheshyam Goel and Mrs. Sita Goel by the Petitioner and Respondent No. 2 vide Articles of Agreement dated 14.02.1979. It is the case of the Petitioner that, pursuant to the said takeover, the Petitioner was allotted 3552 equity shares of Rs.100/- each in Respondent No. 1 Company. It is further submitted that Respondent No. 2 was allotted 30 shares, Respondent No. 3 was allotted 1,344 shares, Respondent No. 4 was allotted 2,714 shares and Respondent No. 5 was allotted 14,840 shares in the said Company. It is further submitted that the Annual Returns of the Company for the year 1989 clearly reflect the name of the Petitioner as a shareholder of Respondent No. 1 Company holding 3552 equity shares.
6. It is submitted that the Petitioner was appointed as a Director of Respondent No. 1 Company at the time of takeover in the year 1979 along with Respondent No. 2 and continued to hold office as Director till the year 1982. It is the case of the Petitioner that, being a shareholder holding

more than 10% shares in the Company, he was entitled to be appointed as a Director. The Petitioner further alleges that, in or about the year 1982, Respondent Nos. 2 to 4, without the knowledge or consent of the Petitioner, forged and fabricated a resignation letter purportedly issued by the Petitioner and wrongfully tendered the same before the Company.

7. It is the specific contention of the Petitioner that the purported resignation allegedly tendered in the year 1982 was fraudulent, fabricated and not supported by the mandatory statutory filings, including Form No. 32 under the Companies Act, 1956. The Petitioner has accordingly challenged the said purported resignation in the present Petition and claims that he continues to be entitled to be recognised as a Director of Respondent No. 1 Company.
8. It is further alleged that thereafter, in or about the year 1994, Respondent Nos. 2 to 4, without any authority, consent or approval of the Petitioner, illegally transferred the shares standing in the name of the Petitioner in favour of Respondent No. 6 and consequently deleted the name of the Petitioner from the records and Register of Members of the Company. According to the Petitioner, he has been unlawfully divested of his shareholding on the basis of forged and fabricated documents.
9. It is submitted that the Petitioner was required to stay at Goa for a considerable period of time on account of business and personal reasons. Owing thereto, the Petitioner was not actively involved in the day-to-day affairs and management of Respondent No. 1 Company, and the entire management and affairs of the Company were being looked after and controlled by Respondent Nos. 2 to 4. It is further submitted that the share certificates of both the Petitioner and the Respondents were retained in the custody of Respondent No. 2, who was also maintaining the books of accounts and records of the Company.
10. The Petitioner submits that he accidentally came to know in or about the year 2008 about the alleged acts and machinations of the Respondents,

and only thereafter discovered that he had been wrongfully deprived of his status as a shareholder and Director of the Company, along with his rights in the management and affairs of Respondent No. 1 Company.

11. In the aforesaid circumstances, the Petitioner claims entitlement to maintain the present Petition challenging the alleged divestment of his shareholding in or about the year 1994, contending that the purported transfer of shares was effected without any consideration, authority, knowledge or consent of the Petitioner and on the basis of forged and fabricated documents allegedly created by Respondent Nos. 2 to 4, who were then in control of the management and affairs of the Company.
12. It is submitted that, upon discovering the alleged fraudulent acts of Respondent Nos. 2 to 4, the Petitioner filed a Criminal Complaint before the Learned Metropolitan Magistrate, Borivali on 29.05.2008 for offences punishable under Sections 465, 466, 467, 468, 471, 420 read with Section 34 of the Indian Penal Code, 1860. It is further submitted that the Learned Magistrate passed an order under Section 156(3) of the Code of Criminal Procedure, 1973 directing investigation into the matter. The Petitioner has also instituted L.C. Suit No. 411 of 2009 before the Bombay City Civil Court for seeking, inter alia, injunctions restraining Respondent Nos. 2 to 4 from disposing of the properties of Respondent No. 1 Company or creating any third-party rights therein.
13. The Petitioner alleges that Respondent Nos. 2 to 5, in complete breach of the trust and confidence reposed in them, systematically and fraudulently took over and hijacked the management and control of the Company. It is further submitted that various filings and transactions were carried out unilaterally by Respondent Nos. 2 to 5 without the knowledge of the Petitioner, resulting in the transfer of the Petitioner's shareholding to Respondent No. 6, which presently holds 1,21,968 shares as against the original holding of 3552 shares belonging to the Petitioner. According to the Petitioner, the share capital of the Company has substantially

increased over the years and his proportionate entitlement has consequently been diluted through fraudulent acts.

