

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P. No. 151 (MB) 2025

Under Section 241-242 of the Companies Act, 2013.

In the matter of

**C. Mahendra Exports Ltd., Through the Resolution Professional Mr.
Jayanti Lal Jain** ...Petitioner

Versus

C. Mahendra International Ltd. and Ors. ...Respondents

Order pronounced on 19/06/2026

Coram:

Shri. Prabhat Kumar
Member (Technical)

Shri. Sushil Mahadeorao Kochey
Member (Judicial)

Appearances:

For the Petitioner : Mr. Aniruth Purusothaman, Advocate

For the Respondents : Mr. Nithish Bangera, Company
Secretary for R-7;

Mr. Ashish Pyasi, Advocate for R-6

ORDER

Per: Coram

1. Brief Facts:

1.1. C. Mahendra Exports Ltd. (Petitioner/CMEL) was the holding company and a majority shareholder of the C. Mahendra International Ltd. (Company/Respondent no. 1). As on 31.03.2019, the Petitioner held

1,12,500 shares out of the total issued share capital of 1,12,800 shares, constituting 99.73% of the shareholding of Respondent No. 1 Company. The Petitioner underwent the Corporate Insolvency Resolution Process (“CIRP”) under the Insolvency and Bankruptcy Code, 2016. Mr. Jayanti Lal Jain was appointed as the Resolution Professional (RP) of CMEL. Presently, the Petitioner is in liquidation pursuant to this tribunal liquidation order dated 29.07.2025, appointing Mr. Krishna Chamadia as the liquidator.

- 1.2. A Petition being C.P. No. 304 of 2016 was filed against the Petitioner before the Hon'ble High Court of Bombay. The petition was admitted by the Hon'ble High Court, and directions for publication were issued vide order dated 19.07.2017. Thereafter, the Hon'ble High Court, vide order dated 13.07.2018, allowed the aforesaid petition and initiated the winding up of the Petitioner under the Companies Act, 1956. Accordingly, an Official Liquidator was appointed by the Hon'ble High Court.
- 1.3. Thereafter one Flawless Trading FZE filed an application being IA No. 19403 of 2021 before the Hon'ble High Court seeking transfer of the Company Petition to this Tribunal under the provisions of Section 434(1)(c) of the Companies Act, 2013. The Hon'ble High Court vide an order dated 17.11.2021 allowed the said application and transferred the Company Petition to this Tribunal.
- 1.4. The Company Petition being C.P. No. 304 of 2016 so transferred by the Hon'ble High Court was heard and admitted by this Tribunal in C.P. No. 757 (MB) 2023 *vide* order dated 04.10.2024 thereby admitting the Petitioner into CIRP. Mr. Jayanti Lal Jain was appointed as the Resolution Professional of the Petitioner *vide* an order dated 29.04.2025.
- 1.5. Further, Bank of Baroda, one of the CoC members, informed the Resolution Professional that the Respondent No. 1 Company was in the

process of alienating/selling its assets located in the Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai. After examining all the information and data of the petitioner, the Resolution Professional discovered that there was a board meeting of the Respondent No. 1 Company held on 21.05.2018 when the resolution purporting to offer and issue 1,20,000 equity shares on a preferential basis to Respondent No. 6, Krupa Shah, was purportedly passed.

1.6. The Board also resolved to issue a notice for convening an Extraordinary General Meeting (EOGM) on 18.09.2018 for passing a special resolution issuing 1,20,000 equity shares to Respondent No. 6. Pursuant thereto, a notice was issued on 21.05.2018. The meeting was convened on 18.09.2018 and the special resolution was passed thereat.

1.7. Following this revelation, the Resolution Professional addressed emails to the Official Liquidator and the suspended Board of Directors, seeking confirmation as to whether notice of the purported EOGM held on 18.09.2018 had been served upon the Official Liquidator. However, no response was received from the Board.

1.8. In view of non-cooperation and response from Respondent No. 2, The Resolution Professional filed an application u/s 19(2) of the Code being IA. No. 1443 of 2025. The said IA is pending adjudication.

