

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT) NO.56 OF 2024**

(Arising out of judgement and order dated 17.01.2024 passed by the Nation Company Law Tribunal, Kolkata Bench in IA(CA) No.183/KB/2023 in CP No.287/KB/2023

**In the matter of:**

Somangsu Biswas,  
Flat No. 4A & 4B Trinayanee  
22B Panchanantata Road  
Kolkata 700029

**.....Appellant**

Vs

1. The Calcutta Cricket & Football Club,  
A company within the meaning of  
Section 8 of the Companies Act, 2013  
having its registered office at 19/1,  
Gurusaday Road, Kolkata 700019,  
West Bengal, India.
2. Subrata Das  
President  
25 Palit Street,  
Kolkata 700019
3. Irfan Ahmed,  
P 21, Darga Road, Park circus,  
Kolkata 700017
4. Hirak Dasgupta  
R/N6, Mayfair Road  
Kolkata 700019
5. Wamique Zaki,  
4 Moitra Street,  
Second Floor,  
Kolkata 700017
6. Mr Saurav Chatterjee  
171/M/20 Picnic Garden Road  
Kolkata
7. Mr. Rajiv Ghosh

Suit No.# 279/28, Aje Bose Road  
Kolkata

8. Mr Anuj Kichlu  
Flat 803, Floor 8<sup>th</sup>  
Upohar, Tower 52052 Chakgaria  
Kolkata
9. Mr. Indrajit Roy  
Palacio, Flat -1b & 2b 6,  
Queens Park  
Kolkata 19
10. Mr Chittaprioy Bose  
2 Woodbum Court 1<sup>st</sup> Floor  
10 Elgin Road, Kolkata.
11. Mr Vivek Bhasin  
CL 256  
2<sup>nd</sup> floor, Sector 2, near CK Market,  
Saltlake City, Kolkata
12. Mrs Davina Thacker  
Thacker Residency  
Rowland Road, Kolkata
13. Sanaya Mehta Vyas  
10/1B, Diamond Harbour Road  
Kolkata 700027
14. Jeet Banerjee  
Flat No.1A, 12B,  
Mandeville Gardens  
Ballygunge  
Kolkata 700019
15. Ketan Patel  
1/6 Rowland Road  
Second Floor  
Kolkata 700020
16. Mr Karan Singh Grewal  
6A Clarke Street  
Kolkata 700026
17. Guneet S Grewal  
6A Clarke Street  
Kolkata 700026
18. Himanshu Ajmera

29B, Ballygunge Park,  
Ballygunge, Circus Avenue,  
Kolkata 700019

19. Vikrum Jairath  
1B Navrang  
6 Southend Park  
Kolkata 700029

.....**Respondents**

**Present:**

**For Appellant** : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Gaurav Mitra, Ms. Sonia Dube, Ms. Kanchan Yadav, Ms. Saumya Sharma, Ms. Heena Kochar, Advocates.

**For Respondents** : Mr. Ratnanko Banerji, Sr. Advocate with Mr. Rishav Banerji, Ms. Srishti Barman Roy, Mr. Ankur S. Kulkarni and Ms. Rishika Goyal, Ms. Priya S. Bhalerao, Advocates for R-1.  
Mr. Shaunak Mitra, Mr. Abhishek Singh, Mr. Anmol Agarwal, Advocates for R- 13.

**J U D G M E N T**  
**(Hybrid Mode)**

**[Per: Ajai Das Mehrotra, Member (Technical)]**

The Respondents No. 16 to 19 of the present appeal had filed Company Petition bearing CP No. 287/KB/2023 under Sections 241 and 242 of the Companies Act, 2013 (hereinafter referred to as the “**Act**”) before the Ld. NCLT, Kolkata alleging oppression and mismanagement in running of Respondent No. 1 Company, namely, the Calcutta Cricket & Football Club. Since the Respondents were not fulfilling the eligibility criteria prescribed under Section 244(1)(b) by the Act, an Interlocutory Application bearing I.A. (CA) No. 183/KB/2023 was filed before the Ld. NCLT seeking waiver of the eligibility prescribed in Section 244(1)(b) of the Act by invoking the powers given to the Tribunal in proviso to Section 241(1)(b) of the said Act.

