BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
CA NO. 26 OF 2017
IN
C.P. NO.82/241,242,244/NCLT/MAH/2016

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of **Sections 241, 242 & 244** of the Companies Act, 2013.
Between:

Cyrus Investments Pvt. Ltd. &Anr. ...Applicants/ Orig. Petitioners
V/s.
M/s. Tata Sons Ltd. & Ors. ...Respondents/ Orig. Respondents

Applicants/ Petitioners:

1. Cyrus Investments Pvt. Ltd.
2. Sterling Investment Corporation Pvt. Ltd.

Respondents/ Respondents:

1. Tata Sons Ltd.
2. Ratan N. Tata
3. Amit Ranbir Chandra
4. Ishaat Hussain
5. Ajay GopikisanPairamal
6. Venu Srinivasan
7. Nitin Nohria
8. Ranendra Sen
9. Vijay Singh
10. Farida Dara Khambata
11. Cyrus Pallonji Mistry
12. Ralf Speth CEO of Jaguar Land Rover
13. N. Chandrasekaran
14. N.A. Soonawala
15. J. N. Tata
16. K. B. Dadiseth
17. R. K. Krishna
18. S. K. Bharucha
19. N. M.Munjee
20. R. Venkataramanan
21. Dr. Amrita Patel
22. V. R. Mehta
23. F. N. Subedar

Petitioners' Counsel:

Shri Aryama Sundaram, Sr. Counsel, a/w. Mr. Somasekhar Sundaresan, Ms. Rohini Musa, Apurva Diwanji, Mr. Ruzbeh Mistry, Mr. Anoj Menon, Mr. Parag Sawant, Ms. Gunjan Shah, Mr. Akshay Doctor, Mr. Manik Dogra, Ms. Sonali Jaitley, Mr. Rohan Jaitley, Mr. Mohit Arora, Mr. Ravi Tyagi, Mr. Apurv Agarwal, Sanya Kapoor, Mr. Shubhanshu Gupta, Mr. Devashish Chauhan, Advocates for the Petitioners, i/b. Desai & Diwanji.

Respondents' Counsels:

1. Dr. Abhishek Manu Singhvi, Sr. Counsel, Shri Mr. Ravi Kadam, Sr. Counsel, Mr. Nikhil Sakhardande, Mr. Prateek Sekseria, Mr.

Shuva Mandal, Mr. Nitesh Jain, Mr. Dhruv Dewan, Ms. Ruby Sigh Ahuja, Mr. Sayak Maity, Ms. Tahira Karanjawala, Mr. Avishkar Singhvai, Mr. Sidharth Sharma, Mr. Rohan Batra, Mr. Arjun Sharma, Ms. Eesha Mohopatra, Mr. Sameer Rohatgi, Ms. Payal Chhabria, Mr. Jeet Karia, Ms. Juhi Mathur, Advocates for the Respondent Nos. 1, 2, 3 & 23, i/b. Shardul Amarchand Mangaldas & Co.

2. Mr. Shailesh Poria, Advocate for the Respondent Nos. 5 & 7, i/b. Economics Laws Practice.

3. Shri Mohan Parasaran, Sr. Counsel, Shri Sudipto Sarkar, Sr. Counsel, Mr. ZalAndhyarujina, Mr. D.L. Chidananda, Mr. Ashwin Kumar D.S., Ms. Shurti Sardesai, Mr. Jahangir Mistry, Ms. Namrata Parikh. Advocates for the Respondent Nos. 6, 14, 16 to 22, i/b. M/s. Mulla & Mulla & Craigie Blunt Caroe.

4. Shri Janak Dwarkadas, Sr. Counsel, Mr. Sharan Jagtiani, Mr. Jehangir Jejeebhoy, Mr. Kaiwan Kalyaniwalla, Ms. Shireen Pochkhanawalla, Mr. Nirav Barot, Mr. Nikhil Rohatgi, Ms. Neeha Nagpal, Advocates for the R-11, i/b. Maneksha & Sethna.

ORDER

(Heard on 04.04.2017)
(Pronounced on 17.04.2017)

Per: ***B.S.V. Prakash Kumar, Member (Judicial)***

The Petitioners, Shapoorji Pallonji group, filed CA 26/2017 in CP 82/2016 seeking waiver of the qualification mandate set out in section 244(1) of the Companies Act 2013 (hereafter referred as "Act") to enable them to pursue their Petition filed u/s 241 of the Act on the ground that the interest of the Petitioners in Tata Sons Limited (R1) is substantial, the issues raised in the Petition are more appropriate to be dealt with u/s 241 and the cause raised is substantial in importance to the Petitioners, to class of members, to the Company itself and to the Public.

2. The basic claim of the Petitioners is that they together hold 18.37% equity in Tata Sons and the affairs of the company have been/being conducted in a manner not only prejudicial and oppressive to them but also

to the company and public on various grounds mentioned in the later part of this Order.

3. Though it is conventional to introduce the case with facts before discussing legal proposition involved, the petitioners counsel, to our perception, having slightly digressed from the legal proposition relevant to decide waiver plea, this Bench hereby discusses the legal proposition first, then factual aspect and then to observe as to whether waiver plea can be granted or not. Before get into it, Sections 241, 241(2), and 244 being relevant, the text of them are placed below.

Chapter XVI
Prevention of Oppression and Mismanagement

241. Application to Tribunal for relief in cases of oppression, etc

(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.

242. Powers of Tribunal

(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) ....
(b) .... Etc,

244. Right to apply under section 241

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

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

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

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

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

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

4. If we see the chapter heading, it is obvious that it is meant for passing reliefs for **prevention of oppression and mismanagement in progress**, therefore, the purpose and object of this chapter not meant for passing declaratory reliefs by declaring as to whether particular action is valid or invalid in the eye of law, but to prevent oppression or mismanagement resulted from unfairly conducting the affairs of the company regardless of legality of the action complained of so as to establish fairness without prejudice and by simultaneously enabling the company to carry its functioning. The reliefs can be passed under Section 241, but certainly not at the cost of the company. The main aim is to bring the matters complained of. Since our law was initially structured basing on English Companies Act 1948, changes in English Law have also to some extent carried forward in our law, still there are perceptible differences existing between the two. When English law in the Companies Act 2006 is examined, the oppression remedy of 1948 Act has changed into "**protection of members of against unfair prejudice**" aimed to protect members, whereas in our country it is aimed **to prevent oppression and mismanagement.** When passing a relief under this chapter of our Act, two aspects have been taken into consideration, one to prevent oppression, simultaneously save the company from infighting by resolving the affairs complained of. This concept is an exception to majority rule. Majority is always a rule, it is equally or more important to ensure that in the obsession of prevention of oppression and mismanagement, the salient features of majority rule are not obliterated.

5. Every section will have some characteristics; the same is the case in section 241 as well. Unless the characteristic features comprised in section 241 & 242 are present in the petition filed by the petitioning party, that

petition can't be called as petition comprised of cause of action raised u/s 241 of the Act. It is needless to say that cause of action is a bundle of facts entitling the petitioning party to seek reliefs under a provision of law, unless those bundle of facts fill in abstract characteristics of that section, it cannot be construed that the petitioning party is accrued with subject matter jurisdiction available under the said section. If any case is taken on file short of facts revealing subject matter jurisdiction, then it could be like carrying a pot without any water in it and carrying baggage blindly transgressing the jurisdictional conferment given to the Tribunal.

6. We need not say that Tribunal shall be limited to the jurisdiction given to it, but there is a saying that sky is the limit to pass orders under sections 397 & 398 of the old Act, to make it true, one must show cause of action, then prima facie case and then pass proof test. It will get completeness for passing reliefs only after the Tribunal is of the opinion that case is made out under section 241 and such facts would justify the making of winding up order on just and equitable grounds and such winding up would be unfairly prejudicial to the member or members. May be it is easy to visualise an order under these sections, but to get such an order; one has to pass all the stages mentioned above.

7. The characteristic features of the sections 241,242 & 244:

1. Any **member** of a company **complaining shall have 10% shareholding or not less than 1/10th of members** in number of that company referred above, or a member, to whom **waiver is granted** basing on the proviso to section 244 (1).

2. The complaint shall be **about the affairs of the company (here R1), above referred**. Affairs of the company means the affairs of the company which the member/shareholder complaining, a member complaining cannot complain about the affairs of a company other than the company from which he derives qualification or waiver granted.

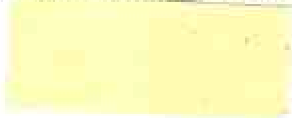
Exception is one-the conduct of the affairs of a subsidiary where the directors of the parent company represented the majority of the subsidiary,

and two, if conduct in a company is fraudulent, indicating siphoning funds to other subsidiary, in that situation also, the other company whose affairs are said as connected to the company against which complaint is made, but to seek such relief that other company shall be made as party to the proceeding.

3. The **acts complained** shall be either **have been or are being conducted** (complaint shall be in relation to the affairs falling within the ambit of present perfect tense or present continuous tense, not otherwise).

Seeing the bold phrases, it is understandable timelines are great visual to identify what acts can be complained of. On seeing the section, it is evident that the acts must either have been done or being done, i.e., the acts falling in present perfect tense or present continuous tense, but not all the acts happen in the company. If these two phases are seen in grammatical sense, we will find three kinds of acts in present perfect tense, one – the acts complained of shall be the events that have just been completed at the moment of speaking, two – a past action still has an effect upon something happening in the present, three – acts that have been happening over a period of time, but aren't finished yet. One thing is pertinent to note that oppression must start in the past and still continuing, a situation where petitioning party agreed in the past to some act, and if the implications of such acts have currently become not productive, can it be called oppression or prejudice started in the past and continuing till now? To our perception, it can't be. Suppose such act has been opposed by the petitioning party in the past and today if it becomes oppressive upon petitioners, then first it has to be seen as to whether it is qua business decision or an act solely to cause harm to the petitioners. Here it is not the case, that the petitioners opposed to some acts in the past and those acts now causing injury to them. Let us see, how present perfect tense works by seeing the pictures below. This picture is taken out from some other source.

The present perfect is used to discuss events that have just been completed at the moment of speaking:



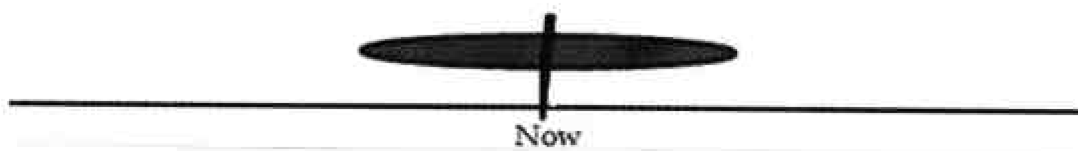
I have just finished homework:

It is often used to suggest that a past action still has an effect upon something happening in the present.

He has been in a car accident. (So now he is in the hospital)

It is often used to discuss events that have been happening over a period of time, but aren't finished yet.

Raju has worked as a teacher for 25 years.



Then next aspect is, the acts shown in present continuous, are the acts in progress. The only difference is, in the old Act, the oppression or prejudice in progress alone had been taken into consideration as affairs of the company mentioned in 397, now addition is the above three kinds covered under present perfect time. It does not mean that we can stretch the situations covered under present perfect to past and concluded actions. The actions closed shall not be raked up under section 241 of the Act. By reading these timelines, the complainant can complain the affairs of the Company where actions are in progress or actions finished which started sometime before, the actions just finished or the actions still having effect to the present. Except these actions, nothing could be complained of by the complainant. The act means an act with prejudice or oppression inbuilt at the time of initiation, it can't be said that reflections of past acts not laced with prejudice or oppression have now become oppressive to the complaining party. The basic reasoning is that action must be an act started

with malafide to inflict the complaining party by either causing unlawful loss to the complainant or as the case may be or for making unlawful gain at the cost of any of the categories mentioned in the section.

4. Those **acts** must be **conducted in such a manner prejudicial to public interest** or **to the interests** of the above referred **company** or in a manner **prejudicial or oppressive to the complainant** or **any other member or members of the** above referred **company**.

By reading this provision, there can be three categories of aggrieved, one – member or members, two – company and three – Public; synchronisation is that member can seek relief on behalf of any of these three. If it is qua personal grievance then it will become personal claim, if it is on company's behalf it will become derivative claim. The actions change depending on whose behalf relief is sought. In ***Shanti Prasad Jain v. Kalinga Tubes (AIR 1965 SC 1535*** – basing on the ratio decided in ***Elder v. Elder & Watson Ltd.*** *1952 SC 49),* it has been held that the requirements for invocation of section 397 is that there must be oppression qua shareholder; and the oppression must be such as would otherwise justify winding up on just and equitable grounds. In respect to oppression qua shareholder doctrine has not been changed even after section 397 of the old Act has become section 241 of the new Act.