14. The Petitioner therefore claims entitlement not only to restoration of his original holding of 3552 shares, but also to the proportionate increase corresponding to the enhancement in the share capital of the Company. It is the case of the Petitioner that since he originally held approximately 13% shareholding in Respondent No. 1 Company, he is entitled to restoration and allotment of equivalent proportionate equity in the present share capital structure of the Company. It is further submitted that Respondent Nos. 2 to 5 have acted in violation of the provisions of the Companies Act by transferring shares in favour of partnership firms, namely Respondent Nos. 6 and 7. According to the Petitioner, under Section 41 of the Companies Act, a partnership firm cannot be recognised as a member or shareholder of a company.
15. It is submitted that, as per the last Balance Sheet of Respondent No. 1 Company for the financial year ended 31.03.2008 available with the Petitioner, the authorised share capital of the Company was Rs.11,00,00,000/- divided into 11,00,000 equity shares of Rs.100/- each, whereas the issued, subscribed and paid-up share capital stood at Rs.10,78,30,000/- divided into 10,78,300 equity shares of Rs.100/- each. It is further submitted that the last Annual Return filed by the Company for the year ending 31.03.2009 reflects the names of Respondent Nos. 3, 4, 5 and 10 as shareholders of Respondent No. 1 Company.
16. The Petitioner filed a Rejoinder Affidavit to the replies filed by Respondent Nos. 3 and 4, as well as to the further affidavit of Respondent No. 3 dated 09.08.2011, denying the allegations made therein and, inter alia, contending as follows:
 - i. The documents annexed to the further affidavit dated 09.08.2011 pertain to proceedings involving Sudeep Constructions Pvt. Ltd. and have no connection with the present Petition.

- ii. The Petitioner was released on bail by the Hon'ble Bombay High Court vide order dated 16.09.2011, in connection with MECR No. 7 of 2011 registered for offences punishable under Sections 199, 200, 201, 202, 204, 405, 409, 420, 423, 466, 468, 471 and 477-A of the Indian Penal Code.
- iii. Respondent Nos. 2 to 4 were themselves involved in criminal proceedings concerning cheating and financial irregularities, including a complaint involving an amount of Rs. 4.50 Crores and Crime No. 401 of 2007 filed at Chennai. It is further stated that Criminal Original Petition No. 32369 of 2007 filed by Respondent Nos. 2 to 4 before the Hon'ble Madras High Court came to be dismissed.
- iv. The Respondent No. 1 Company was incurring losses in the year 1994 and had a negative net worth per equity share of Rs. 59.83. The expenditure account exceeded the reserves and surplus, resulting in a loss of Rs. 59,70,263/-.
- v. Respondent No. 6 being a wholly family-owned concern, it was common for members of the Shrivastava family, including the Petitioner, to contribute funds to or borrow funds from the firm. Therefore, the amounts referred by the Respondents cannot be treated as consideration for the alleged sale of 3,552 shares.
- vi. Owing to persistent defaults committed by various entities of the Shrivastava Group, recovery proceedings were initiated by several financial institutions. The Petitioner contends that Respondent Nos. 2 to 4 had diverted company funds for personal benefit, compelling the Petitioner to communicate with banks and indicate that Respondent No. 2 had assumed responsibility for repayment of liabilities from the assets of the group companies.
- vii. The Petitioner submits that he trusted in Respondent No. 2 for the management of the affairs of the Company and, therefore, did not

independently verify whether notices of Board Meetings or Annual General Meetings were being issued to him. It is further alleged that notices, if issued, may not have reached him as the address used was common with that of the Respondents.

