

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

**Company Appeal (AT) No.54 of 2026**

(Arising out of Order dated 16.12.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in C.P. No.1105(CA)/(MB)2018)

**IN THE MATTER OF**

**1. Sanjit Instruments Private Limited**

Through its Director  
Having its Registered Office at:  
J-33, M.I.D.C., Ambad,  
Nashik - 422 OIO  
Maharashtra

**...Appellant No.1**

**2. Mr. Sunil Jagannath Bagul**

Flat No. T - 904, T Eka Society,  
Eka One Life, Evana Circle, Pathardi Gaon,  
Nashik - 422 010, Maharashtra

**...Appellant No. 2**

**3. Mrs. Megha Sunil Bagul**

Flat No. T - 904, T Eka Society, Eka One Life,  
Evana Circle, Pathardi Gaon, Nashik - 422 010,  
Maharashtra

**....Appellant No. 3**

**Versus**

**Mr. Arvind Jagannath Bagul,**

Swastik, Sharanpur Road,  
Near Kulkarni Garden,  
Nashik - 422 002 Maharashtra

**...Respondent**

Present:

For Appellant : Mr. Sandeep Bajaj, Ms. Vandana Sehgal, Mr. Vikas  
Soni, Mr. Mayank Biyani, Ms. Tanishka Kapoor,  
Advocates

For Respondent : Mr. Ramdas Rajguroo, Mr. Aishwarya Rajput, Advocates

**JUDGEMENT**

**Per Justice Sharad Kumar Sharma, Member (Judicial)**

The appellant before us, is an opposite party to the proceedings filed by the respondents by invoking the provisions contained under Section 241 – 242 of

the Companies Act. The proceedings thus instituted was numbered as C.P. No.1105(CA)/(MB)2018. By virtue of the impugned order, the company petition has been disposed of by the learned Tribunal along with the directions particularly as it has been contained in para – 12 of the impugned judgement dated 16.12.2025 passed in C.P. No.1105(CA)/(MB)2018 and, primarily, the directions have been based upon the implications flowing from the powers those were exercised by the Ld. Tribunal, under Section 242(2)(b) of the Companies Act.

2. The brief facts, which are inevitably required to be referred to are given hereunder. The appellant contends that, the appellant company has been registered as a private limited company, having its incorporation as per the provisions contained under the Companies Act of 1956. Ever since its inception, the company was said to have been engaged in the business of manufacturing and supply of electrical and electronic instruments. The appellant Nos.2 and 3, who are the directors and the shareholders of the appellant No.1 company, contend that at the relevant point of time, they were holding about 8,249 shares i.e. equivalent to a fully paid up equity shares of 33.39% and 7,323 shares amounting to 29.64%, respectively, with the paid up share capital of the company of Rs.24,70,500/-.

3. Their case has been that, they have been closely associated with the functioning of the appellant No.1 and also in the capacity of being the directors and shareholders of the company i.e. appellant No.1. They had also been the directors and shareholders of M/s. Sanjit Instruments Private Limited, a company which too was registered under the provisions of Companies Act, 1956,

having been thus incorporated so in the year 1990. The respondent herein was one of the promoter/directors of the appellant No.1, who holds 7,853 fully paid up equity share of Rs.100/- each aggregating to Rs.7,85,300/- shares i.e. equivalent to being 31.79% of the total equity shareholdings of appellant No.1. The respondents too have been involved in the affairs of appellant No.1 company, for several years together ever since its incorporation, and they had been entrusted with the responsibilities relating to carrying out the marketing coordination with the customers and other vital administrative functions relating to the affairs of the appellant No.1 company. And in relation thereto, as to up to what extent they exercised the functions in controlling the affairs of the company, we could well derive it from the response filed by the appellants before the Ld. NCLT in aforesaid company petition.

4. In the company petition, the appellant contended that respondent No.1 was promoted by respondent No.2, as a proprietary concern under the name and style of M/s. Swastik Engineers and had developed the business in electronic tester as its first product of the company by making an initial investment of about Rs.2.50 lakhs and due to this project, the authorities gave M/s. Swastik Engineering, an extension of time period for completing of the building and other infrastructure, because of the petitioners i.e. respondents herein, were not in a position to invest in building up the company in order to carry out the project of development of the electronic testers as its first produce.