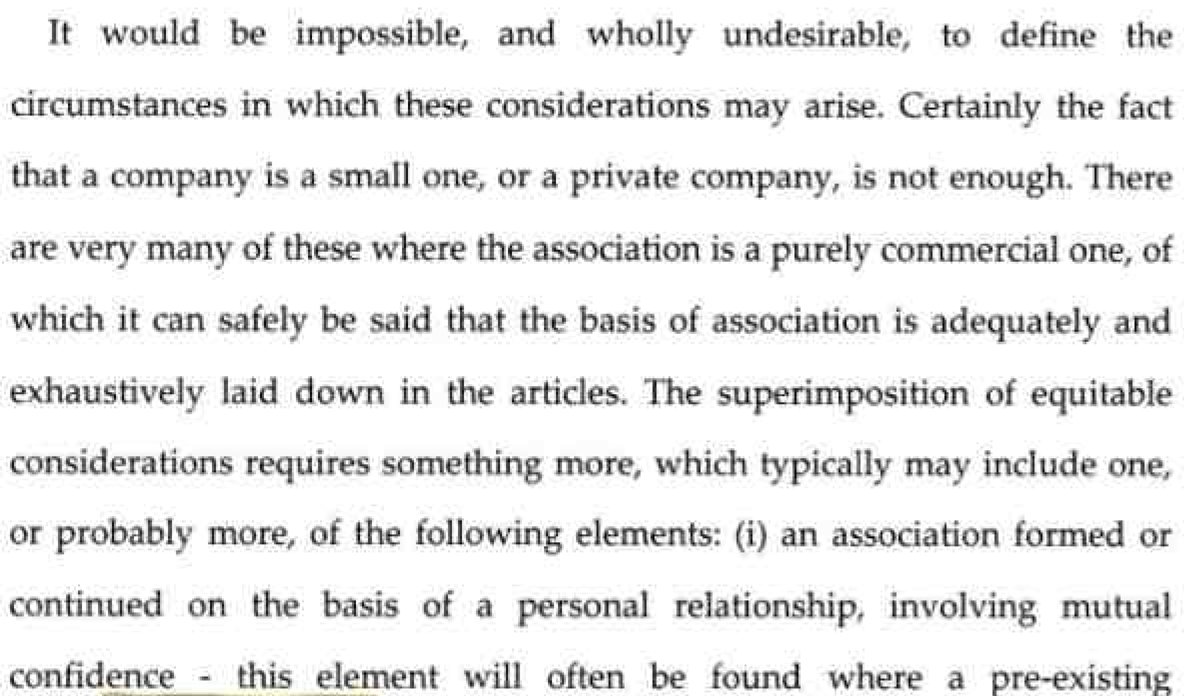
Another interesting aspect is what could be the "interest" of the shareholders in the company. Since shareholders association being for making profits, the interest enunciated in the oppression remedy can only be economic interest. The shareholder, especially when his economic interest is unfairly treated or done an action to cause loss to such shareholder, he can initiate action under section 241. But if this conducting is with the consent of such shareholder, he cannot make it as grievance against himself. There are two aspects to be seen before passing a relief, one – the shareholder, who allowed things to run on acquiescing such acts, cannot seek relief, two – shareholder's own conduct is important, if relief is made with a motive to strangulate the company, then also no relief could

be granted. Normally the decisions of general body of a company without aiming malafide at the complainant or other categories mentioned are never open for scrutiny, because ethos of democracy demands amenability to its decisions from its members. If the treatment by the management is restricted to situations involving inequality of treatment between shareholders, then it can be a cause of action for invoking section 241.

Common law in England started applying this oppression remedy in small companies, quasi partnership companies, family companies and owner based companies, mostly private companies, reason is, in these companies, the minority cannot transfer their shares to outsiders and they cannot survive in the company by the oppressive actions of the management, as to family companies, mostly they make their livelihood and develop on those companies – therefore, since their roots are embedded in a closed company, they cannot go out; at the same time they can't suffer from oppression from inside; likewise in companies where two three friends come together and start company on quasi-partnership principles with an understanding equal partnership in management, companies come into existence with expectations and explicit or implicit understandings in closely held companies. When this concept has come into existence, there were no companies like Tata and many other companies with global presence. If we see the cases in which these principles are decided, like ***Symington v. Symington' Quarries Ltd (1905) 8 F 121; In re Yenidje Tobacco Co. Ltd (1916) 2 Ch 426; Loch v. John Blackwood Ltd (1924) A.C. 783; Thomson v. Drysdale (1925. S.C.311); In re Cuthbert Cooper & Sons Ltd (1937) Ch.392; Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324; In re Lunde Brothers Ltd (1965) 1 W.L.R 1051; In re K/9 Meat Supplies (Guildford) Ltd (1966) 1 WLR 1112. Ebrahimi v. Westbourne Galleries (1973) AC 360,*** all are either family or quasi partnership principles based and closely held companies. If those precedents are applied to big public limited companies and professionally managed companies, then tremors coming out of such interference will

have far reaching implications. What good will happen, nobody is sure of it, but after effects of court interference will certainly destabilise the company, it is an admitted fact that Tata is a conglomerate of $100billion, if in-house management, unless compelling reasons are there, is let open to outside interference, it will definitely have far reaching effect.

Most celebrated case in this line is ***Ebrahimi v. Westbourn Galleries Ltd,*** in this there were two partners Ebrahimi and Nazar, both took director's salary rather than dividend for tax reasons, when Nazar's son came of age, he was appointed to the Board by transferring shares to him. After a fall out between them, Nazar and his son passed an ordinary resolution removing Ebrahimi, hehad applied for winding up, then Lord Wilberforce held that the court normally would not apply such application, but by seeing the company was so similar in its operation as it was when it was a partnership, Lords created what is now known as a quasi-partnership doctrine. Ebrahimi had a legitimate expectation that that his management function would continue and that the articles would not be used against him in this way. Based on the personal relationship between the parties, it would be inequitable to allow Nazar and his son to use their rights against Ebrahimi so as to force him out of the company and so it was just and equitable to wind it up. The company was wound up and Ebrahimi received his capital interest.



It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing

partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere. These are the principles broadly warrant courts to make repairs.

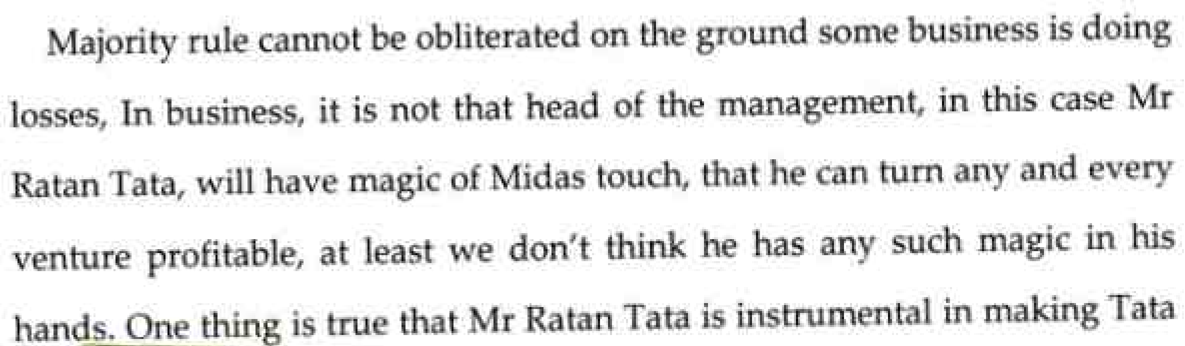
To avoid abuse of derivative action, in England, a separate chapter namely **"Derivative claims in England and Wales or Northern Ireland"** is introduced in 2006 with sections for Derivative claims (section 260), Application for permission to continue derivative claim (section 261);Application for permission to continue claim as a derivative claim (section 262); whether permission to be given (section 263); Application for permission to continue derivative claim brought by another member (section 264). When anybody comes forward with a derivative action petition, such petition will be put to two stage preliminary hearing before substantial hearing, there unless the claim passes strict prima facie hearing test, it will not be cleared to substantial hearing. Normally, derivative action suits in England will end up at preliminary stage itself. Of course, no such preliminary hearing test is present in our statute. In England, initial oppression remedy is bifurcated into derivative action and unfair prejudice action, former one is for corporate action, later one (section 994 of English Act) is for personal action limiting their claim to the interest of the members alone. In later remedy, the shareholder cannot espouse the cause of the company as in the case of derivative action.

Although courts have been reluctant to intervene in the internal management of companies, there has been a tendency to strike a balance between excessive interference on the one hand and protection of minority shareholders rights on other hand. The court's intention has been to find an appropriate balance between majority rule and the prevention of oppression and mismanagement. But when it comes to seeking corporate

action under the cover of derivative claim, such action always tends to be remedy of last resort. An action on company's behalf and in the name of public interest is undoubtedly a derivative claim. Now the argument of the petitioners' counsel saying this waiver is to be allowed since this case is of national interest, public interest and interest of the company is nothing but derivative action. By going through English law and Indian Law as well, it appears normally courts will not interfere with internal management which runs on the principle of majority rule, which is well accepted in all spheres of contemporary world, unless the action is such which unfairly and oppressively erodes the economic interest of the member not privy to the management.

This test is well set out in ***Needle Industries (India) Ltd and others v. Needle Industries Newey (India) Holding Ltd. and others ((1981) 3 SCC 333)***, in this case, facts are, one Devagnanam held meeting without serving notice in time, upon which it has been held that meeting is not illegal and the decision taken in such meeting may not be treated as non-est where no injury to proprietary rights has been caused to the aggrieved shareholders and it is said when articles of association confer power on the Board to appoint additional director, such appointment can be made even if it is not shown in agenda items (para 129, 130, 136, 169 and 170 and para 116 & 117). The ratio evident is that it does not matter whether act is legal or illegal, what matters is as to whether proprietary interest of the aggrieved shareholders is effected or not. It has to be kept in mind that if any loss incidentally and in general incurred to all the shareholders out of any business decision, it cannot not become a ground to be taken up under section 241.

Majority rule cannot be obliterated on the ground some business is doing losses, In business, it is not that head of the management, in this case Mr Ratan Tata, will have magic of Midas touch, that he can turn any and every venture profitable, at least we don't think he has any such magic in his hands. One thing is true that Mr Ratan Tata is instrumental in making Tata



Group into USD100billion group. In such a long travel, some business decisions miss out that Midas touch. It is reiterated by English and Indian courts that courts are slow in interfering with the business decisions of any company, unless management decisions are vitiated with fraud and self-serving.

Or

5. If **any material change** is taken place in the management of the company by **alteration of Board of Directors** or **manager** or **in the ownership of the company's shares** or in **its membership** (in section 8 companies) or in any other manner whatsoever and **if such change is likely to conducting the affairs of the** above referred **company in a manner prejudicial to the interest above referred company** or **its members or its class of members**. (Here also two conditions to be fulfilled, one – there shall be a material change as stated, two – such change must cause **prejudice to** the **company** or **its members** or **its class of members**. Addition in new section under the head of material change is prejudice to class of members, this prejudice to class of members will come into picture only when action is aimed to cause discrimination to a class of members, and such discrimination is potential enough to cause prejudice to a particular class. It can't be canvassed by a group out of a class saying that their group being separate they have to be treated as separate class out of class and apply class prejudice to grant relief. In respect to this clause (b) of section 241 (1), **paradigm shift** is public interest is omitted, therefore if at all any ratio speaking of prejudice to public interest in the past is hereafter not applicable to the litigation under new law. The public interest present in 241 (1) (a) is missing in 241 (1) (b), which was there in section 398 of the Old Act is not present in its new avatar, so basing on material change as specified in the subsection, a cause for public interest now cannot be espoused, therefore if the material change is taken as ground to say public interest is prejudiced, then petition fails.

6. **Unless the above conditions** either **under 241 (1) (a) or 241 (1) (b)** are **fulfilled**, the **member complaining cannot file a petition u/s 241** of the Act.

7. When we come to **section 242**, it **speaks of the powers**, but first part of the section speaks **about what satisfaction is required to the Tribunal** to **make an opinion to pass orders.**

8. To form an opinion **u/s 242** by the Tribunal, **two aspects** party has **to prove**, one – it is invariable to prove **that the acts** complained in relation to the affairs of the company referred in section 241 **shall be prejudicial or oppressive to the member or members or to public interest or to the interest of the company** (notable change is category of class of members envisaged in section 241 (1) (b) is omitted), two – **facts would justify the making of winding up order on just and equitable grounds**, not only **that such winding up thought would be unfairly prejudicial to such member or members.** If all these conditions are fulfilled, then the Tribunal in its discretion "**may**" pass any order including reliefs u/s 242 (2) of the Act.

9. **Waiver proviso** is introduced in section 244 by converting independent subsection (4) to the old section 399 into a proviso giving discretion to NCLT to consider waiver to the qualification given in the main enactment (section 244 (1)).

8. Therefore, to raise a case under section 241, unless the averments made in the Company Petition has all these characteristics, the pleading cannot be considered as cause of action to file a case u/s 241 of the Companies Act, 2013.

9. Law permits to seek a remedy to the grievances of one's own, but the unique feature in section 241 in Chapter-XVI is that member qualified can seek a remedy either on his behalf or on others behalf. The reason behind to complain on others behalf is company on its own cannot seek remedy.

When the Directors themselves become perpetrators, it is quite natural that they will not come forward to seek a remedy on company's behalf. To get over a situation like this, exceptional remedy has been carved out to prevent oppression and mismanagement against its shareholders or company. So this Section is combination of personal actions and derivative actions. In Sec.244 (1), it has been categorically mentioned that the members complaining u/s 241 shall have 10% Shareholding or not less than one tenth of members of its number of members.

