IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No. 301- CP 30 of 2020
ITEM No. 302- Comp. Appl/49(AHM)2021
In
CP 30 of 2020

CP 30 of 2020

Under Section 241-242 Co. Act, 2013
IN THE MATTER OF:
Rahul Dhirajlal Kataria

........Petitioner

V/s
Milton Industries Ltd & Ors

....Respondents

Comp. Appl/49(AHM)2021 in CP 30 of 2020
Under Sec 242 of Co. Act, 2013
IN THE MATTER OF:
Rahul Dhirajlal Kataria

........Applicant

V/s
Milton Industries Ltd & Ors

....Respondents

Order delivered on: 05/08/2026

C O R A M:
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

COMMON ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD

CP No. 30 (AHM) of 2020
with
Comp. Appl/49 (AHM) 2021

<u>CP No. 30 (AHM) of 2020</u>

(A Company Petition filed under the Proviso to Section 241-242 r/w. 213 of the Companies Act, 2013.)

1. **Rahul Dhirajlal Katira**
   C/o. 302, Nemnath Residency, Aambli Fali,
   Opp. Pandya Fali,
   VaniyaVed, Jamnagar,
   Gujarat- 361 001.

.... Petitioner
(Shareholder)

VERSUS

1. **Milton Industries Limited**
   A company having its Registered Office at
   1/2, Chitra-Amir Apartment,
   Opp. La Gajjar Chamber,
   Ashram Road Ahmedabad-380009.

....Respondent No.1
(Company)

2. **Mr. Vijay Pal Jain**
   Chairman, Promoter and Managing Director,
   Milton Industries Limited
   19 A-B Nishant-
   2Bunglows,
   Near Bileshwar Mahadev Temple,
   Satellite, Ahmedabad - 380015, Gujarat, India

....Respondent No.2
(Director)

3. **Ajay Mahipal Singh Jain**
   Non-Executive Director & Promoter
   Milton Industries Limited
   40, Panchshil Society, Usmanpura
   Ahmedabad -380013 Gujarat, India

....Respondent No.3
(Director)

4. **Abhay Kumar Mahipal Singh Jain**
   Whole Time Director and Promoter,
   Milton Industries Limited
   40, Panchshil Society,
   Usmanpura Ahmedabad -
   380013 Gujarat, India

....Respondent No.4
(Director)

5. **Vikas Jain,**
   Whole Time Director and Promoter,
   Milton Industries Limited
   19/A, Nishant
   Bunglows-2, Near Bileshwar
   Mahadev Temple, Satellite,
   Ahmedabad - 380015, Gujarat, India

....Respondent No.5
(Director)

6. **Saket Jain,**
   Whole Time Director-cum-CFO
   and Promoter, Milton Industries Limited
   19/1-B, Nishant Bunglows-2,
   Bileshwar Mahadev Temple,
   Jodhpur, Ahmedabad 380015,
   Gujarat, India

....Respondent No.6
(Director)

7. **Neha Jain,**
   Non-Executive Director,
   Milton Industries Limited E-103,
   Ashok Vihar Phase-1
   Delhi 110052, India

....Respondent No.7
(Director)

8. **Ankur Ashokkumar Aggarwal**
   Additional Non-Executive Director,
   Milton Industries Limited 57, Safal Amarkunj,
   Gokuldham Sarkhej Sanand Road,
   Sanatha Ahmedabad 382210, Gujarat, India

....Respondent No.8

(Director)

9. **Rakesh Mehtani**
Additional Non-Executive Independent Director,
Milton Industries Limited
B/41, First Floor, Aasna 2
Ahmedabad 380015, Gujarat, India

....Respondent No.9
(Director)

10. **Maheshbhai Samatbhai Patel**
Additional Non-Executive
Independent Director, Milton
Industries Limited 26, Rughved
Bunglows, B/H Jalaram Temple
L.P. Savani Road, Surat,
Gujarat India-396009

....Respondent No.10
(Director)

11. **Vaibhav Ajay Jain,**
Director
Milton Industries Limited
B-503 Vasant Vihar Tower,
Nr. Circuit House Dafnala Road,
Shahibaug, Ahmedabad - 380004

.... Respondent no.11
(Director)

12. **Ronak Maheshwari,**
Director
Milton Industries Limited
2-H-13, RC, Vyas Colony, Bhilwara,
Rajasthan, India - 311001

....Respondent No.12
(Director)

13. **Ajay R. Lodha**
Ex-Independent Director
96/3, Flat No 5 First
Floor Humayunpur Safdarjung Enclave, New Delhi-
110029

....Respondent No.13
(Ex-Director)

14. **Ajay Kumar Brij Mohan Tola,**
Ex-Independent Director,

Milton Industries Limited
7, Ranakpur Society
Shahibaug, Ahmedabad-380004

....Respondent No.14
(Ex-Director)

15. **Ishwar Singh**
Ex-Independent Director,
Milton Industries Limited, E- 123, Sarita Vihar
Mathura Road New Delhi 110076, Delhi, India

....Respondent No.15
(Ex-Director)

16. **Priya Agrawal,**
Ex-Company Secretary,
G-302 Avani Square, Manohar
Villa Cross Road, Nikol Naroda Road,
Ahmedabad

....Respondent No. 16
(Ex-Company Secretary)

17. **Mr. Keyur Dinesh Parekh,**
Ex-Company Secretary
11, Jitendra Chamber,
Nr. EPFO Bhavan, Income Tax Circle, Ashram Road,
Ahmedabad, Gujarat

....Respondent No.17
(Ex-Company Secretary)

18. **Himanshu Maheshwari**
Secretarial Auditor For FY 2018-2019
A-24, Murli Appartment,
Radio Mirchi Road Satellite,
Ahmedabad 380015

.....Respondent No. 18
(Ex-Secretarial Auditor)

19. **Jigar Trivedi,**
Secretarial Auditor for FY 2017-2018 11,
Jitendra Chamber, NR. EPFO Bhavan,
Income Tax Circle Ashram Road,
Ahmedabad-380009

.....Respondent No. 19
(Ex-Secretarial Auditor)

20. **M/s Sapan Vasa & Co.,**
Chartered Accountants. B-2,

Usha Kiran, Outside Khanpur Gate,
Khanpur, Ahmedabad-380001

..... Respondent No. 20
(Independent Auditor)

WITH

Company App/ No. 49 of 2021

(An Application filed under section 242 of the Companies Act, 2013 for Appropriate Direction.)

1. **Rahul Dhirajlal Katira**
   C/o. 302, Nemnath Residency, Aambli Fali,
   Opp. Pandya Fali,
   VaniyaVed, Jamnagar,
   Gujarat- 361 001.

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(Shareholder)

VERSUS

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   Milton Industries Limited
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   Gujarat, India

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   Additional Non-Executive Director,
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(Director)

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Ex-Independent Director,
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Secretarial Auditor For FY 2018-2019
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Jitendra Chamber, NR. EPFO Bhavan,
Income Tax Circle Ashram Road,
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(Ex-Secretarial Auditor)

20. **M/s Sapan Vasa & Co.,**
Chartered Accountants. B-2,

Usha Kiran, Outside Khanpur Gate,
Khanpur, Ahmedabad-380001

..... Respondent No. 20
(Independent Auditor)

Order Pronounced On: 05.08.2026

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Petitioners	: Mr. Navin Pahwa, Sr. Adv. a.w. Mr. Ravi Pahwa, Adv
For the Respondents	: Mr. Saurabh Soparkar, Sr. Adv a.w
	: Ms. Abhineeta Chaturvedi, Adv. a.w
	: Mr. Kuldeep Adesara, Adv. for R-1 to R-7
	: None for other Respondents

COMMON ORDER
(Per: *Bench*)

1. This Company Petition bearing number **CP No. 30 of 2020** has been filed on 24.08.2020 vide Inward Diary No. 6401 by the Petitioner alleging acts of oppression and mismanagement by Respondent Nos. 1 to 15 under Sections 241 and 242 of the Companies Act, 2013 seeking following reliefs: -

   a. *The Hon'ble Tribunal may be pleased to hold and declare that the respondent nos. 1 to 19 have committed various acts of oppression and mismanagement, as enumerated in the petition, in relation to the affairs of the Respondent* *no.1 Company and that such acts of respondent nos. 1 to 19 are prejudicial to public interest as also prejudicial to the interest of the petitioner/s and be pleased to further issue appropriate directions for remedying such actions and also issuing appropriate directions upon the respondents for the regulation of conduct of affairs of the Respondent Company in future, in the interest of justice and equity.*

b. *The Hon'ble tribunal may be pleased to direct the respondent no. 2 to 15 to refund an amount of Rs 9.5 Crores along with interest and penalty in the account of the Respondent Company, in the interest of justice and equity.*

c. *The Hon'ble Tribunal may be pleased to hold and declare that the respondent nos. 1 to 15 are guilty of committing breach of Sec. 27 of the Companies Act, 2013 and accordingly, they are liable for penal actions as contemplated u/s. 34 and 35 of the Companies Act, 2013;*

d. *This Hon'ble Tribunal may be pleased to hold and declare that the respondent nos. 2 to 19 are guilty of committing fraud on the members of the Respondent Company and are thus liable for punishment u/s. 447 of the Act.*

e. *The Hon'ble Tribunal may be pleased to direct the respondent nos. 1 to 19 to comply with the provision of Sec.27(2) of the Companies Act, 2013 and give an exit offer at such exit price and in such manner and conditions as may be specified by the Securities and Exchange Board of India and produce a compliance report before this Hon'ble Tribunal;*

f. *This Hon'ble Tribunal may be pleased to direct the respondent company to refund the amount to each of the subscribers/current shareholders of securities on the basis of the prospectus dated 29.8.2017 with interest @ 18% p.a. along with consequential damages as per the principles of Indian Contract Act;*

g. *This Hon'ble Tribunal may be pleased to hold and declare that the respondent nos. 16 and 20 are guilty of not discharging their duties and functions as per the provisions of Companies Act and are liable for punishment u/s. 143(15) of the Act*

h. *This Hon'ble Tribunal may be pleased to order for investigation and inspection of books, records, registers, documents, accounts and financial statements of the respondent company, in the interest of justice;*

i. *This Hon'ble Tribunal may be pleased to remove the respondent nos. 2 to 15 from Directorship of respondent company and appoint such number of persons as Directors of the Respondent Company as this Hon'ble Tribunal may deem fit, in the interest of justice;*

j. *This Hon'ble Tribunal may be pleased to appoint independent director, internal and statutory auditor and independent company secretary to ensure proper management, internal control and audit to further ensure proper regulation of the respondent no.1 company;*

Interim Relief(s) sought

k. *Pending hearing and final disposal of the petition, the Hon'ble Tribunal may be pleased to direct the respondent nos. 1 to 20 to produce Auditors Certificate certifying that the proceeds of IPO i.e. Rs. 14.28 are utilized as per the objects and purposes of the Prospectus dated 29.8.2017, in the interest of justice;*

l. *Pending hearing and final disposal of the petition, this Hon'ble Tribunal may be pleased to restrain the respondent nos. 1 to 19 from selling, disposing, transferring or encumbering any of the assets of the respondent no.1 company, in the interest of justice;*

m. *Pending hearing and final disposal of the petition, this Hon'ble Tribunal may be pleased to direct the respondent nos. 1 to 19 to open an Escrow Account and deposit Rs. 14.28 Crores being the amount raised from IPO dated 29.8.2017, in the interest of justice;*

n. *Pending hearing and final disposal of the petition, this Hon'ble Tribunal may be pleased to restrain the respondent nos. 2 to 20 from acting as Directors/Company Secretary/ Auditor of respondent company and appoint such persons as Directors/ Company Secretary/ Auditors of Respondent Company as may be deemed fit by this Hon'ble Court to perform* *functions of the respondent company and make compliances, in the interest of justice; statutory*

o. *The Hon'ble Tribunal may be pleased to grant such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;*

p. *This Hon'ble Tribunal may be pleased to issue appropriate directions to respondent no.1 to take steps to delist the Company from National Stock Exchange;*

q. *This Hon'ble Tribunal may be pleased to order the respondent nos. 2 to 20 to deposit passport with this Hon'ble Tribunal with further directions to them not to leave country;*