5. The appellant contends, that the petitioners/respondents were working with the company called as M/s. Intel Telecommunications, which was almost on the verge of closing, and thus the respondent No.2 decided to convert the

propriety concern in two private limited companies, with respondent No.2 as its promoter director, and later on decided to incorporate the name of the petitioner, as its promoter director of the respondent No.1 company. The appellant in response submitted before the learned Tribunal, that it could be found out, that as per the minutes of the meeting of the Board of Directors and EGM as held on 15.11.2017 and 27.12.2017. The petitioners were shown to be working as the whole time director and Mr. Purvesh Bagul, son of the petitioner, was shown to be then working as the manager of respondent No.1 company. It was alleged by the appellants, in response to the company petition that, there has been an apparent misuse of powers, acts have also been done in a manner which were in breach of trust in the management by allowing one M/s Aasua Engineering Solutions Private Limited, to use the existing customers. It was the case of the appellant that its because of the anti-business activity of the petitioner/respondent and Mr. Purvesh Bagul, it had caused a financial loss of about Rs.50 lakhs, which otherwise there could have been tremendous financial gain for appellant No.1 company. The entire action of the respondents was nothing but a well hatched conspiracy between the father and the son to take the advantage of the powers, that was vested with them of the appellant company, and these facts sufficiently prove that the respondents/ petitioners have been working with ulterior motive to take an advantage of the appellant No.1 company and set up the business of his son at the cost of the appellant No.1 company.

6. The appellant pleaded that because of the fact, he was involved in the affairs of Respondent Company, regulating its various vital functions. With the

gradual process, the respondent's son Mr. Purvesh Bagul, without taking appellants into confidence started venturing to other project. The respondents are shown to have a demand of Rs.1,71,00,000/- vide their email of 07.03.2016, alleging to be the amount which were payable as various transactions, which were pleaded to be held between appellant No.1 and SMPL since 1997.

7. It could be seen that respondent's son has another company namely M/s. Aasua Engineering Solutions Private Limited. Its object as per object clause as contained under Clause 3A(2), the business activities were almost similar to one as that of appellant company. Despite of incorporation of M/s. Aasua, Mr. Purvesh Bagul still held a key managerial position in appellant company. It came to the knowledge of appellants that Mr. Purvesh Bagul had been writing various letters and emails to the financial institutions, to defame the appellant and giving wrong information as regards business activities of appellant No.1. This fact could be revealed when appellant came to know of one of the communications which was written by respondent Mr. Purvesh Bagul to Yes Bank before which appellant's proposal for fresh term loan was pending consideration, to somehow thwart the sanction of loan, by supplying misleading information. Appellant contends that could gather the knowledge of the malicious activities in July 2016, when Mr. Purvesh Bagul started communicating with the customers of the appellant No.1, as to be an associate company of appellant No.1, that is how he started engaging in diversion of funds and customers of the appellant company.

8. Due to nefarious activities of Mr. Purvesh Bagul, the appellant No.1 company in its Board meeting of 15.11.2017, suggested to terminate the managerial position of Mr. Purvesh Bagul with appellant No.1 company, directed

cancellation of salary for months of July to October, 2017 and restricted his access to the premises.

The appellant No.1, conducted EOGM for his removal, and changed the position of respondent from Director to Non-Executive Director and stopped all bank operations by him. Thus by the resolution of 15.11.2017 terminated the directorship of his from the appellant company. The response to his removal vide his email of 17.12.2017 showed functioning of M/s. Aasua, and his working at that time with appellant company. The EOGM was approved on 27.12.2017 and it resolved as under:-

- a. *“Respondent's involvement with Aasua which was a competing business, while also holding a position at Appellant No.1;*
- b. *Diversion of Appellant No.1's customers to Assua and misuse of Appellant No.1's resources;*
- c. *Respondent's confession in Board Meeting dated 15.11.2018 regarding providing informed support to the said activities of Aasua, and signing of related documents;*
- d. *Respondent's agreement to surrender Director's authorities without resigning as a Director, and*
- e. *Respondent's non-integrity and breach of trust.”*

Based on the aforesaid, respondent on 11.05.2018, filed company petition with the following relief:-

- “a. That the removal of the Respondent from the position of Appellant No. 1's director be declared null and void, and the Respondent be restored to the position of Executive Director and on same terms and conditions;*