2. The Respondent No. 1 is a Company incorporated under Section 8 of the Companies Act, 2013 and does not have any share capital. The Respondent No. 1 Company has approximately 1850 members. The Respondents No. 16 to 19, who were petitioners before Ld. NCLT, are stated to be members of the general committee of Respondent No. 1 Company. The Appellant herein is also a general committee member of the Respondent No. 1 Company.

3. Before we proceed ahead with the matter, it shall be relevant to go through Section 244 of the Act, which is reproduced below:

***“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 sub-section (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.”*

*(Emphasis supplied)*

**4.** Through the impugned order dated 17.01.2024, the Ld. NCLT has allowed the request of the Respondents herein for waiver of eligibility prescribed in Section 244(1)(b) of the Act.

**5.** The Learned Counsel for the Appellant submitted that they are aggrieved by the said order mainly on two counts, namely, that no notice was given to the Respondents when the matter was taken up for hearing by Ld. NCLT on 17.10.2023 and that the petitioners before the Ld. NCLT (Respondents No. 16 to 19 herein) were only 4 out of 1850 members of the Respondent No. 1 Company, amounting to only 0.002% of the total number of members.

**6.** It was submitted that Respondent No. 1 Company does not have any share capital and the requirement under Section 244(1)(b) in the case of Company not having share capital is that the petition be filed by not less than 1/5<sup>th</sup> of the total number of members, which otherwise means that petition can be filed by at least 20% of the members.

**7.** On the issue of notice, the Appellant has submitted that no Court notice was issued, though some of the Respondents in CP No. 287/KB/2023 and IA No. 183/KB/2023 were present on advance notice when the order was reserved on 17.10.2023.

**8.** On the merits of the waiver, it was submitted by the Learned Counsel for the Appellant that Ld. NCLT has not formed any opinion as to whether the said petition related to “oppression and mismanagement” or was frivolous. Reference was made to the judgment of this Tribunal in the case of *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors. reported in 2017 SCC*

OnLine NCLAT 261 wherein in paras 148 to 152, reproduced below, this Tribunal has laid down the guidelines for considering application for waiver:

**“148.** *Now there is a clear departure from earlier provision i.e. sub-section (4) of Section 399 whereunder the Central Government was empowered to permit the ineligible member(s) to file an application for ‘oppression and mismanagement’ by its executive power. Under proviso to sub-section (1) of Section 244 now the Tribunal is required to decide the question whether application merits ‘waiver’ of all or any of the requirements as specified in clauses (a) and (b) of sub-section (1) of Section 244 to enable such member(s) to file application under Section 241. Such order of ‘waiver’ being judicial in nature, cannot be passed by Tribunal, in a capricious or arbitrary manner and can be passed only by a speaking and reasoned order after notice to the (proposed) respondent(s). The basic principle of justice delivery system is that a court or a Tribunal while passing an order is not only required to give good reason based on record/evidence but also required to show that after being satisfied itself the Court/Tribunal has passed such order. To form an opinion as to whether the application merits waiver, the Tribunal is not only required to form its opinion objectively, but also required to satisfy itself on the basis of pleadings/evidence on record as to whether the proposed application under Section 241 merits consideration.*

**149.** *The Tribunal is required to take into consideration the relevant facts and evidence, as pleaded in the application for waiver and (proposed) application under Section 241 and required to record reasons reflecting its satisfaction.*

**150.** *The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether allegation pertains to ‘oppression and mismanagement’ of the company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.*

**151.** *Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the*

application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-

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

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

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

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

**152.** The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming opinion as to whether application merit 'waiver'."

*(Emphasis supplied)*

**9.** The Learned Counsel for the Appellant referred to another judgment of this Tribunal in the case of *ID Chugh & Ors. v. Vikram Kapur & Ors., Company Appeal (AT) No. 229 of 2022* wherein the judgment in the case of *Cyrus Investments Pvt. Ltd. & Anr. (supra)* was followed.

