

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

IA (Companies Act) No. 62 (MB) 2026

In

Company Petition No. 28 of 2026

Under proviso to Section 244(1) of the Companies Act, 2013.

In the matter of

Devaunshi Mehta *nee* Thackersey ...Applicant

Versus

Bhishma Realty Ltd. & Ors. ...Respondents

And In the matter of

Devaunshi Mehta *nee* Thackersey ...Petitioner

Versus

Bhishma Realty Ltd. & Ors. ...Respondents

Order pronounced on 25/06/2026

Coram:

Shri. Prabhat Kumar

Member (Technical)

Shri. Sushil Mahadeorao Kochey

Member (Judicial)

Appearances:

For the Applicant

: Adv. Rohit Gupta i/b Adv. Pranav Shah

For the Respondents

: Adv. Kunal Vaishnav a/w Adv. Grishma
Mody for R-1;

Sr. Adv. Venkatesh Dhond, Adv. Krishma

Rao for R-2;

Mr. Shyam Kapadia, Advocate for R-2&4;

Mr. Nausher Kohli i/b Mr. Pranav Shah,
Advocates for R-3

ORDER

Per: Coram

1. The Applicant/Original Petitioner is a shareholder of Respondent No. 1 Company, Bhisma Reality Limited, a family-owned entity and presently holds 460 fully paid-up equity shares constituting approximately 4.65% of its paid-up share capital. The Applicant has instituted Company Petition being C.P. No. 28 of 2026 under Sections 241 and 242 of the Companies Act, 2013, alleging acts of oppression and mismanagement by Respondent No. 2, Mr. Raoul Thackersey, in the affairs of Respondent No. 1 Company.
2. The present application has been filed under the proviso to Section 244(1) of the Companies Act, 2013, seeking waiver of the eligibility requirements prescribed under clauses (a) and (b) of Section 244(1) for adjudication of the captioned Company Petition on merits.
3. The Applicant has prayed for the following reliefs:

“(a) To waive the eligibility requirements prescribed under Section 244 of the Companies Act, 2013, in exercise of the powers conferred upon this Hon'ble Tribunal under the proviso thereto, and permit the Applicant to institute, file, and maintain Company Petition No. 28 of 2026 under Sections 241 and 242 of the Companies Act, 2013;

(b) To grant such further and other reliefs as this Hon'ble Tribunal may

deem fit and proper in the interest of justice and equity.”

4. Ld. Counsel for the Applicant submits that the captioned Company Petition has been filed seeking appropriate directions against Respondent No. 2 to restrain him from continuing his oppressive acts and mismanagement of the affairs of Respondent No. 1 Company. The acts of oppression and mismanagement are a direct consequence of the fraudulent implementation of the Memorandum of Understanding dated 16.01.2020 ("2020 MoU") by Respondent No. 2.
5. It is submitted by the Applicant that, pursuant to a family settlement arrived at with another faction of the family (referred to as the "CKT/Uncle Faction"), the 2020 MoU was executed under which the said faction agreed to transfer its shareholding in Respondent No. 1 Company, Capricorn Reality Private Limited ("Capricorn"), and certain other group companies for a total consideration of Rs. 81.26 Crores.
6. Ld. Counsel for the Applicant submits that, in implementation of the 2020 MoU, Respondent No. 2 acquired the shares of Capricorn by utilizing funds belonging to Respondent No. 1 Company towards the consideration of Rs. 81.26 Crores. It is alleged that the entire consideration for the acquisition of shares across multiple companies was funded from the Respondent No. 1 Company.
7. Ld. Counsel for the Applicant submits that the 2020 MoU provided for the transfer of the CKT Group's shareholding in the SKT Group companies to the SKT Group collectively. It is contended that Respondent No. 2, fraudulently had the CKT group transfer almost the entirety of their shareholding only to himself, including 2,681 shares of Respondent No. 1 Company.