*b. That the Appellants be directed to make good and bring back in Appellant No. 1 the monies allegedly paid to Sanjit Moulds Motors Pvt. Ltd. ("SMPL") and also the purported siphoned monies;*

*c. That all monies due to the Respondent and his family members be paid by Appellant No. 1;*

*d. That the business of Appellant No.1 be split between two groups of shareholders based on their shareholding; and*

*e. issue a direction to pay compensation for filing the Company Petition at Rs.3,50,000/- (Rupees Three Lakh and Fifty Thousand Only)."*

9. It was because of these reasons that the dispute arose between the parties. The appellants case has been before the learned Tribunal, that because of the complete and absolute powers having been vested with respondent No.2, which is proved from the facts and e-mail communication of 17.03.2016 and such other emails. The respondent/petitioner are shown to have approached CA Milind Kulkarni in the month of February, 2016, with a proposal of splitting the appellant company, which was a clear indication to the appellants that there was an intention of the respondents/petitioners of splitting the company of appellant No.1 and further plans for formation of M/s. Aasua Engineering Solutions Private Limited, as an independent company under the control of Mr. Parvesh Bagul. Thus in the reply submitted, the appellants came up with a case before the learned Tribunal, that because of the fact that the petitioners/respondents have misused the powers and because of the fact they had started coordinating with the customers, but had also invariably misused the commercial, financial

and general administrative powers against the interest of the company itself, oriented maliciously intended to give an extra benefit and leverage to M/s. Aasua Engineering Solutions Private Limited.

10. It has been argued by the appellant, that, if their nefarious activities were permitted to be allowed, the company of appellant No.1 would suffer irreparably. During the functioning of appellant No.1 company, a request was made by the respondents/petitioners herein, regarding the transfer of plot situated at G67, MIDC, Ambad, Nashik, owned by SMPL to be transferred in their favour as against the alleged amounts those were alleged to have been transferred on various occasions for the business of the appellant No.1. As a matter of fact, what has revealed, is that the respondents/petitioners, have somehow in connivance with the son had managed to take loan on behalf of the SMPL, in order to overcome its financial crises in 1998. The appellant has submitted, that it is because of the conduct of the respondents/petitioners, about their effort to somehow increase the business of M/s. Aasua Engineering Solutions Private Limited, being the company, whose affairs were managed by the son of the respondent. The respondent was removed from the office of the Director in accordance with the provisions of the Companies Act, by the EOGM of 27.12.2017.

11. The appellant contends, that because of the removal of respondent and taking over of the internal management of appellant No.1 from the control of respondent, they filed the **Company Petition 1105/2018** under Section 241-242 of the Companies Act alleging the acts of oppression and mismanagement as against the present appellants.

12. In the proceeding of the aforesaid company petition, those were held before the learned Tribunal on 16.09.2019, the learned Tribunal has recorded a finding, that a statement has been made by the respondent i.e. the petitioner of the present company petition, that he was willing to exit from the company on the basis of the fair valuation.

It is on the basis of the said expression given by the respondent in the proceedings of 16.09.2019, offering to exit from the company, the learned Tribunal found it apt to appoint a valuer to value the shares of the company. Hence, the learned Tribunal passed the following Orders on 16.09.2019: -

*“Both sides present. The counsel for the petitioner submits that the petitioners will take an exit from the company on the basis of valuation and request this Bench to appoint a valuer to value the shares of the company. Mr. V. S. Nagulapati Rao, Address- H-4L, Mahindra Park, L. B.S. Marg, Ghatkopar (West) Mumbai-400086, Email Idnagulapatil2.rao@gmail.com is appointed as a valuer to value the shares of the company. The costs of valuation will be borne by the parties in the ratio of their shareholding. List this matter on 11.11.2019.”*

13. On the basis of the Order dated 16.09.2019, a valuation was carried by Mr. V. S. Nagulapati Rao, who was appointed as a valuer, to value the shares of the company. The valuation was conducted and a valuation report dated 16.06.2021 was submitted in the proceedings of the Company Petition, and the valuation report was accordingly submitted on the records of the company petition. As per the valuer's report of 16.06.2021, upon valuation of the equity

shareholding of the appellant No.1 company as it was existing on 31.03.2018, the total value arrived was shown to be Rs.3,82,68,000/-.

