IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **31.07.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Roopa Dileep
Vs
Kellax Surgicals Pvt Ltd & Ors

MAIN PETITION NUMBER : CP/79/CHE/2022

(IA/MA) APPLICATION NUMBERS
IA(CA)/149/CHE/2025; IA/23(CHE)/2024

ORDER

CP/79/CHE/2022
IA(CA)/149/CHE/2025
IA/23(CHE)/2024

Present: Mr. Vijay, Ld. Counsel for the Petitioner/Applicant.

Vide common order pronounced in the open Court, IA(CA)/149/CHE/2025 disposed of. Documents are taken on record.

Application IA/23(CHE)/2024 is dismissed.

The main petition CP/79/CHE/2022 is also dismissed.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 31.07.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP (CA)/79(CHE)/2022

filed under in the matter of Section 241 and 242 of Companies Act, 2013 read with Rule 11 and Rule 81 of the National Company Law Tribunal Rules, 2016

In the matter of ***Kellax Surgicals Private Limited***

Roopa Dileep
Aged 34 years D/o Dileep Kumar
Residing at Kunnathuparambil, Mannanam,
Athirampuzha, Kottayam, Kerala – 686561.

. . . Petitioner

vs.

1) Kellax Surgicals Private Limited
58, Gokule Street, Ramnagar,
Coimbatore, Tamil Nadu -641009.
benniebwoie@gmail.com
Represented by its Managing Director.

2) Sinu Dominic,
Director, Kellax Surgicals Private Limited
Residing at Chackrapurackel, Kavalam North,
Kunnumma,Alappuzha, Kerala - 688506.
sinudominic30@gmail.com

3) Dominic Savio
Director, Kellax Surgicals Private Limited
Residing at Chackrapurackel,

Kavalam, Kuttanad, Alappuzha, Kerala - 688506.
benniebwoie@gmail.com

4) Thozhuthumkudy Kuruvila Kuriachan
Director, Kellax Surgicals Private Limited
Residing at Thozhuthumkudy House,
Njaralloor, Ernakulam, Kerala – 683562.
benniebwoie@gmail.com

5) Prasanth Gopalakrishnan Nair .
S/o Gopalakrishnan Nair,
Residing at MalimelVaranyam, East Othera P.O.,
Thiruvalla, Pathanamthitta, Kerala - 689546.
prasanthgnair79@gmail.com

6) Bichu Philip
D/o Babu Philip, Residing at Thayyil Athimattathil, Mannanam P.O.,
Athirampuzha, Kottayam, Kerala – 685561.
bichuthayil6@gmail.com

7) Maxshield Rubber Products Pvt. Ltd.
CIN - U25190KL2012PTC032270
Having its Registered Address at
Plot Number 1, Industrial Growth Centre, Pallipuram,
Cherthala, Alappuzha, Kerala - 688541.
accounts@safeshieldindia.com
Represented by its Managing Director.

8) Abraham Kalamannil Joseph
Director, Maxshield Rubber Products Pvt. Ltd
Aged 75 years, S/o Joseph,

Plot Number 1,Industrial Growth Centre,
Pallipuram, Cherthala,Alappuzha Kerala – 688541.
accounts@safeshieldindia.com

9) Samuel Abraham
Director, Maxshield Rubber Products Pvt. Ltd
Plot Number 1,Industrial Growth Centre,
Pallipuram, Cherthala, Alappuzha Kerala – 688541.
accounts@safeshieldindia.com

10) Joseph Abraham
Director, Maxshield Rubber Products Pvt. Ltd
Plot Number 1,Industrial Growth Centre,
Pallipuram, Cherthala,Alappuzha Kerala -688541.
accounts@safeshieldindia.com

. . . Respondents

Along with

IA(CA)/23(CHE)/2024

filed under Sections 195 & 340 of the Code of Criminal Procedure, 1973 & Rule 11 of the National Company Law Tribunal Rules, 2016

Roopa Dileep
Aged 34 years D/o Dileep Kumar
Residing at Kunnathuparambil, Mannanam,
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vs.

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Along with

IA(CA)/149(CHE)/2025

filed under Rule 11 of the National Company Law Tribunal Rules, 2016

Roopa Dileep
Aged 34 years D/o Dileep Kumar
Residing at Kunnathuparambil, Mannanam,
Athirampuzha, Kottayam, Kerala – 686561.

. . . *Applicant*

vs.

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accounts@safeshieldindia.com

. . . *Respondents*

Order pronounced on ***31st July, 2026***

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner/ Applicant	*: Navod Prasannan, K.V Krishnakumar, Advocates*
For Respondent No. 1 and 2	*: P. Sanjay, A. Parvathi Menon, Kiran Narayanan, Advocates*
For Respondent No.7	*: Shameem Ahamed, Jerin Asher Sojan, Advocates*

ORDER

1. The Company Petition, CP(CA)/79(CHE)/2022 has been filed by the Petitioner under Section 241 and 242 of the Companies Act, 2013 seeking the following reliefs:

(i) Declare that the acts of Respondent Nos. 2 to 6 are acts of oppression and mismanagement and are prejudicial to the interest of the 1st and 7th Respondent Company.

(ii) Declare that the Annexure-A16 Minutes of the Meeting dated 25.04.2022 of Board of Directors of the 7th Respondent Company is null and void as no statutory formalities were complied and no Board Meeting of the 1st Respondent Company was convened before transferring the shares of the 7th Respondent Company.

(iii) Declare that the Annexure-A15 Agreement executed in the name of the 7th Respondent Company is null and void as no statutory formalities were complied and no Board Meeting of the 1" Respondent Company was convened before entering into Annexure-A15 Agreement.

(iv) Declare that the Annexure-A18 MOU & authorisation and Annexure-A19 Cash Agreement are null and void as no statutory formalities were complied and no Board Meeting of the 1" Respondent Company was convened before entering into Annexure-A18 MOU & authorisation and Annexure-A19 Cash Agreement.

(v) To appoint independent Chartered Accountant to audit and prepare the balance sheets and financial statements of the 1st Respondent Company and file Income Tax returns and other statutory filings on behalf of the I" Respondent Company.

(vi) To appoint independent Company Secretary to file the audited balance sheets and financial statements of the 1st Respondent Company.

(vii) Order costs of and incidental to this Petition be paid by the Respondents Nos. 2 to 6, and

(viii) Issue such other orders or directions that this Tribunal may deem appropriate to issue, in the facts and circumstances of the case.

2. During the pendency of proceedings, the Petitioner filed IA(CA)/23(CHE)/2024 seeking remittance of application for alleged perjury committed by the 2nd Respondent in the Reply Statement filed in CP(CA)/79(CHE)/2022. The reliefs sought by the Petitioner/ Applicant is extracted below,

i) Accept the Application and to remit the Application to competent magistrate to invoke proceedings under Section 340 of the Criminal Procedure Code and other offences applicable under relevant statues including Companies Act, 2013 and the Indian Penal Code, in interests of justice. And

ii) Issue such other orders or directions that this Tribunal may deem appropriate to issue, in the facts and circumstances of the case.

3. The Petitioner/ Applicant also filed IA(CA)/149(CHE)/2025 seeking to place on record additional documents filed in her Rejoinder

in CP(CA)/79(CHE)/2022. The reliefs sought by the Petitioner/ Applicant are extracted below,

> *i) Accept Additional Documents marked as Annexure-A31 to Annexure-A37 filed along with Rejoinder dated 04.01.2025 filed by Petitioner against Counter filed by 7th Respondent on the files of above Company Petition in interests of justice.*
>
> *ii) Issue such other orders or directions that this Tribunal may deem appropriate to issue, in the facts and circumstances of the case.*

4. **<u>Submissions of the Petitioner in CP(CA)/79(CHE)/2022</u>**

4.1. It is stated that the 1st Respondent, Kellax Surgicals Private Limited (hereinafter referred to as the 'Company' or '1st Respondent Company') was incorporated on 21.03.2018 having CIN U74999TZ2018PTC030215 and registered under the Companies Act, 2013, before the Registrar of Companies, Coimbatore. The main objects of the Company are to do business in manufacturing of surgical equipments, hand gloves and hospitalized materials and trading in Domestic & Export and also to buy, sell, supply, store, stock, maintain, or otherwise deal in all kinds and varieties of generic and patent/ non-patent medicines, drugs, mixtures, formulations, tablets, pills, powders, pharmaceuticals and medical products, needles, syringes, injectables, vaccines, sera, immunogens, phylacogens, chemicals and surgical dressings, kits and instruments and to takeover/establish/operate and maintain diagnosis centres. The

Authorised Share Capital of the 1st Respondent Company is Rs.1,00,000/- (Rupees One Lakh only) and the Paid up Capital is Rs.1,00,000/- (Rupees One Lakh only).

4.2. It is stated that the Respondent Nos. 2 to 6 are the shareholders of the 1st Respondent Company. The Respondent No. 2 is the Managing Director of the 1st Respondent Company. The 6th Respondent is the wife of the 2nd Respondent.

4.3. It is stated that Respondent No. 7 is Maxshield Rubber Products Pvt. Ltd. (CIN U25190KL2012PTC032270) having Authorised Capital of Rs.1,00,00,000 (Rupees One Crore only) and Paid up Capital of Rs.1,00,00,000 (Rupees One Crore only). The main objects of the 7th Respondent Company as per its Memorandum of Association are to carry on in India or elsewhere the business of manufacture, trading, distribution, import and export of rubber, rubber-based products, and other allied products including hospital and medical supplies & accessories and also to act as agents and facilitators for the trading, import and export, distribution and manufacture of the above.

4.4. It is stated that Respondents Nos. 8 to 10 are the shareholders of the 7th Respondent Company. The Respondent No. 8 is the Managing Director and Chairman of the 7th Respondent Company.

4.5. It is stated that in October, 2020, the Petitioner was persuaded by the Respondent Nos. 1 to 5 to invest in the shares of the 1st Respondent Company. The Respondent Nos. 2 to 6 had represented to the

Petitioner on the strength of audited financial statements that 1st Respondent Company is earning huge profits due to the increase in demand for medical supplies during the Covid-19 pandemic and the Petitioner can reap huge benefits by investing in the shares of the 1st Respondent Company. The Respondent Nos. 2 to 6 had also represented that 99.80% shares of the 7th Respondent Company are held by the 1st Respondent Company and the remaining 0.20% are held by the 2nd Respondent. 7th Respondent Company owns a factory at Alappuzha, Kerala and the management of the 7th Respondent Company vests with the 1st Respondent Company and the 2nd Respondent. The Respondent Nos. 2 to 6, to establish the ownership of factory, also furnished a copy of the Agreement of Hypothecation dated 04.09.2020, submitted to the South Indian Bank Ltd and the Financial Statements for the year ended 31.03.2020 to substantiate the same. (Copy of the Audited Balance Sheet as on 31.03.2020, Profit and Loss for the year ended 31.03.2020 along with Notes of financial statements of the 7th Respondent Company are annexed and marked as ***Annexure-A9***.)

