

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (Court-I)  
KOLKATA**

IA(Companies Act)259/(KB)/2025

In

CP No. 83/KB/2021

*An Application under Section 244(1) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

*And*

In the matter of:

Sections 56, 58, 59, 241, 242, 447, 448 and 449 of the Companies Act, 2013;

In the matter of:

1. **Man Mohan Varma**, for himself and as Karta of Man Mohan Varma & Sons (HUF), residing at 4, Ashok Nagar, Dhansar, Dhanbad, P.S. Bank More, Sub-division and District-Dhanbad, Jharkhand – 828106
  2. **Saroj Varma**, residing at 4, Ashok Nagar, Dhansar, Dhanbad, P.S. Bank More, Sub-division and District-Dhanbad, Jharkhand – 828106
  3. **Manish Varma**, for himself and as Karta of Manish Varma & Sons (HUF), residing at 4, Ashok Nagar, Dhansar, Dhanbad, P.S. Bank More, Sub-division and District-Dhanbad, Jharkhand – 828106
  4. **Rima Varma**, residing at 4, Ashok Nagar, Dhansar, Dhanbad, P.S. Bank More, Sub-division and District-Dhanbad, Jharkhand – 828106
- ...Applicants

Versus

1. **Pre-Stressed Udyog (India) Private Limited**, a company within the meaning of the Companies Act, 2013, having its registered office at Karnani Estate, 209, A. J. C. Bose Road, Kolkata-700 017.
2. **Dinesh Pradhan** resident of Adarsh Nagar, Hirapur, Dhanbad -826001, Jharkhand, India
3. **Mahesh Pradhan** resident of Adarsh Nagar, Hirapur, Dhanbad - 826001, Jharkhand, India

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4. **Ritu Ritolia**, working at J.C Mallick Road, Hirapur, Dhandbad –  
826001

...Respondents

Date of pronouncement of order: 09.06.2026

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)**

**Appearances (via Video Conferencing/Physical):**

Mr. Jishnu Chowdhury, Sr. Adv.	] For the Petitioners
Mr. Shaunak Mitra, Adv.	]
Mr. Dripto Majumdar, Adv.	]
Mr. Subham Bothra, Adv.	]
Ms. Manisha Saraf, PCS	]
Mr. Rishav Banerjee, Adv.	] For the Respondent
Mr. Gopal Kumar Khetan, PCA	]

**O R D E R**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The Court congregated through a hybrid mode.
2. This application has been preferred in the year 2025 to seek waiver in terms of proviso to Section 244(1) of the Companies Act, in regard to a Company Petition filed in the year 2021 alleging oppression & mismanagement.
3. Ld. Senior Counsels/ Counsels were heard *in extenso* and the materials on record were perused.
4. The moot issue that craves consideration at this stage is whether belated filing of an application for waiver of requirements under Section 244(1) of the Companies Act, to cure the defect with which the CP was filed four years back, could be allowed given the fact that admittedly the provisions for seeking waiver of conditions that Section 244(1) of the Companies Act, 2013, enumerates operating in the field on the very date the CP under Section 241 was preferred but was consciously not availed of by the Petitioners with full knowledge of the fact that without grant of such waiver CP would not be maintainable as the threshold for filing CP would not be met.
5. At this juncture we would fumigate our mind with the oft-quoted paragraph from Hon'ble NCLAT's decision in **Cyrus Investments Pvt Ltd & Anr. Vs. Tata Sons Ltd & Ors.** where at paragraph 151 Hon'ble NCLAT has clearly and categorically held as under:-

*"151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section(1) Section 244:-*

  - (i) Whether the applicants are members of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.
  - (ii) *Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression*

*and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.*

- (iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?*
- (iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.?"*

6. Admittedly and irrefutably, therefore, before a "waiver" of requirements in clauses (a) and (b) of sub Section 1 of Section 244 is granted the first and foremost issue to be decided would be whether the applicants who seeks waiver are "members" of the company in question. In the event the answer is in negative the application is to be rejected outright or else the Tribunal will look into the next factor whether the application relates to 'oppression and mismanagement', it will then proceed to the next issue whether similar allegation of 'oppression and mismanagement' earlier made by any other member stood decided and concluded and thereafter whether "exceptional circumstances" have been made out for grant of waiver that too "so as to enable **members** to file application under Section 241".