1.9. The Petitioner company, through its RP, filed the present petition challenging the acts of the Respondents in illegally issuing equity shares to Respondent No. 6 by way of private placement, with the intent of diluting the Petitioner's shareholding and usurping control of the Company. It is further alleged that the Respondents are attempting to sell the assets of Respondent No. 1 Company through such illegally acquired shareholding. The Petitioner has prayed for the following:

“a) That this Hon'ble Tribunal be pleased to pass appropriate orders

and grant reliefs and concessions under Sections 241 and 242 of the Companies Act, 2013 to put an end to the aforesaid acts of oppression and mismanagement perpetrated by Respondent Nos. 2 to 9 for necessary orders and reliefs in respect thereto, including as prayed for herein;

b) That this Hon'ble Tribunal be pleased to direct Respondent Nos. 2 to 9 and their respective servants, agents and assigns to make a full, free and complete disclosure of records of the Company with regard to the affairs of the Company;

c) That this Hon'ble Tribunal be pleased to restrain Respondent No. 2 to 9 and their agents, assigns, heirs, servants or any other person claiming through or under them from taking any steps to dilute the shareholding of the Petitioner in the Company.

d) That this Hon'ble Tribunal be pleased to declare as illegal and set aside the Resolution passed at the Board Meeting conducted on 21st May 2018 for approving the issuance of 1,20,000 shares to Krupa Shah by way of private placement;

e) That this Hon'ble Tribunal be pleased to declare as illegal and set aside the Resolution passed at the Extra-ordinary General Meeting held on 18th September 2018 approving the issuance of 1,20,000 shares to Krupa Shah by way of private placement;

f) That this Hon'ble Tribunal be pleased to declare as illegal and set aside the Resolution passed at the Board Meeting conducted on 20th May 2019 approving the issuance of 1,20,000 shares to Krupa Shah by way of private placement;

g) That pending the hearing and disposal of the present Petition, this Hon'ble Tribunal be pleased to stay the effect and implementation of the Resolution passed at the Board Meeting conducted on 21st May 2018 approving the issuance of 1,20,000 shares to Krupa Shah by way of private placement;

h) That this Hon'ble Tribunal be pleased to direct the rectification of the

register of members of C. Mahendra International Ltd. by removing the 1,20,000 shares illegally allotted to Krupa Shah and restoring the shareholding of C. Mahendra Exports Ltd. to its position prior to such illegal allotment.

i) That pending the hearing and disposal of the present Petition, this Hon'ble Tribunal be pleased to stay the effect and implementation of the Resolution passed at the Extra-ordinary General Meeting held on 18th September 2018 for approving the issuance of 1,20,000 shares to Krupa Shah by way of private placement;

j) That pending the hearing and disposal of the present Petition, this Hon'ble Tribunal be pleased to restrain the Respondent No. 6 from exercising his voting rights in any manner;

k) That pending the hearing and disposal of the present Petition, this Hon'ble Tribunal be pleased to restrain the Respondent Nos. 2 to 9 from transferring, alienating and/or otherwise creating any third party rights on the assets of the Respondent No.1 Company;

l) That pending the hearing and disposal of the present Petition, this Hon'ble Tribunal be pleased to issue directions to the Respondent Nos. 2 to 9 to issue notice of every general meeting to the Resolution Professional of the Petitioner;

m) Ad interim reliefs in terms of Prayers (i), (j), (k), (l) and (m) above.

n) Costs of and incidental to the Petition be paid by the Respondent Nos. 2 to 9;

o) That this Hon'ble Tribunal be pleased to pass such other and further directions and reliefs as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.”

1.10. On 29.07.2025, a liquidation order was passed in IA(IBC)(LIQ.)/50(MB)/2025 under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (IBC), terminating the CIRP of the Petitioner company and appointing Mr. Krishna Chamadia as the Liquidator under

Section 34(4).

1.11. As on 28.02.2026, Respondent No. 1 had an issued, subscribed, and paid-up share capital of Rs. 59,28,000/-, comprising 5,92,800 equity shares of Rs. 10/- each.