14. The valuation report thus submitted by Mr. V. S. Nagulapati Rao, a copy of the same was opened in the presence of the parties to the Company Petition and the matter thereafter remained pending. It is an admitted position that, the valuation report thus submitted by the valuer on 16.06.2021 was not opposed by the appellant by filing any objection to the valuation report. Ultimately, the company petition was heard on 26.11.2025 and the Tribunal recorded the submissions of the respective advocates and allowed the company petition subject to the observations, those have been made in the impugned Order, particularly, that as contained in para – 12 of the Order. Hence this Company Appeal.

15. In this company appeal, the respondents were noticed and upon service of notice, the respondents have filed their reply and vehemently denied the assertions and the grounds taken by the appellant in the company appeal, contending thereof, that at this stage, the appellant is restrained from raising any doubt with regards of the valuation report, as it was submitted in the proceedings of the company petition and if any buying out process was to be resorted to, it was to be done on the basis of the report, which was called by the learned Tribunal vide its Order of 16.09.2019.

16. The respondents/petitioners while opposing the company appeal, submitted that as of now the appellant cannot contend that no act of mismanagement or oppression is made out. Besides that, he cannot also contend that the valuation report dated 16.06.2021, that was submitted, it cannot be

taken as to be the basis to complete the process of buying out of shares and, more particularly, because of the fact that the appellant has not filed any objection to the valuation report, hence would be estopped from raising any case to the contrary qua the impact of the valuation report dated 16.06.2021.

17. The respondents further submitted, that when the learned Tribunal has proceeded to pass an Order on 16.09.2019 appointing the valuer, its argued that because of the fact that the appellant had shared the fee, that was directed to be made payable to the valuer appointed by the NCLT, there was no other option left for the appellant except to accept the valuation report, which could have been safely relied upon to seek an exit in accordance with the valuation given in the report. The respondent submitted that so called plea of the appellant that there was no case of oppression and mismanagement that has been made out, is being derived from the proceeding of the learned Tribunal, particularly, which has been recorded on 16.12.2025, wherein the learned Tribunal has clearly observed that the appellant would be estopped from contending that there was no act of oppression and mismanagement that was made out. More particularly, when the said plea was alleged to have been raised by the appellant himself at the stage of final hearing, that would be barred by the principles of acquiescence and estoppel, hence that couldn't be permitted to be agitated at this matured stage of the proceedings.

18. On the issue of exit from the company, it was argued by the respondent, that it was absolutely misleading on the part of the company to contend, that they were being forced to exit from the company, as there was no compulsion on the appellant to exit by selling his shareholding, because on the basis of the

valuation done by the valuer in its report of 16.06.2021, it was always open for the appellant to have offered to purchase the shares of the respondent so as to resort to the process of preventive and remedial measures of closing the proceedings instead of stepping into the stages of winding up, which may not be just and equitable, owing to the given set of facts and circumstances.

19. The learned Counsel for the appellant has heavily relied upon as to the manner in which the learned Tribunal has drawn implications and inferences from the provision contained under section 242 of the Companies Act, which has been otherwise argued by the learned Counsel for the respondent contending that the grant of relief under Section 242 of the Companies Act, could be possible even in the absence of there being any finding on oppression and mismanagement, as contemplated under Section 241 of the Act, could still be possible, because of the fact that the appellant had agreed with the process of valuation, hence as a matter of fact, there was no issue left open for the appellant to argue the instant appeal as against the impugned order in the light of the consequences flowing from the valuation report for the purposes of applying the principals of exit under Section 242(2)(b) of the Companies Act. The contention of the learned Counsel for the appellant had been that the valuation report of 16.06.2021 as a matter of fact, in principal, it was reflecting a situation that was based upon the final position of the shares of the company, as it was then standing as on 31.03.2018. Hence, he submitted that the report of 16.06.2021, which was reflecting the valuation of the equity shareholding of the appellant No.1 company, it was actually exiting on 31.03.2018, in itself cannot be a sound basis to be adopted for the purposes of attracting the provisions contained under

Section 242(2)(b) of the Companies Act and hence, he contend that the inference drawn to the learned Tribunal, while drawing its conclusion in para – 12 of the judgment, may not be correct, because thereby directing that respondent Nos.2 and 3 being the majority shareholders shall purchase the shares held by the petitioner at the value that has been determined by the report as referred to be that, of 10.02.2025.