**7. Submissions of the Petitioners:**

- 7.1. Respondent No.1 company Pre-Stressed Udyog (India) Private Limited was incorporated ON 17.06.1981 as a closely held company of the Varma family, the Petitioner No.1 and Petitioner No. 3 were the first subscribers and the first directors. The company was in the business of manufacture of PSC Sleepers and Turnouts for Indian Railways.
- 7.2. The Petitioners claimed to be promoters and at all material times in control of Respondent No. 1 company Pre-Stressed Udyog (India) Private Limited and that their shareholding was 100% viz. 10 lakhs 70 thousand shares.
- 7.3. It is stated that in June, 2016 Respondent No. 2 and Respondent No.3 approached Petitioner No.1 with a proposal to acquire Petitioner's stake in the company and another closely held company, namely, Mars

Mercantiles Private Limited and for the purpose a share purchase agreement dated 21.02.2017 (SPA) was entered into and executed. The Petitioners were to exit from the company by transfer of their shareholding to Respondent No.2 and Respondent No.3 upon receiving consideration of Rs. 17.45 crores. A supplementary agreement dated 06.03.2017 was also executed between the parties.

7.4. It is stated and emphatically admitted that at the instance of Respondent No.2 and Respondent No.3, Petitioner No.1 and Petitioner No.3 allegedly without receiving the total consideration for transfer of shares resigned from the Board and Respondent No.2 and Respondent No.3 took control of the business and transferred the entire shareholding of Petitioners to themselves way back in 2017. Thus, admittedly and irrefutably, the Petitioners as on the date of filing of the CP were neither shareholders nor directors of the Company in question.

#### **8. The Allegations of the Petitioners:**

8.1. It is alleged that taking advantage of the resignation of Petitioner No.1 and Petitioner No.3 from the Board Respondent No.2 and Respondent No.3 have caused entire shareholding of the Petitioners to be transferred to themselves. No transfer deeds were executed and the original share certificates are still with the Petitioners whereas such share transfer deed is mandatory in terms of Section 56 of the Companies Act.

8.2. In 2019 the Petitioners noticed an MGT-7 for 2016-17 uploaded in the MCA portal on 03.03.2018, a form AOC-4 filed in the MCA portal on 04.04.2018. In the MGT-7 reflected that the share transfer was registered on 15.03.2017. The shareholding of the Petitioners was shown as NIL.

8.3. After three years on 31.07.2020, Respondent No. 2 and Respondent No.3 uploaded MGT-14 containing an alleged indemnity bond along with affidavits which reflected that Board meeting held on 19.06.2017 to indemnify the purported transferees and approve the transfers. The date of alleged indemnity bond was 22.06.2017 that is two days after the so-called Board meeting held on 19.06.2017.

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- 8.4. The Respondents have deliberately resorted to the proviso to Section 56(1) to affect the alleged share transfer by furnishing alleged indemnity bond as no transfer deeds would be executed by the Petitioners having not received any consideration towards such transfer.
- 8.5. The indemnity bond is a forged and fabricated document as confirmed in writing by notary public in Dhanbad, namely, Satyendra Pandit who by way of an affidavit an information Petition No. 2131 of 2020 filed before the executive magistrate Dhanbad confirmed that no such indemnity bond was signed by him or executed before him.
- 8.6. The Petitioners also made written complaints to ROC and ROC has taken steps under Section 206 Sub-Section (1) by a notice dated 15.12.2020 and held a further detailed enquiry.
- 8.7. The Practising Company Secretary, the Respondent No.4 has certified that the alleged MGT-7 and MGT 14 record fraudulent transfers and the indemnity bonds and affidavits are forged. She has been held guilty of professional misconduct by the ICSI disciplinary committee on 10.12.2021 as such the petitioner alleges that the actions of Respondents are highly oppressive, prejudicial to the company's interest.
- 8.8. It is submitted that the NCLT is the only forum where the share purchase agreement can be declared as illegal and rectification of the share register can be ordered in reference to Section 59 of the NCLT rules.
- 8.9. It is submitted that the right to invoke Section 8 of the Arbitration and Conciliation Act, 1996 can be waived and it will be treated as a waiver of the said right.
- 8.10. Under these circumstances the petitioners prayed for the following:-
- (i) The share transfers and documents in connection therewith be adjudged null and void.
  - (ii) Rectification of the share register.
  - (iii) Reinstatement of P1 and P3 as directors of the Company.
  - (iv) Removal of R2 and R3 as directors of the Company.
  - (v) Such further and/or other orders.