2. Submissions of the Petitioner:

2.1. Ld. Counsel for the Petitioner submits that, upon examining the records of the Petitioner/Corporate Debtor, the Resolution Professional found that the Petitioner was the holding company of Respondent No. 1. As on 31.03.2019, the Petitioner held 1,12,500 shares out of the 1,12,800 issued shares, constituting 99.73% of the shareholding of Respondent No. 1 Company.

2.2. Ld. Counsel for the Petitioner further submits that a Board Meeting of Respondent No. 1 Company was held on 21.05.2018, wherein it was resolved to issue 1,20,000 equity shares on a preferential basis to Respondent No. 6. The Board also resolved to convene an Extraordinary General Meeting (EOGM) on 18.09.2018 to pass a special resolution for the issuance of the abovementioned shares. Pursuant thereto, a notice convening the EOGM was issued on 21.05.2018. The special resolution was passed in the purported meeting and was later filed with the Registrar of Companies in March 2019.

2.3. It is submitted that the aforesaid EOGM was held after the winding-up proceedings against the Petitioner Company had commenced and the Official Liquidator had been appointed by the Hon'ble High Court. Accordingly, as per the Companies Act, 2013 and Secretarial Standards, the Official Liquidator was entitled to receive notice of the EOGM. However, the notice convening the EOGM was not served upon the Official Liquidator.

2.4. Ld. Counsel for the Petitioner submits that the Respondents were aware of

the aforesaid requirement to issue notice of the EOGM to the Official Liquidator and, therefore, for a meeting convened on 18.09.2018, the Respondents prepared a back-dated notice dated 21.05.2018. The back-dated notice was manufactured by the Respondents only to circumvent the defence that the notice was not served upon the Official Liquidator. The notice purportedly issued for the EOGM was for an unusually long period of around four months, whereas the provision requires a minimum notice period of only 21 days. Further, in any event, even if it is assumed that notice of the EOGM scheduled on 18.09.2018 was in fact issued on 21.05.2018, after the initiation of winding-up proceedings and the appointment of the Official Liquidator, the Respondents ought to have served notice upon the Official Liquidator of the Petitioner as well, the Petitioner holding 99.73% of the shareholding in Respondent No. 1 Company.

2.5. It is submitted that the allotment of 1,20,000 equity shares to Respondent No. 6 was made only to reduce the Petitioner's shareholding percentage in Respondent No. 1 and to wrest control from the Official Liquidator of the shareholder entity, thereby rendering the winding-up proceedings initiated vide order dated 19.07.2017 nugatory through a mala fide private placement.

2.6. Ld. Counsel for the Petitioner further submits that Respondent No. 2, Mr. Mahendra Shah, was disqualified as a director under Section 164(2) of the Companies Act, 2013 from October 2017 to September 2022. Despite this, all the resolutions passed during FY 2018–19 were signed by him as a Director of the Company. Therefore, the resolutions of May 2018 and September 2018, and the meetings chaired by him, are null and void ab initio.

2.7. Ld. Counsel for the Petitioner submits that the notice convening the

EOGM and the minutes approving the offer, issue, and allotment of shares to Respondent No. 6 were signed by Respondent No. 2. Since he stood disqualified as a director with effect from 29.10.2017 and such disqualification continued until the commencement of CIRP, the documents signed by him are invalid.

2.8. It is further submitted that a member of the Committee of Creditors, Bank of Baroda, informed the Petitioner that Respondent No. 1 Company was in the process of alienating commercial office spaces situated at Bharat Diamond Bourse, Bandra. Since Respondent No. 1 is the corporate guarantor of the Petitioner and its subsidiary, Bank of Baroda, the lead banker of the consortium, requested the Managing Committee of Bharat Diamond Bourse vide letter dated 27.06.2025 not to issue a No Objection Certificate for the sale of the units of Respondent No. 1 Company. However, Bharat Diamond Bourse, vide letter dated 11.07.2025, declined the request in the absence of any restraining order.