8. Ld. Counsel for the Applicant submits that a separate petition under Section 59 of the Companies Act, 2013, claiming additional shares and rectification of register of Respondent No. 1 company, is pending before this Tribunal. It is further submitted that the present application is not filed to supplement any prayer in the Section 59 petition, and the Applicant has not included those shares, subject matter of rectification proceedings in the said petition, for determining her eligibility to file company petition in terms of section 244(1)(a) of the Companies Act, 2013.
9. The Ld. Counsel for the Applicant further submits that, under the transaction, Respondent No. 1 Company received only the shares of Capricorn, whereas the shares of Respondent No. 1 Company, which were also intended to be transferred under the MoU, were gifted to Respondent No. 2. It is submitted that the funds of Respondent No. 1 Company were thus utilized not only for the acquisition of assets by the Company but also to confer a personal benefit upon Respondent No. 2, enabling him to acquire a significant shareholding in Respondent No. 1 Company.
10. It is submitted by the Applicant that, these transactions constitute a case of oppression and mismanagement as Respondent No. 2 secured control over the majority shareholding of Respondent No. 1 Company and Capricorn Reality Private Limited and is now using such control to oppress the minority shareholders.
11. Ld. Counsel for the Applicant submits that Capricorn had undertaken a buy-back of its shares in January 2020, pursuant to which the value of each share was determined at approximately Rs. 2.26 Lakhs. It is submitted that the consideration of Rs. 81.26 Crores under the MoU works out to approximately Rs. 3.75 Lakhs per share, representing an excess of about Rs. 1.50 Lakhs per share over the buy-back valuation. It is submitted that

Respondent No. 1 Company did not justify such inflated expenditure merely to facilitate the acquisition contemplated under the MoU.

12.Ld. Counsel for the Applicant further submits that no shareholder other than Respondent No. 2 and Capricorn Reality Private Limited holds a significant shareholding exceeding 10% of the equity share capital of the Respondent No. 1 Company. It is stated that Capricorn is a Thackersey family-controlled entity and is itself controlled by Respondent No. 2, who holds approximately 40% of its equity share capital. It is further submitted that, out of 168 shareholders of the Respondent No. 1 Company, nearly 160 shareholders hold approximately 0.1%. Consequently, Respondent No. 2 is exercising absolute control over the affairs of Respondent No. 1 Company rendering the statutory threshold prescribed under Section 244 of the Act illusory and practically impossible to satisfy.

13.Ld. Counsel for the Applicant places reliance upon the judgment of the Hon'ble NCLAT in *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors., 2017 SCC OnLine NCLAT 261* to contend that, in circumstances where there is no possibility for a shareholder to obtain the consent of the requisite number of members prescribed under Section 244(1) of the Companies Act, 2013, this Tribunal ought to exercise its discretion and grant waiver of the eligibility requirements. It is further submitted that an applicant seeking waiver under Section 244 is not required to establish a prima facie case on merits at the stage of considering the waiver application. The scope of inquiry at this stage is limited to examining whether the petition contains allegations of oppression and mismanagement.

14. It is contended by the Applicant that the captioned Company Petition sets out several instances of oppression and mismanagement, including, inter

alia:

14.1. Respondent No. 2 has allegedly diverted substantial funds of Respondent No. 1 Company towards the acquisition of high-value residential properties and luxury motor vehicles, which continue to be utilized by Respondent No. 2 and other family members. Such properties include the "Bishops Gate" apartment in Mumbai valued at approximately Rs. 32 Crores and presently occupied by Respondent No. 2, as well as a duplex property at Cumballa Hill acquired for the benefit of Ms. Jasna Thackersey, who has no executive role, employment, or professional association with Respondent No. 1 Company.

14.2. Assets of Respondent No. 1 Company have allegedly been mortgaged without any demonstrable necessity or benefit accruing to the Company.

14.3. On 24.06.2020, Respondent No. 2 convened a Board Meeting of Respondent No. 1 Company seeking authorization for himself to negotiate and finalize the consideration payable to the CKT Group for acquisition of their shareholding.

