

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**C.A. 509 OF 2023**

Under Section 244 of the Companies Act,  
2013

**Mr. Rahul Hemchandra Visaria**  
...Applicant

In the matter of

C.P. No. 41/MB/2016

Mr. Rahul Hemchandra Visaria  
  
**...Petitioner**

Vs.

Maurya Intermediaries Private Limited.  
  
**...Respondent**

*Order delivered on: 16.04.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the Petitioner : Mr. Monil Punjabi, Advocate

For the Respondent : Ms. Pragya, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This application CA 509/2023 was filed by Mr. Rahul Hemchandra Visaria (“Applicant”) under Section 244 of the Companies Act, 2013 in the Company Petition CP 41/2016 which was filed under Section 241-242 in the matter of Maurya Intermediaries Private Limited, seeking waiver of the requirement specified in clause (a) of the said section and thereby, enable the Petitioner to apply and proceed with the captioned Company Petition preferred by the Petitioner under section 241 of the Companies Act, 2013. The company petition was filed on 21 October, 2016.
2. The Applicant is the Original Petitioner who has preferred the captioned Company Petition under sections 213 and 241 of the Companies Act, 2013 against the Respondents. The Applicant was the promoter and the founding member of the Respondent No. 1 Company and was holding majority of the shareholding i.e. 15,50,000 shares, equal to 51.67% of the total paid- up capital of Respondent No. 1. For the sake of convenience, the Applicant/ Original Petitioner shall be hereinafter referred to as the "Petitioner".
  - 2.1. The Respondent No. 1 is a private limited company limited by shares, registered with the Registrar of Companies, Mumbai. Respondent No. 1 was incorporated on 14 November, 2013 and is engaged in the business of stock broking.

2.2. The Respondent No. 2, Mr. Chandrakant Ghelani, is an individual and became a 40% equity shareholder in Respondent No. 1 after the former directors, Mr. Viral Motani and Mrs. Nidhi Motani resigned from the directorship on 21 March, 2016.

2.3. The Respondent No. 3, Ms. Gunjan Hemani, is an individual and became a member and shareholder of Respondent No. 1 by purchasing 8.33% shareholding.

2.4. The Respondent No. 4, Mrs. Pratibha Ghelani is an individual and is the wife of Respondent No. 2 who became the director of Respondent No. 1 vide the impugned EGM dated 29 August, 2016 and by virtue of which the Petitioner came to be removed as the director of Respondent No. 1.

2.5. The Respondent No. 1 was incorporated on 14 November, 2013 and was into the business of stock broking. The Petitioner along with Mr. Viral Motani were the founding directors of Respondent No. 1.

2.6. Subsequently, Mrs. Nidhi Motani came to be introduced as the director of the Respondent No. 1 vide the board meeting held on 14 November, 2013. Thereafter, the Respondent No. 3 came to introduced as the member of the Respondent No. 1. Hence, the shareholding pattern of the Respondent No. 1 was as follows:

- a. Mr. Rahul Visaria (Petitioner) held 51.67% shareholding;
- b. Mr. Viral Motani held 31.67% shareholding;
- c. Mrs. Nidhi Motani held 8.33% shareholding;
- d. Mrs. Gunjan Hemani held 8.33% shareholding.

2.7. However, in and around 21 March, 2016, Mr. Viral Motani and Mrs. Nidhi Motani resigned from directorship of Respondent No. 1. Post Mr. Viral Motani and Mrs. Nidhi Motani's resignation, Respondent No. 2 purchased the total 40% shareholding held by Mr. Viral Motani and Mrs. Nidhi Motani and thereby, became the new director and shareholder of Respondent No. 1 on 21 March, 2016. Hence, post the introduction of Respondent No. 2, the shareholding pattern changed as under:

- a. Mr. Rahul Visaria (Petitioner) held 51.67% shareholding;
- b. Mr. Chandrakant Ghelani held 40% shareholding;
- c. Mrs. Gunjan Hemani held 8.33% shareholding.

2.8. However, the Respondent No. 2 on becoming the director had certain disputes with the Petitioner, wherein Respondent No. 2 would overstep the powers conferred upon the Respondent No.2 by the Petitioner with respect to the functioning on Respondent No. 1. On one such occasion, the Petitioner, in and around June, 2016, learnt that the Respondent No. 2 had changed the address of the registered office of the Respondent No. 1, without obtaining any consent and/or authority from the board of directors of Respondent No. 1 and that the Respondent No. 2 had been operating illegally from the said address. Neither was any board meeting conveyed nor was any

notice given in respect to the change of address of Respondent No. 1.

