IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH I

C.P. No. 244 of 2023

Under Sections 213, 241 & 242 of the Companies Act, 2013;

In the matter of

Devendrakumar Ramshanker Mishra ..... Petitioner

Versus

Vatshalya Developers Private Limited & Ors. .. Respondents

Order Pronounced on 15.07.2026

Coram:

Shri. Prabhat Kumar	**Shri. Sushil Mahadeorao Kochey**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Petitioner:	Adv. Gauraj Shah a/w CS Siddharth Doshi
For the Respondents:	Adv. Poushali Chakraborty i/b Chaitanya Kulkarni

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<u>ORDER</u>

1. The present petition has been filed by Mr. Devendrakumar Mishra alleging acts of oppression and mismanagement by Respondent Nos. 2 to 6 (Mr. Velji Velani, Mr. Niraj Patel, Mr. Chandresh Velani, Mr. Prakash Zore, Ms. Nishmita Kode respectively) in the affairs of

Respondent No. 1, Vatshalya Developers Private Limited, and also seeking an investigation into the affairs of the respondent Company.

2. Respondent No. 1 was incorporated on 14.10.2003. Since its incorporation, the Petitioner and Mr. Pramod Vasani were its Directors and held 50% shareholding each. Until 2009, the Petitioner held 50% of the shareholding in Respondent No. 1. However, the Petitioner's shareholding as on date of filing this petition is reduced to 7.99%.
3. During the pendency of the petition, the Petitioner expired on 19.12.2025. Consequently, this Tribunal, by order dated 20.03.2026, allowed the amendment of the petition, pursuant to which the Petitioner's legal heirs, namely his wife, daughter, and son were brought on record. The Petitioner has prayed for the following reliefs:
    3.1. To pass an appropriate order under Section 213, 241,242 of the Companies Act,2013, to bring an end to the acts of oppression and mismanagement perpetrated by Respondents;
    3.2. To pass an order thereby framing a Scheme for the proper management and administration of the Respondent Company on such terms and conditions as this Hon'ble Tribunal deems fit and proper and Direct Investigation u/s 213 of the Companies Act,2013;
    3.3. To re-instate Petitioner as Director of the Respondent No. l Company and declare resignation letter filed as forged/fabricated and direct Respondent No.7 (Registrar of Companies (ROC), Mumbai to declare e- form DIR 12 filed for Resignation of Petitioner and as illegal, null and void;
    3.4. To direct for forensic audit/ investigation for the forged/fake documents executed by the Respondent No.2/other Respondents/other persons for resignation of the Petitioner at the cost of Respondent No. l Company and/ or take handwriting report obtained by the Petitioner on record;

3.5. To restrain Respondents and their agents and employees or assigns from selling, mortgaging, alienating or otherwise creating third party rights on the property of the Respondent No. l Company described 1n the Company Petition above whether entered in the books or not, pending the final disposal of this Petition;

3.6. To remove the Respondent No. 2 as a director of Respondent No. l Company and appoint nominee/s of the Petitioners as Directors of Respondent No. 1 Company;

3.7. To pass an order and direction to Respondents to rectify the register of members by rectifying the shareholding pattern by cancelling the illegal allotment;

3.8. To restrain Respondents and their agents and employees or assigns from selling, mortgaging, alienating or otherwise creating third party rights in the leasehold property and other properties of the Respondent No.1 Company described in the Company Petition above whether entered in the books or not;

3.9. The Respondent No .2,3,4,5 and 6 be directed to render true and faithful accounts of all secret profits and illegal gains made;

3.10. To appoint receiver / administrator to immediately taken into custody the possession with respect to the property and all records of Respondent No. l Company;

3.11. The Respondent No.2,3,4,5 and 6 be directed to indemnify the losses incurred by Respondent No.1 Company and Petitioner with respect to obstructing the affairs of the Company;

3.12. To pass an order thereby directing the Respondent No.2,3,4,5 and 6 to pay costs of the Petition to the Petitioner;

3.13. Such further and other reliefs as the nature and circumstances of the case may require as this Hon'ble Bench may consider fit.

4. The facts of the case, as stated by the Petitioners in the petition are as follows:

4.1. On 10.08.2006, the Respondent No. 1 company entered into a development agreement with Mr. Prakash Zore and 25 other members of the Managing Committee of Sambhaji Nagar Vikas Mandal ("the property"). Mr. Chandrakant Patil and 16 others, being the landlords of the said property, were parties to the Agreement as confirming parties. Under the said Development Agreement, Respondent No. 1 Company was granted the sole, exclusive and irrevocable right to develop the said property under Slum Redevelopment Scheme.