10. A proviso has been added to Section 244 to waive the qualification criteria mentioned in the main provision so as to enable the members to apply u/s 241. This waiver clause was initially provided as another sub-section under Section 399 of the Companies Act, 1956 giving authority to the Central Government to waive the qualification on its satisfaction, whereas now, the authority given to the Central Government is reduced to a proviso to Section 244. We already discussed elaborately in the order dated 06.03.2017 over as to how this subsection has been modified into proviso.

11. Proviso is always one kind of exception given to be invoked in special circumstances. A proviso or exception will not have any overriding effect on the main enactment to obliterate the letter and spirit of the main issue. When a separate sub-section has been modified as proviso, it itself is manifest that this proviso can be invoked in special circumstances only. When the difference between proviso and exception is looked into, proviso is not applicable in all cases whereas exception is applicable in all cases where facts fall within that exception. Here in this proviso, it is only said that the complainant can seek exemption from main enactment by filing an Application and on such Application, the Tribunal will exercise its judicial discretion whether to waive the qualification or not. When it comes to main enactment, it is mandatory on the members to have qualification to file an

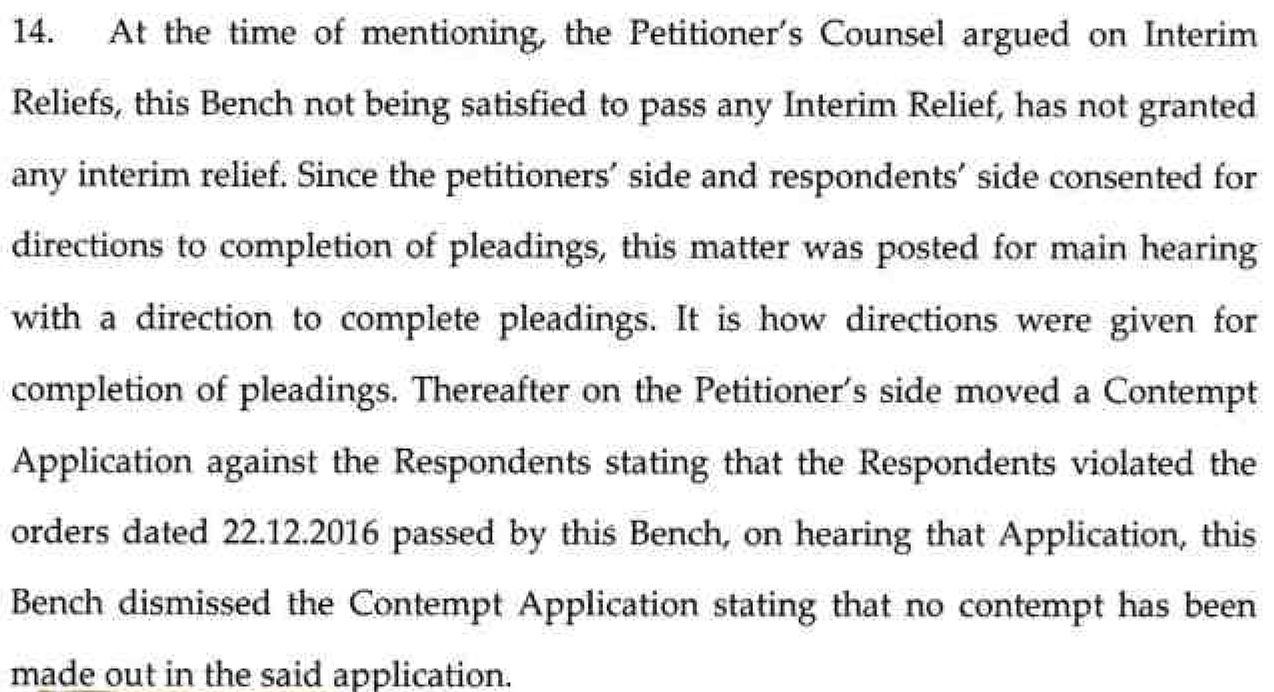
Application u/s 241, when it comes to proviso, the discretion is left to the Tribunal to see as to whether waiver can be granted or not. This qualification criteria is not only present in Indian enactment, it is there in Germany corporate jurisprudence as well, in every country one or other type of bar is manifest so as to prevent a litigation causing fetters to the functioning of company.

12. Any suit or for that matter any court proceeding, will have three stages; as soon as proceeding is initiated, courts will scrutiny it as to whether any cause of action is existing in petition, once petitioning party passes cause of action test, then that petitioner must present a prima facie case to avoid dismissal of the case or an unfavourable directed verdict. The petitioner must produce enough evidence on all elements of the claim to support the claim and shift the burden to the respondent. If the petitioner fails to make a prima facie case, the respondent may move for dismissal or a favourable directed verdict without presenting any evidence to rebut whatever evidence the plaintiff has presented. This is because the burden of persuading a judge or jury always rests with the petitioner. If the said case does not fall within the ambit of cause of action section, then it shall be treated as a Petition without cause of action. At the time of prima facie case test, if prima facie case test is not passed, then also the petition liable to be dismissed. In case prima facie case test passed, then proof test or merit test has to pass to seek remedy. Proof test will be applied only when the Court or Tribunal is satisfied that a prima facie case is made out in a case come for first hearing. The two important points to be taken for consideration at the time of first hearing is as to whether pleadings of the Petition are making out a cause of action as enunciated under the respective sections or not, then to see as to whether any material believable supporting the case of the Petitioner is present or not. It will not see whether it is true or false. It will only be seen when other side files a reply saying that the averments are false. The point this bench highlights is that it shall not be confused that the prima facie case as proof test. Unless the complaining party satisfies the prima facie case test, the complaining

party cannot pursue the petition any further. It has to be dismissed in limine when the party fails to satisfy the prima facie case test as well.

13. This is fourth round of hearing in this case. Why this Bench has taken so much pain to explain all these aspects is, when this Bench expected that the Petitioner's Counsel would show cause of action and also explain the prima facie case of the Petitioners, instead of doing so, the petitioners counsel had stated that he would submit on merits of the case once waiver plea is allowed ignoring the proposition that cause of action test is imperative before passing to the stage of prima facie test and then to hearing case on merits. It is not out of context to mention that legislature made it clear that CPC is not applicable, but the bottom line of approach is, Tribunals shall adhere to natural justice in adjudication of matters. The reason behind this approach is to render speedy justice without getting stuck in the bottlenecks of procedural wrangles.

Unfortunately, these petitioners want to jump the guns of cause of action test and prima facie test to reach out to merit test. But the Petitioners have mentioned the allegations of the Company Petition in a capsule form in the Waiver Application.



14. At the time of mentioning, the Petitioner's Counsel argued on Interim Reliefs, this Bench not being satisfied to pass any Interim Relief, has not granted any interim relief. Since the petitioners' side and respondents' side consented for directions to completion of pleadings, this matter was posted for main hearing with a direction to complete pleadings. It is how directions were given for completion of pleadings. Thereafter on the Petitioner's side moved a Contempt Application against the Respondents stating that the Respondents violated the orders dated 22.12.2016 passed by this Bench, on hearing that Application, this Bench dismissed the Contempt Application stating that no contempt has been made out in the said application.

15. On which, when an Appeal was filed before NCLAT, impugning the Order dated 18.01.2017, the Hon'ble Appellate Tribunal gave directions to hear maintainability plea, if maintainability plea is decided against the Petitioners, then to hear Waiver Plea raised by the Petitioners, if Waiver Plea is allowed then to hear main Company Petition.

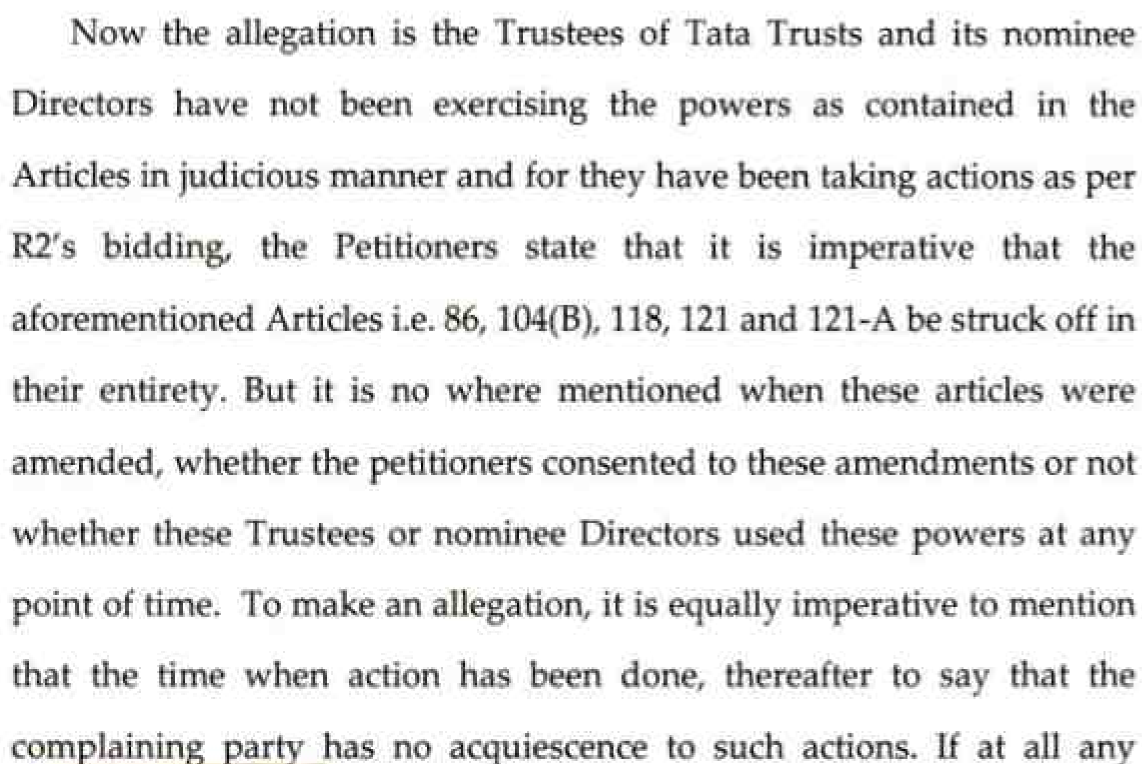
16. In pursuance of the Order passed by the Honourable Appellate Tribunal, this Bench heard maintainability plea wherein a detailed order has been passed stating that the Petition is hit by Section 244 qualification. Since there is direction of Honourable Appellate Tribunal to hear Waiver Plea, this Bench has heard on Waiver plea. In this background, when this Bench expected that the petitioners counsel would show prima facie case, the counsel argued that at the time of hearing waiver plea, this Bench need not look into the merits of the case. Of course, this proposition is not correct at least in a case where already maintainability point has been decided against the petitioners. It is to place that pleadings in main petition are already complete.

17. However, since the Petitioners have already set out their main allegations in brief in the Waiver Application, this Bench, basing on the allegations in the waiver application and main petition, studied to notice as to whether the petitioners have shown any cause of action, if cause of action is shown, then to see as to whether any prima facie case is present in the petition. To make it easy, this Bench will simultaneously discuss the allegations to find out as to whether the respective allegations constituted any case u/s 241 or not. Allegations are as follows:

I. Articles of Association of R1 and in particular the articles identified in the Petition are per se oppressive as they effectively ensure that the Sir Ratan Tata Trust and Sir Dorabji Tata Trust are in de jure and de facto control of R1. Moreover, the articles of Association are being abused and misused by said Trusts and in particular R2 to perpetuate control over R1 for which they are not accountable.

As to this allegation, the Company Petition discloses that under Article 104, the Trustees of the Trust (Sir Ratan Tata and Sir Dorabji Trusts) are entitled to nominate three Directors. Under Article 121, all decisions of the Board of Directors of R1 will need the affirmative consent of a majority of the Trusts nominated Directors. Under Article 121(a), certain decisions should be brought to the Board of Directors of R1 whereby majority of Trustees Nominated Directors could call the shots. Article 186 provides that so long as Tata Trusts collectively hold at least 40% of the paid up capital of R1, no quorum shall be constituted in the General Meeting of the company unless at least one authorised representative jointly nominated by the Tata Trusts is present in the meeting. Article 104-B provides that so long as Tata Trusts collectively hold 40% of the paid up capital, Tata Trusts acting jointly shall have the right to nominate one third of the nominated Directors of the Board so also to remove any person so appointed and in his place, to appoint another person as Director. Article 118 provides that so long as Tata trusts collectively hold 40% of the paid up capital, a selection committee shall be constituted to recommend a person to the post of Chairman of the Board and the Board may appoint the person so recommended as Chairman of the Board.

Now the allegation is the Trustees of Tata Trusts and its nominee Directors have not been exercising the powers as contained in the Articles in judicious manner and for they have been taking actions as per R2's bidding, the Petitioners state that it is imperative that the aforementioned Articles i.e. 86, 104(B), 118, 121 and 121-A be struck off in their entirety. But it is no where mentioned when these articles were amended, whether the petitioners consented to these amendments or not whether these Trustees or nominee Directors used these powers at any point of time. To make an allegation, it is equally imperative to mention that the time when action has been done, thereafter to say that the complaining party has no acquiescence to such actions. If at all any



change has taken place, the complaining party must also explain as to how the complaining party has not taken any action until this Petition has been initiated.

