NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 138 of 2026

IN THE MATTER OF:

Sushil Dhurchand Bothra **...Appellant**

Versus

Arham Anmol Projects Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant	**:**	**Mr. Gaurav Mitra, Sr. Adv., Mr. Chirag Bhavsar, Mr. Vishisht Singh, Mr. Anand Jagmalani, Mr. Vansh Kalra, Advocates.**
For Respondents	**:**	**Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Ms. Ishita Singh, Mr. Vinayak Girdhar, Advocates.**

O R D E R
(Hybrid Mode)

07.08.2026: The appellant, is before us against the impugned order of 19.01.2026 that, has been passed by the Ld. NCLT, Mumbai Bench, in I.A. No. 228 of 2021 in CP No. 73 of 2016. The effect of the impugned order is that the intervention application preferred by the respondent has been allowed, consequentially granting liberty to contest the proceedings of the company petition, which are the proceedings that, has been carried under Sections 397-398 of the Companies Act, 1956.

2. The appellant herein is petitioner of the company petition, which he had preferred before the Ld. Tribunal on 20.05.2016, praying for an order of injunction to restrain Respondents Nos. 2 & 3 from operating the bank accounts of Respondents No. 1 company standing with the Bank of Baroda, bearing the accounting details as it has been given in the relief

clause of the company petition. Injunction of the nature was also sought to restrain Respondents No. 2 & 3 of the Company Petition, from dealing with the land and immovable properties of the company, that was purchased on behalf of the respondent company in the name of Respondents No. 2 & 3 or any relatives or associates or any other third party. Further relief was also sought from the Respondent No.1 to issue a share certificate to the petitioner of 37,500 equity shares and, more importantly, relief 9 (d), which reads as under:

> *"9. (d) Direct the first Respondent Company to give consent for the Transfer of 10125 Equity Shares to 3 persons as requested by Petitioner vide letters dated 03.03.2016 and 31.03.2016."*

3. Besides that, there were number of other reliefs sought by the petitioner which, at this stage, we may not be required to venture into on merits owing to the limited question, which we have been called upon to consider.

4. Based on a premise and the claim that, the petitioner happens to be the majority shareholder and one of the Directors of Respondent No.1, the company, has raised certain allegations of mismanagement and oppression against Respondents No. 2 & 3, which are said to have persisted till the date of filing of the company petition. It was alleged by the Petitioner that, the conduct of Respondents No. 2 & 3 in management of business and in day-to-day management of the affairs of the

Respondent No.1 company, had caused serious prejudices in the exercise of his legal and proprietary rights despite being the majority shareholder.

5. Petitioner contended that he had been dealing with the real estate business, in which Respondent No.2 is said to have join hands for the purchase and sale of land and development of land in and around villages in Bhiwandi area, resulting in the incorporation of the company. Respondent No.1 on 03.04.2008. Due to the incorporation of the company, Respondent No.3 too was inducted as a Director and was allotted an equity share in the respondent company. All the business activities or management of the company was controlled by Petitioner and Respondents No. 2 & 3.

6. In a correspondence of 03.03.2016, the Petitioner is shown to have written a letter to Respondent No. 2 & 3 requesting for the issuance of share certificate, for the purposes of seeking an approval of the board's back-to-back intention of transfer of shares held by him to the person named in the said letter of 03.03.2016.

7. Admittedly, at the relevant time, there had been proceedings drawn before the Sub-Divisional Magistrate Tahsildar and the Executive Magistrate, Bhiwandi, under the provisions of the Maharashtra Land and Revenue Act. The proceedings of the Companies Petition under Sections 397-398 of the Companies Act, 1956, were too simultaneously pending consideration. It's at that stage, that an application was preferred, being I.A. No. 228 of 2021 in C.P. No. 73 of 2016, wherein the applicant, i.e., Sh. Shyambihari Mishra, had made a prayer to the effect that, owing to

the supporting documents filed with the application prayed to implead himself as a party to the proceedings of Company Petition No. 73 of 2016.