**10.** The Learned Counsel for the Appellant submitted that the need for exceptional circumstance for grant of waiver following the judgment of *Cyrus Investments Pvt. Ltd. & Anr. (supra)* was also emphasised in the judgment of this Tribunal in the case of *S. Ahamed Meeran Managing Director v. Ronny George son of Late Mr. V.R. George and others, 2018 SCC OnLine NCLAT 968.*

The Learned Counsel for the Appellant submitted that the impugned order is devoid of any reasons why the grant of waiver was expedient and necessary, and the only argument given in para 13 and 14 of the impugned order is that the Respondent Club is one of the oldest sports club having very rich heritage and it is in public interest that waiver be granted. The relevant paragraphs of the impugned order are reproduced below:

*“13. It appears from the averments in the petition that differences have crept into between the members of the Respondent Club, which is a club with the principal objective to promote and encourage various sports. It is stated to be one of the oldest sports clubs in Asia having immense repute and a very rich heritage.*

*14. It is seen that the objective of the club is to promote and encourage the playing of sports such as Cricket, Football, Hockey, Tennis, Golf, Rugby, Polo, Swimming and it has a long history and commands a good reputation. Therefore, keeping in mind the public interest at large, it is essential that such differences are addressed in right earnest and accordingly we grant waiver to the petitioners to file this petition under section 241-242 and seek the reply of the Respondents.”*

**11.** The Respondents No. 1 and 13 have supported the cause of the Appellant and had argued in favour of the Appellant herein.

**12.** The Learned Counsel appearing for the contesting Respondents No. 16 and 19 submitted that it is incorrect to say impugned order was passed ex-parte. Admittedly, advance notice was issued to all the Respondents and affidavit of service was filed before the Ld. NCLT demonstrating service upon all the Respondents. No issue was ever raised by the Respondents that they were not served. As recorded in the impugned order, the Learned Counsels for the Respondent Nos. 1, 2, 3, 4, 8, 9, 10, 11 and 14 were present during the hearing.

**13.** It was also submitted that the matter was reserved for order on 17.10.2023 and the order was pronounced on 17.01.2024 and none of the parties had requested to file reply to the petition in the intervening period. Even after hearing on 17.10.2023, when the order was reserved, no application was filed for recalling of the said order or for filing a reply. It was submitted that challenge to the order on the ground of insufficient opportunity was an afterthought.

**14.** The Learned Counsel for the contesting Respondents submitted that impugned order is reasonable. It was submitted that in their waiver application and the company petition, the petitioners had raised various allegations regarding oppression and mismanagement, some of which are as under:

(a) the respondent Nos. 2 to 14 have wrongfully convened the Annual General Meeting on 11<sup>th</sup> September, 2023 and wrongfully elected themselves as General Committee Members;

(b) Defalcation and Embezzlement of funds and concealment of related parties status by the respondent No.14;

(c) The respondent Nos 2 to 14 illegally contended that the petitioner Nos 1 to 4 have ceased to be General Committee Members of the Club;

(d) Violation of the order of the Division Bench of the Calcutta High Court dated 17<sup>th</sup> May, 2023.;

(e) AGM held on 11<sup>th</sup> September, 2023 is illegal, null and void;

(f) Allegation of embezzlement and siphoning of funds. Allegation of discretionary proceedings against respondent No.14;

(g) tabulation of charges of oppression and mismanagement against the respondents;

(h) particulars of the embezzlement of funds;

(i) prayer that the charges of embezzlement be properly investigated;

(j) prayer that disciplinary proceedings against the respondent No.14 be proceeded with.