Since it appears that Article 86, 106, 118, 121(A) were amended in the EGM held on April 9th 2014, what prevented these Petitioners to make any grievance in respect to these amendments until Mr Cyrus Mistry was terminated as Chairman of R1 Company on 24.10.2016. Of course, the respondents categorically mentioned that these Petitioners group favourably voted in the Meeting on April 9th 2014 for passing the amendments to the clauses mentioned above. Since the petitioners have not disclosed in their case that they did not attend to EGM of April 9, 2014 and they voted against the resolution, the contention of the respondents should have orally disputed those contentions, but the petitioners have not done so. Then, it has to be construed that it is an an admitted fact that the petitioners by their vote acquiesced the amendments to the articles. After all these, how can now they say that these articles are detrimental to them? It is not their case that these respondents exercised these veto powers against the petitioners. Whenever any allegation is made, it is the bounden duty of the respective party to give dates, actions and effect of the actions and also to say that inspite of their objection such and such actions were carried out by the Respondents causing prejudice or oppression to them, no such details have been given in respect of these allegations. It is a cardinal principal that the person acquiesced to an action cannot subsequently complain about the same. It is not even mentioned that the respondents herein invoked these Articles with prejudice to oppress the Petitioners. Unless all these characteristics are present in the allegation, there cannot be any cause of action made out u/s 241. Therefore, this Bench has not noticed any cause of action for striking out these amended Articles from the Company's Constitution. In view of the reasons afore given, we have not found any facts constituting cause of action under section 241.

II. The Petition highlights the concerns arising from $12billion Investment made by TSL at a substantial premium in Cora Group PLC, and the use of powers in relation to this investment.

In respect to this allegation, the Petition says that R1 Company has 31.35% Shareholding in Tate Steel Limited (TSL). With that leverage, R2 in the year 2007 led the purchase of Corus Group PLC (referred as Corus) by TSL for a sum in excess of $12billion which was more than 33% of its original price, which eventually led Tata Steel go down by this purchase and ever since it has not been doing well. To revive the glory of Tata Steel, when Mr. Mistry (R11) initiated to merge this Tata Steel with Thyssen so as to rid Tata Steel from the financial sufferance, Mr Ratan Tata objected to the proposal causing loss to everybody including the Petitioners.

By going through this allegation, it appears that this transaction took place in the year 2007 that was almost 9 years before filing this Company Petition, in all these 9 years, these Petitioners never complained of Tata Steel entering into this transaction. Moreover, it is the case of the Petitioners that R1 Company holds only 31.35% Shareholding in Tata Steel Limited, when Shareholding of R1 is less than 50% in Tata Steel, can such company be called as subsidiary to R1 Company? Moreover, this Tata Steel Limited and its directors are not made as parties to this Petition. It is purely an affair of Tata Steel Limited. Therefore, this action, basing on the facts available, could not even remotely be called as the affair of R1 Company. Besides all these aspects, R2 is not presently continuing as either Director or Chairman of R1 Company. Until before filing this case, R11 only continued as chairman of the company. This petition averment is not supported by any annexure. When it is not a case that Petitioners are not members of Tata Steel Limited, when this affair is not the affair of R1 Company, when Tata Steel is not a party, when Tata Steel is not subsidiary to R1, when this transaction is a past

and concluded action i.e. in the year 2007, on top of all, when these petitioners never raised objection over this acquisition in the past, even for imagination also, this issue can be considered as an issue to invoke jurisdiction u/s 241 of the Act, 2013. The case of the petitioners is it is bleeding, if that is so, it is a business decision to be taken by general body of TSL or if it is related to R1, then by its general body. Therefore, we have not seen any cause of action to take it up as an issue to be decided under section 241 – threshold bar to consider it as cause of action is, it is not the affair of R1, TSL is not made as party, it is not said TSL is subsidiary of R1 Company, moreover this decision was taken in the year 2007 and it is purely a business decision. In any sense, we have not found any merit to consider it as a point to be decided u/s 241.

III The continuation of the business of Nano Car Project undertaken by Tata Motors upon the insistence of R2, despite substantial losses being caused by the same.

On perusal of the Company Petition, it appears that sometime in 2007-2008, R2 came out with a proposal to manufacture a car that could be enjoyed by poor of this nation with an installed capacity of 2,50,000 cars but the demand for this cars is only 3000 cars per year, by which, Tata Motors, once upon a time profit making company, has gone into losses consistently loosing ₹1000Crores, inspite of it, R2 for his emotional reasons has prevented R11 from taking crucial decision to shut down Nano Car Project.

These Petitioners at least mentioned how many shares Tata Sons have in Tata Steel Limited in the earlier allegation, whereas in this allegation, it is not even mentioned how much shareholding R1 Company has in Tata Motors, it is not even mentioned that Tata Motors is subsidiary to R1 Company. In the back drop of these facts; this action cannot be called as the affair of R1 Company. Unless the allegation is an affair of R1 Company, it will not fall within four corners of Section 241,

henceforth this Bench hereby holds that this allegation has not made out any cause of action.

Without prejudice to the holding already given, we must make it clear unless time is along with us; we may not able to have achievement as expected. In this case, Tata group when came out with the idea of Nano, car market situation was different, competition was not as today. When business decisions are linked to public, it can't be said we are right unless plan is materialised. The same is the thing happened in this case. To make it short, we only say business decisions are business decisions, if they are seen with different glasses, it will obviously give different perception. If the minority is given free ride over majority to take these kinds of allegations as acts of oppression against minority, then no company can take any decision. Therefore, courts will only interfere when actions are unconscionable, unjust and laced with fraud so as to cause oppression to the complaining party. It is not even the case of the petitioners that this action was aimed to cause prejudice to the petitioners. It can't be also.

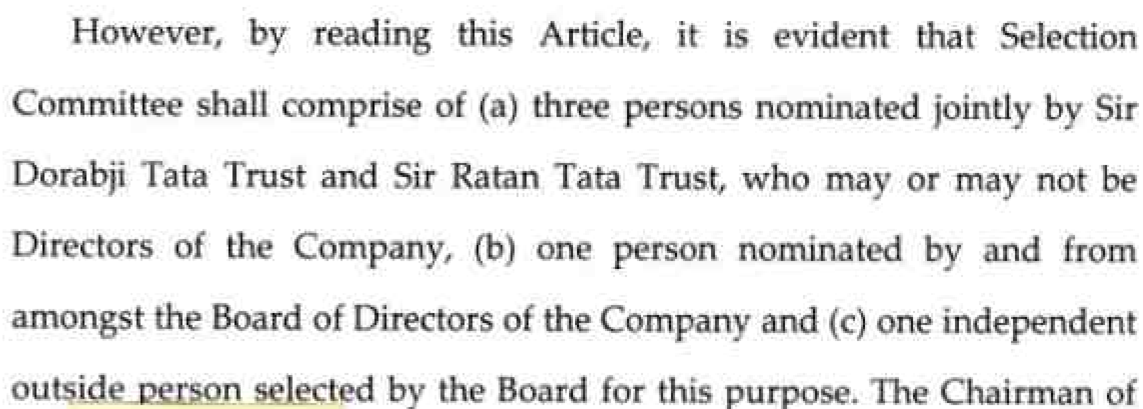
To fall under the rubric of an oppression proceeding, alleged wrongful conduct must impact the personal interests of the complainant and not, for example, the complainant's interests as a member of the "body corporate" or collectively of shareholders. The oppression remedy will not be available simply because the complainant asserts a reasonable expectation that it holds in common with every other shareholder. Instead, the complainant must demonstrate that the alleged wrongful conduct has been oppressive, unfairly prejudiced or unfairly disregarded his/her/its personal interests.

IV. The illegal removal of R11 as Chairman of R1 is in complete violation of the law, principals of governance, fairness, transparency and probity.

The allegation is R11 namely Mr. Cyrus Mistry was removed as Chairman of R1 Company on 24th October, 2016 in a Board Meeting

contrary to the Articles of Association and the Resolution for his appointment as Chairman. In support of this allegation, the Petition states that Article 118 provides that for the selection of the Chairman, a Selection Committee is to be constituted in accordance with Article 118 and the same procedure is to be followed for removal of the Chairman. But it is an admitted position that no Selection Committee was constituted for the removal of R11 as Executive Chairman of the Board. The purported reason provided for the removal R-11 was that Board of Directors of R1 had lost confidence of leadership of R11. On the contrary, as recently as 28th June, 2016, the nomination remuneration committee of R-1 had at its Meeting lauded the performance of inter alia R-11, and the General Executive Committee formed by him (which pertinently was abruptly disbanded on 25th October, 2016 and had demanded a hike in the remuneration). The Petitioners believe that under the dictate of R2, the Board of Directors of R1 wrongly and illegally removed R11 as Executive Chairman of the Board on 24th October, 2016 to ensure that no legal steps are taken against Shiva (to whom shares were allotted in TTSL) by R1 or TTSL. The allegation of the Petitioners is that when R11 was about to take action against Shiva, R11 was unceremoniously removed as Chairman of R1 Company.

Going by this averment, it is true that Article 118 is devised for appointment and removal of Chairman by recommendation of Selection Committee. By going through the Record, it appears that his removal happened not by the recommendation of the Selection Committee but by the Directors of the Board itself.

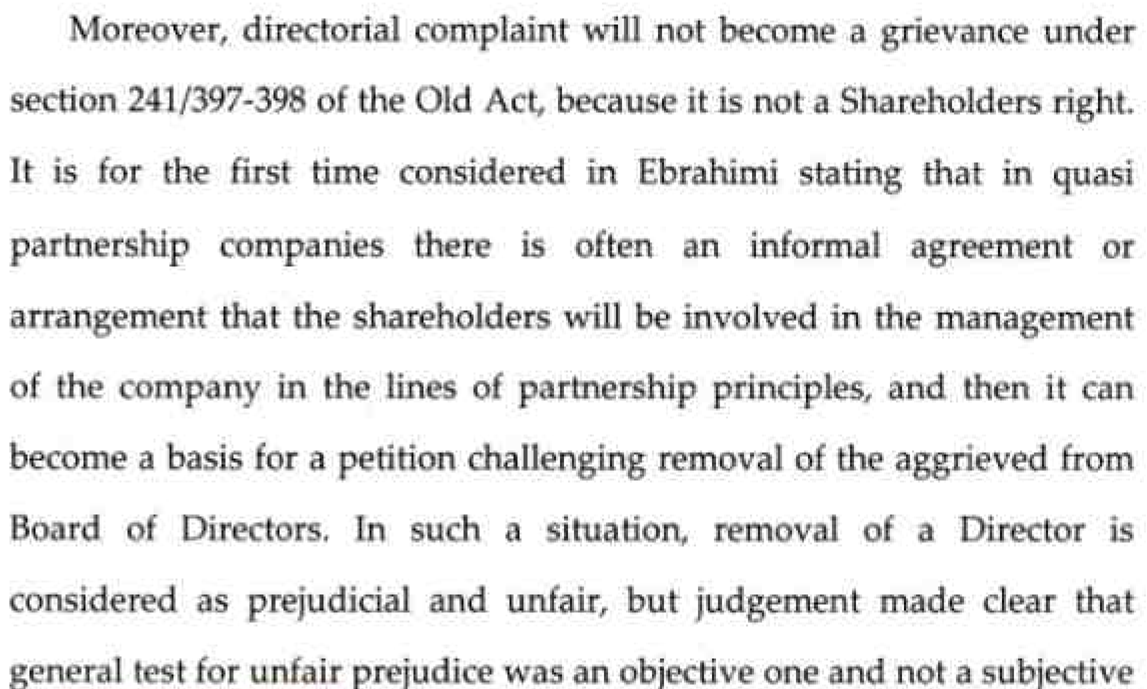


However, by reading this Article, it is evident that Selection Committee shall comprise of (a) three persons nominated jointly by Sir Dorabji Tata Trust and Sir Ratan Tata Trust, who may or may not be Directors of the Company, (b) one person nominated by and from amongst the Board of Directors of the Company and (c) one independent outside person selected by the Board for this purpose. The Chairman of

the Committee will be selected by Sir Dorabji Tata Trust and Sir Ratan Tata Trust from amongst the nominees nominated from the Trust. It is also said that quorum for the meeting of the Selection Committee shall be the presence of majority from the members nominated jointly by Sir Dorabji Tata Trust and Sir Ratan Tata Trust.

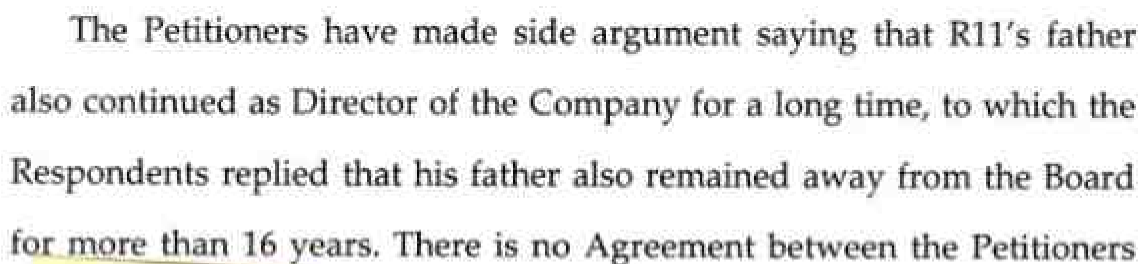
Though it is true that removal has to be done by the recommendation of the Selection Committee, since the Selection Committee is comprised of majority members from Sir Dorabji Tata Trust and Sir Ratan Tata Trust, selection committee recommendation is mere formality. The outcome of this formality will become one and the same whether it is through Selection Committee or by Board of Directors with majority from the Trusts. This Bench has already referred Needle case stating that inflection of an article will become matter if its non-compliance makes any difference to the proprietary interest of the petitioners. Since Trust directors are majority on Board, constituting of selection committee would not make difference to the decision taken by the Board, because even if committee was formed, there also the members of the committee would be the persons at the wish of the nominee directors. Therefore, constitution of committee or no committee will be of no difference. It will become grievance to the Trusts, if chairman is removed against the wish of them.