8. The foundation of the application had been that the applicant Sh. Shyambihari Mishra, pleaded that he had purchased about 3,375 shares from the Petitioner of the company petition for which he has already paid an amount of Rs. 20,25,000/- as against the purchase of shares. Besides that, he has also paid the applicable stamp duty as per law for the transfer of shares. In the subsequent acts, the Petitioner confirmed the transfer of shares to Sh. Shyambihari Mishra and it's because of this the Petitioner in the interim prayer as sought in Clause C & D had admitted the fact that he is required to transfer the shares to the applicant. Relief C & D of the Company Petitioner are extracted herein under:

> *"9. C. Directing the Respondent Company to issue share certificate to Petitioner for 37500 shares.*
>
> *D. Direct the first Respondent Company to give consent for the Transfer of 10125 Equity Shares to 3 persons as requested by Petitioner vide letters dated 03.03.2016 and 31.03.2016."*

9. So far as the relief 'C' is concerned, there was a specific prayer made to direct the Respondent No.1 i.e. company to issue a share certificate to the Petitioner for 37,500 shares. The applicant Sh. Shyambihari Mishra contends that since the petitioner has admitted the fact of the required transfer of shares to the applicant, and because of the fact that the Applicant/Intervenor had acquired knowledge, about the

proceeding before the Tribunal in the company petition for procuring certain orders. The applicant expressed that if the already existing status quo order is vacated, the assets of Respondent No.1 company would be open to be dealt with and disposed of. It would be detrimental to his interest; hence, he sought impleadment in the company petition, in order to protect his right and particularly interest as a shareholder of 3375 equity shares of Respondent No. 1 company. Is this application, which has been allowed by the impugned order on the ground that, the applicant's apprehension as it has been expressed in the application for impleadment that, owing to the pending proceedings, being held under Sections 241-242 of the Companies Act, 2013 in which there operated a status quo order, there could be a possibility that the Applicant/ Intervenor may not be transferring the shares that have already been transacted between the Petitioner and the Applicant, his applicant expressed that his rights may be put at stakes due to pending proceedings or because of its consequences too.

10. This application was contested by the Petitioner, the appellant herein, on the ground that the Applicant has already availed a civil remedy of filing a civil suit, hence, he may not be permitted to file the present application for impleadment. Despite considering the said objection, the impleadment application has been allowed by the impugned order, and a right to contest the proceedings to safeguard the interest of the applicant in relation to the shares agreed to be transferred was

permitted to be defended by the applicant in the proceedings of the Company Petition.

11. The Tribunal further observed that, owing to the fact that the earlier contract had already taken place long a ago, in case if, it is terminated due to judicial determination, what implications would it have? These would be some of the vital issues those were required to be gone into in the company petition, in which the applicant was required to be made a party to be heard on merits.

12. The sole contention that has been raised by the appellant while putting a challenge to the impugned order of 19.01.2026 as passed on I.A. No. 228 of 2021, thereby directing the impleading of the applicant as one of the parties to the company petition. Its argued by appellant, that since the company petition is exclusively confined to the act of oppression and mismanagement in Arham Anmol Projects Private Limited, a closely held private company. The dispute relating thereto is an exclusively internal affair relating to the management of the company and pertains to the conduct of its existing members; the applicant doesn't become a necessary party to be impleaded. It was also opposed on the ground that the impleadment couldn't have been permitted by the Ld. Tribunal because of the fact that, as per the requirements of law, the Intervenor was not a shareholder or a member of the company, and since his name does not appear in the register of members and no transfer of shares, have ever taken place or been completed, he may not be the necessary party to the company petition, though stated that the Intervenors claim

could be independently claimed by virtue of a civil proceeding as based upon solely a private contractual arrangement relating to the proposed transfer of 3375 shares from the appellant in the year 2016.

13. It was opposed on the ground that, since the transfer of shares in favour of the applicant had never been completed, because of the absence of their being a board's approval required under Article of Association. The Intervenor doesn't become a necessary party to be impleaded in the company petition on the grounds of the apprehended mis-utilisation or non-transfer of shares alleged to be sold to the Intervenor, under the apprehension that if the assets of the company are dealt with in future the Applicant/Intervenor may suffer.

14. The appellant further contested the proceedings of the intervention/impleadment, as there happens to be an independent Commercial Suit No. 3 of 2024 pending before the Civil Court for grant of a decree of specific performance of the alleged agreement for transfer of shares, which is yet to be completed. The appellant may not be the necessary party to be impleaded in the company petition.

15. We must be conscious of the fact that the apparent issue of termination of a contract, which is alleged to have taken place long a ago. All such issues would be required to be dealt with incidentally by the Tribunal, in the presence of the applicant because the so-called transfer of shares in favour of the applicant had been as a consequence, and part and parcel of the conscious act and conduct of affairs of the company. However, what is claimed by the Applicant/ Intervenor is all together a

different issue, but it's probable safeguard due to whatsoever the consequences may be flowing from the proceedings of the company petition are required to be safeguarded by the Applicant/ Intervenor whose rights are likely to be prejudiced.