4.2. Subsequently on 28.01.2009, Respondent No. 1 Company entered into a Memorandum of Understanding ("MoU") with Mr. Hiralal Patel and Mr. Pravin Kumar Patel through Mr. Veljibhai Velani, Respondent No. 2, for the joint development of the said property. Under the terms of the MoU, Respondent No. 2 was to be appointed as a Director of Respondent No. 1 Company and was allotted 5 equity shares of Rs. 10 each. It was agreed that upon completion of the project or earlier termination of the MoU, Respondent No. 2 would resign as Director and re-transfer the said 5 equity shares in favour of the existing shareholders, namely the Petitioner and Mr. Pramod Vasani.

4.3. After the financial year 2010-11, the business operations of Respondent No. 1 Company gradually came to a standstill and the Company became inactive. Consequently, the Registrar of Companies, Mumbai, *vide* Outward No. ROCMUM/Section 248/2017/STK-7/6 dated 18.08.2017, struck off the name of Respondent No. 1 Company from the Register of Companies on account of non-filing of financial statements for the Financial Year 2011-12 to 2015-16.

4.4. Consequent upon the strike off of Respondent No. 1 Company, all its Directors, including the Petitioner, Respondent No. 2, and Mr.

Pramod Vasani became disqualified under Section 164(2) of the Companies Act, 2013 for a period of five years up to 31.10.2022 and their respective Director Identification Numbers (DINs) were deactivated.

4.5. Mr. Pramod Vasani, Director and shareholder of Respondent No. 1 Company passed away on 11.09.2019.

4.6. Thereafter, the name of Respondent No. 1 company was restored in the register of companies pursuant to the order dated 30.06.2020 passed by this tribunal in C.P. 4033/252/MB/2019.

5. **<u>Submissions by the Petitioner:</u>**

5.1. Ld. Counsel for the Petitioner submits that the restoration petition of Respondent No. 1 was proceeded by Respondent No. 2 without any intimation or consent of the petitioner and the petitioner became aware of the revival of the company only on obtaining public search from the website of MCA. It is submitted that only three directors were on the board of Respondent no. 1 of whom Mr. Pramod Vasani died on 11.09.2019, thus leaving the Petitioner and Respondent No. 2.

5.2. It is further submitted that after the restoration of Respondent No. 1 Company, Respondent No. 2 filed Form DIR-12 with the Registrar of Companies in December 2020 recording the cessation of Mr. Pramod Vasani as Director on account of his death.

5.3. The Ld. Counsel for the Petitioner submits that Mr. Niraj Patel and Mr. Chandresh Velji Velani, Respondents Nos. 3 and 4 respectively, were appointed as Directors of Respondent No. 1 Company pursuant to an Extraordinary General Meeting allegedly held on 29.08.2020. The said appointments were made without any notice or consent of the Petitioner, who was a Promoter Director and majority shareholder of the Company. According to reasons mentioned in the explanatory statement, the appointments were made on the ground that the existing

Directors had been disqualified and there was no duly constituted Board to manage the affairs of the Company.

5.4. It is submitted that thereafter Respondent No. 2 forged the Petitioner's signature on a purported resignation letter dated 08.02.2021 and filed the same with the Registrar of Companies to falsely record the Petitioner's resignation as Director.

5.5. On 27.02.2021, Mr. Prakash Zore and Ms. Nishmita Kode, Respondents Nos. 5 and 6 respectively, were appointed as Additional Directors of the Respondent No. 1 Company.

5.6. The Ld. Counsel for the petitioner further submits that, after the restoration of the Company, Respondents Nos. 2, 3 and 4 shifted the registered office of Respondent No. 1 Company from A-101, Minal Park, CS Road, Near Petrol Pump, Dahisar(E), Mumbai-400068 to Office No. 104, Ambica Darshan, Chhitabhai Patel Road, Off Akurli Road, Behind Bus Stop, Kandivali (East), Mumbai - 400101, with effect from 29.08.2020. It is submitted that the said address is the residential address of Respondent No. 2.

5.7. It is further submitted that Respondents Nos. 2 to 6 increased the authorised share capital of Respondent No. 1 Company from Rs. 5 lakhs to Rs. 1 Crore, with the intention of diluting the Petitioner's shareholding and voting rights. The Respondents also approved the adoption of a new Memorandum of Association and Articles of Association in EOGM dated 08.01.2022 without issuing any notice to or obtaining the consent of the Petitioner, who was the majority shareholder of the Company.

