

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 399 of 2018**

[Arising out of Order dated 4<sup>th</sup> September, 2018 passed by the National Company Law Tribunal, Bench III, New Delhi in CA No.54/C-III/(ND)/2018 in CP No. 84/(ND)/2018.]

**IN THE MATTER OF:**

**1. Mr. Manoj Bathla**

50-A, Saket,  
Opposite Punjab National Bank,  
Near Gole Market,  
Meerut, Uttar Pradesh.

**2. Sarthak Madhur Publications Pvt. Ltd.**

Represented by its Authorised Representative  
B-34, Madhuban, Ground Floor,  
Delhi – 92.

**3. Mr. Prakash Chand Bathla**

“Basera”, Main Road, Dwarikapuri,  
Musaffarnagar, Uttar Pradesh – 251 001.

**4. Mrs. Krishna Kumari**

“Basera”, Main Road, Dwarikapuri,  
Musaffarnagar, Uttar Pradesh – 251 001.  
All resident of 50-A, Saket,  
Opposite Punjab National Bank,  
Near Gole Market,  
Meerut, Uttar Pradesh

**...Appellants**

**Vs**

**1. Mr. Vishwanah Bathla**

Resident of 9-A, Shivlok Colony,  
Western Kutchery Road, Meerut,  
Uttar Pradesh.

**2. Registrar of Companies,**

4<sup>th</sup> Floor, IFCI Tower,  
61, Nehru Place,  
New Delhi – 110 019.

**...Respondents**

**Present:**

**For Appellants:** Mr. Sanchit Garga, Advocates.

**For Respondents:** Mr. P. K. Mittal, Advocate.

**J U D G M E N T**

**BANSI LAL BHAT, J.**

Respondent No. 1 – ‘Vishwanath Bathla’ filed C.A. No. 54 of 2018 before National Company Law Tribunal, Bench III, New Delhi (hereinafter referred to as ‘Tribunal’) seeking waiver of requirement specified in Section 244 of the Companies Act, 2013 (hereinafter referred to as ‘Act’) for prosecuting the main Company Petition filed under Section 241 of the Act alleging acts of oppression and mismanagement against Respondents therein who figure as ‘Appellants No. 1 to 3’ in this appeal. On consideration of the matter, the Tribunal was of the view that the status of Respondent No. 1 as shareholder holding shares above the threshold limit not being disputed by the Appellants and evidence in relation to share allotment and share transfer not being produced by the Appellants, grant of waiver of requirement postulated under Section 244 of the Act was warranted. Aggrieved thereof the Appellants including those arrayed as Respondents 1 to 3 in the application before the Tribunal preferred the instant appeal questioning legality and correctness of the impugned order primarily on the ground that the shareholding of Respondent No. 1 being zero percent, he does not fall within the definition of “*member*” under Section 2(55) of the Act.

2. It is contended on behalf of Appellants that the Tribunal has waived the eligibility condition of Respondent No. 1 despite the fact that he admittedly holds zero percent shareholding in 'Sarthak Madhur Publications Pvt. Ltd.' – Respondent No.2 (hereinafter referred to as 'Company'). It is contended further that the impugned order has been passed ignoring the dictum of law laid down by this Appellate Tribunal in Company Appeals No. 133 and 139 of 2017 titled 'Cyrus Investments Pvt. Ltd. & Anr.' Vs. 'Tata Sons Ltd. & Ors.', in terms whereof, apart from other requirements the primary consideration is that the applicant seeking waiver should be a member of the Company in question. It is further contended that the petition under Section 241 filed by Respondent No.1 does not relate to allegations of oppression and mismanagement and that Respondent No. 1 has grievance only as regards transfer of his shareholding to Appellant No. 1 in respect whereof remedy is available under Section 58/59 of the Act and not under Section 241/242 of the Act.

3. Respondent No. 1 has filed reply denying the allegations in appeal. It is submitted that the shareholding of Respondent No. 1 has been illegally reduced to 0.33% and the transfer of shares being illegal is liable to be set aside as all actions had been done behind his back by forging and fabricating the documents which have been suppressed. Respondent No. 1 has depended the impugned order contending that the Appellant No. 1, being an elder brother, was looking after the accounting and secretarial records and Respondent No. 1 had immense faith in him but Appellant No.1

skillfully managed to transfer the shareholding of Respondent No. 1 by forging and fabricating the documents, in gross breach of trust which construed oppression as against Respondent No.1. Thus, it is submitted, this was a fit case for grant of waiver.