4.6. It is stated that based on the assurances of Respondent Nos. 2 to 6, on 25.10.2020, the Petitioner purchased shares at the rate of Rs.100/- (Rupees One Hundred only) from Respondent Nos. 2, 3 and 6. Initially, the Petitioner purchased 300 shares for an amount of Rs. 30,000/- (Rupees Thirty Thousand only) of the 1st Respondent Company. On 29.10.2020, the Petitioner was appointed as one of the Directors of the 1st Respondent Company. Later, on 18.11.2020, the Petitioner again purchased 100 shares from the 2nd Respondent. The Petitioner was thus holding a total of 400 shares of the 1st Respondent Company. To substantiate the same, Petitioner has placed copy of the Share Certificates of Respondent No. 2, 3 and Bichu Philip dated 21.03.2018, Memorandum of Transfer dated 25.10.2020, Securities Transfer Form No.SH-4 dated 25.10.2020 and 14.11.2020, Minutes of Board Resolution passed on 25.10.2020 and 18.11.2020 of the 1st Respondent Company

4.7. It is stated that after purchasing the shares of 1st Respondent Company, the Petitioner realised that the affairs of the 1st Respondent Company were not proper and there was mismanagement in the affairs of the Company by Respondent Nos. 2 to 6. The Board Meetings of the 1st Respondent Company were not convened and there were no discussions among the Directors regarding the affairs of the Company. The entire affairs of the 1st Respondent Company were solely managed by Respondent Nos. 2 to 5 without discussing anything with the Petitioner. Respondent Nos. 2 to 5 were reluctant to convene meeting of the Board of Directors or even Annual General meeting of the 1st Respondent Company. There was no transparency in the affairs of the 1st Respondent Company.

4.8. It is stated that the Petitioner learned about an Agreement dated 25.04.2022 executed between the 7th Respondent Company and Respondent Nos. 8 to 10. The terms of the agreement states that 51% of shares of the 7th Respondent Company belonging to the Respondent No. 2, 3 and 6 shall be sold to Respondent Nos. 8 to 10. The terms of the agreement also state that, Respondent Nos. 8 to 10 shall invest an amount of Rs. 5,00,00,000/- (Rupees Five Crore only) in the 7th Respondent Company. In terms of the minutes of the Board Meeting of the 7th Respondent Company held on 25.04.2022, on the basis of Memorandum of Understanding dated 25.04.2022, the Respondent Nos. 2 to 6 sold 51% of the equity shares of the 7th Respondent Company to Respondent Nos. 8 to 10. The 3rd Respondent transferred his 20,000 shares worth Rs.20,00,000/- (Rupees Twenty Lakhs only) to the 10th Respondent and 16,000 shares of Rs. 16,00,000/- (Rupees Sixteen Lakhs only) to 9th Respondent. The 2nd Respondent transferred 4,000 shares for an amount of Rs.4,00,000/- (Rupees Four Lakhs only) to the 9th Respondent and 1,000 shares for an amount of Rs.1,00,000/- (Rupees One Lakh only)to 8th Respondent. In terms of the said minutes, 6th Respondent transferred her 10,000 shares for an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) to 8th Respondent. Upon the sale of 51% of equity shares of the 7th Respondent Company, Respondent Nos. 3, 5 and 6 resigned from the office of Directors of the Board and Respondent Nos. 8 to 10 were appointed to the office of Directors of the Board of the 7th Respondent Company. Further, 8th Respondent was appointed as the new Managing Director and Chairman of the 7th Respondent Company.

4.9. It is stated that when the Petitioner enquired from Respondent Nos. 2 to 6 about the meeting of the Board of Directors of the 7th Respondent Company on 25.04.2022, the Respondents failed to give any proper explanation and clarified that the Petitioner is a minor shareholder, neither the presence of the Petitioner in the meeting was required nor the opinion/consent of the Petitioner was necessary for any decision making, intended by the majority shareholders.

4.10. It is stated that the Petitioner never authorised the sale of equity shares of the 7th Respondent Company nor any Board Meeting was convened for authorising the sale of shares of the 7th Respondent Company. The Petitioner was never informed of any transfer of shares of the 7th Respondent Company nor any plausible explanation was given by the Respondent Nos. 2 to 6. Although it was represented that the 1st Respondent Company owns 99.80% of the shares of the 7th Respondent Company, Respondent Nos. 2 to 6 sold 51% of the equity shares of the 7th Respondent Company to Respondent Nos. 8 to 10 in violation of statutory mandates. The aforesaid acts of Respondent Nos 2 to 6 qualify as acts of oppression and mismanagement. Respondent Nos. 2 to 6 and Respondent Nos. 8 to 10 colluded together and executed the share transfer agreement with the intention to attain unlawful gain and cause unlawful loss to the Petitioner. This act of Respondent Nos 2 to 6 qualifies as an act of oppression and mismanagement.

4.11. It is stated that the Petitioner also learned that the 2nd Respondent had issued and signed Memorandum of Understanding with one Sri. Lalit Mohan Rana, Consultant, Trident International for procuring Foreign Direct Investment. The Petitioner also learned that on 27.11.2020, 1st Respondent Company through the 2nd Respondent entered into a Cash Agreement on Delivery of Cash Funds for Investments with Alfa Contracting Gmbh, Kurallee 1, 06114 Halle (Saale), Leipzig, Germany, as per which Alfa Contracting Gmbh was to transfer an amount of € 1,00,00,000 (Hundred Million Euros) with tranches of € 1,92,00,000 (Nineteen Million Two Hundred Thousand Euros) to the Bank Account No.918020094141089 of the 1st Respondent Company maintained with Axis Bank, SF No.44/, Main Road, Sugunapuram, Kuniyamthur, Coimbatore, Tamil Nadu. It is stated that the Petitioner was never aware of such an agreement until May, 2022 as no meeting of the Board of Directors of the 1st Respondent Company was convened. It is stated that the Respondent Nos, 2 to 6 received huge investments and never cared to discuss such matters of the 1st Respondent Company with the Petitioner.

4.12. It is stated that it came to the Petitioner's knowledge that Respondent Nos. 2 to 6, by issuing documents representing the 1st and 7th Respondent Company, entered into Agreements and obtained investments from the financial institutions. However, none of the transactions of the Company was discussed with the Petitioner. It is stated that the Petitioner has come to know that the above financial arrangement and the funds/investment received were divided among Respondent Nos 2 to 6. The acts of the Respondent Nos. 2 to 6 are thus prejudicial and constitute oppression and mismanagement as their intention is to attain illegal gains by oppressing the rights of the Petitioner as a shareholder in the Company.

4.13. It is stated that no Annual General Meeting of the 1st Respondent Company was convened at any point of time after the Petitioner purchased the shares of the Company. No notices were issued for any meeting of the Board of Directors of the 1st Respondent Company to the Petitioner. No returns to the knowledge of the Petitioner were filed. Also, no resolutions were passed for the activities of the 1stRespondent Company. It is stated that there are gross violations of the provisions of the Companies Act committed by the Respondent Nos. 2 to 6 and the aforesaid acts constitute as acts of mismanagement of the affairs of the 1st Respondent Company

4.14. It is stated that by selling 51% of the equity shares of the 7th Respondent Company to Respondent Nos. 8 to 10, the Respondent Nos. 2 to 6 have committed fraud upon the Petitioner.

4.15. It is stated that the Respondent Nos. 2 to 6, dishonestly and fraudulently mismanaged the entire affairs of the 1st and 7th Respondent Company for attaining illegal gains and for their personal benefits in an arbitrary manner. It is stated that the acts of the Respondent Nos. 2 to 6 squarely fall within the definition of Oppression and Mismanagement. The sequence of events would prove that the Respondent Nos. 2 to 6 have taken the complete and autocratic control of the management of the Company by adopting arbitrary and illegal means.

4.16. It is stated that the affairs of the 1ª Respondent Company are being conducted in an oppressive manner and are being mismanaged. Respondents 2 to 6 are purporting to operate the 1st Respondent Company according to their whims and fancies without paying any heed to the rights of the Petitioner.

4.17. It is stated that the 2nd Respondent, enraged by the enquires made by the Petitioner regarding the oppression and mismanagement in the 1st and 7th Respondent Companies, has now filed false complaints numbered as Crime No. 311 of 2022 against the husband of the Petitioner, Arjith K. Rajan at the Police Station, Cherthala, Alappuzha, Kerala.

5. **Submissions of 2nd Respondent/ Sinu Dominic**

5.1. It is stated that the petitioner has deliberately suppressed the true nature of her relationship with the 1st Respondent Company and mis-stated material facts to buttress her non-existent claim by raking-up frivolous allegations of oppression and mismanagement before this Tribunal. The petitioner has no locus standi to prefer the company petition as she is not a shareholder of the 1st Respondent Company at any given point in time nor was her name included in the register of members. Only a person who is a member can approach this Tribunal with an application and the petitioner is not a member of either the 1st or the 7th Respondent Company.

5.2. It is stated that Financial Statements of the 7th Respondent Company for the year ended 31.03.2020 (***Annexure 9)*** filed by the petitioner are the dummy documents that have no validity. The valid copies of the financial documents of the 7th Respondent Company filed with the Registrar of companies by the company's statutory auditor S. Jayaprakash, Chartered Accountant, for the year ended 31.03.2020 are produced herewith. The Respondent also placed on record copy of the notice of the 8th AGM along with the report of the Board of Directors of the 7th respondent company dated 26.06.2020 and the true copy of the independent auditor's report submitted by the statutory auditor, Sri. S. Jayaprakash dated 26.06.2020. As per the aforesaid documents, neither the 1st Respondent Company nor the Petitioners are the members/shareholders of the 7th Respondent, which is a separate legal entity. Hence, the Petitioner has no locus standi to seek any reliefs especially under Section 241 and 242 against the 7th Respondent Company.

5.3. It is stated that the 7th Respondent Company has Authorised/ Paid up share capital of Rs. 1,00,00,000/- i.e. 100000 shares of 100 rupees each and there has been no contribution from the 1st Respondent Company or the petitioner herein. Admittedly, the authorised/paid up capital of the 1st respondent company is only Rs 1,00,000/-, yet the petitioner claimed that by allegedly purchasing the shares worth Rs.40,000 (400 shares @Rs. 100 each) in the 1st Respondent Company, she is entitled to own 40% of the 7th Respondent Company which has a paid-up capital of Rs. 1,00,00,000/- and valuation of more than Rs. 15,00,00,000/- which can only be described as absurd. The rationale behind the petitioner's contention that a company with an authorised/paid up capital of only Rs. 1 lakh acquired 99% stake in another company with an authorised/paid capital of Rs.1 crore without increasing its capital base is beyond understanding.

5.4. It is stated that the purchase of 400 shares of 1st Respondent Company by the Petitioner is denied as false since no such transaction has taken place between the parties and such consideration for the shares has not exchanged hands. Whilst the petitioner has produced SH4 forms and board resolutions (Annexure A-12 to A-4), she has not produced any bank statement evidencing payment of consideration because there is none.

5.5. It is stated that the 2nd Respondent is an Engineer turned Entrepreneur, who started trading in surgical masks and gloves even while pursuing his engineering course. Respondent No. 2 decided to expand business by setting up a manufacturing unit in industrial land to set up a green field manufacturing unit at Coimbatore. Pursuant to the same, 1st Respondent Company was registered at Coimbatore with an authorised capital of Rs. 100,000/- as 1000 shares of Rs.100 each with the 2nd Respondent as its Managing Director. After investing over 1 crore of family funds and purchasing over 3 acres of land in Coimbatore to set up the unit, he could not begin construction of the project owing to complications in land rules, which prevented conversion to industrial land. Hence, idea of setting up the unit in

Coimbatore had to be abandoned, the land was sold and the Respondents No. 2 to 6 returned to Kerala.