Moreover, directorial complaint will not become a grievance under section 241/397-398 of the Old Act, because it is not a Shareholders right. It is for the first time considered in Ebrahimi stating that in quasi partnership companies there is often an informal agreement or arrangement that the shareholders will be involved in the management of the company in the lines of partnership principles, and then it can become a basis for a petition challenging removal of the aggrieved from Board of Directors. In such a situation, removal of a Director is considered as prejudicial and unfair, but judgement made clear that general test for unfair prejudice was an objective one and not a subjective



one. Taking the ratio decided by Lord Wilberforce in Ebrahimi to consider directorial complaint as cause of action in oppression remedy, given company shall be comprised of any of the situations present in Westbourne Galleries Ltd as stated above, not a company like Tata, whose network has been spread globally. For that reason alone, Lord Wilberforce started saying court interference is not right, but for the reasons mentioned above, Court interfered stating *"that words are recognition of the fact that behind it, or amongst it, there are individuals, with rights and expectations and obligations inter se which are not necessarily submerged in the company structure"*. This ratio, according to ***Ebrahimi*** itself, is applicable in family companies, partnership based companies and owner based companies but not to companies like Tata Sons, which is completely institutionalised and professionally managed. Therefore, ratio applicable to partnership companies and family companies cannot be applied to R1 Company. In fact R11, had not been made as Chairman as of right on the ground the Petitioners have 18.37% equity Shareholding in the company. It had happened on selection. By virtue of a Selection, he had been taken as Chairman on employment. One thing always to be kept in mind is, section 241 is designed to remedy the grievance of the shareholders and shareholders alone. Therefore, this allegation saying since he has been removed as Chairman, the Petitioners are entitled to take it up as cause of action u/s 241 of the Companies Act is not correct. Removal of R11 as director need not be discussed separately, for the rationale for adjudication on removal of R11 as chairman and Director is one and the same, for it is held that directorial complaint in a company like Tata is not permissible, because the shareholders are sovereign authority to take a call over it.

The Petitioners have made side argument saying that R11's father also continued as Director of the Company for a long time, to which the Respondents replied that his father also remained away from the Board for more than 16 years. There is no Agreement between the Petitioners



Group and the Company or in between the Petitioners and Tata Trust to keep a Director position to Mistrys on the Board of Directors; therefore, these Petitioners cannot have reasonable or legitimate expectation to ensure that a representation from Mistry side is to continue on the Board of Directors.

V. Use of R1's brute Shareholding majority in certain Tata Group Companies to requisition EGMs' for the removal of R11 as Director from group Companies.

This allegation cannot be raised in this case for more than one reason because the companies from which R11 was removed as Director have not been made as parties to these proceedings. R11's removal from other companies is through Shareholders Meetings. Though there are many points to be discussed here, since those companies not being parties to these proceedings, such action cannot become an action in relation to the affairs of R1Company, therefore it can be safely said that no cause of action arose under section 241 to take up this issue for determination.

VI. Actions of R1 completely undermining the position and status of independent directors in the listed Tata Group Companies, by taking steps to requisition a meeting to remove Mr. Nasli Wadia because and only because he expressed support for the leadership of R11.

Though ratio to decide this point has already been covered in Point V, for completeness we again reiterate that the affairs of other companies which are not parties to this proceeding cannot become affairs of this company as envisaged u/s 241, therefore, this allegation has no cause of action u/s 241.

VII. Allegation of actions of R2 and others constitute breach of SEBI Regulations on prohibition of insider trading by giving access to price sensitive information of the listed Tata Group Companies.

It is purely an allegation relating to SEBI violation, if any such case is found in respect to insider trading, that has to be decided by SEBI not by this Tribunal. If at all SEBI decided that irregularities have been committed by the Respondents, then it is a point to be seen whether that will become a ground u/s 241 or not. At this stage, it is premature to raise such an allegation so as to victimize the answering Respondents and R1 Company, henceforth this point does not deserve to become cause of action u/s 241.

VIII. Another allegation is close relation of R2 with Shiva is purported to have been cause for leakage of Board Meeting discussions to Shiva, because in past also, R2did favour to Shiva at the expense of R1 in relation to Do Co Mo. On reading the Company Petition, the allegation noticed is that R2 caused issuance of 520 billion Shares of TTSL at the rate of ₹17 to a Company called Sterling for a throw away price of ₹884Crores and then issued TTSL shares to Singapore Company at a price of ₹26per share immediately after the transaction with Sterling owned by Shiva who is close to R2. Thereafter, Shiva sold 20.74 Million Shares out of above shares in the year 2008 to Do Co Mo at the rate of ₹117.81 per share making huge profit of above ₹200Crores; all these facts were admitted by Shiva himself saying he is benefited by his closeness with R2.

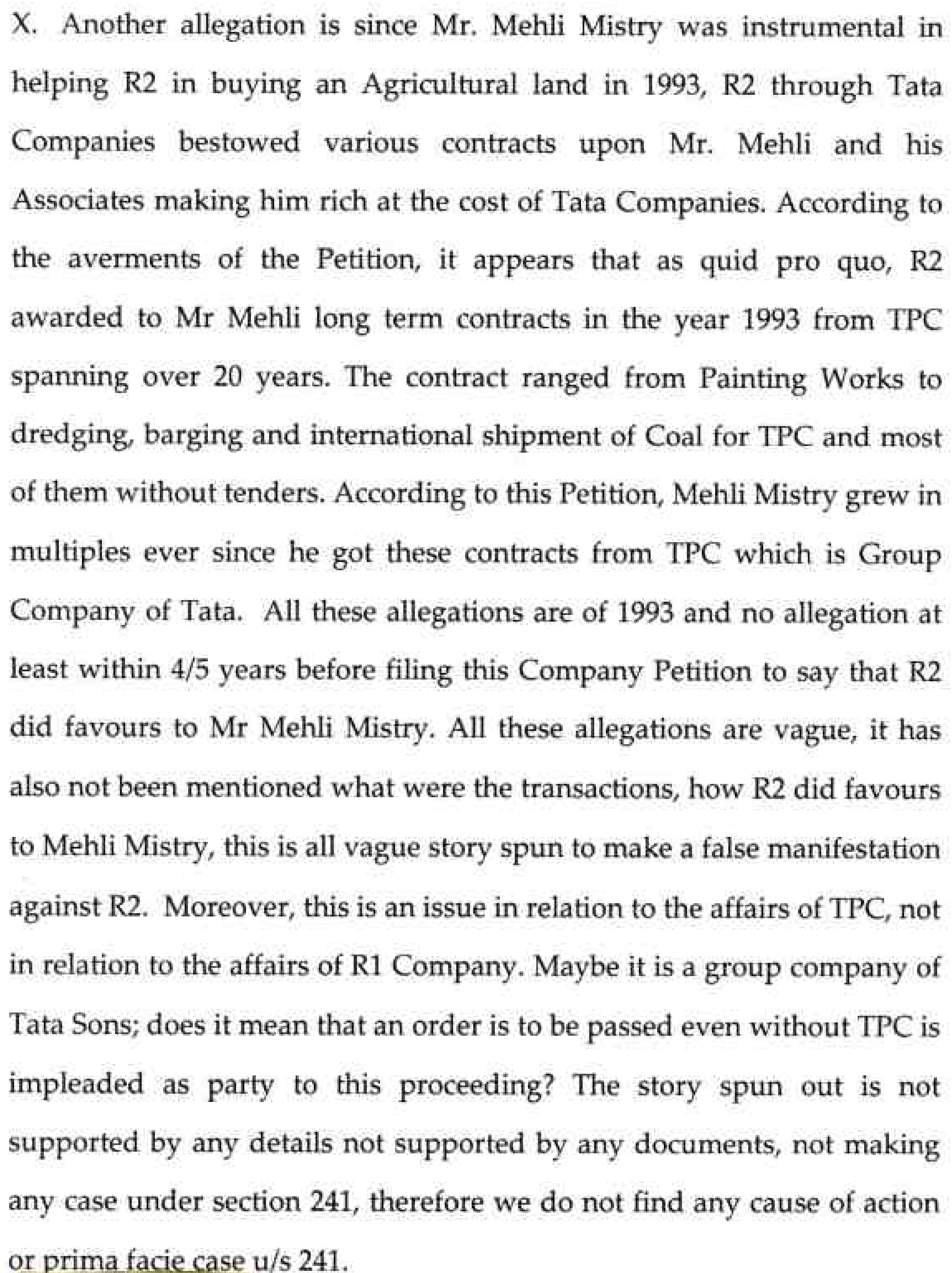
By reading this allegation from the Company Petition, it appears that the shares in favour of Sterling were transferred way back in the year 2005. Now this Company Petition has come in existence in the year December 2016, exactly after 10 years, these petitioners have surfaced this transaction as prejudicial to the Petitioners. Is it their case that this transaction was noticed by the Petitioners just before filing this Company Petition? Moreover, this is an affair in relation to Tata Teleservices Limited not relating to the affairs of R1 Company and TTSL is not made

as a Party to the proceedings. Supposing any order is passed going by the allegation of the Petitioners, will it survive unless that company is made as a party? Anyhow it is a stale claim made by the Petitioners to manifest a case against the respondent. If we see the heading of this Chapter oppression and mismanagement, it is very clear that, it is a preventive action that is required to be taken over the acts and omissions happening in the company or happened just before filing the Company Petition. It does not mean that the Petitioners are at liberty to rake up any or every issue that happened long time before in relation to other companies. We are not aware whether this allegation is true or false, to know probability of succeeding over this allegation, we can go into it under the heading of prima facie test, but we are not getting into, because TTSL is not made as a party. It is out and out an allegation against 2nd respondent, who stepped out from chairman position of R1 Company in 2012 itself. Ever since R11 continued as Chairman, in his tenure of 4 years, did he ever raise this allegation in the Board of Directors either in Tata Sons or in Tata Tele Services? However, this Bench having considered that this issue is not in relation to the affairs of R1 Company, R11 having continued as Chairman until before filing this Company Petition, R2 having retired from the Chairman position in the year 2012 itself, today R2 cannot be labelled as shadow Director or a man playing ghost role just because R11 was removed as Chairman of R1 Company.

IX Actions in relation to immovable property of R1 (being a flat at Colaba) and awarding contracts of Tata power, intended to favour and benefit persons close to R2.

The allegation is R2 pocketed ₹3crores come from MPCPL towards surrendering tenancy rights of the residential apartment that R2 used to reside in a building called Bakhtawar at Colaba, otherwise the money

should have come to the company called FFC, which was at the time Tata Group Company. No details when it happened, no details as to whether R2 abused his position to do such thing, inspite of it, the petitioners have flagged Mr Tata, who made Tata $100billion conglomerate, with Rs3crore misappropriation without even mentioning when happened how happened, how R1 connected to it. It is their own case that FFC is today not a group company of TATA. This, we hold as an allegation without any cause of action u/s 241.



X. Another allegation is since Mr. Mehli Mistry was instrumental in helping R2 in buying an Agricultural land in 1993, R2 through Tata Companies bestowed various contracts upon Mr. Mehli and his Associates making him rich at the cost of Tata Companies. According to the averments of the Petition, it appears that as quid pro quo, R2 awarded to Mr Mehli long term contracts in the year 1993 from TPC spanning over 20 years. The contract ranged from Painting Works to dredging, barging and international shipment of Coal for TPC and most of them without tenders. According to this Petition, Mehli Mistry grew in multiples ever since he got these contracts from TPC which is Group Company of Tata. All these allegations are of 1993 and no allegation at least within 4/5 years before filing this Company Petition to say that R2 did favours to Mr Mehli Mistry. All these allegations are vague, it has also not been mentioned what were the transactions, how R2 did favours to Mehli Mistry, this is all vague story spun to make a false manifestation against R2. Moreover, this is an issue in relation to the affairs of TPC, not in relation to the affairs of R1 Company. Maybe it is a group company of Tata Sons; does it mean that an order is to be passed even without TPC is impleaded as party to this proceeding? The story spun out is not supported by any details not supported by any documents, not making any case under section 241, therefore we do not find any cause of action or prima facie case u/s 241.

XI. Matters pertaining to the Joint Venture between Air Asia Limited and Telstra Trade Place Private Limited for entering into aviation sector, including the coming to light of possible fraudulent, hawala transaction upto ₹22crores as indicated in the Forensic Report of Deloitte Touch and Tohmatsu Limited.