- viii. The Petitioner contends that the public advertisement relied upon by the Respondents was published in a newspaper having limited circulation amongst businessmen and not in widely circulated newspapers. It is further stated that the Respondents were aware that the Petitioner was residing in Goa and, therefore, was unlikely to come across the said publication.
- ix. The Civil Suit instituted before the City Civil Court, Borivali, concerns independent reliefs and was filed primarily to restrain the Respondents from dealing with the properties of the Company. According to the Petitioner, the issues involved therein are distinct from those arising in the present Petition.

SUBMISSIONS OF THE RESPONDENT NO. 3 AND 4:

17. The Respondent Nos. 3 and 4 filed their Affidavit in Reply denying the allegations made in the Petition and, inter alia, contended as follows:
 - i. The Petitioner himself engaged in acts of forgery, defalcation and other irregularities in relation to the properties and affairs of the Company and its group entities with which he was associated.
 - ii. The Petitioner had expressed his intention to resign from the Board of Directors of Respondent No. 1 Company vide resignation letter dated 29.06.1982 and thereafter ceased to take any interest in the affairs of the Company.
 - iii. The Petitioner had voluntarily agreed to transfer his shareholding in or about the year 1994 in favour of Respondent No. 6. The Annual Return of Respondent No. 1 Company for the year 1994 records the transfer of the Petitioner's shares to Respondent No. 6, for which consideration was duly paid.

- iv. The Petitioner held 3,552 equity shares of face value Rs.100/- each and was entitled to consideration of Rs. 3,55,200/- for the transfer thereof. Out of the said amount, Respondent No. 6 paid Rs. 2,59,327/- as part consideration, which is reflected in its books of account, and the balance amount of Rs. 95,873/- was paid during the period 2001–2004.
 - v. The Petition suffers from gross delay and laches as the Petitioner had voluntarily transferred his shares in 1994–1995. It is further contended that, if the Petitioner continued to be a Director and shareholder as claimed, he would have enquired about Board Meetings, Annual General Meetings, notices and minutes thereof. The Respondents further contend that the Petitioner admittedly did not attend Board Meetings for several years and had not sought leave of absence, which would result in automatic vacation of office under the applicable provisions of law.
 - vi. The Petitioner himself, by letter dated 07.07.2004 addressed to the State Bank of India, acknowledged that Mr. Shyamkumar Shrivastava, as Chairman of the Shrivastava Group, had taken over the assets and liabilities of the group companies.
 - vii. Respondent No. 1 Company had published a public advertisement dated 28.05.2006 inviting objections to the consolidation of shareholding. According to the Respondents, the Petitioner is deemed to have had notice of the said publication and has failed to explain when and how he allegedly became aware of the transfer of his shares.
18. Respondent No. 3 also filed a Further Affidavit dated 12.08.2011 and, inter alia, submitted as follows:
- i. The Petitioner was allegedly involved in acts of forgery, defalcation and misappropriation of the properties and funds of the Company and its group entities. In this regard, complaints had

been filed before the Learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai.

- ii. The Petitioner's application for anticipatory bail was rejected by the Learned Sessions Court, Mumbai on 20.04.2011. A subsequent application for anticipatory bail filed before the Hon'ble Bombay High Court was also rejected vide order dated 13.05.2011.
- iii. The Petitioner was arrested on 20.06.2011 in connection with MECR No. 7 of 2011 registered for offences punishable under Sections 199, 200, 201, 202, 204, 405, 409, 420, 423, 466, 468, 471 and 477-A of the Indian Penal Code.

FINDINGS AND ANALYSIS:

19. It is observed that vide Order dated 28.11.2023, this Tribunal disposed of the present Petition. The relevant portion of the said Order reads as under:

“Even after clear and categorical directions from this Bench, the Petitioner chose not to appear before the Bench today and prosecute their matter further.

5) The continuous absence on the part of the Petitioner further strengthens the belief of this Bench that the Petitioner is no more inclined to prosecute their matter further. In that view of the matter, the present Transfer Company Petition bearing TCP No. 32 of 2010, is disposed of for want of prosecution. Resultantly, all the pending Applications, arising out of the present Transfer Company Petition, stands closed, in view of disposal of the main Transfer Company Petition.”