- 2.9. On an apprehension that Respondent No. 2 might have caused further harm, the Petitioner started perusing the bank accounts of the Respondent No. 1. It was then that the Petitioner learnt that Respondent No. 2 had siphoned off funds amounting to Rs. 14,00,000/- (Rupees Fourteen Lakhs only) from Respondent No. 1. The Petitioner further learnt that the son of Respondent No. 2, Mr. Mihir Ghelani, was taking active participation in the business of Respondent No. 1 and that the said siphoned off funds were used by Respondent No. 2 to pay the travel bills of Mr. Mihir Ghelani and for such other personal expenses of Respondent No. 2 and his family, without any prior approval of the Petitioner. It is pertinent to mention that Mr. Mihir Ghelani was barred from trading in securities for a period of five years by the Securities Exchange Board of India vide Order dated 31 July, 2013 passed in the matter of Grishma Securities Private Limited. Even then Mr. Mihir Ghelani used to take active participation in the business of Respondent No. 1 which in itself was related to stock broking. Mr. Mihir Ghelani was coming to the office of Respondent No. 1.
- 2.10. On learning the same, the Petitioner filed Complaint against Respondent No. 2 and Mr. Mihir Ghelani with Pydhonie Police Station to bring on record the fraudulent acts of the Respondents.
- 2.11. As a counterblast, Respondent No. 2 on instructions of Respondent No. 3 also initiated complaints and filed FIR

bearing No. 119 of 2016 dated 09 July, 2016 with Dongri Police Station against the erstwhile directors of Respondent No. 1, Mr. Viral Motani and Mrs. Nidhi Motani. Subsequently, Respondent No. 3 made a complaint dated 29 July, 2016 to implead the present Petitioner as party accused in the said FIR.

2.12. Subsequently, numerous events have unfolded wherein the Petitioner has intimated NSDL, Compliance Department, NSE, Registrar of Company and such authorities informing that a dispute had been going on between the directors of the Respondent No. 1 on account of the illegal acts committed by the Respondent No. 2. All such outrageous acts of the Respondents have been exhaustively covered in the Company Petition. However, to the utter shock of the Petitioner, the Petitioner received an email dated 17 October, 2016 from the Ministry of Corporate Affairs stating that the e-form DIR-12 dated 08 September, 2016 with respect to Respondent No. 1 had been approved. On the very same day, the Petitioner also saw that the Petitioner had received another email dated 22 September, 2016 from the Ministry of Corporate Affairs, which the Petitioner was unable to check on account of his health conditions.

2.13. On learning the same, the Petitioner conducted further search on the Ministry of Corporate Affairs portal and found out that the Respondent Nos. 2 and 3 conducted an EGM on 29 August, 2016 where they purported to have passed an ordinary resolution to remove the Petitioner from the directorship of Respondent No. 1 and thereby, introduce Respondent No. 4 as

the new director of Respondent No. 1. Post the removal of the Petitioner from Respondent No. 1, the Petitioner immediately intimated the Registrar of Companies vide a letter dated 17 October, 2016 stating that the Respondents had removed the Petitioner from the directorship of Respondent No. 1 and had introduced the Respondent No. 4 as the new director of Respondent No. 1. The Petitioner thereafter requested the Registrar of Companies to maintain status quo in respect of Respondent No. 1.

2.14. The Petitioner, with a hope of getting an immediate relief, approached this Hon'ble Tribunal by preferring the captioned Company Petition on 21 October, 2016 against the Respondents under sections 213 and 241 of the Companies Act, 2013 seeking indulgence of this Tribunal in directing the Respondents inter-alia to bring an end to the acts of oppression and mismanagement against the Petitioner and thereby, obstruct the Respondents from creating further harm. It is pertinent to mention that the Petitioner had approached this Tribunal solely on the reason that the Petitioner had been removed from the directorship of the Respondent No. 1.

2.15. Subsequently, Respondent No. 2 filed its affidavit-in-reply challenging the maintainability of the captioned Company Petition on 08 November, 2016. On a perusal of the said affidavit-in-reply, the Petitioner was shocked to learn that the Respondent No. 2 in its affidavit-in-reply claimed that the Petitioner was not a member of the Respondent No. 1 and hence, had no locus standi to file the captioned Company

Petition. It was at this juncture that the Petitioner upon perusal the affidavit-in-reply for the very first time learnt the following:

