

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (CA) No. 71/JPR/2023
In CP No. 28/241-242/JPR/2023

MEMO OF PARTIES

UMESH AGARWAL

...Petitioner

Versus

**VASHALI VARDHMAN COLOISERS
PRIVATE LIMITED AND ORS.**

...Respondents

IN THE MATTER OF:

IA No. 71/JPR/2023

UMESH AGARWAL

15/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan

...Petitioner

Versus

**1. VASHALI VARDHMAN COLOISERS PRIVATE
LIMITED,**

662/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan

Corporate Identity Number (CIN):
U45201RJ1995PTC010833

Email: indiamotors.pvt.ltd@gmail.com

...Respondent No. 1

IA (CA) No. 71/JPR/2023
In CP No. 28/241-242/JPR/2023

Solr

Solr

2. **HEMRAJ GOYAL**,
14/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan
...Respondent No. 2
3. **PADAM CHAND JAIN (DIN:- 09679747)**,
Chhajer Mohalla, Jethana, Ajmer
(Rajasthan), 305207
...Respondent No. 3
4. **VISHNU DUTT GOYAL**,
14/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan
...Respondent No. 4
5. **MANISH KUMAR GOYAL**,
14/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan
...Respondent No. 5
6. **PANKAJ GOYAL**,
662/23, Sitaram Bazar, Kesarganj,
Ajmer-305001, Rajasthan
...Respondent No. 6
- For Petitioner : Veyankatesh Garg, Adv.
For Respondents : None Appeared

Order Pronounced on: 16.07.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This present Application bearing *IA No. 71/JPR/2023* has been filed by
Mr. Umesh Agarwal ('Petitioner') under Section 244(1) of the Companies
Act 2013 read with Rule 11 of the NCLT Rules, 2016 for seeking waiver of

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right to file/ apply for the petition under Section 241-242 of the Companies Act, 2013.

2. The main Petition numbered as *CP No. 28/241-242/JPR/2023* has been preferred by the Petitioner under Sections 241 and 242 of the Companies Act, 2013 alleging certain acts of oppression and mismanagement in the affairs of *M/s Vashali Vardhman Coloisers Private Limited* ('Company'/ 'Respondent No.1').
3. Respondent No. 1 is a private limited company incorporated on 04.10.1995 and duly registered with the Registrar of Companies, Jaipur, having Identification No. U45201RJ1995PTC010833. The registered office of the Company is situated at 662/23, Sitaram Bazar, Kesarganj, Ajmer-305001 (Rajasthan). The authorized share capital of the Company is Rs. 5,00,000/- (Rupees Five Lakh Only) and the paid-up share capital is Rs. 5,00,000/- (Rupees Five Lakh Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.
4. The Petitioner seeking waiver under Section 244 of the Companies Act, 2013 on the following set of facts:
 - 4.1. The Petitioner is a shareholder holding 300 shares, constituting 6% of the total shareholding in the Company. The shares were originally held by the late *Sh. Vishnu Kumar Mangal*, the father of the Petitioner. Following the unfortunate demise of the Petitioner's father on

26.01.2023, the shares were transferred to the legal heirs of the deceased shareholder.

- 4.2. Thereafter, all the legal heirs of the deceased shareholder relinquished their interest in the shares in favour of the Petitioner through a relinquishment deed dated 27.06.2023. Consequently, the Petitioner became the shareholder and member of the Company by operation of law. A copy of the relinquishment deed dated 27.06.2023, is attached as Annexure-8 to the main Petition.
- 4.3. *Mr. Hemraj Goyal* ('Respondent No. 2') was appointed as a Director and became a shareholder of the Company in 2020 after the demise of his father, the late *Sh. Umesh Chand Goyal*, who was a director and held 11% of the total shareholding in the Company. Respondent No. 2 has continued to hold the position of Director since 2020.
- 4.4. It is important to note that the Company is a family-led business and therefore, Respondents No. 2, 4, 5, and 6 are family members. Respondents No. 4, 5 and 6 served as full-time directors of the Company until 21.07.2022 and were responsible for all aspects of the company's day-to-day management. Furthermore, Respondent No. 2 introduced *Mr. Padam Chand Jain* ('Respondent No. 3') as a Director in the year 2022-23.
- 4.5. The Petitioner alleged oppression and mismanagement against the acts

and conduct of Respondents on the basis of following instances:

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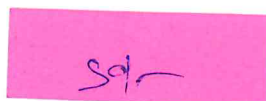
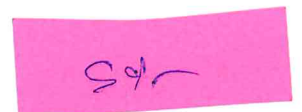
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4.5.1. It is submitted that Respondent No. 2 had introduced Respondent No. 3 for the betterment of the business of the Company. The appointment was approved by the then directors of the Company and thereby granted him a power of attorney to work and deal the companies inventories for converting, developing and selling further into the market.