5.6. It is stated that in December 2019, the 2nd Respondent learnt that a manufacturing unit by name of Maxshield Rubber Products Private Limited (7th Respondent) was available for sale within the industrial area at Cherthala in Ernakulam district of Kerala. The 2nd Respondent decided to mortgage his property to avail an industrial loan of 2.0 crore from the bank. At the time of acquiring, the 7th Respondent Company was a Non-Performing Asset. Hence the bank said, that it cannot extend credit directly to the 7th Respondent Company, but the credentials of the 1st respondent company can be used for sanctioning the loan, given its clean record. It is stated that the 1st Respondent Company had no business activity whatsoever. It was retained only for banking and accounting purposes. Guarantees for the said loan were provided by Respondent Nos. 2 to 6 in their personal capacity and by pledging the assets of the 7th Respondent Company, necessitating a tri-partite hypothecation agreement. It has no relation whatsoever with the 7th Respondent Company, which is a separate legal entity. As of today, the loan has been paid back entirely and the funds of the 1st Respondent were not used at any stage of the repayment

5.7. It is stated that the petitioner and her husband run a money lending firm in the name of MTL Associates (Money Tree Loans) in Kottayam District of Kerala. The couple are neighbours of the 2nd Respondent's wife, the 6th Respondent. With the sudden outbreak of

Covid-19, the 2nd respondent was flooded with orders for masks and gloves and urgently needed funds to ramp up production. The Petitioner's husband offered to provide unsecured corporate loans to the 1st Respondent to be paid back on a weekly basis.

5.8. It is stated that Rs. 25 lakhs was transferred to the 6th Respondent between 06.03.2020 to 07.10.2020. The Petitioner's partnership firm MTL Associates transferred a total of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakh only) to the bank account of the respondents 1, 2, and 6 in tranches on various dates. As security for the loan, signed blank cheque leaves, stamp papers and signed blank papers were provided. Between 13.04.2020 to 20.10.2020, the respondents paid back a total sum of Rs.1,14,15,000/- (One Crore Fourteen Lakh Fifteen Thousand) which can be seen from the records.

5.9. It is stated that the Respondents were prompt in repaying the loans availed. However, they required additional funds to meet their capital requirement. Hence, the petitioner's husband agreed to provide the required finances for a longer duration, with the condition that the Petitioner be made a dummy director of the 1st Respondent Company, the accountant be appointed of his choice and of signed SH-4 certificates be handed over as security. Hence, signed SH-4 and Board Resolutions, relied upon by the Petitioner were given as security for the loan. It was agreed that the same would never be acted upon. It was in furtherance to this funding arrangement, the petitioner was made dummy director of the 1st respondent company on 29.10.2020 and Mr. Vinod Markus was appointed as Accountant.

5.10. It is stated that pursuant to the funding arrangement, (i) between 28.10.2020 to 02.12.2020, the Petitioner transferred Rs.92,50,000/- (Rupees Ninety-Two Lakh Fifty Thousand only) to the bank account of the Respondents 1 and 2 in tranches, (ii) between 15.07.2021 to 13.09.2021, a loan of Rs.75,00,000 was extended by the partnership firm MTL associates. A total sum of Rs.3,38,25,000/- (Rupees Three Crore Thirty-Eight Lakh Twenty Five Thousand only) was received from the petitioner, her husband and her finance firm by the respondents. An amount of Rs.2,63,91000/- (Rupees Two Crore Sixty Three Lakh Ninety One Thousand only) was repaid to the bank account of MTL Associates and Rs.24,91,059/- (Rupees Twenty Four Lakh Ninety One Thousand and Fifty Nine only) was paid to the bank account of the petitioner's husband, Ajith Rajan and his partner Shibu. The total repayment via bank transfer was Rs.2,88,82,059/- (Rupees Two Crore Eight Eight Lakhs Eighty Two Thousand Fifty Nine). In addition to the payments made above, MTL Associates, being a finance company insisted on weekly repayments. The petitioner's husband Ajith Rajan and his partners also collected Rs. 50 lakhs in cash from the 2nd Respondent during the tenure of loan. The bank statements reflecting the above have been scrutinised by the chartered accountant and certified by M/s Jayaprakash & Co. The Chartered Accountant Statement dated 18.01.2023 showing the amount received from M/s MTL Associates, the petitioner. Ms. Roopa Dileep and amounts paid to

MTL Associates to Mr. Ajith Rajan and Mr. Shibu, Managing Partner and Partner of MTL Associates is annexed.

5.11. It is stated that the 2nd Respondent was making prompt repayments, however, the Petitioner's husband abruptly stopped providing funds to the 1st Respondent Company and recalled the loan facility. The petitioner and her husband pressured and coerced the 2nd respondent to transfer an immovable property owned by him to their name which they promised to return to the 2nd Respondent after payment of an additional interest of Rs.50 lakhs. As he was unable to raise cash on such short notice, left with no other option, he transferred an immovable property measuring 60 cents or 24.28 ares or 10.88 grounds or 23.99 gunthas worth Rs. 2.4 crores in favour of the petitioner and her husband as a temporary stop-gap arrangement. On the insistence of the petitioner and her husband, in order to save registration costs, the property was registered as three sales deeds.

5.12. It is stated that since, the 2nd respondent received the funds from the bank, he demanded return of the documents and expressed his willingness to even pay an additional sum of Rs.50 lakhs as agreed, however, the petitioner and her husband kept deliberately delaying the return of documents. The petitioner's husband started demanding Rs. 1,00,00,000/- for return of documents.

5.13. It is stated that as the uncertainty over the return of the documents continued, the 2nd respondent received a demand notice from the petitioner's husband's firm MTL Associates seeking return of Rs.2.68 crores. Though the 2nd respondent tried to reach out to the petitioner's husband for an explanation to the notice, he was threatened by the petitioner's husband. On 01.11.2021, the petitioner's husband and his goons tried to trespass into the 7th Respondent Company and disrupt its operations saying that he would disrupt the operations of the 7th Respondent Company. The respondent was forced to file a police complaint. When no action was taken because of undue influence of the above persons, a private complaint was filed before the JFCM -I, Cherthala and FIR was registered against the petitioner's husband and his associates u/s 420, 341, 294(b), 506 and 34 of the Indian Penal Code, 1860. This was reported in the local edition of vernacular daily Malayala Manorama on 18.05.2022. It is stated that the respondent also approached the Munsiff Court, Cherthala seeking an injunction against MTL associates and the petitioner trespassing into the 7th Respondent Company, which was allowed by the Vacation Judge, Alapuzha.

5.14. It is stated that the 2nd respondent also filed a complaint with the office of the Dy. Commissioner Sales Tax (Intelligence) praying for cancellation of licence issued to MTL Associates for charging usurious interest in violation of the Kerala Money Lenders Act, 1958. Since no action was taken on the aforesaid complaint, the 2nd respondent was constrained to approach Hon'ble High Court of Kerala seeking appropriate directions for time bound disposal of the complaint filed with the office of Dy. Commissioner Sales Tax (Intelligence). True copy of the judgement dated 19.07.2022 in WP(C) 22351/2022 by the Hon'ble High Court of Kerala is placed as Annexure R2-w.

5.15. It is stated that when the 2nd respondent became aware that the accountant, who was appointed at the behest of the petitioner's husband, was sharing all the company documents with the petitioner's husband, he was terminated from the employment. It is stated that before that, the accountant had shared all the confidential documents of 1st and 7th respondent company with the petitioner's husband. It is stated that the aforesaid documents obtained by deceit and theft are placed to foist the false company petition. The 2nd Respondent filed a complaint with the office of the Inspector General of Police, Crime Branch and Dy. Superintendent of Police, Crime Branch when the theft of documents was discovered. The complaints for theft of documents is pending before the Station House Officer, Ettumanoor Police Station, in which the petitioner has also been questioned for her role in extorting the 2nd respondent.

5.16. It is stated that the petitioner's husband threatened to implicate the 2nd respondent in a POCSO case using his shady contacts, if his unjust demands were not met. The 2nd respondent then lodged a complaint with the office of the State Police Chief, Kerala by email.

5.17. It is stated that the petitioner's husband was given a personal cheque by the 6th respondent as security for the loan which he intentionally presented for payment and was returned as dishonoured.

Thereafter, the Petitioner's husband filed ST 1905/2022 before Hon'ble JFCM -1, Ettumanoor. The petitioner's husband's firm also filed a commercial suit as CS 6/2022 against the 6th respondent for realisation of Rs.25 lakhs before the Commercial Court, Pala in Kottayam, Kerala and obtained an attachment order. The petitioner also approached the Hon'ble Additional District Judge, Coimbatore praying for action u/s 447 of the Companies Act, 2013 against the 1st Respondent company and others.

5.18. It is stated that the petitioner and her husband initiated frivolous civil and criminal litigations before various Forums including this Tribunal only to harass the 2nd respondent into making some unjust financial settlement. A perusal of the complaints filed by the 2nd respondent pending before various statutory authorities would show 2nd respondent is being harassed and blackmailed by the petitioner and her husband and the present company petition is merely a continuation of the same. The petitioner and her husband are trying to wrest control of the 7th Respondent Company using the 1st Respondent.

5.19. It is stated that Respondents 8 to 10, are large investors, based in Kerala and have been arrayed as party to step up the pressure on the 2nd respondent.

5.20. It is stated that the Petitioner has no right to make any enquiries regarding the business of the 7th Respondent Company. The petitioner is in no way connected with the 7th Respondent Company, which does not require any authorisation from the Petitioner to carry out any activity including sale of equity shares. The averment that such an authorisation from the petitioner is required to be taken has no legal or factual basis. The agreement executed between the respondents 2 to 6 and 8 to 9 was in the normal course of business and has no bearing on the petitioner as she has no locus to question their dealings in any capacity whatsoever. The respondents have not committed any fraud on the Petitioner by selling the equity in the 7th Respondent Company in which the petitioner has no shareholding.

5.21. It is stated that in midst of the Covid-19 pandemic, there was a lot of investor interest in the surgical gloves and masks business. The 2nd Respondent through a mutual contact, sought to attract Foreign Direct Investment. Negotiations through Lalit Mohan Rana with Alfa Contracting Company GMBH were positive. They expressed interest to invest 100 million euros in tranches. Unfortunately, the deal was not cleared by the statutory authorities and the funds got blocked since the 1st respondent company had no revenues or assets, so it was not fit to receive FDI. The deal with Alfa Contracting Company thus failed and the money transferred to the forex account was returned. No statutory action was initiated against the 2nd respondent in this regard as there was no anomaly in the deal whatsoever. The Memorandum of Understanding and Cash Agreement dated 27.11.2020 relied upon by the Petitioner are the official documents kept in the custody of the 1st Respondent Company and were stolen by the accountant. The complaint in this regard for theft of documents is pending before the Station House Officer, Ettumanoor Police Station.