20. The learned Counsel for the appellant had argued on the appeal from these major perspectives-

- (i) He submits that since there is no specific and concrete finding recorded by the learned Tribunal establishing an act of oppression and mismanagement, to call for to attract Section 242 of Companies Act.
- (ii) He submits that for the purposes of attracting the provisions under Section 242(2)(b), it was incumbent that there has had to be a prior conclusive finding, upon determination, as per Section 241 and 242, prior to attracting Section 242(2)(b).
- (iii) That, initially the issue has to be construed pertaining to the report of the valuer, which was submitted on 16.06.2021 (resubmitted before the learned Tribunal on 10.02.2025) for the reason being that, since the said report, which was showing the valuation was as it stood on 31.03.2018, that may not be reflecting the true value to be accepted for determining the actual valuation of shares as on the date of

the judgement itself i.e. 16.12.2025 because thereafter, much water has flown and obviously the shareholding of the company might have undergone a change in its valuation, which may affect the contents of the report dated 06.06.2021 itself. Thus actual valuation ought to be done on the date when the proposal of buy-out was being considered.

- (iv) Lastly, that the learned Tribunal's Judgement is perverse because as a matter of fact, the learned Tribunal proceeded on a premise that as a matter of fact, the valuation report happens to be obtained in 2025 and accordingly based upon the same, the finding has been recorded though as a matter of fact, there is no such report of 10.02.2025, which was ever placed on record before the learned Tribunal, rather the only report that happens to be on record is that of 10.06.2021, which was expressing the valuation existing as it was determined on 31.03.2018. Hence, he contends that the finding recorded are perverse.

21. We are of the view that, under Section 241 and 242 of the Companies Act, which contemplates to provide an avenue for filing of an application before the Tribunal, it casts a mandatory duty, as has been assigned under its Sub-Section (1), that, only upon the applicant i.e. the respondent herein who has to establish a specified act of misconduct and oppression as contemplated or perceived of under Sub-Section (1) (a) and (b) and before initiation of proceedings under Sub-Section (1), there has had to be a satisfaction and a determination

based on records pertaining to existence of an act of oppression and mismanagement. The argument of the learned Counsel for the respondent has been opposed by the appellant apart from it on perusal of the pleading contending thereof that if the observation and finding recorded by the learned Tribunal are taken into consideration, in fact, there is no definite opinion, which has been drawn based upon appreciation of evidence, to logically conclude that, there was an establishment of an act of oppression and mismanagement. For the aforesaid purpose, the learned Counsel before the Tribunal has taken us to the judgment, which records a description of parties, submission of petitioner, submission of respondent and lastly the finding.

22. The finding recorded by the Ld. Tribunal, in the order under challenge before us. The finding commences from para – 5. In para – 5 and 6, there is no whisper nor any finding, which has been recorded by the learned Tribunal after considering the evidence on record for bringing the case of the respondent/petitioner to be at all falling within the ambit of Section 241 of the Companies Act, as there is not even a single finding recorded by the learned Tribunal about any act of oppression and mismanagement. If we further proceed to scrutinize the judgment, immediately where the judgement after referring to the basic facts, considers the implication of Section 242 of the Companies Act. The learned Tribunal, while issuing the directions as given in para – 12 of the impugned Judgement, has made a peculiar observation contending that since the provision contained under Sections 241 and 242 are preventive and remedial in nature, the Tribunal has to form an opinion only in order to bring it within a just and equitable act. The learned Tribunal has recorded as under:-

*“8. The Hon'ble Supreme Court has consistently held that proceedings under Sections 241--242 are preventive and remedial in nature, and not punitive. Once the Tribunal forms an opinion that facts justify winding up on “Just and equitable” grounds, but winding up would unfairly prejudice shareholders, it is empowered to grant alternative reliefs including purchase of shares. The Tribunal is not bound to record a detailed finding of oppression if the conduct of parties and circumstances warrant equitable relief under Section 242. Consent to valuation and buy-out is a strong indicator that mutual trust has irretrievably broken down, justifying separation of shareholding principle consistently followed in India).”*