5.8. The Ld. Counsel for the Petitioner submits that the paid-up share capital of Respondent No. 1 Company was increased from Rs. 2,01,000, comprising 20,100 equity shares of Rs. 10 each, to Rs. 12,51,000 by the preferential allotment of 1,05,000 fresh equity shares of Rs. 10 each through private placement under Section 42 of the Companies Act, 2013 to relatives of Respondent No. 2 and new directors of the respondent company. The same was approved in EOGM dated 08.01.2022 and allotted in Board Meeting dated 07.02.2022.

5.9. It is further submitted that, following the restoration of the Company, the financial statements and annual returns for the financial years 2011-12 to 2021-22 were filed with the Registrar of Companies without issuing any notice of the Board Meetings for approval of the financial statements or of the Annual General Meetings for their adoption thereat.

5.10. The Ld. Counsel for the Petitioner submits that Respondent No. 2 did not issue a single notice of any Board Meeting or Annual General Meeting to the Petitioner. Despite the same, annual returns falsely represented that the Petitioner had attended and participated in such meetings.

5.11. It is further submitted that the Petitioner lodged a complaint before the Senior Police Inspector, Samta Nagar Police Station, alleging forgery of his signature on the resignation letter by the Respondents. The Petitioner has also initiated proceedings before the Metropolitan Magistrate's Court at Borivali in relation to the said acts.

5.12. The Ld. Counsel for the Petitioner further submits that the Petitioner obtained an opinion from a handwriting expert, who, upon examination of the resignation letter, opined that the Petitioner's signature on the resignation letter appears to have been forged.

5.13. It is further submitted that, during the pendency of the present Petition and in violation of the interim orders passed by this Tribunal directing the parties to maintain status quo and restraining the creation of third-party rights, Respondent No. 4, acting in concert with Respondent No. 2 and through Concept Architects submitted a fresh proposal before the Slum Rehabilitation Authority (SRA) on or about 03.11.2025 in respect of the same property bearing CTS Nos. 2422A/3 (Part) and 2422B

(Part), Village Dahisar, Mumbai, which constitutes the sole and principal asset of Respondent No. 1 Company.

5.14. The Ld. Counsel for the Petitioners submits that, during the pendency of the present proceedings, several settlement meetings were held between the parties to amicably resolve the disputes. However, the conduct of Respondent Nos. 2 to 6 during such discussions shows that the settlement process was used only to gain time and delay the adjudication of the present Petition, and frustrate the proceedings pending before this Tribunal.

6. **<u>Submissions by the Respondent:</u>**

6.1. The Ld. Counsel for the Respondents submits that, as on the date of filing of the present Company Petition, the Petitioner did not hold the statutory minimum requirement of 10% of the issued share capital of Respondent No. 1 Company as required under Section 244 of the Companies Act, 2013. It is therefore submitted that the Petitioner is not entitled to maintain the present Petition.

6.2. It is further submitted that the present Petition has been filed after a delay of more than three years from the date on which the alleged cause of action arose and is therefore liable to be dismissed on the ground of limitation.

6.3. The Ld. Counsel for the Respondents submits that the Petitioner has failed to make out any case of oppression or mismanagement against the Respondents and that the present Company Petition is devoid of merits.

6.4. It is submitted that the Petitioner had neglected the affairs of Respondent No. 1 Company since 2013 and failed to discharge his duties as a Director by ensuring statutory compliances, including the filing of financial statements and annual returns, such negligence resulted in the striking off of Respondent No. 1 Company from the Register of Companies.

6.5. The Ld. Counsel for the Respondents further submits that, in a meeting held on 18.10.2011 between the committee members and residents of the SRA project and the Directors of Respondent No. 1 Company, the Petitioner agreed to transfer his shareholding to Respondent No. 2 as he was unwilling to actively participate in the affairs of the Company and intended to remain only a sleeping partner.

6.6. It is further submitted that the Petitioner subsequently expressed his unwillingness to continue in the management of Respondent No. 1 Company and conveyed his intention to resign as Director. Based on the Petitioner's decision, his resignation was accepted and the management of Respondent No. 1 Company was thereafter taken over by Respondents Nos. 2 to 6. The Respondents contend that the Petitioner voluntarily resigned from the Company and cannot now dispute the same.

6.7. It is submitted that, after the Company was restored, Respondents Nos. 2 to 6 took the necessary steps to revive and manage the affairs of Respondent No. 1 Company. In doing so, they incurred substantial expenditure towards penalties, legal fees, and other charges for restoring the Company and ensuring compliance with the provisions of the Companies Act, 2013.