14.4. At the said Board Meeting, the existence and execution of the 2020 MoU were concealed from the Board. The agenda read “*The Company intends to acquire equity shares from the promoter(s) of its group companies at short notice and many a time it is not possible to convene the Board Meeting at a shorter notice or only for solitary item of investment.*”

14.5. No reasons or explanatory statement were placed before the Board to justify the necessity of such investment or to explain the urgency

that allegedly warranted immediate approval.

15. Ld. Counsel for the Applicant further submits that no proceedings relating to the present dispute are pending before any other court or tribunal. It is submitted that, the Applicant has filed separate proceedings u/s 59 of the Companies Act, 2013, the pendency of such proceedings does not preclude the Applicant from seeking a waiver u/s 244 or from pursuing reliefs under Sections 241 and 242 of the Companies Act, 2013.

16. Ld. Counsel for Respondent No. 3 submits that he supports the Applicant's request for waiver.

17. Per contra, The Ld. Counsel for the Respondent submits that the rights claimed under the 2020 MoU are related to the Applicant's status as a member of the "Thackersey Family" and not to her status as a shareholder of Respondent No. 1. The 2020 MoU seeks to distribute and allocate certain "Thackersey Family" assets between two groups of the family, namely the CKT Group and the SKT Group. The entitlements under the MoU flow from the status of the concerned persons as members of the "Thackersey Family" and have no nexus with their shareholding in Respondent No. 1 Company. Even if the Applicant were not a shareholder of Respondent No. 1, she would still be entitled to the benefits under the 2020 MoU.

18. The Ld. Counsel for the Respondent further submits that the 2020 MoU required the SKT Group to relinquish its entire shareholding in Hindustan Mills (a CKT Group company). Respondent Nos. 2 and 3 transferred their shareholding in the said company, however, the Applicant did not do so. It is submitted that, had Applicant considered herself to be a part of the SKT Group and bound by the terms of the 2020 MoU, she too would have transferred her shareholding to the CKT Group.

19. The Ld. Counsel for the Respondent submits that, in her petition u/s 59 of the Companies Act, 2013, the Applicant has prayed that the said 2,651 shares of Respondent No. 1 Company be divided equally among the five members of the SKT family. It is submitted that this relief indicates that the Applicant has no objection to the alleged misutilisation of the funds of Respondent No. 1 Company amounting to Rs. 81 crores, or to the alleged fraud perpetrated upon Respondent No. 1, so long as she receives a share in the alleged misutilisation or fraudulent gain.
20. The Ld. Counsel for the Respondent further submits that, even as per the Applicant's own case, Respondent No. 2 and Capricorn Realty Private Limited together own and control only 77.57% of Respondent No. 1. A substantial number of non-Thackersey minority shareholders collectively hold 14.91% of the shareholding in Respondent No. 1. In addition, the Applicant's father and mother hold 1.26% and 1.49% equity shares respectively, aggregating to 2.75% of the equity share capital of Respondent No. 1. It is submitted that the present application seeking waiver does not fall within the exceptional circumstances contemplated under Section 244. Further, the Applicant cannot plead "impossibility" on account of her own failure to persuade other independent shareholders to join a misconceived action.
21. Heard Ld. counsels appearing for both the parties. The Applicant/Original Petitioner is a shareholder of Respondent No. 1 Company, Bhisma Reality Limited, a family-owned entity and presently holds 460 fully paid-up equity shares constituting approximately 4.65% of its paid-up share capital. The Applicant has instituted captioned Company Petition being C.P. No. 28 of 2026 under Sections 241 and 242 of the Companies Act, 2013, alleging acts of oppression and mismanagement by Respondent No. 2 in the affairs of Respondent No. 1 Company.