5.22. It is stated that the respondents 2 to 6 are the authorised representatives of the 1st and 7th respondent companies. They are not duty bound to discuss or disclose any of the business activities of the companies with the petitioner. It is denied that the funds from such investments were received and divided amongst the Respondents.

5.23. It is stated that the arrangement between 1st Respondent Company and the 7th Respondent Company in executing the Agreement of Hypothication was for accounting and banking purposes and cannot be construed as oppression and mismanagement. Appropriate compliances and disclosures before the ROC are being made by the statutory auditor. The petitioner, after having received all her loans back with interest has been trying to extort the management of the 1st respondent company.

5.24. It is stated that there have been no acts of oppression of mismanagement either in the 1st respondent or the 7th respondent company. None of the allegations made by the Petitioner has any legal or actual basis for them to be construed as oppression and mismanagement as envisaged under the Companies Act, 2013. The allegation that the 2nd respondent has taken autocratic control by adopting arbitrary and illegal means is baseless, hence denied.

5.25. It is stated that the petitioner is not entitled to any reliefs whatsoever from this Tribunal. The reliefs sought by the Petitioner are merely an attempt to disrupt the operations of the 1st and 7th respondent companies and force the 2nd respondent into making an unjust financial settlement.

6. **Submissions of 1st Respondent Company**

6.1. It is stated that the petition is liable to be dismissed for the reason that filing a single company petition alleging oppression and mismanagement in two different companies i.e., 1st Respondent Company and 7th Respondent Company is against Rule 38A of the NCLT Rules, 2016 which states that a petition shall be based upon a single cause of action. Hence the Company Petition is to be dismissed for misjoinder of parties.

6.2. It is stated that the Petitioner is not a shareholder of the 1st Respondent Company as per the company records nor has her name updated in the Register of Members. The petitioner has no locus standi to approach this Tribunal for any relief under Section 241 and 242 as she is not a member of the company. Only a member of a company can initiate action under the aforesaid sections.

6.3. It is stated that the Respondent No. 2, 3 and 6, in terms of the mutual agreement between the parties, submitted letters dated 25.10.2020 and 18.11.2020, confirming that the documents including board resolution and SH4 form have been handed as a security for availing the unsecured loan and the share transfer need not be executed, accordingly no transfer was effected. Although copies of the said letters are available with the petitioner's husband, the Petitioner has suppressed the same to buttress her non-existent claim over the shares. There has been no transfer or transmission of shares as envisaged under Section 56 of the Companies Act, 2013. Consequently, 1st Respondent Company never updated the register of members to include the name of the Petitioner.

6.4. It is stated that the Petitioner never exercised her right to inspect the register of members after the so called share purchase nor she initiated any communication to the 1st Respondent Company questioning the non-inclusion of her name in the register of members or filed a rectification application under Section 59 of the Companies Act, 2013, within 60 days of executing the so called instrument in case she did not receive any communication from the company. Instead, she has come before this Tribunal alleging oppression and mismanagement even before challenging her non-inclusion in the register of members.

6.5. It is stated that as per the proviso to Section 58 (2), any arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. Any valid contract has to have an offer, acceptance and consideration and a contract without consideration is void ab initio. Since no consideration has exchanged hands between the Petitioner and Respondent No. 2 to 6, for the purchase of shares, any instrument executed without lawful consideration is invalid rendering the transaction null and void.

7. **<u>Submissions of 7th Respondent Company</u>**

7.1. It is stated that there is absolutely no basis for the allegations raised in the company petition. On the one hand, the petitioner submits that, she was induced to believe that, the 1st respondent company was holding 99.8% of the 7th respondent, but on the other hand, the petitioner refers to sale of individual shares by the Respondent No.2 to 6 to respondent No.8 to 10. It shows that, shares were held by the respondent No.2 to 6 in their individual capacity and not by the 1st respondent company. The petitioner cannot have any grievance for the sale of individual shares by the Respondents 2 to 6, which are held by them in 7th respondent company, as the petitioner is not a shareholder or director in the 7th respondent company.

7.2. It is stated that the Petitioner is not a shareholder of 7th respondent company and therefore has no right to invoke Sec 241 and 242 to make allegation of oppression and mismanagement with respect to the 7th Respondent Company. Hence, the petitioner did not meet the eligibility criteria for filing a petition under Sec 241 and 242.

7.3. It is stated that, the respondent No.8 to 10 are not currently the shareholders of the 7th respondent company. The entire shares are held by Mr.Sabu Kuriakose and Mrs. Jamol Sabu, who had acquired the shares from Respondent No.2,3 and 6 under different Share Purchase Agreements.

7.4. Since the petitioner is not a member of the 7th respondent company, her authorization or concurrence with respect to transfer of shares of 7th respondent company are not required nor she has any right to object the same.

8. **Rejoinder filed by the Petitioner**

8.1. It is stated that the documents filed by the Petitioner were handed over by the Respondents for the purposes of security, which is violation of Section 42 of the Companies Act, 2013. In this case, since the shares were issued on private placement basis, share allotment had to be completed within 60 days from the date of share application. The subscription money was to be collected in a separate bank account, and Forms PAS-3 and PAS-4 forms were to be filed. However, the same were not complied with.

8.2. It is stated that South Indian Bank extended the loan to the 1st and 7th Respondent Companies only because of the representation of the 7th Respondent as a unit of the 1st Respondent. In the letters of the 7th Respondent Company addressed to the Branch manager of Axis Bank and the Commissioner of Income Tax, Corporate Ward, Ernakulam, it was represented that the 7th Respondent is a Unit of 1st Respondent. These documents indicate that the 1st and 7th Respondent are the sister concerns.

8.3. Further, in the Financial Statement of the 7th Respondent filed by the 2nd Respondent, under Item 23(b)(7) titled as DISCLOSURE OF CORPORATE GUARANTEE, it is stated that 1st Respondent Company is a sister concern of 7th Respondent Company. Therefore, the 2nd Respondent has committed perjury by affirming in his reply statement that 1st and 7th Respondent are separate entities and have no relation whatsoever.

8.4. It is stated that the 2nd Respondent has denied any transaction between the Petitioner and Respondents, however, admitted the execution of documents of share transfer in favour of the Petitioner. He is attempting to dispute the same by averring that no proof of transfer of consideration has been produced. Thus, the locus of the Petitioner for filing the Company Petition is admitted by the Respondent. Further, in light of Section 56 of The Companies Act, 2013, the 1st Respondent Company ought to have transferred the shares in the register of members in favour of the Petitioner. Non-compliance of the mandates provided in Section 56 of The Companies Act, 2013 will attract the penal provision under Section 56 (6) of The Companies Act, 2013.

8.5. It is stated that Agreement of Hypothecation does not show that personal property of the 2nd Respondent has been kept as mortgage. The borrowers of the Agreement of Hypothecation are the 1st and 7th Respondent Companies. The hypothecated goods as per Schedule III show the address of the 7th Respondent Company as the place where hypothecated goods would be kept. It is stated that the Factory of the 1ª Respondent Company is the 7th Respondent Company. Hence, nexus between the 1st and 7th Respondent Companies is well established. Thus, the averment of the 2nd Respondent that the 7th Respondent Company is a separate legal entity and the 1st Respondent Company is not a member/shareholder of the 7th Respondent Company is not true.

8.6. It is stated that the Chartered Accountant who has given the certification, has certified that the amounts were transferred by the Petitioner in the capacity of partner of MTL Associates. It is stated the Petitioner has never been a partner of MTL Associates and the conclusion of the Charted Accountant that the Petitioner is a partner of MIL Associates is without any basis and hence denied. Further, even if a partner of a Partnership Firm transfers amount from a personal account, the same by accounting standards would not be an amount transferred by the Partnership Firm and under the Income Tax Act and Rules would only be a transaction of the partner in his individual capacity. It is stated that the amounts supposedly have been repaid into the personal bank accounts of the partners of MTL Associates. Even assuming that the said payments were made as repayment of the amounts transferred by the Petitioner, although not admitting, but the same cannot be considered as repayment as per accounting standards.

8.7. It is stated that the petitioner is not part of the loan arrangement between the Respondents and MTL Associates and hence the

Petitioner is not privy to the transactions between the Respondents and MTL Associates or its partners. The averments in relation to the transactions of the Respondents with MTL Associates do not require any rebuttal from the Petitioner.

9. **Facts of IA(CA)/23(CHE)/2024**

9.1. It is stated that this Tribunal vide Order dated 17.01.2024 directed the Applicant/Petitioner to furnish Bank Statements duly audited by Chartered Accountant showing the investments made as to the purchase of shares. It is stated that M/s GMN & CO Chartered Accountants, after perusal of the Bank Account Statements, Income Tax Returns and copies of Partnership Deeds of M/s MTL ASSOCIATES and M/s Money Tree Loans and Finance submitted by the Petitioner/ Applicant has given the required certifications on 29.01.2024 and 30.01.2024. The Original Certificate issued by M/s GMN & CO Chartered Accountant dated 29.01.2024 and 30.01.2024 have been placed on record. It is stated that the claim of the 2nd Respondent that the Petitioner has received Rs. 92,50,000/- (Rupees Ninety-Two Lakhs And Fifty Thousand Only) from the 1st and 2nd Respondents is false and has been made to mislead this Tribunal.

9.2. It is stated that, it has been sworn by the 2nd Respondent that 1st and 7th Respondents are separate legal entities and have no relation whatsoever. However, the letterhead of the 7th Respondent Company and the Financial Statements of the 7th Respondent Company, clearly indicate that the 1st and 7th Respondent are the sister concerns. Therefore, the 2nd Respondent has committed perjury by affirming that the 1st and 7th Respondent are separate entities and have no relation whatsoever in the Reply Statement.

9.3. It is stated that the sworn statements are all false and are only an attempt to mislead the Tribunal. The Application has been filed invoking the provisions of Section 340 of the Criminal Procedure Code to remit the Application to the Magistrate under Section 340 of the Criminal Procedure Code and other offences applicable under relevant statutes including Companies Act, 2013 and the Indian Penal Code, in the interest of justice

10. **Reply of the 2nd Respondent in IA(CA)/23(CHE)/2024**

10.1. It is stated that the Petitioner/ Applicant and her husband have initiated multiple proceedings with an ulterior motive of extorting money from the 2nd respondent and his family for unjust financial gain. These proceedings are blatant abuse of the process of law.

10.2. It is stated that C.S. 6/2022, filed by MTL Associates, is pending before the Sub Court, Kottayam. The Applicant's husband insisted that the first tranche of the unsecured loan of Rs. 25 lakhs be transferred to the personal savings account of his wife. The Applicant's husband falsely showed it as a personal borrowing and forged a cheque to obtain an ex parte attachment of the 6th respondent's personal assets. This suit was filed against the 6th Respondent for recovery of Rs. 25

lakhs plus interest alleged as personal borrowing. The Applicant also initiated proceedings under Section 138 of the Negotiable Instruments Act on account of dishonour of cheque of the 6th respondent obtained as security. These proceedings are pending before the Hon'ble JFCM, Etumanoor as ST 1905/2022.