2.9. It is further contended that, even assuming that the EOGM was in fact held on 18.09.2018, since the Petitioner was not present at the meeting, the purported resolution approving the issuance of equity shares to Respondent No. 6 by way of private placement could not have been passed.

2.10. The Petitioner contends that Section 62 of the Companies Act requires the issue price of shares to be supported by a valuation report from a registered valuer. The valuation report filed on the MCA portal is inadequate and does not consider all relevant factors in arriving at the value of Rs. 10 per share.

3. **Submissions of the Respondents:**

3.1. Ld. Counsel for Respondent No. 6 submits that Respondent No. 6 is a

bona fide shareholder of the company, having acquired 1,20,000 equity shares through a preferential allotment made in compliance with the Companies Act, 2013 and the Articles of Association. Respondent No. 6 has no role in the management or day-to-day affairs of the company, having never been a director, nor involved in any alleged acts of oppression or mismanagement. The shares were allotted to her as a strategic investor to infuse capital into the company during financial distress, and the allotment was approved by the Board and shareholders. It is submitted that a petition for oppression and mismanagement must disclose a prima facie case against the concerned respondent, which is absent against Respondent No. 6.

3.2. The Ld. Counsel for the respondents submits that the petition does not plead that it is just and equitable to wind up the company or that such winding up would prejudice the Petitioner.

3.3. The Ld. Counsel for the respondents further submits that the reliefs sought u/s 58 and 59 of the Act cannot be granted in a petition filed only under Sections 241 and 242 of the Companies Act, 2013. Since the Petitioner also seeks rectification of registers, the petition ought to have been filed under Sections 58 and 59 of the Act.

3.4. It is further submitted that the petition was filed by the RP on 28.07.2025. On 29.07.2025, a liquidation order was passed in IA(IBC)(LIQ.)/50(MB)/2025 under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (IBC), terminating the CIRP and appointing Mr. Krishna Chamadia as the Liquidator under Section 34(4). Upon such appointment, the RP ceased to have authority to represent the corporate debtor or continue these proceedings. Since no substitution of the Liquidator was made, the petition is not maintainable. It is also submitted that the Liquidator's powers under Section 35 of the IBC do not extend to

pursuing oppression and mismanagement claims without the approval of the Adjudicating Authority, which has not been shown.

3.5. It is further submitted that the petition challenges events of 2018–2019 and is barred by limitation under Article 137 of the Limitation Act, 1963. The alleged acts occurred more than six years before the filing of the petition in 2025 and do not constitute continuing acts of oppression or mismanagement. Therefore, no continuing cause of action exists.

3.6. It is submitted that the shares allotted to Respondent No. 6 by private placement were issued to raise funds for a company facing financial stress. The dilution of existing shareholding was a consequence of this exercise.

3.7. The Ld. Counsel for the Respondents submits that the list of disqualified directors under Section 164 of the Companies Act, 2013 was published on the MCA portal on 21.02.2019. Before that date, the disqualification of Respondent No. 2 as a director was not known. Upon becoming aware of the disqualification, he resigned on 19.03.2019, and Respondent No. 7, Mr. Vishal Vaghajibhai Mehta, was appointed as a Director of Respondent No. 1 Company on the same day. It is further submitted that, even if there was any defect in Respondent No. 2's appointment, Section 176 of the Companies Act, 2013 validates acts done by a director notwithstanding defects in appointment. Therefore, resolutions passed in 2018 cannot be challenged in 2025 on this ground. It is further submitted that Respondent No. 2 was not disqualified on the dates when the impugned resolutions were passed.

3.8. The Ld. Counsel for the Respondents further submits that notices for the EOGM were sent on 21.05.2018 to all members entitled to receive them, in compliance with Section 101 of the Companies Act, 2013. It is submitted that Section 101 and the Secretarial Standards require notice of a general meeting to be sent to members whose names appear on the

register on the date of dispatch of the notice. Notice is not required to be sent to persons who become members after the notice has been dispatched. Accordingly, notice was sent to members as on 21.05.2018 and not to persons who became members by 18.09.2018.