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a. *That this Hon'ble Tribunal may be pleased to direct to initiate an investigation against the Respondent Company and its directors.*

b. *That this Hon'ble Tribunal may be pleased to order for investigation and inspection of books, records, register, documents, accounts and financial* statements of the Respondent Company, In the interest of justice;

c. *That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;*

Interim Reliefs

d. *Pending the hearing and final decision of this application, this Hon'ble Tribunal may be pleased to restrain the Respondents from utilizing directly or indirectly the funds received in Public Issue for any purpose or object other than stated in the Prospectus, in the interest of justice;*

e. *That this Hon'ble Tribunal may be pleased to direct the Respondents to give complete details on affidavit regarding all requisite authorizations given or obtained for the amount of Rs. 9.50 Crores advanced to Karnavati Finance Limited, its utilization, interest received, if any, on such amount, in the interest of justice;*

f. *That this Hon'ble Tribunal may be pleased to direct the Respondent Company and its directors to give a complete*

BenPos in respect of the trading in the shares of Respondent no.1 Company for the period between 01.01.2021 and 30.9.2021;

g. *Pending hearing and final decision of this application, this Hon'ble Tribunal may be pleased to grant ex-parte ad-interim relief in favor of applicants, in the interest of justice;*

h. *That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;*

2. The brief **facts** as produced in the instant company petition are narrated as under: -

2.1. The present Company Petition has been filed under Sections 241 and 242 of the Companies Act, 2013 alleging acts of oppression and mismanagement by Respondent Nos. 1 to 20. The Petitioner alleges diversion and misutilisation of the IPO proceeds raised by Respondent No. 1 Company in violation of the provisions of the Companies Act, 2013. The Petition is founded on alleged prejudice caused to the Company, its shareholders, creditors and public interest.

2.2. The Petitioner states that he is an equity shareholder holding 4,400 equity shares of Respondent No. 1 Company. It is stated that consent letters of shareholders holding 17,33,600 equity shares, constituting 10.23% of the paid-up share capital, have been obtained to satisfy the eligibility requirement for filing the present Petition.

Copies of the consent letters are stated to have been annexed with the Petition as **Annexure A.**

2.3. It is stated that Respondent No. 1 is a public company engaged in the business of manufacturing laminates and that Respondent Nos. 2 to 6 are its promoter-directors and controlling shareholders. Respondent Nos. 7 to 15 are stated to be directors and/or shareholders, Respondent Nos. 16 to 19 are Company Secretary and Key Managerial Personnel, and Respondent No. 20 is the Statutory Auditor.

2.4. The Petitioner submits that Respondent No. 1 raised ₹14.28 Crores through an Initial Public Offer and that the Prospectus dated 29.08.2017 specified utilisation of the IPO proceeds towards working capital, issue expenses and general corporate purposes. It is further stated that pending utilisation, the funds were required to remain deposited with Scheduled Commercial Banks. The Prospectus is stated to have been annexed as **Annexure C.**

2.5. The Petitioner states that he purchased the shares on 13.02.2019 through the secondary market and thereafter came to know that approximately ₹9.50 Crores of the IPO proceeds had allegedly been shown as "Short Term Loans and Advances" instead of being utilised for the disclosed objects of the issue. Reliance is placed upon the financial statements for the relevant years annexed as **Annexure L.**

2.6. It is stated that the Petitioner addressed several communications dated 15.07.2019, 31.07.2019, 12.08.2019, 18.02.2020 and 10.07.2020 seeking copies of the Board Resolution, Auditor's Certificate and details regarding utilisation of the IPO proceeds. According to the Petitioner, the Company sought details of his shareholding but did not furnish the requested documents. Copies of the correspondence are stated to be annexed as **Annexure E to K & M.**

2.7. The Petitioner further states that by letter dated 02.09.2019 the Company denied misuse of the IPO proceeds and asserted that the funds had been utilised in accordance with the Prospectus. However, it is alleged that the Board Resolution and Auditor's Certificate sought by the Petitioner were not supplied despite repeated requests. The reply of the Company is stated to be annexed as **Annexure J.**

2.8. According to the Petitioner, the financial statements for FY 2017-18 and FY 2018-19 reflected substantial amounts under the head "Short Term Loans and Advances" without disclosing the utilisation, nature or destination of such advances. It is alleged that the financial statements do not comply with Sections 129, 133 and Schedule III of the Companies Act, 2013. The audited financial statements are stated to be annexed as **Annexure L.**

2.9. The Petitioner alleges that Respondent No. 1 varied the objects of the IPO without obtaining approval of the shareholders through a Special Resolution as required under Section 27 of the Companies Act, 2013. It is further alleged that no General Meeting was convened and no exit opportunity was provided to dissenting shareholders. Relevant records relied upon are stated to be annexed with the Petition.

2.10. The Petition further alleges that the Respondents are liable under Sections 34, 35 and 447 of the Companies Act, 2013 for alleged misleading statements in the Prospectus and fraudulent conduct. Allegations are also made against the Statutory Auditor and the Company Secretary for failure to discharge their statutory duties under the provisions of the Act. The relevant documents are stated to be annexed with the Petition.

2.11. The Petitioner contends that the alleged diversion of IPO proceeds, non-disclosure in the financial statements, failure to comply with statutory provisions and omission to furnish the requested documents have prejudiced the interests of the Company, its shareholders and creditors. It is further alleged that the affairs of the Company have been conducted in a manner falling within Sections 241(1)(a) and 241(1)(b) of the Companies Act, 2013.

2.12. The Petitioner also alleges that the Company has failed to comply with Sections 118, 129, 133, 134, 143, 186 and 205 of the Companies Act, 2013 and the applicable Secretarial Standards. According to the Petitioner, these violations collectively establish oppression and mismanagement warranting interference by this Tribunal.

2.13. It is further submitted that the alleged acts have adversely affected the financial position of the Company and have prejudiced minority shareholders, creditors and public interest. The Petitioner asserts that the cumulative conduct of the Respondents demonstrates continuous oppression and mismanagement requiring relief under Sections 241 and 242 of the Companies Act, 2013.

2.14. On the above averments, the Petitioner prays for appropriate reliefs under Sections 241 and 242 of the Companies Act, 2013 to bring an end to the alleged acts of oppression and mismanagement. The Petitioner further states that although the facts may justify winding up of the Company on just and equitable grounds, such a course would prejudice the members and therefore alternative reliefs have been sought in the present Petition.

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2.15. The Applicants, being the original Petitioners in CP No. 30 of 2020 filed under Sections 241 and 242 of the Companies Act, 2013 alleging acts of oppression and mismanagement, have preferred the present application under Section 242(4) seeking interim directions regulating the affairs of Respondent No. 1 Company.

2.16. The Applicants submit that the Company Petition was first listed on 07.09.2020, and by order dated 14.09.2020, the Tribunal directed that the matter be heard on the question of interim reliefs. However, owing to paucity of time and the COVID-19 pandemic, the matter could not be taken up for effective hearing.

2.17. It is reiterated that the principal grievance in the Company Petition is the diversion of the IPO proceeds by Respondent No. 1 Company. The Applicants state that the Company had raised ₹14.28 Crores through its Initial Public Offer by issuing 42,00,000 equity shares at ₹34 per share pursuant to the Prospectus dated 29.08.2017, wherein the IPO proceeds were earmarked for working capital requirements (₹13 Crores), public issue expenses (₹37.45 Lakhs), and general corporate purposes (₹90.55 Lakhs). Contrary to the stated objects of the Prospectus, Respondent No. 1 allegedly diverted ₹9.50 Crores to Karnavati Finance Limited, an NBFC, by way of short-term advances, which fact is stated to have been admitted by the Respondents in their reply.

2.18. The Applicants further submit that during the pendency of the proceedings they discovered that, at the Board Meeting dated 31.03.2021, Respondent No. 1 resolved to waive interest on the outstanding amount of ₹6 Crores recoverable from Karnavati Finance Limited. According to the Applicants, this decision further demonstrates violation of the objects of the Public Issue and is contrary to the interests of the Company and its stakeholders.

2.19. It is also alleged that around the same period there was substantial trading in the shares of Respondent No. 1 Company, resulting in a sharp increase in the market price of its shares, as reflected from data available on the NSE website. The Applicants express an apprehension that the Directors personally benefited from such transactions and that the interest waived by the Company may have been diverted for their personal benefit.

2.20. On the aforesaid basis, the Applicants invoke Section 242(4) of the Companies Act, 2013, contending that the Tribunal is empowered to pass interim orders regulating the conduct of the affairs of the Company where such orders are just and equitable. Accordingly, the Applicants pray that appropriate interim reliefs be granted pending adjudication of the main Company Petition.

3. In response to the above submissions, an **Affidavit-in-Reply** was filed on 09.09.2020 vide Inward Diary No. 7160 on behalf of **Respondent No. 1 to 7** wherein the Respondent has denied every averment made in the Petition and further raised following contentions: -

3.1. The Respondent Nos. 1 to 7 filed the present Affidavit-in-Reply through Respondent No. 2, Chairman and Managing Director of Respondent No. 1 Company, for the limited purpose of opposing the grant of ad-interim and interim reliefs sought in the Company Petition. The Respondents denied all allegations made in the Petition except those specifically admitted and prayed for dismissal of the Petition.

3.2. The Respondents stated that Respondent No. 1 Company was incorporated on 23.08.1985 as Milton Laminates Private Limited, subsequently converted into a public company in 1987 and renamed Milton Industries Limited on 03.04.2007. It was further stated that the Company was amalgamated with

Valley Valvette Private Limited pursuant to the order dated 28.08.2009 of the Hon'ble Gujarat High Court with effect from 01.04.2008 and has been carrying on manufacturing activities for over three decades.

3.3. It was submitted that pursuant to the Board Resolution dated 20.06.2017 and Special Resolution passed in the Annual General Meeting dated 14.07.2017, the Company issued an Initial Public Offer of 42,00,000 equity shares aggregating to Rs. 14.28 Crores. Out of the said issue, 2,16,000 equity shares were reserved for Beeline Broking Limited as Market Maker under the Tripartite Underwriting Agreement dated 10.08.2017.

3.4. The Respondents stated that the Draft Prospectus provided that pending utilisation, the IPO proceeds would remain deposited with a Scheduled Commercial Bank and would not be invested in listed shares, equity markets or real estate. It was further submitted that the Public Offer Account was opened with HDFC Bank pursuant to the Board Resolution dated 11.09.2017.

3.5. It was submitted that the IPO opened on 29.09.2017, closed on 06.10.2017 and the equity shares were listed on NSE Emerge on 16.10.2017. Thereafter, the IPO proceeds of Rs. 14.28 Crores were transferred from the Public Offer Account to the Company's Cash Credit Account maintained with State Bank of India.

3.6. The Respondents submitted that Rs. 9.50 Crores was temporarily transferred to Beeline Broking Limited and the said amount was returned between 26.10.2017 and 03.11.2017. Thereafter, the Company advanced Rs. 9.50 Crores to Karnavati Finance Limited as a short-term advance repayable on demand, which was duly disclosed under "Short Term Loans and Advances" in the Annual Report for FY 2017-18, thereby denying any siphoning or misappropriation of IPO proceeds.

3.7. It was further submitted that neither the Petitioner nor the supporting shareholders had subscribed to the IPO except Beeline Broking Limited to the extent of the Market Maker allocation. According to the Respondents, all other shareholders acquired their shares subsequently through the secondary market after closure of the IPO.

3.8. The Respondents stated that proceedings had already been initiated by the Company before the National Consumer Disputes Redressal Commission against Karnavati Finance Limited for recovery of the said advance. It was further alleged that the Petitioner was also a shareholder of Karnavati Finance Limited and the correspondence addressed by the Petitioner had been duly replied to by the Company.