**15.** It was submitted that the Ld. NCLT had considered the allegations and some of them have been reproduced in para 7 and 8 of the impugned order. The Ld. NCLT had also noted that there are differences between members of the Respondent club and that the principal objective of the club is to promote and encourage various sports and that it is oldest sports club in Asia having immense reputation and a very rich heritage and that Ld. NCLT kept in mind the public interest at large while granting waiver to the petitioners under Section 244 of the Act.

**16.** The Learned Counsel for the Respondents submitted that judgment in the case of *Cyrus Investments Pvt. Ltd. & Anr. (supra)* cited by the Appellant supports the case of the Respondents. The Respondents are members of the company and have brought out allegations of oppression and mismanagement. It was submitted that para 151 of the said judgment (reproduced supra) starts with word 'normally' and indicates that the conditions enshrined therein are only indicative. Para 152 of the said judgment notes that these factors are not exhaustive.

**17.** It was submitted that the Ld. NCLT has gone through the petition, recorded some of the allegations in paras 7 and 8 of the impugned order and have thereafter formed the opinion regarding oppression and

mismanagement. The 4 petitioners before the Ld. NCLT were committee members and similar allegations were also made by 90 members. The copy of the letter dated 22.08.2023 sent by 90 members to the Club Management was placed on record before Ld. NCLT. It was also noted by Ld. NCLT that the club is prestigious and has produced sportsmen for the country and it is in public interest to investigate the allegations.

**18.** It was also submitted that the judgments cited by the Appellant herein are not relevant to the facts of the present case.

**19.** The Learned Counsel for the Appellant referred to paras 13 and 14 of the judgment of Hon'ble Supreme Court in *Wander Ltd. and Another v. Antox India P. Ltd. reported in 1990 (Supp) SCC 727* wherein the Hon'ble Supreme Court has held that appeal court cannot substitute its discretion in place of the discretion exercised by the trial court. The relevant portion of the said judgment is reproduced bellow:

**“13.** *On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a mis-direction in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*

**14.** *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not*

reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."

*The appellate judgment does not seem to defer to this principle."*

*(Emphasis supplied)*

**20.** The Learned Counsel also relied upon the judgment of Hon'ble Supreme Court in *Laxmikant V. Patel v Chetanbhai Shah and Another* reported in (2002) 3 SCC 65 wherein the Hon'ble Supreme Court has held as under:

"17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial court and substitute its own discretion therefor except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the courts under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has

*been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion (see Wander Ltd. v. Antox India (P) Ltd. and N.R. Dongre v. Whirlpool Corpn.). However, the present one is a case falling within the well-accepted exceptions. Neither the trial court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a later stage. The discretion exercised by the trial court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.”*

*(Emphasis supplied)*

**21.** It was also submitted that no appeal has been filed by the Club/Respondent No. 1 objecting to the waiver. Further the present appeal has been filed only by one of the members of the general committee. The appeal is not maintainable as much as the Appellant has no authority to represent general body of the members or the general committee of the Club.

**22.** We have heard the Learned Counsels for the Appellant and the Respondents and have perused the material on record.

**23.** Applying the test given in para 151 of the judgment in the case of *Cyrus Investments Pvt. Ltd. & Anr.*, the relevant portion of which is reproduced in para 9 of this judgment (*supra*), we find that the petitioners before the Ld. NCLT were members of the Respondent No. 1 Company/Club. We also note that the proposed application pertains to oppression and mismanagement

and the major allegations have been noted by the Ld. NCLT in paragraphs no. 7 and 8, which are reproduced below:

*“7. This Respondent Nos. 2 to 14 are illegally contending that the Petitioner Nos. 1 to 4 have ceased to be Directors and/or General Committee Members of the Respondent No. 1 Club on the basis of the illegal Annual General Meeting dated 11 September 2023, which meeting is impugned in the present proceeding.*

*8. In the said petition, the Petitioners have raised various allegations of oppression and mismanagement against the Respondents. It also appears that a Suit has been filed before the Civil Court at Alipore which is pending disposal and where an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 has been filed.”*