**Contentions of the Respondents:**

**9. On Legal Lacunae**

- 9.1. The proceedings initiated by the Petitioners are not maintainable under the Companies Act as they lack eligibility criteria as prescribed under Section 244 of the Companies Act since they are neither shareholders nor members in the Respondent No.1 company as on the date of filing of the CP 83/KB/2021.
- 9.2. The disputes canvassed by the Petitioners in the Company Petition are not disputes pertaining to 'oppression and mismanagement' under Section 241 to 242 of the Companies Act. The disputes are in regard to share purchase agreement, which is an arbitrable dispute and, therefore, the company petition cannot be proceeded with before this Tribunal.
- 9.3. Further, the Petition is barred under law of limitation, since, date of knowledge is 21<sup>st</sup> February, 2017 and the Petition has been filed long after a period of three years.
- 9.4. The Petition is also barred by Principles of Waiver, Estoppel and Acquiescence.
- 9.5. No waiver under Section 244(1) of the Companies Act was sought for at the time of institution of the Company Petition and, therefore, the CP is a non-starter.

**10. On Factual Matrix:-**

- 10.1. The Petitioners in January, 2017 approached Respondent Nos.2 and 3 for selling of Respondent No.1 company after negotiation the Respondent No.2 and 3 agreed to enter into a share purchase agreement (SPA) whereafter the Respondent No.2 and 3 have acquired 10 lakhs 70 thousand shares from the Petitioners as such the legal and beneficial interest in the shares of company stands transferred to the Respondent No.2 and 3.
- 10.2. It is an admitted fact that the Petitioners received share purchase consideration from Respondent No.2 and 3 and Petitioner Nos.1 and 3 have resigned from the directorship from Respondent No.1 company. As such Petitioners do not have *locus standi* to file the company petition.

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10.3. The details of shareholding of Respondent No.1 company is as under:-

Sr. No.	Name of Shareholders	Number of Shares	Shareholding
1	Mr. Mahesh Pradhan	535000	50%
2	Mr. Dinesh Pradhan	535000	50%

The Petitioners having raised no objection to the transfer of shares are estopped from invoking equitable jurisdiction of this Tribunal at such a belated stage.

10.4. The details of payment made against the share purchase according to the Respondent is as under:

Sr	Name	Number of Equity Shares	Cheque No.	Date	Amount
1	Mr. Man Mohan Varma	5,86,000	793665	20.02.2017	60,00,000.00
			793678	06.03.2017	39,62,000.00
2	Manish Varma	1,72,000	793679	06.03.2017	29,24,000.00
3	Saroj Varma	2,36,050	793666	20.02.2017	40,00,000.00
			793680	06.03.2017	12,850.00
4	Rima Varma	75,950	793681	06.03.2017	12,91,150.00
Sub Total (I)-					1,81,90,000.00
(One crore eighty-one lakhs ninety thousand rupees)					

10.5. The clause 8.3 of the SPA states that "It is also agreed by the Purchaser that the outstanding of the bank as on Cut Off Date is crystalized and covered in Schedule V which shall stand adjusted out of consideration money and any amount over and above the same amount shall be to the account of the Purchaser". As per the said clause, the respondent nos. 2 and 3 had adjusted out of share purchase consideration as per Schedule V of the said SPA. The details of the adjustments with consideration are given below as per Schedule V of the said SPA:

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Advance as per Chapter 3 of Agreement	20.02.2017	1,00,11,000.00
Mr. Man Mohan Varma	28.04.2017	50,00,000.00
	05.02.2017	50,00,000.00
	20.05.2017	50,00,000.00
	30.05.2017	3,50,000.00
	30.05.2017	2,33,000.00
	31.05.2017	3,50,000.00
	06.03.2017	5,00,000.00
Mr. Manish Varma	29.05.2017	12,50,000.00

<b>Adjustments as per Schedule V of the Agreement</b>	
Sales Tax (VAT)	4,30,88,759.00
Excise Duty	12,06,000.00
Performance against BG	1,50,00,000.00
Current Liabilities	3,58,84,601.00
Bank Outstanding as on the cut-off date i.e. 06.03.2017	3,38,57,653.00
Sub-Total (II)	Rs. 15,67,31,015.00 (Fifteen Crore Sixty-Seven Lakh Thirty-One Thousand Fifteen Rupees)
<b>Total Payment = 17,49,21,015.00/-</b>	

And thus the respondents assert that the Respondent Nos 2 and 3 had paid back Rs. 17,49,21,015.00 to the Petitioners.

10.6. It is stated that the said transfer of 10 lakhs 70 thousand shares shares has been registered to Respondent Nos. 2 and 3 is reflected in MGT-7 filed in the year 2016-17.