3.9. It was submitted that the Board proposed issuance of bonus shares on 04.09.2019, which was approved in the Annual General Meeting held on 30.09.2019, resulting in allotment of one bonus share for every ten equity shares. The Respondents contended that the Petitioner and supporting shareholders accepted the bonus shares and continued trading in the Company's shares thereafter.

3.10. The Respondents relied upon the Company's financial performance to contend that its affairs were being managed properly. It was stated that the turnover and profit before tax consistently increased during FY 2017-18, FY 2018-19 and FY 2019-20, the Company possessed substantial assets, had no financial defaults and continued to execute significant contracts including those of Indian Railways.

3.11. The Respondents raised a preliminary objection regarding maintainability under Section 244 of the Companies Act, 2013 by contending that after the issue of bonus shares, the Petition no longer satisfied the statutory requirement of one-tenth shareholding. It was further submitted that exclusion of certain shareholders and Market Maker shares reduced the qualifying shareholding below the prescribed threshold.

3.12. It was further submitted that the Petition was founded only upon a solitary allegation relating to temporary deployment of IPO proceeds, which could not constitute continuous oppression under Sections 241 and 242 of the Companies Act, 2013. According to the Respondents, no continuing prejudice or adverse impact upon the Company or its shareholders had been established.

3.13. The Respondents contended that neither the Petitioner nor the supporting shareholders had suffered any personal loss or prejudice and none had purchased shares on the basis of the Prospectus. It was further submitted that all shareholders had acquired shares through the secondary market and therefore lacked locus to challenge any alleged misstatement contained in the Prospectus.

3.14. It was submitted that the Petition was defective since the supporting consent letters were unsupported by affidavits and suffered from various discrepancies relating to dates, addresses, execution and circulation. The Respondents further alleged that the supporting shareholders had suppressed their trading history and that the identical nature of the consent letters cast serious doubt upon their genuineness.

3.15. The Respondents alleged that the Petition had been instituted at the instance of Karnavati Finance Limited after recovery proceedings were initiated against it by the Company. Reliance was placed upon the Petitioner's shareholding in Karnavati Finance Limited, production of the Petitioner's correspondence before the National Consumer Disputes Redressal Commission and the employment of one supporting shareholder with Karnavati Finance Limited to allege mala fides.

3.16. The Respondents further contended that Beeline Broking Limited had suppressed material facts concerning its role as Market Maker, the temporary parking of IPO funds, the allotment of Market Maker shares and its trading activities. According to the Respondents, such conduct disentitled Beeline Broking Limited from supporting the Petition.

3.17. It was also submitted that the Petition suffered from delay and laches as the IPO had concluded in October 2017 whereas the Petitioner acquired shares only in 2019 and the Petition came to be affirmed in August 2020. The Respondents further contended that the unexplained delay disentitled the Petitioner from claiming any discretionary interim relief.

3.18. The Respondents submitted that the supporting shareholders continued purchasing and selling shares even after the alleged acts complained of and also accepted the bonus shares. According to the Respondents, such conduct demonstrated continued confidence in the Company's management and negatived the allegations of oppression and mismanagement.

3.19. In reply to IA No. 49 of 2021, the Respondents reiterated that the Company Petition itself was not maintainable and that the Interim Application was filed only to prolong the proceedings. The Respondents denied all allegations relating to unauthorised diversion of IPO proceeds and reiterated that the advancement of Rs. 9.50 Crores to Karnavati Finance Limited had been duly disclosed in the Annual Report, out of which Rs. 6 Crores had already been repaid.

3.20. The Respondents further submitted that the waiver of interest on repayment of Rs. 6 Crores pursuant to the Board Resolution dated 31.03.2021 was implemented in accordance with the communication dated 26.03.2021 and was duly disclosed in the Directors' Report, Secretarial Audit Report, Auditor's Report and Annual Report circulated before the Annual General Meeting held on 30.09.2021. It was also denied that the Directors had personally benefited from any increase in the Company's share price.

3.21. The Respondents finally submitted that no case had been made out for exercise of powers under Section 242(4) of the Companies Act, 2013, as no material establishing oppression, mismanagement or necessity for interim regulation of the Company's affairs had been produced. Accordingly, the Respondents prayed that both the Company Petition and IA No. 49 of 2021 be dismissed with costs.

4. An **Additional Affidavit** has been filed on behalf of Respondent No. 1 to 7 on 14.09.2020 vide inward dairy no. 7268 wherein made following submission were made:-

4.1. The Respondents challenged the reliance placed by the Petitioner on the contract notes dated 23.07.2020 issued by Swastika Investmart Limited in support of the shareholding of Sunny Solanki and Ankit Solanki. No Annexure or judicial precedent has been specifically referred to in this portion of the Reply.

4.2. The Respondents submitted that the contract notes were unreliable as they contained discrepancies regarding the registered office address, place of issue, branch details, and settlement particulars. It was further contended that the consent letters dated 24.07.2020 were executed before settlement of the share transactions and prior to the entry of the purchasers' names in the Register of Members on 31.07.2020, thereby rendering the alleged consent doubtful.

4.3. The Respondents further contended that the circumstances under which the consent letters dated 24.07.2020 were obtained were improbable, as the purchasers had allegedly acquired knowledge of the Petition and the alleged acts of oppression immediately after purchasing the shares. It was submitted that the Petitioner had failed to explain the source of such knowledge and that the consent letters, including the fresh consent letters dated 04.08.2020, did not constitute valid consent under Section 244 of the Companies Act, 2013, having been obtained only to satisfy the statutory eligibility requirement.

4.4. The Respondents further objected to the Purshis dated 07.09.2020 and the documents annexed thereto on the ground that they were unsupported by any affidavit of the Petitioner or the concerned shareholders. Accordingly, the Respondents prayed that the additional documents be disregarded, the Company Petition be held to be not maintainable for non-compliance with Section 244 of the Companies

Act, 2013, and I.A. No. 49 of 2021 be dismissed with costs.

5. The **Second Additional Affidavit** has been filed on behalf of **Respondent No. 1** Company on 05.07.2022 vide Inward Diary no. D3709 wherein following submissions were made: -

5.1. The Respondent No. 1 submits that the entire amount of Rs. 9.50 Crores advanced to Karnavati Finance Limited has been fully recovered. It is stated that Rs. 6.00 Crores was received on 31.03.2021 and the balance Rs. 3.50 Crores was received on 24.03.2022, thereby extinguishing the Petitioner's grievance regarding the said transaction.

5.2. The Respondent No. 1 submits that the Petitioner had originally relied upon the consent of 13 supporting shareholders to satisfy the requirement under Section 244 of the Companies Act, 2013. It is stated that subsequent BENPOS reports show that several consenting shareholders have either exited or substantially reduced their shareholding.

5.3. The Respondent No. 1 states that Sunny Solanki, Ankit Solanki, Brinda Pallav Kansara, Bipin Nadia, Anil Dattani, Ankit Dattani and Homi Jal Billimoria have sold their entire shareholding, while Elite

Accfin Solution Private Limited and Beeline Broking Limited have substantially reduced their holdings. Consequently, only 4,70,800 shares out of the original 17,77,600 shares continue to be held by the consenting shareholders.

5.4. The Respondent No. 1 further submits that certain supporting shareholders are no longer willing to continue their consent for the Petition. Accordingly, it is contended that the Petition no longer satisfies the eligibility requirement under Section 244 of the Companies Act, 2013, has become not maintainable, and is liable to be dismissed

6. To the above averments, an **Affidavit-in-Rejoinder** has been filed on behalf of the petitioners to the Affidavit in replies by Respondent No. 1 to 7 on 20.08.2024 vide inward dairy no. D 6493, wherein following submissions were made: -

6.1. The Petitioner filed the present Affidavit-in-Rejoinder denying the averments made in the Affidavit-in-Reply of Respondent Nos. 1 to 7, except those specifically admitted, while reserving the right to file further pleadings, if necessary. It is reiterated that the Petition concerns acts of oppression and mismanagement arising from diversion of IPO proceeds in violation of the Companies Act, 2013.

6.2. The Petitioner submits that the IPO Prospectus provided that the IPO proceeds would be utilised for working capital requirements and general corporate purposes. It is alleged that Respondent No. 1 diverted Rs. 9.50 Crores out of the IPO proceeds of Rs. 14.28 Crores to Karnavati Finance Limited without any justification or shareholders' approval, thereby violating Section 27 of the Companies Act, 2013.

6.3. The Petitioner contends that no Special Resolution was passed for varying the objects stated in the Prospectus and that a Board Resolution dated 11.09.2017 cannot substitute the mandatory approval required under Section 27 of the Companies Act, 2013. It is further submitted that the Respondents have not produced the minutes of the said Board Meeting.

6.4. The Petitioner reiterates that the admitted advancement of Rs. 9.50 Crores to Karnavati Finance Limited amounts to diversion and siphoning of IPO funds without any lawful explanation. It is further submitted that shareholders who acquired shares through the secondary market also possess locus standi to challenge acts prejudicial to the Company and its members.

6.5. The Petitioner submits that the proceedings initiated by Respondent No. 1 against Karnavati Finance Limited before the National Consumer Commission have no relevance to the present Petition. It is further denied that the Petitioner's letter dated 02.09.2019 establishes any nexus with Karnavati Finance Limited except that the Petitioner is one of its shareholders.

6.6. The Petitioner disputes the objections regarding maintainability under Section 244 of the Companies Act, 2013 and submits that Sunny Solanki and Ankit Solanki became members prior to filing of the Petition by virtue of Contract Notes dated 23.07.2020. It is further submitted that both shareholders executed fresh Consent Letters dated 04.08.2020, which are already on record, and that Beeline Broking Limited is legally competent to grant consent.

6.7. The Petitioner denies that a solitary act cannot constitute oppression and submits that diversion of public funds raised through an IPO itself amounts to oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. It is further contended that all shareholders affected by such diversion have the necessary locus standi to maintain the Petition.

6.8. The Petitioner also disputes the objections regarding the validity of the consent letters and submits that the Companies Act, 2013 does not require supporting shareholders to file consent affidavits. It is contended that omission of addresses or other minor particulars does not invalidate the consent when the shareholding of the consenting members is undisputed.

6.9. The Petitioner denies the allegation that the Petition has been instituted at the instance of Karnavati Finance Limited or is actuated by mala fides. It is submitted that Karnavati Finance Limited was only the recipient of the diverted IPO funds and that the Petitioner's only connection with the said company is his shareholding therein.

6.10. The Petitioner further denies the allegation of delay and laches and submits that the Petition has been filed within the prescribed period of limitation. Accordingly, the Petitioner has prayed that the objections raised by Respondent Nos. 1 to 7 be rejected and the Company Petition be allowed as prayed.

7. That the **brief submission** came to be filed on behalf of the Petitioner on 25.09.2024 vide inward dairy no. D 7305.

8. That the **List of dates and events** on behalf of Respondent No. 1 to 7 on 26.09.2024 vide inward dairy no. 2001 whereas Petitioner filed the same on 23.04.2026 vide inward dairy no. D 3566. The same has been taken on record.

9. In pursuance of the notice issued by this Tribunal, learned counsel appeared on behalf of Respondent Nos. 1 to 7 and filed separate Vakalatnamas for each of the Respondents No. 1 to 7 on 07.04.2026 vide Inward Diary No. D-3066. The same are taken on record.

10. The **Further Affidavit** on behalf of the Respondent No. 1 was received dated wherein made following submission: -

10.1 The Respondent No. 2, being duly authorised to affirm the affidavit on behalf of Respondent No. 1 Company, has filed the present Further Affidavit in compliance with the order dated **09.04.2026**. The affidavit has been filed to place on record the documents directed by this Tribunal and to clarify the factual position regarding the Board Meeting referred to in the earlier pleadings.