10.3. It is stated that the 1st Respondent Company challenged the summons issued and the cognizance taken in the aforementioned case. The Hon'ble High Court of Madras, in Crl. OP. No. 16257 and 16380 of 2023, was pleased to stay the proceedings and quash the same. The matter has been remanded for reconsideration as the cognizance was taken without proper application of mind and without following the procedure laid out in the Cr.PC. It is submitted that the prosecution proceedings are contrary to Section 212(6) of the Companies Act. It is stated that in all the pleadings, the applicant is blatantly lying and falsely claiming that she is a shareholder of the 1st respondent company.

10.4. It is stated that the applicant's husband handed over one of the security cheque to his Driver, Jerin Joy and filed a suit for realisation of money against the 6th respondent which is numbered as OS 25/2023, before the Principal Sub Court, Pala. Once again, the 6th respondent's personal cheque was misused and forged to file the suit for a claim of 13,25000/- and an attempt was made to seize the 2nd respondent's car. The Court however was pleased to release the car on the 2nd respondent's personal bond. The matter is pending as Jerin Joy has not remitted the requisite Court fees. Once again, the personal cheque of the 6th respondent was deposited and got bounced to initiate proceedings under Sec. 138 of Negotiable Instruments Act as CMP 2027/2023 before JFCM, Etuamnoor.

10.5. It is stated that the present application ought to be viewed in the above backdrop. The above IA is yet another tactic to prolong the matter and falsely implicate the respondents.

10.6. It is stated that the Respondent has come to the Tribunal with clean hands and placed on record the bank statements and consolidated statement prepared by the Chartered Accountant, which show the true nature of transactions between the parties and list the amounts received from the applicant, which the applicant has suppressed in her company petition. It is only after a direction from this Tribunal, that the applicant produced her bank statement and admitted have to lended more than 92 lakhs to the respondents. As recorded by this Tribunal in the proceedings dated 14.02.2024, the Applicant's bank statement not only shows the true nature of transactions between the parties; and all the money loaned to the 1st Respondent Company came from MTL associates, but also exposes the fact that there is no proof of payment for purchase of shares thereby debunking her claim of being a shareholder in the company.

10.7. It is stated that the 7th respondent company was acquired by the 2nd respondent and their family by pledging personal assets, and this acquisition was completed several months before the unsecured loan was taken from the applicant and her husband. At the time of acquiring the 7th respondent company, respondents 2 to 6 initially decided to make a tagline unit of Kellax Surgicals only for marketing purposes. However, they were cautioned and advised against this by the financial experts who warned that it may lead to double taxation. The phrase 'Unit of Kellax Surgicals' that appeared briefly on the 7th respondent company's letterhead during the period was thereafter removed based on professional advice.

10.8. It is stated that at the time of acquisition, the 7th Respondent Company was defunct and had not completed its statutory filings. After the acquisition, the new management under Respondents No. 2 to 6 approached the authorities, including the Income Tax Commissioner, requesting for reopening of the Income Tax Portal to file the IT returns for 2021-22 to regularize the filings. The term 'sister company" in the Financial Statements merely indicates that both the companies were promoted by a 'common promoter group' but the two are the separate entities and do not have any legal relationship. Moreover, as per the Financial Statements filed by the Respondents, neither the applicant nor the 1st respondent company are listed as shareholders or members of the 7th Respondent Company, which clearly demonstrate that the title 'unit of Kellax Surgicals' was, at the most, a marketing tagline.

10.9. It is stated that a criminal case, registered as FIR 425/2023, has been filed by the Respondent with regard to the theft of documents and the conspiracy of the Petitioner to extort money.

10.10. It is stated that at the time of lending money to the 1st respondent company, the applicant's husband, who is a partner in the money-lending firm MTL Associates, informed the respondents that the applicant was a "partner" in the business and insisted that she be made a Director to supervise the prompt repayment of the unsecured loan to MTL Associates. The bank statement clearly shows that, all amounts provided by MTL Associates were first transferred to the applicant's bank account and then routed to the 1st Respondent Company, establishing the Applicant's active involvement in the lending business. Hence, there is no inconsistency in the statement issued by the Chartered Accountant, which was prepared based on the instructions from the respondents, who believed that the applicant was a partner in MTL Associates.

10.11. It is stated that the applicant's malafide intent is evident, as, during the pendency of the petition before this Tribunal, she lodged complaint with the ROC to initiate action against the respondents and entangle them in legal proceedings. The complaint against the Chartered Accountant, accusing him of perjury, lacks merit and is again an underhand pressure tactic and blatant abuse of law.

11. **During the hearing held on 14.02.2024, IA/20(CHE)/2024 came up for hearing wherein the Petitioner sought the Tribunal to take on record additional documents as Annexure A20 to A30. In terms of order dated 17.01.2024, the documents were taken on record.**

FINDINGS OF THIS TRIBUNAL

12. We have heard Ld. Counsels for the parties and perused the documents placed on record.

13. This Company Petition has been filed by Ms. Roopa Dileep claiming to be a shareholder in the 1st Respondent Company, Kellax Surgicals Private Limited. The 1st Respondent Company was incorporated on 21.03.2018 with a paid-up share capital of Rs. 1,00,000/-. The Petitioner claims to hold 400 equity shares of Rs. 100 each, allegedly transferred in her favour on 25.10.2020 and 18.11.2020. As per the Masterdata of the 1st Respondent Company, the Petitioner has been a Director of the Company since 29.10.2020. The maintainability of the petition has, however, been disputed by the Respondents No. 1, 2 and 7, on the ground that the Petitioner is not reflected as a member in the Register of Members maintained by the Company and consequently lacks the locus standi to file a petition under Sections 241 and 242 of the Companies Act, 2013. The issue that arises for consideration is *'Whether the Petitioner's name not being entered in the 'Register of Members' is fatal to the maintainability of the petition.'*

14. The Petitioner has relied upon various judgments in support of her contentions, as set out in the Compilation dated 08.12.2025, Written Synopsis dated 23.02.2026 and Additional Written Synopsis dated 06.05.2025. Respondent No. 1 has also relied upon various judgments as set out in the Compilation dated 24.04.2024 and the Synopsis dated 27.05.2024.

15. Hon'ble Supreme Court in the case of ***Dr. Bais Surgical and Medical Institute Pvt. Ltd. and Ors. v. Dhananjay Pande Civil (Appeal No. 8973 of 2010 with Civil Appeal No. 9456 of 2010)***, has held that while determining the maintainability of proceedings under Sections 397 and 398 of the Companies Act, 1956 (corresponding to Sections 241 and 242 of the Companies Act, 2013), the expression "member" cannot be construed in a restrictive or technical manner by mechanically applying the requirement of entry in the Register of Members as envisaged under Section 41 of the Companies Act, 1956. The Hon'ble Supreme Court considered Section 2(27) of the Companies Act, 1956, which states that 'member' does not include '*a bearer of a share-warrant of the company issued in pursuance of section 114*' and adopted the broader definition for the term 'member' in light of the equitable nature of oppression and mismanagement proceedings. The relevant paragraphs of the judgment are extracted hereunder,

> *"22. A more fundamental consideration arises from the nature of jurisdiction conferred under Sections 397 and 398 of the Act, which has consistently been recognised as equitable in character by this Court. These provisions, situated in Chapter VI, are designed to afford*

remedies to minority shareholders against acts of oppression and mismanagement. The entitlement to invoke such jurisdiction is regulated by Section 399, which prescribes the eligibility criteria for maintaining an application under Sections 397 and 398. ***Accordingly, the relevant enquiry, while determining maintainability, must center on whether the applicant satisfies the conditions prescribed under Section 399, rather than on a mechanical application of the procedural requirements found in Section 41(2). The equitable foundation of Sections 397 and 398 must be a guiding factor to not construe the expression "member" in an unduly restrictive or technical manner confined solely to formal entry in the register, thereby frustrating the remedial purpose underlying the legislative scheme.***

23. A conjoint reading of Sections 397, 398 and 399 indicates that the expression "member" cannot be construed in isolation or confined to the technical formulation contained in Section 41(2). Rather, the broader definition embodied in Section 2(27) assumes significance in determining whether a person is entitled to invoke the remedies contemplated under the Act. It would be contrary to settled principles of interpretation to attribute to the Legislature an intention to create conflicting meanings of the same expression within the statute. The expression "member", when employed in the context of remedies under Sections 397 and 398, must therefore be construed with reference to the wider definitional framework provided in Section 2(27) and allied provisions governing the rights of members."

(emphasis supplied)

16. Significantly, the Hon'ble Supreme Court in the case of ***Dr. Bais Surgical (supra)*** did not hold that every person claiming ownership of shares without his name appearing in the Register of Members is entitled to maintain a petition. Rather, the Hon'ble Court broadened

the scope of the term 'member' to consider other modes of acquiring membership except entry in the register of members such as *recognition of proprietary interest evidenced through conduct.* The Hon'ble Court considered the cumulative circumstances demonstrating that the Respondent had been consistently recognised and treated as a shareholder of the company. The relevant paragraph is extracted hereunder,

> *"28. Further guidance on this aspect may be drawn from the decision of the Delhi High Court in Umesh Kumar Baveja (supra), wherein the Court held that the absence of formal allotment of shares or entry in the register of members is not, by itself, determinative of the status of membership for the purposes of proceedings under Sections 397 and 398 of the Act, 1956. The Court observed that where substantial funds invested specifically towards acquisition of equity, are accepted and reflected in the financial records of the company as share application money pending allotment, and are utilised for the company's business purposes, such conduct constitutes strong evidence of recognition of the investor's proprietary stake…*
>
> *29. **Having carefully examined the record, relevant statutory provisions, competing submissions, judicial pronouncements and the reasoning adopted by the High Court, this Court finds that the conclusion treating respondent no. 1 as a member was founded upon a consistent and cumulative chain of factual circumstances demonstrating recognition of his proprietary interest in the appellant company**..*
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30. The High Court further relied upon the financial and operational conduct of the company, which showed that respondent no.1's investment was accepted and utilised for the expansion of the company's business, resulting in increased authorised share capital and profitability. The cumulative effect of these circumstances persuaded the High Court to conclude that respondent no. 1 had, in substance, acquired the status of a shareholder whose interest stood recognised by the company over a considerable period"

(emphasis supplied)

17. In the decision of Hon'ble High Court of Delhi in the case of ***Umesh Kumar Baveja v. IL&FS Transportation Network Ltd (CO.A(SB) 30/2013 & Co.Appl.1051/2013)*** which was referred upon by the Hon'ble Supreme Court in ***Dr. Bais Surgical (supra),*** it was held that where the conduct of the company clearly demonstrates that the applicant has been treated as a shareholder or member of the Company, equitable considerations would justify a broader interpretation of the term "member". Thus, what is material is not merely the existence of documents evidencing transfer of shares but whether the surrounding circumstances establish that the company itself recognised the applicant as possessing proprietary rights in the shares.