6.8. The Ld. Counsel for the Respondents submits that the Petitioner has acted contrary to the interests of Respondent No. 1 Company by neglecting his fiduciary duties towards the Company. It is submitted that Respondent No. 1 Company had been granted development rights under the Slum Rehabilitation Scheme in respect of land bearing C.T.S. No. 2422B, Survey No. 166B, Hissa Nos. 3B, 4 and 2A, admeasuring approximately 26,627 square metres, situated at Village Dahisar, Taluka Borivali, Mumbai. Petitioner's negligence caused the project to remain stalled, thereby affecting the interests of the slum dwellers.

6.9. It is further submitted that Respondents Nos. 2 to 5 have not derived any personal financial benefit from the affairs of Respondent No. 1 Company. They have not drawn any salary or remuneration from the Company.

6.10. The Ld. Counsel for the Respondents further submits that the Petitioner voluntarily chose not to participate in the further infusion of capital into Respondent No. 1 Company, resulting in the dilution of his shareholding. Having consciously declined to subscribe to the additional capital, the Petitioner cannot now challenge the consequential reduction in his shareholding or seek relief under the present Petition. It is also submitted that, prior to filing the present Petition, the Petitioner never addressed any communication to the Company or its Directors alleging exclusion from the affairs of the Company or raising any grievance regarding its management.

6.11. The Ld. Counsel for the Respondents submitted that, in a meeting held on 18.10.2011 between a Committee member, the residents of the SRA project, and the directors of Respondent Company, the Petitioner himself accepted and agreed to transfer his shareholding to Respondent No. 2, as he was not willing to take an active role and intended to continue as a sleeping partner. The said meeting was attended by all the concerned persons, including the Petitioner. However, the Petitioner refused to sign the minutes of the meeting.

6.12. It is further submitted that, under the said MoU, it was agreed that the Parties of the First Part, namely the Petitioner and Mr. Pramod Vasani, would reduce their shareholding, and Respondent No. 2 would hold 87.5% of the shares in Respondent No. 1 Company.

7. **<u>Findings:</u>**

7.1. It is noted that the Petitioner has alleged that Respondent No. 2 and other Respondent directors have committed the following acts in relation to Respondent No. 1 Company after its revival in June 2020. The Ld. Counsel for the Petitioner submitted that all the following actions were undertaken without any notice or consent of the Petitioner, who held 49.75% of the shareholding and voting rights in the Company. The allegations are as follows:

7.1.1. Filing of Form DIR-12 recording the cessation of Mr. Pramod Vasani as a Director of the Company upon his demise.

7.1.2. Forging the Petitioner's signature on a resignation letter and filing the same with the Registrar of Companies.

7.1.3. Appointment of Respondent Nos. 3 and 4 as Directors of the Company on 29.08.2020.

7.1.4. Appointment of Respondent Nos. 5 and 6 as Additional Directors on 27.02.2021.

7.1.5. Shifting of the registered office of the Company from A-101, Minal Park, CS Road, Near Petrol Pump, Dahisar (East), Mumbai-400068 to Office No. 104, Ambica Darshan, Chhitabhai Patel Road, Off. Akurli Road, Kandivali (East), Mumbai-400101.

7.1.6. Increase in the authorised share capital of the Company, adoption of a new Memorandum of Association and Articles of Association, and increase in the paid-up share capital by way of a private placement under Section 42 of the Companies Act, 2013.

7.1.7. Filing of the financial statements and annual returns for the financial years 2011-12 to 2021-22 without serving notice of the Board Meetings for approval of the financial statements or notice of the Annual General Meetings for their adoption.

7.2. At the outset, it is noted that the Petitioner along with his family holds 8.04% shareholding in Respondent No. 1 Company on the date of filing of the present Petition. However, the Petitioner has pleaded that he held

49.75% of the shareholding until additional shares were allotted by way of private placement u/s 42 of the Companies Act, 2013 to Respondent No. 2, Mrs. Rasila Velani, Mr. Chandresh Velji Velani, Ms. Bhavita Chandresh Velani, Mr. Prakash Zore, Mr. Niraj Patel and Ms. Nishmita Kode. It is further noted that the Petitioner has neither filed an application seeking waiver under Section 244(1) of the Companies Act, 2013 nor has prayed for such waiver in the Petition. However, it is the case of the petitioner that his and his family's shareholding was unlawfully reduced from 49.97% to 8.04% by the impugned allotment. It is therefore contended that the Petition is maintainable under Sections 241 and 242 read with Section 213 of the Companies Act, 2013.