10.2 The Respondent has submitted that the reference to the Board Meeting dated **31.10.2017** was inadvertent, as no Board Meeting was held and no resolution was passed on that date. It is clarified that the relevant approvals were granted at the **31st Annual General Meeting dated 14.07.2017** and the **Board Meeting dated 16.10.2017**, copies of whose minutes have been annexed with the present Further Affidavit.

10.3 The Respondent has further submitted that the **31st Annual General Meeting dated 14.07.2017** duly passed the necessary ordinary and special resolutions. It is stated that the minutes formed part of the Company's Annual Report for FY 2016-17, were available on the websites of the Registrar of Companies and the Company, and were also referred to in the Company's Prospectus under the heading "**Material Documents**" for inspection before closure of the Initial Public Offer.

10.4 The Respondent has prayed that the minutes of the **Board Meeting dated 16.10.2017**, annexed with the present Further Affidavit along with the affidavit itself, be taken on record in compliance with the Tribunal's directions and in the interest of justice.

11. The **Affidavit in Response** of the Petitioner to the further Affidavit dated 01.05.2026 filed by the Respondent No. 1 was received on 04.05.2026 vide inward dairy no. D 3871 wherein made following submission: -

11.1 The Petitioner filed the Affidavit in Response denying the averments made by Respondent Nos. 1 to 7, except those specifically admitted, and reiterated that the Company Petition concerns acts of oppression and mismanagement arising from diversion of IPO proceeds contrary to the objects stated in the Prospectus. The maintainability of the Petition has also been reaffirmed.

11.2 The Petitioner submitted that Respondent No. 1 diverted Rs. 9.50 Crores out of the IPO proceeds of Rs. 14.28 Crores to Karnavati Finance Limited without obtaining shareholders' approval by way of a Special Resolution under Section 27 of the Companies Act, 2013. It is further contended that the Respondents failed to justify such diversion or produce the Board Meeting minutes dated 11.09.2017.

11.3 The Petitioner further submitted that the Petition satisfies the requirements of Section 244 of the Companies Act, 2013, as the consenting shareholders were members prior to institution of the Petition and had validly executed consent letters. It is also contended that all shareholders, including those acquiring shares through the secondary market, possess locus standi to challenge acts prejudicial to the Company.

11.4 The Petitioner denied the allegations regarding mala fides, delay, laches and invalidity of the consent letters, and submitted that the proceedings against Karnavati Finance Limited have no bearing on the present dispute. Accordingly, the Petitioner prayed for rejection of the objections raised by Respondent Nos. 1 to 7 and for allowing the Company Petition in terms of the reliefs sought.

12. The Respondent No. 1 to 7 have put reliance upon: -

i. Power Finance Corporation Limited vs. Shree Maheshwar Hydel Power Corporation Limited and others ([2019] 213 Comp Cas 491 [NCLT])

ii. Peek v. Gurney [L.R.] 13 Eq. 79

iii. Al-Nakib Investments (Jersery) Ltd. and another v. Longcroft and others [1990] 1 WLR 1390

iv. Shanti Prasad Jain vs. Kalinga Tubes Limited (1965) 2 SCR 720

v. Suresh Kumar Sanghi vs. Supreme Motors Limited, 1981 SCC Online Del 199

vi. Chatterjee Petrochem vs. Haldia Petrochemicals, (2011) 10 SCC 466

vii. Power Tools and Appliances Co.Ltd. vs. Jaladhar Chakrabarty, 1991 SCC Online Cal 261

viii. Power Tools and Appliances Co.Ltd. vs. Jaladhar Chakrabarty, 1991 SCC Online Cal 261

ix. Suresh Kumar Sanghi vs. Supreme Motors Limited, 1981 SCC Online Del 199

x. Needle Industries (India) Limited vs. Needle Industries Newey (India) Holding Limited, (1981) 3 SCC 333

xi. Mohanlal Ganpatram vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd., 1964 SCC Online Guj 66

xii. Central Government vs. Kopran Limited, 2004 SCC Online CLB 36

xiii. Maharani Lalita Rajya Lakshmi vs. Indian Motor Co. (Hazirabagh) Ltd., 1961 SCC Online Cal 179

13. The **Purshis** was received on behalf of Respondent No. 1 Milton Indusrties Ltd. dated on 14.09.2020 vide inward dairy no. 7305. Wherein following submission were made in : –

13.1 Respondent No. 1 has placed on record a Consumer Complaint filed by it before the National Consumer Disputes Redressal Commission against Karnavati Finance Limited alleging deficiency in service and unfair trade practice. It is stated that the Complaint seeks refund of the amounts deposited under a Corporate Deposit Scheme/Loan.

13.2 It is submitted that Respondent No. 1 deposited an aggregate amount of Rs. 9.50 Crores with Karnavati Finance Limited through four cheques dated 30.10.2017 and 31.10.2017 under a Corporate Deposit Scheme carrying agreed interest. In support thereof, copies of the bank statements evidencing the deposits were relied upon.

13.3 It is further submitted that the deposits were repayable on demand and that demand letters dated

26.07.2018 and 23.08.2018, along with a reminder email dated 31.07.2018, were issued seeking repayment. It is alleged that Karnavati Finance Limited admitted its liability in its reply dated 13.08.2018 but failed to repay the amount.

13.4 Respondent No. 1 has further stated that Karnavati Finance Limited deducted TDS of Rs. 43,21,643 and issued a balance confirmation showing an outstanding amount of Rs. 9,88,89,479 as on 31.03.2018, but neither refunded the principal amount nor paid further interest.

13.5 It is contended that the deposits were made only under a Corporate Deposit Scheme for a limited period and not as part of any investment or money-lending activity. On this basis, Respondent No. 1 claims to be a consumer under the Consumer Protection Act and alleges deficiency in service.

13.6 It is further submitted that a legal notice dated 31.12.2018 was issued demanding repayment, to which Karnavati Finance Limited replied on 22/25.02.2019 alleging, without supporting documents, that the deposits were for ten years. It is also stated that a complaint dated 30.01.2019 was submitted before Opposite Party No. 2, but no action was taken.

13.7 Respondent No. 1 has prayed for refund of Rs. 9,88,89,479 with continuing interest on Rs. 9.50

Crores, compensation of Rs. 3 Crores, and other consequential reliefs.

14. We have heard the learned Counsel appearing for the parties at considerable length, perused the pleadings, the documents placed on record, the written submissions and the judicial precedents relied upon by both sides. Since the Company Petition and the connected Company Applications arise out of the same factual matrix and involve substantially overlapping questions of fact and law, they were heard together and are being decided by this common order.

Observation and findings of the Tribunal:

15. The present Company Petition under Sections 241 and 242 of the Companies Act, 2013 concerns allegations of oppression and mismanagement in the affairs of Respondent No. 1 Company. The principal dispute relates to the alleged utilisation of **Rs. 9.50 Crores** out of the IPO proceeds of **Rs. 14.28 Crores** contrary to the objects stated in the Prospectus dated **29.08.2017**, allegedly in violation of Section 27 of the Companies Act, 2013.

16. The Petitioner, holding **4,400 equity shares** acquired on **13.02.2019**, claims to have satisfied the requirement under Section 244 of the Companies Act, 2013 through consent letters of shareholders holding **10.23%** of the paid-up share capital. It is alleged that the IPO proceeds were advanced to Karnavati Finance Limited without shareholders' approval and in violation of Sections 27, 129 and 134 of the Companies Act, 2013.

17. The Respondents challenge the maintainability of the Petition under Section 244 of the Companies Act, 2013 and dispute the validity of the consent letters. It is their case that the advance to Karnavati Finance Limited was a bona fide temporary commercial transaction, duly disclosed in the financial statements, subsequently recovered in full, and incapable of constituting oppression or mismanagement.

18. During the pendency of the Petition, the parties filed interlocutory applications, additional affidavits and documents placing subsequent developments on record. The principal issues in all such proceedings relate to the utilisation of the IPO proceeds, the advance to Karnavati

Finance Limited, the alleged violation of Section 27 of the Companies Act, 2013 and the allegations of oppression and mismanagement.

19. Having considered the pleadings, documents, submissions of the parties and the applicable provisions of the Companies Act, 2013, this Tribunal is of the view that the following issues arise for determination. The findings recorded on those issues shall also govern the connected interlocutory applications, wherever applicable

20. The principal **issues** which arise for consideration by this Tribunal are, therefore, as under: -

- **(i)** **Issue No. (i):** Whether the Petitioner has established the eligibility and qualification prescribed under Section 244 of the Companies Act, 2013 to maintain the present Petition under Sections 241 and 242 of the Companies Act, 2013?
- **(ii)** **Issue No. (ii):** Whether Respondent No. 1 Company diverted or utilised the IPO proceeds amounting to ₹9.50 Crores by advancing the same to Karnavati Finance Limited contrary to the objects stated in the Prospectus dated 29.08.2017?
- **(iii)** **Issue No. (iii):** Whether the advance of ₹9.50 Crores to Karnavati Finance Limited amounted to a variation in the objects of the public issue requiring compliance with Section 27 of the Companies Act, 2013 and, if so, whether such statutory requirements were complied with?

(iv) **Issue No. (iv):** Whether the Respondents failed to make the disclosures required under the Companies Act, 2013, including Sections 129, 134, 143 and Schedule III, regarding the utilisation of the IPO proceeds?

(v) **Issue No. (v):** Whether the acts complained of by the Petitioner, including the alleged diversion of IPO proceeds and the consequential acts of the Respondents, constitute oppression of the members and mismanagement of the affairs of Respondent No. 1 Company within the meaning of Sections 241 and 242 of the Companies Act, 2013?

(vi) **Issue No. (vi):** Whether the Respondents have established that the advance made to Karnavati Finance Limited was a bona fide commercial transaction undertaken in the ordinary course of business and that the subsequent recovery of the entire amount cures or negates the allegations made in the Petition?

(vii) **Issue No. (vii):** Whether the Petitioner has established that the Respondents committed fraud, breach of fiduciary duties or any other statutory violation warranting the exercise of powers under Sections 241 and 242 of the Companies Act, 2013?

(viii) **Issue No. (viii):** Whether the subsequent recovery of the entire amount of Rs.9.50 Crores from Karnavati Finance Limited during the pendency of the proceedings renders the present Company Petition or the reliefs claimed therein infructuous?

(ix) **Issue No. (ix):** Whether the present Company Petition is liable to be dismissed on the grounds of delay, laches, acquiescence or estoppel in view of the Petitioner's acquisition of shares through the secondary market, acceptance of bonus shares and the subsequent conduct of the supporting shareholders?

(x) **Issue No. (x):** Whether the Petitioner and the supporting shareholders are entitled to the relief of an exit opportunity under Section 27(2) of the Companies Act, 2013 or any consequential refund as prayed for in the Company Petition?

(xi) **Issue No. (xi):** Whether the Petitioner is entitled to the reliefs sought in the Company Petition and the connected Interlocutory Application?

21. We would like to refer to the chronology of events relevant to the matter: -

Date	Event
23.08.1985	Respondent No.1 Company was incorporated as **Milton Laminates Private Limited**.
03.04.2007	The Company changed its name to **Milton Industries Limited**.
20.06.2017	Board of Directors resolved to raise capital through an Initial Public Offer (IPO).
14.07.2017	Shareholders approved the proposed IPO by passing a Special Resolution at the Annual General Meeting.
29.08.2017	Respondent No.1 issued the Prospectus for an IPO of **42,00,000 equity shares** aggregating **₹14.28 Crores**. The Prospectus stated that the proceeds would be utilised towards **working capital requirements (₹13 Crores), public issue expenses (₹37.45 Lakhs) and general corporate purposes (₹90.55 Lakhs).**
16.10.2017	Equity shares of Respondent No.1 were listed on the SME Platform of the National Stock Exchange.
2017–2018	According to the Petitioner, Respondent No.1 advanced **₹9.50 Crores** out of the IPO proceeds to **Karnavati Finance Limited** under the head "Short-Term Loans and Advances".
13.02.2019	The Petitioner acquired **4,400 equity shares** of Respondent No.1 through the secondary market.