3.9. It is further submitted that under Section 101(4) of the Companies Act, 2013, any accidental omission to give notice or non-receipt of notice by a member, does not invalidate the proceedings of the meeting.

3.10. Ld. Counsel for Respondent No. 7 submits that Respondent No. 7 ratified the decisions and documents executed by Respondent No. 2 during the relevant period.

4. **Findings & Analysis:**

4.1. The present Petition is filed by C. Mahendra Exports Ltd. through its Resolution Professional, Mr. Jayanti Lal Jain. However, it is noted that one day after this petition was filed, this Tribunal passed a liquidation order dated 29.07.2025 which terminated the CIRP of the Corporate Debtor under Section 33(2) of the Code and the Resolution Professional was replaced by Mr. Krishna Chamadia as the Liquidator of the Corporate Debtor. This Tribunal, vide order dated 07.11.2025, granted liberty to carry out amendments to the petition in view of the changed circumstances. The relevant extract of the said order is as follows: “*Ld. Counsel for the Petitioner seeks liberty to amend cause title to bring on record the Liquidator in place of the Resolution Professional. Liberty is granted. The amendment be carried out before the next date of hearing after serving an amended copy to the other side.*”

4.2. The Petitioner has filed this petition under Sections 241 & 242 of the Companies Act, 2013 in its capacity as a shareholder of Respondent No. 1 Company through Resolution Professional appointed by the Adjudicating Authority under the provisions of Insolvency & Bankruptcy

Code, 2016 ('IBC') consequence to commencement of corporate insolvency resolution process in case of Petitioner Company in terms of provisions of IBC, after transfer of winding up petition pending before Hon'ble High Court. In terms of section 25(2)(a) of IBC, the Resolution Professional is obligated to take custody and control of all the assets of the corporate debtor, and section 25(2)(b) empowers the Resolution Professional to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings. Further, Section 25(1) of IBC requires the Resolution Professional to preserve and protect the assets of the corporate debtor. Section 17(1)(a) of IBC provides that, from the date of appointment of the Interim Resolution Professional the management of the affairs of the corporate debtor shall vest in the interim resolution professional. Further, Section 23(2) of the IBC provides that the Resolution Professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional. These provisions vest the management and affairs of the Corporate debtor in the hands of the Resolution Professional and empowers him to initiate and pursue proceedings on behalf of the Corporate Debtor when such proceedings are necessary to protect and preserve the rights of the corporate debtor. Indubitably, the proceedings u/s 241 of the Companies Act, 2013 are initiated by shareholders to seek redress to the oppressive acts and mismanagement of the shareholders/directors in the management of the Company, and the allotment of shares to exclusion of one set of shareholders has the effect of reducing the intrinsic value of shares of such shareholders, the Resolution Professional was competent to institute the present proceedings.

4.3. Further, Section 34(2) of IBC provides that, on the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case

may be, shall cease to have effect and shall be vested in the liquidator. Also, Section 35(1)(b) requires the Liquidator to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor, section 35(1)(d) requires the liquidator to take measures to protect and preserve the assets and properties of the Corporate debtor, and section 35(1)(k) requires the liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the Corporate Debtor. Accordingly, in our considered view, the liquidator was within its power to represent the corporate debtor as petitioner in the present proceedings for and on behalf of the corporate debtor to protect the value of its investment in the respondent company. Further, the bar imposed in section 33(5) of IBC does not apply to the existing proceedings filed by the corporate debtor. Hence, we do not find any merit in the objection of the Respondent in relation to competence of liquidator in prosecuting present petition.

4.4. The primary issue raised by the Petitioner relates to the issuance of 1,20,000 shares to Respondent No. 6, Krupa Shah, by way of private placement with the intent of reducing the shareholding percentage of the Petitioner Company and thereby usurping control of Respondent No. 1 Company. The Ld. Counsel for the Petitioner submitted that no notice of the EOGM was served upon the Official Liquidator, who was acting as the representative of the Petitioner Company, the majority shareholder of Respondent No. 1 Company. Further, it is contended that the Special Resolution passed at the EOGM held on 18.09.2018 is illegal, invalid, and liable to be set aside.