7.3. It is noted that, as on date of filing of present petition, there were 11 shareholders, out of which 1 shareholder is daughter in law of the petitioner holding 0.05% shares. The Petitioner has pleaded in the Petition that he and his family held 8.04% shares, which includes shares held by her daughter-in-law also. Accordingly, basis pleadings in the Petition, the Petitioner group had two shareholders, which constitute more than $1/10^{th}$ of total number of members as on date of filing of present petition. However, it is noted that no consent from daughter in law of the petitioner is annexed to the petition, accordingly, the petitioner alone constitutes less than $1/10^{th}$ of total members of the Respondent Company as on date of filing of present petition.

7.4. It is further noted that the remaining shares of the Respondent Company are held by Respondent no. 2 to 6 and their relatives, and the present petition seeks relief against the alleged oppressive acts of these Respondents. Accordingly, the petitioner could not have mustered support of any other member to meet the threshold requirement provided in section 244(1)(a) of the Companies Act, 2013.

7.5. In the matter of ***Montreaux Resorts (P) Ltd. & Ors. Vs. Ascot Hotels & Resorts Ltd. & Ors.*** [2018 SCC Online NCLAT 664], Hon'ble NCLAT observed as follows:

> *"17. This Appellate Tribunal vide its judgement dated 24 January, 2017 in the matter of Anup Kumar Agarwal v. Crystal Thermotech Ltd. has held as under:*
>
> *"A shareholder/member or group of shareholder/members without and notice or information cannot visualize or presume that his/their shares) will be brought down to their disadvantage, which amounts to oppression and mismanagement. On such anticipation or presumption no petition under Section 397 or 398 of the Companies Act, 1956 can be filed. Such aggrieved shareholder(s)/member(s) can file the petitioner under Section 397 and 398 of the Companies Act, 1956 only after cause of action has taken place, If that be so, the day on which a petitioner under Section 397 and 398 is filed by a shareholder/member, whose shareholding has been brought down below the requirement of having an aggregate of 10% out of the total shareholding, will be deprived to avail remedy Under Section 387 and Section 398, without their fault. He will be remediless. In 'Bhagwati Developers Pvt Ltd.' and, 'Rajahmundry Electric Supply Ltd.' aforesaid issue was not raised nor decided. For the reasons aforesaid, we are of the view that the law laid down by Supreme Court in 'Bhagwati Developers Pvt Ltd.' and 'Rajahmundry Electric Supply Corporation Ltd.' are not applicable in the case where an applicant alleges 'oppression and mismanagement' in bringing down his shareholding below the requirement of 1/10th of the total shareholding of the company, thereby deprived him of his right to sue."*

7.6. The Hon'ble NCLAT in case in the matter of ***Anup Kumar Agarwal & Ors. Vs. Crystal Thermotech Ltd. & Ors*** **[MANU/NL/0015/2017]** has held as follows:

> "*31. The question of oppression and mismanagement and maintainability in the present case is a mixed question of facts and law. As the petition was filed on the ground that the shareholding of the applicants has been brought down below 1/10th of the total shareholding of a Company by oppression and mismanagement, Tribunal was required to decide the question of maintainability at the time of final hearing of the Petition. Both the merit and question of maintainability were required to be decided together. On hearing the parties, in case the Tribunal forms opinion that there was no oppression and mismanagement on the date of cause of action as alleged by the applicant then in such case it was open to the Tribunal to dismiss the petition as not maintainable in view of Section 399 of the Companies Act 1956.*"

7.7. These legal prepositions on the issue of maintainability of the Company Petition clearly holds that a petition by a member(s) is maintainable even if such member does not meet the threshold prescribed u/s 244(1)(a) of the Company, if such member has impugned the allotments, which had the effect of bringing his shareholding below the statutory threshold.

7.8. In the present case, the petitioner held 49.75% shares in the respondent company prior to 07.02.2022, i.e the date of approval of preferential allotment of new shares by the board to Respondent No. 2, Relatives of the Respondent No. 2 and newly appointed Directors of the company, and said allotment is impugned as an act of oppression in the present petition. Accordingly, following the above judicial precedents, we hold that the present petition is maintainable. Hence, we proceed this petition on its merits in view of the shareholding of the Petitioner being one of the alleged oppressive acts in the present petition.