Date	Event
April 2019	The Petitioner claims to have discovered from the financial statements that ₹9.50 Crores of the IPO proceeds had been advanced to Karnavati Finance Limited, allegedly contrary to the objects of the Prospectus.
16.07.2019	The Petitioner addressed the first representation to the Respondents alleging diversion of IPO funds, misconduct, insider trading and misappropriation.
27.07.2019	Respondent No.2 called upon the Petitioner to furnish proof of his shareholding and related particulars before responding to the allegations.
31.07.2019	The Petitioner furnished details of his shareholding and reiterated his request for clarification regarding the utilisation of IPO proceeds.
18.08.2019	The Petitioner again addressed the Respondents reiterating the allegations of diversion of funds and seeking disclosure of relevant documents.
02.09.2019	Respondent No.1 replied to the Petitioner denying wrongdoing and maintaining that the Company's affairs were conducted lawfully.
18.02.2020	The Petitioner issued a legal notice to all Respondents alleging violations of the Companies Act and seeking remedial action.
10.07.2020	A further representation was addressed by the Petitioner before initiation of legal proceedings.
July 2020	The Petitioner obtained consent letters from shareholders holding **17,33,600 equity shares (10.23%)** for filing the petition under Sections 241–242 read with Section 244 of the Companies Act, 2013.
2020	The Petitioner instituted **Company Petition No.30 of 2020** before the National Company Law Tribunal, Ahmedabad Bench, alleging oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013.
06.09.2020	Respondents filed their Affidavit-in-Reply opposing the

Date	Event
	maintainability of the Petition and denying all allegations.
07.09.2020	The Petition was first listed before the Tribunal.
14.09.2020	The Tribunal passed an order directing exchange of pleadings and continuation of the proceedings.
31.03.2021	The Board of Respondent No.1 considered matters relating to Karnavati Finance Limited. According to the Respondents, **₹6 Crores** were recovered from Karnavati Finance Limited on this date.
2021	The Petitioner filed **Interlocutory Application No.49 of 2021** seeking interim directions regarding the utilisation of IPO funds and subsequent developments.
24.03.2022	According to the Respondents, the balance amount of **₹3.50 Crores** was received back from Karnavati Finance Limited, thereby recovering the entire advance of **₹9.50 Crores**.
01.05.2026	Respondent No.1 filed a Further/Additional Affidavit placing subsequent developments and additional documents on record, including Board Minutes dated 16.10.2017.
Thereafter	The Petitioner filed an Affidavit in Response to the Further Affidavit disputing the authenticity and legal effect of the Board Minutes and reiterating that no Special Resolution under Section 27 had ever been passed.

22. Findings on Issue No. (i): Whether the Petitioner has established the eligibility and qualification prescribed under Section 244 of the Companies Act, 2013 to maintain the present Petition under Sections 241 and 242 of the Companies Act, 2013?

a. Before adverting to the allegations of oppression and mismanagement, it is necessary to examine the preliminary objection raised by the Respondents with regard to the maintainability of the present Petition. The Respondents have contended that the Petitioner is not qualified to invoke the jurisdiction of this Tribunal under Sections 241 and 242 of the Companies Act, 2013, inasmuch as he individually holds only 4,400 equity shares constituting approximately 0.025% of the issued share capital of Respondent No.1 Company and, therefore, does not satisfy the eligibility criteria prescribed under Section 244 of the Act.

b. Section 244 of the Companies Act, 2013 prescribes the threshold qualification for maintaining a petition under Section 241. In the case of a company having a share capital, the petition may be presented either by not less than one hundred members or by members constituting not less than one-tenth of the total number of members, whichever is less, or by any member or members holding not less than one-tenth of the issued share capital of the company, subject to payment of all calls and other sums due on their shares. The provision thus operates as a statutory filter to ensure that proceedings alleging oppression and mismanagement are instituted only by members having the requisite representative interest in the affairs of the company, unless the Tribunal exercises its discretionary power of waiver.

c. In the present case, the Petitioner has not sought waiver of the requirements under the proviso to Section 244. Rather, the Petitioner asserts that the statutory threshold stands satisfied by virtue of consent letters obtained from shareholders collectively holding 17,33,600 equity shares constituting approximately 10.23% of the issued share capital of the Company. The Respondents have, however, questioned the validity of such consent letters by alleging that some of the consenting shareholders had transferred their shares, that certain consent letters were defective, and that the statutory requirement was, therefore, not fulfilled.

d. The question that arises is whether, for the purpose of Section 244, the Tribunal is required at the threshold stage to finally adjudicate upon the correctness of the Respondents' objections regarding the shareholding of each consenting member. In our considered view, the answer must be in the negative.

e. The Hon'ble NCLAT in ***Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd.*** *Company Appeals (AT) No.133 and 139 of 2017* while interpreting Section 244 has held that the first and foremost consideration is whether the applicant is a "member" of the company and whether the petition relates to allegations of oppression and mismanagement. The Appellate Tribunal observed that the issue of qualification under Section 244 is a jurisdictional requirement, but the Tribunal is not expected to conduct a detailed trial on disputed questions of fact at the stage of considering maintainability. Where the applicant establishes prima facie compliance with the statutory requirement, the merits of rival claims must be examined during final adjudication.

f. Equally, the Hon'ble Supreme Court in ***Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. & Ors.*** AIRONLINE 2021 SC 179 recognised that the jurisdiction exercised by the Tribunal under Sections 241 and 242 is equitable in nature. The Court also noted that where an applicant does not satisfy the eligibility requirements prescribed under Section 244(1), recourse may be taken to the proviso thereto seeking waiver of such requirements, as was done in the facts of that case.

g. In the present case, there is no dispute that the Petitioner is a registered shareholder of Respondent No.1 Company. The record further discloses that consent letters purportedly issued by shareholders holding more than ten per cent of the issued share capital accompanied the Petition. Whether those shareholders continued to hold the requisite shares on the relevant date, whether the consent letters are genuine, and whether any subsequent transfer of shares has the effect of invalidating such consent are questions intrinsically connected with the documentary evidence produced by both parties. These are disputed questions of fact which cannot be conclusively determined merely on the basis of pleadings.

h. It is a settled principle that, while considering the maintainability of a petition under Section 244, the Tribunal is only required to ascertain whether there exists prima facie compliance with the statutory requirements. A detailed enquiry into disputed questions relating to title, transfer of shares, genuineness of documents or subsequent changes in shareholding would amount to conducting the trial itself at the threshold stage, which is impermissible.

i. The Respondents have relied upon alleged defects in the consent letters as well as subsequent events to contend that the Petition has become non-maintainable. We are unable to accept the said contention. The maintainability of a petition is ordinarily examined with reference to the facts existing on the date of institution of the proceedings. Subsequent changes in shareholding, unless they demonstrate that the petition was fundamentally incompetent at its inception, do not automatically divest the Tribunal of jurisdiction already validly invoked.

j. This view also finds support from the scheme of Chapter XVI of the Companies Act. The object of Section 244 is to prevent frivolous litigation by insignificant shareholders while at the same time ensuring that genuine grievances affecting the affairs of the company are not defeated on hyper-technical grounds. Once prima facie material demonstrating compliance with the statutory threshold is produced, the Tribunal ought to proceed to examine the allegations on merits rather than reject the petition solely on disputed factual assertions regarding supporting shareholders. (National Company Law Appellate Tribunal)

k. In the facts of the present case, the Petitioner has produced material indicating that he is a member of Respondent No.1 Company and has relied upon consent letters of shareholders holding more than ten per cent of the issued share capital. The Respondents dispute the validity of those documents; however, such dispute requires appreciation of evidence and cannot be conclusively decided as a preliminary issue. We are, therefore, satisfied that the Petitioner has established prima facie compliance with the requirements of Section 244 sufficient to maintain the present Petition.

l. Accordingly, **Issue No. (i)** is answered in the **affirmative**, holding that the present Company Petition is maintainable under Sections 241 and 242 read with Section 244 of the Companies Act, 2013, leaving all disputed questions regarding the evidentiary value of the documents produced by the parties to be considered while adjudicating the substantive allegations raised in the Petition.

23. Findings on Issue No. (ii): Whether Respondent No. 1 Company diverted or utilised the IPO proceeds amounting to ₹9.50 Crores by advancing the same to Karnavati Finance Limited contrary to the objects stated in the Prospectus dated 29.08.2017?

a. The principal allegation of the Petitioner is that Respondent No.1 Company, after raising an amount of Rs. 14.28 Crores through its Initial Public Offer ("IPO") pursuant to the Prospectus dated 29.08.2017, advanced a sum of □9.50 Crores to Karnavati Finance Limited under the head "Short-Term Loans and Advances", thereby utilising the IPO proceeds for a purpose not disclosed in the Prospectus. According to the Petitioner, the Prospectus contemplated utilisation of the issue proceeds towards working capital requirements, issue expenses and general corporate purposes, whereas no part of the

Prospectus envisaged advancement of substantial funds to another corporate entity.

b. The Respondents have denied the allegation of diversion of funds. It has been contended that the amount advanced to Karnavati Finance Limited represented a temporary commercial deployment of surplus funds undertaken in the ordinary course of business. It is further contended that the transaction was duly reflected in the audited financial statements of the Company and was never concealed from the shareholders or the regulatory authorities. The Respondents have also placed reliance upon the subsequent recovery of the entire amount to contend that neither the Company nor its shareholders have suffered any financial prejudice.

c. The Prospectus dated 29.08.2017 forms the primary document governing the present controversy. It records that the Company proposed to utilise the net proceeds of the public issue towards its working capital requirements, issue expenses and general corporate purposes. The Prospectus does not specifically disclose that a substantial portion of the IPO proceeds may be deployed by way of loans or advances to another company. The object clause contained in the Prospectus constitutes a representation made by the Company to the investing public regarding the proposed utilisation of the funds raised through the public issue.

d. It is equally not in dispute that the audited financial statements of Respondent No.1 Company reflected an advance aggregating Rs. 9.50 Crores to Karnavati Finance Limited under the head "Short-Term Loans and Advances". The existence of the transaction is, therefore, not seriously disputed by the Respondents. The dispute centres around the character and legality of such utilisation.

e. The Respondents have explained that the transaction was a prudent commercial decision taken by the Board in the interest of the Company and that the amount was recoverable on demand. According to them, the advance neither altered the objects of the public issue nor resulted in any permanent diversion of funds, particularly when the entire amount was subsequently recovered.

f. The Tribunal is unable to accept the proposition that the mere recovery of the amount subsequently advanced is, by itself, sufficient to answer the Petitioner's grievance. The subsequent repayment of the advance may be relevant while considering the consequences flowing from the transaction; however, it does not conclusively determine whether the initial utilisation of the funds was in conformity with the objects disclosed to the shareholders and investors at the time of the public issue. The legality of the impugned transaction is required to be examined with reference to the circumstances prevailing at the time the funds were deployed.

g. At the same time, it would also be inappropriate to hold, merely because the funds were advanced to Karnavati Finance Limited, that the transaction necessarily amounted to diversion of IPO proceeds. Whether such deployment constituted a permissible commercial utilisation of funds or amounted to utilisation for a purpose outside the disclosed objects necessarily depends upon the nature of the transaction, the authority under which it was undertaken, the disclosures made by the Company and the statutory framework governing variation in the objects of the issue.

h. It is well settled that the Prospectus is a statutory disclosure document intended to enable prospective investors to take an informed investment decision. The Company and its Directors are expected to adhere to the disclosures contained therein and maintain transparency in the utilisation of funds raised from the public. The Hon'ble Supreme Court in ***N. Narayanan v. Adjudicating Officer, SEBI***, AIR 2013 SUPREME COURT 3191, held that investor protection is the cornerstone of the securities market and that disclosure and transparency are the two pillars on which market integrity rests. The Court further observed that prevention of market abuse and preservation of market integrity constitute the hallmark of securities law, and that the securities market is founded upon free and open access to accurate information. The Hon'ble Supreme Court also held that directors of listed companies bear a heightened responsibility in ensuring the correctness of financial statements and disclosures made to investors and cannot evade liability for false or misleading representations.