16. The governing principles for impleadment in the present context would be that any party or person who is likely to be affected by any financial transaction or diversion of funds or misuse of funds, which is the subject matter of consideration in a proceeding of oppression and mismanagement, this would be inclusive of the issue of allotment of shares, as members would be the necessary party who are concerned with the affairs of the company and are required to be arrayed as a party to the proceedings in order to facilitate an effective decision, so as to protect the rights of the shareholders and that of the Directors, which may be affected as the consequences that could be flowing from the final adjudication to be made by the Tribunal.

17. The basic governing principles which determines the parameters to justify the impleadment of particular party to the proceedings had been primarily considered by the Hon'ble Apex Court in Judgment reported in '*Kasturi v. Iyyamperumal and others*' [AIR (2005) 6 SCC 733] wherein the basic criteria has been prescribed therein that (i) there must be a right to some relief against such party in respect of the allegations involved in the proceedings to the impleadment becomes necessary for an effective adjudication of the parties and where in the absence the decision could not been taken.

18. Almost the similar view was expressed way back in matter of '*Razia Begum v. Sahebzadi Anwar Begum and others'* as reported in [AIR 1958 SCC Online SC 77]. In the said Judgment the Hon'ble Apex Court in paragraph 14 has observed that the basic principles of Order 1Rule 10(2) of the CPC it generally not one of initial jurisdiction of the Court but of a judicial discretion which has to be exercised. In some cases it may raise controversies as to the power of the court and the contradistinction to its incidental and inherent jurisdiction. The power circumscribes to add to a party where the court can exercise its discretion to justify a party to be made as a party to the proceedings.

19. Almost similar view was taken by this Tribunal in the matter reported in '*P.J. Mathews and Others vs. C. Mohanan Pillai and others'* [2021 (227) Comp Case 340] wherein this Tribunal has dealt with the issue as to what will be the striking features to decide the necessity of a person to be impleaded in the proceedings. The basic principles have been laid down in paragraph 18 & 19 of the said Judgment which is extracted hereunder:

> *"18. To be noted, that any person "concerned with the affairs of the company" can be arrayed as a "party" to the proceedings, if such adding, as respondent would facilitate an "effective", "efficacious", "just and fair adjudication" of the case. It must be borne in mind that on the date of the filing of the petition, the respondent must either be a "shareholder" or "director" of the company. However, if a person is a proper and necessary party, he can be arrayed as a "party" in a given proceedings.*

19. It is relevantly pointed out that a 'Tribunal' has the requisite power to add or strike out a party at any stage of a given proceedings, in the considered opinion of this "Appellate Tribunal". Further, in law, to bring a person as a party/respondent/defendant in a given case/legal proceedings is not a "substantive right" but one of "procedure" and the "Tribunal" in this regard, is to exercise its sound judicial discretion. To determine whether a "person" is to be impleaded or otherwise, cannot depend mainly on the aspect as to whether he has an interest in the property, but whether a right of a person would get affected, if not impleaded in a given pending legal proceedings before the "competent forum". As a matter of fact, the "Tribunal" can permit even the impleadment of third party, if his/its presence is necessary for adjudication of the subject matter in issue."

20. Hence, we are of the view that in order to resolve the controversial issues concerning the main company petition, in a completely satisfactory manner, a party who is even remotely affected or likely to be effected by any decision, is required to be arrayed as a respondent. Moreover, any relief that could be granted in the company petition may have an adverse bearing against a proper party, who seeks to be impleaded despite pending litigation before the Civil Court. The purpose of impleadment is to avoid a multiplicity of proceedings and to protect the interests of the applicant. But if a person is a proper party whose rights are likely to be affected, he can be added as a party either as one of the Petitioner or as a Respondent as the applicant would be deemed to be a person who would be taken to be concerned with the affairs of the company.

21. Hence, we are of the view that in order to effectively resolve the controversial issues concerning the main company petition in a completely satisfactory manner, a party who is even remotely affected by any decision in the proceeding is required to be arrayed as a respondent and be heard. Moreover, any relief that could be granted in the company petition may have an adverse bearing against a proper party, who seeks to be impleaded despite pending litigation before the Civil Court. The purpose of impleadment is to avoid a multiplicity of proceedings and to protect the interests of the applicant. But if a person is a proper party whose rights are likely to be affected, he can be added as a party either as one of the Petitioner or as a Respondent as the case would be deemed to be a person who would be taken to be concerned with the affairs of the company.

22. The appeal is dismissed accordingly. All pending interlocutory applications are also closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

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