23. The inference drawn by the Ld. Tribunal, as extracted herein above, and the findings recorded by the Tribunal, to the effect that the Tribunal is not bound to record any reasons, for any act of oppression and mismanagement which could be established only after assimilation of facts, is not necessary, if the circumstances warrant attraction of Section 242, it could still be done under the concept of equitable relief. This finding recorded by the learned Tribunal observing thereof that if the situation contemplates attraction of Section 242 of the Companies Act, no finding of oppression and mismanagement is required to be recorded, is not acceptable by us for the reason, being that if provisions contained under Section 242 itself is taken into consideration and particularly, that as contained under Sub-Section (1) which is extracted hereunder: -

*“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 powers under Sub-Section (1), an order under that **sub-section** may provide:-*

*(a) the regulation of conduct of affairs of the company in future;*

*(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*

*(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;*

*(d) restrictions on the transfer or allotment of the shares of the company;*

*(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;*

*(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):*

*Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;*

*(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;*

*(h) removal of the managing director, manager or any of the directors of the company;*

*(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;*

*(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);*

*(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;*

*(l) imposition of costs as may be deemed fit by the Tribunal;*

*(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.”*

24. It observes that its only upon an application preferred under Section 241 when the conclusion is drawn, there has had to be a definite opinion to be recorded by the learned Tribunal about the affairs of the company, which is mandated under the provision, is analysis of facts whether, the conduct of the company, the prejudicial acts of the company and its members, the public interest involved therein and henceforth are established, there has to be determination by the Tribunal. Meaning thereby, Section 242(1), which precedes the provisions contained under Section 242(2), becomes mandatory to be satisfied. Before the Tribunal barges upon to attract adoption of Section 242 of the Companies Act, the Tribunal will have to arrive at a conclusive finding about the act to be brought to be falling within the ambit of Section 241 first and its after that conclusion and findings recorded under “that Sub-Section” i.e. Section 241(1) only, and its upon the satisfaction being recorded about the act complained of to be falling under Section 241, then only Section 242 could be attracted thus the finding under Section 241(1) would be the basis and attract 242(1) of the act. Hence, the inference drawn by recording the fact in para – 8 of the judgement as extracted above, will itself not take away the responsibility of the learned Tribunal, to escape to record the finding of oppression and mismanagement because irrespective of attraction of Section 242, a prior recording of satisfaction and finding of Section 241 is mandatory in the light of

the provisions contained under Sub-Section (1) of Section 242 to be read with Sub-Section (2) of Section 242 of the Act.

25. This logic is because of the reason that the alternative actions under Section 242(1), which could be taken by the Tribunal, are prescribed under Sub-Section (2) of Section 242, are only upon the conclusion drawn based upon the finding recorded under Sub-Section (1) of Section 242 meaning thereby the attraction of Section 242(2) is not exclusive in nature, but rather its applicability is based upon the reasoning and rationale recorded under Sub-Section (1) of Section 242 of the Act, which in turn is based upon the finding which were required to be recorded based on material under Section 241 of the Companies Act. Thus, if we take into consideration the provision of Section 242(2) itself, the same cannot be directly attracted to be made applicable in the absence of their being any prior opinion drawn qua the actions falling within the ambit of Section 241 of the Act, and recording its satisfaction and drawing of opinion by the Ld. Tribunal, under sub-section (1) of Section 242 of the act.

26. If we go through the judgement in its entirety, there is no finding of satisfaction recorded pertaining to parameters required to be established under Section 241 and there is not even a satisfaction recorder further with regards to satisfying the conditions of Sub-Section (1) of Section 242 because it is thereafter only Sub-Section (2) of Section 242 could be attracted. Thus, the manner in which the Tribunal has proceeded, is judicially not sustainable for the reason being that if Sub-Section (2) of Section 242 of the Companies Act, is taken into consideration, it had got close nexus and connectivity with Sub-Section (1) of Section 242, which in turn has got a connectivity and an interplay with Section

241 of Companies Act, and if we see the reverse process then primarily, we are of the view that it is mandatory that there has to be a prior satisfaction of the condition about recording of the finding on the act of oppression and mismanagement for bringing it to be falling under Section 241, its then only the tribunal will have to draw an opinion based on the finding as contemplated under Section 242(1) and upon that “**opinion only**”, then the provisions of Sub-Section (2) of Section 242 could be applied. Otherwise, there cannot be a reverse process of applying Sub-Section (2) of Section 242 in the absence of their being any prior opinion under Sub-Section (1) of Section 242 and Section 241 and, more particularly, in the absence of their being any finding, justifying the attraction of 242(2)(b) of the Companies Act, hence applying the same would be bad in the eyes of law and cannot be sustained.