i. Equally, the Directors of a company occupy a fiduciary position and are expected to exercise their powers in good faith and for proper corporate purposes. In ***Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan, AIR 2005 SUPREME COURT 1624*** , held that directors occupy a fiduciary position and are bound to exercise their powers with utmost good faith, care, skill and diligence for the benefit and in the interest of the company. The Court further held that the power to issue shares must be exercised for a proper purpose, and any exercise of such power for an extraneous purpose, including acquiring or maintaining control of the company, is liable to be invalidated.

j. Applying the aforesaid principles, this Tribunal finds that the material presently available on record establishes that an amount of Rs. 9.50 Crores, representing a substantial portion of the IPO proceeds, was admittedly advanced to Karnavati Finance Limited. The Respondents have not disputed the transaction but have sought to justify it as a commercial deployment of funds. Whether such deployment was permissible under the objects stated in the Prospectus and whether it required compliance with the statutory mandate contained in Section 27 of the Companies Act, 2013, is a distinct question which falls for consideration under the succeeding issue.

k. Consequently, this Tribunal records that Respondent No. 1 utilised a sum of **Rs. 9.50 Crores** out of the IPO proceeds by advancing the same to Karnavati Finance Limited. Whether such utilisation was in conformity with the objects stated in the Prospectus and in compliance with Section 27 of the Companies Act, 2013 shall be examined while deciding Issue No. (iii).

l. Accordingly, **Issue No. (ii) is answered to the extent that Respondent No.1 Company did utilise a sum of Rs. 9.50 Crores** from the IPO proceeds by advancing the same to Karnavati Finance Limited. Whether such utilisation was contrary to the objects stated in the Prospectus and in violation of Section

27 of the Companies Act, 2013 is left to be determined while deciding Issue No. (iii).

24. **Findings on Issue No. (iii):** Whether the advance of ₹9.50 Crores to Karnavati Finance Limited amounted to a variation in the objects of the public issue requiring compliance with Section 27 of the Companies Act, 2013 and, if so, whether such statutory requirements were complied with?

a. Having held under Issue No. (ii) that Respondent No.1 Company admittedly advanced a sum of Rs. 9.50 Crores to Karnavati Finance Limited out of the monies raised through the Initial Public Offer, the next question requiring consideration is whether such utilisation constituted a variation in the objects of the public issue attracting Section 27 of the Companies Act, 2013.

b. The case of the Petitioner is that the Prospectus dated 29.08.2017 specifically disclosed that the IPO proceeds would be utilised for three identified purposes, namely, (i) Rs. 13 Crores towards working capital requirements, (ii) Rs. 37.45 Lakhs towards public issue expenses and (iii) Rs. 90.55 Lakhs towards general corporate purposes. According to the Petitioner, the advancement of Rs. 9.50 Crores to Karnavati Finance Limited under the head "Short-

Term Loans and Advances" was wholly dehors the objects disclosed in the Prospectus and, therefore, amounted to a variation of the objects without obtaining the approval contemplated under Section 27 of the Companies Act, 2013.

c. Per contra, the Respondents contend that there was no diversion or siphoning of funds. According to them, the deployment of funds constituted a commercial decision taken by the Board in the interest of the Company and the transaction was duly reflected in the books of account. It is their further case that the Company has subsequently placed on record the minutes of the Board Meeting dated 16.10.2017 to demonstrate that the Board had resolved to make investment in a body corporate out of the funds received through the IPO. The Respondents have also placed on record that the entire amount of Rs. 9.50 Crores has since been recovered by the Company, Rs. 6 Crores on 31.03.2021 and the balance Rs. 3.50 Crores on 24.03.2022.

d. Before examining the rival submissions, it is necessary to notice the scope of Section 27 of the Companies Act, 2013. The said provision imposes a statutory restriction upon a company which has raised money from the public through a prospectus. Once the objects of the issue have been disclosed to the investing public, any variation in such objects in respect of the unutilised amount can be effected only after complying with the procedure prescribed therein, namely obtaining the approval of the shareholders by a special resolution together with the consequential disclosures contemplated under the Act and the applicable SEBI Regulations. The object of the provision is to preserve investor confidence by ensuring that public funds are utilised substantially in accordance with the representations made in the Prospectus.

e. The Prospectus placed on record leaves little room for dispute regarding the declared objects of the public issue. It specifically earmarks the utilisation of the issue proceeds towards working capital requirements, public issue expenses and general corporate purposes. No specific reference is found in the Prospectus permitting deployment of a substantial portion of the issue proceeds by way of loans or advances to another body corporate.

f. It is equally not in dispute that an amount of Rs. 9.50 Crores stood advanced to Karnavati Finance Limited and was reflected in the financial statements under the head "Short-Term Loans and Advances". Thus, the existence of the transaction is admitted. The controversy, however, is whether such utilisation can legitimately be regarded as falling within the objects disclosed in the Prospectus or whether it constitutes a departure therefrom.

g. Considerable emphasis has been placed by the Respondents upon the minutes of the Board Meeting dated 16.10.2017. According to the Respondents, the said minutes evidence the conscious decision of the Board to invest a portion of the IPO proceeds in another body corporate. The Petitioner, however, disputes both the genuineness and legal effect of the said minutes and contends that the same were brought on record only by way of a further affidavit filed during the pendency of the proceedings. Even assuming that such Board Resolution authorised the transaction, the question still remains whether the Board could, by its own resolution, alter the utilisation of the public issue proceeds without complying with the mandatory requirements of Section 27.

h. Even assuming that the Board Resolution dated 16.10.2017 authorised the impugned transaction, such authorisation, by itself, cannot dispense with the mandatory requirements of Section 27 of the Companies Act, 2013, if the utilisation of the IPO proceeds amounted to a variation of the objects stated in the Prospectus. A Board Resolution cannot substitute the statutory approval required under the Act.

i. The Respondents have sought to contend that the transaction formed part of the Company's commercial wisdom and was only a temporary deployment of surplus funds. While the Tribunal ordinarily does not sit in appeal over commercial decisions taken by the Board of Directors, such deference cannot extend to dispensing with an express statutory requirement. Commercial expediency cannot override compliance with a mandatory provision enacted for investor protection.

j. The Hon'ble Supreme Court in ***Sahara India Real Estate Corporation Ltd. v. SEBI, Civil Appeal No. 9813 of 2011***, observed that the prospectus is the principal medium through which investors obtain information regarding the company's strengths and weaknesses, its creditworthiness, the credibility of its promoters and its business prospects. The Court, while interpreting the Companies Act and the SEBI regulatory framework, emphasized the necessity of compliance with the statutory requirements governing public issues and disclosure obligations. Likewise, in ***Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212,*** the Hon'ble Supreme Court reiterated that directors occupy a fiduciary position and are required to exercise their powers in accordance with law and for proper corporate purposes.

k. Applying the aforesaid principles to the facts of the present case, this Tribunal finds that the Respondents have failed to place any material demonstrating that the shareholders approved the utilisation of □9.50 Crores for advancing the same to Karnavati Finance Limited by passing a special resolution as contemplated under Section 27. Apart from relying upon the Board Minutes dated 16.10.2017, no notice convening a general meeting, no explanatory statement, no special resolution, nor any material evidencing compliance with the procedure prescribed under Section 27 has been produced before this Tribunal.

l. The subsequent recovery of the entire amount from Karnavati Finance Limited also does not cure the statutory non-compliance, if any. Recovery of the amount may be relevant while moulding the final reliefs; however, it cannot retrospectively validate a utilisation of public issue proceeds which required prior shareholder approval under the statutory scheme.

m. In the circumstances, this Tribunal is of the considered view that the advancement of □9.50 Crores to Karnavati Finance Limited constituted utilisation of the IPO proceeds for a purpose not shown to have been authorised by the objects expressly disclosed in the Prospectus. Such utilisation amounted to a variation attracting Section 27 of the Companies Act, 2013. The Respondents have failed to establish that the mandatory statutory procedure prescribed under Section 27 was complied with before undertaking the impugned transaction.

n. Accordingly, **Issue No. (iii)** is answered in the **affirmative.** It is held that the utilisation of □9.50 Crores by advancing the same to Karnavati Finance Limited attracted the provisions of Section 27 of the Companies Act, 2013, and the Respondents have failed to establish compliance with the mandatory statutory requirements prescribed therein.

25. Findings on Issue No. (iv): Whether the Respondents failed to make the disclosures required under the Companies Act, 2013, including Sections 129, 134, 143 and Schedule III, regarding the utilisation of the IPO proceeds?

a. The Petitioner has contended that Respondent No.1 Company failed to make full, true and fair disclosures regarding the utilisation of the proceeds raised through the Initial Public Offer. According to the Petitioner, although an amount of □9.50 Crores was advanced to Karnavati Finance Limited and reflected in the financial statements under the head "Short-Term Loans and Advances", the Annual

Financial Statements, the Board's Report and the Auditor's Report failed to disclose that the said amount represented utilisation of the IPO proceeds for a purpose allegedly inconsistent with the objects stated in the Prospectus. It is the Petitioner's case that such omission constitutes violation of Sections 129, 134, 143 and Schedule III of the Companies Act, 2013. The Petitioner has consistently alleged that the funds raised through the IPO were diverted to Karnavati Finance Limited instead of being utilised towards working capital and other stated objects of the issue.

b. The Respondents, on the other hand, have denied the allegation of suppression. Their case is that the advance made to Karnavati Finance Limited was duly reflected in the audited financial statements under the head "Short-Term Loans and Advances" and, therefore, there was complete transparency in the accounting treatment of the transaction. It has further been contended that the financial statements were duly approved by the Board and audited by the Statutory Auditors and that there was no concealment of the impugned transaction. Subsequently, the Respondents also placed on record that the entire amount of Rs. 9.50 Crores had been recovered by the Company.

c. Having considered the rival submissions, this Tribunal is of the view that the statutory obligation cast upon the Company under Sections 129 and 134 extends beyond the mere disclosure of accounting entries. Section 129 requires the financial statements to present a **true and fair view** of the affairs of the Company in conformity with the prescribed accounting standards and Schedule III. Likewise, Section 134 obliges the Board of Directors to furnish in its Report a fair disclosure of the state of affairs of the Company and all material information necessary for the members to appreciate the financial position and affairs of the Company. The object of these provisions is to ensure transparency and informed corporate governance.

d. It is not disputed that the financial statements reflected the advance of Rs. 9.50 Crores under the head "Short-Term Loans and Advances". However, the issue before this Tribunal is not whether the accounting entry was made, but whether the statutory reports sufficiently disclosed that a substantial portion of the funds raised through the public issue had been deployed in the said manner and whether the shareholders were informed that such utilisation had any bearing upon the objects disclosed in the Prospectus.

e. The record placed before this Tribunal does not indicate that the Board's Report specifically disclosed that the amount advanced to Karnavati Finance Limited represented utilisation of the IPO proceeds or that the Board considered whether such utilisation was consistent with the objects of the public issue. Similarly, no material has been placed before this Tribunal to show that the Board's Report contained any discussion regarding the deployment of the IPO proceeds, the justification for such deployment or the requirement, if any, of obtaining shareholders' approval under Section 27 of the Companies Act, 2013.

f. Equally, no material has been produced to demonstrate that the Statutory Auditor, while reporting under Section 143 of the Companies Act, specifically examined or commented upon the utilisation of the IPO proceeds vis-à-vis the objects disclosed in the Prospectus. The absence of any qualification or observation in the Auditor's Report cannot, by itself, be treated as conclusive proof that the statutory requirements relating to utilisation of public issue proceeds stood satisfied. The scope of an audit under Section 143 is distinct from the adjudicatory jurisdiction exercised by this Tribunal under Sections 241 and 242 of the Act.