18. In the case of ***Abraham Reji & Anr vs. Meenachil Hotels & Resorts Pvt Ltd (***TCP/44/KOB/2019 in CP/62/KOB/2017), the NCLT, Kochi Bench, considered a case where one of the Petitioners held 7.5% shareholding and the other Petitioner held no shares as per the Register of Members and consequently failed to satisfy the threshold

requirement prescribed under Section 244 of the Companies Act, 2013. The Petitioners contended that they were unable to satisfy the threshold requirement solely on account of the Respondents' refusal to effectuate transfer of shares in their favour. Upon consideration of the documentary evidence placed on record, the Tribunal was satisfied that the Petitioners have established their beneficial ownership over the shares and exercised its powers under Section 244 of the Companies Act, 2013 to waive the threshold requirements for maintaining the petition under Section 241 of the Act. The Tribunal recognised that the Petitioners' names not being entered in the Register of Members would not defeat their substantive rights arising from their beneficial ownership of the shares. The aforesaid findings were affirmed by the Hon'ble NCLAT in ***Meenachil Hotels & Resorts v. Abraham Reji (TA (AT) No. 19 of 2021 (Company Appeal (AT) No. 124 of 2020))***. The Hon'ble Supreme Court in ***Meenachil Hotels & Resorts & Ors. v. Abraham Reji & Ors. (Civil Appeal Diary No. 5140 of 2023)*** also declined to interfere with the order passed by the Hon'ble Appellate Tribunal.

19. In ***World Wide Agencies Pvt. Ltd. v. Margaret T. Desor ([1990] 1 SCC 536 / AIR 1990 SC 737),*** the Hon'ble Supreme Court recognised that legal representatives stepping into the shoes of deceased shareholders could not be denied the right to maintain proceedings under Sections 397 and 398 merely because consequential entries had not yet been made in the Register of Members.

20. Thus, from a conjoint reading of the aforesaid judgments, it is clear that entry in the Register of Members is not, in every case, a determinative requirement for assessing whether a person bears the character of a member and has the locus to maintain proceedings alleging oppression and mismanagement. The principle emerging from the aforesaid decisions is that, even where the name of a person does not appear in the Register of Members, the conduct of the Company and the surrounding circumstances evidencing recognition of such person's proprietary or beneficial interest in the shares may be relevant considerations in determining whether such person can invoke the jurisdiction under Sections 241 and 242 of the Companies Act, 2013.

21. In light of the aforesaid principle, we will now examine the facts of the present case. The Petitioner has relied upon three share certificates of the 1st Respondent Company bearing Folio Nos. KSP0006, KSP0009 and KSP0010, originally standing in the names of Respondent No.2, 3 and 6. The Petitioner has produced Memorandum of Transfer, Form SH-4 and Board Resolutions passed by the 1st Respondent Company as proof of transfer of shares in favour of the Petitioner with effect from 25.10.2020. However, the case of the Respondents is that the said documents were executed as security in connection with the loans advanced by the Petitioner, her husband Ajith Ranjan and his partnership firm, MTL Associates, during the period of increased business activity arising out of the demand for surgical gloves and medical equipments during the year 2020. According to the Respondents, the documents were never intended to

effectuate actual transfer of ownership in the shares and were handed over solely as collateral security for financial assistance extended by the lending parties.

22. It is seen that there has been no formal agreement pursuant to the borrowing of unsecured loans from the Petitioner and her related parties executed by the Respondents. We therefore refer to the details of the amounts received by the Respondents from M/s MTL Associates, the Petitioner and the amounts paid by the Respondents to the Accounts of M/s MTL Associates, Ajith Rajan, Shibu (Managing Partner of M/s MTL Associates) duly certified by the Chartered Accountant, M/s Jayaprakash and Co, dated 18.01.2023, extracted hereunder,

AMOUNT RECEIVED FROM M/S.MONEY TREE LOANS AND FINANCES (MTL ASOCIATES), MANKOTTIL BUILDING, IV/815, ATHIRAMPUZHA, KOTTAYAM DIST					
DATE	AMOUNT	RECEIVED FROM	TRANSFEREE		
			NAME	A/C NO	BANK
06/03/2020	2500000	MTL Associates	Bichu Philip	,159048727047	INDUSIND BANK
03/07/2020	3500000	,,	Kellax Surgicals	,760073000000121	SOUTH INDIAN BANK
03/07/2020	750000	,,	,,	,,	
03/07/2020	25000	,,	,,	,,	,,
22/09/2020	4400000	,,	,,	,,	,,
07/10/2020	2200000	,,	,,	,,	,,
11/12/2020	400000	,,	,,	,,	,,
05/12/2020	100000	,,	Sinu Dominic	,0760053000005140	,,
07/03/2020	1500000	,,	Kellax Surgicals	,918020094141089	AXIS BANK
09/04/2020	2200000	,,	,,	,,	,,
15/07/2021	2000000	,,	Maxshield	,5020058209517	HDFC BANK
02/09/2021	2500000	,,	,,	,,	,,
13/09/2021	2500000	,,	,,	,,	,,
TOTAL	24575000				

AMOUNT RECEIVED FROM ROOPA DILEEP, PARTNER OF MTL ASSOCIATES, MANKOTTIL BUILDING , IV/815, ATHIRAMPUZHA, KOTTAYAM DIST					
DATE	AMOUNT	RECEIVED FROM	TRANSFEREE		
			NAME	A/C NO	BANK
28/10/2020	1250000	Roopa Dileep	Sinu Dominic	,0760053000005140	SOUTH INDIAN BANK
02/11/2020	1150000	"	"	"	
10/11/2020	500000	"	"	"	"
13/11/2020	1000000	"	"	"	"
18/11/2020	500000	"	"	"	"
27/11/2020	700000	"	Kellax Surgicals	,760073000000121	"
30/11/2020	500000	"	"	"	"
01/12/2020	700000	"	"	"	"
02/12/2020	1000000	"	"	"	"
02/11/2020	850000	"	Sinu Dominic	,159446220088	INDUSIND BANK
06/11/2020	1100000	"	"	"	"
TOTAL	9250000				

DETAILS OF AMOUNTS PAID TO MONEY TREE LOANS AND FINANCES (MTL ASSOCIATES), MANKOTTIL BUILDING , IV/815, ATHIRAMPUZHA, KOTTAYAM DIST					
DATE	AMOUNT	PAID TO	TRANSFEROR		
			NAME	A/C NO	BANK
21/05/2021	500000	MTL Associates	Maxshield	,5020058209517	HDFC BANK
05/06/2021	500000	"	"	"	"
14/06/2021	1000000	"	"	"	"
25/06/2021	975000	"	"	"	"
26/06/2021	25000	"	"	"	"
16/07/2021	1000000	"	"	"	"
20/07/2021	1000000	"	"	"	"
02/08/2021	1500000	"	"	"	"
02/08/2021	300000	"	"	"	"
04/08/2021	200000	"	"	"	"
16/08/2021	150000	"	"	"	"
18/08/2021	1000000	"	"	"	"
20/08/2021	1000000	"	"	"	"
08/09/2021	1000000	"	"	"	"
08/09/2021	1500000	"	"	"	"
30/09/2021	500000	"	"	"	"
11/10/2021	1000000	"	"	"	"
20/10/2021	500000	"	"	"	"
13/04/2020	280000	"	Kellax Surgicals	,918020094141089	AXIS BANK
17/04/2020	280000	"	"	"	"
24/04/2020	280000	"	"	"	"
28/04/2020	405000	"	"	"	"
15/05/2020	200000	"	"	"	"
22/05/2020	350000	"	"	"	"
29/05/2020	350000	"	"	"	"
29/05/2020	55000	"	"	"	"
05/06/2020	405000	"	"	"	"
17/06/2020	810000	"	"	,0760073000000121	SOUTH INDIAN BANK
08/07/2020	375000	"	"	"	
08/09/2020	5000000	"	"	"	"
06/10/2020	250000	"	"	"	"
20/10/2020	250000	"	"	"	"
08/04/2021	2000000	"	Maxshield	,385401010036262	UNION BANK
14/05/2021	500000	"	"	"	"
14/05/2021	500000	"	"	"	"
01/03/2021	150000	"	Sinu Dominic	,0760053000005140	SOUTH INDIAN BANK
08/02/2021	150000	"	"	"	
12/08/2021	151000	"	"	"	"
TOTAL	26391000				

DETAILS OF AMOUNTS PAID TO MR. AJITH K RAJAN - MANAGING PARTNER ,MTL ASSOCIATES, MANKOTTIL BUILDING , IV/815, ATHIRAMPUZHA, KOTTAYAM DIST					
DATE	AMOUNT	PAID TO	TRANSFEROR		
			NAME	A/C NO	BANK
09/09/2020	135000	AJITH K RAJAN	Sinu Dominic	,0760053000005140	SOUTH INDIAN BANK
17/09/2021	125000	„	„	„	
08/09/2021	125000	„	„	„	„
20/07/2021	100000	„	„	„	„
08/09/2020	990000	„	Kellax Surgicals	,918020094141089	AXIS BANK
TOTAL	1475000				

DETAILS OF AMOUNTS PAID TO MR. SHIBU - PARTNER ,MTL ASSOCIATES, MANKOTTIL BUILDING , IV/815, ATHIRAMPUZHA, KOTTAYAM DIST					
DATE	AMOUNT	PAID TO	TRANSFEROR		
			NAME	A/C NO	BANK
11/06/2021	16059	SHIBU	Sinu Dominic	,0760053000005140	SOUTH INDIAN BANK
08/09/2020	1000000	„	Kellax Surgicals	,918020094141089	AXIS BANK
TOTAL	1016059				

23. The Petitioner has questioned the credibility of the Chartered Accountant's certification produced by the Respondents owing to incorrect description of the Petitioner as a partner of MTL Associates. It is seen that the petitioner also filed a complaint before the Disciplinary Committee of ICAI. The Chartered Accountant in his Written Statement filed in the proceedings before ICAI, explained the said discrepancy as an inadvertent error stating that he did not refer to the Partnership Deed at the time of certification. While we do not have the jurisdiction to ascertain the admissibility of such a submission, we are only concerned whether the transaction was certified by the Chartered Accountant. The Petitioner has also filed details of transactions between her and the Respondents duly certified by Chartered Accountant, M/s GMN & Co dated 29.01.2024, which is extracted hereunder:

a). Details of amount transferred from Ms. Roopa Dileep's Federal Bank Account to M/s Kellax Surgicals Private Limited are as follows;

Date	Amount in Rs
09/11/2020	15,00,000
27/11/2020	7,00,000
30/11/2020	5,00,000
01/12/2020	7,00,000
02/12/2020	10,00,000
Total	**44,00,000**

a). Details of amount transferred from Ms. Roopa Dileep's Federal Bank Account to Mr. Sinu Dominic are as follows;

Date	Amount in Rs
28/10/2020	12,50,000
02/11/2020	11,50,000
10/11/2020	5,00,000
13/11/2020	10,00,000
18/11/2020	5,00,000
Total	**44,00,000**

a). Details of amount transferred from Ms. Roopa Dileep's Federal Bank Account to Mr. Bichu Philip are as follows;

Date	Amount in Rs
02/11/2020	8,50,000
06/11/2020	11,00,000
Total	**19,50,000**

24. On perusal of the Chartered Accountant certificates filed by the parties, it is seen that there is a discrepancy concerning an additional disbursement of Rs. 15,00,000/- by the Petitioner to the 1st Respondent Company, which is reflected in the details of transaction certified by M/s GMN & Co, engaged by the Petitioner. On perusal of Statement of Account of the Federal Bank of the Petitioner for the period 01.08.2020 to 28.02.2022, it is seen that a sum of Rs. 15,00,000 was deposited by MTL Associates into the account of the Petitioner and on the same day was transferred to the 1st Respondent Company. However, the receipt of such amount is not reflected in the corresponding Bank Statement of the 1st Respondent Company. Apart from this anomaly, the other amounts certified by M/s Jayaprakash and Co, Chartered Accountant appointed by the 2nd Respondent, correspond to the bank statements placed on record. **Upon verification of relevant bank statements and supporting documents, this Tribunal finds no reason to discard the certification by M/s Jayaprakash and Co, solely on account of the clerical error of mentioning the Petitioner as a partner of M/s MTL Associates.**

25. Unlike the facts in the aforesaid decisions, the present case does not disclose any consistent course of conduct on the part of the 1st Respondent Company recognising the Petitioner as a shareholder possessing proprietary rights in the Company. The Petitioner has relied upon three physical share certificates standing in the names of Respondent Nos. 2, 3 and 6, Form SH-4, the Memorandum of Transfer and the Board Resolutions to substantiate her alleged acquisition of

shares. However, the Securities Transfer Forms (Form SH-4) dated 25.10.2020 and 14.11.2020 relied upon by the Petitioner, contain the particulars of the Transferors but do not contain the particulars of the Transferee. Hence, mere production of the share certificates, Memorandam of Transfer and Board Resolutions, in the absence of any corresponding contemporaneous conduct of the Company recognising the Petitioner as a shareholder or exercising rights ordinarily associated with ownership of shares, does not, by itself, establish that the Petitioner was recognised as a member of the 1st Respondent Company.