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- 10.7. The Respondent have instituted civil suit and filed two FIR's against the Petitioners on 04<sup>th</sup> December, 2019 and 04<sup>th</sup> May, 2021 at Bank More P.S. Dhanbad.
- 10.8. Despite receiving the share purchase consideration and resigning from the directorship of the Respondent No.1 Company they have initiated harassive proceedings.
- 10.9. The respondents have referred to a decision in Asha Devi Daga and others vs. Deepak Industries Limited and other (Company Petition No.13/KB/2015) where this Bench had taken a view that without seeking a waiver under Section 244, which is mandatory and requires to be expressly sought for even when reduction and shareholding is under challenge the Petitioners who did not possess requisite shareholding as on the date of presentation of the Petition, could not have filed this Petition.
11. Ld. Sr. Advocate Mr. Ratnanko Banerji appearing for the respondents at the time of hearing would also refer to para 151 of decision in Cyrus Mistri, (extracted supra), to assert that which mandates that the four conditions mentioned therein are required to be satisfied to move a Petition alleging oppression and mismanagement in the company. Ld. Sr. Counsel would submit that if the Petition is found not maintainable at the threshold, evaluation of its merits need not be undertaken and this Tribunal need not proceed to decide on any other issues.
12. Ld. Sr. Advocate Mr. Jishnu Chowdhury appearing for the Petitioner on the other hand would submit that:
- (i) Rectification under Sections 58 and 59 is permissible and under Section 430 of the Companies Act, this Tribunal is vested with exclusive jurisdiction to grant prayers under the said sections.
  - (ii) Further that the prayers as at paragraph j, k, h can only be sought for under Section 242 of the Companies Act. Ld. Counsel would also take us through the ROC's findings.
  - (iii) Ld. Counsel would allege violation of Section 56 which mandates execution of transfer deeds for transfer of shares and would outright deny payment of any consideration by the respondent to the Petitioners.

- (iv) Ld. Counsel would submit that fact that it is a company dispute is prima facie proven from the ROC's report.
- (v) The next contention of the Petitioners was that the respondent's never invoked arbitration clause at the material time and after exchange of affidavit any leave to invoke Section 8 should be dismissed.
13. We have considered the rival contentions and perused materials on record.
14. At the outset we would note that when the Petitioners approached this Tribunal their shareholding in the company was NIL as they had transferred their entire shareholding which is emphatically admitted by the Petitioners themselves. Further, they had already resigned from the Board in 2017.
15. It is evident that to a Petition filed under Section 241 of the Companies Act alleging oppression and mismanagement in the Respondent Company, admittedly filed in 2021 an application to seek waiver of requirements under clauses (a) and (b) of Section 244(1) of the Companies Act is sought for in 2025.
16. Coming to the question whether waiver of requirements can be sought long after filing of the Petition under Sections 241-242, it would be apt to quote the relevant statutory provisions.
17. **Statutory Provisions:**
- A. Section 241: Application to Tribunal for relief in cases of oppression, etc.**
- \*241. (1) Any member of a company who complains that—*
- (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
- (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control*

*of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,*

*may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.*

*(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.*

*<sup>1</sup>[Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.]*

*<sup>1</sup>[(3) Where in the opinion of the Central Government there exist circumstances suggesting that—*

*(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;*

*(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;*

*I a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or*

*(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,*

*the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.*

*(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.*

*(5) Every application under sub-section (3)—*

*(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and*

*(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.]*

#### **B. Section 242: Powers of Tribunal.**

*\*242. (1) If, on any application made under section 241, the Tribunal is of the opinion—*

*(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and*

*(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,*

*the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.*

*(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—*

*(a) the regulation of conduct of affairs of the company in future;*

*(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*

*(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;*

*(d) restrictions on the transfer or allotment of the shares of the company;*

*(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;*

*(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):*

*Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;*

*(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;*

*(h) removal of the managing director, manager or any of the directors of the company;*

*(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;*

*(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);*

*(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;*

*(l) imposition of costs as may be deemed fit by the Tribunal;*

*(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.*

*(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.*

*(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.*

*(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.*

*(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.*

*(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.*

*(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the*

*making thereof, be filed by the company with the Registrar who shall register the same.*

*(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to <sup>3</sup>[one lakh rupees.*

**C. Section 244: Right to apply under section 241.**

*\*244. (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.*

A mere running over eye on the provisions of Section 241, 242 and 244 of the Companies Act will show that while clauses (a) or (b) of

Section 241 deal with the subject matter of the grievances which can be raised in a petition alleging oppression and mismanagement, Section 244(1) deals with the locus/eligibility of the member who can raise such grievance, He has to satisfy his eligibility under Section 244 first.