The case of the Petitioners is that R2 had already concluded partnership with Air Asia in the meeting held on 6th December, 2012 thereafter since R11 took over as Executive Chairman. The Petitioners submit that the deal with Air Asia was forced upon R11 as a fait accompli wherein forensic investigation was carried out by Deloitte revealing fraudulent transaction of ₹22crores involving non-existent parties in India and Singapore. It is being further stated that R20, being an executive trustee on the Board of Air Asia and also Shareholder in R1 Company, he was involved at every juncture of Air Asia deal right from negotiation to advising in every respect. Now the allegation is that when the forensic report of Deloitte was scheduled to be placed before the Board of R1 Company in its meeting held on 24thOctober, 2016, R-11 was removed as Chairman and thereafter the Summary Report of Deloitte was placed only in the month of November, 2016, in the said meeting, Air Asia was further funded despite there is a report concluding Air Asia had financial dealing with a Global Terrorist Mr. Hamid Reza Malakotipour. The Petitioners made all their efforts to target R2 by raising this allegation. But it is nowhere mentioned how R2 has been involved in all these transactions, that apart, since R11 himself was there all through from 2012 till before he was removed. Since R11 was there for almost five years, what prevented R11 to raise this issue either in the Board Meeting or in the General Meeting some time before he was terminated? This has become an issue for him only after he was removed as Chairman of R1 Company. R11 was a Director even before he became

a Chairman, therefore, today this Petitioner could not make it as cause of action to target R2 without even placing any single document showing that R2 did something causing loss either to the company or to the Petitioners. By going through the averments of the Petition, there being neither a pleading nor a documentary material to place a prima facie case that some fraud has been taken place in Air Asia and R2 is cause for that fraud, such a grave allegation cannot be thrust upon him from air. Unless there is a consistent pleading and material to make this Bench believe that this averment could be correct, no need to wait until it was formally posted for main hearing. What law says is, there shall not be any inherent lacuna in the pleadings to make out a case, if enough pleading and material to prove an allegation is not there, no party shall be permitted to develop the case soon after case is admitted. In view of the discussion above, in this allegation also, we have not seen any prima facie case triable to post it for hearing. After all, these cases are decided on the affidavits and documents coming along with the pleadings. If case is not made out from the Affidavits, if such case is posted for completion of pleadings and hearing, howsoever big the company is, it is nothing but thrusting unnecessary burden upon the Courts and the opposite parties.

18. Though the Petitioners Counsel has not argued over the points set out, he has submitted that the following factors have to be considered for deciding the waiver application.

(a) What is the interest of the Petitioner in the company? Is it significant or substantial?

(b) What are the issues raised in the Petition and whether section 241 is the most appropriate jurisdiction to deal with the same?

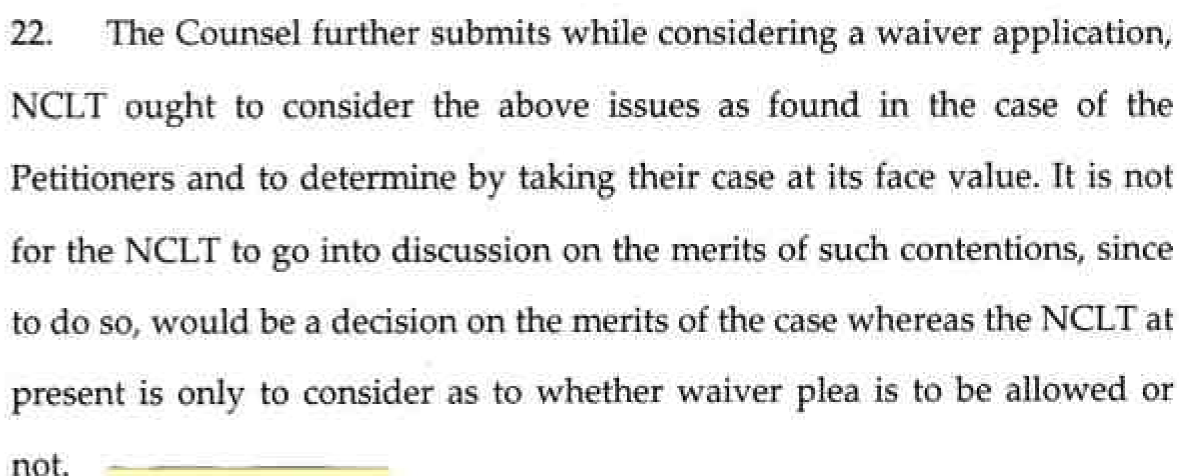
(c) Is this cause raised up substantial importance to the Petitioner or to any class of member or to the company itself or any public interest?

19. In support of the headings above, the Petitioner counsel submits that the NCLT is the appropriate forum to deal with the issues raised, if the issues raised are in nature of substantially affecting the interest of the member, class of members, the company or the public, then waiver ought to be granted and the aim would be to further a remedy rather than prevent it since the object of clothing NCLT with the power of waiver is to sub serve such purpose. Since Tata is such a company, any issue that arose in this company will have wide spread ramifications and consequence with wide spread affect over the public.

20. The Counsel submits that the Petitioners since have 18.37% equity Shareholding having a present market value of more than one lac crore rupees with a substantial interest in the company, since they have 18.37% equity in the company, if equity alone is taken into consideration, they are far in excess of 10% in the shareholding and 1/10th of the number also.

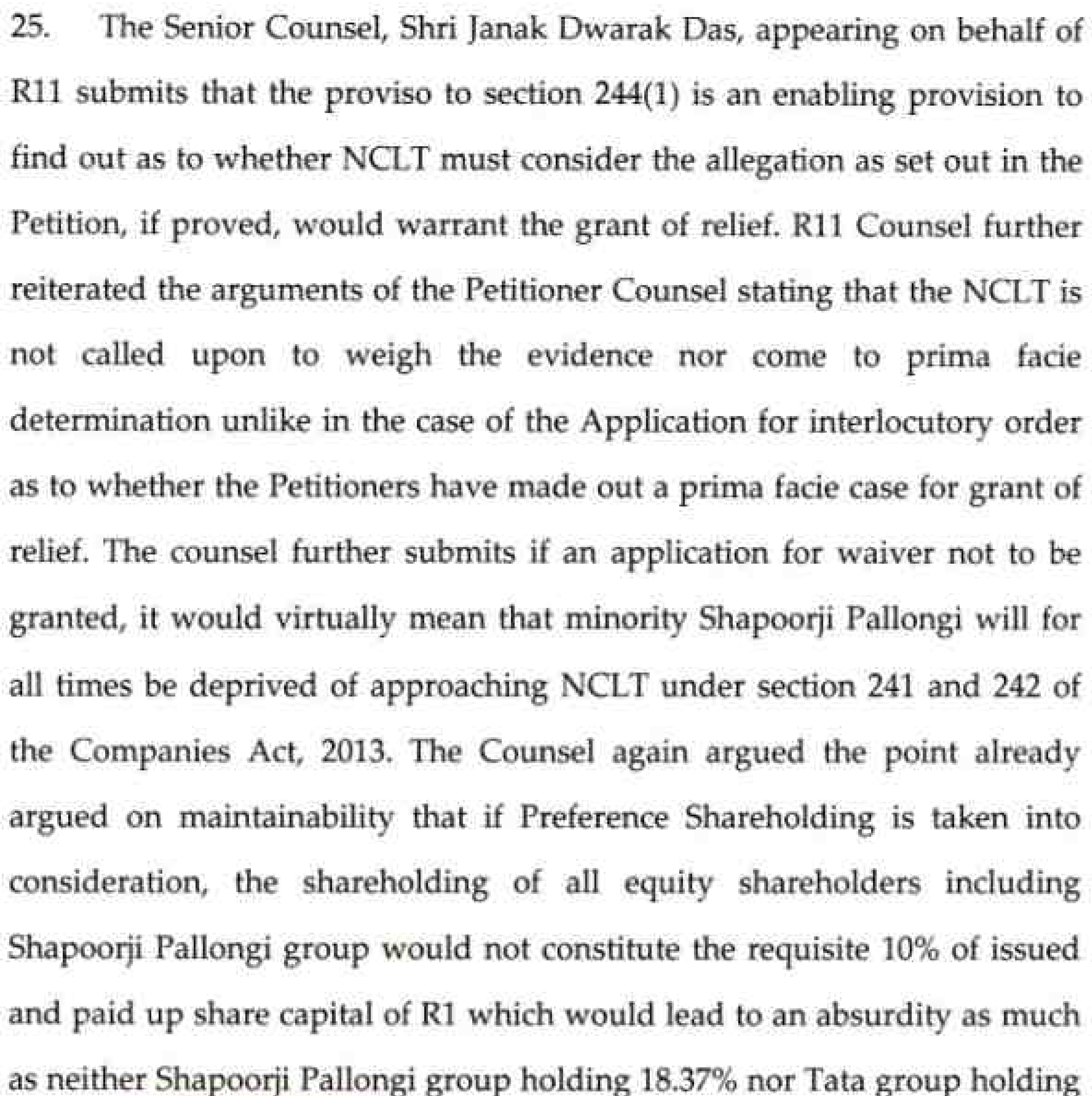
21. The counsel further submits that the issues having fallen within the ambit of section 241, no other court will have any jurisdiction except NCLT as envisaged under sec.430 of the Companies Act, 2013 therefore, in order to deal with these subject matters, the power of waiver ought to be applied to sub serve such purpose rather than defeat it.

22. The Counsel further submits while considering a waiver application, NCLT ought to consider the above issues as found in the case of the Petitioners and to determine by taking their case at its face value. It is not for the NCLT to go into discussion on the merits of such contentions, since to do so, would be a decision on the merits of the case whereas the NCLT at present is only to consider as to whether waiver plea is to be allowed or not.



23. The Counsel further submits that if the waiver application is sought to be rejected on the ground that it does not make out a case under sec.241, then, the only test to be applied for rejection at this stage would be those found in Order VII Rule 11 CPC. And what is to be looked into as is held in catena judgements in such case, is only to see as to whether the petition on the face of it, if taken averments as absolutely correct, makes out a cause of action to maintain the suit (***Saleembhai and Others v/s. State of Maharashtra and Others (2003 (1) SCC 557)***).

24. The Petitioners Senior Counsel Shri Sundaram relied upon the order of a Coordinate Bench of NCLT at Chennai decided on 18.11.2016 in ***Church of South India Trust Association v. Shri John Durai*** to say that waiver application can be considered at any stage.



25. The Senior Counsel, Shri Janak Dwarak Das, appearing on behalf of R11 submits that the proviso to section 244(1) is an enabling provision to find out as to whether NCLT must consider the allegation as set out in the Petition, if proved, would warrant the grant of relief. R11 Counsel further reiterated the arguments of the Petitioner Counsel stating that the NCLT is not called upon to weigh the evidence nor come to prima facie determination unlike in the case of the Application for interlocutory order as to whether the Petitioners have made out a prima facie case for grant of relief. The counsel further submits if an application for waiver not to be granted, it would virtually mean that minority Shapoorji Pallongi will for all times be deprived of approaching NCLT under section 241 and 242 of the Companies Act, 2013. The Counsel again argued the point already argued on maintainability that if Preference Shareholding is taken into consideration, the shareholding of all equity shareholders including Shapoorji Pallongi group would not constitute the requisite 10% of issued and paid up share capital of R1 which would lead to an absurdity as much as neither Shapoorji Pallongi group holding 18.37% nor Tata group holding

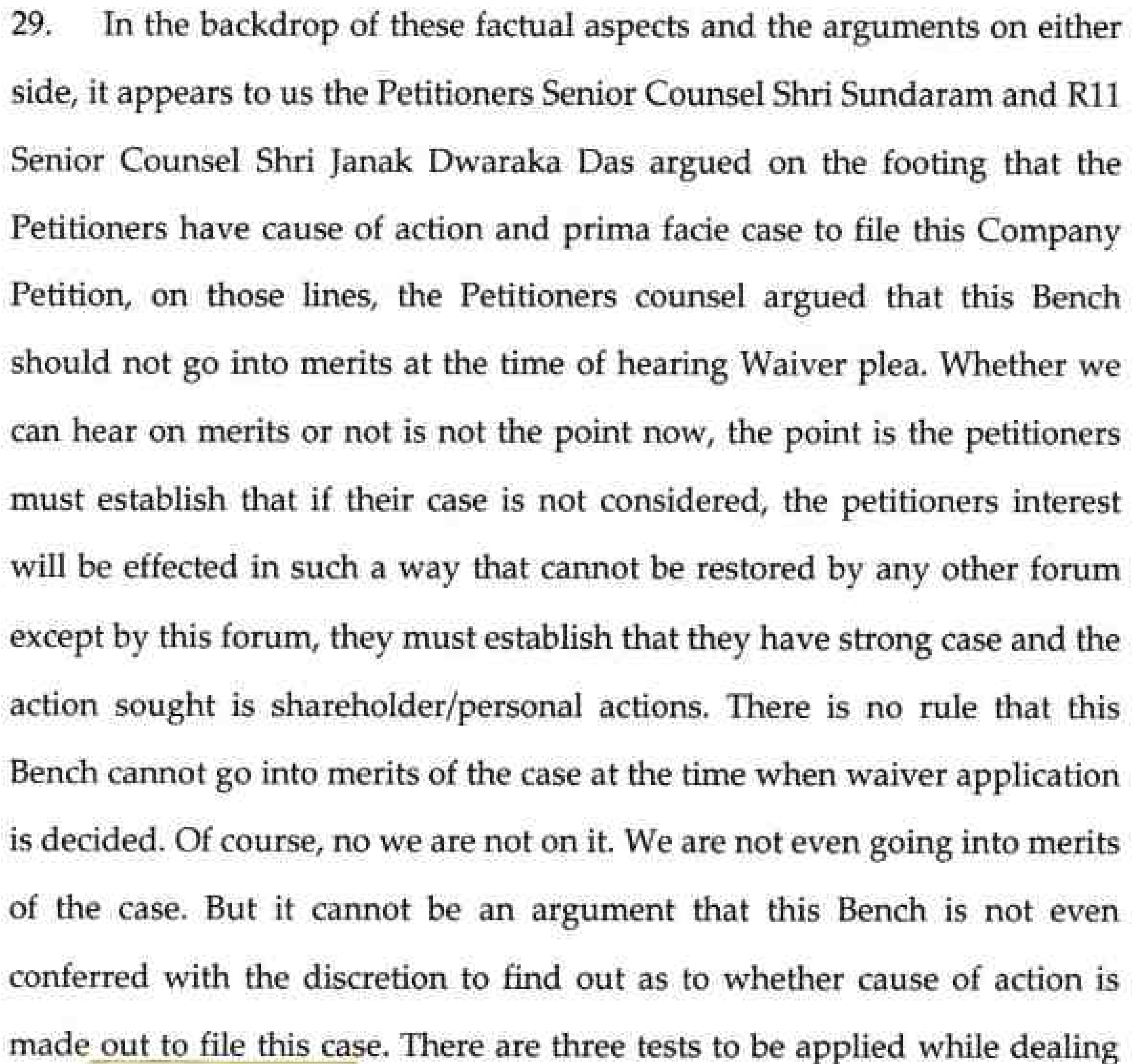
78% of equity would be able to maintain an action. Therefore, R11 counsel argument is that NCLT is not required at this stage to delve into merits of the allegations raised in the petition.