7.9. It is noted that the Respondent Company's name was struck off from the Register of companies by the Registrar of Companies, vide order dated 18.08.2017, due to non-filing of annual financial statements for the year 2011-12 to 2015-16, and at that time, there were 3 directors, namely, the Petitioner, Respondent No. 2 and Mr. Pramod Vasani, who died on 11.9.2019. A Petition CP 4033/252/2019 for restoration of Respondent Company's name was filed on 14.11.2019 u/s 252 of the Companies Act, 2013 by the Respondent Company, and the name of the Respondent Company was restored in terms of order dated 30.6.2020 passed by this Tribunal. Though the records of said company petition are not available before this Tribunal however, the date of filing indicates that Mr. Pramod Vasani may not be alive at the relevant time, accordingly, it is not understood how the Respondent company decided to file an petition for restoration of its name when the Petitioner has denied having consented to filing of said petition. It only follows therefrom the Respondent No.2 had suo moto acted for restoration of Respondent company's name without valid authorization from its board. Nonetheless, the restoration of company's name in the Registrar of Companies maintained by Registrar of Company cannot said to be an oppressive act as such restoration has also resulted into some gain in the value of shareholding of the Petitioner.

7.10. The Ld. Counsel for the Petitioner submitted that, despite being a Director and shareholder of the respondent company, the Petitioner was not served with notice of any Board Meeting or General Meeting held after the revival of the Respondent Company i.e. after 30.06.2020, in violation of Section 101 of the Companies Act, 2013. We note that the Respondents have not placed on record any notice or acknowledgement of receipt to show that such notices were served upon the Petitioner. It is an admitted position that, prior to the allotment of the fresh equity shares, the Petitioner held 49.75% shareholding in the Respondent Company and his daughter in law held 0.22% shares. In such circumstances, the Petitioner, if served the notice of such general meetings, would have opportunity to object to passing of a special resolution resulting into authorization to the board for preferential allotment of shares. It is also noted that Mr. Pramod Vasani, holding 49.75% of the shares had died prior to the general meeting wherein the resolution for increase of authorized share capital of the company and for allotment on preferential basis were approved. It follows therefrom that these resolutions in the general meeting held on 08.01.2022 were passed by Respondent No.2 who held only 0.02% shareholding of the Respondent Company at the relevant point of time and the remaining 0.24% held by relative of Mr. Pramod Vasani. The Vasani family is not a Respondent herein.

7.11. Pursuant thereto, 75,000 shares were allotted to Respondent No.2 & his relatives and 30,000 shares to Respondent No.3, 5 and 6 who were appointed as Directors in a General Meeting held on 29.08.2020 after restoration of Company's name. The said allotment was made on preferential basis at face value, even though the company had development rights in its favour.

7.12. This preferential allotment had reduced Petitioner's & his family shareholding from 49.97% to 8.04%, and the shareholding of other promotor Mr. Pramod Vasani & family also stood reduced similarly. On the other hand, the shareholding of Respondent No. 2 and his family increased from 0.02% to 59.95%. The shareholding pattern before and after the impugned allotment is as follows:

Devendra Kumar Mishra (Petitioner)	10,000	49.75%
Siddhi Mishra (Daughter in law of Petitioner)	45	0.22%
Pramod Vasani	10,000	49.75%
Chirag Vasani	50	0.24%
Velji Velani (Respondent No.2)	5	0.02%
	20,100	**100%**

<u>After allotment:</u>

Names of Shareholders	**No of Shares**	**%**	**Group**
Devendra Kumar Mishra (Petitioner)	10,000	7.99	**Petitioner & Family 8.04%**
Siddhi Mishra (Daughter in law of Petitioner)	45	0.05	
Pramod Vasani	10,000	7.99	
Chirag Vasani	50	0.05	
Velji Velani (Respondent No.2)	45,005	35.98	**Respondent No.2 & Family 59.95%**
Rasila Velji Velani (Wife of Respondent No.2)	10,000	7.99	
Chandresh Velji Velani (Son of Respondent No.2)	10,000	7.99	
Bhavita Chandresh Velani (Daughter in law of Respondent No.2)	10,000	7.99	
Nishmita Kamlakar Kode (Respondent No.6)	10,000	7.99	**Newly appointed directors 23.97%**
Niraj Vinod Patel (Respondent No.3)	10,000	7.99	
Prakash Babla Zore (Respondent No.5)	10,000	7.99	
Total	**1,25,100**	**100**	

7.13. From the aforesaid discussion, it is clearly discernible that the primary purpose of the allotment was to enable Respondent No. 2 and his family to acquire majority control of the Company, and reduce the original promotors to a minority purpose.