27. In the Judgement passed by this Tribunal, in the matter of “Upper India Steel Manufacturing and Engineering Co. Ltd. vs Gurlal Singh Grewal & Ors. [CA (AT) No.150 of 2017], it is observed as under: -

*“31. From bare perusal of Section 242 of the Companies Act, 2013, it is clear that the Tribunal if it comes to a definite conclusion 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 that to wind up the company would unfairly prejudice such member or members, then only with a view to bring to an end the matters complained of, may make such order as it thinks fit including the order in terms of sub-section (2) of Section 242.*

*35. Even if it is accepted that the parties have agreed to sell out their shares, in absence of any power vested with Tribunal, after its specific finding there was no 'Oppression and Mismanagement', the Tribunal had no jurisdiction to direct any party to sell or buyout any share. Further finding about, the date of valuation/ buyout as the date closest to the filing of the petition i.e. 31st March, 2007 being perverse and contrary to the offer made by parties in the year 2008, and the order dated 25th February 2009, passed by Tribunal such order cannot be upheld.*

*36. For the reasons aforesaid, while we uphold the findings of the Tribunal in so far as it relates to failure of petitioners to prove 'Oppression and Mismanagement', the last part of the order and direction to the extent of sale of shares, date of valuation/ buyout and the order regarding payment of interest and the findings that the minority group have systematically whittled Company Appeals (AT) Nos. 150 and 189 of 2017 due to non-payment of dividend, and reduction in the number of directors being perverse, such portion of the impugned order are set aside.”*

28. It had been argued by the learned Counsel for the respondent/petitioner that the report of the valuer since was not opposed by the appellant, it was bound to be accepted. Mere non-filing of an objection cannot be a reason to accept the report irrespective of its contents and its analysis by an adjudicating authority ceased with the matter. We are of the view that since the valuer's report is determining the major controversy of purchase of shares by the petitioners, then the genuineness and sanctity of the report was all the more required to be judicially scrutinized by the learned Tribunal itself on its own merits, irrespective

of whether the same has been objected or not. And the aforesaid reason is backed by that the reciprocal buying and selling mechanism itself is a separate statutory remedy provided under Section 242(2)(b) and if that is to be based upon the valuation report, then the valuation report in itself is required to be tested on its anvil of its judiciousness pertaining to the valuation assigned by the valuer.

29. In the instant case, in fact, the inclination of the Ld. Tribunal right from the inception of the proceedings when the Tribunal proceeds to record its finding, the Tribunal itself was found to be bent upon to adopt an alternative recourse provided under Section 242, rather than coming to its conclusion after recording the finding of oppression and mismanagement. In the absence of their being any finding, (i) on oppression and mismanagement, (ii) that the difference between the parties were irreconcilable, (iii) in the absence of binding on irretrievable break down of trust and confidence, and (iv) in the absence of their being any finding about the capability of either of the sides of running the company, (iv) in the absence of there being any finding upon the deadlock and its efforts to resolve, and then to arrive at a conclusion without analysis and then taking positive steps was mandatorily required to have been taken by the learned Tribunal before passing of an Order directing the buying out of shares, by making an effort to resolve the dispute, rather than carving out an exception of buying out and that too by an irrational applicability of Section 242(2)(b) of the Companies Act.

30. We have been consistently observing in the preceding paragraph that the **valuer's report** was called by the learned Tribunal, by passing an Order on 16.09.2019 and the report thereof too was submitted also, before the learned

Tribunal on 16.06.2021. However, it was merely a resubmission of the same valuer's report that was made before the Tribunal on 10.02.2025, which was, in fact, the valuation of 31.03.2018 as thereafter, no fresh valuation report was ever called for. The fact remains that, there happens to be one valuation report on record by Mr. V. S. Nagulapati Rao, which was submitted on 16.06.2021, it may be that the report was resubmitted before the learned Tribunal on 10.02.2025, but the fact remains that it was, in fact, the only valuation of 31.03.2018 that has been referred as to be the report of 10.02.2025. If we go through the finding recorded by the learned Tribunal invariably whenever the reference has been made with regards to the report, the same has been mentioned by the learned Tribunal as to be that of 10.02.2025, though as a matter of fact, there is no such report of 10.02.2025 on record, rather it was the report of 16.06.2021, which was only resubmitted on 10.02.2025 pertaining to the valuation as it existed on 31.03.2018. Thus, observing thereof that the report happens to be of 10.02.2025 itself shows that the Tribunal has not correctly appreciated the evidence and documents on record while recording its finding in the impugned Order.