4.5. The list of shareholders of Respondent No. 1 Company, before and after the allotment of equity shares to Respondent No. 6, as disclosed in the Annual Return filed by the Respondent Company is reproduced below:

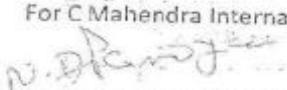


Regd. & Corporate Office: Tower 'C', Office No. CC-6011, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East) Mumbai - 400 051 • Tel: +91-22-2672 5555 (30 Lines) • Fax: +91-22-2675 4560 • Email: bhk@cmahendra.com

List of Shareholders as on 22.09.2019 (As on Date of Annual General Meeting)		
S.No	Name of the shareholders	No. of Shares
1	Krupa Shah	120000
2	C. Mahendra Exports Ltd	112500
3	Mahendra C. Shah	50
4	Rasila M. Shah	50
5	Pravin C. Shah	50
6	Kanu C. Shah	50
7	Prakash Sanghavi	50
8	Sandeep M. Shah	50
Total No. of Shares		232800

Thanking you

For C Mahendra International Limited


 NIKHIL DHIRAJLAL PANDYA
 Director
 (08390355)



Date: 22.09.2019
 Place: Mumbai

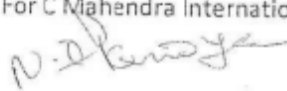


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List of Shareholders as on 31.03.2019		
S.No	Name of the shareholders	No.of Shares
1	C. Mahendra Exports Ltd	112500
2	Mahendra C. Shah	50
3	Rasila M. Shah	50
4	Pravin C. Shah	50
5	Kanu C. Shah	50
6	Prakash Sanghavi	50
7	Sandeep M. Shah	50
Total No. of Shares		112800

Thanking you

For C Mahendra International Limited


 NIKHIL DHIRAJLAL PANDYA
 Director
 (08390355)



Date: 22.09.2019
 Place: Mumbai

4.6. It is noted that the Hon'ble Bombay High Court, *vide* order dated 13.07.2018, passed in Company Petition 304 of 2016 filed by HDFC bank seeking winding up of Petitioner Company in terms of Section 433(3) of Companies Act, 1956, initiated the winding up of the Petitioner and appointed an Official Liquidator. It is further noted that, during the pendency of said winding up petition, the Board of Directors of

Respondent No. 1, in their meeting held on 21.05.2018, passed resolutions to offer and issue equity shares on a preferential basis and also to issue notice for convening an EOGM of Respondent No. 1 Company on 18.09.2018. The notice was issued on 21.05.2018. The EOGM was conducted on 18.09.2018, wherein a special resolution to issue and allot 1,20,000 equity shares of Respondent No. 1 Company on a private placement basis to Respondent No. 6 was passed. Pursuant thereto, the Board of Directors passed a resolution in their meeting held on 20.05.2019 approving the allotment of 1,20,000 shares to Respondent No. 6.

4.7. It is observed that the notice issued for convening the EOGM was issued on 21.05.2018 and the EOGM was to be convened on 18.09.2018, i.e., nearly four months after the issuance of the notice. During this interregnum, the Official Liquidator was appointed for the Petitioner Company, and all the property and effects of the company are deemed to be in the custody of the court as from the date of the order for the winding up of the company in terms of section 456(2) of the Companies Act, 1956. It is an admitted position that the Official Liquidator was not served with notice of the EOGM after his appointment, which happened approximately two months prior to the EOGM. There is also nothing on record to show that the suspended director, who was also director of Respondent Company and participated in said EOGM, informed the Official Liquidator of the said EOGM. This act demonstrates the fraudulent intent and conduct of the Respondents. Being the representative of the Petitioner Company, which held 99.73% of the shareholding in Respondent No. 1 Company, the Official Liquidator ought to have been served with notice of the EOGM or ought to have been told by the erstwhile director of corporate debtor who was also director of Respondent Company, in order to enable the liquidator to exercise the vote on behalf of majority shareholder i.e. corporate debtor, and no resolution, be it special or ordinary, could have been passed in the manner

it came to be passed, if the voting rights of corporate debtor would have been exercised, particularly in view of the changed circumstances. It is clear that the Official Liquidator was kept in dark and the respondent company and its management reduced the status of the Petitioner Company from a majority shareholder to a minority shareholder consciously by proceeding with allotment of further shares in the name of Respondent no 6, who is daughter in law of Responden No. 2.