**24.** We also note that in paras 13 and 14, the Ld. NCLT has recognised that there are differences between the members of the Respondent Club, which was established with the principal objective to promote and encourage various sports and also carries good reputation, and therefore it is in the public interest that these differences are addressed in right earnest. Further it is nobody's case that these allegations were made earlier in any proceedings and stand decided/concluded. Thus, the requirements prescribed in sub clauses (i), (ii) and (iii) of para 151 of the judgment of *Cyrus Investments Pvt. Ltd. & Anr. (supra)* are fulfilled. The only issue left is whether the Ld. NCLT was satisfied about the exceptional circumstances made out to grant waiver or not.

**25.** The Ld. NCLT has noted the allegations of oppression and mismanagement, and differences between the members, and has noted the public interest involved in the Section 8 company promoting sports.

**26.** The issue of waiver has been considered and allowed in the following judgments of this Tribunal:

i. *Brookefiled Technologies Pvt. Ltd., Represented by Director, Mr. Pawan Kumar Jain and Another v. Shylaja Iyer and Others, reported in 2020 SCC OnLine NCLAT 829*, wherein this Tribunal had granted waiver and relevant portion of the judgment is reproduced as under:

**“Power of Waiver**

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

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

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

**52.** *It is to be remembered that when no case is made out by the petitioner relating to the 'oppression and mismanagement' of the affairs of the company that the concerned Tribunal has the requisite power not to grant any relief in a given case.*

**53.** *Even though the Tribunal in the impugned order in IA No. 170 of 2020 in C.P. No.110/BB/2019 dated 05.06.2020 had observed among other things that the contention of the Respondent that Civil Court has already decided the issues and thus the present application and main company petition are not maintainable, are baseless on facts and law etc.; these are in the considered opinion of this Tribunal only rendered at an interlocutory stage, the same cannot preclude the Appellants to*

raise all factual and legal pleas like the locus standi of the petitioner (First Respondent) to file petition under section 241 of the Companies Act, 2013 Issue of Estoppel, Res Judicata, Delay/Laches in its Reply/Response/Counter and to advance arguments on merits at the time of final hearing of main petition before the Tribunal and that the Tribunal is to pass orders on merits in a fair, just and dispassionate manner uninfluenced and unhindered with any of the observations made by this Tribunal in the present Appeal. Suffice it for this Tribunal to point out that a petition at the initial stage cannot be thrown out if the averments contained therein require detailed/elaborate/an in-depth examination/inquiry based on relevant materials/evidence, if any, to be let in by parties in a given case.

**Disposition**

**54.** *The First Respondent/Petitioner has 9% of the total share capital even after a shareholding was reduced from 45%, by means of 'Rights Issue' which is a subject matter of the main company petition. The Tribunal, has exercised its discretion and opined that a meritorious litigation cannot be thrown at threshold without examining the merits of the case and further observed that the First Respondent/Petitioner had made out a prima facie case to entertain the main company petition for its final adjudication and resultantly allowed the waiver application IA No.170 of 2020 in C.P.No.110/BB/2019 dated 05.06.2020 which in the considered opinion of this Tribunal requires no interference. Viewed in that perspective the instant Appeal fails.*

*In fine, the Appeal is dismissed. No costs.”*

*(Emphasis supplied)*

- ii. This Tribunal in the case of *Photon Infotech Pvt. Ltd. and Others v. Medici Holdings Ltd. and Others*, reported in 2018 SCC OnLine NCLAT 632, has allowed waiver and the relevant portion of the judgment is reproduced below:

**“16.** *Going through the application which was filed for waiver by the Respondent no. 1 we find that the application pertains to 'oppression and mismanagement'. We keep in view the pleadings of alleged oppression and mismanagement. There is no dispute that the original applicant/respondent no. 1 is member of the company. It cannot be said that the application is frivolous. It is not a case that similar allegations of 'oppression and*