g. The Hon'ble Supreme Court in ***Union Of India v. Deloitte Haskins & Sells LLP***, (CRIMINAL APPEAL NOS.2305-2307 OF 2022, while interpreting Chapter X of the Companies Act, 2013, held that the legislative scheme governing auditors is intended to preserve the integrity and independence of the audit process, enhance transparency and disclosures, and ensure greater accountability of statutory auditors. Further, in ***Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan***, AIR 2005 SUPREME COURT 1624, the Hon'ble Supreme Court reiterated that directors owe fiduciary obligations to the company and are required to ensure fair and transparent corporate governance. Compliance with statutory disclosure obligations is an integral facet of such fiduciary responsibility.

h. In the facts of the present case, this Tribunal is of the considered view that although the impugned advance appears to have been reflected as an accounting entry in the financial statements, the Respondents have failed to establish that adequate and meaningful disclosures were made to the shareholders regarding the utilisation of the IPO proceeds in the context of the objects stated in the Prospectus. Mere disclosure of the advance under the accounting head "Short-Term Loans and Advances" cannot be equated with full disclosure of the utilisation of public issue proceeds where such utilisation itself is the subject matter of challenge before this Tribunal.

i. The Tribunal also notes that Respondent No.1 is a listed company and the utilisation of IPO proceeds is governed not only by Section 27 of the Companies Act, 2013 but also by the applicable SEBI framework regulating disclosure and utilisation of public issue proceeds. Compliance with the Companies Act and the applicable SEBI Regulations is complementary in nature, and failure to comply with either statutory framework may have regulatory consequences. However, the present adjudication is confined to the exercise of jurisdiction under Sections 241 and 242 of the Companies Act, 2013.

j. Accordingly, this Tribunal holds that the Respondents have not demonstrated due compliance with the disclosure obligations contemplated under Sections 129 and 134 of the Companies Act, 2013 insofar as the utilisation of the IPO proceeds is concerned. However, in the absence of any independent evidence establishing professional misconduct or dereliction on the part of the Statutory Auditor, no definitive finding of violation of Section 143 is warranted in these proceedings.

k. **Issue No. (iv) is answered partly in favour of the Petitioner.** It is held that the Respondents have failed to establish that complete and meaningful disclosures regarding the utilisation of the IPO proceeds were made to the shareholders through the statutory reports as contemplated under Sections 129, 134 and Schedule III of the Companies Act, 2013. However, this Tribunal refrains from recording any finding of statutory violation against the Auditor under Section 143 in the absence of specific evidence and independent adjudication on that issue.

26. Findings on Issue No. (v): Whether the acts complained of by the Petitioner, including the alleged diversion of IPO proceeds and the consequential acts of the Respondents, constitute oppression of the members and mismanagement of the affairs of Respondent No. 1 Company within the meaning of Sections 241 and 242 of the Companies Act, 2013?

a. The principal grievance of the Petitioner is that Respondent No.1 Company, immediately after raising Rs. 14.28 Crores through an Initial Public Offer for the specific objects disclosed in the Prospectus, advanced Rs. 9.50 Crores to Karnavati Finance Limited instead of utilising the funds towards working capital requirements and general corporate purposes. The Petitioner has further alleged that the said utilisation was undertaken without obtaining shareholders' approval contemplated under Section 27 of the Companies Act, 2013, without making adequate disclosures in the statutory reports and in breach of the fiduciary obligations owed by the Directors to the Company and its shareholders. According to the Petitioner, these acts constitute oppression of the minority shareholders and mismanagement of the affairs of the Company.

b. The Respondents have denied the allegations and contended that the transaction was duly reflected in the audited financial statements under the head "Short-Term Loans and Advances", that the Company continued its manufacturing activities without interruption, and that the advance was subsequently recovered in full from Karnavati Finance Limited. It is their contention that the Petitioner has merely alleged a singular commercial transaction and that such transaction, by itself, does not constitute oppression or mismanagement within the meaning of Sections 241 and 242 of the Act. The Respondents have also questioned the maintainability of the Petition and asserted that there was no dishonest intention on their part.

c. The jurisdiction of this Tribunal under Sections 241 and 242 is equitable in nature. Mere illegality or violation of a statutory provision does not automatically amount to oppression or mismanagement unless the impugned conduct is shown to be prejudicial to the interests of the Company or its members and lacking in probity. The conduct of those in control of the Company must therefore be examined in its entirety and in the light of the fiduciary duties owed by the Directors.

d. This Tribunal is conscious that every statutory or procedural violation does not, by itself, constitute oppression or mismanagement under Sections 241 and 242 of the Companies Act, 2013. Such violation must be shown to have resulted in prejudice to the Company or its members or to reflect a lack of probity in the conduct of the Company's affairs. The findings recorded herein are based upon the cumulative effect of the impugned acts and not upon the mere existence of statutory non-compliance.

e. In the present case, it is not in dispute that a substantial portion of the IPO proceeds, amounting to Rs. 9.50 Crores, was advanced to Karnavati Finance Limited shortly after the public issue. The record further indicates that the Prospectus represented to prospective investors that the proceeds of the issue would principally be utilised towards the working capital requirements of the Company. The Respondents have not produced any material demonstrating that the shareholders approved any variation of the stated objects under

Section 27 before such deployment of funds. On the contrary, the explanation offered by the Respondents proceeds on the basis that the transaction was a commercial decision of the Board.

f. This Tribunal is of the considered opinion that funds raised from the investing public through an Initial Public Offer constitute monies impressed with a specific purpose disclosed in the Prospectus. Directors, while exercising their powers, are under a fiduciary obligation to ensure that such funds are utilised strictly in accordance with the representations made to investors or in accordance with law after obtaining the requisite approvals. Any substantial departure from the disclosed objects, without following the statutory procedure and without complete transparency, strikes at the very foundation of shareholder confidence and corporate governance.

g. The subsequent recovery of the amount from Karnavati Finance Limited cannot, by itself, efface the legal consequences of the original deployment of the funds. Restitution may mitigate the financial impact upon the Company; however, it does not retrospectively validate a transaction which is alleged to have been undertaken contrary to the objects of the public issue or without compliance with the statutory safeguards enacted for the protection of shareholders. The subsequent repayment, therefore, is relevant only while moulding the final relief and not while determining whether the impugned conduct was oppressive or constituted mismanagement.

h. The cumulative effect of the aforesaid circumstances, viewed as a whole and not merely as an isolated commercial transaction, establishes a course of conduct lacking in transparency and statutory compliance. The Tribunal has, therefore, assessed the impugned acts collectively while determining whether the affairs of Respondent No. 1 Company were conducted in a manner constituting oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013.

i. The Hon'ble Supreme Court in ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., 1981 AIR 1298***, reiterated that oppression under Section 397 of the Companies Act, 1956 involves conduct that is "burdensome, harsh and wrongful" and that mere lack of confidence between shareholders is insufficient unless it arises from oppression involving an element of lack of probity or fair dealing in the management of the company's affairs. Likewise, in ***Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan***, AIR 2005 SUPREME COURT 1624, the Hon'ble Supreme Court emphasised that Directors occupy a fiduciary position and are bound to exercise their powers for the benefit of the Company and all its shareholders.

j. Applying the aforesaid principles to the facts of the present case, this Tribunal is satisfied that the impugned acts are not merely isolated commercial decisions but constitute a course of conduct affecting the legitimate expectations of the shareholders who invested in the Company on the faith of the disclosures made in the Prospectus. The utilisation of a substantial portion of the IPO proceeds in a manner inconsistent with the stated objects, coupled with the absence of statutory compliance regarding variation of those objects, amounts to conduct prejudicial to the interests of the Company and its members.

k. Accordingly, this Tribunal holds that the acts complained of by the Petitioner constitute mismanagement of the affairs of Respondent No.1 Company within the meaning of Section 241 of the Companies Act, 2013. Further, the said conduct, viewed cumulatively, also amounts to oppression of the members, as it defeats the legitimate expectations of the investing shareholders and lacks the standards of fairness, transparency and probity expected from those in control of the Company.

1. **Issue No. (v)** is answered in **favour of the Petitioner**. The Respondents have failed to demonstrate that the impugned utilisation of the IPO proceeds was undertaken in compliance with the statutory safeguards under the Companies Act, 2013 or in a manner consistent with their fiduciary obligations towards the Company and its shareholders. The impugned conduct therefore attracts the jurisdiction of this Tribunal under Sections 241 and 242 of the Companies Act, 2013.

27. Findings on Issue No. (vi): Whether the Respondents have established that the advance made to Karnavati Finance Limited was a bona fide commercial transaction undertaken in the ordinary course of business and that the subsequent recovery of the entire amount cures or negates the allegations made in the Petition?

a. The Respondents have contended that the advance of Rs. 9.50 Crores made to Karnavati Finance Limited was a genuine commercial transaction undertaken in the ordinary course of business of Respondent No.1 Company. It is their case that the transaction was duly reflected in the audited financial statements under the head "Short-Term Loans and Advances", that interest was earned thereon, and that the amount was subsequently recovered in full. According to the Respondents, the repayment of the entire amount demonstrates the bona fides of the transaction and completely nullifies the allegations of diversion and siphoning of funds.

b. The Petitioner, on the other hand, has submitted that irrespective of the subsequent repayment, the fundamental issue is whether the IPO proceeds, which were raised for specified purposes under the Prospectus, could have been advanced to Karnavati Finance Limited without obtaining the approval mandated under Section 27 of the Companies Act, 2013. According to the Petitioner, the subsequent recovery neither validates the initial deployment of the funds nor absolves the Directors from their fiduciary obligations.

c. This Tribunal is unable to accept the Respondents' contention that the impugned advance constituted an ordinary commercial transaction merely because it was reflected in the books of account or because interest may have accrued thereon. Disclosure in financial statements establishes only that the transaction was recorded; it does not, by itself, establish that the transaction was lawful, bona fide, or consistent with the objects for which the public funds had been raised. Corporate disclosure cannot substitute statutory compliance.

d. The record indicates that the Company had represented to prospective investors in the Prospectus that the proceeds of the IPO would primarily be utilised for meeting its working capital requirements, public issue expenses and general corporate purposes. A substantial amount, namely Rs. 9.50 Crores out of Rs. 14.28 Crores, was thereafter advanced to Karnavati Finance Limited. Such deployment constituted a significant deviation from the stated objects of the issue. The Respondents have not placed any convincing material demonstrating that the shareholders authorised such variation in accordance with Section 27 of the Companies Act, 2013 before the funds were deployed.

e. The contention that the advance formed part of the ordinary course of business is equally unpersuasive. Respondent No.1 Company is engaged in the business of manufacturing laminates and allied products. The Respondents have not established that advancing substantial sums from IPO proceeds to a finance company constituted a regular or integral part of the Company's ordinary business operations. Mere characterization of the transaction as a commercial decision of the Board cannot convert an extraordinary deployment of public issue proceeds into an ordinary business activity.

f. The subsequent recovery of the entire amount is also insufficient to exonerate the Respondents from the allegations made in the Petition. It is evident from the subsequent affidavits that the amount of Rs. 9.50 Crores was recovered in two instalments, namely Rs. 6 Crores on 31.03.2021 and Rs. 3.50 Crores on 24.03.2022. The repayment establishes only that the Company ultimately recovered the funds; it does not retrospectively validate the original decision to deploy the IPO proceeds in a manner inconsistent with the disclosed objects of the issue.

g. The Tribunal is of the considered view that the legality and propriety of a corporate transaction must be assessed on the basis of the circumstances prevailing at the time when the decision was taken. A subsequent restitution may reduce or eliminate the financial loss suffered by the Company, but it cannot erase a prior breach of statutory obligations or fiduciary duties, particularly where public shareholders had invested on the faith of representations contained in the Prospectus.

h. Although the subsequent recovery of the entire amount substantially mitigates the financial consequence suffered by the Company, such recovery cannot retrospectively validate an act undertaken in breach of the statutory safeguards governing utilisation of IPO proceeds. The legality of the transaction is required to be examined with reference to the circumstances existing on the date of deployment of the funds.

i. The Respondents have also relied upon subsequent Board resolutions and additional affidavits to justify the transaction. However, the production of such documents during the pendency of the proceedings does not satisfactorily establish that the statutory requirements governing variation of the objects of the Prospectus were complied with before the funds were advanced. Subsequent explanations cannot substitute prior statutory compliance.

j. This Tribunal therefore holds that the Respondents have failed to establish that the advance to Karnavati Finance Limited was a bona fide commercial transaction undertaken in the ordinary course of business of Respondent No.1 Company. Equally, the subsequent recovery of the entire amount does not cure, validate or negate the allegations relating to the original deployment of the IPO proceeds. The repayment is a relevant circumstance while considering the nature and extent of relief to be granted, but it does not extinguish the cause of action arising from the alleged misuse of funds raised from the investing public.

k. Accordingly, **Issue No. (vi)** is answered **against the Respondents.** The Tribunal holds that the

Respondents have failed to discharge the burden of demonstrating that the impugned transaction was a bona fide commercial transaction in the ordinary course of business or that the subsequent recovery of the amount completely absolves them of the allegations of oppression, mismanagement and breach of statutory obligations raised in the present Petition.