4.8. The Respondent No. 6, Mrs. Krupa Shah, the allottee of shares under preferential allotment, was daughter in law of the director of corporate debtor as well as respondent company during the relevant time, therefore, Mr. Mahendra Shah, being relative of beneficiary of the proposed preferential issue, proceeded with such preferential issue to the detriment of the corporate debtor/petitioner company which had the effect of diluting the intrinsic value of share of respondent company in view the shares being offered at face value, which was less than its fair value. On perusal of Financial Statement for the FY ended 31st March 2019 the book value of per share was Rs. 238.80 per share and the shares were allotted to Krupa Shah at Rs. 10 each. Further, the Respondents have not placed on record the Financial statements for the FY 2019-20 to demonstrate if there was a need for liquid funds for the business of the company, which was required to be generated from the said preferential issue. Nonetheless it is noted that the respondent Company had short term loans and advances and other current assets amounting to Rs. 7 Crore approx. besides cash in hand of Rs. 6.70 lakhs.

4.9. It is noted the paid up share capital of the Respondent Company is stated to be Rs. 59,28,000/- divided into 5,92,800 shares of Rs. 10/- each as on 28.02.2026, which indicates that further allotments of shares of respondent company were made by the respondents at face value, as no share premium account is reflected in the provisional financial statement for the year ended on 28.02.2026 placed on record by the Respondents.

4.10. Though this Tribunal cannot suggest what the management ought to have done, however, the evaluation of probable alternate ways gains importance to test the underlying principle in ‘Proper-Purpose Doctrine’ approved by Hon’ble Supreme Court in ***Dale & Carrington Inv. (P) Ltd. v. P.K. Prathapan (2005) 1 SCC 212***, wherein the Hon’ble Court also noted application of said doctrine in Needle Industries, which has been relied upon by the Respondents. In the said case, the Hon’ble Supreme Court explained the said doctrine stating that “20. *The principle deduced from these cases is that when powers are used merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company, the same cannot be upheld*”. The Hon’ble Court in the said decision further observed the decision in ***The Tea Brokers (P) Ltd. and Others v. Hemendra Prosad Barooah, (1998) 5 Company Law Journal 463*** and quoted at Para 23 the observations of Justice A.N. Sen in it “*It is well settled that the directors may exercise their powers bona fide and in the interest of the company. If the directors exercise their powers of allotment of shares bona fide and in the interest of the company, the said exercise of powers must be held to be proper and valid and the said exercise of powers may not be questioned and will not be invalidated merely because they have any subsidiary additional motive even though this be to promote their advantage. An exercise of power by the directors in the matter of allotment of shares, if made mala fide and in their own interest and not in the interest of the company, will be invalid even though the allotment may result incidentally in some benefit to the company.*”

4.11. However, considering the peculiar facts of this case, this Tribunal must examine the bona-fide requirement of said preferential issue in terms of Proper-purpose doctrine as evolved by courts in Commonwealth countries including England and Australia and affirmed in ***Dale & Carrington*** (Supra), wherein it was said that “21. *Courts in the Commonwealth countries including England and Australia have*

emphasized that the duty of the Directors does not stop at "to act bonafide" requirement. They have evolved a doctrine called the 'proper purpose doctrine' regarding the duties of company directors. In Hogg v. Cramphorn, (supra), explicit recognition was given to the proper purpose test over and above the tribunal bonafide test....". The Hon'ble Court in that case further observed that "Further it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors malafide, the said act must ordinarily be considered to be an act of oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run and affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company". The Hon'ble Court further noted that "28. It will be seen from the judgments in Needle Industries (supra) and Tea Brokers (supra) that the courts in India have applied the same tests while testing exercise of powers by directors of companies as in other Commonwealth countries".