26. In reply to these submissions, the Senior Counsel Dr Abhishek Singvi appearing on behalf of the Respondents submits that waiver application cannot be filed causally, as a side wind or an afterthought. The Respondent Counsel referred Rule 83A of NCLT Rules to say that an Application under the Waiver provision is to be filed as mentioned in Form NCLT-9. By seeing the contents of the tenor of the Form, it is evident that it has to be filed along with the Petition but not after deciding the maintainability point taken up by the Respondent. The Counsel further submits that the waiver proviso cannot be interpreted in a manner so as to completely nullify the object of section 244(1). If waiver proviso is interpreted in an overbroad manner, then it would completely negate the requirement of section 244 and this would be akin to the proviso swallowing the principal section itself. The Legislative intention behind the objective threshold under sec. 244(1) is not only to weed out frivolous cases but even in other cases where substantial grievances may have been raised. The rationale behind this bar is to insulate the company from litigation by shareholders who do not meet the specified threshold. This waiver proviso could be invoked only in exceptional and compelling cases, he says, the Appellate Authority, for this reason alone held that a waiver may be granted only if ***"strong"*** grounds of waiver have been made out.

27. He relied upon three judgements ***Shri Raghuthilakathirtha Sreepadangalavaru Swamiji v. State of Mysore, AIR 1966 SC 1172), Santosh Ekoba Sonavane v. State of Maharashtra 2010 SCC online Bom 917; Director of Education (Secondary) and another v. Pushpendra Kumar & others (1988) 5 SCC 192*** to say that exception to a section created by way of proviso cannot swallow the main rule, a proviso cannot regulate a

substantive provision and derogation ought to be permitted only in exceptional and compelling cases, and departure from a main provision ought to be made only in exceptional and compelling circumstances where a strong case is made out. The Counsel further submits that this waiver could be invoked only when the Petitioners make out a case of supervening national interest or public interest, or where the complaining shareholder would be remediless if the waiver is not granted, or where an action of the offending party let to bring the party below the qualification criteria so as to deprive the Petitioner from raising cause of action to remedy the oppression.

28. The Respondent counsel submits that these petitioners have not met any of the criteria mentioned above. Therefore, this waiver application is liable to be rejected.



29. In the backdrop of these factual aspects and the arguments on either side, it appears to us the Petitioners Senior Counsel Shri Sundaram and R11 Senior Counsel Shri Janak Dwaraka Das argued on the footing that the Petitioners have cause of action and prima facie case to file this Company Petition, on those lines, the Petitioners counsel argued that this Bench should not go into merits at the time of hearing Waiver plea. Whether we can hear on merits or not is not the point now, the point is the petitioners must establish that if their case is not considered, the petitioners interest will be effected in such a way that cannot be restored by any other forum except by this forum, they must establish that they have strong case and the action sought is shareholder/personal actions. There is no rule that this Bench cannot go into merits of the case at the time when waiver application is decided. Of course, no we are not on it. We are not even going into merits of the case. But it cannot be an argument that this Bench is not even conferred with the discretion to find out as to whether cause of action is made out to file this case. There are three tests to be applied while dealing

with a case. When a case is filed, it is the bounden duty of the this court to see as to whether averments in the Petition has made out any cause of action to proceed with the said case under the respective section of law, thereafter it has to be seen whether any prima facie case has been made out to assess the probabilities of the petitioners succeeding if their averments and material thereto is not rebutted by the respondents, then it has to be seen whether there is any merit in the petition to grant the relief that the Petitioner has sought. There are three phases to be considered in the petition. (1) Cause of action test (2) prima facie case test and (3) merits (proof) test. The Petitioners to get their relief in the Company Petition, they have to pass through all these tests, wherever fail to pass the test, then there cannot be any chance for them to proceed any further.

30. We have already discussed all the allegations raised by the Petitioners to find out as to whether any cause of action is made out in any of the allegations raised by the Petitioner so as to invoke the jurisdiction under sec.241, but the misfortune is these Petitioners could not make out any cause of action in any of the allegations, as to this aspect, the Petitioners counsel or R11 counsel cannot say that this Bench cannot look into as to whether cause of action is there or not. In any case, if cause of action is not arose, that case has to be dismissed at first blush because no party is supposed to be permitted to improve his case soon after initiating the proceeding before a court of law. The only leave that could be granted to a party is if the Petitioners fail to produce any document that is not in possession or to produce a document or averment that is not within his knowledge except this the Petitioner cannot make any further improvement to the case originally filed. Such being the situation, most of the allegations raised by the Petitioners not being in relation to the affairs of the R1 company, the law being already established that when the party fails to make out any oppression or prejudice in the impugned acts, they cannot be considered as an acts covered under sec.241. If the averment is disclosing

oppression, this Bench without looking into whether it is true or false proceed with the case giving directions to other side to rebut the averment made against the said Respondents. If the rebuttal is good enough either not to believe or to disbelieve the averment of the Petitioner, then the Petition will be allowed/dismissed on merits. Knowing as to whether the averment is true or false is called as adjudication on merits. The decision on merits cannot be latched on to the cause of action test or prima facie case test. When party fails to make out cause of action, then that petition has to be rejected at the threshold itself and if the party fails to make out any prima facie case making this Bench to believe that the petitioner is probable to win the case on merits, then also there is no point to post it to hear from other side, because it is an age old doctrine that petitioning party must prove his case. If the case does not stand on its own, there is no point in continuing it to the next stage.

31. By reading the case of the petitioners, this Bench has already come to a conclusion no cause of action is made out in any of the averments raised by the Petitioners.

32. It is needless to say that the interest of the Petitioners means the economic interest of the Petitioners. It is not sufficient if the petitioners have substantial interest in the company, they have to make an averment that acts complying of have caused harm or injury to the economic interest of the Petitioners, but it has not been mentioned as to what economic interest has been effected by the acts of the Respondents with respect to the affairs of the Respondent company.

33. This Bench cannot get into the details of the business decision taken by the Company because the company is the best judge to decide what decision is prudent to the company, normally the decisions taken in the General meeting will not be questioned by court, as long as fraud or

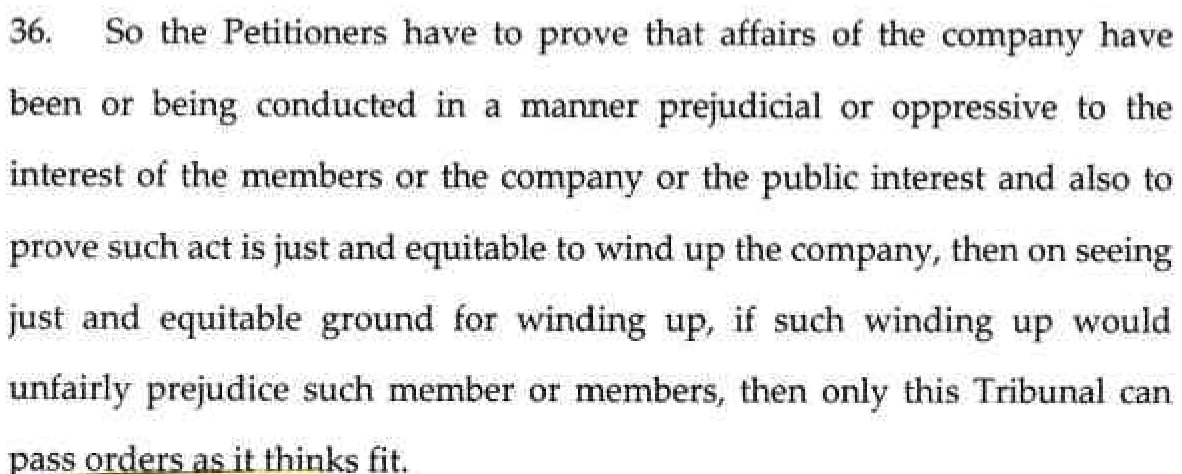
malafide is not involved and not to self-serve themselves and not to defraud the Petitioners. It is not even the case of the Petitioners that the Respondents have done something so as to make gain to themselves depriving the Petitioners. Moreover, that kind of allegation could be made only when shareholders have not participated in the management decision, here R11 who is the face of the Petitioners group, continued as Chairman of this company from December, 2012 to October 2016. Had there been any decision that affected the interest of the petitioners or the company, what prevented R11 to make an issue when he was at the helm of affairs of the company. R2 who is targeted in this case, in his tenure from 1991 to 2012 grew this company manifold making it $100billion conglomerate by 2011-12. The right of remedy under sec.241 will come into existence to remedy the grievance of the shareholders, if the shareholders, qua as members put to suffering, then it has to be understood that grievance is made out u/s.241. In the situation where the minority shareholders continue in the management, in fact, as head of the management, can today raise an allegation, saying "every decision is thrust upon me as fait accompli, my participation in those decisions cannot be treated as my actions, Mr. Ratan Tata worked as shadow director / ghost director, for that reason I could not act upon"? With this excuse, R11 cannot have a hat of shareholders to ensure that this company petition is filed by the Petitioners to carry this proxy litigation. Oppression remedy will trigger into action to prevent the decisions taken in the company adversely affecting the interest of the shareholders who have no chance to participate in the Board or to have their say carry some effect in the company. This action cannot be turned against the management which until yesterday decided every issue in relation to the affairs of the company.

34. Though there is surplus material to say that any of the allegations raised by the Petitioners have no truth in it this Bench has not gone into

material available for rebuttal to find out as to whether the Petitioners on their own have any case in the company petition.