- i. Firstly, the Respondent No. 2 alleged that the Petitioner expressed his desire to sell 51.67% shareholding of the Petitioner and resign from the directorship of the Respondent No. 1 and further claimed that the Respondent No. 4 agreed to acquire the said stake of the Petitioner. A reference can be made to 'para no. 9(m) of the affidavit-in-reply of the Respondent No. 2.
- ii. Secondly, it was further learnt that an alleged board resolution dated 10 May, 2016 was passed in respect of proposal of resignation of the Petitioner from the directorship of the Respondent No. 1 and for the appointment of Respondent No. 4 as the new director and the alleged transfer of the Petitioner's shares to the Respondent No. 2.
- iii. Thirdly, it was erroneously stated that post the passing of the aforesaid resolution, the Petitioner sold and transferred the Petitioner's 70,000 shares to the Respondent No. 2 and handed over the Securities Transfer Forms along with the Original Share Certificates bearing Nos. 1, 6 and 10. It is allegedly stated that as against the purchase of the said 70,000 shares, the Respondent No. 2 transferred an amount of Rs. 2,00,000 (Rupees Two Lakhs only) on 13 May, 2016 and an amount of Rs. 5,00,000 (Rupees Five Lakhs only) on 27 June, 2016 via bank-transfer. A reference may be drawn



to 'para no. 9(0)' of the affidavit-in-reply of the Respondent No. 2.

- iv. Fourthly, the Petitioner also learnt that the Respondent had concocted another story wherein it was alleged that the Petitioner had taken a loan of Rs, 50,00,000/- (Rupees Fifty Lakhs only) from one, Mrs. Promila Nath Chopra for which the Petitioner had pledged Petitioner's 14,80,000 equity shares of the Respondent No. 1 and had handed over the Original Share Certificate Nos. 3 and 11. However, on account of non-payment of the principal amount and the interest thereon, it was shown that the said Mrs. Promila Nath Chopra had sold the Petitioner's 14,80,000 shares for a total consideration of Rs. 50,00,000/- (Rupees Fifty Lakhs only) to the Respondent No. 4 and had thereby, handed over the said Original Share Certificate. A reference may be drawn to 'para no. 9(p) to 9(t)' of the affidavit- in-reply of the Respondent No. 2.
- v. Hence, the Respondent No. 2 in its affidavit-in-reply, after the alleged pledging of shares, transfer of shares and removal of the Petitioner and consequent introduction of Respondent No. 4, the alleged shareholding of the Respondent No. 1 was changed to the following:
- a. Mr. Chandrakant Ghelani held 42.33% shareholding;
  - b. Mrs. Gunjan Hemani held 8.33% shareholding;
  - c. Mrs. Pratibha Ghelani held 49.33% shareholding.

- 2.16. The Petitioner was extremely shocked and surprised to learn the said contentions of the Respondent No. 2 in its affidavit-in-reply. It was only at this juncture, that the Petitioner realized that the Petitioner's entire shareholding had been diluted and transferred by the use of false, forged and fabricated documents, whose existence the Petitioner was completely unaware of till the filing of the said affidavit-in-reply.
- 2.17. The Petitioner thereafter filed a detailed rejoinder on 12 January, 2017 countering each and every allegation/contention of the Respondent No. 2. The Petitioner in detail countered to all such wrongful assertions made by the Respondent No. 2 and also adduced the report of a professional handwriting analyst, who in its report clearly states that the signature(s) of the Petitioner on the Share Transfer Document have been forged.
- 2.18. The Respondent No. 2 also filed a Sur-Rejoinder on 25 January, 2017 raising contentions as stated therein. The Respondent No. 2 once again challenged the maintainability of the captioned Company Petition.
- 2.19. Thereafter, multiple hearings took place and finally this Hon'ble Tribunal on 19 June, 2018 was pleased to direct that this Hon'ble Tribunal would hear the parties on maintainability and main issue at the time of final hearing.
- 2.20. However, in accordance with section 244 of the Companies act, 2013, the Petitioner is required to file a waiver application to

waive off the requirement specified in clause (a) of the said section and thereby, enable the Petitioner to apply and proceed with the captioned Company Petition preferred under section 241 of the Companies Act, 2013.

- 2.21. It is submitted that the Petitioner was under the bona fide belief that the Petitioner had only been removed from the directorship of Respondent No. 1 vide the EGM dated 29 August, 2016. Hence, the Petitioner, under the same belief that the Petitioner still continues to remain a shareholder preferred the captioned Company Petition before this Tribunal to bring an end to the acts of oppression and mismanagement of the Respondents.
- 2.22. The Petitioner submits that it was only when the Respondent No. 2 filed its affidavit-in-reply challenging the maintainability of the captioned Company Petition that the Petitioner learnt that his entire shareholding in Respondent No. 1 had been diluted from 51.67% to 0.00% by the Respondents, without any knowledge of the Petitioner. It was only then that the Petitioner learnt regarding the false, fabricated and forged documents created by the Respondents in order to enable them to remove the Petitioner from the directorship.
- 2.23. It is submitted that as stated above the Petitioner held 51.67% shareholding in Respondent No. 1 and was one of the founder members and director of Respondent No. 1. However, the shareholding of the Petitioner came to be illegally and fraudulently diluted, which even the Petitioner was unaware of. Hence, no such application was made at the time of preferring the captioned Company Petition, since the Petitioner himself

was unaware of his diluted shareholding. It was only on an understanding that the Petitioner continues to remain a shareholder and is entitled to prefer an application under 241, that the Petitioner preferred the captioned Company Petition.