26. Further, while the consideration for the alleged acquisition of 400 equity shares of the 1st Respondent Company is admittedly only Rs. 40,000/-, the Petitioner has not offered any explanation as to why an aggregate amount of Rs. 1,07,50,000/- came to be transferred to the 1st Respondent Company and its Directors. If, as contended by the Petitioner, the aforesaid transfers were solely towards acquisition of shares, it remains unexplained as to why amount far in excess of the alleged consideration was transferred. Equally significant is the fact that the transfer towards subscription and allotment of shares was admittedly made to the Company's Account as well as to the personal accounts of the Respondents. Had the transaction genuinely been for acquisition or subscription of shares, the Petitioner, ought to have questioned the receipt of the subscription money by individuals rather than by the Company itself. It is pertinent to note that the Petitioner did not raise any such grievance in the Company Petition. It is only

after the 2nd Respondent, in the Reply Statement, disclosed the subsisting relationship of unsecured creditor and borrower and explained the financial transactions as loans advanced by the Petitioner, her husband and M/s MTL Associates, the Petitioner, by way of Rejoinder, sought to contend that the Respondents had failed to receive the share subscription money in the account of the Company, had not issued Form PAS-4 and had also failed to file the Return of Allotment in Form PAS-3 before the Registrar of Companies. In the considered opinion of this Tribunal, these averments appear to be an afterthought intended to explain the financial transactions after the Respondents disclosed the true nature of the relationship between the parties.

27. The broader interpretation of the expression "member" in ***Dr. Bais Surgical (supra)***, ***Umesh Kumar Baveja (supra),*** and ***Meenachil Hotels & Resorts (supra),*** has invariably been applied only where the documentary evidence and conduct of the parties unmistakably establish beneficial ownership or recognition of the petitioners as a shareholder notwithstanding the absence of a formal entry in the Register of Members.

28. On the contrary, the admitted financial transactions between the parties, the manner in which the monies were transferred, absence of any explanation regarding the disproportionate consideration and the subsequent pleadings of the Petitioner lend considerable support to the Respondents' case that the documents relied upon by the Petitioner were executed only as security for the financial accommodation

extended by the Petitioner and the persons connected with her. **The surrounding circumstances indicate that the transfer documents cannot be considered in isolation but must necessarily be appreciated in the context of the lending arrangements existing between the parties. This Tribunal is therefore unable to hold that the Petitioner has established the requisite status of a member or beneficial owner of the 1st Respondent Company so as to maintain the petition under Sections 241 and 242 of the Companies Act, 2013.**

29. Since it has been held that there is no sufficient material placed on record to prove that the Petitioner is the shareholder of the Company, the Tribunal now considers *whether the Petitioner in her capacity as the director of the 1st Respondent Company, can file a petition under Section 241-242 of the Companies Act, 2013?*

30. The Hon'ble Bombay High Court in the case of ***Manish Kumar v. Topworth Urja & Metals Ltd. ((2022) ibclaw.in 706 HC)*** considered the case of a non-member Director who had instituted a Civil Suit challenging certain resolutions passed by the Company seeking consequential injunctive reliefs. The Hon'ble High Court, while affirming the order refusing interim relief passed by the trial court, held that having regard to the scheme of Chapter XVI of the Companies Act, 2013 read with Section 430 thereof, disputes pertaining to oppression and mismanagement are required to be adjudicated by the NCLT and that the expression "member" occurring in Section 241 ought not to be assigned a narrow or restrictive meaning so as to defeat the legislative intent underlying the constitution of the

specialised Tribunal. The Hon'ble High Court observed that a restrictive interpretation of the expression "member" would result in multiplicity of proceedings and frustrate the object sought to be achieved by the Companies Act, 2013. The relevant paras are extracted hereunder,

> *"15. If any person, who is interested in the affairs of the Company and who alleges mismanagement or oppression, he shall not be restrained from knocking the doors of the Tribunal merely because the words employed in Section 241; as 'any member' and under Section 242, the Tribunal is expected to exercise it's power upon an application preferred under Section 241 i.e. by any member of the Company. If the intention of the legislature was to create a special Fora, in the form of a quasi-judicial authority incorporated for dealing with the corporate disputes that are of civil nature arising under the Companies Act, particularly, the complaints in relation to the affairs of the Company, alleging that they are conducted in a manner prejudicial to the public interest or prejudicial or oppressive to the complainant or any other member or members or prejudicial to the interest of the Company itself, there is no reason why the plaintiff, who alleges mismanagement and oppression, cannot approach the Tribunal.* ***The words 'any member' if read constrictively and confining it only to member as defined, would result in defeating the intention of law makers, who created the special Tribunal with exclusive jurisdiction only for corporate and reduce the multiplicity of litigation before different forums, including civil courts and to provide justice at close range. On it's creation, the jurisdiction of civil court is ousted, to consider any suit or proceeding with reference to any matter, which the Tribunal or Appellate Tribunal is empowered to decide.***
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> .

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17. I concur with the above view and is of the firm opinion that the word 'member' employed in Section 241 cannot be assigned a confined and narrow meaning as it may lead to abuse of process of law, particularly, by keeping in mind the intention of the legislature, when it created a special Tribunal and conferred powers on it to pass appropriate orders for preventing the oppression and mismanagement in a company.

31. Similar view was expressed by the Hon'ble Madras High Court in the judgment of ***Chiranjeevi Rathnam vs. Ramesh ((2017) SCC OnLine Mad 23049)***, wherein the non-member director had filed a petition seeking remedies for oppression and mismanagement before the Hon'ble High Court. The High Court, by applying the doctrine of reading down, held that the expression "member" occurring in Section 241 should not be construed in its strict or technical sense alone but would also include a person who bears the character of a member or possesses a substantial interest in the internal affairs of the Company. Paragraph Nos. 24 to 26 of the said judgment are relevant, which read as under:

"24. The right to approach tribunal is given to the members, because none-else can have any cause of action or complaint against the indoor-management of the company. Whether the Company calls for Extraordinary General Body Meeting(EGM) is legal (or) whether or not its Directors are elected following the mandate of the procedure contemplated in the statue or the bye laws of the respective company are all matters of concern only to members of the Company and not for outsiders/non-members.

25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word "member" employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful. The golden Rule of statutory construction is that the words and phrases or sentences should be interpreted according to the intent of the legistature that passed the Act. Section 241 and 242 should be read together. If the words of the statutes raises doubt, it is inevitable to call in aid the ground and cause of making the statute and the mischiefs, which the Act intends to redress. Under the new Companies Act, 2013, the intention of the legislature is to vest the power of adjudication the matters referred in Section 242 to the Tribunal.

26. On applying the Doctrine of Reading Down, an internal aid to construe the word in a statute to give reasonable meaning, so as to give the supposed purpose the word "member" referred in Section 241 of the Act, should not be read in isolation or in strict meaning. The word should be read down along with Section 242 of the Act. Therefore, the phrase 'member of the company' in Section 241 mean and include person not only member of the company is strict sense but, also person who "bears the character of a member" or "have substantial interest in the internal affairs of the company".

32. The Hon'ble Supreme Court in ***Shashi Prakash Khemka v. NEPC Micon Ltd*** and the Hon'ble High Court of Madras in ***Viji Joseph v. P. Chander***, while disposing of the petitions filed by non-member directors dealt with the issue of maintainability of proceedings before Civil Courts/ High Courts in light of Section 430 of the Companies Act, 2013 and did not directly determine the issue of locus standi of a

petitioner invoking the jurisdiction of the Tribunal under Sections 241 and 242 of the Companies Act, 2013.

33. It is pertinent to note that the aforesaid decisions arose in the context of the bar of jurisdiction contained in Section 430 of the Companies Act, 2013 and the maintainability of proceedings before Civil Courts. The observations regarding the scope of the expression "member" were made while considering the exclusion of Civil Court jurisdiction under Section 430 and do not directly determine the issue of locus standi of a petitioner invoking the equitable jurisdiction of the Tribunal under Sections 241 and 242 of the Companies Act, 2013. The question of whether the Petitioner thereon qualified as a person having 'the characteristics of a member' or 'substantial interest in the affairs of the Company' was still left for the Tribunal to adjudicate upon.

34. On the other hand, the Hon'ble NCLAT in the case of ***Mr. Jithendra Parlapalli v. Wirecard India Pvt. Ltd. and Ors., (Company Appeal (AT) (CH) No. 127 of 2023),*** considered the maintainability of a petition under Sections 241 and 242 of the Companies Act, 2013 at the instance of a person who admittedly was not a member of the Company. His grievance arose from his removal as a Director and the acts committed against him in his directorial capacity. Although the petitioner made allegations of mismanagement of the company's funds, the reliefs sought, including investigation into the affairs of the Company, were founded upon his status as a Director and not upon any rights flowing from membership of the Company. The Hon'ble Appellate Tribunal held that the eligibility prescribed under Section

244 is founded upon the status of a member and that a directorial grievance, in the absence of membership, cannot by itself suffice to seek waiver under Section 244. The Hon'ble Supreme Court dismissed the appeal in ***Jithendra Parlapalli v. M/S Wirecard India Private Ltd.*** upholding the NCLAT's decision that a non-member director lacks the standing to file an oppression and mismanagement petition. The relevant paragraphs of the order of the Hon'ble NCLAT are extracted hereunder:

> ***"63.*** *At this juncture, it is not out of place for this `Tribunal', to make a pertinent mention that the fundamental eligibility criteria, laid down in Section 244 of the Companies Act, 2013, a `Complainant', must be a `Member' of a `Company', in relation to which, the `Petition', is to be filed. Therefore, it is latently and patently evident that, only a `Member' of a `Company', can prefer a `Petition', in relation to the `Company'.*
>
> ***64. It cannot be forgotten that a `Directorial Complaint', cannot be a basis for filing a `Petition', under Section 241 & 242 of the Companies Act, 2013, as `complaints', in such a `Petition', should relate to the `Rights', in the `status / capacity' of a `Member'***
>
> **.**
>
> .
>
> *66. In the instant case on hand, the `Appellant', in Comp. App (AT) (CH) No. 127 of 2022, had tacitly admitted that he is / was not a `Shareholder' of the `1st Respondent / Company' (`1st Defendant' in Suit). When that be the fact situation, and as per Section 241 of the Companies Act, a `Petition', can be preferred, only by the `Member(s)' of the `Company', and all the more, the `eligibility' of the `Member(s)', who can sustain a `Petition', under Section 241 of the Companies Act, 2013, is prescribed, and when the `Appellant' / `Petitioner', has no*

`Right' to file a `Petition', under Section 241 of the Companies Act, because of his `ineligibility' (not being a `Shareholder' / `Member' of the `1st Respondent' / `Company'), then, in `Law', he has no `Locus' whatsoever, to seek `waiver of the requirement', in IA/644/2020 in CP/289/2020, enabling him, to `Apply', under Section 241 of the Act. Viewed in that perspective and looking at from any angle, the IA No. 644/2020 in CP/289/2020, filed by the `Petitioner / Appellant' (before the `National Company Law Tribunal', Division Bench – I, Chennai), seeking to `Waive' all the requirements, specified in Clauses (a) and (b) of Section 244 of the Companies Act, 2013, and resultantly, permitting him to prefer a `Petition', as per Section 241 and 242 of the Companies Act, 2013, is `per se', not `Sustainable', in the `eye of Law', as held by this `Tribunal'."