22. It is noted that the 2020 MoU was executed to set out mechanism by which the SKT Group and CKT Group could separate. Both the groups jointly held shares in various companies. Accordingly, it was agreed under the MoU that the companies would be divided between the two groups, whereby certain companies would be allotted to the CKT Group and the remaining companies would be allotted to the SKT Group. Significant Companies subject matter of the MoU were (i) Hindustan Mills; (ii) Delta Investment; (iii) Capricon; (iv) Bhisma Realty and others. Under MoU, the CKT faction agreed to transfer its shareholding in Respondent No. 1 Company, Capricorn Reality Private Limited ("Capricorn") and other SKT group companies.
23. In the present case, the Applicant alleges oppression and mismanagement by Respondent No. 2 mainly on the ground that he abused his fiduciary powers by fraudulently transferring 2,681 shares of Respondent No. 1 Company solely to himself instead of transferring them to the SKT Group. The Applicant further alleges that Respondent No. 2 acquired the shares of Capricorn by utilizing funds belonging to Respondent No. 1 Company towards the consideration of Rs. 81.26 crores. It is also alleged that Respondent No. 2 mismanaged the funds of the Company by using them to acquire high-value assets for his personal benefit, treating Company funds as personal income.
24. The present application has been filed under the proviso to Section 244(1) of the Companies Act, 2013 seeking waiver of the eligibility requirements prescribed therein. The Hon'ble NCLAT in *Cyrus Investments (supra)* laid down certain principles for determination of what shall constitute exceptional circumstances so as to justify the exercise of discretion u/s 244(1) for waiver of threshold condition.

“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.?’”

25. In the present case, the Applicant is admittedly a shareholder of Respondent No. 1 Company. The allegations raised in the captioned Company Petition relates to the acts of oppression and mismanagement by Respondent No. 2, including alleged diversion of company funds for personal gains, breach of fiduciary duties and improper transfer of shares by Respondent No. 2. Further, we are of the view that the share entitlement of the applicant, which is subject matter of a petition being C.P. 205 (MB) 2025 under Section 59 of the Companies Act, 2013 pending before this Tribunal, need not be considered in the present matter for meeting threshold prescribed under section 244(1)(a) of the Companies Act, 2013. Nonetheless, we are of considered view, the entitlement of shares, being subject of matter of rectification proceedings, can be a relevant consideration for relaxing the threshold.

26. It is further noted that, as per the list of shareholders of Respondent No. 1 Company submitted by the Respondent No. 2 and annexed as Annexure ‘A’ of his affidavit in Reply, it can be observed that only Respondent no. 2 and Capri Realty Private Limited holds more than 10% shares in the Respondent No. 1 Company. The Applicant holds only 4.65% of the share capital. The remaining shareholders hold very small percentages of shareholding. A substantial number of shareholders hold merely 0.01% to 0.03% shareholding each, while only a few shareholders hold shareholding exceeding 1%.

27. In *Cyprus Investments (Supra)*, the Hon’ble NCLAT held that an individual minority shareholder cannot be forced to secure the support of other shareholders in order to satisfy the threshold requirements under

Section 244(1), such support depends entirely upon the willingness of other members. Therefore, the inability to gather the required number of shareholders may justify seeking a waiver of the eligibility requirements under the Act. The relevant extract is as follows: “156. *That means in the context of present case, except that the minority shareholders join together, i.e., either six in number or such numbers of members whose joint shareholding will come up to 10 per cent. of the issued share capital of the company, which will be also not less than 3 to 4 members, none of the 49 shareholders can file an application under section 241 alleging ‘oppression and mismanagement’.*

157. One or the other minority shareholder cannot be asked or directed to form a group of 10 per cent. of the member(s) that means six person(s) in the present case, as it will be dependent on the prerogative of the other member(s).”

28. In view of the above discussion, we are of the view that Respondent No. 2 holds majority shareholding in Respondent no. 1 company, both directly and indirectly, and that exceptional circumstances exist for exercise of discretion under the proviso to Section 244(1) of the Companies Act, 2013 for grant of waiver.

29. Accordingly, the application IA 62 of 2026 in C.P. 28 (MB) 2026 is allowed and disposed of.

30. List C.P. No. 28 (MB) 2026 on **17.07.2026** for further consideration.

Sd/-
Prabhat Kumar
Member (Technical)

/AJ/

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)