4.5.2. It is alleged that on being grant of power of attorney, the Respondent No. 2 in collusion with Respondent No. 3 sold the plots and land of the Company on a price below the actual rates prevailing in the market. The plots were sold on DLC rates and major portion of the consideration amount was received in cash. The proceeds from the aforesaid sale of plots were not retrieved in the accounts of the Company. The copy of the bank statements of the Company for the period 2017-2022 is annexed as Annexure-5 in the main petition.

4.5.3. Further alleged that Respondent No. 2 and 3 maliciously sold out the plots owned by Company by way of sale deeds in the name of their family members and close relatives. It is further submitted that as per the sale deeds executed between Company and purchasers of the said plots, there was a clear mention of cheques issued by the purchasers in lieu of the consideration of the amount to be paid to the Company. However, no such amount

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has been retrieved/received in any of the two bank accounts in the name of the Company within the stipulated time frame.

4.5.4. The Company holds the plots of land for developing them as an individual unit and further sale to get the better rates in the market. However, the Respondent No.2 and 3 sold the plots of land of the Company after combining those plots altogether into one bigger part of land and shown the measurements of the plots in bigger units (example- Bigha/Biswa) so that the charges for registry and stamp duty could be paid at lesser rates as compared to the stamp duty levied on a plot of land.

4.5.5. The details of the plots sold by the Respondent No. 2 and 3 in the period of 2020-2023 to their close relatives and family members along with the details of the cheques which are considered as encashed by the company as per the sale deeds is submitted at Para 13 of the main petition.

It is submitted that no such payment through the cheques had been received in the bank accounts in the name of Company in the timeframe stipulated in law. The copy of the registered sale deeds from the date 04.11.2020 to 10.01.2023 are annexed as Annexure-6 in the main petition.

5. Consequently, the Petitioner filed this Petition against the acts and conduct

of Respondents No. 2 and 3, alleging oppression and mismanagement.

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However, the Petitioner does not meet the threshold limit of shareholding required for consideration under Section 241-242 of the Act. Therefore, the Petitioner has prayed under Section 244(1) of the Act for a waiver to file or apply for the Petition under Section 241-242 of the Companies Act, 2013.

6. We have heard the Ld. Counsel for the Petitioner and perused the averments made in the Application and Affidavit along with the documents enclosed therein. It is important to mention here that none appears on behalf of Respondents and no reply has been filed.
7. Before adjudicating upon the issue of waiver, it is germane to refer to the shareholding patterns of the Respondent Company. The shareholding pattern of members in the Company as per MGT-7 of 2020-21 obtained from MCA is reproduced hereunder: -

DETAILS OF SHARES HELD

<i>Ledger Folio No.</i>	<i>Name of Shareholder, Father/Husband Name and Address of Shareholder</i>	<i>Type of Shares</i>	<i>Number of Shares Held</i>	<i>Amount/ Share in Rs.</i>
01	<i>Sh. Manak Chand Sisodiya S/o Late Sh. Pukhraj 6, Veer Lokasha Colony, Ajmer</i>	<i>Equity</i>	<i>250</i>	<i>100</i>
03	<i>Sh. Vishnu Dutt Goyal S/o Late Sh. Om Parkash Goyal 14/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>550</i>	<i>100</i>
04	<i>Sh. Mahesh Chand Goyal S/o Late Sh. Om Parkash Goyal 662/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>400</i>	<i>100</i>
05	<i>Smt. Nortti Devi Goyal</i>	<i>Equity</i>	<i>300</i>	<i>100</i>

	<i>W/o Sh. Mahesh Chand Goyal 662/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>			
07	<i>Sh. Umesh Chand Goyal, S/o Late Sh. Om Parkash Goyal 14/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>1100</i>	<i>100</i>
08	<i>Smt. Taramani Devi Goyal W/o Sh. Vishnu Dutt Goyal 14/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>300</i>	<i>100</i>
09	<i>Smt. Saroj devi Goyal W/o Sh. Umesh Chand Goyal 14/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>300</i>	<i>100</i>
10	<i>Sh. Manish Goyal S/o Sh. Vishnu Dutt Goyal 14/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>500</i>	<i>100</i>
11	<i>Smt. Navita Goyal W/o Sh. Manish Goyal</i>	<i>Equity</i>	<i>750</i>	<i>100</i>
12	<i>Sh. Vishnu Kumar Mangal S/o Kishan Agarwal 15/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>300</i>	<i>100</i>
13	<i>Sh. Pankaj Goyal S/o Sh. Mahesh Chand Goyal 662/23, Sita Ram Bazar, Kaiser Ganj, Ajmer</i>	<i>Equity</i>	<i>250</i>	<i>100</i>