18. The said provisions explicitly demonstrate and establish that to maintain a Petition under Section 241 of the Companies Act, 2013 alleging oppression and mismanagement in the company by the majority shareholder it is imperative that the minority shareholder must be a “member” of the company and for the purpose of filing such a petition such a “member” must at least hold 1/10 of the issued share capital or else seek a waiver under proviso to Section 244 of the requirements specified in clause (a) or clause (b) of Section 244(1), to seek reliefs under Section 242. Thus a waiver of the requirements would have to be sought first, without which the Petition under Section 241-242 cannot be taken up on merits.
19. Here it would be apt to quote paragraphs 144 and 145 and 151 of the judgment rendered by **Hon’ble NCLAT in Cyrus Investment Pvt. Ltd & Anr. versus Tata Sons Ltd. & Ors the paragraphs read as under:**

*“144. Therefore, before grant of waiver, the question of forming opinion by Tribunal on an application made under Section 241 and to pass any order as it thinks fit does not arise. If the Tribunal intends to decide the application under Section 241 on merit, it is required to waive the requirement as prescribed under Sub-Section (1) of Section 244.*

*145. For the reasons aforesaid, we hold that the Tribunal cannot deliberate on the merit of a (proposed) application under Section 241, while deciding an application for ‘waiver’ under proviso to sub-section (1) of Section 244.*

**xxxxxxxxxxxx**

*151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits ‘waiver’ of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-*

*(i) Whether the applicants are member(s) of the company in question? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.*

*(ii) Whether(proposed) application under Section 241 pertains to ‘oppression and mismanagement’? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to ‘oppression and mismanagement’ of the company or its members and/or is frivolous, it will reject the application for ‘waiver’. Otherwise, the Tribunal will proceed to notice the other factors.*

*(iii)Whether similar allegation of ‘oppression and mismanagement’, was earlier made by any other member and stand decided and concluded?*

*(iv) Whether there is an exceptional circumstance made out to grant ‘waiver’, so as to enable members to file application under Section 241 etc.?*

With that the Hon<sup>ble</sup> NCLAT’s ruling is quite clear that this Tribunal is to steer clear of the merits of the case and should instead take into account other special considerations demonstrated in the waiver application first.

20. The Judgment establishes without any ambiguity or ambivalence that a formal application seeking waiver under proviso to Section 244(1) of requirements under Section 244(1), clauses (a) and (b) to allege oppression and mismanagement under Section 241-242 of the Companies Act, 2013 must be filed simultaneous to the filing of the Petition under Section 241-242 and must be taken up for consideration first, before proceeding to hear out the Petition alleging oppression and mismanagement on merits. Whereas the present matter was all along getting heard on its merits, while the very foundation of his claim ought to be his “membership” in the company.
21. As noted supra, a waiver under Section 244 of the Companies Act, 2013 allows this Tribunal to permit the minority shareholders to allege oppression and mismanagement and file a Petition even if they do not meet the minimum 10% shareholding or 100 member threshold and the grant of wavier of requirements is purely discretionary.
22. It is an admitted fact that after divesting of his entire shareholding in the Respondent Company, the Petitioner was no longer a shareholder in the company or a “member” as contemplated under Section 244(1).

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA**

IA(Companies Act)259/(KB)/2025  
In  
CP No. 83/KB/2021

23. The Petitioner without having established himself as a shareholder of the Respondent No.1 company and a “member”, as explained above, could not have moved a Petition under Section 241-242 or sought for waiver under proviso to Section 244(1) of the Companies Act, 2013.
24. Any attempt on the part of the Petitioner, who is admittedly not a “member” as 244(1) contemplates, to come up with an application to seek waiver in terms of Section 244, four years after filing of the CP under Section 241 alleging oppression and mismanagement in the company, is clearly an afterthought to figure out an ingenious way to by-pass the mandatory statutory provisions in order to regularize a Petition that was not maintainable at the threshold and was a non-starter.
25. Accordingly, this hopelessly belated IA to seek waiver is **dismissed**. The CP as such being admittedly not maintainable when it was filed by the Petitioner also stands **dismissed** with all pending applications.
26. It is to be noted that similar order has been passed in IA 258 of 2025 in another Company Petition No. 82 of 2021.
27. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
28. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**Siddharth Mishra**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 09.06.2026.**

S. Ghose, (Steno)/ Bhatt, O. [LRA]