7.14. It is also noted that MOU dated 28.01.2009 entered into between the Respondent company through its Promotors, the Petitioner and Mr. Pramod Vasani, and Respondent No.2 evidences that Respondent No.2 was inducted into Respondent Company pursuant to said MOU, whereby 87.5% of developed FSI in the development rights was assigned in favour of Respondent No. 2 for a consideration of Rs. 3 crores, and Respondent No.2 was to remain as a Director/Share Holder of the Company till the entire project is completed and/or it is earlier determined by notice in writing on account of wilful defaults made by either party. Further the said MOU also stipulates that, on completion of project or its earlier termination, the said Velji bhai shall resign as a Director of the Company and shall re-transfer the said Shares in favour of the said Shareholders.

7.15. Further, the Respondent's reliance on the MoU to contend that the Petitioner and Late Mr. Pramod Vasani had agreed to reduce their shareholding, thereby enabling Respondent No. 2 to hold 87.5% of the shares in Respondent No. 1 Company is misconceived. Clause 16 of the MoU only deals with the sharing of development benefits and the constructed FSI arising from the redevelopment project. It does not provide for the transfer of ownership, voting rights, or controlling shareholding of the Company. Clause 16 of the MoU is reproduced below:

16. It has been agreed that the constructed FSI in respect of the free sale component shall be shared between the Party of the First Part and the said Veljibhai in the following ratio:

1.	Party of the First Party Jointly	10.5%
2.	the said Veljibhai	87.5%
3.	the nominees of the Party of the First part a Separate list of the nominees has been given by the Party of the First part to the said Veljibhaiduly signed by the Party of the First part and the said Veljibhai and the names in the said list shall be binding on the parties hereto	2.0%

7.16. It is also noted that the minutes of the meeting dated 18.10.2011 only records that the Petitioner shall remain sleeping partner in relation to development activities being carried by Respondent Company through Respondent No.2, however, the said minutes no where records that the Petitioner had given up his rights in any manner as Promotor shareholder of the company entitled to 50% ownership thereof. These conclusions equally apply to Mr. Pramod Vasani as no evidence has been placed on record by the Respondent demonstrating consent of the legal heirs of Mr. Pramod Vasani to this effect.

7.17. It follows from above discussion that the preferential allotment of shares was made to wrest control from the Petitioner and Mr. Pramod Vasani's legal heirs in favour of Respondent No.2 and other Directors appointed by him. The infusion of funds by these persons towards of preferential allotment was, in any case, required to be infused by Respondent No.2 as consideration for 87.5% developed FSI in terms of MOU dated 28.01.2009. Further the cost of development was to be borne by Respondent No.2 on his personal account in terms of the MOU, hence the question of requirement of funds for the said purpose at the end of Respondent Company could not have arisen.

7.18. In the present case, the Respondents have not pleaded any particular reason to establish the necessity for raising additional funds or increasing the authorised and paid-up share capital during the financial year 2021-22. Prior to the allotment, the Petitioner held 49.75% of the shareholding in Respondent No. 1 Company. The allotment of shares to Respondent No. 2 and his relatives, does not satisfy the Proper Purpose Doctrine as explained in the case of ***Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan (2005) 1 SCC 212***.

7.19. Accordingly, the said act of allotment constitutes an act of oppression. Since, the preferential allotment has taken place without any vote from 99.98% shareholders of the company, the said allotment as well as the increase in authorized capital cannot be sustained. However, increase in authorized capital, per-se, does not cause any prejudice to any member, hence we do not consider it appropriate set aside increase in the authorized capital. Nonetheless, the preferential allotment of 1,05,000 equity shares made by Board of Directors in its meeting held on 07.02.2022 pursuant to shareholders resolution dated 08.01.2022 is set aside. Needless to say, the amounts contributed by these allottees shall become refundable to them within 30 days.

7.20. With regard to the appointment of Respondent Nos. 3 and 4 as Directors, it is observed that both were appointed at the Extraordinary General Meeting held on 29.08.2020. As observed above, there were only two Directors on that date namely the Petitioner and Respondent No.2, as Mr. Pramod Vasani had deceased prior to that date. Since the Petitioner had pleaded that no notice of any general meeting or board meeting was given by Respondent No.2 or Respondent company, the appointment of Respondent No.3 and 4 in the EOGM held on 29.08.2020 cannot be sustained. Further, the Respondent No.2 cannot exclude Petitioner from affairs of the Company merely on the basis of an understanding recorded in the minutes of the meeting whereby the

Petitioner was to remain sleeping partner in the affairs of the company in relation to development rights. Further, the said minutes are not signed by the Petitioners.