31. What we could also see that, even let us presume that there happens to be a report of 16.06.2021 placed on the record of the Tribunal on 10.02.2025, what sanctity did the report of 16.06.2021 had as regards to portraying the correct valuation of the shareholding on the date of rendering of the Judgement, that would have been one of the vital issues, that was required to be considered, particularly, when the Judgement aimed at observing that respondent Nos.2 and 3 would, being the majority shareholders, shall purchase the shares held by the petitioner. If that be the situation, the actual transaction of purchase of shares

under buy back situation was upon the orders of Tribunal, it should have been on the basis of the actual face value, when the direction is issued under Section 242(2)(b) of the Companies Act. Issuing a direction of buying back of the shares on the basis of valuation of 16.06.2021 report, as held by the petitioner/respondent herein has had to be on the basis of the current valuation of the shares as on the date of the Judgement or at least should have a close proximity to the valuation with the date of determination. It will not be safe and justified too, to rely upon the valuation report, which projects the financial position and the valuation as conducted on 31.03.2018, and that too particularly when the learned Tribunal has read the report and dealt with it as to be that of 10.02.2025.

32. The process of buying is more or less akin to any business deal or transaction, it has had to be upon consideration of present economic condition of the company, and actual prevailing current market rate of the share, it would be unfair, its an equitable jurisdiction of Section 241 and 242 of Companies Act, to direct buying out of share on the date of judgement, based on the earlier valuation, which may as of now project the correct value. The correct value has to commensurate to date on which the process has to take or at least in close proximity. That has been laid by Hon'ble Bombay High Court in the matter of **“Nafan B.V. vs Saf Yeast Company Pvt. Ltd.” [(2016) 1 Comp LJ36 (Bom)]** as under:

*“147. For the purpose of valuation of shares, it will be most appropriate that today's date is taken as a reference. The order could thus be in two steps. Part I will be the forward competitive bid for*

*which Muthu Group will have to withdraw the civil suit they have filed and not take any steps based on MOU henceforth and convey its acceptance within a particular period. If such willingness is not shown in the stipulated period, then Part II of the order regarding buy-out will come into effect.”*

It has also been laid by the same High court in the matter of “**Prudence Maynard and Anr. Vs. Mundhra Container Freight Station Pvt. Ltd., [(2017) 202 Comp Cas 635]** as under: -

*“66. Learned counsel for the appellant placed reliance on the judgment of this Court in the case of **Nafan B.V. Vs. Saf Yeast Company (P) Ltd. & Ors., (2016) 1 Comp LJ 36 (Bom)** and in particular paragraph 147 in support of her submission that for the purpose of the valuation of the shares, it would be most appropriate to consider the date on which the judgment is delivered as a reference.”*

33. Hence, there happens to be an absolute perversity in the judgement so far it relates to the reading of the evidence on record. Hence, based on the aforesaid, we are of a confirmed opinion that in the light of the interplay of Sections 241 and 242 of the Companies Act, in its totality, a finding of oppression and mismanagement has to be preceded with before resorting to any steps under Section 242(2) of the Companies Act.

34. If the Tribunal was issuing the directions for the purchase of shares by the petitioner/respondent herein, it has had to be on the basis of the current value of the shares, and logically not on the basis of the stale valuation which was

done as back as on 31.03.2018 i.e. about 8 years back, which may as to now with passage of time reflect the true value. Since the judgement itself happens to be perverse without a rational finding on establishment of any act of oppression and mismanagement. The same cannot be sustained, is accordingly hereby quashed the order of 16.12.2025 as rendered in CP No. 1105(CA)/(MB)2018. The matter is remitted back to the learned Tribunal to call for a fresh valuation report and then to proceed to decide the matter on its own merits afresh. Considering the implications of interplay of Section 242 along with 241, as to under what circumstances it could be made to be attracted to be applied.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Arun Baroka]**  
**Member (Technical)**

**[Indevar Pandey]**  
**Member (Technical)**

14.10.2026

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