8. The instant Application has been filed by the Petitioner seeking waiver of the requirements prescribed under Section 244 of the Companies Act, 2013 to maintain the Petition concerning mismanagement and oppression of the Respondent Company. Section 244 of the Companies Act, 2013 is reiterated below for reference:

“ Section 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 (1) 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 sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make an application on behalf and for the benefit of all of them.”*

9. Upon perusal of Section 244 of the Companies Act, 2013 it is evident that only those members of a company shall have the right to file a Petition under Section 241 of the Companies Act, 2013 who fulfil the criteria laid down under the provisions of clause (a) or clause (b) of Section 244(1) of the Companies Act, 2013. The qualifications prescribed under the Section seeks to ensure that only persons with sufficient interest in the affairs of the Company can file a petition under Section 241 of the Companies Act, 2013. The proviso to Section 244(1) provides the Tribunal with ample powers to waive the requirements under the Section to enable minority shareholders to

file a Petitions under Section 241 so that the complaints of oppression and mismanagement are not forced to be shelved for want of the qualification requirements under the Section.

10. The Hon'ble NCLAT in the matter of *Cyrus Investments Private Limited vs. Tata Sons Limited*, (2017) SCC Online 261/Company Appeals (AT) No.133 and 139 of 2017 has laid down general guidelines to deal with the applications seeking waiver under Section 244 of the Companies Act. The relevant paras are reproduced hereunder:-

“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.?”*

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11. Also, the Hon'ble NCLAT in the case of Brookefield Technologies Pvt. Ltd. v/s Shylaja Iyer and Others 2020 SCC OnLine NCLAT 829 has observed that:-

“49. Under the Companies Act, 2013 the exercise of power by a Tribunal to waive the requirements to file a petition under section 241 of the Act is at its discretion which may be exercised on an application made to it in this behalf.

50. The interest of an applicant in a company whether it is substantial or significant, the issues raised in the petition u/s 241 of the Companies Act, 2013 is the appropriate/competent jurisdiction to deal with them by the Tribunal, and whether the cause/case projected in the petition is of primordial importance to an ‘applicant’ or to the ‘company’ or to ‘any class of members’ etc. are some of the pertinent factors to be taken note of for projecting an application for waiver of the requirements under section 244 of the Companies Act, 2013.

51. It cannot be forgotten that in genuine and hardship cases, the discretion to waive the conditions specified in Section 244(b) of the Companies Act can be pressed into service.

....

54. The First Respondent/Petitioner has 9% of the total share capital even after a shareholding was reduced from 45%, by means of ‘Rights Issue’ which is a subject matter of the main company petition. The Tribunal, has exercised its discretion and opined that a meritorious litigation cannot be thrown at threshold without examining the merits of the case and further observed that the First Respondent/Petitioner had made out a prima facie case to entertain the main company petition for its final adjudication and resultantly allowed the waiver application IA

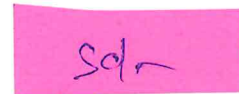
No. 170 of 2020 in C.P. No.110/BB/2019 dated 05.06.2020 which in the considered opinion of this Tribunal requires no interference.”

12. In light of the issues raised by the Petitioner, it appears that the plots were sold to the relatives and family members of the Respondents through a sale deed. The transactions entered between the Company and the close relatives/ family members of the Directors of the Company, *prima facie* appears related party transactions, therefore needs further due adjudication.
13. Additionally, we note that the Petitioner has raised the issue of non-payment of the appropriate stamp duty to the concerned authority as alleged that Respondents No. 2 and 3 sold the plots of land of the Company after combining those plots altogether into one bigger part of land and shown the measurements of the plots in bigger units (example- Bigha/Biswa). Therefore, it is crucial to determine whether their actions are against and prejudicial to the interests of the Petitioner as a shareholder.
14. The Petitioner does not meet the threshold limit of shareholding required for consideration under Section 241-242 of the Companies Act, 2013. In the view of submissions made documents submitted, we are of the opinion that the allegations made by the Petitioner require due adjudication. Therefore, in the interest of justice, we are inclined to grant a waiver of the threshold limit. Consequently, the prayer of the Petitioner filed under Section 244(1) of the Companies Act, 2013, seeking a waiver of the right to

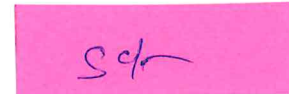
file or apply for the petition under Sections 241-242 of the Companies Act, 2013, is allowed.

17. In view of the foregoing, the *IA (CA) No. 71/JPR/2023* is allowed.
18. For the sake of clarity, we make it clear that this Tribunal has not expressed its opinion on the merits of the main CP No. 28/241-242/JPR/2023.

List the CP No. 28/241-242/JPR/2023 on 23.07.2024.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**