20. Thereafter the Petitioner filed Restoration Application No. **RST.A (COMPANIES ACT)/8(MB)2025 in TP/32(MB)2010** seeking restoration of the present Petition. This Tribunal, vide Order dated

11.02.2026, allowed the said Restoration Application and restored the present Petition for adjudication on merits.

21. It is observed that, except Respondent Nos. 3 and 4, none of the other Respondents have filed any Affidavit in Reply to the present Petition. Although some of the Respondents had appeared before this Tribunal on various occasions, they failed to file their replies despite being granted sufficient opportunities to do so. Accordingly, the present Petition is being adjudicated on the basis of the material available on record and without considering any reply from the said Respondents.
22. We have carefully considered the pleadings, documents placed on record, submissions advanced by the parties and the applicable provisions of law. The principal grievance of the Petitioner pertains to the alleged illegal removal of his name from the Register of Members of Respondent No. 1 Company consequent to the purported transfer of 3,552 equity shares standing in his name in favour of Respondent No. 6.
23. It is an admitted position that the alleged transfer of shares took place in or about the year 1994-1995, whereas the present Petition came to be filed only in the year 2010. Even according to the Petitioner, he became aware of the alleged transfer in or about the year 2008, though, no satisfactory explanation, except averment in his complaint filed on 29.05.2008 before Addl. Chief Metropolitan Magistrate that he was told by Shyamkumar Shrivastava in the year 2008 that he is not having any share in champion engineering limited, has been furnished for the prolonged delay in challenging the entries reflected in the statutory records of the Company.
24. It is noted that the Petitioner claims to have continued as a Director and shareholder of Respondent No. 1 Company despite the alleged transfer of shares in the year 1994 and has contended that, in or about the year 1982, Respondent Nos. 2 to 4 forged and fabricated a resignation letter purportedly issued by him. This Submissions of the petitioner are contrary to letter dated 07.07.2004 written by the petitioner to the State Bank of

India as well as in order dated 24.10.2008 passed by the Ld. Court of Sessions for greater Bombay at Dindoshi, Goregaon in the matter of Anticipatory Bail Appln. No. 256 of 2008 wherein it is recorded that “5. *In the background as above, it is further case of complainant that he had repeatedly questioned about the transfer of his said shares however, no replies were given, He did not pursue the said matter any further until 1996 when the mother of the complainant and applicant No. 1 expired. In this background, complaint is filed in the year 2008.*” No material has been placed on record to demonstrate that the said fact was erroneously recorded by the Ld. Court in the said order. It is also pertinent to note the final observation of learned Court at para 9 which states that “.....it is also pertinent that the entire theory about forged and fabricated documents revolves upon the documents which complainant will have to produce and prove complicity of applicants in the alleged offences. That would be a matter of investigation involving upon collection of documents which may be material for coming to proper conclusion about alleged offences.....” Further the Petitioner has not placed on record any final investigation report if any filed by the Investigating Authority in Criminal Complaint filed by the Petitioner in the Learned Court of Addl. Chief Metropolitan Magistrate.

25. It is further noted that the Petitioner vide letter dated 07.07.2004 informed the State Bank of India Overseas branch that “.....As explain to you in personal meeting in detail on 3rd July 2004. Since Mr. Shyam Kumar Shrivastava, Chairman of all the companies of SHRIVASTAVA GROUP has taken over all the assets and liabilities in favour of his family members therefore, I have to inform you that entire liabilities are required to be paid by Mr. S. K. Shrivastava, my elder brother, as per our oral family understanding. Therefore, I request you to kindly call on him to honour all the commitments which he has agreed to discharge on behalf of all the parties to the suit.” In this context if we consider the statement of the

Petitioner in his complaint before Learned Court of Addl. Chief Metropolitan Magistrate that “...*certain disputes arose in the year 1990 and thereafter it continued till 2006 in between the Sham Kumar Shrivastav got all shares had been transferred in his name and in the name of Accused No.3 and 4 as they are sons of Shyam Kumar Shrivastava...*”, it follows that there may have been an agreement between the parties in relation to ownership of the Respondent Company and it cannot be emphatically said that the transfer of shares from the Petitioner to the Respondents as well as the resignation of the Petitioner dated 19.06.1982 was forged, because it is unfathomable as to why the Petitioner, claiming the dispute between two of them during the year from 1990 till 2006, had not taken any action, whatsoever, to discover his status in the Respondent Company