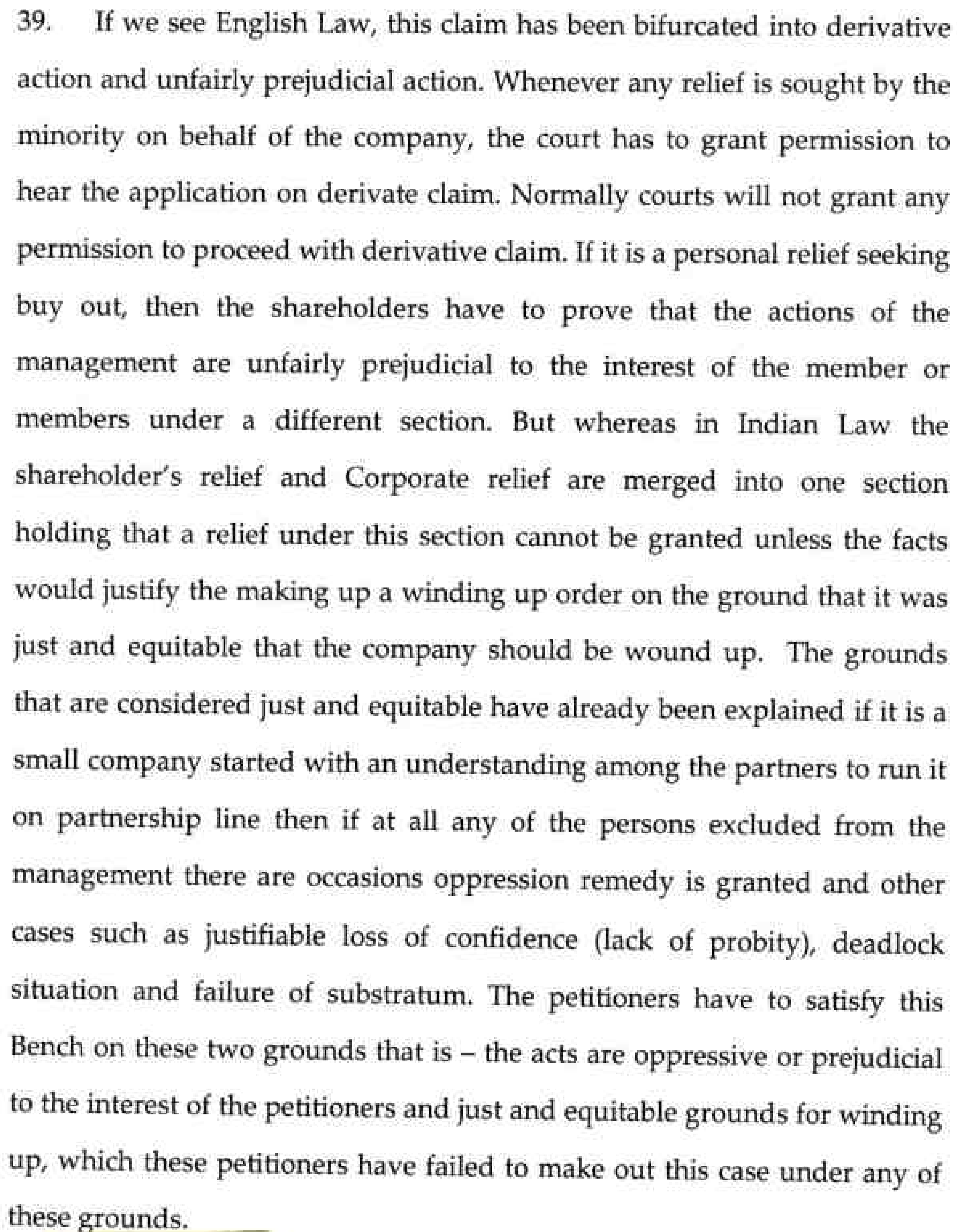
35. Here the Petitioners not only to prove that the Respondents acted in such a manner that is prejudicial or oppressive against the company or to say that they mismanaged the affairs of the company, but also to prove that the facts which would justify the making up of a winding up order on the ground that it is just and equitable that the company should be wound up. Though there is no specific definition to the phrase "just and equitable", over a period of time, grounds included under this head are, when there is justifiable loss of confidence by lack of probity which lead to serious occasions of fraud, director's breaches of duty, misappropriation of corporate assets, fraudulent payments out of company fund and failure to observe proper procedure as set of in Articles of Association (vide ***Loch v. John Blackwood Ltd. (1924) AC 783)***. When a deadlock comes in between the parties having equal control over the company and the differences are so irreconcilable causing extreme difficulty in working together which will raise vertical split in functioning of the company and also in a situation when the company fails to carry the business for the object and purpose for which it is meant or if the liabilities exceed assets causing losses consistently then also it could be said failure of substratum, which is also just and equitable situation for winding up.

36. So the Petitioners have to prove that affairs of the company have been or being conducted in a manner prejudicial or oppressive to the interest of the members or the company or the public interest and also to prove such act is just and equitable to wind up the company, then on seeing just and equitable ground for winding up, if such winding up would unfairly prejudice such member or members, then only this Tribunal can pass orders as it thinks fit.



37. In this case the petitioners at threshold itself failed to make out any cause of action to maintain the petition.

38. It is already decided that these Petitioners have no requisite qualification to maintain this petition. As to waiver, it is to be granted only rare and compelling situation, when no cause of action itself is present where is the question of granting waiver in a case like this.



39. If we see English Law, this claim has been bifurcated into derivative action and unfairly prejudicial action. Whenever any relief is sought by the minority on behalf of the company, the court has to grant permission to hear the application on derivate claim. Normally courts will not grant any permission to proceed with derivative claim. If it is a personal relief seeking buy out, then the shareholders have to prove that the actions of the management are unfairly prejudicial to the interest of the member or members under a different section. But whereas in Indian Law the shareholder's relief and Corporate relief are merged into one section holding that a relief under this section cannot be granted unless the facts would justify the making up a winding up order on the ground that it was just and equitable that the company should be wound up. The grounds that are considered just and equitable have already been explained if it is a small company started with an understanding among the partners to run it on partnership line then if at all any of the persons excluded from the management there are occasions oppression remedy is granted and other cases such as justifiable loss of confidence (lack of probity), deadlock situation and failure of substratum. The petitioners have to satisfy this Bench on these two grounds that is – the acts are oppressive or prejudicial to the interest of the petitioners and just and equitable grounds for winding up, which these petitioners have failed to make out this case under any of these grounds.

40. Waiver could be granted in a case where the economic interest of the Petitioners is affected in such a way that he could not make out anything from the residue remained in the company or the Petitioner remains remediless and not in a position to go before any other forum and the Petitioners shareholding has been reduced so as to prevent him to file a claim under sec.241, then in such situation, a waiver can be invoked, but in any case like this, there is no scope of invoking waiver enabling the petitioners to proceed with this company petition.

41. The Petitioner counsel argued that Civil Court has no jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of power conferred by or under this Act or any other Law for the time being in force, by the Tribunal or the Appellate Tribunal.

42. It is needless to say that Court can pass any order or decree unless jurisdiction is prohibited, whereas Tribunal can pass orders only when jurisdiction is conferred upon. For this reason, wherever legislature intended to confer this jurisdiction of this Tribunal, it has been explicitly mentioned to what extent it is conferred upon. The party if not in a position to make out case under this chapter, it is open to the party to approach Civil Court that is what has been said in section 430. Section 430 says as below:

"430. Civil court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action

taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

43. The Tribunal can exercise jurisdiction u/s 241, when the issues fall within the four corners of the said section, if the acts not reflecting prejudice or oppression or material change, parties cannot seek reliefs before NCLT. Suppose action is illegal devoid of oppression or prejudice or material change, this Bench cannot usurp into the jurisdiction not given and try the issue. Therefore, the argument that this Bench alone has jurisdiction, no other court has, is not correct. Section 430 does not say that any action in Companies Act has to be tried by NCLT, it is only said wherever jurisdiction is given, in those matters civil court shall not exercise jurisdiction.

44. In view of the reason above, the petitioners cannot insist upon this Bench to take up the issues where no allegation is ex facie disclosing either oppression. Prejudice or material change.

45. The senior counsel appearing on behalf of the petitioners argued almost on the same point before Honourable Supreme Court in another case namely **Chatterjee Petrochem (I) Pvt. Ltd v. Haldia Petrochemicals Ltd.& Ors. (2011) 10 SCC 466**which goes as follows:

"Mr. Sundaram submitted that the next issue involved the question as to whether the concept of legitimate expectation of a body of shareholders would be applicable to a large public limited company or only in quasi partnerships and family companies and whether in those situations also the sale of shares could be directed in order to break a deadlock. In this regard, reference was made to the decision of this Court in ***Kilpest Pvt. Ltd. & Ors. Vs. Shekhar Mehra [(1996) 10 SCC 696] and Hind Overseas Pvt. Ltd. vs. Raghunath Prasad***

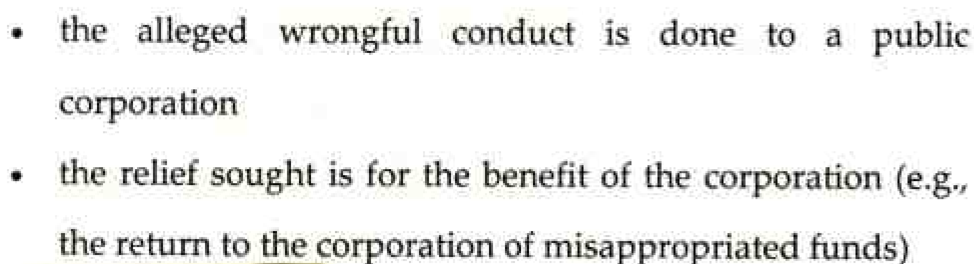
***Jhunjhunwalla & Anr. [(1976) 3 SCC 259].** In Hind Overseas Pvt. Ltd.'s case, this Court had held that when more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are excluded from management, the principles of dissolution of partnership cannot be liberally invoked. It was further observed that it is only when shareholding is more or less equal and there is a case of a complete deadlock in the running of the company on account of lack of probity in the management and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, a case for winding up may arise. However, in a given case, the principles of dissolution of partnership may apply if the apparent structure of the company is proved not to be the real structure and on piercing the veil it is found that in reality it is a partnership. Mr. Sundaram submitted that, in any event, the application of the just and equitable clause would depend upon the facts and circumstances of each case. A note of caution was also introduced that even admission of a petition could prejudice and cause immense injury to a company in the eyes of the investors, if ultimately the petition is dismissed. Mr. Sundaram urged that in a petition under Section 397/398 of the Companies Act, it was not always incumbent on the CLB to order the winding up of a company on the just and equitable principle, but in order to pass any order under Section 397, the Company Law Board would have to arrive at a specific finding that there was just and equitable reason to order such winding up."*

46. Ultimately Honourable Supreme Court in the above case, held that company petition u/s 397 &398 was not maintainable. The petitioners raised a ground that the allegations shall be taken as oppressive acts against the petitioners considering them as class because they have 18.37% equity relying upon cases decided in scheme matters, the object and purpose in those cases is different, in cases under section 241 are different, hence it is not applicable. Of course if material change happened on class basis, then yardsticks are different.

47. Let us narrow down to the point in what situations waiver could be granted. In English law, as we said above, shareholders can try on two remedies, one derivative action and another unfair prejudice claim. In both the situations, qualification criterion is not present, but in respect to derivative actions, the complainant shall take permission or leave to proceed with main hearing, unless such permission is given, it is not possible to proceed any further. It is called prima facie case test. By reading English law, it is understood, English Courts normally don't grant leave to proceed with main case, sometimes courts go to an extent, if any of the actions complained of can be cured by ratification of Board or general body, then direct the company to get it cured, instead of granting leave to prosecute. But when it comes to unfair prejudice remedy u/s 994 (Companies Act 2006 UK), there the members can make a claim over the grievance of members alone, may be because of this reason, no prima facie test bar has been set out to relief u/s 994. When it is corporate action, bar of prima facie test has to be passed, when it is personal action/shareholders action, such bar is not set out. Therefore, yardsticks are different to corporate actions and personal actions. Let us see what are the actions categorised as corporate actions.

48. English Courts find that a claim *must* be brought as a derivative action where wrongful conduct is alleged to have affected a corporation and that wrongful conduct affects all shareholders equally. The Courts identified three hallmarks of a claim that must be pursued by way of derivative action:

- the alleged wrongful conduct is done to a public corporation
- the relief sought is for the benefit of the corporation (e.g., the return to the corporation of misappropriated funds)



- there is no personal element (i.e., the complainant's personal interests are not uniquely and directly affected by the alleged wrongful conduct).

49. Looking at the scenario in England, the concern of the courts is more for the personal actions/shareholders actions, it is quite natural also, shareholders' actions will be the actions that speak about the proprietary rights of them, especially when the acts complained of solely to effect the economic interest of minority shareholders. In cases like this and more specially when the shareholders cannot get relief from any other forum, then we believe waiver is the window to ventilate their grievances in a cases like this, provided strong case is ex facie appearing on record.

50. If really, any such grievance were there to these petitioners, obviously it would become a ground for waiver and their point of substantial equity in the company would help them out, but their equity shareholding of 18.37% in the company on its own cannot become a ground for waiver.

51. Tests for invocation of reliefs keep changing from one situation to other, public interest and company interest are shown back seat as against members' interest, especially economic interest; public interest and company interest are actions fall under derivative actions. Now there are many Regulating and Monitoring authorities come into existence to watch the functioning and performance of the companies. If any violation in respect to public interest is noticed, then, in usual course, respective authority will take action, of course no such specific issue before us. To avoid frivolous grounds under the cause of derivative actions, English law bifurcated the actions and put almost iron curtain on derivative actions, lifting that curtain is made difficult by screening it with prima facie test. We are not blindly going by English law, but by seeing reason behind it to

curtail unnecessary litigation and to let the companies run their business in their usual course, we have adopted this to consider waiver plea. However, at the cost of repetition, it is hereby mentioned, that no issue raised in this case is related to personal action of shareholders, directorial complaint, in a company like this, will not fall within the ambit of shareholder action. It could not even be said that actions impugned in this case will have impact upon public, usually such situation will arise when business of the company effects the health of public or economy of the country, but by reading the petition, such issue is not present anywhere in the petition.

52. Therefore, we are of the view that the case seeking waiver must be for seeking shareholder action in relation to their economic interest, two there must be a case likely to succeed. On the top of it, the reasons for granting waiver shall be supported by fairly strong and compelling reasons. As to other points of public interest and company interest, we don't believe the issues manifested in the petition are fit for grant of waiver plea. If any violations are noticed to other Acts, there are other forums for it, if anybody is so bent upon to seek action on such violations, such as the issue raised in this case in relation to violation of SEBI regulations, they can complain to those forums, not before NCLT especially under section 241.

53. The petitioners' allegation, one after another have been dealt with, first they have not disclosed any cause of action, second they are not shareholder actions, hence forth, they are not actions fit to be considered for granting waiver.

54. In view of these reasons, the waiver is not granted, accordingly waiver application as well as main company petition are hereby dismissed without costs.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)