4. Heard learned counsel for the parties and perused the record. The case setup by Respondent No. 1 before the Tribunal for seeking waiver of the requirement under Section 244(1)(a) of the Act for prosecuting the main Company Petition alleging acts of oppression and mismanagement on the part of Appellants may briefly be noticed. It was alleged that Respondent No.1 held 25% shares in the Company which were reduced to NIL or Zero percentage due to oppressive act of Appellants. Initially at the time of incorporation of the Company in the year 2005, Respondent no. 1 held 2500 shares while his father – Appellant No.3 held 5000 shares and his brother - Appellant No.1 held 2500 shares, the subscribed and paid up capital being to the extent of 10,000 equity shares. Allegedly acts of oppression and mismanagement committed in relation to other family owned companies as well and the disputes were sub-judice before various Tribunals. It was alleged that though Respondent No.1 was a member of the Company and also a Director, Appellant No.1 managed to increase the shareholding strength of Appellant No.3 from 5,000 shares to 4,20,000 shares and also issued fresh 3,40,000 shares to mother – figuring as Appellant No.4. All this is alleged to have been done without the knowledge of Respondent No.1 whose shareholding strength was brought down from 25% to 0.33%. It is on

the strength of these allegations that the alleged illegal transfer of shareholding was being assailed and grant of waiver was the only way out to do complete justice to Respondent No.1 by rendering him eligible to prosecute the main Company Petition. Appellants herein who figured as Respondents before the Tribunal contested the application on the ground that since Respondent No.1 presently held Zero percent of the share capital of the Company, as such, he could not be considered as a member. Reliance has been placed on judgment of this Appellate Tribunal rendered in 'Cyrus Investments Pvt. Ltd. & Anr.' Vs. 'Tata Sons Ltd. & Ors.' (supra) to press the argument that the Respondent No.1 currently not being a member of the Company, the application seeking waiver was to be outrightly rejected.

5. We have given our anxious consideration to the arguments advanced at the Bar. In the wake of allegations of oppression of Respondent No.1 in the form of reduction of his share capital from 25% to a bare 0.33%, albeit by manipulation, fabrication of record and preparation of false documents which are not forthcoming from the record of Appellants, it would be a travesty of justice to non-suit the Respondent No.1. Learned Tribunal did not find the explanation, offered by Appellant No.1 for non-production of documentary evidence in relation to share allotment and share transfer, convincing and we find no compelling reason to take a contrary view. Admittedly, Respondent No. 1 was a shareholder of the Company since its incorporation. It is not the Appellant's case that Respondent No.1 was holding shares below the threshold limit. Appellants have not also been

able to demonstrate that the number of members of the Company exceeded 10. Admittedly, the parties belong to one family. Respondent No.1 and Appellant No.1 are brothers while Appellant No. 3 and 4 are their parents. It is not disputed by the Appellants that both brothers i.e. Respondent No.1 and Appellant No.1 held 25% shareholding each in the Company while their father Appellant No. 3 held 50% shareholding. Whether the shareholding of parents stated to have been increased between year 2009 to 2011, the substantial hike resulting in reduction of shareholding of Respondent No. 1 to 0.33% was an act of manipulation on the part of Appellant No.1 or had been done with the consent and approval of Respondent No.1 who too was the Director of the Company, is the core issue in the Company Petition, which, alongwith other contentions raised may or may not establish oppression as alleged by Respondent No.1. In the absence of relevant record, being withheld and explanation for such withholding not being found plausible and convincing, Respondent No.1 cannot be held as having been divested of the status of a '*member*' of the Company for limited purpose of waiver of the requirement as specified in Section 244(1)(a) of the Act. The judgment relied upon by the Appellants does not squarely apply in the facts and circumstances of the instant case. We are convinced that refusal to grant waiver would amount to adopting of a blood thirsty approach to a case where relief is sought on the allegations of oppression manifesting in the form of manipulation, fabrication and preparation of false record. When the status of Respondent No.1 being a shareholder with 25% shareholding

at the time of incorporation of the Company and also being one of the founding Directors of the Company is admitted, it cannot be contended that he ceased to be a “*member*” upon reduction of his share capital and that too when the transfer of shareholding is alleged to be clandestine and product of fabrication and forgery.

6. Since, we find no infirmity in the impugned order, we decline to interfere. The appeal, being devoid of merit, stands dismissed. There shall be no orders as to costs.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

**NEW DELHI**

**30<sup>th</sup> April, 2019**

AM