- 4.12. Indubitably, the petitioner was likely to be admitted into winding up process, and the notice for calling EOGM was issued during the pendency of such winding up petition, and finally, the winding up process was set in motion appointing liquidator by Hon'ble Bombay High Court after about two month of issuance of said notice but prior to approx. two month of scheduled date of EOGM. The Petitioner held about 99.73% shares of the Respondent Company, and the proposal to allot shares to a relative of director of Respondent Company at face value certainly does not meet the proper purpose test as the intent and object of such allotment was only to reduce the Petitioner company to minority. This conduct constitutes an

oppressive act on the part of Respondent No. 1 Company and its management.

4.13. It is further observed from Form MGT-7 filed by Respondent No. 1 Company that for FY 2018-19, the Company had a turnover of Rs. 2,45,83,412/- and a positive net worth of Rs. 26,93,69,595/-, but suffered a loss of Rs. 46,84,646/-. Further, nothing has been placed on record to show that during FY 2018-19, i.e., from 1st April 2018 to 31st March 2019, a sudden need had arisen for a substantial investment.

4.14. For the infused amount, Respondent No. 1 Company allotted equity shares to Respondent No. 6. It appears that the only purpose of allotting additional shares in the company was to gain control of Respondent No. 1 Company. Therefore, in our view, the allotment of shares to Respondent No. 6, Krupa Shah is an act of oppression and has to be set aside to bring an end to the dispute. Further, subsequent allotments of the shares on preferential basis though not impugned in the present petition, also gets vitiated in the absence of notice to the Liquidator/Resolution Professional of any meeting of shareholders, whereat any resolution for further allotments of shares subsequently would have been passed, or no offer of right shares was made if the further dilution from 48.32% to the present level happened on account of allotment of shares on right basis to existing shareholders.

4.15. With regards to the issue of limitation raised by the Respondents, it is observed that the corporate debtor was undergoing winding up when the EOGM was held on 18.09.2018 and the suspended board member of Corporate Debtor, Respondent no. 2 herein, who was director of Respondent Company as well did not inform the Official Liquidator of the said EOGM, nor the decisions taken thereat. Further, the said winding up proceedings resulted into resolution proceedings under IBC and thereafter liquidation thereunder after enactment of IBC. Consequently, the official liquidation or the Resolution Professional could not be

expected to keep track of the affairs of the subsidiary company of corporate debtor, which is respondent company herein, in routine manner, as can be expected from a shareholder who participates in the affairs of the Respondent Company. Following the initiation of CIRP of the Petitioner company, this Tribunal vide order dated 29.04.2025 appointed the Resolution professional. Upon examining the records of the Petitioner/Corporate Debtor, the Resolution Professional discovered that the Petitioner was the holding company of Respondent No. 1 and that, pursuant to the EOGM dated 18.09.2018, equity shares had been issued on a preferential basis to Respondent No. 6. This preferential allotment came to the knowledge of the Resolution Professional in or around May/June 2025, after which the present petition was filed on 06.08.2025. It is settled law that in the incidents of fraud or concealment, the limitation period begins to run from the date the incident is discovered or comes to knowledge. Hence, in the present case, the limitation would run from the date of knowledge the Resolution Professional acquired in relation to commission of fraud. Hence, the petition, having been filed within 3 years from the date of knowledge on the part of Resolution Professional, is within limitation.

4.16. With respect to the disqualification of Respondent No. 2 as a Director, it is observed that the list of disqualified directors under Section 164 of the Companies Act, 2013 was uploaded on the MCA portal on 21.02.2019, and Respondent No. 2 resigned as a Director of Respondent No. 1 Company with effect from 19.03.2019. It is submitted by Respondent No. 6 in her affidavit in reply that the disqualification took effect from 31.12.2018. However, we observe that all the resolutions and minutes were signed by Respondent No. 2 before being informed about his disqualification under Section 164 of the Act, which was uploaded on the MCA portal on 21.02.2019.

4.17. In terms of the above, CP No. 151/2025 is allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)

/AJ/