26. Further, the material placed on record indicates that the Petitioner admittedly did not participate in the affairs of the Company for several years and failed to attend Board Meetings or Annual General Meetings. No satisfactory explanation has been offered as to why, if he genuinely continued as a Director and shareholder, he did not seek copies of notices, minutes, annual returns, financial statements or any other corporate records for such a prolonged period. The Petitioner has also failed to explain the delay in challenging the alleged resignation of 1982 and the alleged transfer of shares of 1994. Such prolonged inaction is inconsistent with the conduct expected of a person claiming to be a Director and substantial shareholder of the Company. Nonetheless the present petition is filed under Section 111 of the Companies Act, 1956, the issue of resignation or any oppressive act cannot be examined by this Tribunal.
27. In the case of ***Chalasani Udaya Shankar and others Versus M/s. Lexus Technologies Pvt. Ltd. and others Civil Appeal Nos. 5735-5736 of 2023***, the Hon’ble Supreme Court held that –

32. *This would mean that the National Company Law Tribunal*

exercising jurisdiction under Section 59 of the Act of 2013 has to examine the factual issues to ascertain the substance of the issue before it after removing the cloak of the form of the application. The expression ‘rectification’, as already pointed out, connotes something that ought to have been done but, by error, was not done, or what ought not to have been done but was done, requiring correction. The phrase ‘sufficient cause’ in Section 59 of the Act of 2013 is to be tested in relation to the statutory mandate thereof, i.e., anything done or omitted to be done in contravention of the Act of 2013 or the Rules framed thereunder.

33.In Adesh Kaur (supra), this Court observed that if, on facts, an open-and-shut case of fraud is made out and the person seeking rectification was the victim, the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the Act of 2013.....

34..... Needless to state, questions of fact must be decided on the principle of preponderance of probabilities, giving due weight to the specific facts, as found, so as to draw the conclusion that a reasonable person, acquainted with the relevant field, would draw on the basis of the same facts. (See High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others⁹).

28. In the present case, the petitioner has sought rectification of Register of Members alleging fraudulent removal of his name from the said register in terms of a purported transfer deed, which was not executed by him, and the underlying consideration was not paid to him. As observed earlier the Petitioner has himself admitted the existence of dispute between two groups at least from 1990 till 2006, and the alleged transfer is stated to have taken place on 07.04.1994. It is noted that the Respondent Company has filed its annual return reporting such transfer during the relevant

period and has also filed annual returns for subsequent years reporting the shareholding pattern accordingly. The complaint of the Petitioner in relation to forgery is sub-judice before the learned Court of Addl. Chief Metropolitan Magistrate and there is no final finding of fact in this relation. Further, the Petitioner had wrote letter dated 07.07.2004 to the State Bank of India, acknowledging that Mr. Shyamkumar Shrivastava, Chairman of the Shrivastava Group, has taken over all assets and liabilities in favour of his family members as per our oral family understanding. If this facts are tested on the principle of preponderance of probabilities, It is more probable than not that the Petitioner had knowledge of the transfer of his shares much prior to 2008 and such transfer is not a an open-and-shut case of fraud.

29. In view of the aforesaid facts, it is clear that there is contested facts in relation to transfer of shares from Petitioner to Respondent and the claim of petitioner in relation to knowledge of transfer of these shares is contrary to the fact recorded by Ld. Addl. Chief Metropolitan Magistrate in the pending complaint of fraud and forgery in relation to such transfer as well pendency of such suit, this Tribunal is of the considered view that the relief sought in the present Petition for rectification of Register of Members can not be granted.
30. In view of the foregoing, TCP 32/2010 is disposed of as dismissed.

SD/-

Prabhat Kumar

Member (Technical)

Vipul Ghate

SD/-

Sushil Mahadeorao Kochey

Member (Judicial)