35. The Hon'ble High Court in ***Chiranjeevi Rathnam (supra)*** and ***Manish Kumar (supra)*** dealt with the exclusive jurisdiction vested on the Tribunal under Section 430 of the Companies Act, 2013. However, the question of whether a petitioner ultimately satisfies the requirements of Sections 241 and 242 of the Companies Act, 2013 is still left open for interpretation by the Tribunal based on the facts and circumstances of each case. The Hon'ble NCLAT in ***Jithendra Parlapalli (supra)*** undertook a complete assessment of the facts and reliefs sought by the Appellant and concluded that the petition was founded solely upon grievances arising in his capacity as a Director. Therefore, the aforesaid decisions do not lay down conflicting propositions of law. The consistent principle emerging therefrom is that proceedings under Sections 241 and 242 are intended to vindicate rights arising out of membership of a company. While a person whose name does not appear in the Register of Members may, in an

appropriate case, invoke the equitable jurisdiction of the Tribunal by establishing that he bears the character or trappings of a member, a person whose grievance arises solely in another capacity, without asserting any such interest, cannot maintain a petition under the said provisions.

36. Without prejudice to the aforesaid finding on locus standi, this Tribunal would examine *"whether the allegations contained in the Petition disclose any acts of oppression and mismanagement warranting interference under Sections 241 and 242 of the Companies Act, 2013."* This Tribunal refers to Section 241(1) of the Companies Act, 2013 which provides the grounds for filing a petition alleging oppressing and mismanagement and Section 242(1) which provides the scope of powers of the Tribunal in this regard. The relevant sections are extracted as under:

> ***"Section 241. Application to Tribunal for relief in cases of oppression, etc.***
>
> *(1) Any member of a company who complains that-*
>
> *(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
>
> *(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or*

if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter…

Section 242. Powers of Tribunal

(1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit…"

37. In terms of Section 241(1), the Petitioner may file a petition before the Tribunal if the **affairs of the Company have been/ are being conducted in a manner prejudicial** to the Petitioner, the Company or the members in terms of Section 241(1)(a) or, if there is a **material change** in the management or control or ownership of the company not in the interest of shareholders, creditors and, it is likely that **the affairs of the company will be conducted in a manner prejudicial to**

its interests or its members or any class of members under Section 241(1)(b).

38. On a conjoint reading of Section 241 and 242, the following issues arise before this Tribunal:

(i) Whether the company's affairs have been or are being conducted or there has been any material change that is prejudicial to any members public interest or the interests of the company; and

(ii) If that be so, whether to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up.

39. Reference is made to the judgment of the Hon'ble Supreme Court in ***Shanti Prasad Jain vs. Kalinga Tubes Ltd. (AIR 1965 SC 1535),*** wherein it has been held that alleged conduct must be **harsh, burdensome, and wrongful and** mere disagreement, lack of confidence do not, by themselves, constitute oppression or mismanagement. The Hon'ble Supreme Court has observed as follows:

> *"It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the*

company were being conducted in a manner oppressive to some part of the members. ***The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.***"

40. In the present case the Petitioner has made blanket assertions that no meetings have been held and no statutory filings have been made ever since she became a Director of the 1st Respondent Company. However, the Respondents have submitted that the statutory auditors of the Respondent Companies are ensuring that requisite filings have been made.

41. The jurisdiction under the said provisions is equitable in nature and is not intended to remedy every alleged illegality or procedural non-compliance in the affairs of a company unless such acts are shown to be burdensome, harsh or wrongful, or prejudicial to the interests of the company or its members. In the absence of any material demonstrating prejudice or malafide conduct, such vague allegations cannot form the basis for granting relief under Sections 241 and 242 of the Act.

42. The Petitioner has further alleged that the sale of 51% of the shares of the 7th Respondent Company is oppressive and prejudicial to her interests. Since she claims to be a shareholder of the 1st Respondent Company, which in turn is alleged to hold 99.80% of the shares of the 7th Respondent Company, she ought to have been informed of the said transaction. It is her case that the Respondent Nos. 2 to 6 misrepresented the shareholding position of the 1st Respondent Company in the 7th Respondent Company and proceeded with the transaction in violation of the statutory mandate.

43. The Petitioner has relied upon the Balance Sheet of the 7th Respondent Company for the FY 2019-2020 wherein it is stated that the 1st Respondent Company holds 99.80% of the 7th Respondent Company, extracted hereunder,

...has not declared dividend to its equity shareholders.

a) Details of shareholders holding more than 5% shares of the Company

	As at 31 March 2020		As at 31 March 2019	
	Number of shares	% holding in the class	Number of shares	% holding in the class
Equity shares of Rs. 10 each fully paid-up held by				
Anikumar P C				
Kavitha Anikumar	-	-	70,000	70
Kellax Surgicals Pvt Ltd	-	-	30,000	30
Sinu Dominic	99,800	99.80	-	-
	200	0.20	-	-

44. The Respondents, however, dispute the authenticity and evidentiary value of the said financial statements and contend that the same do not constitute the audited financial statements of the 7th Respondent Company. Petitioner says that case that the said financial statements were shown to her in October 2020. However, the

document placed on record bears the date 30.07.2021. When queried regarding this discrepancy during the course of the proceedings, no satisfactory explanation has been furnished by the Petitioner. The original Financial Statements of the 7th Respondent Company for the Financial Year 2019-2020, placed on record by the Respondents disclose that the 1st Respondent Company does not hold any shares in the 7th Respondent Company, as extracted below

			100,000	10,000,000
-List of Share holders having 5% or more Shares in the company (In Nos)				
Name Of the Shareholders	No. of Shares	% on Holdings	No. of Shares	% on Holdings
Dominic Savio	50,000	50%	50,000	50%
Sinu Dominic	25,000	25%	25,000	25%
Bichu Philip	15,000	15%	15,000	15%
TK Kuriachen	10,000	10%	10,000	10%
Anilkumar PC	-	0%	70,000	70%
Kavitha Anilkumar	-	0%	30,000	30%

45. The Petitioner has placed the Agreement of Hypothecation dated 04.09.2020 executed by the 1st Respondent Company in favour of South Indian Bank Limited for a sum of Rs.1,05,00,000/-, wherein the 7th Respondent Company is also reflected as one of the borrowers. The Respondents, on the other hand, have explained that the relationship between the 1st Respondent Company and the 7th Respondent Company commenced in the year 2019 when the 2nd Respondent became interested in acquiring the business of the 7th Respondent Company. The 7th Respondent Company, being classified as a Non-Performing Asset, was unable to directly obtain financial assistance from banks. Consequently, clean financial record of the 1st Respondent Company was leveraged for availing the requisite loan facilities. The Financial Statements filed by the Respondents record that the 7th

Respondent Company had provided guarantee in favour of the 1st Respondent Company in respect of the loan availed from South Indian Bank Limited in accordance with Section 186 of the Companies Act, 2013. The disclosures contained in the Agreement of Hypothecation do not substantiate the allegations of the Petitioner regarding the shareholding of the 1st Respondent Company in the 7th Respondent Company and only indicate that the two entities are related concerns due to the common shareholders.

7. Disclosure of Corporate Guarantee

S.no.	Particulars	For the year Ended 2019-20
1.	Charge ID - 100318560 Charge Holder - The south Indian bank limited	Rs. 7,20,00,000/-

Note: The above mentioned Guarantee is to be renewed every year in a recurring basis. The Entire Guarantees is provided by Maxshield Rubber Products Pvt Ltd to its sister concern Kellax Surgicals Private Limited. Maxshield Rubber Products Pvt Ltd would suffer contingency in case Kellax Surgicals Private Limited fails to perform the Obligation as necessary for the Guarantees provided.

46. The Petitioner relies upon certain letters addressed to banks and the Income Tax Department describing the 7th Respondent Company as a unit of the 1st Respondent Company. From the material placed on record, it appears that the description of the entities as sister concerns or units, was adopted for commercial purposes, which has also been admitted by the Respondents. Such descriptions, by themselves, do not establish any inter-se shareholding relationship between the two companies

47. **While it has been held that the Petitioner does not have the locus to question the management of the affairs of the 1st Respondent Company, she cannot seek to challenge transactions pertaining to the shareholding of the 7th Respondent Company in the absence of any holding subsidiary relationship between the two entities as alleged by the Petitioner.**

48. Lastly, the Petitioner has brought to the notice of this Tribunal certain agreements relating to proposed foreign investments, including FDI Agreement entered into with Sri Lalit Mohan Rana and an agreement pertaining to investments proposed to be made by a German entity, Alfa Contracting GMBH. It is alleged that the Petitioner was kept unaware of such arrangements and the Respondents have committed acts of oppression and mismanagement. However, the Respondents have submitted that the agreements were indeed not fruitful owing to regulatory restrictions and in fact, all amounts received thereon were returned to the investors. Moreover, the Memorandum of Understanding and Agreement placed on record do not constitute proof of receipt of any investment amount nor do they establish that any act prejudicial to the interests of the Company or its members has been committed.

49. In view of the findings made hereinabove, specifically in para 24 and 47, we find that the need for reference to the Magistrate to invoke proceedings under Section 340 of the Criminal Procedure Code does not arise. **IA(CA)/23(CHE)/2024 is accordingly dismissed.** The

documents filed in **IA(CA)/149(CHE)/2025** are taken on record and the application is, disposed of.

50. This Tribunal is of the view that the Petitioner has failed to establish either her locus standi to maintain the present Petition or the existence of any acts of oppression and mismanagement warranting interference under Sections 241 and 242 of the Companies Act, 2013. Accordingly, **CP(CA)/79(CHE)/2022** is dismissed with no orders to cost.

51. Files be consigned to records.

-Sd-	-Sd-
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)