28. **Findings on Issue No. (vii):** Whether the Petitioner has established that the Respondents committed fraud, breach of fiduciary duties or any other statutory violation warranting the exercise of powers under Sections 241 and 242 of the Companies Act, 2013?

a. The Petitioner has alleged that the Respondents committed fraud, breached their fiduciary duties and violated various provisions of the Companies Act, 2013 by utilising the IPO proceeds contrary to the objects stated in the Prospectus and without complying with Section 27 of the Act. It has also been alleged that such acts attracted Sections 34, 35 and 447 of the Companies Act, 2013.

b. The Respondents denied the allegations and submitted that the deployment of the IPO proceeds was a bona fide commercial decision, duly reflected in the books of account, and that the entire amount of Rs. 9.50 Crores was subsequently recovered. It was further contended that no fraudulent intention, wrongful gain or wrongful loss has been established.

c. Having regard to the findings recorded on the preceding issues, this Tribunal is satisfied that the Respondents have failed to establish compliance with the statutory requirements governing utilisation of the IPO proceeds under the Companies Act, 2013. Such findings are, however, confined to the exercise of equitable jurisdiction under Sections 241 and 242 of the Act and shall not be construed as recording any finding of criminal liability under Sections 34, 35 or 447 of the Companies Act, 2013.

d. Allegations relating to fraud under Sections 34, 35 and 447 of the Companies Act, 2013 require independent examination upon satisfaction of the statutory ingredients prescribed therein. The scope of the present proceedings under Sections 241 and 242 being essentially remedial and equitable, this Tribunal considers it unnecessary to record any finding regarding criminal liability or penal consequences in the present proceedings.

e. The allegations relating to fraud under Sections 34, 35 and 447 of the Companies Act, 2013 involve issues requiring a higher standard of proof than is necessary for adjudication under Sections 241 and 242. In the absence of adequate evidence establishing the statutory ingredients of fraud, no finding is recorded thereon in the present proceedings.

f. Accordingly, **Issue No. (vii)** is answered **partly in favour of the Petitioner**. While breach of statutory obligations and fiduciary duties has been established, no conclusive finding regarding fraud or liability under Sections 34, 35 or 447 of the Companies Act, 2013 is recorded in the present proceedings, leaving it open to the competent statutory authorities to proceed independently in accordance with law, if so advised.

29. Findings on Issue No. (viii): Whether the subsequent recovery of the entire amount of Rs.9.50 Crores from Karnavati Finance Limited during the pendency of the proceedings renders the present Company Petition or the reliefs claimed therein infructuous?

a. The Respondents have strongly contended that the entire amount of Rs.9.50 Crores advanced to Karnavati Finance Limited stood fully recovered during the pendency of the present proceedings and, therefore, no surviving cause of action remains for consideration by this Tribunal.

b. We are unable to accept the said contention. The subsequent recovery of the amount is undoubtedly a relevant circumstance while moulding the equitable relief under Section 242 of the Companies Act, 2013. However, such recovery cannot retrospectively validate the legality of the original utilisation of the IPO proceeds if the same was undertaken contrary to the statutory requirements governing public issues.

c. The cause of action pleaded in the present Company Petition is founded not merely upon financial loss but upon the alleged misuse of public issue proceeds, breach of statutory obligations and acts amounting to oppression and mismanagement. Such issues survive notwithstanding the subsequent repayment of the amount.

d. Consequently, although the recovery of the entire amount substantially mitigates the financial consequences alleged by the Petitioner and renders certain monetary reliefs unnecessary, the present Company Petition itself cannot be regarded as having become infructuous.

e. Accordingly, **Issue No. (viii)** is answered **against the Respondents**.

30. Findings on Issue No. (ix): Whether the present Company Petition is liable to be dismissed on the grounds of delay, laches, acquiescence or estoppel in view of the Petitioner's acquisition of shares through the secondary market, acceptance of bonus shares and the subsequent conduct of the supporting shareholders?

a. The Respondents have submitted that the Petitioner acquired shares through the secondary market long after completion of the Initial Public Offer, accepted bonus shares declared by the Company and continued to remain a shareholder, thereby disentitling himself from maintaining the present proceedings.

b. It is equally contended that the Petition has been instituted after considerable delay and, therefore, deserves dismissal on the grounds of delay, laches and acquiescence.

c. We do not find merit in the said objection. The material placed on record indicates that after acquiring shares, the Petitioner addressed several representations seeking clarification regarding utilisation of the IPO proceeds before ultimately invoking the jurisdiction of this Tribunal. The correspondence exchanged between the parties demonstrates that the Petitioner had continuously questioned the impugned transaction prior to institution of the present proceedings.

d. Mere acceptance of bonus shares or continued holding of shares cannot, by itself, amount to waiver of statutory rights or condonation of acts alleged to constitute oppression and mismanagement. Likewise, acquisition of shares through the secondary market does not disentitle a member from questioning acts which allegedly continue to prejudice the affairs of the Company.

e. In the absence of any material establishing intentional waiver, acquiescence or prejudice caused by the delay, we are unable to hold that the Petition deserves dismissal on these grounds.

f. Accordingly, **Issue No. (ix)** is answered **against the Respondents.**

31. Findings on Issue No. (x): Whether the Petitioner and the supporting shareholders are entitled to the relief of an exit opportunity under Section 27(2) of the Companies Act, 2013 or any consequential refund as prayed for in the Company Petition?

a. The Petitioner has prayed for issuance of directions requiring the Respondents to provide an exit opportunity to the shareholders under Section 27(2) of the Companies Act, 2013 and also sought refund of the investment together with consequential reliefs.

b. Section 27 of the Companies Act, 2013 contemplates an exit opportunity to dissenting shareholders where the objects for which money has been raised through a prospectus are varied after obtaining approval by way of a Special Resolution in accordance with the statutory framework and the applicable SEBI Regulations.

c. In the present case, this Tribunal has already recorded its finding that the Respondents have failed to establish compliance with Section 27 before utilising the IPO proceeds in the impugned manner. Equally, the material placed before this Tribunal does not disclose that any Special Resolution varying the objects of the issue was ever passed so as to attract the statutory mechanism contemplated under Section 27(2).

d. Furthermore, during the pendency of the proceedings, the entire amount advanced to Karnavati Finance Limited has admittedly been recovered by Respondent No.1 Company. In these circumstances, the extraordinary relief directing refund of investments or compulsory exit cannot be granted in proceedings under Sections 241 and 242, particularly in the absence of the statutory preconditions contemplated under Section 27(2).

e. The said prayer is, therefore, rejected, leaving it open to the competent statutory authorities to exercise such powers, if any, as may be available under the Companies Act, 2013 and the applicable SEBI Regulations.

f. Accordingly, **Issue No. (x)** is answered **against the Petitioner.**

32. Findings on Issue No. (xi): Whether the Petitioner is entitled to the reliefs sought in the Company Petition and the connected Interlocutory Application?

a. In view of the findings recorded on **Issues No. (i) to (x),** this Tribunal is satisfied that the affairs of Respondent No.1 Company were conducted in a manner prejudicial to the interests of the Company and its members within the meaning of Sections 241 and 242 of the Companies Act, 2013. The Tribunal is further satisfied that, although the facts may justify winding up on just and equitable grounds, such winding up would unfairly prejudice the members. It is therefore just and equitable to grant appropriate reliefs under Section 242 of the Companies Act, 2013 to bring an end to the matters complained of.

b. While moulding the relief under Section 242, this Tribunal is required to confine itself to the powers expressly conferred by the Companies Act, 2013. Reliefs falling within the exclusive jurisdiction of the Central Government, the Registrar of Companies, SEBI or other statutory authorities cannot ordinarily be granted in proceedings under Sections 241 and 242, except to the extent specifically authorised by law.

33. Before issuing the final directions, this Tribunal considers it appropriate to observe that the jurisdiction under Sections 241 and 242 of the Companies Act, 2013 is preventive and remedial in nature. The object of the jurisdiction is to bring an end to the matters complained of and to secure proper corporate governance rather than to impose penal consequences. Accordingly, the relief granted herein has been moulded keeping in view the subsequent recovery of the entire amount, the interests of the Company, its shareholders and the necessity of ensuring future statutory compliance.

34. Accordingly, the Company Petition is partly allowed and the following directions are issued: -

(i) It is declared that the utilisation of IPO proceeds amounting to Rs. 9.50 Crores for advancing the same to Karnavati Finance Limited, without establishing compliance with Section 27 of the Companies Act, 2013, was contrary to the statutory framework governing utilisation of public issue proceeds.

(ii) Since the entire amount of Rs. 9.50 Crores has admittedly been recovered by Respondent No.1 Company during the pendency of the proceedings, no further direction for restoration or repayment of the said amount is required.

(iii) Respondent No.1 Company shall ensure that all future statutory disclosures relating to utilisation of funds raised through public issues are made strictly in accordance with Sections 129, 134 and other applicable provisions of the Companies Act, 2013, Schedule III thereto and the applicable SEBI Regulations.

(iv) Respondent No.1 Company shall ensure that any future variation in the objects of a public issue, if undertaken, shall be effected only after strict compliance with Section 27 of the Companies Act, 2013 and the applicable SEBI Regulations.

(v) The Registry shall forward a copy of this Judgment to the Registrar of Companies as well as to SEBI for information and such action as may be permissible under the Companies Act, 2013.

(vi) It is clarified that this Judgment shall not preclude the Central Government, the Registrar of Companies, SEBI or any other competent statutory authority from exercising their respective statutory powers independently in accordance with law.

(vii) The remaining prayers contained in the Company Petition, including those relating to investigation, prosecution or punishment under Sections 34, 35 and 447 of the Companies Act, 2013, removal of Directors, appointment of Independent Directors, Company Secretary, Auditor or any other officer, delisting of the Company, deposit of passports, or any other relief sought are not supported by sufficient evidences in the pleadings justifying any of these reliefs. Further, the violations, if any, due to utilisation of public issue proceeds in advancing money to Karnavati Finance Limited can be looked into by the appropriate authority, as noted in (vi) above, and such violations does not justify the reliefs sought from this Tribunal as above and accordingly stand rejected.

35. Accordingly, **Company Petition No. 30 of 2020** stands **partly allowed** and disposed of in the aforesaid terms.

36. In view of the findings recorded herein and the admitted recovery of the entire amount advanced to Karnavati Finance Limited during the pendency of the proceedings, **Company Application No. 49 (AHM) of 2021** stands **disposed of** as having become **infructuous**. All pending interlocutory applications, if any, also stand disposed of.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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