7.21. In the absence of any evidence of service of notice upon the other shareholders, Respondent No. 2 remained the only person participating in the meeting. It is pertinent to note that, u/s 103 of the Companies Act, 2013, the quorum for a general meeting of a private company is two members personally present. Consequently, the conduct of EOGM, in itself, is irregular and appointment of Respondent Nos. 3 and 4 as Directors as approved in such EOGM, is liable to be set aside. Hence the said appointment is set aside.

7.22. Further, Respondent No.5 and 6 were appointed on 27.02.2021 as Additional Directors and their appointment as Additional Director was valid till the next annual general meeting unless their appointment is confirmed as a Director in that meeting, it is noted that Registrar of Company had extended time for holding annual general meeting for the relevant year till 30.11.2021 and the annual general meeting was held on 30.11.2021, no documents has been placed on record to evidence if resolution for confirmation of Respondent No.5 and 6 as Director of the Respondent Company was adopted at such meeting. Further the Directors report dated 30.11.2021 for the year ended 31.03.2021 also does not state that they were recommended for appointment as a regular director. Accordingly, they had ceased to be director of Respondent company on conclusion of AGM held on 30.11.2021. Hence no further order is called for in this relation.

7.23. It is also noticed that the Registered Office of the Respondent Company was shifted from A-101, Minal Park, CS Road, Near Petrol Pump, Dahisar (E), Mumbai-400068 to Flat No. 104, Ambica Darshan, Chhitabhai Patel Road, Off. Akurli Road, Kandivali East, Mumbai-400101, i.e., the residence of Respondent No. 2, with effect from

29.08.2020, the date of the EOGM. The MoU entered into between the Petitioner and Respondent No. 2 also records the address of Respondent No. 2 as the changed address. In our considered view merely change of the registered office within same city does not cause any prejudice to a shareholder or the company, unless the access to such registered office is denied to the member. Since the decision to shift the registered office within city limits can be taken by the board in terms of Section 12(5) of Companies Act, 2013, and the board constituted at relevant point of time took such decision, we are of considered view that no order is called for in relation to shifting of the registered office. Merely because the said shifting of registered office was also approved by the shareholders by special resolution, which could not have been passed in the absence of vote by Petitioner and legal heirs of Mr. Pramod Vasani family who together held 99.98 of capital, the said special resolution even if held illegal was not required to be passed for the purpose of shifting within city limits.

7.24. The Petitioner further submitted that his resignation as Director was forged and the forged resignation letter was filed with the Registrar of Companies through Form DIR-12. The Petitioner has also placed on record the opinion of handwriting expert which concludes that the signature appearing on the resignation letter appears to be forged. On the contrary, the Respondents have merely stated that the Petitioner had expressed his unwillingness to continue as a Director and had voluntarily resigned, following which the management of Respondent No. 1 Company was taken over by Respondent Nos. 2 to 6. However, except this submission the respondents have not placed on record any communication, email or letter to prove that the Petitioner voluntarily resigned from the Directorship of the respondent company. It is further noted that the Petitioner has lodged a complaint before the Senior Police Inspector, Samta Nagar Police Station, alleging forgery of his signature on the resignation letter. We further note that proceedings are also pending before the Metropolitan Magistrate Court, Borivali. However, it is noted that the Petitioner has since deceased so the restoration of the Petitioner as a Director is impossible. Nonetheless, since we have found the Petitioner and his family as Promotor of the Respondent company entitled to 49.99% shareholding, we direct the Respondent Company to appoint one nominee from the Petitioner family as Director of the company. Respondent No.2 shall do the needful and file the necessary forms.

7.25. Accordingly, we pass following directions:

a. The preferential allotment of 1,05,000 equity shares made by the Board of Directors at its meeting held on 07.02.2022, pursuant to the shareholders' resolution dated 08.01.2022, is hereby set aside. Consequently, the shareholding pattern as it existed prior to the said allotment shall stand restored. The amounts contributed by these allottees shall become refundable to them within 30 days. The Respondent Company shall carry out the necessary rectification of its Register of Members.
b. The appointment of Respondent Nos. 3 and 4 as Directors of the Respondent Company, approved in the Extraordinary General Meeting dated 29.08.2020 is hereby set aside.
c. The Respondent Company shall appoint one nominee from the Petitioner's family as a Director of the Respondent Company. Respondent No. 2 shall take all necessary steps and file the requisite statutory forms to give effect to this direction.
d. The Respondent Company shall ensure that notice of all future Annual General Meetings and Board Meetings is served upon the shareholders or, where applicable, their legal heirs, in accordance with the provisions of the Companies Act, 2013.

7.26. In terms of the above, CP No. 244/2023 is partly allowed and disposed of.

Sd/-	Sd/-
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)

/AJ/