*mismanagement' were earlier made and stood decided or concluded (please see Para 146 of the judgment in the matter of Cyrus Investments). It has already been held in Para 150 of the judgment in the matter of Cyrus Investments that Civil Court has no jurisdiction to entertain any suit or proceeding in respect of alleged acts of 'oppression and mismanagement' if it is preferred by any member of the company. When any member of the company complains of 'oppression and mismanagement' in the company, in view of the Companies Act, the issue has to be decided by NCLT. Thus only because the Respondent no. 1 filed suit in the High Court would not be a Bar to present application as the question of oppression and mismanagement has to be decided by NCLT.*

**17.** *In the present matter Respondent no. 1 earlier moved the Central Government and the permission was granted by orders dated 06.05.2015 (page no. 208) which appear to have been challenged in writ petition. It has been argued that writ petition was filed on the basis that the officer who heard the parties did not pass the concerned orders. It appears that subsequently the concerned officer passed another order on 03.07.2015 (page no. 232) whereby the necessary permission was granted to file petition before Company Law Board under section 397 and 398. No doubt it is stated that even the second order has been challenged in writ petition. We are making reference to these orders for the limited purpose that the Respondent no. 1 is not running from pillar to post without having a substantial matter. It did have an order in its favour under section 399(4) of the Old Act where the Central Government could permit if there were circumstances making it "just an equitable so to do" to authorize a Member to file the application to CLB. In fact the proviso under section 244 (1) is not even circumscribed by any conditions like "just an equitable" like in section 399(4) and rather it is open ended giving wide discretion to NCLT. Of course all judicial powers and discretions are to be so exercised that it should not be arbitrary or whimsical. Interest of justice has always been the guiding factor.*

**18.** *No doubt in the impugned order NCLT, reading the proviso below section 244 as it is, discussed whether prima facie case is made out and observed that the respondents had not shown certain factors, but we are ignoring those observations in view of judgment in the matter of Cyrus. However, we on our analysis of the matter find that it is a fit case for grant of waiver.*

**19.** *In reply to arguments of the Ld. Counsel for respondent no. 1 (original appellant) it is argued by Appellants (see brief written submissions on behalf of the appellants filed on 19.03.2018) that appellant no. 5 is not a shareholder of the 1st appellant company, nor is it involved in its management; and that appellant no. 5 is only the transferee under a Business Transfer Agreement signed by the 1st appellant company; and that "It is a bona fide third party purchaser of the 1st appellant's assets at a fair value". We find that when it is shown that substratum itself of the company has been transferred, it is an exception circumstance, and waiver as sought should be granted."*

*(Emphasis supplied)*

**27.** We note that besides the company petition by 4 members, 90 members of the Respondent/Club have raised various issues of mismanagement in their letter to Club Management dated 22.08.2023. The Ld. NCLT has noted the allegations of 'oppression and mismanagement' in the petition before exercising its discretion to allow waiver. A decision on merits of the allegation was not warranted at this stage, as Ld. NCLT will have to consider it while deciding the main petition under Section 241 read with Section 242 of the Companies Act, 2013.

**28.** In the conspectus of this case, where petition under Section 241 read with Section 242 of Companies Act, 2013 is filed by four members of the Section 8 company alleging acts of oppression and mismanagement, and the issue of mismanagement is also raised by 90 other members in their signed letter to Club Management, and considering the nature of activities of the company involving public interest, and that similar allegations were not considered or decided earlier, we find no reason to interfere in the discretion exercised by Ld. NCLT in allowing waiver under Section 244 of the Companies

Act, 2013. Accordingly, the appeal is dismissed. All connected pending application(s), if any, are closed. No order as to costs.

**[Justice Yogesh Khanna]  
Member (Judicial)**

**[Mr. Ajai Das Mehrotra]  
Member (Technical)**

***Place: New Delhi  
Dated: 02.04.2025  
Ram N.***