- 2.24. The modus operandi of the Respondents was such that the Respondents first removed the Petitioner from the directorship of the Respondent No. 1 and thereafter, started diluting his shareholding, all by forging the signature of the Petitioner. The intention of the Respondents was such that the Respondents aimed that the affairs of Respondent No. 1 be controlled and managed by the members of the same family.
- 2.25. It is only now that the Petitioner has been granted an opportunity to file the present Interim Application. Hence, in view of the aforesaid, the Petitioner prays that the requirement specified in clause (a) of the section 244 of the Companies Act, 2013 be waived off.

3. Heard learned counsel for both sides and perused the records.

- 3.1. We note that Company Petition 41/2016 u/s 241, 242 was filed by the Petitioner on 21.10.2016. The said Petition 41/2016 does not contain any prayer for waiver of threshold specified in Section 244 of the Companies Act, 2013. Accordingly, this Application seeking waiver in terms of section 244(1)(b) of the Companies Act, 2013 was filed on 24.11.2023 by the petitioner contenting that he held 15,50,000 shares in Respondent No. 1 and that constituted more than 10% share capital of the Respondent Company. However, he came to know from the reply filed in C.P. 41/2016 only that his

shares have been fraudulently transferred by the Respondent No. 2 in name of his relatives and himself and he is stated to hold no share in the Respondent No. 1 company. It is also contended that the matter could not be taken up on earlier occasions and this Tribunal conveyed that maintainability of petition shall be heard first in light of reply of Respondent. Accordingly, this application is preferred for waiver of conditions stipulated in section 244 for maintaining a petition in terms of section 241-242 of Companies Act, 2013, since he, in fact, held 51.67% shares in Respondent Company.

3.2. Section 244 of the Companies Act, 2013 provides as under –

*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.*

3.3. *The Hon'ble NCLAT in case of Cyrus Investments Private Limited & Anr. Vs. Tata Sons Limited & Others 2017 SCC Online NCLAT 261* has held at Para 144 & 145 that

*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.*

3.4. Further, at para 151 & 152 of the decision in this case of *Cyrus Investments Private Limited (Supra)* lays down the conditions for waiver u/s 244 it reads 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 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.?*

*152. The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration to whether application merits 'waiver'.*

3.5. The Hon'ble Tribunal in the case of Cyrus Investments Private Limited (Supra) at Para 145 opined that Whether a prima facie case is made out or not is dependent on merit of the case as may pleaded in the (proposed) application under Section 241. The Tribunal cannot decide the question

- (i) as to whether a prima facie case has been made out or not,
- (ii) question whether (proposed) application under section 241 is barred by Limitation or not,
- (iii) whether the allegation pertains to Directorial Complaint or not, or
- (iv) the question of deciding the conduct of an applicants to disentitle them from seeking a relief, while deciding an application for 'waiver.

3.6. In the present case, the Applicant has pleaded that he was holder of 15,50,000 shares of Respondent No. 1 company and it constituted 51.67% shares of the Respondent Company. The company petition was filed for seeking relief from this Tribunal in relation to unjustified removal of the petitioner as director. However, the Applicant now pleads that reply to petition demonstrates that the shareholding, he had claimed in the Petition, has also been fraudulently transferred by Respondents thus making him non-member. Since, the fact of transfer of shares from Petitioner, alleged to be fraudulent, came to notice of the Petitioner after the Respondents filed their reply in the company petition, the same could not have formed part of the petition at that time. It is undisputed fact that the applicant was not a member of Respondent Company as on date of filing of the petition as can be seen from the reply of respondents in the petition, however, de hors the transfer of these shares, the applicant would have been entitled to maintain a petition u/s 241-242 of the Companies. Since, the alleged fraudulent transfer of shares itself has disentitled the applicant from maintaining the Company Petition due to his becoming non-member and such fraudulent transfer itself constitutes prima-facie case of oppression qua a member, admittedly a erstwhile member who ceased to be members because of complained act, we consider it appropriate to waive the conditions stipulated in section 244(1).

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)